Case No: G01CL213

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand, London
WC2A 2LL

5 August 2022

BEFORE:

HIS HONOUR JUDGE LUBA QC

B E T W E E N:

ABDUDAH ALI IBRAHIM

Claimant

- v -

LONDON BOROUGH OF HARINGEY

First Defendant

-and-

CAPITAL HOMES SERVICES LIMITED

Second Defendant

Hearing dates: *14 and 15 March 2022, 19 May 2022 and 6 June 2022*

Mr Matthew Lee appeared on behalf of the Claimant

Mr Stephen Evans appeared on behalf of the First Defendant

Mr James Holmes-Milner appeared on behalf of the Second Defendant

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JUDGMENT

I direct that no recording shall be taken of this Judgment and that copies of this version as sealed and handed down may be treated as authentic.

Introduction

1. This is a claim for damages arising from alleged harassment in, and then alleged unlawful eviction from, residential accommodation. The claimant, Mr Abdudah Ali Ibrahim ('Mr Ibrahim'), asserts that he was the secure tenant or licensee of the London Borough of Haringey ('the Council') at the residential accommodation and that it is liable to him in significant damages of up to £600,000 for his wrongful harassment and eviction. Alternatively, he contends that he was the assured shorthold tenant of Capital Homes Services Limited ('Capital') in respect of the same accommodation and that it is liable to him in significant damages for his wrongful harassment and eviction. Both contentions are vigorously denied.

2. The proceedings began with the issue of the claim form and, simultaneously, the lodging of an application for an interim injunction to restrain a perceived threatened unlawful eviction. Initially, an interim injunction was granted by HHJ Hellman in this Court but, on the return day, that injunction was discharged by HHJ Saunders. He found that Mr Ibrahim had not entered into a legal relationship with either the Council or Capital in respect of the accommodation, effectively resolving the issues in the claim. At that point, Mr Ibrahim left the accommodation. But he also pursued an appeal. In due course, Mr Justice Lane allowed the appeal[1] and remitted the claim for trial in this Court.

3. The trial was conducted over several days. For the Claimant, I had the oral and written evidence of Mr Ibrahim and of his former solicitor Mr Adrian Smith. For the Council, I had the oral and written evidence of Mr Leigh Richman. For Capital, I had the oral and written evidence of two members of staff, Mr Yaj Hemoo and Mr Gbenga Sanusi. I am satisfied that each of these witnesses was doing his best to assist the Court as to his participation in, and recollection of, the relevant events. Where necessary to do so, I will make assessments on the reliability of that evidence in relation to specific disputes.

4. I had the considerable assistance of counsel for each of the three parties, initially by way of helpful skeleton arguments and thereafter by way of closing speeches, the latter occupying a full Court day, despite the economy and skill with which each was delivered.

[1] [2021] EWHC 731 (QB), 30 March 2021

The relevant background

Mr Ibrahim

5. Mr Ibrahim was born in Palestine in January 1983. He is stateless and has sought asylum in the UK. His first language is Arabic. Although his spoken English has developed in the 15 years he has been in this country, he cannot read or write in English or in Arabic.

6. From 2015 to early May 2020, he was provided with NASS accommodation in North London by an accommodation and support contractor engaged by the Home Office. He lost that accommodation on 3 May 2020 when he was arrested as a result of an allegation made by another resident. On about 6 May 2020, he was bailed on terms that he should not return to the same address. He had no other accommodation and began sleeping rough.

7. That was a particularly difficult time to be street homeless because there was a raging COVID-19 pandemic in London in May 2020, and the country was in a state of 'national lockdown'. But, given his immigration status, Mr Ibrahim was not authorised to work and was not eligible for state support through housing benefit or other welfare benefits. He was likewise not eligible for allocation of social housing or the provision of statutory homelessness assistance.

8. He was fortunate to have the services of a legal aid solicitors' firm which had assisted him both with his immigration matters and with the criminal proceedings arising from his arrest. The same firm also holds a Housing Contract from the Legal Aid Agency. The Housing Contract work supervisor at the firm, Mr Adrian Smith, took up Mr Ibrahim's case and sought to obtain accommodation for him from the Council.

National Policy

9. On 23 March 2020, the UK Government had declared the first National Lockdown in response to the COVID-19 pandemic. On 26 March 2020, as part of the national measures adopted by central government to counter the pandemic, Luke Hall MP, then Minister for Local Government and Homelessness, wrote to all local authorities stating that "it is now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week". He referred to the need to "bring in those on the streets to protect their health and stop wider transmission". This marked the start of what has become known as the "Everyone In" initiative.[2]

10. The object of this public health initiative was to provide accommodation for rough sleepers as a matter of urgency. It recognised a heightened risk of infection or transmission of infection arising from homelessness. For obvious reasons, dormitory

[2] The precise legal nature of this 'policy initiative' has only very recently been subject to judicial analysis: *R (ZLL) v Secretary of State for Housing, Communities and Local Government* [2022] EWHC 85 (Admin) (18 January 2022)

hostel-style accommodation (sometimes known as 'night shelters') could no longer be used to accommodate rough sleepers overnight.

11. The Minister's letter stated that local authorities should:

> "…make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities;
>
> utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic;
>
> mitigate their own risk of infection, and transmission to others, by ensuring that they are able to self-isolate as appropriate in line with public health guidance."

12. The Minister set out a programme of actions to be undertaken by local authorities including "Urgently procuring accommodation for people on the streets if you have not already done so". Over the following month, the Minister sent further letters to local authorities announcing additional central government funding to assist in managing the cost of accommodating rough sleepers in the pandemic.

13. No new housing legislation, nor new housing supply, accompanied the announcements. Only much later did it even become possible to identify the statutory powers under which local authorities had responded to the initiative and arranged accommodation for rough sleepers and other vulnerable homeless persons (beyond assisting those who were eligible under the 'normal' national statutory framework for homelessness assistance).[3] What national government was exalting local authorities to do was, in effect, to provide rough sleepers with "emergency temporary accommodation".[4]

The Council

14. The Council is a London Borough Council discharging the functions of a local housing authority under the provisions of the Housing Act 1996 Part 6 (allocation of social housing accommodation) and Part 7 (homelessness). It also has many other powers and duties that involve the provision of, or arranging the provision of, accommodation.

15. Many of its housing-related functions are undertaken on its behalf by an arm's length management organisation (ALMO), Homes for Haringey. I assume there is some form of contracting-out arrangement between the Council and the ALMO in relation to some or all of the Council's housing functions, but nothing was put before the Court in relation to those matters. Most specifically, nothing was put before me as to any contracting-out or delegation to the ALMO of whatever functions or powers the Council was exercising in order to give effect to the Everyone-In initiative.

16. All parties appear to have treated the precise relationship between the Council and the ALMO as irrelevant to this litigation, notwithstanding that almost all the limited

[3] *R(Ncube) v Brighton & Hove CC* [2021] EWHC 578 (Admin) and [2021] HLR 31 (11 March 2021).

[4] The description used by HHJ Wood QC in *R(Cort) v Lambeth LBC* [2022] EWHC 1085 (Admin) (11 May 2022) at [94]

dealings between Mr Ibrahim and 'the Council' were in fact between him and staff of the ALMO. I proceed therefore on the premise that the ALMO was, in all its dealings with Mr Ibrahim, acting as agent for the Council with actual or ostensible authority to do what was done. I do so despite the ALMO not being a party to the proceedings.

17. The Council, and more recently the ALMO, have long had arrangements with accommodation providers, in and beyond Haringey's borough boundaries, for the supply of short-term accommodation to assist it in discharging its statutory responsibilities, particularly its responsibilities under the mainstream homelessness provisions.

18. It is somewhat surprising, given the issues arising in this litigation, the notional value of the claim, and the costs at stake in determining it, that none of the parties sought to place before the Court the witness evidence of any councillor or council officer as to the arrangements the Council had in place, whether pre-pandemic or in response to Everyone-In, to secure accommodation for rough sleepers. If the Council adopted a specific policy or procedure[5], I was not shown it.

19. For the Council, the evidence tendered was that of Mr Leigh Richman, an employee of the ALMO with the job title "Head of Lettings and Move On". He was answerable to the Executive Director of Housing Demand, Ms Denise Gandy. Mr Richman's evidence was to the effect that if (during this early stage of the pandemic) a rough sleeper approached the Council during working hours, their application would be dealt with by a member of staff in the Housing Needs Team. That officer would make some form of preliminary assessment as to whether they were eligible for statutory homelessness assistance (most immediately to be met by the provision of interim accommodation under Housing Act 1996 section 188) or – if not – whether they were to be provided with assistance under the Everyone-In initiative. Another member of staff would then become responsible for securing suitable accommodation for the individual from an accommodation provider.

20. If the need for accommodation arose out-of-hours or at the weekend, initial contact with the individual would be received by and handled by a council contractor, CAPITA. There was nothing placed before the Court as to the terms of the contract between the Council (or the ALMO) and CAPITA. Nor any document setting out the procedural arrangements agreed between them.

21. The call-handler at CAPITA would be furnished at the start of their shift by the Council or the ALMO with a list of authorised accommodation providers. A duty officer of the ALMO or Council would be available to be contacted by the call handler if there were difficulties in finding accommodation for that night for an individual. CAPITA itself would make no assessment of eligibility for assistance or whether accommodation was being provided under statutory duties or in the exercise of statutory powers. (The ALMO had issued 'scripts' to CAPITA staff as to how to operate this service. None was available to the Court.)

[5] The public law challenge to the decision judicially reviewed in *R(Cort) v Lambeth LBC* [2022] EWHC 1085 (Admin) (11 May 2022) in large part succeeded for want of such a policy.

22. The call-handler would then, in effect, ring-round the listed accommodation providers to see if any could take the individual that night. If they could take a nominee, the call-handler was authorised to book them in and supply the accommodation provider with the basic contact details for the individual. It was then left to the provider and the individual to make contact, so that admission to the accommodation could be organised. This 'system' had been operating pre-pandemic to deal with out-of-hours applications for assistance under the 'normal' homelessness arrangements. Processes for implementing Everyone-In appear to have simply been grafted onto it.

23. Mr Richman explained that, in an attempt to keep the individuals covered by Everyone-In at accommodation where support (and security) could be collectively provided, the Council or ALMO had commissioned purchase of bulk units of hotel accommodation, particularly at Travelodge Hotels that were no longer in normal use by reason of the pandemic-related lockdown. Only where special factors prevailed, such as current COVID infection requiring individual self-isolation, or particular mental health difficulties, would non-hotel, self-contained accommodation be secured for a rough sleeper. Mr Richman was responsible for briefing the Out of Hours Team (OHT) both in the ALMO and at CAPITA on what accommodation to use and what was available.

24. By way of illustration, I was taken to material relating to the period 7-11 May 2020. This showed that the Council (or the ALMO or an accommodation supplier) had secured at least 10 rooms at the London Finsbury Park Travelodge, with rooms for men and women on separate floors. Support arrangements for former rough sleepers had been put in place there and the Council had supplied security personnel. On 9 May 2022, Mr Richman told the OHT team that from that date the Council or ALMO would be using that Travelodge for new placements and that, if the 10 rooms pre-booked did not suffice, the Travelodge could be asked for more. He updated the existing spreadsheet of out of hours suppliers dated 7 May 2022 by adding the Travelodge and its details to the existing list of suppliers with the description "Please use for initial placements."

25. The arrangement appeared to be that once an individual had been accommodated overnight or over the weekend by the efforts of CAPITA staff, their circumstances would be considered on the next working day by a member of Council or ALMO staff in the Housing Needs Team. That officer would make some form of preliminary assessment as to whether they were eligible for statutory homelessness assistance (and if so, authorise provision of interim accommodation under Housing Act 1996 section 188) or – if not – determine whether assistance should continue under the Everyone-In initiative.

Capital

26. Capital Homes Services Limited is a private limited company operating in the property management services field. One of its business models is the sourcing of residential accommodation capable of short-term provision to meet the needs of local housing authorities to accommodate homeless households. It deals with several councils.

27. On 18 April 2018, Capital and the Haringey ALMO had entered into a poorly worded and pro forma written agreement headed "Temporary Accommodation Suppliers Management Agreement for Annexes" and extending over seven pre-printed pages.

The words "for Annexes" appear superfluous and are omitted from the title of the document as it appears in its footer.

28. By the agreement, Capital agreed to offer the ALMO "for the use and occupation of its nominees (the Residents) any available and vacant premises". The ALMO reserved absolute discretion as to whether to make nominations but, if it did, Capital agreed to provide the nominated 'resident' with temporary accommodation upon "presentation" of an official booking order provided by the ALMO. The ALMO's purpose in entering into the agreement was said to be for the better performance of its duties under Part 7 Housing Act 1996 (despite it having no such statutory duties of its own).

29. By the same agreement, Capital agreed to "provide the premises to" the ALMO "for nomination of any resident". The ALMO agreed to pay the "cost per night" of those premises from "the date of the Temporary Accommodation Agreement (TAA)" until the date of termination of the TAA. The agreement set out how a TAA was to be provided to the Resident and how the ALMO might terminate it.

30. In respect of the latter, Clause 2.15 reads:

> "Where Homes for Haringey notify the Supplier of its intention to terminate responsibility for a particular Resident … it is the supplier's responsibility to ensure the Resident … leaves the premises. The Supplier will immediately terminate the TAA and at the cost of the Supplier to (sic) obtain vacate (sic) possession of the Premises"

31. This arrangement appeared to have operated satisfactorily for some time in the sense that Capital, as a supplier, routinely sourced and supplied accommodation for homeless households whom the Council needed to provide-for under its statutory homelessness functions. In return, the Council or ALMO paid nightly charges levied by Capital for that provision. An employee of Capital, Yaj Hemoo, even has the job description 'Housing Officer' identifying his role in securing temporary accommodation for the use of this and other councils.

32. The business model of Capital also included providing accommodation management services at a building known as "The Hub" or "Clayford House" at the junction of Hampden Road and Willoughby Road in London N8. The building was constructed or adapted in 2016/2017 to provide (according to the developer/owner's website) "state of the art luxury studio flats…[d]esigned to offer New York style concierge serviced apartments for those with a busy lifestyle in a contemporary and bright living space."

33. The building is owned by the company Magic Homes and it employs the services of Capital to attract private tenants for some of the studio flats and to manage short-term provision of some of the other flats as serviced units to business travellers, tourists, and the like. Capital manages about two thirds (about 30) of the 51 flats in the block. The rest are privately let by Magic itself. Nothing was provided to the Court as to the form or detail of any written agreement as to the arrangements between Magic Homes and Capital.

34. In the context of the pandemic, and of the first national lockdown, it appears that a decision was taken by Magic Homes - or by Capital as its agents - to make a business adjustment in order to redress the impact upon it of the collapse of the market for short-

term use of serviced flats in London. There were at that time no business travellers and no tourists wishing to utilise what Magic Homes had available at The Hub.

35. Again, somewhat surprisingly, no party called any evidence from any director or senior operating officer at either company as to what decisions were made about this or by whom, or when, or why. But from the relatively junior employees who did give evidence it was possible to glean that someone at Magic Homes or Capital decided that the otherwise empty units at The Hub should be released for Capital to use as part of the portfolio of accommodation it might offer under its standing arrangements with the Council or its ALMO for provision of temporary accommodation.

36. The result is illustrated by the appearance of an entry on the OHT spreadsheet dated 7 May 2020 of "22 studios" at The Hub as potentially available to the ALMO, through Capital, for short term use by the Council's nominees. This swift adaptation by Capital to a different market environment plainly worked because, within two to four weeks of these new arrangements, The Hub was "full".

Mr Ibrahim and The Hub

37. The following account of the interactions between the three parties to these proceedings, and their agents or staff, is somewhat more detailed that might be usual, reflecting both the short period involved (some 10 days) and the speed at which events moved 'on the ground' within that time.

38. On Tuesday 12 May 2020, at 15.29, Mr Ibrahim's solicitor Mr Smith sent an Email to the Council's Housing Needs Team asking it to "urgently secure that interim accommodation is made available for his occupation in the current circumstances surrounding COVID-19." The Email set out that Mr Ibrahim was stateless, had no recourse to public funds, had depression, suffered with memory loss, and was rough sleeping.

39. The Email attached a copy of the Minister's letter of 26 March 2020 and quoted extensively from it. It asked the Council to "confirm an address [for Mr Ibrahim] as a matter of urgency in order to comply with this guidance". In simple terms, Mr Smith was asking for Mr Ibrahim to be accommodated under the Everyone-In initiative. The Email asked for confirmation of accommodation provision, and of the address of the accommodation to be provided, by 5pm that day (essentially, within the next 90 minutes).

40. To its credit, the Council or ALMO responded virtually immediately through someone known only as "Marcelle". As a result of the help provided by that officer, Mr Smith re-sent his Email and attachments at 15.51 to another Email address within the Council or ALMO. It was obviously not possible for Council or ALMO staff themselves to source accommodation for Mr Ibrahim before close of business that day (not least because many staff were working remotely from home). His details must have been among those passed to CAPITA when the Out of Hours Team came on duty that evening.

41. Although Mr Richman of the ALMO told me that, as the senior responsible officer at the ALMO in respect of this litigation, he had investigated the ALMO's dealings with Mr Ibrahim, he candidly explained that he had not investigated who at the Council or ALMO had got the request for accommodation made by Mr Smith, what happened immediately as a result of it, or how and why Mr Ibrahim's request for accommodation came to the attention of the Out of Hours Team at CAPITA.

42. As it happened, Mr Richman was the ALMO officer on Out of Hours authorisation duty that evening. It was obviously developing to be a busy night. By 18.24, Mr Richman had already been contacted by CAPITA to say that they had tried to place two individuals at the Finsbury Park Travelodge but that the hotel was full, already having taken six placements that day alone.

43. But a provider which did have accommodation for that night was Capital. At 18.16, it had sent an Email to the ALMO (at multiple addresses) indicating that it had "available properties for tonight" listing 10 studio flats at The Hub at a "price per night" of £45. The Hub was not on the spreadsheet that had been provided to CAPITA staff that evening, but as indicated above, by an early stage they were finding it difficult to book placements using that spreadsheet.

44. By 20.00, someone (possibly, as he accepted, Mr Richman) had authorised the CAPITA Out of Hours Team to take up the Capital offer and make placements at The Hub. Mr Richman could not explain why the Council's pleaded case suggested that the nomination by CAPITA to Capital that night was "in error" or how Mr Justice Lane came to recount in his judgment that there had been a "mistake".[6] He accepted that, although the default position was a hotel placement for single rough sleepers being assisted under Everyone-In, if there were no available hotels or the hotels were fully booked, other accommodation could – as in this case – be authorised for use.

45. Although he had investigated this case for the ALMO, he had not troubled to call for, or examine, any records identifying who at CAPITA had made the nomination to Capital, what 'script' they had used, or even whether it was indeed he, or someone else at the ALMO, who had authorised nominations to units at The Hub that night.

46. Three or four individuals were 'booked' for the Hub that night by nominations from CAPITA staff. Mr Ibrahim was one of those. Mr Dan Stanley, Senior Customer Service Representative at CAPITA, sent an Email at 20.01 to a Mr James Nicolou at Capital providing Mr Ibrahim's name, personal details, a contact number, contact details for his solicitor Mr Smith and a Homes for Haringey "case reference number". Neither of these men gave any evidence and it is not known whether the Email was preceded by any sort of direct discussion between anyone at CAPITA and anyone at Capital. The Email stated: "Number of nights required: 14". Mr Richman told me that 14 days was the 'default' figure used by CAPITA on a nomination or booking under the normal homelessness arrangements.

47. Seven minutes later, Mr Nicolou sent the Email on to another Capital employee, Mr Gbenga Sanusi. Mr Sanusi normally worked for Capital during business hours as a 'lettings negotiator' concerned with finding private tenants for private landlords (and

[6] At [4].

vice versa), including tenants for the studio flats at The Hub. He had no experience of dealing with council nominees for emergency accommodation (whether as 'statutory homeless' or otherwise), nor of the systems that Capital usually operated for such services pursuant to its agreement with the ALMO. He had received no training in such matters. He had never seen the agreement between the ALMO and Capital. But he seemed to be on duty for Capital that evening as part its ad-hoc COVID lockdown arrangements (with most of its staff working from home). He was prepared to undertake the role of receiving nominees for The Hub that night and to be responsible for moving them into the available units.

48. Mr Ibrahim's recollection was that he was told by his solicitor by telephone that evening of where he should go to, in order to be accommodated. That was presumably after the solicitor had been contacted by someone at CAPITA or Capital and given the address. Mr Ibrahim thought he had then gone to a council office, but I accept Mr Sanusi's evidence that arrangements were made for the two men to meet on the street outside The Hub. It is inherently unlikely that any Council or ALMO office would have been open or staffed at that hour or that Mr Ibrahim would have been sent to one.

49. Having met Mr Ibrahim outside, as arranged, Mr Sanusi took him into the Reception area of The Hub where there was a small office with a desk. Mr Sanusi satisfied himself that Mr Ibrahim was the CAPITA-nominated individual by taking a photo of his ID. He then retrieved a pro forma printed document from a stock in the office and made manuscript entries on it as necessary. There was no discussion between the men about any terms or conditions for the provision of accommodation or, on Mr Sanusi's account, as to how long Mr Ibrahim would stay. Mr Sanusi could not say whether Mr Ibrahim spoke in English or read or understood the printed form that both men signed, or even understood the entries made in manuscript on it, beyond his (Mr Ibrahim's) own name which he himself wrote onto the form.

50. Mr Sanusi retained a copy of the form and gave the other copy to Mr Ibrahim. There was no discussion about money because Mr Sanusi understood that, as he explained to me, "the Council are paying". Mr Ibrahim told me that he signed the form, even though he could not read it and even though it was not translated to him or explained to him, simply because he wanted to "move in". The document that the two men signed is reproduced as an Appendix to this Judgment.

51. Mr Sanusi thought that he may have been told by another Capital employee that Mr Ibrahim was to be signed up for Flat 41 from among the available flats. He took the keys for No.41 from the key cupboard and then walked Mr Ibrahim up to the flat on the second floor. The flat was one of those previously used for serviced short-term lets. Mr Sanusi showed Mr Ibrahim in, pointed out the facilities, explained how to use them, gave him the keys, and left.

52. The flat itself was a two-person self-contained studio flat with all the usual facilities. It had its own kitchen and bathroom/toilet. Given the standard of provision usually made on an emergency basis for those in housing need, it is no surprise that Mr Ibrahim "loved that place" and stated that "it was very comfortable for me". He spent the night of 12 May 2020 in the flat.

53. In his evidence, Mr Ibrahim's account was that on this evening (12 May) he had been dealing with a Council officer and that he was told by that person that they were "with the Council" and they had used the words "I am from Haringey Council Housing". He is mistaken as to that. I am satisfied that he dealt with Mr Sanusi of Capital (not least because theirs are the two signatures on the document).

54. Mr Ibrahim's recollection was that the man who was dealing with him, and who had signed the form, had told him that he "could stay until the end of the Coronavirus pandemic". I cannot accept that account. It is inconsistent with the Email making the booking for 14 nights, which Mr Sanusi had seen. And at the date this was happening, no-one could or would have known how long the pandemic would last. It is highly unlikely such a thing would have been said, particularly by Mr Sanusi.

55. Further, Mr Ibrahim's account was that this person (whom he wrongly thought was a Council officer) told him that "when the Council needed me to leave the property, they would give 2 days' notice". Again, I am not satisfied that any such thing was said. I prefer and accept Mr Sanusi's account that, if nominees needed to know anything or asked anything about their stay, he would tell them to ask the Council. He was himself unfamiliar with the procedures for dealing with those being temporarily accommodated under the arrangements with the Council. I do not accept that he said what is alleged.

56. My inability to accept Mr Ibrahim's account on these matters springs not from any belief that he was misleading the Court. Rather, as he and those advising him accepted, he suffers from memory loss. In respect of his account of the meeting with Mr Sanusi that evening, I believe his evidence is simply muddled and confused. The state of his recollection will not only have been affected by his memory loss but also by the fact that, as he told me, he was destitute and tired that night after having slept rough in a garage for several days. Moreover, he told me that he only understood "bits and pieces" of what was said to him that night.

57. As will be seen, a good number of things happened in quick succession over this day and the following days involving many different individuals transacting with Mr Ibrahim, in addition to his own solicitor. I do not believe that I can place weight on Mr Ibrahim's account of them save to the extent that they were unchallenged or are corroborated in some other way.

58. By 21.03 on Tuesday 12 May 2020, the allocation of No. 41 to Mr Ibrahim had been completed. Mr Sanusi sent an Email at that time to his colleagues that "Abdudah has been checked in to Flat 41". A few minutes later, Capital sent the ALMO a revised list of available flats at The Hub from which No.41 and another flat had been removed. Later that evening, a third flat from the list was taken by another CAPITA nominee. And, in due course, a fourth. In total, four nominated individuals from CAPITA were booked into Flats 38, 41, 43 and 45 on that night.

59. I interpose, in this chronological narrative of the facts, the observation that if Mr Ibrahim had contracted with anyone for the provision of accommodation to him at Flat 41, that transaction must by this stage have been completed. He was in occupation, he had the keys, and the property he occupied was self-contained.

60. At 8.37 the following morning (Wednesday 13 May 2020), Mr Jack Kalou, a Contracts and Procurement Officer at the ALMO, asked Capital to confirm by way of a monitoring report who had arrived the previous night and "any no-shows".

61. At 9.05, Ms Andrea Panayiotou of Capital replied (inaccurately) that "3 people were placed at The Hub last night". Her reply contained a helpful tabulation showing, by Flat number and name, the three individuals. The last column of her table is headed "Tenant" and under it appeared, in respect of Flat 41, Mr Ibrahim's name. [A similar tabulation, generated the following day showed that, in fact, four individuals had been booked into four flats on the evening of 12 May.]

62. In the course of that morning (Wednesday 13 May 2020), Mr Ibrahim was contacted by telephone by Ms Taanisa Mohamed of the ALMO's Housing Needs Team. Her file note indicates that she had seen a record of Mr Smith's invitation to the Council to accommodate his client. Her notes also indicate that, from discussion with Mr Ibrahim, she was immediately satisfied that he would not be eligible (by dint of his immigration status) for mainstream homelessness services. She was able to generate (from a template) a letter confirming that fact. Her note indicates that she read it aloud to Mr Ibrahim. Her concluding entry on the file was "He stated that he understands and thinks his solicitor will be trying to get him another NASS accommodation."

63. Mr Ibrahim denies that any letter was read to him on this day or indeed that the conversation recorded in the file notes took place at all. I prefer the account reflected in Ms Mohamed's notes and find that what is recorded there actually took place.

64. The letter that she read out stated:

> "Dear Mr Abdudah Ibrahim,
> **Re: Accommodation under non-statutory provisions**
> Under normal circumstances, the local authority would not owe a statutory duty to accommodate you. However, due to the on-going public health crisis with Covid 19, we have agreed to use our discretion to provide you with non-secure accommodation. The accommodation will be in a hotel…
> When deemed appropriate to cease the use of this discretionary measure, you will be asked to leave the accommodation that was provided to you on 48 hours' notice, or other such reasonable period dependent on your circumstances."

65. On the same day, Ms Mohamed generated a formal decision letter (as required by Housing Act 1996 section 184) which was addressed to Mr Ibrahim and which set out the reasons why he was not eligible for statutory homelessness assistance. It was placed on file rather than sent out to him.

66. Of course, despite the standard terms of the first of those letters, Mr Ibrahim was not in an hotel but in Flat 41 at The Hub. He slept there again on the night of 13 May 2020.

67. The following day (Thursday 14 May 2020), Mr Jack Kalou of the ALMO sought to address the situation. He wrote to colleagues at 10.11am giving the names of Mr Ibrahim and several others and stating that they were "booked by Out of Hours the night before (12/5/2020), all of which (sic) appear present at The Hub and presumably ought to be transferred to alternative hotel placements." He asked his colleagues to "kindly confirm and we can organise the placement details for you to co-ordinate with the clients directly".

68. Someone at the ALMO or Council must then have contacted Capital because at 15.39 that afternoon Ms Panayiotou of Capital sent an Email to all her relevant staff (including Mr Sanusi and Mr Hemoo) stating that "All the late-night bookings from the 12th May need to leave and go to property in Finsbury Park. Emilio [Marchese of the ALMO] is trying to call them and let them know."

69. In his written evidence, Mr Hemoo of Capital stated that "we were informed by phone call from Jack/Emilio" that "the booking was cancelled". Mr Hemoo timed this as having occurred at 15.39 but that was, in fact, the time of the internal Capital Email. The "we" in question was not him. He took no such call. That is why he cannot say who it was from the ALMO that had called Capital.

70. Minutes later, at 13.55 that afternoon, Mr Eamonn Kenny, the ALMO's Temporary Accommodation and Contracts Team Manager, sent an Email to Mr Emilio Marchese of the ALMO asking him to contact the Finsbury Park Travelodge and request placement there of the men who had been booked into The Hub. The message ended with "Can you also speak with Capital as the tenants will need to return the keys and give the clients a call and ask them to head to the Hotel."

71. Someone from Capital or the ALMO or the Council did then call Mr Ibrahim to tell him that he had to leave The Hub and move to the Travelodge. Mr Ibrahim's recollection was that the caller was female. But in that too he was, I find, inaccurate. He took the caller's number and then passed it to his solicitor.

72. Mr Smith's evidence was that his client had called him to tell him he had been called by a man who had told him he was being moved to a Travelodge that day. Mr Smith promptly called the number and found himself speaking with Mr Emilio Marchese from the ALMO. Mr Smith's account was that Mr Marchese initially said that Mr Ibrahim would have to leave that day but eventually agreed that nothing would happen until 12 noon the next day "if at all". Mr Smith telephoned his client to brief him to that effect.

73. Not sufficiently assured by what he had been told, Mr Smith wrote by Email at 16.24 the same day to an officer in the Council's legal department (re-sending the Email to the Council's generic litigation team address at 17.13). He set out that his client had been in occupation since 12 May 2020 and had been required by Emilio Marchese to leave and move to a Travelodge. He stated that "Our Client was placed in the accommodation under the Council's discretionary powers due to the Covid 19 pandemic". He asserted that his client was the Council's tenant or licensee of the flat and that he enjoyed security of tenure under the Housing Act 1985.

74. He attached his client's copy of the form that Mr Sanusi of Capital had completed, and that his client had signed (attached hereto as an Appendix). He described it as a "tenancy agreement", with the Council as landlord and his client as tenant. He sought immediate assurance that the Council would take no steps to evict his client and threatened to apply for a without notice injunction if such confirmation were not forthcoming by 10am "on 14 May" which was presumably a typo for "15 May".

75. Before any reply could be received to that, and on the same afternoon (14 May 2020) Mr Hemoo of Capital went to Flat 41. Mr Ibrahim thought this was after 6pm but again I prefer the account of Mr Smith that it occurred around 5pm. Mr Ibrahim understood

Mr Hemoo to be asking him to leave. Mr Ibrahim called Mr Smith who spoke directly to Mr Hemoo by telephone. Mr Smith's account was that, after discussion, Mr Hemoo confirmed that he would not be evicting Mr Ibrahim that day and that decisions about any eviction were for the Council to make.

76. Mr Hemoo's written statement placed this visit and telephone discussion as having occurred the following day (15 May). I regret to find that, as with much of the other content of Mr Hemoo's statement, it was inaccurate. His oral evidence was little better. Although he was trying to be helpful, rather than to mislead the Court, he had made no contemporaneous records of his dealings with Mr Ibrahim or with his solicitor. He had generated no Emails or texts (or, if he had, they were not before the Court).

77. His understanding of his company's arrangements with the Council or the ALMO or CAPITA was limited or sketchy. His answers to questions in his oral evidence were frequently that he would need to check, or would need to confer with his managers, or that the questions should be directed to his managers (none of whom were called). I regret that I could place little confidence in the accuracy of his evidence as a whole.

78. What Mr Hemoo does say about this, which I believe I can accept as accurate, is that he visited Mr Ibrahim and the three other CAPITA-placed residents at The Hub on that day and told them that "they would need to leave the premises and move to the Travelodge at Finsbury Park."

79. In the event, following the discussion between his solicitor and Mr Hemoo, Mr Ibrahim slept the night of Thursday 14 May 2020 in Flat 41.

80. Mr Ibrahim's recollection was that the next day (Friday 15 May), a female Council officer called him and told him that he needed to leave and move to a room in a Travelodge. I do not accept that Mr Ibrahim was called by a female officer of the Council or ALMO, but it is possible that he was called by Ms Panayiotou, a female employee at Capital who said words to that effect. In response, Mr Ibrahim called his solicitor.

81. At 10.40am, Mr Smith wrote to Capital by Email sent to its generic inbox. He stated that "Our client was at all times accommodated under the Council's discretionary powers due to Covid 19". He explained that he believed that Mr Ibrahim was the Council's tenant of the flat and that only the Council could lawfully evict him. But in the alternative, if Capital was his landlord, Mr Ibrahim was an assured shorthold tenant (under the Housing Act 1988) and he could not be evicted without a Court Order. He asked for confirmation, within the hour, that Mr Ibrahim would not be evicted, in default of which he would apply for a without notice injunction. By 11.14, he had discovered the identity of Ms Panayiotou at Capital and forwarded his Email to her personal Email address. He had perhaps got her name from his client as the person who had called him.

82. At 10.57, Mr Smith sent the Council an Email indicating that, as he had had no reply to his Email of the previous day and the situation was urgent, he would be issuing proceedings without further notice. Indeed, he made a Witness Statement on 15 May 2020 for use in the proposed proceedings and drew up a Claim Form and an Application for an Injunction.

83. There were then exchanges by Email between Mr Smith and a Mr Matthews, a litigation lawyer at the Council. Mr Matthews wrote at 12.01:

> "The simple point here is that we are assisting rough sleepers on a discretionary basis including those who would be ineligible during the crisis. This is wasteful litigation, particularly since your client will continue to be assisted. Any individual in temporary accommodation can be asked to move to alternative temporary accommodation. Your client was placed out of hours and is now being asked to move to an alternative placement"

84. Mr Smith replied that his client "would be highly disadvantaged by being moved from a property where he arguably has security of tenure to a hotel where he would have none" and sought assurance that "any eviction would be postponed" to noon on the following Monday, 18 May 2020 to enable issue of the claim to be deferred until the Monday.

85. At 12.07, Ms Panayiotou of Capital wrote to Mr Kalou of the ALMO that most of the (CAPITA-placed) tenants had left that afternoon, one was leaving that evening, but that Flat 41 "is refusing to move out". Later that afternoon, at 17.09, she supplied Mr Kalou with Mr Ibrahim's name and contact number and stated he was "not moving, solicitor emailed, he needs to be given written notice as per the agreement he has signed".

86. Nothing appears to have occurred over the weekend. So, Mr Ibrahim spent the nights of Friday, Saturday and Sunday sleeping at the flat.

87. His written evidence was that, on Sunday 17 May, Mr Hemoo again came to his Flat and told him he needed to leave. I accept Mr Hemoo's explanation that in the light of the Email to Capital from his solicitors on 15 May, no such visit was made, and that Capital and its staff took no further steps. The reference to this visit in Mr Ibrahim's witness statement is out of chronological sequence and is likely to be inaccurate. I find that it did not occur.

88. On Monday 18 May 2020, at a telephone hearing held without notice to any other party, Mr Ibrahim obtained an injunction from HHJ Hellman prohibiting his exclusion from Flat 41 or interference with his "quiet enjoyment" of the property. A return date was fixed for an on-notice hearing on Thursday 21 May 2020. Mr Smith informed the Council and Capital of the outcome of the hearing by Email at 17.34. He apparently had a telephone discussion with Ms Panayiotou at Capital on the same afternoon.

89. On Tuesday 19 May 2020, the Council put forward a Defence contending there had been no intention to enter into legal relations between the Council and Mr Ibrahim (para 7) but that if there was such a legal relationship it was a relationship of licence on the terms of the form signed on 12 May 2020 (paras 4(2) and 7) and appended to this Judgment.

90. As to Capital, Mr Smith followed-up the discussion of the previous afternoon by Email to Ms Panayiotou at 13.22 indicating that if Capital indicated in writing that it would not take any steps to evict, either on its own account or as agent of the Council, it would not be subject to further action. No such confirmation was forthcoming and on 19 May 2020 solicitors engaged by Capital wrote to the Court inviting the discharge of the interim injunction.

91. On Wednesday 20 May 2020 at 08.38, Mr Igbins of the ALMO wrote to Ms Panayiotou of Capital that "as part of the process of gaining possession, your organisation must deliver the attached notice to the client by hand before midday today. Please print the letter and deliver by hand to the address as soon as you can this morning and confirm to me by Email that it has been delivered".

92. The attachment comprised a letter from Mr Igbins dated 20 May 2020 and addressed to Mr Ibrahim by name at the address of the flat. After the salutation, it read "NOTIFICATION LETTER TO TERMINATE YOUR OCCUPATION OF FLAT 41…WITH EFFECT FROM 12 NOON ON THURSDAY 21 MAY 2020". The content explained that "we hereby give you …written notice to cease occupation of the premises with effect from 21 May 2020. Your last night of occupation of the premises will be 20 May 2020. Please vacate the premises no later than 12 noon on 21 May 2020"

93. Mr Hemoo was tasked at Capital with delivering the letter. He went to the flat at about 11.30. Mr Ibrahim was not present. Mr Hemoo used a master key to let himself in. He noticed that Mr Ibrahim's (limited) belongings were still in the flat. He placed the letter in an envelope on the floor, took a picture of it and closed the door, He sent the photo to Ms Panayiotou at Capital and she sent it on to Mr Igbins at 11.40 confirming that the notice had been delivered. Mr Ibrahim's evidence was to the effect that he found no such envelope containing a letter when he later returned to the flat. Given the photographic confirmation and the contemporaneous Email traffic, I am satisfied that the letter was inside the envelope and was delivered to the flat.

94. Mr Ibrahim remained in the flat. He had slept there on the nights of Monday, Tuesday, and Wednesday of that week.

95. On Thursday 21 May, the interim injunction application came before HHJ Saunders on notice. Having heard counsel for Mr Ibrahim and the Council, he dismissed the application and discharged HHJ Hellman's order. Mr Ibrahim nevertheless spent that night at the flat.

96. His written evidence suggests that on Friday 22 May 2020 he was "asked to leave the property by midday". In so far as this suggests a further contact from staff of the ALMO or Capital, I cannot accept it. The more likely explanation is that this was information he received from his solicitor confirming the effect of the notice/letter delivered the day before and of the Court's order.

97. By the time Mr Hemoo visited the flat at 1.30pm that day (Friday 22 May 2020), Mr Ibrahim had vacated and had moved to the Travelodge. Mr Ibrahim told me that he had left because of the Court's order.

98. He then stayed at the Travelodge from 22 May 2020 to 12 August 2020 before moving to other temporary accommodation and ultimately to NASS accommodation arranged by the Home Office where he has remained ever since.

Getting to this point

99. The Court did not receive the assistance it was entitled to expect from the parties in enabling it to achieve the above account of the facts and of the Court's findings upon them.

100. On the Claimant's part, although much of Mr Ibrahim's evidence was obviously going to be challenged and potentially unreliable (given his memory loss and literacy and language difficulties), only Mr Ibrahim himself was initially called. For no good reason, the partially corroborating witness statement of Mr Smith was accompanied by a Civil Evidence Act Notice indicating that he would not be called because he had left his former firm. He was obviously readily contactable.

101. When prompted, an application was made that he be permitted to give oral evidence. The Claimant's case was re-opened. Mr Smith attended and gave his oral evidence without any access to the office mobile phone which held the records of his telephone, text and WhatsApp exchanges with Mr Ibrahim and others back in May 2020. He did not have access to his former firm's files, or any attendance notes he may have made. He made no supplementary witness statement to develop the brief account given in his statement of 15 May 2020, even though he had remained with the firm until as recently as the summer of 2021. He should not have been placed in this situation and the Court should have been better assisted in this respect.

102. Further, notwithstanding that Mr Ibrahim had no proper grasp of reading or writing English, his witness statement was initially taken and presented to the Court in English. Only when it became plain at Court that he would need a translator in order to confirm it, were steps taken to produce an Arabic statement and have that translated into English. These deficiencies resulted in an earlier attempt to try the case being aborted. When, months later, he eventually came to give evidence, he was asked where his copy was of the form that he signed on 12 May 2020. He readily said that he still had it and 'could bring it tomorrow'!

103. Although Mr Lee directed criticism at both Defendants for their failure to adduce documents or witnesses who may have offered better and more relevant evidence, he could point to no application for specific disclosure made by his solicitors and no attempts by them to call the witnesses that he thought may have assisted the Court. It hardly needs adding that the Claimant's solicitors failed to pay the initial Trial Fee on time and had to apply for relief from sanction.

104. The conduct of the Defendants likewise was less than helpful to the Court. Only part way through Mr Hemoo's evidence did it become clear that he personally had had nothing to do with Mr Ibrahim coming to occupy Flat 41 at the Hub or with the arrangements made between the Council, the ALMO, CAPITA and Capital in relation to his arrival at The Hub. Hasty and late measures then had to be taken to get Mr Sanusi to Court during the trial and to have a witness statement produced for him. Further, many of the documents passing between the Defendants, and referred to in my account of the facts, were adduced by them only part way through the trial. On the Council's part, Mr Richman's witness statement not only failed to set out the general arrangements the Council or ALMO had made to respond to the Everyone-In initiative

but despite referring to his having "made enquiries and reviewed the available paperwork" it failed to disclose that he had been on duty the night Mr Ibrahim was placed at The Hub and that it may well have been he who authorised the placement.

105. Given the nominal value of the claim, the seriousness of the allegations of unlawful eviction and harassment and (one would have thought) the potential significance of the Court's findings on the legal issues, it is extraordinary how much of the case was being "patched up" as the trial went along. Even on the separate third day of the trial, additional documents were being added to the trial bundle.

106. In the event, it has only proved possible for the Court to draw the strands together with the considerable assistance of counsel in making good deficiencies on the parts of their lay and professional clients. This experience must not be repeated in future cases in this Court.

Note of Caution

107. It is understood that tens of thousands of individual rough sleepers were accommodated at the instigation of local authorities in response to Central Government's "Everyone-In" initiative. Over a thousand were accommodated by this Council alone.

108. This judgment is not concerned with any general issues as to how or on what terms they were accommodated by this Council or by authorities elsewhere. It is concerned only with the individual circumstances of Mr Ibrahim's case and the specific factual matrix that I have recorded and recounted in this judgment.

109. However, this judgment does demonstrate how little attention is given by some local authorities and some accommodation suppliers to the legal implications of the agreements they enter into with each other and the arrangements they make (or one of them makes) with the ultimate occupiers of temporary accommodation. The cases of the parties to these proceedings are pleaded in alternatives given the uncertainties as to how the law might apply to the relatively commonplace events I have described above. As is so often the case in this subject area, the legal waters are further muddied by agency arrangements and, as the present case illustrates, by sub-agency arrangements.

110. The lay witnesses were hopelessly unclear as to their respective understandings of the consequences of what had occurred. Mr Ibrahim thought he had a landlord and that his landlord was the Council or, if not, Capital. Mr Richman of the ALMO disclaimed any notion that Mr Ibrahim was the Council's tenant or even that the Council had granted him a licence. He came to the last day of the trial with his witness statement indicating (at para [12]) that the form appended to this judgment had been signed by Mr Sanusi "on the first defendant's behalf" only to correct that at the opening of his evidence to "on the second defendant's behalf". Mr Hemoo of Capital (and other Capital staff) referred to those nominated to The Hub and accommodated there as "tenant" or "tenants", but Mr Hemoo said his understanding was that they were the Council's tenants.

111. The present litigation arises in a context in which the dispute is about someone asked to leave such accommodation and to move elsewhere. This Court would encourage all those involved with the provision of temporary accommodation to and by local authorities to properly consider the true nature of the arrangements they intend to create, or have created, before it becomes necessary to deal with a range of other disputes involving, for example, serious or fatal injury to an occupying individual(s) of such temporary accommodation.

The claim in Contract

112. The primary case for Mr Ibrahim appears to be advanced in contract, and is to the effect that the Council offered, and he accepted, accommodation at Flat 41 The Hub. The consideration payable under the contract, made by that offer and acceptance, was £45 per night. For that, he was granted exclusive occupation of the flat. The relationship was one between two parties who had intended to, and did, create, and enter into a legal relationship. The express terms of the contract were those set out in the form signed on the night of 12 May 2020 and appended to this Judgment. There were, it was asserted, further oral express terms (e.g., as to duration and notice) and further implied terms, including as to "quiet enjoyment" of the premises. If that be wrong, Mr Ibrahim's secondary case is that he entered into a contract, presumably, on the same terms and by the same acts and matters, with Capital. Whichever party he had contracted with, the contract had been breached.

113. The Council's pleaded response is that there was never any entry into legal relations between itself and Mr Ibrahim and that neither of those parties had ever subjectively intended to enter into a legal relationship.

114. The pleaded case for Capital is that Mr Ibrahim had been granted by the Council the right to occupy Flat 41 and that any right to occupy that he had was at best a licence. If he was a tenant, he was the Council's tenant not its tenant. In closing submissions, Mr Holmes-Milner put Capital's case on the basis that there had been no contract at all between Mr Ibrahim and Capital and no intention to create any legal relationship between those parties which might amount to a contract.

115. I am amply satisfied that there was in play here a contract. But that was a contract made between the ALMO and Capital. Happily, I do not need to analyse the legal meaning of, or consequences of, that contract for the parties to it. Whether it creates any tenancy, licence, or agency arrangement between the parties to it is not a matter for me.

116. What does matter is whether *Mr Ibrahim* entered into a contractual relationship with one or other of the Defendants to occupy Flat 41. Was there any intention by Mr Ibrahim and by one or other of the Defendants that they should enter into legal relations?

117. The provision of accommodation is, obviously, a supplier/consumer relationship in which the parties usually intend to create a legal relationship, whether the accommodation is a detached house or a room in a hotel. But that is not necessarily always so. In *Booker v Palmer* [1942] All ER 674, a person whose house had been

destroyed by enemy action was offered accommodation in a cottage, rent free, for the remaining duration of World War II. Lord Greene MR stated:[7]

> "There is one golden rule which is a very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the conduct of the parties negative any intention of the kind. It seems to me this is a clear example of the application of that rule."

118. There is of course a spectrum, as the Master of the Rolls recognised,[8] ranging on the one hand from the parties entering into a formal document recording their agreement (from which one can readily infer an intention to create legal relationships) to, on the other hand, a brief casual telephone conversation (from which one can much less readily draw such an inference).

119. Mr Lee submitted that the countersigned form dated 12 May 2020 placed the present case firmly at the upper end of the spectrum. Indeed, in dealing with the instant case at an earlier stage, Lane J observed that "since there was an express signed agreement between the parties, the burden was on the first defendant to show that there was, nevertheless, no intention of creating legal relations."[9] That is consistent with the learning to be derived from *Chitty on Contracts* Vol 1 at [2-169] and the text which follows it.

120. However, Mr Evans submitted that because the countersigned document had been entered into between Mr Ibrahim and Mr Sanusi (acting for Capital) the burden was cast on the second not the first defendant or perhaps on the claimant – because he (Mr Ibrahim) could not be sure who he had contracted with (if anyone).

121. I deal first with the form countersigned on 12 May 2020. I acknowledge that some of the language on the pre-printed form is highly consistent with what one might expect in a written representation of an arrangement spawned of an intention to create legal relations. It appears in full as the Appendix to this Judgment. Not least there is the use of: "This Agreement…"; "…by this AGREEMENT…"; "I agree that…", "I accept the terms…", "I agree and accept that…" and "I agree to be bound and held accountable".

122. But, as in so much else in the law, context is all. I have already set out the immediate context to the use of this document in the instant case and the following features seem to me particularly important in determining whether it is the refection of an agreement between two parties made with the intention of creating a legal relationship between them:

    a. Even as a pro forma, it was the wrong document being utilised for the wrong purpose. It was intended to provide a template for a circumstance in which a homeless person was being assisted under the provisions of Housing Act 1996 Part 7. This was not the circumstance of the present case. It was being deployed in the context of a relatively recently adopted initiative to deal with a public emergency and pursuant to the exercise of discretionary powers vested in local

[7] At 677C
[8] At 676H
[9] At [55].

authorities to deal with such emergencies. It was simply a piece of paper adapted from its normal function solely to record that the individual was confirmed as the person who would be occupying what was being provided.

b. It expressly refers to itself as an "Agreement made pursuant to the Local Authority's duty to provide interim accommodation pending investigation of your homelessness application". No such duty was being performed and there had been no homelessness application. It was for use in respect of accommodation being provided on a "Temporary B&B Type basis", as it states. That was not the actual basis of its use in this case.

c. The document purports to require identification of three parties in its header: the local authority, the supplier, and the occupier. Only the second of those is identified in the printed text. Again, demonstrating that whatever this form was usually used for, it served a different function in this instance.

d. If one party is Mr Ibrahim, who is presumably doing the stated "agreeing and accepting", it is impossible from the document to understand with whom he is making any agreement. It cannot be with *both* the first and second defendant (they cannot both be agreeing to provide him with the same licence or tenancy to occupy the same accommodation). If it is one of them, it is wholly unclear as to which.

e. The document is in English and Mr Ibrahim cannot read English. It was not translated. Nor even read to him in English. He did not ask for it to be translated or read to him. In short, its content was meaningless to him at the time and date he signed it.

f. It was preceded by no relevant negotiation or even discussion.

g. The factual context is that Mr Ibrahim wrote his name and signed the form placed before him not as a step in agreeing anything with anyone but simply to do such as he was told was necessary to get himself some shelter that night. For his part, Mr Sanusi provided and countersigned the document not to reflect an agreement he or anyone else was making with Mr Ibrahim but in order to have the paperwork necessary to advance his company's subsequent claim on the ALMO for payment under the agreement made with it.

123. In my judgment, this document in its relevant context casts no special evidential burden on either Defendant. But even if I am wrong as to that, the burden of proof is amply discharged. The position is clear on the facts that I have found. Mr Ibrahim was making no agreement with anyone.

124. He was the very 'object' of the adjusted performance of an earlier agreement made between two others – the ALMO and Capital. The following features, in particular but not exclusively, lead me to hold that there was here no intention to create legal relations between Mr Ibrahim and anyone else:

a. The reason why Mr Ibrahim was accommodated was because he was the object of the exercise of discretionary powers by the Council, available to it as a result of a public health emergency.

b. His being accommodated had nothing to do with any assessment of his housing need (none had been made) whether in relation to accessing homelessness assistance or access to housing more generally.

c. To secure such accommodation he did not need to "agree" to anything. He was being required to pay nothing. To the extent that he put his name to a document containing the words "Charge per night", that was – in context – simply the charge that Capital was going to recover under *its contract* with the ALMO for supplying accommodation for his accommodation. Mr Ibrahim had no means to pay anything and no lawful ability to secure funds to pay anything.

d. There was no discussion or negotiation between him with anyone else about what accommodation would be provided, where, or for what period or on what terms or at what (if any) cost. He was simply told where to go, and later where and what to sign, in order to secure the accommodation that his solicitor had demanded the Council secure for him.

e. He was relying on his solicitor (nominally his agent) to procure any accommodation for him and that agent (the solicitor) neither agreed nor sought to agree anything on his behalf. His solicitor was not seeking to contract on his behalf for any legal right to occupy anything. He was seeking to engage public law functions, not enter into a contract on his client's behalf, nor expecting his client to enter into any contract.

f. The latter feature – the involvement of the solicitor as the agent to secure the accommodation - is of particular importance where (as here) the principal cannot read or write in English, but where any contract would be made in English.

125. Having exhaustively considered the evidence and the submissions of the parties, I am amply satisfied that, as HHJ Saunders had found on a more limited consideration of the matter when it was before him, "there was no intention to create legal relations" in the present case. I emphasise again that my judgment is confined to the facts of this instant case. There may be cases where the persons who benefit from the exercise of emergency welfare powers by a public body, such as those invoked here, do so on the basis of a contractual agreement in respect of the accommodation ultimately provided to them, but that is not this case.

126. If I am wrong about the absence of any intent to create a legal relationship to which Mr Ibrahim was a party, it would be necessary to identify with whom he had entered into such a relationship. The need to ask that question is itself a powerful indicator that no such relationship has been established. In my judgment, any such relationship can only have been with Capital, acting either on its own account or as agent for Magic Homes.

127. There was no such contractual relationship with the Council in relation to the accommodation at Flat 41. The Council has no connection with Flat 41 at all. It was not the owner. It had no proprietary interest in the flat. It did not even know that Flat 41 was the accommodation at The Hub that would be provided to Mr Ibrahim. It had no control over what unit of accommodation he would occupy and no power to control the unit once he was in it. It was simply exercising a power to arrange accommodation for him and was sourcing the provision of that accommodation under an agreement its ALMO had made with Capital. Its agent (CAPITA) had nominated Mr Ibrahim to Capital and that had triggered an obligation on it to pay a nightly charge, whatever accommodation Mr Ibrahim was provided with by Capital. It was Capital that decided Mr Ibrahim was to have Flat 41. If there was a contractual agreement (contrary to my finding above), Mr Ibrahim made it with Capital.

128. If the form countersigned on 12 May 2020 does serve to establish or support the making of a contractual agreement between Mr Ibrahim and someone else (contrary to my holding otherwise) then what it shows is that the 'someone else' was Capital not the Council. I take that from these features:

a. Capital is the only person/body, other than Mr Ibrahim, identified by name in the form.

b. The words "Haringey" appear nowhere, nor the name or address of any officer or office of any part of the Council.

c. The only name, address, and contact details given are those for Capital.

d. The document was furnished to Mr Ibrahim for signature by Capital.

e. Capital decided what specific accommodation he should be provided with at The Hub, which it managed.

f. The person dealing with Mr Ibrahim was not a council employee but a Capital employee.

g. That employee signed the agreement not on behalf of the Council but, as the printed words next to his signature show, "on behalf of Capital Homes".

h. Any consideration for the provision of the accommodation was owed to Capital not the Council (and that is not changed by the fact that the Council was paying).

129. I do not overlook Mr Lee's submission that, when it came to wanting Mr Ibrahim to leave, the Council was (to use my own words) "calling the shots" and not Capital. The Council was giving notice to Mr Ibrahim that the accommodation was no longer being made available to him and that he would have to leave. But this, to my mind, proves nothing. It was a manifestation of the Council indicating that although it would exercise its discretionary emergency powers to shelter Mr Ibrahim, it would no longer do so at this address. Its agreement with Capital enabled it to stop paying and to leave the business of getting Mr Ibrahim out of Capital's accommodation to Capital.

130. Even on the hypothesis that there was here an agreement between Mr Ibrahim and Capital, and one intended to have legal effect, I would not have been prepared to find that there was in law a contractual relationship. That is for want of any consideration.

131. Mr Ibrahim was not asked to agree to pay anything to Capital for the accommodation and was not expected to pay anything. Entering into an agreement which cast a liability on him would have been extraordinary given Capital's pre-existing contractual right to recover from the Council what it (by its ALMO) had agreed to pay for the accommodation in respect of any nominee occupying it. The Council was not paying a nightly charge as agent in order to meet any obligation of Mr Ibrahim. It was paying to meet its own obligation. Mr Ibrahim was not giving, and was not required to give, any consideration at all to Capital for his occupation of the property it had secured for him.

132. For all these reasons, any claim in contract made against either Defendant fails.

133. I should add that the finding that Mr Ibrahim was no party to any contract for the provision of accommodation to him also disposes of any claim in private law that either Defendant failed to give him such *notice* as may have otherwise been contractually required. Certainly, the Council was under a public law duty to behave properly and give reasonable notice to determine any licence (contractual or otherwise), including when it is dealing with those no longer owed accommodation duties,[10] but this is not a public law claim.

Licence to Occupy

134. As Lane J has earlier observed in this case, Mr Ibrahim must in law have had at least a licence to occupy Flat 41. Else he was a trespasser, and no-one has suggested that. If there was (as I have found) no contract made by or with Mr Ibrahim for any accommodation, that is no impediment to him being found to have a non-contractual licence to occupy it.

135. Mr Lee's primary case is that even if Mr Ibrahim was not a *contractual* licensee of the Council in respect of Flat 41, he was at least the holder of a bare or gratuitous licence from the Council. He takes considerable comfort from the fact that the Council's Amended Defence pleads (at [3](4)) that "it is admitted that the First Defendant permitted the Claimant to occupy the Property as a bare or gratuitous licensee". Despite the oral evidence of Mr Richman that he did not believe that Mr Ibrahim was the Council's licensee at all, no application was made to retract the pleaded admission or amend it.

136. The admitted existence of such a licence is given additional importance by virtue of the express provisions of Housing Act 1985 section 79 which, so far as material, read:

[10] *Regina -v- Secretary of State for the Environment ex parte Shelter* [1997] COD 49

> "(1) A tenancy under which a dwelling-house is let as a separate dwelling is a secure tenancy at any time when the conditions described in sections 80 and 81 as the landlord condition and the tenant condition are satisfied.
>
> (2) …
>
> (3) The provisions of this Part apply in relation to a licence to occupy a dwelling-house (whether or not granted for a consideration) as they apply in relation to a tenancy.
>
> (4) Subsection (3) does not apply to a licence granted as a temporary expedient to a person who entered the dwelling-house or any other land as a trespasser (whether or not, before the grant of that licence, another licence to occupy that or another dwelling-house had been granted to him)."

137. The Council is a body which meets the landlord condition in section 80 and, Mr Lee contends, Mr Ibrahim satisfied the tenant condition in section 81 because "he occupie[d] the dwelling-house as his only or principal home". Flat 41 was undoubtedly a "separate" dwelling (if it was a dwelling at all). In the result, Mr Lee submits, his client enjoyed at Flat 41 the security of tenure envisaged by Housing Act 1985 Part IV. The Council could not oust Mr Ibrahim without complying with the provisions of that Act as to notice of intention to seek possession, initiating a claim for possession, and establishing the necessary statutory grounds and conditions. That process was not followed, and Mr Ibrahim was wrongly and unlawfully evicted.

138. Mr Lee sensibly acknowledges that the Council had no right or title to Flat 41, but that – he correctly submits – matters not. A tenancy, and – a fortiori – a licence, may be granted by a person or body with no right or title in the land at all.[11]

139. To the same effect, Mr Lee – again correctly – contends that whether the Council was acting within its powers or ultra vires, or even entirely by mistake, in granting a licence which fulfils section 79(3) matters not.[12] Likewise, if it inadvertently lets into occupation a person whose immigration status deprives him of the right to such assistance.[13] If it, or an agent on its behalf, granted Mr Ibrahim a gratuitous licence of Flat 41 that meets the other requirements of section 79 then the licence is 'secure' and Mr Ibrahim enjoyed the same benefits as any other 'secure' tenant or licensee.

140. Mr Evans counters with two points. First, to qualify under section 79(3) there must have been the grant of a licence to occupy Flat 41 "as a separate dwelling" – see section 79(1). Second, the licence envisaged by section 79(3) must be one conferring exclusive occupation on the occupier.[14] His case is that the facts demonstrate that Mr Ibrahim was not provided with Flat 41 "as a … dwelling" and he was not provided with "exclusive possession." I am with Mr Evans on the former (which suffices to defeat the contention of a secure licence) but against him on the latter. Whatever else Mr Ibrahim enjoyed, it was the benefit of exclusive possession of the flat in the sense that, while occupying by licence, he was entitled to keep out all others.

141. In my judgment, it verges on the abusive in this factual context to suggest that Flat 41 was provided to Mr Ibrahim as a "dwelling house" to be occupied *as* a separate

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[11] *Bruton v London & Quadrant Housing Trust* [2000] 1 A.C. 406

[12] *Birmingham City Council v Qasim* [2009] EWCA Civ 1080 and [2010] P.T.S.R. 471

[13] *Akinbolu v Hackney LBC* (1996) 29 HLR 259.

[14] *Westminster City Council v Clarke* [1992] 2 AC 288 at 300C-D

dwelling. The truth is that he was being provided with shelter by the Council acting pursuant to its public law functions and powers to get rough sleepers off the streets in the context of a public health emergency. It was not providing Mr Ibrahim with a "home" or anything like it. As he and it well knew, the rough sleeping homeless were not being provided with homes but only with temporary shelter in emergency circumstances. That is the very antithesis of provision of a home. Mr Ibrahim is, was and remains, home*less.* That is and was as true in relation to accommodation provided to him through NASS, through Everyone-In, or – more properly- as a beneficiary of emergency public health powers. Such accommodation – whether in a house, a flat, a guest house room, a penthouse apartment in a luxury hotel, or a private hospital ward – was the provision of simple shelter. It was not provision of accommodation "*as a … dwelling".* Indeed, the exclusions from access to social housing and homelessness assistance by virtue of his immigration status serve to emphasise that his circumstances were precisely those of someone being debarred from obtaining a 'home' from a local authority.

142. The majority of the UK Supreme Court in *R(on the application of N) v Lewisham LBC and R (on the application of H (A Child)) v Newham LBC* [2015] AC 1259 explained that: the statutory phrase "as a dwelling" addressed the purpose of the tenancy or licence rather than the use of the premises by the occupier" (at [24]); that "dwelling" suggests a greater degree of settled occupation than "residence" (at [26]); and that "the legal and factual context" is particularly important (at [28]).

143. Mr Lee sought to confine the principles in that case to the context of the duty to provide interim accommodation under Housing Act 1996 section 188. But the Court was, with respect, clearly addressing a broader range of statutory duties – and powers – to provide short term emergency or interim accommodation (see the references it made to the accommodation powers in section 188(3) and section 204(4) of the 1996 Act). To my mind, this is an even plainer case. The Council was assisting an individual who could not even access the statutory powers and duties under the 1996 Act. It was acting pursuant to specific discretionary powers derived from its function in response to a public health emergency. In my judgment it cannot possibly be said to have been providing Mr Ibrahim with Flat 41, "as a …dwelling".

144. Accordingly, I am satisfied that if Mr Ibrahim had a licence from the Council to occupy Flat 41 it was not a licence to occupy it *as* a dwelling (section 79) and he was not occupying it as his principal or any "home" (section 81). Mr Ibrahim did not have the protection of Housing Act 1985 Part IV. For good measure, and for the same reasons, had I been satisfied that Mr Ibrahim had been a tenant of Capital, I would not have found that Flat 41 was let to him "as a dwelling" for the purposes of Housing Act 1988 section 1.

Claim in Tort

145. Mr Lee's alternative case is that even if (as I have found) Mr Ibrahim had no contract, and was not a secure licensee, nevertheless he has been the victim of a tortious wrong. He was evicted without a Court order contrary to the Protection from Eviction Act 1977, there was trespass by the entry into and taking of his flat without proper notice, and he was subject to harassment to induce him to leave.

146. On the first of those, *R (on the application of N) v Lewisham LBC and R (on the application of H (A Child)) v Newham LBC [2015] AC 1259* is directly applicable. The Council required no court order to obtain possession from Mr Ibrahim and nor did Capital. The protections of the Protection from Eviction Act 1977 did not apply.

147. But in any event, the claim in unlawful eviction or trespass by re-entry without notice fails on its facts. Capital did not recover possession from Mr Ibrahim by ejecting him or by re-entry without notice. Mr Ibrahim was given both oral and written notice to leave (more than sufficient in the circumstances) and, when the injunction that had been obtained was discharged, he left voluntarily and with the benefit of access to his solicitor for advice. He told me that he left as a matter of respect for the judgment and order of the Court (HHJ Saunders). That is the antitheses of ejection or trespass.

148. That leaves the claim for harassment in breach of the Protection from Harassment Act 1997. The claim is particularised in the Amended Particulars of Claim at paragraph 15. As to the pleaded incidents set out therein, my factual findings are as set out above but in summary as to each allegation (without reproducing them here):

15.1. Mr Emilio Marchese of the ALMO did speak to Mr Ibrahim and tell him that he was being moved to the Travelodge. But on then speaking (virtually immediately) to Mr Ibrahim's solicitor, Mr Marchese he agreed that the move would not occur that day and perhaps not at all.

15.2 and 15.3 This refers to the first visit by Mr Hemoo of Capital. He did not attempt to evict Mr Ibrahim. On then speaking (virtually immediately) to Mr Ibrahim's solicitor, Mr Hemoo agreed that he would not be requiring Mr Ibrahim to leave.

15.4.1. This did not happen. No lady from the Council called Mr Ibrahim on 14 May 2020 to tell him to leave without notice.

15.4.2. This is a repeat of 15.2.
15.4.3 This did not happen. No lady from the Council called Mr Ibrahim on 15 May 2020.

15.4.4. This is incorrect. After exchanges with Mr Ibrahim's solicitor both Mr Marchese and Mr Hemoo agreed they would not evict Mr Ibrahim.

15.4.5 This did not happen.

15.4.6 This did happen in order to effect service of notice.

15.4.7 This did not happen.

149. In my judgment, the pleaded incidents that I have found established get nowhere near amounting to a course of conduct constituting harassment for the purposes of the 1997 Act. At their highest, they amount to Mr Ibrahim being firmly encouraged to agree to accept a voluntary move from his present accommodation to alternative

accommodation better suited to the provision of the support and assistance he would need. In due course, that is precisely what he voluntarily did.

150. Mr Holmes-Milner correctly drew my attention to a statement by Nicklen J of the applicable approach which is based on high authority and which I accept:[15]

> "The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability…"

151. The 'behaviour' alleged here, whether individually by each Defendant or by both Defendants together, falls short of that standard by a country mile.

Conclusion

152. For the reasons given above, this claim is dismissed on all grounds against both Defendants.

153. The parties are invited to agree a minute of order reflecting that outcome and the consequences of it. I will deal with any consequential matters that cannot be agreed at the formal handing-down of the judgment.

HHJ Luba QC

5 August 2022

[15] *Hayden v Dickenson* [2020] EWHC 3291 (QB) at [44](ii)