Neutral Citation Number: [2018] EWCA Civ 2742

Case No: B5/2017/3090 and B5/2018/1286

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON COUNTY COURT
His Honour Judge Saggerson

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2018

Before:

LORD JUSTICE LEWISON
LORD JUSTICE HENDERSON
and
LADY JUSTICE ASPLIN

- -

Between:

ABDELRAHIM ALIBKHIET	**Respondent**
- and -	
LONDON BOROUGH OF BRENT	**Appellant**
AMOUNAH ADAM	**Appellant**
- and -	
CITY OF WESTMINSTER	**Respondent**

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Nicholas Grundy QC and Millie Polimac (instructed by **Brent Council**) for the **Appellant in B5/2017/3090**
Martin Westgate QC and Dominic Preston (instructed by **Hodge Jones & Allen Solicitors Ltd**) for the **Respondent in B5/2017/3090**
Jonathan Manning and Richard Granby (instructed by **Oliver Fisher Solicitors**) for the **Appellant in B5/2018/1286**
Andrew Lane and Riccardo Calzavara (instructed by **City of Westminster Council**) for the **Respondent in B5/2018/1286**

Hearing dates: 27th November 2018

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Approved Judgment

Lord Justice Lewison:

1. You would need to be a hermit not to know that there is an acute shortage of housing, especially affordable housing, in London; and that local government finance is severely stretched. Under the homelessness legislation housing authorities in London have duties to procure housing for the homeless; and must, so far as it is reasonably practicable to do so, accommodate such persons within their own district. These joined appeals concern the lawfulness of the decisions and process by which two London boroughs, in purported exercise of their statutory duty, made offers to accommodate homeless persons outside their respective districts. Both appeals are appeals from HHJ Saggerson, who in one case upheld the decision of the local authority, and in the other quashed it.

The statutory framework

2. It is not in dispute that the housing authority in each of these appeals owed the relevant applicant the full housing duty imposed by section 193 of the Housing Act 1996. That duty is a duty to "secure that accommodation is available for occupation by the applicant". The duty may be discharged if the housing authority makes an offer of accommodation which an applicant refuses. The housing authority may discharge their duty only in certain specified ways, one of which is by securing that an applicant obtains suitable accommodation from a third party: section 206 (1). In addition, an authority must not make a final offer unless they are satisfied that "the accommodation is suitable for the applicant": section 193 (7F).

3. Since changes brought about by the Localism Act 2011 a housing authority may discharge its duty by making a private rented sector offer. The criteria applicable to such an offer are set out in section 193 (7AC). The relevant criterion for present purposes is:

> "(c) the tenancy being offered is a fixed term tenancy … for a period of at least 12 months."

4. Section 195A (1) provides:

> "If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—
>
> (a) is satisfied that the applicant is homeless and eligible for assistance, and
>
> (b) is not satisfied that the applicant became homeless intentionally,
>
> the duty under section 193(2) applies regardless of whether the applicant has a priority need."

5. Section 195A (3) makes similar provision for persons threatened with homelessness.

6. Section 208 (1) provides that:

> "So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district."

7. The Secretary of State has power to make regulations specifying circumstances in which accommodation is or is not to be regarded as suitable; and matters to be taken into account or disregarded in determining that question: section 210 (2). The Regulations in force at the date of the impugned decisions were the Homelessness (Suitability of Accommodation) (England) Order 2012.

8. Article 2 of the Order provides:

> "In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—
>
> (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;
>
> (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;
>
> (c) the proximity and accessibility of the accommodation to medical facilities and other support which—
>
> (i) are currently used by or provided to the person or members of the person's household; and
>
> (ii) are essential to the well-being of the person or members of the person's household; and
>
> (d) the proximity and accessibility of the accommodation to local services, amenities and transport."

9. In addition to complying with the Order, a housing authority is also required to "have regard to such guidance as may from time to time be given by the Secretary of State": section 182. That guidance states:

> "48. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

> 49. Generally where possible authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support."

10. An applicant is entitled to request a review of any decision of a housing authority as to the suitability of accommodation offered to him: section 202 (1). If the result of the review is to confirm the original decision, the reviewing officer must give reasons for the decision: section 203 (4).

11. An applicant dissatisfied with a review decision may appeal to the county court on a point of law; and in determining the appeal the county court must apply the principles applicable to judicial review. On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit: section 204 (3). (I note in parentheses that it was not suggested that section 31 (2A) of the Senior Courts Act 1981 applied ether by analogy, or by informing the exercise of the court's discretion under section 204 (3) of the 1996 Act).

12. It is also necessary to refer to section 11 of the Children Act 2004, which requires a local authority to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

Adam v Westminster City Council

13. Ms Adam is a divorced woman with three children who, at the relevant time, were aged 11, 9 and 6 respectively. She applied to Westminster City Council as a homeless person; and on 9 March 2015 Westminster accepted that it owed her the full duty under section 193 (2) of the Housing Act 1996. In compliance with that duty Westminster housed her and her children temporarily in Flat 72, Lapworth Court, Delamere Terrace, London W2. The children attended a local school: King Solomon Academy, Penfold Street, London NW1.

14. Westminster has an accommodation placement policy for homeless households, which is Appendix 9 to its Housing Allocation Scheme. The policy is reviewed annually. The version with which we are concerned is the January 2017 version. It begins by setting out some key principles:

> "2.1 In accordance with legislation and statutory guidance, the council seeks to accommodate homeless households in Westminster as far as reasonably practicable. However, as there is a serious shortfall of accommodation in-borough to meet housing need, it will not be reasonably practicable to provide accommodation within Westminster to every household and there will be an increasing need to use accommodation that may be at some distance from the borough.

> 2.2 Because of the limited supply of accommodation in Band 1 and Band 2 (defined below), accommodation within these bands will be allocated to homeless households with a compelling need for it."

15. The policy groups households into three bands. Those in Band 1 are given priority for offers of accommodation within Westminster and adjacent boroughs. Those in Band 2 are prioritised for offers of accommodation within Greater London; and those in Band 3 will normally be offered accommodation outside London. The policy states that individual decisions about placements in Bands 1 and 2 will take account of the availability of suitable property in the bands; and that any special circumstances demonstrating a compelling need for accommodation within either Band 1 or Band 2 will also be considered. The policy also states that priority banding is not a guarantee of placement within the relevant area; and is subject to suitable accommodation being available. It is common ground that Ms Adam is not among those prioritised for accommodation within Band 1. On my reading of the policy she is not among those automatically prioritised for accommodation within Band 2 (because her children were not at the required stage of their education).

16. In addition to its accommodation placement policy Westminster also maintains a policy dealing with private rented sector offers. This states that such an offer will be made to any homeless household where the law allows it.

17. After a brief period in accommodation in Chadwell Heath, Ms Adam and her family were moved in January 2017 to 7 Harriet House, Wandon Road in the borough of Kensington and Chelsea. On 5 September 2017 Westminster offered Ms Adam accommodation at 19 Washington Road, Worcester Park in the London Borough of Sutton. Leading up to the making of that offer Westminster carefully considered Ms Adam's situation. The housing officer concerned noted that Ms Adam was number 696 on the housing list and was approximately 15 years away from an offer of social housing. He noted that there was one suitable unit of accommodation within the borough; but that it was earmarked for a household higher up the priority list. He also considered the commuting distance between the offered accommodation and the children's school; and considered that it would be unreasonable. However, he noted that there were local schools to which the children could transfer. He went on to consider Ms Adam's medical needs; what support network she had locally; whether anyone in the household was receiving support from social services; and the amenities in the vicinity of the offered accommodation. He concluded that there was no impediment to the offer of accommodation in Worcester Park. Ms Adam requested a review of that decision. Her solicitors wrote a nine page letter making representations on her behalf in support of the review. What they requested was a review of the suitability of the offered accommodation. The main point raised was the length of the journey to school that the children would need to make if they stayed at King Solomon Academy; and the disruption to their education that would be caused if they were to change schools. It also mentioned Ms Adam's health problems, and affordability.

18. The review decision confirmed that the offered accommodation was suitable accommodation, such as to discharge Westminster's duties under the 1996 Act. It is that decision that Ms Adam challenges. There are two surviving grounds of challenge. The first is that Westminster did not make sufficient efforts to comply with its duty to

house Ms Adam within the borough of Westminster if reasonably practicable. The second is that Westminster did not give adequate reasons for its decision.

19. The parties helpfully numbered the paragraphs in the decision letter (a practice that I would commend to reviewing officers generally). The reviewing officer began by saying that he had been asked to "review the suitability" of the offered accommodation; and then said that he would explain "why I have upheld the suitability of the accommodation". In the course of his decision letter, the reviewing officer gave detailed consideration to the position of Ms Adam's children. He considered how they would be able to travel to school; how long it would take; and whether they could transfer to a new school without excessive disruption. He considered the points made about Ms Adam's health and the practicability of her maintaining social and other contacts within Westminster. The reviewing officer also stated:

> "[27] I have taken into account s. 208 (1) of the Housing Act 1996, the Homelessness (Suitability of Accommodation) England Order 2012 and statutory guidance. In line with the above, we are obliged to accommodate applicants in the borough if possible or as near to the borough as possible. Unfortunately, it is not reasonably practicable to accommodate all applicants in or close to Westminster. I have attached our Temporary Accommodation FAQ sheet, which explains our approach to procuring and allocating temporary accommodation. This sheet also tells you where you can find information about Westminster's Housing Allocation Scheme, which explains how we prioritise households for temporary accommodation within Westminster.
>
> [28] As part of my enquiries I have discussed Ms Adam's case with our Private Sector Rents Team to determine what properties were available within the borough at the time we were considering her for an offer. I have been advised that there were no other available three bedroom properties in or outside of Westminster. They also confirmed that the physical layout of the property is suitable taking into account any medical issues in the household.
>
> In summary, and in the light of all the above factors, I cannot accept as justifiable, your reasons for considering the accommodation offered unsuitable."

20. There was some dispute about whether the Temporary Accommodation FAQ sheet was or was not sent with the decision letter. We cannot resolve that dispute. But if it was not, it seems odd that the omission was not more vigorously followed up.

21. Ms Adam appealed to the county court against that decision. HHJ Saggerson dismissed her appeal.

Alibkhiet v London Borough of Brent

22. Mr Alibkhiet is a national of Eritrea. In 2014 he was given leave to remain in the UK; and in September 2016 he was joined in the UK by his wife and four year old daughter. On 19 September 2016 he applied to the London Borough of Brent as homeless. He was on job seeker's allowance (and had been for about a year before his application). Before that he worked as a cleaner. Brent accepted that it owed him the full housing duty.

23. Brent maintains a Temporary Accommodation Placement Policy. Section 4 of the policy deals with the priority of applicants for accommodation either in-borough or in Greater London. Certain categories of homeless persons are given priority in obtaining accommodation either in-borough or in Greater London. It is accepted that Mr Alibkhiet is not within any of these categories. However, the policy also states that "any other special circumstances will be taken into account". Paragraph 4.2 of that policy states that there will be a general presumption that placements outside of London will be used to discharge housing duties "where suitable, affordable accommodation is not available locally". Brent also maintains a policy on discharging its statutory duty by a placement in the private rented sector. That policy states that where an applicant is owed the full housing duty the presumption will be that Brent will discharge its duty "by arranging for a private landlord to make an offer of an assured shorthold tenancy for a period of at least 12 months." However, the policy goes on to say that it is not a "blanket application" of the new power, but that a decision will be taken after a full consideration of a household's individual circumstances. Section 3 of the policy repeats that the duty will remain until Brent arranges for a private sector landlord to offer an assured shorthold tenancy "for a period of at least 12 months". Paragraph 4.2 of that policy also states that there will be a general presumption that placements outside of London will be used to discharge housing duties "where suitable, affordable accommodation is not available locally".

24. On 18 January 2017 Mr Alibkhiet was interviewed by a housing officer at Brent with the aid of an Arabic interpreter. The interview lasted for three hours. It is common ground that in the course of that interview Mr Alibkhiet said that there were no reasons why he should stay in Brent, or indeed in London. His concern was for his daughter who had special needs. The officer explained that there was a lack of affordable housing in London, which was in the throes of a housing crisis; and offered Mr Alibkheit a flat in Smethwick in the West Midlands. Mr Alibkhiet objected to that offer because his support networks were in Brent; there was no Arabic community in the Birmingham area; there were fewer job opportunities and he was planning to get work in a restaurant as a cleaner. The officer told him that he could take up the offer and request a review. An offer letter was sent to him on the following day. The letter stated:

> "Please note that this suitable offer of private accommodation will discharge our duty to you whether you accept or refuse the property and that you will receive only this one offer of suitable accommodation."

25. It also informed him that he had the right to request a review of the suitability of the offered accommodation.

26. Mr Alibkhiet went to inspect the flat on the day after that; and refused the offer. His ground for refusal was that the flat was not provided with a washing machine, in addition to the objections that he had articulated at his interview. Brent asserted that since Mr Alibkhiet had refused the offer Brent's duty under the 1996 Act was discharged. Mr Alibkhiet requested a review, but the review was unsuccessful.

27. Mr Andrew Frankish carried out the review. His decision occupies over 16 pages of closely typed text, which goes through all Mr Alibkhiet's objections in meticulous detail. As in Ms Adam's case the parties helpfully numbered the paragraphs. Having referred to Brent's duty to accommodate Mr Alibkhiet within Brent so far as reasonably practicable, the decision letter continued:

> "[14] However, there is a severe shortage of affordable temporary and long term housing within the Brent area as well as in London and the South East generally.
>
> [15] The demand for social housing in Brent significantly outweighs supply…. The average time it takes a family to secure a 2 bed unit under our choice based lettings scheme for someone in band C is 8 to 9 years. …
>
> [16] There is a chronic shortage of affordable, private rented sector accommodation within the Brent area but also more widely within London and the South East. …
>
> [17] Because market rents are so much higher than LHA [i.e. Local Housing Allowance] levels, this means that Brent Council is unable effectively to compete with other potential tenants for the limited supply of private sector accommodation…. At the end of December 2015 Brent Council was accommodating 2,942 households in temporary accommodation. …
>
> [18] For the above reasons, it is not possible for Brent Council to secure accommodation within or near to Brent for the majority of accepted homeless households. It therefore has to prioritise the very limited supply of accommodation within or near to borough for those most in need of it. This is done by applying the council's Temporary Accommodation Placement Policy. This is regularly reviewed to ensure that all the affordable housing available to the council from time to time is targeted as those who need it most. It was last updated in July 2015 …
>
> [19] Under paragraph 4.3.1 of the placement policy applicants are prioritised for an offer within Greater London if they have been continuously employed within Greater London for a period of six months and for 24 hours or more a week. By your own admission and through our enquiries we have confirmed that you have been in receipt of jobseeker's allowance since September 2016 when you ceased your employment as a part

> time restaurant cleaner and had been in receipt of approximately £450 per month in the form of wages.
>
> [20] The fact that your case did not come within the criteria set for a placement within-borough or within Greater London means that, within the constraints that we operate in, it was not possible to secure housing for you and your family within those areas which would have been close to where you were previously living, while also being fair to other applicant households with far higher levels of need to be housed in those areas. The accommodation that was offered to you was the nearest that Brent Council could find to Greater London that was affordable for you. …
>
> [21] Unfortunately, the experience of the Council's housing needs team is that it is very difficult to procure suitable accommodation outside of the main metropolitan areas. In practice, if a household such as yours does not qualify for within Greater London placement priority, the nearest available accommodation that it is possible to procure is within the West Midlands conurbation, including Birmingham and Wolverhampton. I can confirm that this was the position in relation to your application and that was the closest accommodation that it was possible for the Council to offer you.
>
> [22] Our placement policy had been applied when making the offer. Where an applicant does not meet the criteria for an in-borough or in Greater London placement this means that it is not normally possible to accommodate an applicant within either of these areas. This is the purpose of the placement policy, as explained above."

28. The reviewing officer then went through the various factors to which he was obliged to have regard by virtue of the Homelessness (Suitability of Accommodation) (England) Order 2012. In the course of that exercise he repeated many of the points that he had already made; and added:

> "[42] Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which was secured [the latter] may not be considered to be suitable. However, our records at the point of offer clearly illustrate that at the point of offer, the property [in Smethwick] was the only property available on that date that was suitable to your household's needs."

29. At [46] the reviewing officer said:

> "Hence in line with TAPP and after looking at the other properties that were available at the point of offer [the flat in

> Smethwick] was an appropriate offer for you and your household."

30. The reviewing officer moved on to deal with a number of other points that had been raised by or on behalf of Mr Alibkhiet, before turning to the Supplementary Guidance on changes in the Localism Act 2011. He said that he had had regard to that guidance and added:

> "[111] … However in relation to paragraph 48 I have been able to confirm that there was no other accommodation at the point of offer located nearer to London."

31. The reference to paragraph 48 is a reference to the statutory guidance which I have already quoted. He referred again to Brent's Temporary Accommodation Placement Policy and repeated that Mr Alibkhiet did not qualify for placement under that policy. He referred to two further policies: the Placement Policy – Temporary Accommodation and Private Rented Sector Accommodation; and the Policy for Discharging the Homelessness Duty into the Private Rented Sector. He explained that he took those policies into account and continued:

> "[113] I also considered whether there were any special factors which meant that the policies should not be applied to you but did not find any such factors."

32. In a subsequent part of the review decision the reviewing officer explained that Brent had five procurement officers, and that although they did source accommodation both in Brent and other London boroughs, due to the high level of rents they had to look outside Brent and London in order to cater for the number of homelessness applications that Brent receives. He explained that:

> "[116] Any properties either in London or in the Home Counties ring within reach of London, even if they were available, would not have been offered to yourself due to the fact that you are a non working household with a daughter below mandatory school age. If available they would have been allocated to those families that had a member of their household in employment for over six months, a child at a critical stage in their education or another special circumstance as explained in the aforementioned Temporary Accommodation Placement Policy…
>
> [117] Historically private rented sector offers have been made by Brent to families away from London in such areas as Luton, High Wycombe and Margate. However as rents have increased along with competitiveness from other London boroughs who are able to match and exceed the terms that Brent can offer, this borough has for some time only been able to procure "away from London" in the West Midlands. Unfortunately whether the offer of accommodation had been made a day, week or month later it is almost certain that the offer would have been the same or in an equivalent area in the West Midlands."

33. Mr Alibkhiet appealed to the county court against the review decision. In the course of the appeal Mr Frankish made a witness statement, exhibiting Brent's relevant policies. He explained what staff Brent had to procure accommodation for the homeless both within the borough and outside it. He also exhibited a spreadsheet which showed a number of flats in different colours, which he described in his witness statement as "details of the available properties at the time the Private Rented Sector Offer … was made". Those highlighted in dark green were properties over which Brent had nomination rights. Nomination rights meant that those properties would usually give a period of security for a minimum period of two years in the first instance. Those highlighted in blue were classed as "multiple viewings". That meant that the properties in question were open to viewing by other boroughs, and were not reserved exclusively for Brent. Mr Frankish explained that these were:

> "… primarily used by our "prevention team" and the pale green entries are "multiple viewing" properties used exclusively by the PRSO team. Further these properties do not provide the security of tenure offered by the two year tenancies provided by those with nomination rights."

34. Two properties are relevant for present purposes. One was a flat in Harlesden (in-borough). The other was a flat in Acton (in an adjacent borough). Both were of the right size; and both commanded rents that were within Local Housing Allowance. According to the spreadsheet, both were available at the time when Brent made its offer to Mr Alibkhiet of the flat in Smethwick.

35. HHJ Saggerson decided to quash the review decision. He did so on the sole ground that there was:

> "… a total absence, in the process from offer through to discharge letter, including the review decision letter, of any explanation, let alone a cogent explanation, as to why on the date of the offer, 18th January 2017, the Acton property … was not a property that was offered to this family."

Judicialisation of welfare services

36. In *R (A) v Croydon LBC* [2009] UKSC 8, [2009] 1 WLR 2557 Lady Hale warned against the "judicialisation of claims to welfare services"; a warning that Lord Carnwath repeated in *Poshteh v Kensington & Chelsea RLBC* [2017] UKSC 36, [2017] AC 624 at [22]. He also noted at [35] the range of factors, including allocation of scarce resources, to which authorities are entitled to have regard in fulfilling their obligations under the housing legislation.

37. Where an authority, such as the two authorities in these appeals, has to formulate a policy for housing allocation then it is entitled to bring to bear a variety of different considerations, such as the balance between supply and demand both in-borough and more widely; knowledge of the circumstances of applicants generally; long term strategy considerations; expertise; political and social awareness, and local knowledge: *R (Ahmad) v Newham LBC* [2009] UKHL 14, [2009] PTSR 632 at [62]. Although in that case Lady Hale drew a distinction between a duty to provide benefits or services for a particular individual (such as duties owed to the homeless) and a

general or target duty which is owed to a whole population (such as a power to provide social housing), I consider that where, as here, the policy in question relates specifically to a group all of whom are within the same category of persons to whom the individual duty is owed, an authority must be entitled to carry out a similar balancing exercise. That is an exercise with which the court ought to be very wary of interfering. To put the point another way the individual duty is owed both to the particular applicants, and also to all other applicants in relation to whom the authority has accepted the full housing duty. It must try as best it can to give effect to those concurrent duties.

38. A court must be wary about imposing onerous duties on housing authorities struggling to cope with the number of applications they receive from the homeless, in the context of a severe housing shortage and overstretched financial and staffing resources. That said, the court is the guardian of legality; and it must not hesitate to quash an unlawful decision.

In-borough accommodation

39. The leading case on section 208 is the decision of the Supreme Court in *Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] PTSR 549, allowing an appeal from this court: [2014] EWCA Civ 1383, [2015] PTSR 211. Ms Nzolameso applied to Westminster as a homeless person. She was a single mother with health problems and had five children aged between 8 and 14; all of whom were in local schools. Westminster offered her temporary accommodation which it considered suitable near Milton Keynes, some 40 miles away. Ms Nzolameso refused the offer on the grounds that she had lived in Westminster for some years, had many supportive friends there and wished to remain registered with her doctor and for her children to continue at their existing schools. Westminster rejected her grounds concluding, in particular, that since the children were not of GCSE age it was suitable for them to move schools. Westminster's reasons were contained in a standard paragraph in the review which said:

> "As you are aware Westminster is currently suffering from a severe shortage of both temporary and permanent accommodation. It is therefore not reasonably practicable to offer temporary accommodation in the borough for everyone who applies for it and therefore we have to offer some people temporary accommodation located outside Westminster. The council's temporary lettings team carefully assesses each application based on the individual circumstances of each household member and decides what type of accommodation would be suitable for the household. Given the shortage of housing in Westminster and all of your circumstances, including those above, I believe that it was reasonable for the council to offer your household this accommodation outside the Westminster area."

40. Westminster produced no evidence of their policy in relation to the procurement of accommodation in order to fulfil their obligations under the 1996 Act, nor of the location of that accommodation, nor of the instructions given to the temporary lettings team as to how they were to decide which properties are offered to which applicants.

41. The Supreme Court held that Westminster had not demonstrated that it had complied with its duty under section 208. At [19] Lady Hale referred to the statutory duty and said:

> ""[Reasonable] practicability" imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate "in-borough", they must generally, and where possible, try to place the household as close as possible to where they were previously living."

42. In other words the reviewing officer had asked himself the wrong question. The question was not whether it was reasonable to offer Ms Nzolameso accommodation in Bletchley: it was whether it was reasonably practicable to offer her accommodation in Westminster.

43. At [31] to [35] Lady Hale recited the submissions made on behalf of the Secretary of State (who had intervened in the appeal) about the need to provide reasons for decisions. At [35] she said:

> "The Secretary of State complains that the effect of [the Court of Appeal's] approach would be to encourage courts to infer, on no other basis than the assumed experience and knowledge of a local authority, that the authority knew of the Code and Guidance and had taken it into account; that the authority had considered and rejected the possibility of providing closer accommodation than that offered; and that the authority had good reasons for their decision in this particular case. If the courts are prepared to assume all this in the authority's favour, this would immunise from judicial scrutiny the "automatic" decisions to house people far from their home district, which was just what the 2012 Order and Supplementary Guidance were designed to prevent."

44. In essence she accepted that submission. Turning to the decision under appeal, she considered that it had failed to show that Westminster had complied with its duty. What she said at [36] was:

> "There is little to suggest that serious consideration was given to the authority's obligations before the decision was taken to offer the property in Bletchley. At that stage, the temporary lettings team knew little more than what was on the homelessness application form. This did not ask any questions aimed at assessing how practicable it would be for the family to move out of the area. Nor were any inquiries made to see whether school places would be available in Bletchley and what the appellant's particular medical conditions required. Those inquiries were only made after the decision had been taken. The review decision is based on the premise that, because of the general shortage of available housing in the borough, the authority could offer accommodation anywhere else, unless the applicant could show that it was necessary for

> her and her family to remain in Westminster. There was no indication of the accommodation available in Westminster and why that had not been offered to her. There was no indication of the accommodation available near to Westminster, or even in the whole of Greater London, and why that had not been offered to her. There was, indeed, no indication that the reviewing officer had recognised that, if it was not reasonably practicable to offer accommodation in Westminster, there was an obligation to offer it as close by as possible."

45. In essence, therefore, this was a reasons challenge. Lady Hale recognised that housing authorities have a difficult task to perform; and gave some helpful general guidance on what should be done for the future. It is important and worth quoting at some length. She said:

> "[38] But how, it may be asked, are local authorities to go about explaining their decisions as to the location of properties offered? It is common ground that they are entitled to take account of the resources available to them, the difficulties of procuring sufficient units of temporary accommodation at affordable prices in their area, and the practicalities of procuring accommodation in nearby authorities. It may also be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future. On the other hand, if they procure accommodation outside their own area, that will place pressures on the accommodation, education and other public services available in those other local authority areas, pressures over which the receiving local authority will have no control. The placing authority are bound to have made predictions as to the likely demand for temporary accommodation under the 1996 Act and to have made arrangements to procure it. The decision in any individual case will depend on the policies which the authority has adopted both for the procurement of temporary accommodation, together with any policies for its allocation.
>
> [39] Ideally, each local authority should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year. That policy should, of course, reflect the authority's statutory obligations under both the 1996 Act and the Children Act 2004. It should be approved by the democratically accountable members of the council and, ideally, it should be made publicly available. Secondly, each local authority should have, and keep up to date, a policy for allocating those units to individual homeless households. Where there was an anticipated shortfall of "in-borough" units, that policy would explain the factors which would be taken into account in offering households those units, the factors which

> would be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make it suitable to accommodate a household further away. That policy too should be made publicly available."

46. The key points that I draw from this are:

i) A housing authority is entitled to take account of the resources available to it, the difficulties of procuring sufficient units of temporary accommodation at affordable prices in its area, and the practicalities of procuring accommodation in nearby boroughs.

ii) If there is available accommodation within-borough, it does not follow that the authority *must* offer it to a particular applicant because it may be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future.

iii) The decision in an individual case may depend on a policy that the authority has adopted for the procurement and allocation of accommodation.

iv) The policy should explain the factors which would be taken into account in offering households those units, the factors which would be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make it suitable to accommodate a household further away.

v) The policy should be publicly available.

Adoption and application of a policy

47. As Lady Hale said in *Nzolameso* at [38]:

> "The decision in any individual case will depend on the policies which the authority has adopted both for the procurement of temporary accommodation, together with any policies for its allocation."

48. Although she said that the decision in any individual case "will" depend on the policies, it is only necessary to go as far as saying that it *may* do. The contrary argument must establish that the decision in any individual case *cannot* depend on the policy. The policy must, of course, be a lawful one; and conformably with public law principles relating to policies there must be room for the exceptional case. But in principle, where a public authority has a lawful policy, then provided that it implements the policy correctly its decision in an individual case will itself be lawful: see, for example, *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546 at [31].

The adequacy of reasons

49. As noted, the reviewing officer has a statutory duty to give reasons for the review decision. In *South Bucks DC v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 1953

Lord Brown reviewed a number of authorities on the adequacy of reasons. He confirmed at [29] that the burden is on the challenger to show that the decision maker made an error of law. His well-known summary of principle is at [36]. For the purposes of this case it will suffice if I only quote part of it:

> "Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute and not to every material consideration… Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced."

50. These principles apply equally to review decisions under the Housing Act 1996: *Rother DC v Freeman-Roach* [2018] EWCA Civ 368, [2018] HLR 22.

51. It must be emphasised that the purpose of giving reasons is twofold: first so that the parties can know what was decided and why; and second so that the court may, if necessary, decide whether a decision-maker has made an error of law. It is not the function of a review decision to provide a treatise on housing law; or a detailed description of everything that a housing authority does in performance or purported performance of its duties to the homeless. Thus in *Holmes-Moorhouse v Richmond upon Thames LBC* [2009] UKHL 7, [2009] 1 WLR 413, Lord Neuberger of Abbotsbury said:

> "[47] … review decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment.
>
> [49] In my view, it is therefore very important that, while circuit judges should be vigilant in ensuring that no applicant is wrongly deprived of benefits under Part VII of the 1996 Act because of any error on the part of the reviewing officer, it is equally important that an error which does not, on a fair analysis, undermine the basis of the decision, is not accepted as a reason for overturning the decision.
>
> [50] Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not

> to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

52. This approach is echoed in *Nzolameso* at [32], and *Poshteh v Kensington and Chelsea RLBC* [2017] UKSC 36, [2017] AC 624 at [39] in which Lord Carnwath said of the review decision:

> "Viewed as a whole, it reads as a conscientious attempt by a hard-pressed housing officer to cover every conceivable issue raised in the case. He was doing so, as he said, against the background of serious shortage of housing and overwhelming demand from other applicants, many no doubt equally deserving."

53. If a policy is lawful, and is properly applied, that will usually be sufficient to explain why a decision has been taken: *R (Carol T) v Secretary of State for the Home Department* [2003] EWHC 538 (Admin) at [41].

Brent's policy and reasons

54. Mr Westgate QC, for Mr Alibkhiet, advances a simple argument. Brent's policy states that a placement out of London will be made "where suitable, affordable accommodation is not available locally". Although unknown to Mr Alibkhiet at the time, it is now clear from Mr Frankish's witness statement that in fact there *was* suitable affordable accommodation available locally. The decision letter is replete with assertions that the flat in Smethwick was the nearest that Brent could find to Greater London (para [20]); the flat in Smethwick was the closest accommodation that Brent could offer (para [21]); the flat in Smethwick was the only property available (para [42]); there was no other accommodation at the point of offer located nearer to London (para [111]); properties in London would not have been offered even if they had been available (para [116]).

55. Given that there was in fact suitable affordable accommodation available locally, then simply as a matter of interpretation of the policy the presumption of an out of London placement did not apply. Brent might have had very good reasons for not offering the available accommodation to Mr Alibkhiet. There might have been applicants with a higher degree of priority than him; the accommodation might have been held in reserve for emergencies; the accommodation that was subject to a multiple viewing arrangement might have been taken by one of the other boroughs party to the arrangement. Any of these might well have justified Brent's decision to offer the flat in Smethwick to Mr Alibkhiet. The problem is that it is impossible to infer from the review decision what the reason was. Mr Westgate also argued that the reviewing officer must have interpreted Brent's policy as meaning that a person in Mr Alibkhiet's position would never be offered a placement in London. If so, that would have been a misreading of the policy; and thus would be an additional reason vitiating the decision.

56. I do not consider that the reviewing officer misread the policy. First, at paragraph [22] he stated that the effect of the policy was that a person who did not meet the placement criteria for an in-borough or London placement would not *normally* be

accommodated in those areas. "Normally" is self-evidently not the same as "never". Second, at paragraph [113] the reviewing officer considered whether there were any special circumstances which would enable Mr Alibkhiet to be offered such a placement. He found none; and none has been suggested on this appeal.

57. So that leaves the question: did the review decision adequately explain why Mr Alibkhiet was not offered a placement either in-borough or in London?

58. Mr Grundy QC, for Brent, supported the decision letter. He submitted that when the reviewing officer said that there was no available accommodation, what he meant was that, within the terms of Brent's allocation policy, there was no accommodation that Brent could offer Mr Alibkhiet: in other words "available" meant "available for you". However, given the number of times that the decision letter asserted that there was no available accommodation closer than Smethwick I do not consider that this is a permissible interpretation of the decision letter; or at least not one that would have been clear enough to Mr Alibkhiet.

59. Mr Grundy argued in the alternative that the reason why the flats in Harlesden and Acton were not offered to Mr Alibkhiet could be inferred from what the letter did say. Thus at paragraph [18] the reviewing officer said:

> "[Brent] therefore has to prioritise the very limited supply of accommodation within or near to borough for those most in need of it. This is done by applying the council's Temporary Accommodation Placement Policy."

60. That statement acknowledged that there *was* a limited supply of accommodation within or near to borough; and explained that the reason why it was not offered to Mr Alibkhiet was because of the policy. At paragraph [20] he said:

> "The fact that your case did not come within the criteria set for a placement within-borough or within Greater London means that, within the constraints that we operate in, it was not possible to secure housing for you and your family within those areas which would have been close to where you were previously living, while also being fair to other applicant households with far higher levels of need to be housed in those areas."

61. It, too, implicitly acknowledged that there was accommodation within London; and also explained that the reason why Mr Alibkhiet was not offered accommodation in-borough or within London was because of other households with far higher levels of need. The "constraints" were plainly the constraints imposed by the policy, coupled with the severe housing shortage.

62. At [46] the decision letter stated:

> "Hence in line with TAPP and after looking at the other properties that were available at the point of offer [the flat in Smethwick] was an appropriate offer for you and your household."

63. This, too, acknowledges that there *were* other properties available at the point of offer, and explains that it was the application of the policy that made the flat in Smethwick the appropriate offer.

64. It might also be said that, paraphrasing Lord Neuberger in *Holmes-Moorhouse*, any error made by the reviewing officer did not undermine the basis of the decision, because as he stated in paragraph [116] even if there had been available accommodation (which we now know that there was) it would not have been offered to Mr Alibkhiet because of the policy.

65. In *Nzolameso* Lady Hale warned against relying on inference in considering the legality of decision letters based simply on the knowledge and experience of reviewing officers. However, this is not such a case. It is a question of interpreting, without nit-picking and in a benevolent way, what the review decision actually said. What would a reasonable person in the position of Mr Alibkhiet have understood were the reasons for his not being offered accommodation either in-borough or in London? In my judgment he would have understood that there was a limited supply of such accommodation; that Brent had to allocate it in accordance with the policy; that he did not fall within any of the priority categories covered by the policy; that there were no special circumstances applicable to his case; and that such accommodation as there was in London was allocated to families with a greater need than his.

66. In Mr Alibkhiet's case the judge allowed his appeal on the sole ground that Brent had not explained why Mr Alibkhiet had not been offered the available property in Acton. In my judgment, with all respect to the judge, it is clear enough why Mr Alibkhiet was not offered the property in Acton. Acton, like Brent, is in London; and applying Brent's Temporary Placement Policy, Mr Alibkhiet did not qualify for priority as regards a placement in Greater London. The fact that there was one potentially available unit, or possibly two, (and over 2,000 households in temporary accommodation as the reviewing officer had explained) does not undermine the application of that policy.

67. In my judgment, although the decision letter could have been better expressed, that was enough to amount to a lawful decision, made in accordance with the policy. Brent therefore succeeds on its ground of appeal. That makes it necessary to address the arguments which Mr Alibkhiet raises in his Respondent's Notice.

The section 208 duty

68. It is common ground that a decision when to discharge the full housing duty by making a private rented sector offer is a question of discretion for the authority. Westminster's policy is to make such an offer whenever the law allows it.

69. It must be emphasised that the complaint in Ms Adam's appeal is limited to the question whether Westminster complied with its duty to house her *in-borough*, so far as reasonably practicable. It is not part of the complaint that Westminster did not try to house her in, say, Hammersmith or Camden.

70. Mr Manning emphasised that he was not attacking the lawfulness of Westminster's accommodation placement policy. As I have said, if Westminster's policy were to have been strictly applied, Ms Adam would not have been entitled to priority as

regards Band 2 accommodation. But that is in fact what she was offered. The housing needs officer and the reviewing officer must, therefore, have considered that there were factors in her individual case that justified affording her more generous treatment than the policy required. On the basis of the decision, she qualified for prioritisation for a Band 2 property, and that is what she got.

71. Mr Manning, for Ms Adam, submits that Westminster made "no real attempt" to locate in-borough accommodation for Ms Adam. There are two aspects to this submission: first, whether Westminster ought to have done more than examine its own housing stock and make enquiries of the Private Sector Rents Team; and second whether the inquiries that Westminster made ought to have been repeated over a longer period. As it is put in the skeleton argument:

> "It is insufficient, and unlawful, for an authority to, whether by policy or by the operation of a practice under the policy, designate certain classes of applicant in whose cases accommodation within the area will only be provided if, as luck would have it, something suitable is available on a single given day when the authority happens to look for accommodation for that applicant."

72. It is not easy to reconcile this way of putting the argument with Mr Manning's statement that he did not criticise the policy. As things turned out Ms Adam was allocated accommodation within the terms of the policy.

73. Mr Manning argued that a housing authority must have some further obligation to assess whether it was reasonably practicable to accommodate Ms Adam in-borough; and that Westminster was required to assess whether it would be able to accommodate her in-borough within a reasonable time-frame. He accepted, however, that a housing authority was entitled to decide (within the limits of rational decision-making) for how long a period it should continue to make enquiries, and that an authority was not required to do more than to satisfy the test of reasonable practicability. What an authority was required to do was to take an approach which gives them a reasonable chance of finding accommodation in-borough.

74. He drew support for this submission from the decision of Recorder Wilson QC in the Central London County Court in *Barakate v Brent LBC* (10 October 2016). In the course of his judgment the Recorder said:

> "… in the context of location, the concept of suitability can be seen to be not an absolute one, but a relative one, depending on the availability or non-availability of something closer. This relative suitability must, as I see it, have a further important consequence. As soon as one allows the test of suitability to include this relative element, it seems to me that in cases of far away placements, the test should also include some consideration of the timescale within which more suitable accommodation might be found."

75. In this passage the Recorder was addressing the suitability of accommodation, which is a different question from impugning an authority's decision to discharge its full

housing duty at a particular time. I would accept that in some cases considerations of timescale are relevant considerations. If, for example, a housing authority is aware that a development is approaching completion and that it will provide affordable housing, that may well be relevant to the question whether it should discharge its housing duty immediately, or whether it should wait until the development is complete. However, in this case the shortage of housing in Westminster is the constant backcloth against which all housing decisions are currently made. That is clear not only from the review decision, but also from the key principles of the placement policy. If a housing authority decides to discharge its full housing duty by making a private rented sector offer, I do not consider that it must wait in the Micawberish hope that "something will turn up". It follows, in my judgment, that Westminster discharged its duty by inquiring what suitable accommodation was available at the time at which it made its offer.

76. This ground of appeal fails.

77. Mr Westgate accepts that in Mr Alibkhiet's case Brent has provided adequate explanation as to why there are a limited number of units available in London. He points out that, nevertheless, Brent acknowledges that units in London are procured. But, he says, Brent has not explained *how* those units are procured or the success that is achieved in obtaining them. Barely any information is given about the 'multiple viewings' accommodation that is available to both Brent and other authorities.

78. In addition, he says that barely anything is said in relation to accommodation between London and Birmingham or in relation to any other town or city that is outside London but closer to Brent than Birmingham. The peg upon which this argument hangs is not to be found in the Act itself; or, indeed, in the Order. It is said to be found in the Supplementary Guidance issued by the Secretary of State, to which the authority is required to "have regard". That says in paragraph 48:

> "Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference."

79. Brent's review decision treats London and the South East together. It begins by explaining the shortage of social housing in Brent. It goes on to explain that there is a chronic shortage of affordable private rented sector accommodation within both Brent and London and the South East; and that Brent cannot compete with other tenants for the limited supply of such accommodation. It explains that suitable affordable accommodation is only procurable in major conurbations. The review decision deals in terms with Brent's previous ability to offer placements in Luton, High Wycombe and Margate; and explains why that is no longer possible. Such units of accommodation that are available are allocated by applying Brent's policy. In my judgment, that is an adequate explanation of why Brent does not have access to accommodation within London and the South East.

80. Once that area is eliminated, the West Midlands seems to me to be the next available pool of supply. It is, I suppose, theoretically possible that Brent might have been able

to find somewhere in East Anglia or the East Midlands that was closer to Brent than Birmingham as the crow flies; but that places an onerous burden on a housing authority. Mr Westgate accepted that Brent was not required to scour every estate agent's window between Brent and Birmingham. In addition the review decision explained that suitable affordable accommodation is only available in main metropolitan locations. Moreover, I am by no means convinced that the simple metric of distance as the crow flies is the be-all and end-all, if one leaves out of account means of communication between the offered accommodation and the borough to which the application is made. The review decision goes into a lot of detail about means of communication between Brent and Birmingham by car, coach and train. These, in my judgment, are legitimate factors for a housing authority to take into account when considering an out of borough placement.

81. I reject this criticism of Brent's review decision.

When does the duty to give reasons arise?

82. Mr Westgate submitted that Brent had a duty to give reasons explaining why Mr Alibkhiet was being offered an out of London placement at the time when the offer was made. That would have properly informed his choice whether to accept or reject the offer. The duty to give reasons was part of the overall common law duty of fairness, which applies to administrative actions.

83. The only statutory requirement for the giving of reasons is that contained in section 203, which applies only to review decisions. This was supplemented by regulation 8 of the Allocation of Housing and Homelessness (Reviews Procedures) Regulations 1999, and is now supplemented by regulation 7 of the Homeless (Review Procedure etc.) Regulations 2018, which require a reviewing officer to give reasons if he considers that there is a deficiency or irregularity in the original decision, or in the manner in which it is made, but is minded none the less to make a decision which is against the interests of the applicant on one or more issues. There is no statutory requirement to give reasons at any earlier stage.

84. Nevertheless, in some statutory schemes there is room for the imposition of a common law duty of fairness. That duty may require brief reasons to be given. The duty to give reasons is not a free-standing duty: it is an aspect of the common law duty of fairness: *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812, [2018] 4 WLR 123 at [84] (Singh LJ) and [184] (Hickinbottom LJ). This court considered the applicability of a common law duty to give reasons in the context of the homelessness legislation in *Akhtar v Birmingham City Council* [2011] EWCA Civ 383, [2011] HLR 28. In that case the applicant was offered accommodation which she rejected. She was successful in a review of the authority's decision that the accommodation was suitable, but the decision letter did not give reasons. She was then offered different accommodation, which she also rejected; but this time she was unsuccessful on review. Her complaint was that the first review did not give reasons; and that the letter offering the second accommodation did not explain why the first review had succeeded. Etherton LJ (with whom Maurice Kay and Rimer LJJ agreed) held that there was no duty on the authority to give reasons where not required by the statute to do so. In particular, he pointed to the requirement that the applicant be warned in writing about the consequences of refusing a final offer and said at [48]:

> "I also agree with the judge that any potential unfairness to the appellant was, in any event, avoided by the prominent warnings in both letters of the consequences of refusing a final offer, and notification of the ability to accept the offer and still to challenge it by way of review. Parliament provided that mechanism of accepting an offer while continuing to challenge it by way of review specifically to mitigate the risk to an applicant of irrevocably losing a property by challenging its suitability. Mr Nicol, as I have said, advanced various reasons why that mechanism had potential practical drawbacks for someone in the appellant's situation. Parliament's chosen mechanism for preventing injustice and hardship may not be ideal in all cases, but I cannot see that its potential drawbacks support the case for the importation of duties arising at common law for unfairness. That is particularly so where the additional duty is said to be the obligation to give reasons, but Parliament has already specified other particular circumstances where reasons must be given: for example, under s.184(3) when the authority decides any issue against an applicant as to his eligibility for any assistance and as to the existence of any duty to him under Part 7 of the Act, and under s.203 (4) when, on a review under s.202, the authority decides to confirm its original decision."

85. In my judgment this constitutes binding authority that in this particular statutory scheme the duty to give reasons is contained in and constrained by the statute itself. The statutory scheme is designed so as to avoid unfairness. It was followed and applied by the later decision of this court in *Solihull MBC v Khan* [2014] EWCA Civ 41, [2014] HLR 33.

86. I reject the submission that Brent was required to give reasons at the point of offer.

Westminster's reasons

87. In Ms Adam's case Mr Manning argues that it is not clear from the review decision why Westminster decided to make an offer of stable accommodation at the particular time that it did. It was entitled to continue to provide temporary accommodation, as it had been doing for two and half years, rather than choose to discharge its statutory duty under section 193. In addition, he says, it is not clear how Westminster tried to comply with its duty under section 208 to house Ms Adam in-borough if reasonably practicable.

88. The answer to Mr Manning's first point is that the question he now posits was not squarely raised during the course of the review. The focus of the representations in support of the review was on suitability; not on impugning the timing of the decision to make the offer. The closest that Ms Adam's solicitors came to raising it was to say:

> "[Westminster] has failed to explain why a move from the available temporary accommodation to the current accommodation was justified when taking into account the children's best interest."

89. But this was in the context of the children's needs; and the review decision dealt with that at length. As Lord Brown made clear in *South Bucks*, reasons need only address the main issues. In my judgment the reviewing officer was simply not required to explain why Westminster had chosen to make the offer when it did. The answer to Mr Manning's second point is that it is abundantly clear what Westminster did to comply with its duty under section 208. Whether the steps that it took were adequate to comply is a different question; and I have already dealt with that. I add that it is unfortunate that the Temporary Accommodation FAQ sheet was not attached to the decision letter (if that were the case) because the review decision stated that it explained both Westminster's approach to procurement as well as its approach to allocation. But we have not seen it.

Brent's policy as regards length of letting

90. The argument under this head is that in so far as Brent excluded the Acton flat because it did not carry security of tenure for two years, that was either contrary to Brent's policy; or, if in accordance with Brent's policy, was unlawful.

91. In my judgment this argument involves a misreading of Mr Frankish's evidence. All that he was doing was to explain the difference between a property over which Brent had nomination rights, and a property which was classified as "multiple viewings". He did not say that that difference was the reason why the Acton flat was not offered to Mr Alibkhiet. There is nothing in Brent's policy which restricts it to two year tenancies. On the contrary the policy states (more than once) that a private rented sector offer will be made where a landlord is willing to grant a tenancy for at least 12 months. That is entirely in line with the statutory criterion.

92. The reason why the Acton flat was not offered to Mr Alibkhiet was, as I have said, explained by the fact that he did not fall into any group entitled to priority for a placement within Greater London. Length of tenure played no part in that decision.

Result

93. I would dismiss Ms Adam's appeal; but allow Brent's.

Lord Justice Henderson:

94. I agree.

Lady Justice Asplin:

95. I also agree.