

Merton Council

Cabinet

7 March 2016

Supplementary agenda

7 Homeless Placement policy

1 - 48

This page is intentionally left blank

Committee: Cabinet

Date: 7 March 2016

Subject: Interim Homeless Placement Policy

Lead officer: Simon Williams, Director of Community and Housing

Lead member: Councillor Nick Draper, Cabinet Member for Community and Culture

Contact officer: Steve Langley, Head of Housing Needs and Strategy

Reason for urgency:

The chair has approved the submission of this report as a matter of urgency. This is because it provides the Cabinet with latest information and legal advice with regards to housing placement and Council policy.

Recommendations

1. That the content of this report be noted.
-

1. PURPOSE OF THE REPORT AND EXECUTIVE SUMMARY

- 1.1 This report proposes the adoption of an Interim Homeless Placement Policy for housing. This policy will cover the use of available housing to meet the needs of homeless households where the Council has or is likely to accept a housing duty.

This will include

- Temporary Accommodation under Section 193 Housing Act 1996 Part 7.
- Private rented offer as either a housing option or bringing the homeless duty to an end.
- Accommodation for households with no recourse to public funds.

This paper will also outline the Supreme Court judgement against Westminster Council in a case relating to how it had made a decision on where to place a family to which it had a duty to accommodate under the Housing Act 1996. The judgement has consequence for the Council who are now required to develop policies to show how they procure accommodation both in and outside their boroughs and how they will decide who has priority for accommodation in or close to the borough.

The paper proposes that this policy is adopted on an “interim” basis and a further report is produced in 12 months to examine the impact of the policy.

The purpose of the report is to:

- Provide details of the Nzolameso vs Westminster Judgement.
- Consider the supply/demand data which have shaped this policy.

2. DETAIL

Background

2.1 The Council has a statutory duty under Part VII (7) of the Housing Act 1996 to provide temporary accommodation to households, who it has reason to believe may be eligible, homeless and have a priority need until a decision has been reached on their application. If the Council decides that it owes a “full housing duty” because the applicant is

- Homeless
- Eligible for assistance
- Has a local connection
- Is not homeless intentionally
- Has a priority need

He/she will be offered temporary accommodation until a permanent housing solution is found.

Context:

2.2 The Council has a statutory duty under Part VII (7) of the Housing Act 1996 to provide temporary accommodation to households who it has reason to believe may be eligible, homeless and have a priority need until a decision has been reached on their application. If the Council decides that it owes a “full housing duty” because the applicant is

- Homeless
- Eligible for assistance
- Has a local connection
- Is not homeless intentionally
- Has a priority need

He/she will be offered temporary accommodation until a permanent housing solution is found.

Case Law - The Nzolameso Judgement

2.3 There have been a number of recent Supreme Court Judgements which have impacted upon how the Council responds and deals with homeless applications.

The most relevant to this report is the judgement *Nzolameso Vs City of Westminster* (see Appendix 4) which tightened rules to Councils providing accommodation outside their own districts to those owed a housing duty.

Implications of the Judgement

- 2.4 In the *Nzolameso* judgement there were two important matters for the court to address; how the phrase 'reasonably practicable' set out in s208 HA 1996 should be applied in relation to out-of-borough placements, and the evidence required to be provided by the Authority in giving their decision.

The Courts found that Local Authorities were obliged to provide in borough accommodation so far as was reasonably practical which provides a stronger duty than simply being reasonable. If it was not possible to provide such accommodation, the Authority should attempt to provide accommodation that was as close as possible to where the applicant had previously been living. The court highlighted that although an applicant can ask for a decision to be reviewed under s202, the decision to place the applicant out of the borough is, in itself, not reviewable. However the suitability of the accommodation is reviewable and location of the property is relevant in the accommodation's suitability.

The Court emphasized the duty of Councils to have regard to the need to safeguard and promote the welfare of children under the Children Act 2004, and the fact that these considerations would be relevant in determining whether accommodation was suitable. The Court found that the Local Authority should identify and have regard to the principle needs of the children, which must be evidenced in their decision. These do not need to be regarded as paramount or primary considerations in making the decision, but it must be demonstrated that they have been considered and in these circumstances merely asking whether the children were approaching GCSEs was not sufficient.

It must also be clear from a Council's decision that proper consideration has been given to the relevant matters required by the relevant Act and the Homelessness Code of Guidance for Local Authorities and Supplementary Guidance. The Court found that amongst others, the Authority had not made necessary enquiries into the practicalities of moving schools, whether school places were available and the implications of the Appellant's medical conditions. The Court also criticised the fact that the Authority had not indicated what type of accommodation was available in and around Westminster or a recognised that alternative accommodation offered should be as close to Westminster as possible. The standard paragraph utilised by the Respondents in this instance was not sufficient to discharge their duty and consequently the above the decision was quashed.

This judgement provides guidance to the Council as to how they should go about explaining their decisions as to the location of properties offered. The guidance recognises that local authorities are entitled to take account of the resources available to them, the difficulties of procuring sufficient accommodation at affordable prices in their own district and the practicalities of procuring accommodation in nearby authorities.

However, the decision on an individual case will depend on the policies which the Council has adopted for the procurement and allocation of these units.

This judgment lays the foundation for a more transparent and accountable system for placing tenants out of the borough, hopefully enabling a tenant to see more clearly why and how the decision has been made. Emphasis is also placed on the Authority's duty to house the tenant as close to the borough as possible, and if this is not possible to provide an explanation. Such obligations will hopefully prevent such drastic moves as the one proposed in Ms Nzolameso's case and enable the tenant to continue to access the help and support they require and have already secured.

As a consequence of the Nzolameso Judgement the Council must develop a policy which

- Explains how the Council will decide who will receive priority for accommodation "in borough", "closer to home" and further away.
- Outline the Council's approach to procuring accommodation.

Demand/Supply

2.5 In Merton the Council has seen a 90% increase in temporary accommodation in the last 5 years. We currently have 160 households in temporary accommodation under the Housing Act 1996. Whilst this remains the lowest number for any London Borough it is likely that demand for housing will increase in line with proposed welfare reforms, for example the reduction in the benefit cap from £26,000 to £23,000.

At the same time the number of affordable social rented properties to let has reduced. As at January 2016 only 294 housing association homes have become available to the Council for letting. These are detailed below

<u>Type of Property</u>	<u>Number of lets</u>
Bedsit	6
1 bedroom	156
2 bedrooms	80
3 bedrooms	50
4 bedrooms	2
5 bedrooms	0

The Council has 8864 individuals and families on the Housing Register and the average wait for a 3 bedroom home is 4 years.

Additionally, the Council has a requirement to find temporary accommodation for approximately families who have no recourse to public funds. Currently the Council is providing approximately 40 families with temporary accommodation who are subject to “No Recourse to Public Funds”.

The Council has over a number of years had regular contact with private landlords and lettings agents who supply privately rented accommodation in our borough.

The cost of renting a home in the private sector is rising faster than household income, increasing by about 27% over the last 4 years. The cost of renting 4-bed homes having the biggest increase of 36%. Average rent for 1-bed homes had increased by 29% and by 25% for 2 to 3-bed homes over the same period. The increase in the year to March 2015 alone was 3.2% (ONS April 2015), the highest annual change since the summer of 2013.

The table below compares average weekly rents in Merton with LHA rates of the 2 main Broad Rental Market Areas (BRMAs) in Merton.

	1-Bed	2-Beds	3-Beds	4-Beds
Average Weekly Rents in Merton	265	325	403	623
LHA Outer South	167.22	210.57	279.14	344.38
LHA Outer South West	209.77	280.6	336.96	417.02

The number of properties for rent must be within the LHA rates.

The LHA rates are set at 30th percentile. From April 2011 this had increased by 1% per annum. Broadly speaking this means that 30% of the total number of private rented properties available in Merton should be within LHA rates. However our analysis of around 1,000 properties available for rent at the end of September 2015, suggests that the reality is only around 1%.

Additionally we face barriers in procuring private sector housing supply. This is because Landlords can decide whether or not they wish to rent their properties to households on benefits.

We have contacted a number of Landlords and agencies who have told us that they

- Do not rent properties to people on benefits.
- Some would only do so with a guarantor.
- Some would do so at the discretion of the Landlord.

The stark reality however is that the number of PRS properties for our families and individuals is reducing.

There are in excess of 40,000 households in temporary accommodation in London being housed by Local Authorities and as a consequence there is competition to secure PRS properties from all local councils.

Furthermore PRS properties are available on the open market and are therefore in competition with individuals and families seeking PRS accommodation in Merton and in London generally.

That said officers continue to have success, even in this challenging environment, to source properties in the PRS. This is achieved by:-

- Landlord rent deposits/incentives.
- To make the Council offer more desirable in the current operating market.
- Support Landlords and provide a soft housing management service.
- Regular checks with landlords to obtain individual properties.
- Undertaking advertising campaigns.

This practise, coupled with homeless prevention activities, seeks to minimise numbers of households/individuals in temporary accommodation.

The Council's "in borough" temporary accommodation consists of 81 units of self contained accommodation in Hall Place, Mitcham.

This is owned and managed by a private landlord. In addition to this, the Council has access to accommodation at the Wimbledon YMCA and MASH. These units are only suitable accommodation for single vulnerable adults and young people.

Additionally the Council purchases nightly paid accommodation for those households/individuals it is not able to accommodate in the accommodation units described earlier.

It is increasingly difficult to find affordable accommodation in Merton and London and this difficulty is shared with all other London Boroughs.

In addition to properties procured "in borough", the Council procures accommodation in the Greater London Area. These are not "in borough", but are within 90 minutes travelling distance from Merton.

The current landscape makes it very difficult to accurately predict the number of properties we will be able to secure in Merton and whilst our aim is to provide accommodation within Merton wherever possible, this is sadly not always achievable.

On-going benefit change means that for some households accommodation in Merton will not be affordable and as a result there is an increasing need to use accommodation that is further away.

As highlighted within this report we must have a policy in place to ensure we prioritise those who have the greatest need to be “in borough”, “close to the borough” or “further away”. This is attached at Appendix 1.

Background to the Interim Homeless Placement Policy.

- 2.6 As part of the assessment process to decide where a family or individual should be placed a robust process will be put in place. The application form at Appendix 2 will assist in this process.

This assessment will be agreed by a Senior Manager within the Housing Needs Service.

It is also worth mentioning that there may be instances, where despite an “in borough” or “close to home” assessment, available and affordable accommodation cannot be found. Whilst we will do our best to identify suitable properties within the agreed location if this is not available, the household will be housed to the closest available accommodation. We will then seek to secure alternative accommodation in an area that better matches the individual/families needs.

3. Financial Implications

- 3.1 In addition to the £400k costs on No Recourse to Public Funds, the Council also spent £2,011,293 on temporary accommodation costs for households/individuals requiring assistance under the Housing Act 1996.

4. Legal Implications

- 4.1 The judgement made by the Supreme Court in *Nzolameso vs Westminster Council* [2015] are set out in this report.

Section 188 of the Housing Act 1996 Part 7 imposes a duty on the Council to secure accommodation for an applicant where it has reason to believe that they may be homeless, eligible for assistance and has a priority need.

Section 193 of the Housing Act 1996 Part 7 imposes a duty on the Council to secure accommodation for an applicant where it is satisfied that they are homeless, eligible for assistance, has a priority need and are not homeless intentionally.

Section 17 of the Children’s Act 1989 also provides a general duty on the Council to safeguard and promote the welfare of children within their areas who are in need by providing a range of services to the child and/or his family, which may include the provision of temporary accommodation on a temporary basis.

Section 208 of the 1996 Act also provides that so far as reasonably practicable the Council shall in discharging their housing functions secure that accommodation is available for the occupation of the applicant in their district and that if it secures accommodation outside its district it shall give notice to the local housing authority in whose district the accommodation is situated. The Homelessness (Suitability of Accommodation) Order 2012 sets out factors to be taken into account in determining whether accommodation provided under part 7 is suitable, which includes the location of the accommodation. It also lists various factors to be regarded as unsuitable in relation to a Private Rented Sector Offer ("PRSO"). The Homelessness Code of Guidance and Supplementary Guidance include various provisions on suitability of accommodation in relation to part 7.

5. Equalities

- 5.1 The Equalities Act 2010 sets out the Public Sector Equality Duty. In discharging this duty the Council must have "due regard" to a number of equality considerations and the potential impact on groups with protected characteristics under the Act. An EIA has been carried out (see Appendix 3) for the Interim Homeless Placement Policy. In addition to the impact on groups identified in the EIA, the Council must consider the individual equality impact on each case before making a placement decision. The placement policy is compliant with this and makes provision to deal with individual needs arising from each case. It is important to review implementation of this policy as detailed in this report in 12 months, thus ensuring it's impact continues to remain compliant with the Equality Act 2010.

6. Crime & Disorder

- 6.4 No specific crime and disorder implications.

7. Other Implications

- 7.1 Risk management – There is a risk that the Council could face legal challenges for placing an applicant out of borough. This risk will be mitigated by this policy which takes regard of the Housing Act 1996 Part 7, Homelessness Code of Guidance and Supplementary Code, the Government Suitability Order and the Children's Act 2004 S11 (2).

List of Appendices

- Appendix 1 – "Interim Homeless Placement Policy"
- Appendix 2 – Homeless Placement Application Form
- Appendix 3 – Equality Impact Assessment
- Appendix 4 – Case Law Judgement Nzolameso vs City of Westminster

Appendix 1

London Borough of Merton

Interim Homeless Placement Policy

1. General

The aim of this policy is to provide a framework for the allocation of a limited supply of suitable affordable accommodation within and close to the London Borough of Merton. This policy applies to accommodation secured/under Housing Act 1996 Part 7 and Part 3 Children's Act 1989.

Our aim is to provide accommodation within Merton wherever possible but unfortunately, this is not always achievable. The Council is dependent on the supply that is available, and on-going welfare benefit changes mean that for many households accommodation in Merton will not be affordable. As a result, there will be an increasing need to use accommodation that may be some distance from Merton, and we must have a process in place to ensure that we prioritise those who have the greatest need to be in or close to a particular location.

In assessing the allocation of available accommodation the Council will comply with relevant case law, Section 11 (2) Children's Act 2004, Housing Act 1996 and will have regard to the Homelessness Code of Guidance. It is also necessary to give consideration as to whether the applicant and his/her family can afford the housing without being deprived of basic essentials such as food, clothing, heating, transport and other essentials.

In an emergency situation a homeless household can be placed in temporary accommodation in ANY location where this is available on that day. If deemed unsuitable they will be given priority to be rehoused to alternative temporary accommodation.

This policy recognises that individual cases must be assessed on their own merit to establish whether they are sufficiently exceptional to depart from the Policy. The Council will also take into account the affordability of accommodation in deciding where to provide accommodation.

The award of in-borough or 90 minutes travel priority does not guarantee the provision of accommodation within those areas. Where the applicant is in receipt of welfare benefits, this may place additional constraints on the availability of affordable accommodation.

Merton will continue to seek to comply wherever possible with Inter Borough Temporary Accommodation agreements.

2. Definitions of Placements

For the purposes of this policy the three geographical areas are:-

- In borough i.e. within the London Borough of Merton,
- Close to home, within 90 minutes travelling distance of Merton.
- Any area will be defined as anywhere beyond 90 minutes travelling distance of Merton. In these instances we will consider the availability of services such as schools, health services to ensure the welfare of children is fully considered in line with S11 (2) Children's Act 2004.

3. In Borough Priority

1. Priority for available in borough accommodation will be given to certain households who have a compelling need to be housed within Merton.
2. Such priority does not guarantee an in-borough placement, but should suitable and affordable accommodation be available within that area, it does give that household priority over others without that assessed priority.
3. Applicants and their household members to be housed within them who satisfy one or more of the following criteria will qualify for in-borough priority.
 - (i) They are receiving treatment for a physical or mental health condition from a specialist hospital unit which cannot be transferred to another NHS Service or they are at a critical point in their treatment.
 - (ii) They have a longstanding agreement to provide care and support to another family member in Merton who is not part of the household. Carers will need to be in receipt of carers allowance and/or the person they care for must be in receipt of middle rate or high rate DLA care component or daily living component of PIP.
 - (iii) Children subject to a Child Protection Plan in Merton which cannot be transferred to another Local Authority without causing detriment to the child.
 - (iv) Children subject to an Educational Health and Care Plan in Merton which cannot be transferred to another LA without causing detriment to the child.
 - (v) Other circumstances which demonstrate are compelling and exceptional need that cannot be met outside the borough.
 - (vi) Employment:- The Council will consider the needs of applicants, where one or (more) is in permanent settled employment (for at least six months prior to the date of their homeless application) to reach their normal workplace from the accommodation is secured.

4. 90 Minute Travel Priority

1. Priority for accommodation within 90 minutes travelling distance of Merton by public transport will be given to certain households who have a compelling need to be housed within that area.
2. Such priority does not guarantee a placement within 90 minutes traveling distance of Merton by public transport but should be suitable and affordable accommodation be available within that area, it does give the household priority over others without that assessed priority.
3. Applicants or their household members to be housed with them who satisfy one or more of the following criteria will qualify for 90 minutes travel priority.
4. They have been continuously employed within 90 minutes travelling distance of Merton for 16 hours or more per week in a role which cannot be transferred to another area. Applicants must have employed for at least six months prior to date of homelessness application.
5. Children who are enrolled in GCSE, AS or A level courses in Merton, with exams to be taken within the next academic year. Wherever possible we will seek to place households within 90 minutes traveling distance of their school, college, by public transport.

5. Any Area

All other homeless households will be offered accommodation wherever the borough is able to procure it including outside of London including:-

- Households who would otherwise be an “in borough priority” but who are unable to afford accommodation in Merton, for instance due to benefit restrictions.

6. Consequences of refusal of accommodation

Should an applicant refuse an offer of accommodation and fail to take up occupation of the property and the offer is deemed suitable, the Council will consider its duty to the applicant having met its statutory obligations.

However in accordance in Section 202 of the Housing Act 1996 Part 7, as amended the applicant will have the right to request a review of the suitability of the offer, and will be required to submit their reasons refusing the offer for consideration.

If a review of the suitability considers that the offer is not suitable, the Council will be under a duty to make an alternative offer. Applicants are reminded of their right to accept the offer of accommodation and pursue a review of the suitability of the accommodation whilst in occupation.

7. Advice and Support

All households will be offered an interview with a housing officer to address identified needs and advice will be provided regarding these needs e.g. accessing GP's, health visitors, schools, etc.

HOMELESS PLACEMENT APPLICATION

London Borough of Merton – Housing Needs and Strategy

Tell Us
About
Yourself

Personal Details:-

Name:

Title Mr Mrs Miss Ms Other

Date of Birth:

Family Name:

Given Names:

Do you currently use any other names: Yes No

If yes, Please provide details

Gender: Male Female

Relationship Status

- Married Single
- Divorced Civil partnership
- Separated Widowed
- Unmarried partner Same sex partner
- Dissolved partnership Surviving

Employment Details:-

Are you currently working? Yes No

If YES, Name of your employer

Address:
.....
.....
.....

How many hours a week do you work?

If yes, how long have they been in employment?

- less than 6 months from date of homelessness application.
- 6 months from date of homeless application.
- more than 6 months from date of homeless application.

About your Partner

Your partner

Name:

Title Mr Mrs Miss Ms Other

Date of Birth:

Family Name:

Given Names:

Does he/she currently use any other names: Yes No

If YES, Please give details:

Gender: Male Female

Relationship Status

- | | |
|--|--|
| <input type="checkbox"/> Married | <input type="checkbox"/> Single |
| <input type="checkbox"/> Divorced | <input type="checkbox"/> Civil partnership |
| <input type="checkbox"/> Separated | <input type="checkbox"/> Widowed |
| <input type="checkbox"/> Unmarried partner | <input type="checkbox"/> Same sex partner |
| <input type="checkbox"/> Dissolved partnership | <input type="checkbox"/> Surviving |

Employment Details:-

Are you currently working? Yes No

If YES, Name of your employer

Address:

.....

.....

How many hours a week do you work?

If yes, how long have they been in employment?

- less than 6 months from date of homelessness application.
- 6 months from date of homeless application.
- more than 6 months from date of homeless application.

Your Partner

Is your partner known to Adult Social Care

- Yes No

If yes, please provide information on Adult Social Care involvement

.....
.....
.....
.....

Does your partner receive treatment for a physical or mental health condition?

- Yes No

If yes, please provide details of the hospital or NHS Service.

.....
.....
.....
.....

Are they at a critical point in their treatment?

(Housing Officer to seek advice from the Council's Medical Adviser)

- Yes No

Does your partner provide care and support to another family member in Merton who is not part of the household?

- Yes No

If you answered YES is the carer in receipt of Carers Allowance?

- Yes No

About your Partner

(Evidence will be required)

Does the cared-for person (family member cares for) receive

- Middle Rate DLA
- High Rate DLA
- Daily living component of PIP

Please detail what benefits your partner receives:

.....

.....

.....

.....

Is your partner subject to the benefit cap?

- Yes No

Are there any other exceptional/compelling circumstances to consider?

- Yes No

If yes, please detail.

.....

.....

.....

.....

Your Dependants

Dependant 1

Tell Us About Your Dependants

Name:

Title Mr Mrs Miss Ms Other

Family Name:

Given Names:

Date of Birth:

What is the dependant's relationship to you

Child under 18

Other

If other please specify

Is this person dependant on you? yes No

Tell us about this dependant's current address

Does this dependent live with you yes no

Address:

House Number or Name:

Street Name:

Town or City:

County:

Postcode:

Why does this dependent not live at your address?

.....

.....

Does the child attend school, college or university? Yes No

Name of school, college or university:.....

Dependant 2

Name:

Tell Us About Your Dependants

Title Mr Mrs Miss Ms Other

Family Name:

Given Names:

Date of Birth:

What is the dependant's relationship to you

Child under 18

Other

If other please specify

Is this person dependant on you? yes No

Tell us about this dependant's current address

Does this dependent live with you yes no

Address:

House Number or Name:

Street Name:

Town or City:

County:

Postcode:

Why does this dependent not live at your address?

.....
.....
.....

Does the child attend school, college or university? Yes No

Name of school, college or university:.....

Dependant 3

Tell Us About Your Dependants

Name:

Title Mr Mrs Miss Ms Other

Family Name:

Given Names:

Date of Birth:

What is the dependant's relationship to you

Child under 18

Other

If other please specify

Is this person dependant on you? yes No

Tell us about this dependant's current address

Does this dependent live with you yes no

Address:

House Number or Name:

Street Name:

Town or City:

County:

Postcode:

Why does this dependent not live at your address?

.....

.....

.....

Does the child attend school, college or university? Yes No

Name of school, college or University:.....

***IF YOU HAVE MORE THAN 3 DEPENDANTS PLEASE USE A BLANK PAGE TO
WRITE THE SAME INFORMATION FOR EACH CHILD/YOUNG PERSON.***

Are any of the child(ren) subject to an Educational Health and Care Plan in Merton?

About the Applicant

Yes No

Details:

.....

.....

.....

.....

Is the applicant (family members) known to Children’s Social Care?

Yes No

Are any of the child(ren) subject to a Child Protection Plan?

Yes No

Are any child(ren) enrolled in GCSE, AS or A level courses in Merton with exams to be taken within the next academic year

Yes No

If yes, please provide

Details of Child(ren):

.....

.....

.....

.....

Details of school:

.....

.....

The Applicant

Is the applicant known to Adult Social Care

- Yes No

If yes, please provide information on Adult Social Care involvement

.....
.....
.....
.....

Does the applicant or members of his/her family receive treatment for a physical or mental health condition?

- Yes No

If yes, please provide details of the hospital or NHS Service.

.....
.....
.....
.....

Are they at a critical point in their treatment?

(Housing Officer to seek advice from the Council’s Medical Adviser)

- Yes No

Does the applicant or a member of his family provide care and support to another family member in Merton who is not part of the household?

- Yes No

If you answered YES is the carer in receipt of Carers Allowance?

- Yes No

(Evidence will be required)

About the Applicant

Does the cared-for person (family member cares for) receive

- Middle Rate DLA
- High Rate DLA
- Daily living component of PIP

Please detail what benefits the applicant receives:

.....

.....

.....

.....

Is the applicant subject to the benefit cap?

- Yes
- No

Are there any other exceptional/compelling circumstances to consider?

- Yes
- No

If yes, please detail.

.....

.....

.....

.....

DECLARATION:

- I confirm that the information that I have given on this form is correct.

I understand that if I give false information, the Council may take action against me and I could be prosecuted.

Name:

Signature:

Date:

Reasons for Placement

Equalities Monitoring

We want to make sure that our housing policies work fairly, and we have decided to keep records of everyone who applies for social housing. We would like you to tell us what you consider your ethnic origin, religion or belief and sexuality to be as well as information on any disabilities. We will only use this information for monitoring our housing policies.

Main Ethnic Group:

Main Ethnic Group

- White**
 British
 Irish
 Other

- Black or Black British**
 African
 Caribbean
 Other

- Asian or Asian British**
 Indian
 Pakistani
 Bangladeshi
 Other

- Mixed**
 White and Black African
 White and Black Caribbean
 White and Asian
 Other

- Other Background**
 Chinese
 Any Other

I do not wish to give this information

Disability

- Wheelchair user
 Other physical impairment
 Require letters in large print
 Require letters on audio tape
 Require letters instead of phone calls
 I do not wish to give this information

Gender

- Male
 Female
 Transgender
 I do not wish to give this information

Sexuality

- Heterosexual
 Lesbian
 Gay
 Bisexual
 Other
 I do not wish to give this information

Religion

- Buddhist
 Jewish
 Christian
 Sikh
 Hindu
 Muslim
 None
 Other
 I do not wish to give this information

Reason(s) for Placement (For Officer Use Only):-

(√ select as appropriate)

- HA 1996 Part 7
- Childrens Act 1989

Is the recommendation from the Housing Officer to procure accommodation?

- In Borough
- 90 minutes travelling
- Any area.

Signed:

Print Name:

Approved by:

Print Name:

Equality Impact Initial Assessment Form

Division	Community and Housing / Housing Division
Name of assessor	Angela Chu Housing Strategy Manager
Date of assessment	7th October 2015
Title function/policy/service to be assessed	Homeless Placement Policy

1. Describe the aims / objectives and purpose of the function or policy.	To provide a more transparent and accountable system for placing homeless households out of borough through the development of this policy, as a consequence of the Nzolameso Judgement, and in response to the increasing difficulties for the council to find affordable accommodation in the private rented sector to place homeless households.
2. Are there any other functions, policies or services, which might be linked with this one	This policy is linked to Merton's Housing Strategy and Homelessness Strategy, and to the strategic objective of finding housing solutions for homeless households through the private rented sector by increasing access to the sector.
3. Who will benefit from this policy / service /function	1) Households who have made a homelessness application and needing temporary accommodation while awaiting a decision. 2) Homeless households to whom the council has accepted a duty to rehouse. 3) Homeless households with No Recourse to Public Funds.
4. Who was consulted	There was no consultation

	Positive Impact	Negative Impact	Neither	Reason / Comment / Evidence
Age			✓	Vulnerable children with needs that cannot be met outside the borough will be given In Borough Priority, and young homeless persons have access to a number of supported housing schemes in borough, therefore the policy will have no impact on these client groups. People aged 65 and over make up about 4% of accepted homeless cases. Those needing health treatment that cannot be transferred out of borough or with longstanding care arrangements will be given In Borough Priority therefore the policy

COMMUNITY AND HOUSING

				will have no impact on this client group.
Disability			✓	People with physical disability or mental health condition and need health treatment that cannot be transferred out of borough, or those with longstanding care arrangements will be given In Borough Priority therefore the policy will have no impact on this client group.
Gender	✓			Female lone parents are more likely to be homeless and on low income, therefore it is less likely to for them to find affordable housing solutions in borough or within 90 minutes travelling distance. This policy will have a positive impact on this client group as they will benefit from assistance from the council to help them find affordable housing solutions beyond Merton when no solution can be found in borough.
Race	✓			Ethnic minority groups are more likely to be homeless and on low income, therefore it is less likely to for them to find affordable housing solutions in borough or within 90 minutes travelling distance. This policy will have a positive impact on this client group as they will benefit from assistance from the council to help them find affordable housing solutions beyond Merton when no solution can be found in borough.
Religion / belief			✓	There are no perceived implications on the basis of religion or belief.
Sexuality			✓	There are no perceived implications on the basis of sexuality.
Please give a brief description of how this policy benefits the equality target groups identified in the above table, i.e. promotes equality?		Ethnic minority & female households, who are more likely to be homeless and on low income, will benefit from assistance from the council to help them find affordable housing solutions beyond Merton when no solution can be found in borough.		
If there is a negative impact on any equality target group, is the impact intended or legal? <i>If no,</i>		N/A		

COMMUNITY AND HOUSING

<i>then full Equality Impact Assessment should be completed.</i>	
What actions could be taken to amend the policy/service to minimise the low negative impact?	Review the impact of this policy in 12 months, by analysing data and findings.
If there is no evidence that the policy/service promotes equality, equal opportunities or improves relations within equality target groups, what amendments could be made to achieve this?	N/A

Recommendation

Full Equality Impact Assessment required: No

The department to review the policy after 12 months of implementation.

Signed by Manager of assessor

Equality Group scrutiny date 07/10/2015

Equality group recommendation

COMMUNITY AND HOUSING



Hilary Term
[2015] UKSC 22
On appeal from: [2014] EWCA Civ 1383

JUDGMENT

**Nzolameso (Appellant) v City of Westminster
(Respondent)**

before

**Lady Hale, Deputy President
Lord Clarke
Lord Reed
Lord Hughes
Lord Toulson**

JUDGMENT PROMULGATED ON

2 April 2015

Heard on 17 March 2015

Appellant
Martin Westgate QC
-Lindsay Johnson
(Instructed by Hodge
Jones & Allen LLP)

Respondent
Ian Peacock

(Instructed by City of
Westminster, Contentious
Section Legal Services)

*Intervener (Secretary of
State for Communities and
Local Government)*
Martin Chamberlain QC
Oliver Jones
(Instructed by Treasury
Solicitor)

*Intervener (Shelter
Children's Legal Service –
written submissions only)*
David Wolfe QC
Shu Shin Luh
(Instructed by Freshfields
Bruckhaus Deringer LLP)

LADY HALE: (with whom Lord Clarke, Lord Reed, Lord Hughes and Lord Toulson agree)

1. When is it lawful for a local housing authority to accommodate a homeless person a long way away from the authority's own area where the homeless person was previously living? There is no doubt that, for a variety of reasons, such "out of borough" placements have become increasingly common in recent years. The latest national statistics show that in September 2014 a quarter of all temporary accommodation for homeless people was provided in a different council area, an increase from 21% in September 2013. The great majority of these were from London Boroughs (Department for Communities and Local Government, *Statutory Homelessness: July to September Quarter, England*, National Statistics, Housing, Statistical Release, 11 December 2014). However, local authorities have a statutory duty to provide accommodation in their own area "so far as reasonably practicable": Housing Act 1996 ("the 1996 Act"), section 208(1). And if that is not practicable, statutory guidance requires them "where possible", to try to secure accommodation as close as possible to where the applicant was previously living. This case is about the import of those duties for individual households who are offered an "out of borough" placement.

The facts

2. The appellant is a 51 year old single mother of five children, aged between eight and 14. She has many long-standing health problems: she is HIV positive, and suffers from Type II diabetes, hypertension, diabetic retinopathy and perhaps depression. She has lived in London since at least January 2000. From December 2008 to November 2012, the family lived in a privately rented four bedroomed house in Westminster. Her rent of £1,150 per week was covered by housing benefit. In 2012, however, a cap (known as the local housing allowance) was placed on the amount of housing benefit payable for privately rented properties according to their size and locality (known as the local housing allowance). Her maximum housing benefit was dramatically reduced. This meant that she was no longer able to afford the rent. The landlord was not prepared to reduce it and so she was evicted from her home in November 2012.

3. She applied to Westminster City Council under the homelessness provisions in Part 7 of the 1996 Act and the family were temporarily housed in two rooms in a hotel in the Royal Borough of Kensington and Chelsea on a bed and breakfast basis. This was near enough for the children to continue in their schools. On 17 January 2013, she was notified that Westminster had decided that she was homeless, eligible

for assistance, in priority need, not intentionally homeless, and that they should not refer her case to another local authority where she was more closely connected. Hence they accepted that they owed her what is usually termed the “main homelessness duty” under section 193(2) of the 1996 Act, as they put it “a duty to ensure that you have somewhere suitable in which to live”. Their temporary lettings team would be contacting her shortly “with an offer of self-contained temporary accommodation” in discharge of that duty.

4. On Thursday 24 January, the authority wrote offering her temporary accommodation in a five bedroomed house in Bletchley, near Milton Keynes. They had arranged for her to view the property at 12 pm on Monday 28 January. The letter explained:

“There is a severe shortage of accommodation in Westminster and it is not reasonably practicable for us to offer a Westminster home for everyone who applies for one. That is why we have had to offer you accommodation in Milton Keynes. Although it is outside Westminster, having considered your circumstances, we believe this accommodation is suitable for you.”

The appellant rejected this offer because it was too far away. It was too far from people helping her with her children. There would be nobody there she knew. She had high blood pressure and wanted to stay with her GP. It would mean changing the children’s schools. She had lived in Westminster for a long time.

5. The authority’s immediate response, by letter of Friday 25 January, was that none of the children was of GSCE age, so it was suitable for them to move schools. The average journey time from the Bletchley property to Westminster was around one hour and 15 minutes. The property was of a suitable size for the family and “based on your circumstances there’s no reason for us to place you within the borough of Westminster”. Because she had refused the offer, their duty under section 193 had ended and they were no longer required to provide her with accommodation. The letter was headed “Notice that our housing duty has come to an end”. This was no doubt because the duty under section 193(2) does not come to an end automatically when the applicant refuses to accept an offer of accommodation which the authority are satisfied is suitable; under section 193(5), the authority must serve notice that the duty has come to an end.

6. The appellant sought a review of the authority’s decision under section 202 of the 1996 Act. She was interviewed for the purpose of the review, where she repeated her concerns and gave some more details of the help she received from her

friends. Three of her friends were also interviewed. Two medical certificates were obtained which confirmed that her “chronic conditions [were] incurable and likely to worsen with further complications” and that she needed “safe accommodation to be able to take medication and stay well”; but a medical assessment could not “find anything medical to preclude residing in Milton Keynes”.

7. The review was completed on 27 May 2013 and the reviewing officer confirmed the decision that the property in Bletchley was suitable and the duty towards her discharged. The decision letter dealt in detail with the family’s personal circumstances. As to these, the officer’s conclusions were: “I am not satisfied that the accommodation was unsuitable on the grounds that your medical and support needs are such that you have to live in Westminster”; the length of time she had lived in Westminster was “not a particularly long time and does not mean that you cannot live anywhere else”; none of her children were “currently sitting national exams and could ... move schools without their education suffering”; and the accommodation offered was suitable and affordable.

8. The letter then refers to the duty in section 208 of the 1996 Act and states:

“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.”

This appears to be a standard paragraph which has appeared in a number of other decision letters emanating from the City of Westminster. The authority have 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 are to decide which properties are offered to which applicants.

9. The appellant then appealed to the county court under section 204 of the 1996 Act. The appeal was heard in October 2013. The authority adduced evidence that at that date 52% of Westminster's temporary accommodation units were "in borough" and 48% "out of borough". Also produced was a report dated May 2012, from the Strategic Director of Housing, Regeneration and Property, produced for the relevant Cabinet Member's approval. This reviewed the demand for and supply of social rented housing and low-cost home ownership for the previous year and made supply and demand projections for the coming year. It revealed that in the nine months to the end of 2011 there had been 1072 homelessness applications and 394 acceptances; there was a total of 1783 households in temporary accommodation, of which 478 were "stage 2" (that is, after the main homelessness duty had been accepted); the housing benefit cap was leading to an increase in homelessness resulting from the loss of a private sector tenancy; at the same time it was becoming increasingly difficult to source self-contained temporary accommodation from the private sector, particularly in high rent areas; but at that time around 70% of their temporary accommodation was "in borough", with the majority of the non-Westminster stock in East London; it would continue to be secured in borough so far as reasonably practicable but would also be sourced out of borough in areas where it was available.

10. The appeal was unsuccessful. HHJ Hornby commented that:

"I appreciate that there appears to be no reference in particular to the fact that consideration was given to the particular area within Westminster or those areas nearer than Milton Keynes, but it seems to me almost inevitable that the team must have had regard to all the stock that there was and allocated what was the most suitable property available to them for that particular person."

11. The authority had been continuing to provide interim accommodation for the appellant and her children during the review and appeal process. But they refused to do so pending her application for permission to appeal to the Court of Appeal. After she was refused permission for a judicial review of that decision, the authority ceased to provide that accommodation. The children's services department refused to accommodate the whole family and so on 24 February 2014, the appellant asked the children's services department to provide accommodation for her children under the Children Act 1989. The children were separated between three different foster families and care proceedings were begun.

12. The appellant was granted permission to appeal to the Court of Appeal, but that appeal was also unsuccessful, for reasons which were essentially the same as

those of Judge Hornby: [2014] EWCA Civ 1383, [2015] PTSR 211 (see paras 33 and 34 below).

The 1996 Act and Guidance

13. Sections 206 and 208 of the 1996 Act impose distinct but related requirements upon the local authority. Section 206(1) provides that the authority may discharge their housing functions *only* by securing “suitable” accommodation, albeit by a variety of routes. 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”. By virtue of section 205(1) of the 1996 Act, their “housing functions” refers to their functions under Part 7 to secure that accommodation is available for a person’s occupation. It is clear, therefore, that these are duties owed to the individual person to whom the main homelessness duty is owed. The accommodation offered has to be suitable to the needs of the particular homeless person and each member of her household and the location of that accommodation can be relevant to its suitability: see *R (Sacupima) v Newham London Borough Council* [2001] 1 WLR 563, CA.

14. This has since been fleshed out in statutory guidance. Under section 182(1) of the 1996 Act, local housing authorities are required to have regard to such guidance as may from time to time be given by the Secretary of State. The current general guidance is contained in the *Homelessness Code of Guidance for Local Authorities* (Department for Communities and Local Government, 2006). As to the duty in section 208(1), this provides:

“16.7. Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence.”

15. As to suitability, the Code says this about the location of the accommodation:

“17.41. The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.”

16. This has since been expanded upon. Under section 210(2), the Secretary of State may by order specify (a) the circumstances in which accommodation is or is not to be regarded as suitable, and (b) the matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. During the passage of the Localism Act 2011, the Government undertook “to remain vigilant to any issues that arose around suitability of location”. It had come to light that some local authorities were seeking accommodation for households owed the main homelessness duty “far outside their own district”. The Government was therefore “willing to explore whether protections around location of accommodation need to be strengthened and how this might be done” (Department for Communities and Local Government, *Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation*, May 2012, para 38). A full consultation exercise showed widespread support for strengthening that protection (Department for Communities and Local Government, *Homelessness (Suitability of Accommodation) (England) Order 2012 – Government’s Response to Consultation*, November 2012):

“Government has made it clear that it is neither acceptable nor fair for local authorities to place households many miles away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household.”

17. The method chosen was to make it a matter of statutory obligation to take the location of the accommodation into account when determining whether accommodation is suitable. Hence, in October 2012, shortly before the decisions were taken in this case, the Secretary of State made the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601). Article 2 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.”

18. The Government’s response to consultation had emphasised that the Order “does not prevent or prohibit out of borough placements where they are unavoidable nor where they are the choice of the applicant”. However, the Department also issued *Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012* (November 2012), which strengthened the obligation to secure accommodation as close as possible to where the household had previously been living:

“48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the

distance of that accommodation from the district of the authority. 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.*" (Emphasis supplied)

The guidance goes on to deal with employment, caring responsibilities, education, medical facilities and other support, and also with cases where there may be advantages in the household being accommodated somewhere outside the local authority's district, including employment opportunities there.

19. The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. "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. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an "out of borough" placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2002] EWHC 280 (Admin), [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 58, were decided.

20. An applicant who is dissatisfied with any of the local authority's decisions listed in section 202(1) of the Act can request a review of that decision. The

decisions listed do not in terms include a decision to place “out of borough” despite section 208(1). But they do include, at (f), any decision of a local housing authority as to the suitability of accommodation offered in discharge of their duty under, inter alia, section 193(2). They also include, at (b), any decision as to what duty (if any) is owed, inter alia, under section 193(2). It is common ground that (b) includes a decision that the duty is no longer owed because it has been discharged.

21. Under section 204, an applicant who has requested a review under section 202 and is dissatisfied with the decision may appeal to a county court “on any point of law arising from the decision” (alternatively, if the review decision has not been notified within the prescribed time, arising from the original decision).

The children’s welfare

22. Shelter Children’s Legal Service have helpfully intervened to remind the court that the exercise of the local authority’s functions under the 1996 Act is covered by section 11(2) of the Children Act 2004. This requires each person or body to whom the section applies (which includes a local housing authority) to make arrangements for ensuring that:

“(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and

(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.”

23. Section 11 does not define “welfare”, but section 10 provides a statutory framework for co-operation between the local authority and relevant agencies with a view to improving the “well-being” of children in the area. Well-being for this purpose is defined as (a) physical, mental and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) the contribution made by children to society; and (e) social and economic well-being (section 10(2)). The welfare of the child has long been given a broad meaning in family proceedings, encompassing physical, psychological, social, educational and economic welfare.

24. It has been held that section 11 applies, not only to the formulation of general policies and practices, but also to their application in an individual case. As Pitchford LJ put it, in *R (Castle) v Metropolitan Police Commissioner* [2011] EWHC 2317 (Admin), [2014] 1 All ER 953, para 51:

“The chief officer’s statutory obligation is not confined to training and dissemination of information. It is to ensure that decisions affecting children have regard to the need to safeguard them and to promote their welfare.”

However, he went to point out that:

“This does not mean that the duties and functions of the police have been re-defined by section 11 ... the guidance accurately states the obligation of chief officers of police ‘to carry out their existing functions in a way which takes into account the need to safeguard and promote the welfare of children’.”

25. In the homelessness context, there is a distinction between the factual decisions which the authority have to make and an exercise of discretion or evaluation. Thus it has been held that section 11 has no part to play in the decision as to whether a person’s actions are deliberate for the purpose of deciding whether she is intentionally homeless. As Moses LJ pointed out in *Huzrat v Hounslow London Borough Council* [2013] EWCA Civ 1865, para 26:

“The statutory questions are clear; was the action or omission in question deliberate? The answer to that question cannot differ [according to] whether the local authority takes into account the duty under section 11 of the Children’s [sic] Act or not.”

26. Some statutory questions do leave room for the consideration of the child’s welfare. Where the question relates to the eligibility of a third country national for homelessness assistance under the Regulations implementing the decision of the Court of Justice of the European Union in *Ruiz Zambrano v Office national de l’emploi* (Case C-34/09) [2012] QB 265, the test is whether the EU citizen child of that third country national would be “unable to reside” in the UK or another EEA state if the third country national were obliged to leave. It was held in *Hines v Lambeth London Borough Council* [2014] EWCA Civ 660, [2014] 1 WLR 4112, that the child’s welfare had obviously to be taken into account, but it could not be the paramount consideration as this would be inconsistent with the statutory language.

27. The question of whether the accommodation offered is “suitable” for the applicant and each member of her household clearly requires the local authority to have regard to the need to safeguard and promote the welfare of any children in her

household. Its suitability to meet their needs is a key component in its suitability generally. In my view, it is not enough for the decision-maker simply to ask whether any of the children are approaching GCSE or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote, as well as to safeguard, their welfare. The decision maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision.

28. However, section 11 does not in terms require that the children's welfare should be the paramount or even a primary consideration. As the Joint Committee on Human Rights pointed out (19th Report of Session 2003-2004, *Children Bill*, HL Paper 161, paras 69 to 77), it does not in terms reproduce the wording of article 3(1) of the United Nations Convention on the Rights of the Child ("UNCRC"):

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

29. Where Convention Rights under the Human Rights Act 1998 are engaged, it is well established that they have to be interpreted and applied consistently with international human right standards, including the UNCRC: see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, *H(H) v Deputy Prosecutor of the Italian Republic Genoa (Official Solicitor intervening)*, [2012] UKSC 25, [2013] 1 AC 338, *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), [2013] JPL 1383, approved in *Collins v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1193, [2013] PTSR 1594. It is not suggested in this case that any of the Convention rights are engaged: compare *Yumsak* (para 19 above), where it was conceded that placing the mother and her children in Birmingham interfered with their rights under article 8 of the Convention. We have not heard argument on the interesting question of whether, even where no Convention right is involved, section 11 should nevertheless be construed consistently with the international obligations of the United Kingdom under article 3 of the UNCRC. That must be a question for another day.

30. It is also the case that there will almost always be children affected by decisions about where to accommodate households to which the main homelessness duty is owed. Such households must, by definition, be in priority need, and most households are in priority need because they include minor children. The local authority may have the invidious task of choosing which household with children is

to be offered a particular unit of accommodation. This does not absolve the authority from having regard to the need to safeguard and promote the welfare of each individual child in each individual household, but it does point towards the need to explain the choices made, preferably by reference to published policies setting out how this will be done (as to which see further below).

Evidencing and explaining the authority's decisions

31. The Secretary of State for Communities and Local Government has also intervened in this case, in order to emphasise that when making decisions about where to accommodate homeless persons, local authorities have a number of duties to evidence and explain their decisions. They are required to take the Code and Supplementary Guidance into account. If they decide to depart from them they must have clear reasons for doing so: see *R (Khatun) v Newham London Borough Council* [2004] EWCA Civ, [2005] QB 37, para 47. Very good reasons are required to depart from a policy formulated after public consultation: *Royal Mail Group plc v Postal Services Commission* [2007] EWHC 1205 (Admin), para 33. This is especially so where the Code is designed to protect vulnerable people: *R (Munjaz) v Mersey Care NHS Trust* [2005] UKHL 58, [2006] 2 AC 148. By definition, any homeless household in priority need will be vulnerable in this sense. The authority must also have a proper evidential basis for their decision: *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 58, para 32.

32. It must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code. While the court should not adopt an overly technical or “nit-picking” approach to the reasons given in the decision, these do have to be adequate to fulfil their basic function. It has long been established that “an obligation to give reasons for a decision is imposed so that the persons affected by the decision may know why they have won or lost and, in particular, may be able to judge whether the decision is valid and therefore unchallengeable or invalid and therefore open to challenge: see *R v City of Westminster, Ex p Ermakov* (1996) 28 HLR 819, at 826-827. Nor, without a proper explanation, can the court know whether the authority have properly fulfilled their statutory obligations.

33. The Secretary of State is concerned that the Court of Appeal was too ready to assume that the authority had properly complied with their statutory obligations. Thus, at para 21, it was said that the reviewing officer

“... must be taken to have been aware of the resources available to the council and the pressures on them. It is not necessary in a decision letter of this kind for the reviewing officer to

describe in detail what those resources and pressures are. If, as I think, Westminster was entitled to take a broad range of factors into account in deciding whether it was reasonably practicable to provide accommodation to [the applicant] within its own district, it was sufficient for the reviewing officer to describe the circumstances which led her to that conclusion in general terms. I am therefore not persuaded that her decision was irrational in the sense that it lacked an evidential base.”

34. Then, at para 25, when it came to providing accommodation as close as possible to the home district:

“The guidance produced by the Secretary of State is lengthy and detailed ... in my view there is no basis for inferring that [the reviewing officer] did not have it in mind or that she was unaware of the desirability of accommodating [the applicant] as close to Westminster as was reasonably practicable. ... It was not necessary for her to explain in detail what other accommodation was available to Westminster outside its own district and why it had not been offered to [her].”

35. The Secretary of State complains that the effect of this 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.

This case

36. The Secretary of State has, of course, made no submissions as to the effect of these criticisms in this particular case. Mr Peacock, on behalf of the Local Authority, does not dispute the applicable principles but has valiantly tried to defend the decision letter. But it is apparent that this decision suffers from all of those defects and more. 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.

37. It follows that the authority cannot show that their offer of the property in Bletchley was sufficient to discharge their legal obligations towards the appellant under the 1996 Act. Moreover, their notification to the appellant that their duty towards her had come to an end was purportedly given in circumstances where she did not know, and had no means of knowing, what, if any, consideration had been given to providing accommodation in or nearer to the borough, apart from the general standard paragraph in the letter offering her the Bletchley accommodation the previous day. I would add that they also cannot show that they have properly discharged their obligation under section 11 of the Children Act 2004. The appeal must be allowed and the decision that their duty to secure that accommodation was made available to her had come to an end must be quashed.

Guidance

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 upon 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.

40. This approach would have many advantages. It would enable homeless people, and the local agencies which advise them, to understand what to expect and what factors will be relevant to the decision. It would enable temporary letting teams to know how they should go about their business. It would enable reviewing officers to review the decisions made in individual cases by reference to those published policies and how they were applied in the particular case. It would enable reviewing officers to explain whether or not the individual decision met the authorities' obligations. It would enable applicants to challenge, not only the lawfulness of the individual decision, but also the lawfulness of the policies themselves.

41. Indeed, it would also enable a general challenge to those policies to be brought by way of judicial review. In some ways this might be preferable to a challenge by way of an individual appeal to a county court. But it may not always be practicable to mount a judicial review of an authority's policy, and an individual must be able to rely upon any point of law arising from the decision under appeal, including the legality of the policy which has been applied in her case.

42. No doubt there are other ways in which an authority could ensure that their decisions are properly evidenced and properly explained. But a standard paragraph of the sort that was used in this case is not one of them.

