



Neutral Citation Number: [2022] EWCA Civ 1340

Case No: CA-2022-000320

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
HHJ Hellman
Case Number: H40CL196

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 October 2022

Before:

LADY JUSTICE ASPLIN
LORD JUSTICE MALES
and
LADY JUSTICE ELISABETH LAING

Between:

THOMAS NORTON **Appellant**
- and -
LONDON BOROUGH OF HARINGEY **Respondent**

Lindsay Johnson (instructed by **Hopkin Murray Beskine**) for the **Appellant**
Nicholas Grundy KC and Sean Pettit (instructed by **Haringey Council Legal Services**) for
the **Respondent**

Hearing date: 5 October 2022

Approved Judgment

**This judgment was handed down remotely at 10.30am on 19 October 2022 by
circulation to the parties or their representatives by e-mail and by release to the
National Archives.**

.....

Lady Justice Elisabeth Laing:

Introduction

1. The Appellant ('A') appeals against a decision of HHJ Hellman ('the Judge'). The Judge dismissed A's appeal made under section 204 of the Housing Act 1996 ('the 1996 Act'), against decisions made by the Respondent ('the Council').
2. A had appealed against the Council's decision dated 24 June 2021 ('decision 2'). Decision 2 was the Council's response to A's application for a review of the Council's decision dated 27 January 2021 ('decision 1') that the Council had discharged the main housing duty imposed by section 193(2) of the 1996 Act by making A a private rented sector offer ('PRSO') of accommodation at 3, Elizabeth Blackwell House, London N22 5PB ('property 2').
3. The Council had been providing A with accommodation at Flat A, 27, Beaufoy Road, Tottenham, London, N17 8AX ('property 1') under the terms of a licence dated 5 December 2020 ('the licence') between A and 'the Supplier'. Clause 4.1 of the licence obliged the Occupier (that is, A) to pay 'the Accommodation Charge (whether lawfully demanded or not) without any deduction whatsoever' by weekly payments in advance. The Occupier was obliged to pay the Accommodation Charge to Homes for Haringey, which was obliged to pay it to the Supplier 'as set out in the Management Agreement' (clause 4.1). The Supplier was 'Property Zone (London) Limited'. The 'Accommodation Charge' (or licence fee, also described on page 1 of the licence as 'Rent') was £247.87 a week. A was entitled to terminate the licence on giving seven days' prior notice to the Council and to the Supplier (clause 4.28). Any such notice could be served by posting it by first class pre-paid, registered or recorded delivery post, or by delivering it to the Council, or, in the case of the supplier, by delivering or emailing it to the Supplier.
4. Arnold LJ gave A permission to appeal. On this appeal, A has been represented by Mr Johnson and the Council by Mr Grundy KC and Mr Pettit. Mr Johnson and Mr Pettit also appeared before the Judge. I thank both counsel for their written and oral submissions. It was common ground that the real issue for this Court was the lawfulness or otherwise of decisions 1 and 2. There was little focus in argument on the decision of the Judge. I, too, will concentrate on the lawfulness of decisions 1 and 2.
5. Shortly before the hearing of the appeal, the Council applied to adduce evidence which was not before the Judge. The Court decided, provisionally, that it would consider the evidence during the hearing, and would decide in its judgment whether or not it should be admitted. For the reasons given at the end of this judgment, I would refuse that application.

The statutory framework

6. It is convenient to start with the statutory framework as four of the six grounds of appeal for which permission was given contend that requirements of section 193 of the 1996 Act were not met, and that the Judge was therefore wrong to conclude that, by making the PRSO, the Council brought the duty imposed by section 193(2) to an end.

7. Part VII of the 1996 Act makes detailed and complicated provision about homelessness. For the purposes of this appeal, however, only a few provisions are relevant.

Definition of 'homeless'

8. Section 175(1) provides that a person is 'homeless' if he has no accommodation available for his occupation in the United Kingdom or elsewhere which (a) he is entitled to occupy by virtue of an interest in it, or of an order of the court; (b) he has an express or implied licence to occupy, or (c) he occupies it as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession. Section 175(2) is not relevant to this appeal. A person 'shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy' (section 175(3)).
9. A person is threatened with homelessness if it is likely that he will become homeless within 56 days, or if a valid notice has been served under section 21 of the Housing Act 1988 (which relates to assured shorthold tenancies) in respect of the only accommodation which is available for his occupation, and the notice will expire within 56 days (section 175(4) and (5)).

Section 193

10. Section 193(1) applies in general where an LHA are satisfied that:
 - i. an applicant is homeless,
 - ii. is eligible for assistance
 - iii. did not become homeless intentionally
 - iv. has a priority need and
 - v. the duty owed to him under section 189B(2) has not ceased.
11. Unless they have referred the applicant to another LHA, the LHA must secure that accommodation is available for occupation by the applicant (section 193(2)). The duty imposed by section 193(2) continues unless it ceases 'by virtue of' any of the provisions of section 193(5), (6), (7) and (7AA). The issue on this appeal is whether the duty imposed by section 193(2) ceased by virtue of section 193(7AA).
12. The duty imposed by section 193(2) ceases if the applicant accepts, or refuses, a PRSO, and if he has been informed in writing of three things:
 - i. the possible consequences of a refusal or acceptance of the PRSO,
 - ii. that he has the right to ask for a review of the suitability of the PRSO and
 - iii. 'the effect under section 195A' (see paragraph 15, below) 'of a further application to [an LHA] within two years of the acceptance of' the PRSO (section 193(7AA) and (7AB)).
13. 'PRSO' is defined in section 193(7AC). There are three conditions.
 - i. It is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to accommodation which is or may become available for the applicant to occupy.
 - ii. It is made, with the approval of the LHA, pursuant to arrangements made by the LHA with the landlord with a view to ending the LHA's duty under section 193(1).

- iii. The tenancy offered is a fixed-term tenancy within the meaning of Part 1 of the Housing Act 1988 for a period of at least 12 months.
14. Section 193(7F)(ab) provides that an LHA ‘shall not’ approve a PRSO unless they are satisfied of two things.
 - i. The accommodation is suitable for the applicant.
 - ii. If the applicant is under ‘contractual or other obligations in respect of his existing accommodation’, he is ‘able to bring those obligations to an end before being required to take up’ the PRSO (section 193(7F)(ab) and section 193(8)).
 15. Section 193(9) provides that a person who ceases to be owed the duty under section 193 may make a fresh application to the LHA for accommodation or for assistance in getting accommodation.
 16. Section 195A is headed ‘Re-application after [PRSO]’. If within two years of accepting an offer under section 193(7AA) the applicant re-applies for accommodation, or for assistance in getting accommodation, and the LHA are satisfied that he is homeless and eligible for assistance, and are not satisfied that he became homeless intentionally, the duty imposed by section 193(2) applies whether or not he has a priority need (section 195A(1)). Section 195A(2) provides that ‘For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on the expiry or termination of an assured shorthold tenancy) has been served is treated as to be treated as homeless from the date on which that notice expires’. If the application which immediately preceded the current application was an application to which section 195A(1) applied, section 195A(1) does not apply (section 195A(6)). In other words, he may make a further application, but for the duty to apply to him, he would also need to show that he was in priority need.

Guidance

17. Section 182(2) gives the Secretary of State power to give guidance to LHAs either generally, or to specified descriptions of authorities. LHAs and social services authorities must, in the exercise of their functions relating to homelessness, have regard to that guidance (section 182(1)). Section 210(1) provides that, in deciding for the purposes of Part 7 of the 1996 Act whether accommodation is suitable for a person, an LHA must have regard to Parts 9 and 10 of the Housing Act 1985, and Parts 1 to 4 of the Housing Act 2004.

Suitability

18. Section 210(2) gives the Secretary of State power by order to specify the circumstances in which accommodation is or is not to be regarded as suitable for an applicant and what matters must be taken into account or ignored for that purpose. The Secretary of State has exercised that power: see the Homelessness (Suitability of Accommodation) (England) Order 2012 (2012 SI No 2601) (‘the Order’). Except where article 2A applies, article 2 of the Order lists factors related to the location of the accommodation which an LHA must take into account in deciding whether accommodation is suitable for a person. Article 2A is not relevant to this appeal. Article 3(1) lists 10 factors. ‘For the purposes mentioned in paragraph 2, accommodation shall not be regarded as suitable’ where one or more of those apply. The first factor is that the LHA ‘are of the

view that the accommodation is not in a reasonable physical condition’ (article 3(1)(a)). The purposes listed in article 3(2) include for deciding, in accordance with section 193(7F) of the 1996 Act, whether to approve a PRSO (article 3(2)(a)).

The right to ask for a review

19. Section 202(1) gives a person a right to ask for a review of various decisions by an LHA. Those include any decision about what, if any, duty an LHA owes him under various provisions, including section 193, and any decision about the suitability of accommodation offered to him pursuant to section 193(7) (section 202(1)(b) and (f)).
20. A request for a review must be made within 21 days of the date when the applicant is notified of the decision or within such longer period as the LHA may agree (section 202(3)). If an LHA receives an application for a review ‘duly made’, they must review their decision (section 202(4)). Section 203 makes provision about the procedure to be followed on a review. Section 203(7) gives the Secretary of State power to make regulations about the period within which a review must be done and notified.

The right of appeal

21. Section 204(1) gives an applicant who has asked for a review under section 202, and who is dissatisfied with the decision on the review, or who has not been notified of the decision on the review within the time prescribed under section 203, a right to appeal to the county court on ‘any point of law arising out of the decision or, as the case may be, the original decision’. In other words the right of appeal, in this case, was on any point of law arising from decision 2. On such an appeal, the court may make such order confirming, quashing or varying the decision as it thinks fit (section 204(2)).

The relevant correspondence between the Council and A

The offer dated 8 January 2021

22. On 8 January 2021, the Council wrote to A (‘the offer’). The offer was headed ‘Offer of private rented sector accommodation...under the Housing Act 1996, section 193(7AC)’ and gave the address of property 2. It described property 2 as ‘2 Bed’. Property 2 was said to be available for 24-month assured shorthold tenancy, but the offer did not say when the term would start. The rent was specified. The landlord was said to be HCBS. The Council said that they had arranged with HCBS for them to offer A a tenancy so that HCBS, and not the Council, would be his landlord. The Council had a minority interest in HCBS, but it was said to be an independent private sector landlord. The tenancy would therefore be an assured shorthold tenancy, not a secure tenancy.
23. The offer said that the Council believed that the accommodation was suitable for A. In reaching that decision, the Council had taken into account ‘all relevant legislation and guidance’. In the Council’s view, the property was a suitable size for A’s household, affordable, in reasonable condition (it was said to have been inspected on ‘21/1/2021’), and met all the legal requirements ‘relating to electrical equipment, gas and carbon monoxide safety and energy performance’. The Council said that it had also taken into account the information on their housing file, including their assessments of A and of his household’s housing needs, the amount of disruption which the location of the property would cause to the employment, caring responsibilities or education of the

members of A's household, and whether there were any risks of violence or harassment in the area of the property.

24. The Council referred to the duty imposed by section 193(2). The Council said that the offer was made to bring that legal duty to an end and that it was 'the only and final offer of accommodation we will make to you'. A would be given an opportunity to view property 2 before he signed the tenancy agreement. The Council stressed how important it was for him to look at property 2. The offer also told A that if he refused the offer the housing duty would end. The Council would close his application and remove his name from its waiting list. He would not be entitled to bid for further properties.

25. The offer also said

'If you become homeless within two years of the date, you accepted our offer, and you then re-apply to us for housing:

If we find that you have become homeless through no fault of your own we will, whether or not you still have a priority need, accept a further housing duty, and offer you somewhere to live. This would almost certainly be an offer of another tenancy with a private landlord.

If however, we find that you have become homeless or threatened with homelessness because of something you did or failed to do, (that is, you have made yourself homeless intentionally) we wrong in law then have to consider all aspects of your situation, including whether you still have a priority need and will take a fresh decision on the basis of our then findings.'

If A refused the offer, the Council would close his application and stop providing him with his existing accommodation in property 1.

26. The Council also told A in the offer that he could apply for a review of the offer whether or not he accepted property 2. He could therefore move into property 2 and still ask the Council to reconsider their decisions that property 2 was suitable or that the duty had for some reason ceased on acceptance or refusal of the offer. If A asked for a review and was successful, the housing duty would be reinstated, and the Council would continue to accommodate A. If the Council did not change their mind, A could appeal to the county court if he believed the decision was unlawful. If he applied for a review and did not move into property 2 there would be a risk that the Council would offer property 2 to another applicant. If the review confirmed that the property was suitable, A would then have nowhere to live, as the offer would no longer be open to him and his temporary accommodation would have been cancelled. If he was considering refusing the offer, he was strongly advised to contact his 'Moving On Officer' to discuss the implications. Any review request should be submitted within 21 days of the date of the offer.

The Council's letter of 27 January 2021 ('decision 1')

27. In decision 1, the Council said, among other things, that A had accepted the offer on 25 January 2021 by signing the tenancy agreement for property 2. That meant that the Council could bring the duty imposed by section 193(2) to an end. The Council said that before accepting the offer, A had been told in writing the consequences of accepting or refusing the offer, and of his right to ask for a review of the suitability of the

accommodation and of the effect of making another homelessness application to the Council within two years of accepting the offer. The Council said that they were satisfied that the accommodation offered to A was suitable for him. The Council were satisfied that A was not under any obligations in connection with his existing accommodation that he could not bring to an end before being required to take up the offer.

28. The Council said that they had approved the offer. The offer had told A of the consequences of accepting or refusing the offer. The offer also explained the effect of 're-applying as homeless within two years of accepting the offer if A was intentionally homeless and eligible for assistance (under section 195A of [the 1996 Act])'. The Council asserted that they were satisfied A was not 'under any obligations in connection with [property 1] that could not be brought to an end, before being required to take up the offer', and asserted, later in the letter, that A was not under any such obligations. The Council had approved the offer 'to end the main housing duty'.
29. The Council said that they were satisfied that the accommodation was suitable for A and the members of his household. 24 factors were listed, which, the letter said, the Council had considered. One of the factors listed was 'The fact that the accommodation is in a reasonable physical condition'. Another was 'The fact that when the accommodation was inspected, there were no signs of damp, mould, or excessive cold, and there were no Category 1 hazards...'. Decision 1 also listed seven further matters which the Council had taken into account.

A's solicitors' representations

30. On 18 May 2021, A's solicitors wrote the Council a letter headed with A's name, the address of property 2 and 'Representations on a s 202 review – Part 7 Housing Act 1996 Decision dated 27 January 2021 that the duty under s 193 HA 1996 has ceased'. They apologised for the delay. They said that there were two outstanding reviews: at present they were only in a position to make representations on the review of decision 1. On 28 January 2012, A had asked for a review of the Council's decision that the accommodation was suitable for him. They were not yet able to make representations on that application for a review and asked whether the Council could agree an extension of time. The solicitors addressed suitability at some length, nevertheless.
31. The solicitors said that they had still not yet received full disclosure of documents in relation to the review of the decision 1. The only conclusion open to the Council was that the duty had not been discharged. On the available documents, the Council had not considered whether the requirements for the approval of a PRSO were met, so that the offer could not be treated as a PRSO. The Council could not, in any event, have approved the offer.
32. The solicitors set out the relevant statutory provisions. They made six points, among others.
 - i. Other than the offer, there was no record in the disclosed documents of a decision about the offer, or a decision to 'approve' the PRSO.
 - ii. The solicitors had emailed the Council on 13 January 2021 describing the difficulties A would have with moving from property 1 to property 2. The Council had replied on 15 January that they were not prepared to

delay the start of the tenancy. The Council contacted A on 20 January 2021, asking him to attend a sign-up appointment the next afternoon to sign a tenancy agreement starting on 25 January. A had had to delay giving back the keys to property 1 for the reasons described in the solicitors' representations. The Council cancelled the accommodation at property 1 from 1 February. A returned the keys to property 1 on 3 February, having had an epileptic fit the day before. He was told that he would be liable for the rent for both properties for the period of the overlap.

- iii. The letter of 27 January 2021 considered the factors listed in section 193(7AA) to 7(AC) in more depth than the offer, but was sent after the offer.
- iv. The offer did not adequately inform A of the matters mentioned in section 193(7AB)(c). There was no reference to section 195(2) or of description of its effect on A's position or of the effect of section 195(6) on his future position.
- v. The condition in section 193(7F)(ab) was not met because section 193(8) clearly applied to A. The licence of property 1 obliged A to pay rent until it was terminated, and to give 7 days' prior notice of termination. The offer did not address the start date of the tenancy of property 2 or address the practical arrangements involved, which correspondence with the Council would have informed the Council about, as A had only moved into property 1 about a month earlier. A was not able to bring the licence of property 1 to an end before being required to accept the offer. The start date of the tenancy of property 2 was notified to him less than seven days in advance. He could not give the necessary seven days' notice. The move was not arranged until two days after the start of the tenancy of property 2; and difficulties with property 2 meant that he could not leave property 1. The Council did not respond to requests for the rent to be waived during the period of overlap. Assertions to the contrary in the letter of 27 January 2021 were wrong, and unexplained. These points had not been considered in the offer.
- vi. The Council had failed to satisfy themselves of the matters listed in article 3 of the Order. One example was that the offer referred to an inspection of property 2 on 21 January 2021, which post-dated the offer. There were no disclosed documents which evidenced any inspection.

The review decision dated 24 June 2021 ('decision 2')

33. The author of decision 2 said that he was senior to the officer who had made decision 1 and had not been involved in decision 1. He said that he had considered decision 1, the review request and other information which was before the officer who made decision 1. He was satisfied that that officer had considered all the issues raised in the representations. He was 'therefore satisfied that there is no deficiency or irregularity in the original decision or in the manner in which it was made'. He briefly described the factual background. He set out the text of section 193(7A) and said he was satisfied that the duty had come to an end because section 193(7A) applied to A.
34. His reasons were in three numbered paragraphs. In short, he was satisfied that the statutory conditions were met by the offer. I note that the author of decision 2 did not

refer to the requirements of section 193(7F)(ab) and (8). A was warned that if he left property 2, he was likely to become homeless intentionally. A was notified of his right of appeal to the county court.

The judgment

35. The Judge heard A's appeal on 7 October 2021 remotely. The Judge considered seven grounds of appeal. The Judge dismissed A's appeal in an order dated 16 December 2021.
- i. The Judge dismissed ground 2. He accepted that the offer did not tell A of the effect of section 195A(2), but that did not matter, because that provision did not tell A of the effect of a further application within two years, but, rather, 'deals with the date from which an applicant is to be treated as homeless'.
 - ii. He dismissed ground 4 because there was no evidence that the LHA 'was satisfied of any of the things identified in' article 3(1)(b)-(d) of the Order or that property 2 lacked the things described in article 3(1)(h) and (i). As the tenancy agreement was in HCBS's standard form, the reviewing officer could 'reasonably have inferred that the respondent would have been familiar'.
 - iii. He dismissed ground 5, having accepted an argument that 'not able' in section 193(8)(b) meant 'not able without breaching those obligations'. He recorded (judgment, paragraph 31) that A signed the tenancy agreement for property 2 on 21 January 2021 with a start date of 25 January 2021 and that A was obliged to give seven days' notice to terminate the licence of property 1. He also recorded that A moved into property 2 on 27 January, having retained the keys of property 2, as there was no fridge in property 2 and nowhere to store the food which was in the fridge/freezer in property 1, and the heating was not working in property 2. The basis on which the Judge dismissed ground 5 is not clear to me. I do not understand the Judge's alternative approach 'Even if I am wrong, the fact (if such it was) that the [LHA] approved an offer when they should not have done would not be relevant to whether the offer was a [PRSO] as defined by subsection (7AC)'.
 - iv. He dismissed ground 6. He agreed with Mr Johnson's submission that the author of decision 2 did not seem to have taken A's representations into account; but had he done so, there was no real prospect that they would have made any difference to his decision. The reasons for decision 2 were adequate.

The grounds of appeal to this Court

36. I will concentrate on the three grounds of appeal which were the focus of oral argument.
- a. Ground A is a challenge to the Judge's decision on what was ground 2, and to the Council's approach to that issue. It raises the question whether the Council met the statutory requirement of telling A in writing 'of the effect under section 195A of a further application to [an LHA] within two years of the acceptance of the offer'.
 - b. Ground B is a challenge to the Judge's decision on what was ground 5, and to the Council's approach to that issue. It raises the question whether the Council complied with section 193(7F)(ab) and 193(8) when it approved the PSRO.

- c. Ground C is a challenge to the Judge's decision on what was ground 4, and to the Council's approval of the offer. A argues that there was no evidence, as at 8 January, that the Council was satisfied that the requirements of article 3 were met.

Submissions

37. Mr Johnson argued that, on the plain language of section 193, the Council had not told A fully of the 'effect under section 195A' of a further application within two years of the acceptance of the PRSO because, as the Council had conceded, it had not told A of the effect of section 195A(2). He did not in his written argument rely on a failure to notify A of the effect of section 195A(6), although his solicitors had done so in their representations. When asked in oral argument whether there was an obligation to notify an applicant of the effect of section 195A(6), his response was 'We would say "yes"'.
38. Mr Grundy, by contrast, submitted that section 195A(2) does not deal with the effect of a further application, and that, therefore, the Council had complied with section 193(7AB)(c). Section 193(7AB)(c) could have said, but does not, that an LHA is required to notify an applicant of the matters in section 195A(1) and (2).
39. Mr Johnson pointed out that it was common ground and the Judge recorded that on 21 January 2021, when A was required to sign the tenancy agreement (with a start date of 25 January 2021) A was subject to a requirement under the licence of property 1 to give 7 days' notice to terminate it, and to pay rent in the meantime. Mr Johnson submitted that there was a 'prima facie incompatibility between the agreed facts and section 193(8)'.
40. Mr Grundy submitted that the LHA must be taken to have approved the offer on 8 January 2021. On that date, the Council knew that A could give 7 days' notice to terminate the licence of property 1, that the 'Supplier' (see paragraph 3, above) would not enforce the terms of the licence of property 1 after A moved out of it and that the Council would not seek to recover the licence fees from him after he moved out, even if the licence had not been brought to an end. In the event, A had not moved into property 2 until 21 February 2021, and he had continued to live in property 1. 'In the event the Council's decision that as at the date it approved the offer...any obligation that he was subject to under the licence [of property 1] be determined before he was obliged to take up the offer of [property 2] was confirmed to be correct'. For all but the first of these points, Mr Grundy relied on evidence which the Council had applied to adduce, for the first time, on this appeal.
41. Mr Grundy submitted that it was clear that the requirements of article 3 were met. He asserted that the offer stated that property 2 was inspected by HCBS. I observe that it does not: the offer simply says, '...the property was inspected on 21/1/2021'. He went on to submit that 'That inspection must have occurred before the Council offered' property 2 to A'. He then submitted that 'On the basis of *that report*' (my emphasis) the Council was satisfied of three matters, including that property 2 was in a reasonable physical condition.

Discussion

42. Section 193 imposes a series of what may seem to be rather technical requirements on an LHA. They are, however, the requirements which Parliament has imposed on LHAs in order to protect the statutory rights of people who are or may be homeless. Those rights are or may be affected by actions taken by an LHA under section 193. If the LHA is to bring the duty imposed by section 193(2) to end, those requirements must be complied with.
43. Ground A raises a very short issue of statutory construction. The question is what is the 'effect under section 195A of a further application' within two years of the current application. The introductory words of section 195A(2) are 'For the purpose of subsection (1)'. Section 195A(2) is a special rule, for the purpose of section 195A(1), about the time at which a person becomes homeless. In my judgment, 'the effect under section 195A' includes the effect of section 195A(2). It was common ground that A was not notified of the effect of section 195A(2). On the ordinary meaning of those words, he was not, therefore, told of the effect, 'under section 195A of a further application...'. I have not heard any argument about section 195A(6), and it was not part of Ground A. I say no more about it. I would therefore allow the appeal on ground A.
44. The question at the heart of Ground B is whether the Council was prohibited by section 193(7F)(ab) read with section 193(8) from approving the offer which it made in this case. By the end of the hearing Mr Johnson realistically accepted that it could be inferred that, in making the offer, the Council was at the same time approving that offer. Mr Grundy accepted, in effect, that, on or before 8 January 2021, the Council knew the terms of the licence of property 1. So the Council knew that these two statutory provisions applied. The Council therefore had to be satisfied, at the time it approved the offer, that A could bring the obligations imposed by the licence to an end before being required to take up the offer. In order to be satisfied of that, the Council would have had to have known when A would be required to take up the offer. There is no suggestion in the offer that the Council addressed this question, still less that it knew the answer to it, not least because the offer does not say when the tenancy will start. The Council could not, therefore, have been satisfied, on 8 January 2021, that section 193(8) did not apply to A, and was therefore prohibited by section 193(7F)(ab) from approving the offer as a PRSO. I would therefore allow the appeal on ground B.
45. The parties relied on various detailed points in relation to Ground C. In the light of my conclusions on Grounds A and B, I will only consider one aspect of those arguments. Despite the significant amounts of evidence in his application to adduce evidence which was not before the Judge, Mr Grundy was not able to point to a single document which evidenced any inspection of property 2, apart from Schedule 3 to the tenancy agreement for property 2, which post-dates the letter of 8 January 2021. There is no evidence to support the assertion in his skeleton argument that the Council had a report on the condition of property 2 on or before 8 January 2021. This point was raised by A's solicitors in the representations. They asked to see any relevant report and were never supplied with one.
46. Article 3(1)(a) of the Order read with article 3(2) provides that accommodation shall not be regarded as suitable for the purposes of approving a PRSO under section 193(7F) if the LHA 'are of the view that the accommodation is not in a reasonable physical condition'. This provision is expressed in a negative way, but as a decision maker

governed by public law, the LHA cannot form the view referred to in article 3(1)(a) before approving a PRSO unless it investigates the condition of the property before any approval. The Council could not form that view without, either, inspecting property 2 themselves, or being supplied with a report about it from a reliable source. There is no evidence before this Court, and there was none before the Judge, that the Council had taken any such step on or before 8 January 2021. I would therefore allow the appeal on Ground C.

Relief

Submissions

47. Mr Johnson asked for an order quashing the decision 2 and a declaration that the letter of 8 January 2021 was not a PRSO, and that the duty imposed by section 193(2) continues.
48. Mr Grundy argued that A's challenges were 'technical'. They did not involve any assertion that property 2 was really unsuitable for him. The Council should be given an opportunity 'on a further review to determine whether the technical requirements of a PRSO were met'. Mr Grundy made three submissions.
 - a. If satisfied that the outcome would be the same, this Court should refuse relief altogether. If the appeal were allowed on any of Grounds B or C, the Council would, if required to re-make the decision, find that the requirements of section 193 were complied with.
 - b. If the appeal were allowed on any ground other than Ground A, the Court could quash decision 2 and remit it to the Council to re-make. This Court can only vary a decision about homelessness if 'there is no real prospect that the LHA acting rationally could company to any other decision' (*Deugi v Tower Hamlets London Borough Council* [2006] EWCA Civ 159; [2006] HRL 28, at paragraph 28).
 - c. He accepted that if the appeal were allowed on Ground A, that failure could not be put right.

Discussion

49. On an appeal, this Court has the powers of the court below. So this Court can confirm, vary or quash decision 1 or decision 2, as the case may be.
50. On the facts of this case, section 193(7F) and (8) were a bar to the approval of a PRSO on 8 January 2021. The Council could not be satisfied that property 2 was suitable for A and that section 193(8) did not apply (see my discussion of Grounds B and C, above). The Council's purported approval of a PRSO on that date was therefore ultra vires and void. The Council also erred in law in decision 1 in concluding that A had been informed of the matters described in section 193(7AB). It follows that the Council erred in law in decision 1 in concluding that the offer made in the letter of 8 January 2021, and accepted by A, ended the duty imposed by section 193(2).
51. I would quash decision 2 and (if necessary, although this should be clear from my judgment) declare that the duty imposed by section 193(2) continues.

The Council's application to adduce evidence

52. I would refuse the Council's application. The application is said to be a response to Ground C, which was a ground of appeal in the county court (ground 4), and raises points which were made in the solicitors' representations. All of the evidence was available at the time of hearing before the Judge. If the Council wished to rely on it, it should have applied to adduce it before the Judge. I do not express any view about whether any such application would have succeeded, other than to say that, since decision 2 did not engage, at all, with the factual aspects of the solicitors' representations, such an application might have been ambitious even in the county court.

Lord Justice Males

53. I agree with the judgment of Lady Justice Elisabeth Laing. Because we are allowing the appeal on grounds which have little or nothing to do with whether the property is actually suitable for the appellant and his son, which might be thought to be the real battleground between the parties, I add some comments on the critical grounds of appeal.

Ground A

54. The issue on ground A is whether the local authority's offer letter of 8th January 2021 informed the appellant of "the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer". Unless it did, the local authority's housing duty to the appellant continued: see section 193(7AA) and (7AB(c)).

55. Section 195A does at least two things. First, it absolves a person who makes an application for accommodation within two years of acceptance of a PRSO of the need to show that they are still in priority need. In effect, the local authority's previous acceptance of this is carried over to the further application, regardless of whether the applicant's circumstances have changed. That was explained in the local authority's offer letter and there is no issue about it.

56. Second, section 195A provides in subsection (2) that an applicant making a further application within two years of accepting a PRSO will be treated as homeless from the date on which a valid notice under section 21 of the Housing Act 1988 expires, even though they continue to occupy the property. Put shortly, such an applicant is treated as homeless for the purpose of a further application within two years, even though in fact, as a matter of ordinary language, they are not (or not yet) homeless. That was not explained in the local authority's offer letter. In my judgment it should have been. It may have an important effect on a further application within two years, which an applicant needs to understand.

57. We heard no argument about whether a local authority must also explain the effect of subsection (6) which, in broad terms, means that the carrying over of a local authority's acceptance that an applicant is in priority need does not continue indefinitely. I would reserve my opinion on that point.

58. In the event, it is clear that the appellant was aware, well within the two-year period (which has not yet expired) of the effect of section 195A. Nevertheless, however technical this may be, Parliament has stipulated that if a local authority's housing duty

to a person in priority need is to cease by virtue of a PRSO, the offer must comply with section 193(7AA) and (7AB(c)).

Ground B

59. Section 193(7F) and (8) provides that a local authority shall not make a PRSO unless they are satisfied that the applicant is able to bring to an end any contractual obligations they may have in respect of their existing accommodation before being required to take up the offer. In practice, where an applicant has existing accommodation which requires payment of rent or other charges, it will be difficult for the local authority to satisfy itself about this without knowing the date on which the applicant will be required to take up the offer of a PRSO.
60. It appears that Haringey had made arrangements which ensured that in practice there was no period during which the appellant was required to pay rent or licence fees in respect of two properties and that the appellant did not in fact do so. The mischief at which section 193(7F) and (8) was aimed was therefore resolved, with no prejudice to the appellant, despite the local authority's failure to comply with section 193(7F) and (8). Nevertheless, the section is clear that a local authority must not approve a PRSO unless they are satisfied at the time of doing so that an applicant is able to bring to an end any contractual obligations in respect of their existing accommodation before being required to take up the offer. It will be for local authorities operating in the same way as Haringey to ensure that their arrangements comply with this requirement.

Ground C

61. Finally, Mr Grundy invited us to conclude that, despite the mistaken reference in the offer letter to an inspection "on 21/1/2021", the local authority must have had an inspection report before it when making the offer on 8th January 2021. I am not prepared to reach that conclusion in circumstances where no such report has been produced, despite requests, and there has been no evidence from the local authority to say that a report was in existence by 8th January 2021 or, if so, what has happened to it. It follows that there is no evidence of any basis on which the local authority could have been satisfied that the accommodation was suitable for the appellant at the date of the offer, as required by section 193(7F). Accordingly the PRSO was invalid on this ground also.
62. Nevertheless, this too is a somewhat technical ground of appeal in the circumstances of this case. It appears that the local authority did have an inspection report by 25th January 2021, the date of the tenancy agreement, because part of it formed Schedule 3 to that agreement, and that outstanding matters such as the provision of appropriate white goods were dealt with before the appellant was required to move in. Indeed, almost two years on, it appears that the appellant's real concerns about the suitability of the accommodation have to do with whether there is sufficient access to the shower in view of his disability and with noisy neighbours.

Conclusion

63. This appeal illustrates what is already well known, that housing law can be highly complex. More specifically, it demonstrates that local authorities who wish to discharge their housing duty by the provision of an assured shorthold tenancy with a private

landlord must take care to ensure scrupulous compliance with the terms of section 193 of the 1996 Act.

Lady Justice Asplin

64. I would also allow the appeal for the reasons given by Elisabeth Laing LJ and Males LJ.