Neutral Citation Number: [2019] EWHC 250 (Admin)

Case No: CO/2840/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13th February 2019

Before :

JEREMY JOHNSON QC, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

THE QUEEN **(on the application of B)**	**Claimant**
- and -	
London Borough of Redbridge	**Defendant**

- -
- -

Lindsay Johnson (instructed by **Hopkin Murray Beskine**) for the **Claimant**
Stephen Evans (instructed by Head of Legal, London Borough of Redbridge) for the **Defendant**

Hearing date: 6 February 2019

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Approved Judgment

Jeremy Johnson QC, sitting as a Deputy Judge of the High Court :

Introduction

1. The Defendant is providing accommodation to the Claimant, who would otherwise be homeless, pursuant to its duty under s193 Housing Act 1996. The Claimant says the accommodation is unsuitable because it is unaffordable. She claims that the Defendant has unlawfully failed to conduct a statutory review under s202(4) of the 1996 Act of the accommodation's suitability. The dispute arises in the context of a broader disagreement between the parties as to the accommodation's suitability. That dispute has led to:

   (1) A statutory appeal to the County Court from the Defendant's decision that the accommodation is suitable;

   (2) An application for permission to appeal to the High Court from the County Court's decision not to admit evidence that was not before the original decision maker and, following the dismissal of that application on the papers, a renewed oral application for permission to appeal;

   (3) An application for permission to appeal to the Court of Appeal against the decision of the County Court to dismiss the Claimant's statutory appeal;

   (4) These judicial review proceedings whereby the Claimant seeks an order requiring the Defendant to conduct a statutory review under s202(4) of the 1996 Act.

2. The Defendant says that it is not obliged to carry out a statutory review. The narrow issue in these proceedings is whether the Defendant is under a statutory obligation to conduct a review pursuant to s202(4) of the 1996 Act of its decision that the accommodation is suitable.

The facts

3. The Claimant was married in 2011. She was subjected to violence by her husband. She moved into a refuge, with her two sons. When her husband discovered the location of that refuge they moved into an alternative refuge.

4. On 23 August 2017 the Claimant applied to the Defendant local authority for housing, saying that the refuge was not suitable for her family and that she was unable to return to her matrimonial home because of the risk of violence from her husband. On 11 December 2017 the Claimant was offered a tenancy of a two bedroom flat, at a weekly rent of £185.39. The Defendant indicated in its letter of that date that it believed that the accommodation was suitable. The Claimant accepted the offer of a tenancy and moved in on 17 December 2017.

5. On 22 December 2017 the Claimant requested a review, pursuant to s202(1)(f) of the 1996 Act, of the decision of 11 December 2017 that the accommodation was suitable. She said that it was unaffordable (and hence unsuitable), in part because her benefits would be reduced by £25 per week as a result of the imposition of the "benefit cap". The Claimant's solicitor set out details of her income and expenditure. In respect of the cost of electricity the solicitor said:

> "There are also some expenses which our client has not yet started paying: she has not yet had the first electricity bill for her property. We do not know what type of heating is provided but it appears it must be electric heating of some sort as there is apparently no gas supply to the property, only electricity. Electric heating of course tends to be more expensive than gas heating. For now we have included a figure of £20 per week for electricity costs (including the heating and hot water costs) which may well prove to be a conservative estimate."

6. The Defendant carried out a review under s202(4) of the 1996 Act and the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999. It concluded that the accommodation that had been provided to the Claimant was suitable as temporary accommodation under s193 of the 1996 Act. Its decision is set out in a detailed 82 paragraph letter dated 21 March 2018 ("the review decision"). In relation to affordability it said:

> "14. Affordability: As part of my consideration in regards to whether the accommodation is suitable, I consider whether it is affordable for your client to live in this accommodation. This is not just whether your client can afford to pay the rent, but also whether this accommodation causes your client any additional expenses that are unreasonable for her to bear…"

7. The Defendant then made detailed findings as to the Claimant's living expenses. It accepted the Claimant's estimate of £20 per week in respect of the cost of electricity. It concluded that the Claimant had disposable income of £25.21 per week after payment of rent and necessary living expenses. It therefore found that the accommodation was affordable. However, it also recognised that the imposition of the benefit cap would reduce the Claimant's net income by £25.97:

> "…when the Department for Work and Pensions decides to apply the benefit cap it will move to a point of being extremely borderline in terms of affordability…"

8. On 28 March 2018 the Claimant received her first electricity bill at the property. This showed an amount due of £387.87 in respect of the period 11 December 2017 to 22 March 2017. There is a dispute as to what this amounts to as a weekly cost. I find that (bearing in mind that the Claimant moved in to the property on 17 December 2017) the weekly cost is £28.58. The bill also provides an estimate of the Claimant's energy costs over a 12 month period of £1,306.87, or £25.13 per week. It points out that there are cheaper tariffs, and that the Claimant could save up to £141.60 (which would result in a weekly cost of £22.43).

9. On 9 April 2018 the Claimant's solicitor provided a copy of the electricity bill to the Defendant and pointed out the discrepancy between the predicted and actual cost of electricity. The Defendant was asked to carry out a further review of its decision as to the suitability of the accommodation, taking account of the "new material". The Defendant did not respond to this request. Nor did it respond to a chaser sent the following day. Nor did it respond to the pre-action protocol letter of claim sent on 4 June 2018.

10. The Claimant pursued a statutory appeal to the County Court against the review decision, pursuant to s204 of the 1996 Act. The Claimant sought to rely on evidence that included reference to the actual electricity costs. The Judge refused permission to adduce that evidence because it was not before the decision maker. An application for permission to appeal to the High Court against the refusal to admit the evidence has been refused by an order of Warby J dated 17 January 2019 because the evidence "was plainly irrelevant to the review function which the Judge was performing." The Claimant has made a renewed application for permission to appeal which, at the date of the hearing, had not yet been determined.

11. The Claimant's appeal to the County Court was dismissed. The Claimant has sought permission to appeal against that substantive decision to the Court of Appeal. That application for permission to appeal has also not yet been determined.

12. Separately, the Claimant issued these proceedings for judicial review, challenging the Defendant's failure to undertake a (second) review of the suitability of the accommodation. By its Summary Grounds the Defendant contended that it was an abuse of process to bring a judicial review at the same time as the County Court proceedings. It contended that the Claimant was not entitled to a second review and that the appropriate remedy was, instead, to pursue the County Court proceedings.

13. The Claimant was granted permission to claim judicial review and directions were made for the Defendant to file detailed grounds for contesting the claim and any written evidence on which it wished to rely. The Defendant failed to file Detailed Grounds within the time permitted but was granted relief from sanctions so that (with the exception of one paragraph) it was permitted to rely on Detailed Grounds that it had filed out of time.

14. In correspondence, the Defendant sought disclosure from the Claimant of her more recent electricity bills. The Claimant declined to give disclosure, maintaining that the more recent bills were not relevant to the claim for judicial review because they were not available at the time of the decision not to carry out a review.

Legal framework

15. Local authorities are under a duty to secure accommodation for an applicant who is homeless and eligible for assistance but who has not become homeless intentionally – see s193(2) Housing Act 1996:

> "**193. Duty to persons with priority need who are not homeless intentionally.**
>
> (1) This section applies where—
>
> (a) the local housing authority—
>
> (i) are satisfied that an applicant is homeless and eligible for assistance, and
>
> (ii) are not satisfied that the applicant became homeless intentionally,

(b) the authority are also satisfied that the applicant has a priority need, and

(c) the authority's duty to the applicant under section 189B(2) has come to an end.

…

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

(3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.

…

(9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.

…"

16. In securing such accommodation the local authority must ensure that it is suitable – see s206(1) of the 1996 Act:

"**206 Discharge of functions by local housing authorities.**

(1) A local housing authority may discharge their housing functions under this Part only in the following ways—

(a) by securing that suitable accommodation provided by them is available,

(b) by securing that he obtains suitable accommodation from some other person, or

(c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

17. Section 210 of the 1996 Act gives the Secretary of State power to specify the matters to be taken into account in determining whether accommodation provided under s193(2) is suitable.

18. The Homelessness (Suitability of Accommodation) Order 1996 requires that the affordability of the accommodation for the person in question is taken into account when assessing if the accommodation is suitable. It also requires that when assessing

affordability account should be taken of the person's financial resources, the costs in respect of the accommodation, and the person's other reasonable living expenses.

19. Section 202(1)(f) of the 1996 Act prescribes a right to request a review of a decision as to the suitability of accommodation offered pursuant to s193(2). Because s202 is important to the issues that fall to be resolved I set it out in full:

> "**202 Right to request review of decision**
>
> (1) An applicant has the right to request a review of-
>
> (a) any decision of a local housing authority as to his eligibility for assistance,
>
> (b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness),
>
> (ba) any decision of a local housing authority—
>
> (i) as to the steps they are to take under subsection (2) of section 189B, or
>
> (ii) to give notice under subsection (5) of that section bringing to an end their duty to the applicant under subsection (2) of that section,
>
> (bb) any decision of a local housing authority to give notice to the applicant under section 193B(2) (notice given to those who deliberately and unreasonably refuse to cooperate),
>
> (bc) any decision of a local housing authority—
>
> (i) as to the steps they are to take under subsection (2) of section 195, or
>
> (ii) to give notice under subsection (5) of that section bringing to an end their duty to the applicant under subsection (2) of that section,
>
> (c) any decision of a local housing authority to notify another authority under section 198(1) (referral of cases),
>
> (d) any decision under section 198(5) whether the conditions are met for the referral of his case,

> (e) any decision under section 200(3) or (4) (decision as to duty owed to applicant whose case is considered for referral or referred),
>
> (f) any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e) or as to the suitability of accommodation offered to him as mentioned in section 193(7),
>
> (g) any decision of a local housing authority as to the suitability of accommodation offered to him by way of a private rented sector offer (within the meaning of section 193),
>
> (h) any decision of a local housing authority as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A or 193C).
>
> (1A) An applicant who is offered accommodation as mentioned in section 193(5), (7) or (7AA) may under subsection (1)(f) or (as the case may be) (g) request a review of the suitability of the accommodation offered to him whether or not he has accepted the offer.
>
> (1B) An applicant may, under subsection (1)(h), request a review of the suitability of the accommodation offered whether or not the applicant has accepted the offer.
>
> (2) There is no right to request a review of the decision reached on an earlier review.
>
> (3) A request for review must be made before the end of the period of 21 days beginning with the day on which he is notified of the authority's decision or such longer period as the authority may in writing allow.
>
> (4) On a request being duly made to them, the authority or authorities concerned shall review their decision."

Submissions

20. The Claimant's case is that she has an absolute right to request a review of the decision of 11 December 2017 that the accommodation is suitable, pursuant to s202(1)(f) of the

1996 Act. The Defendant is required to carry out a review pursuant to s202(4). The Defendant's refusal to carry out a review is therefore unlawful. She recognises that this would be a second review but says she is entitled to seek a second review because there has been "a change of facts", namely that the assumption as to the costs of electricity has been shown to be incorrect.

21. The Defendant says that the Claimant must show that there has been a material change of circumstances (or, as it was put in oral argument, some non-trivial change in the facts) entitling the Claimant to a further review, that there has been no such change, because the cost of electricity over the winter months of £28.58pw is not inconsistent with a broad forecast for the general cost of electricity (over the period of a year) of £20pw. Further, it says that the Claimant has an alternative remedy, namely her appeals.

Discussion

Alternative remedy

22. The Claimant's basic case is that the accommodation is unaffordable, and that this is demonstrated by the electricity bill. In the County Court proceedings the Defendant argued that the Claimant could not rely on evidence that referred to the electricity bill. The Judge agreed, as did the High Court Judge on the paper application for permission to appeal. I understood Mr Johnson to submit that the Claimant could not properly seek to rely on the electricity bill in the County Court proceedings.

23. In these proceedings, the Defendant seeks to argue that the Claimant has an alternative remedy by way of her County Court appeal, and the applications for permission to appeal from the High Court and the Court of Appeal that have followed the County Court proceedings.

24. There is a tension between the approach taken by the Defendant in the County Court proceedings and that taken in these proceedings. The Claimant's case in these proceedings relies entirely on the electricity bill. If, as the Defendant successfully argued in the County Court proceedings, the Claimant is not entitled to rely on the electricity bill in those proceedings, then it is difficult to see why they are an adequate alternative remedy. True it is that the Claimant might, in those proceedings, ultimately secure the quashing of the review decision. However, that could only be for reasons other than the extra electricity costs. Those proceedings do not provide a remedy for the problem confronting the Claimant that, on her case, her electricity costs are significantly greater than had been forecast and this renders the accommodation unaffordable.

25. Further, the question of whether the Claimant has an alternative remedy is primarily a matter for consideration when determining whether to grant permission to claim judicial review. Since judicial review is a remedy of last resort, permission to claim judicial review may be refused where a Claimant has available to her a suitable alternative remedy. Here, permission has been granted. The matter has been fully argued on a substantive hearing. The question of whether to grant relief is discretionary. It may, in some cases, be open to a Court to refuse relief at a substantive hearing on the basis that there is an alternative remedy available to the Claimant. It would not, however, be appropriate to take that course here. If the claim were otherwise well-founded it would effectively be committing the parties and the Courts to yet further rounds of litigation

when the matter (so far as relevant to the judicial review proceedings) has already been fully argued. That would be inconsistent with the overriding objective.

26. I therefore reject the Defendant's argument that the claim should be dismissed on the basis that the Claimant has a suitable alternative remedy.

Was the Defendant required to review its decision of 11 December 2017?

27. The argument proceeded on what was, effectively, common ground between the parties, namely that it was necessary and sufficient for the Claimant to surmount some form of threshold before being entitled to a second review. There was some dispute as to what that threshold should be – the parties argued for variations on a theme of "a new fact" or a "non-trivial new fact" or "a change of circumstances" or "new information which is relevant" or "material change in circumstances". Whatever the threshold, there was disagreement as to whether it was met.

28. The parties both relied on the decision of the Court of Appeal in *Begum v London Borough of Tower Hamlets* [2005] 1 WLR 2103 in support of their respective submissions on the question of the threshold for seeking a second review. That case was not, however, primarily concerned with reviews under s202. It was concerned with the right to make a "fresh application" for housing assistance under s193(9) of the 1996 Act. The difficulty was that there was no explicit statutory control over the making of such applications, with the corresponding prospect of multiple repeat applications. The Court held that there was no need to identify a material change in circumstances before making a fresh application under s193(9). If, however, the application was based on exactly the same facts as a previous application then it could, and ordinarily should, be rejected as incompetent.

29. The present case is not concerned with the question of repeat applications under s193(9). It is concerned with repeat applications for review under s202. There is a material difference between the two provisions. The former gives rise to an unfettered right to make a "fresh" application. The latter imposes a time limit. By reason of s202(3) any application for a review must be brought within the period of 21 days of the decision. Given that a review is itself highly likely to take longer than 21 days, it follows that any repeat application (assuming a repeat application is otherwise permissible, as to which see below) for a review is likely to be out of time. The issue that arose in *Begum* does not therefore arise here. The potential problem created by repeat applications is addressed by the imposition of a time limit.

30. The Claimant's case depends on s202(4). It is that provision that imposes on the Defendant a requirement to carry out a review. That requirement applies where the request for a review has been "duly" made. In the light of s202(3) that must mean that the request has been made within the 21 day time limit or within such longer period as is agreed, in writing, by the Defendant. Here, the (second) application for a review of the decision of 11 December 2017 was made outside the 21 day time limit prescribed by s202(3). The Defendant had not agreed, in writing, to allow a longer time for the submission of a request for a review. It follows that the obligation to carry out a review under s202(4) did not arise.

31. This was not a point taken by the Defendant in its Acknowledgement of Service or Detailed Grounds or Skeleton Argument, albeit when I raised it in the course of

argument the Defendant submitted that it did provide an answer to the claim. For his part, Mr Johnson was content to address the issue even though it did not form part of the Defendant's pleaded case. It would be artificial, and unsatisfactory, not to address the issue and to determine the claim on the basis of the parties' pleaded cases which appeared to proceed on an implicit assumption that there was no statutory control to prevent repeat applications for a review.

32. Mr Johnson had two answers to the time limit imposed by s202(3). His principal submission was that s202(3) does not apply where the request for a review is made under s202(1)(f). His alternative submission is that the Defendant had made an implicit "continuing" decision as to suitability such that the application was within time.

33. Mr Johnson accepted that his principal submission involved reading a caveat in to s202(3) (ie that it does not apply in the case of requests made under s202(1)(f)-(h)) which is not on the face of the statute. He submitted that this was justified because of the undesirable consequences that would otherwise follow. Those consequences were that an applicant would have no entitlement to require a local authority to reconsider the suitability of housing if an issue arose outside the 21 day time limit. An applicant would be required to make a fresh application for housing on the grounds that it was not reasonable to expect the Claimant to continue to occupy the housing that had been provided. This, said Mr Johnson, was a different and more exacting test than the question of whether the accommodation was affordable. Moreover, the Claimant would lose the benefit of the time that she had accrued in temporary accommodation provided under s193, and therefore lose her place in the "queue" for permanent accommodation.

34. Mr Johnson also pointed out that there is a qualitative difference between, on the one hand, decisions as to eligibility and priority and homelessness within the meaning of s193, and, on the other hand, decisions as to suitability/affordability. The former are, broadly, criteria that are fixed and are capable of final and binary resolution. The latter is inherently fluid – the suitability/affordability of accommodation may change over time. He submitted that it cannot have been the intention of Parliament to shut out the possibility of seeking a review when the suitability/affordability of accommodation changed after a period of time.

35. In my judgment it is not open to the Court to read a caveat in to s202(3) so that it does not apply to s202(1)(f). The meaning of s202(3) is clear on its face: any request for a review under s202, whether made under s202(1)(a) or s202(1)(f) or any of the other paragraphs of s202(1), must be brought within 21 days (or such longer time as is permitted by the local authority). The interpretative obligation under s3 Human Rights Act 1998 does not here arise. Conventional canons of interpretation do not enable the type of re-writing of s202(3) that the Claimant requires. In any event, I do not agree that the consequences of applying s202(3) to a s202(1)(f) request are as significant as is suggested. A local authority can be asked to consider a request out of time. In deciding whether to consider a request out of time the local authority must act rationally. If it does not do so it can be challenged by judicial review – see *C v London Borough of Lewisham* [2003] EWCA Civ 927 *per* Ward LJ at [44].

36. As to Mr Johnson's alternative submission (see paragraph 32 above), the fact is that the request for a second review related to the original decision of 11 December 2017 rather than any subsequent decision (whether an implicit continuing decision or otherwise). The Defendant had not been provided with the electricity bill before the point in time

that the request for a review had been made, and it therefore could not have made a decision (implicitly or otherwise) as to the suitability of the accommodation by reference to the electricity bill. The review decision could not itself found the basis for a request for a second review – see s202(2). Aside from the review decision, the only decision as to suitability that had been made was the decision of 11 December 2017. The request for a second review can only have been a request for a review of the decision of 11 December 2017. That request was out of time.

37. The Defendant was under a continuing obligation to secure that the accommodation provided was suitable – see s193(2) read with s193(3) and s206. That does not, however, mean, that the Defendant made a continuing decision that the accommodation was suitable. It made its decision of suitability on 11 December 2017. Thereafter, it could have been asked to make a further decision as to suitability if, for example, circumstances changed. If it agreed to make a further decision as to suitability then that decision might be subject to a review request under s202(1)(f). In the event, however, there was no further decision as to suitability, and thus no target to which an in time request for a review could attach.

38. Accordingly, the claim as formulated falls to be dismissed on the basis that the Claimant did not have a right to a review, since the application for a review was made outside the statutory time limit. It follows that the Defendant was not required to carry out a review.

39. There is a further reason why the claim falls to be dismissed. That is because the Defendant did carry out a review. The Claimant made an in time request for a review of the decision of 11 December 2017 and a review was carried out. The Claimant is seeking a right to make a second request for a review. The statute permits the Claimant to make a request for "a" review. It does not permit a request for a second review of the same decision. In *C* the Court of Appeal (albeit, as Mr Johnson points out, *obiter* and without the benefit of full argument) concluded that the statute contemplates that only one request for a review may be made – see at [58]-[59]:

> 58. In *Demetri v Westminster City Council* [2000] 1 WLR 772 the Court of Appeal was considering an appeal from the decision of the county court judge striking out the appeal made to him under s.204 of the Act. There, there had been a review followed by a request to reconsider that decision taken on that review. The housing authority agreed to reconsider but then confirmed its previous decision. The unsuccessful applicant was out of the then strict 21 day time limit for appealing against the first review decision and so sought to appeal the reconsidered decision within time. Douglas Brown J. held at p.778:—
>
> > "In my judgment this appeal must fail. There is no doubt that a council in its discretion can decide to reconsider or review a review decision formerly given under s.202(1). This was an appropriate case for this council to do so where it was being represented to it that on the original review some material argument had not been considered."

> He held, however, that the appeal to the county court lay only against the original decision made on review, not against the reconsideration of that decision.
>
> 59. Whilst reminding ourselves that we have not heard full argument on these matters, we nonetheless feel able to say that we are in agreement with those judgments. It seems to us to follow that a housing authority is not bound to entertain a succession of applications for review or for extensions of time for review given that Parliament has circumscribed the applicant's right to seek them. The scheme envisages only one review, or, if the 21-day time limit has expired, one application to extend time for review. That is not to say that a local authority may not choose as a matter of their discretion to entertain such a request for a further review or a further extension of time. This may be granted for sound pragmatic policy reasons to prevent the kind of roundabout applications to which Mr Luba referred, where the disappointed applicant simply goes to the neighbouring housing authority with the result that, if successful, the matter is referred back to the first authority. The authority may choose to reconsider matters of fact or new matters of fact which would lie outside the scope of an appeal to the county court. These are, however, decisions of good housing management and this extra-statutory discretion of the local housing authority is likely to be held to be close to being absolute. An attempt judicially to review a refusal to consider such a further indulgence is likely to receive the same treatment as was meted out in *Nacion* where Tuckey LJ held at p1100:—
>
> > "It is only in a very exceptional case that there will really be any reasonable prospect of interesting the court by way of judicial review to interfere with the exercise of the very broad discretion which the council have, bearing in mind that they exercise it, knowing the circumstances of the applicants, the range and availability of accommodation in their area …"
>
> Lord Woolf MR was of like mind, saying:—
>
> > "I have difficulty in envisaging cases where application for judicial review will be appropriate."

40. Mr Evans submitted that this is dispositive of the Claimant's claim. Mr Johnson responds that although s202 may only contemplate the right to bring a single request for a review of a decision on matters such as eligibility or priority or homelessness, on the question of suitability/affordability multiple reviews can legitimately be brought. This effectively mirrored his submission that the time limit in 202(3) did not apply to a request for a review of a suitability decision. I see no reason to draw a distinction between requests for reviews of different types of decision. The fact that suitability/affordability can change is accommodated by the local authority's continuing duty to secure that the accommodation is appropriate, and thus the

possibility of an updated decision on suitability which might, itself, be subject to a request for a review.

Alternative ground for relief

41. Mr Johnson contends that if the claim falls to be dismissed because it is out of time, then the Claimant should still be given some form of relief.

42. The 21 day time limit prescribed by s202(3) is not absolute. The authority may, in writing, allow a longer time limit. It has a broad discretion in that regard. The statute does not impose any explicit fetter on the breadth of its discretion. Of course, if the authority irrationally refused to entertain an out of time application for a review then that could be challenged by judicial review – see *C per* Ward LJ at [44].

43. Moreover, although the statute only permits a single request for a review, there is nothing to prevent the Defendant agreeing to carry out an extra-statutory review. This is recognised in *C* at [59] (see paragraph 39 above).

44. I have considered whether to permit the Claimant to amend her claim so as to challenge the (implicit) decision of the Defendant not to allow an extra-statutory request for a review outside the 21 day time limit (or the failure of the Defendant to make a decision as to whether to allow the request to be made outside the 21 day time limit), or, at least, to require the Defendant to make a new decision as to the suitability of the accommodation (which could then be subject to a request for a review).

45. If it were possible fairly to determine one or other such a claim without further delay then in all the circumstances (including that the Defendant had only relied on s202(3) and *C* when the issues were raised by me at the hearing) I would readily have granted such permission. It is not in anybody's interest that the underlying dispute as to the affordability of the accommodation remains unresolved. The ongoing uncertainty is obviously highly undesirable to the Claimant. It continues to erode the Defendant's stretched resources. It also involves a significant call on the courts' resources. However, I have concluded that I am not in a position now fairly to resolve a claim that the Defendant should make some new decision. It is at least possible that if such a claim had been intimated then the Defendant would have sought further information from the Claimant (such as up to date information as to her electricity bills) before deciding whether to make a new decision on affordability or to carry out an extra statutory review. If the Claimant provided that information then that could be taken into account. The Defendant could likewise take into account any failure to provide information that it had reasonably requested. It would be necessary for the Defendant either to make a decision (or to justify not making a decision – for example because insufficient information had been provided). It would then be necessary for the Claimant to identify any public law error in the Defendant's decision. None of that has happened.

Risk of injustice to Claimant?

46. The Claimant's position is perilous. She is a victim of violence at the hands of her husband. Her finances are stretched, possibly beyond breaking point. Although the excess amount of the electricity bill beyond that which was predicted amounts to just a few pounds, that might make all the difference to the affordability – and hence suitability – of her accommodation, particularly when taken in conjunction with the

potential for reduction to her income (for example as a result of the imposition of the benefit cap).

47. The risk that arises as a result of the different routes of challenge (on the one hand the statutory appeal to the County Court with bifurcated onward appeals, on the other hand this claim for judicial review) is that neither addresses the fundamental point as to whether the accommodation is (on the basis of up to date information) suitable. The County Court appeal did not address the question of the electricity bill because of the nature of its jurisdiction and the fact that the bill post-dated the decision under challenge. These proceedings have not addressed the bill because the application for a statutory review was made out of time and because the statute only permits one request for a review of a decision, not multiple requests. None of this is of any comfort to the Claimant who is left, on her case, with unaffordable accommodation.

48. The Claimant is not left without a remedy.

49. The Defendant is under a continuing duty to secure that the accommodation is suitable. The Claimant can ask the Defendant to discharge that duty by satisfying itself that the accommodation continues to be suitable. The Defendant would then have to consider making an updated decision as to suitability. If it agreed to do so and then made an adverse decision then this could be subject to a review request. If it irrationally refused to make an updated decision then that could be subject to challenge.

50. Alternatively, the Claimant could make a further (extra-statutory) request for a review with up to date information (including up to date electricity bills), together with a request that the Defendant allow the request to be made outside the 21 day period. It will then be for the Defendant to consider whether to allow the out of time request to be made. The merits of the Claimant's application may be a relevant factor in that decision (although see *C* at [49] and *R (Slaiman) v Richmond upon Thames LBC* [2006] EWHC 329 (Admin) *per* Hughes J at [22]-[24]). If the Defendant is satisfied that the request is without merit (eg because, over the period of a year, the electricity bill has not been significantly more than £20 per week) then that would be a reason in favour of refusing the request to review the decision on affordability. If, conversely, the Defendant is satisfied that the request is meritorious (eg because the accommodation is demonstrably no longer affordable) then that would be a reason in favour of agreeing to review the decision on suitability.

51. Alternatively, the Claimant may make a fresh application for assistance under s183(1) on the grounds that she is homeless within the meaning of Part 7 of the 1996 Act by reason of the unaffordability of her current accommodation.

52. It also seems possible (although this was not explored in argument) that the Claimant might be able to take more practical steps to address the affordability issue, such as changing her electricity tariff (see paragraph 8 above).

53. The important point, however, is that the dismissal of this claim (and, indeed, the dismissal of the County Court proceedings) does not leave the Claimant without a remedy if her current accommodation is not affordable.

Outcome

54. It follows that this application for judicial review is dismissed.