Neutral Citation Number: [2025] EWHC 280 (Admin)

Case No: AC-2023-LON-000190

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2025

Before :

MR TIMOTHY CORNER, KC
SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

The King on the application of MV	**Claimant**
- and -	
London Borough of Lewisham	**Defendant**
-and-	
Pinnacle Group	**Interested Party**

- -
- -

The **Claimant** in person
Annabel Nuttall Heath (solicitor to the Defendant) for the **Defendant**
The **Interested Party** was not present and was not represented.

Hearing date: 12 December 2024
Further written submissions 19 and 20 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 10 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR TIMOTHY CORNER KC SITTING AS A DEPUTY HIGH COURT JUDGE

Timothy Corner, KC :

INTRODUCTION

1. This claim arises from the claimant's occupation of a property ("the property") in a building ("the building") in the defendant's area. The claimant's partner owns a leasehold interest in the property. In this judgment I will call the claimant's partner Z.

2. The defendant owns the freehold of the building and lets a flat which I will call flat X, a dwelling on the floor above the property, to tenants ("the tenants"). The building is managed by the Interested Party ("IP").

3. The claimant makes many complaints about the behaviour of the tenants, including criminal conduct, violence and persistent anti-social behaviour.

4. The claim form, filed on 20 March 2023, made two principal complaints. The first was that neither the defendant nor the IP has taken action to control the tenants. The second complaint was about the defendant's failure to provide emergency accommodation to the claimant, his partner and daughter.

5. At the hearing on 12 December 2024, at the request of the claimant and there being no objection from the Defendant, I made an order for anonymity, which is reproduced as an appendix to this judgment, but with additional provision for anonymity in respect of the claimant's partner and daughter. The order appended to this judgment supersedes that which I made at the hearing.

FACTUAL BACKGROUND

6. The defendant has a housing allocation policy. The current version was introduced in October 2022 ("the 2022 policy") and the previous version ("the 2017 policy") was introduced in 2017.

7. The allocation policy places applicants for housing in various bands. Band 1, in which the claimant says he should have been placed, read as follows, so far as relevant, in the 2017 policy:

> "Applicants in band 1 have the highest priority.
>
> Applications for emergency priority are normally referred to the Council by other agencies, such as the police or social services. The Housing Panel will only award Emergency Priority where they are satisfied that the applicant or another member of their household has an urgent need for rehousing because, unless they are rehoused:
>
> -their life will be in serious danger,
>
> -they will suffer from a severe physical or mental illness."

8. Band 1 reads as follows, so far as relevant, in the 2022 policy (see page 19, paragraph 2.5.2):

> "Applicants in band 1 have the highest priority…

Emergency priority awarded by Housing Panel

The applicant has been referred to the Council by another agency (e.g. police or social services) and the Housing Panel is satisfied that the applicant or a member of their household has an urgent need for re housing because if they are not rehoused:

-their life will be in serious danger,

-they will suffer from a severe physical or mental illness…"

9. At page 30 of the 2022 policy there is paragraph 3.1.7:

"3.1.7 The Emergency Housing Panel

The Panel will only consider cases where people need to move in an emergency. The panel will normally only consider cases which are referred to by another agency, including the police, Lewisham's Social Care or Health partners, Partner Landlords, the Multi Agency Risk Assessment Conference (MARAC), the Multi Agency Public Protection Arrangement (MAPPA), the National Witness Protection Scheme, or other welfare organisations….

Other agencies referring a case must send a report and be available to answer queries. Referring agencies should attend the meeting if there is one, or participate in telephone or email conferencing. You will not be able to attend the meeting or participate on telephone or email conferencing yourself. The Panel will take account of recommendations from partners including other panels such as…MAPPA or…MARAC, but does not have to accept the recommendations of such panels.

If you think you may have an emergency need to move, you should contact our Housing Advisors. If you are a tenant, you should talk to your landlord first. You should seek help with the difficulties you are experiencing from a suitable agency -police, social services or a specialist welfare agency, depending on the situation.

To be considered for an award of Emergency Priority on medical or welfare grounds, you will need a referral from an agency, which gives evidence of your needs, and shows clearly why you should be considered on an emergency basis.

There is no right to a review of a decision of the Housing Panel.

The Housing Panel has discretion to authorise an offer of a property with the same number of bedrooms as you have when you approach the Panel, or the number of bedrooms it considers you require.

If the Panel do not award Emergency Priority, your case cannot be referred back to them unless your circumstances change significantly. The person referring your case must be able to demonstrate that your

> circumstances are substantially worse than when the Panel previously considered the case."

10. Being placed in a lower band means that the applicant is unlikely to be housed for a considerable time.

11. By letter dated 22 November 2022 the defendant wrote to the claimant, placing him in band 3, not band 1. The letter stated:

> "You have been awarded:
>
> BAND: 3 BAND REASON: Welfare housing for Older People Min Bed Size: 0/Studio Max Bed Size: 1
>
> Please note you can only bid for properties advertised with a preference for clients:
>
> Welfare Housing for Older People
>
> Your eligibility is for older persons housing ONLY-any bids placed for general needs housing will be bypassed with no further notification……
>
> As outlined above you may wait many years to be offered a property, despite your housing need. We encourage you to look at other housing options that are also available that may be of interest to you…"

12. On 28 November 2022, the claimant wrote to the defendant referring to its decision of 22 November 2022, and saying "please consider putting me in Band 1…"

13. On 1 November 2023 Michael Ford KC, sitting as a Deputy High Court Judge, refused permission to apply for judicial review in respect of what he called the claimant's first ground, namely the alleged failure of the defendant and IP to take action against the tenants, but granted permission to apply for judicial review in respect of the complaint that the defendant had failed to place the claimant into band 1 in its allocation policy following the claimant's letter to it of 28 November 2022.

14. His order provided in part:

> "1. The application for permission to apply for judicial review is refused on the 1st ground, relating to the alleged failure of the Defendant and Interested Party to take action against their tenants.
>
> 2. The application for permission to apply for judicial review is granted in respect of the complaint that the Defendant failed to allocate the Claimant into Band 1 of its Allocation Policy following his letter to it of 28th November 2022.
>
> 3. No permission is granted for any other matters in the judicial review."

15. In his reasons for the order, Mr Ford said this:

"2. The claim form makes many complaints of about the behaviour of the tenants at 63A, including of criminal conduct, violence and persistence and serious anti-social behaviour continuing over about five years since March 2018. The statement of facts relied upon and the subsequent correspondence from the Claimant provides details of these.

3. The first principal complaint is that neither the Defendant nor the Interested Party have taken action to control the tenants. The second complaint is that the Claimant, his partner and child should be provided with emergency accommodation by the Defendant. It is said that the Defendant and Interested Party have acted illegally, unfairly, irrationally and unfairly, have created the source of the danger have ignored the law and so on.

4. Judicial review is a process for challenging decisions of public bodies. The claim form refers to two decisions. The first is a letter 21 December 2022, in which the Defendant referred to the on-going dispute with the neighbours, said that the noise levels were 'general household noise' and said the police were investigating a complaint. The second is a letter dated 3 January 2023 from the Interested Party, in which it referred to contact with the police and suggested mediation. Neither of these letters suitable for a challenge in the judicial review: they do not, on their face, decide anything.

5. Nor do the letters really go to the heart of the Claimant's complaints about the conduct of their neighbours. Judicial review is not the appropriate legal forum in which to resolve such disputes. The Claimant has other, more suitable legal remedies for such complaints. For example, he could bring private law proceedings against the neighbours in nuisance or bring proceedings under the Protection from Harassment Act 1997. It is those proceedings, not judicial review, which are appropriate to resolve those sorts of disputes between neighbours. It is in such proceedings which a court can resolve factual disputes about what happened, hear from witnesses and make appropriate orders for injunctions or damages.

6. In those circumstances, I do not consider it arguable that there was an error of law in the two letters and in any case there is a suitable alternative legal means of resolving the dispute with the neighbours.

7.As for the complaint that the Defendant should have assessed the Claimant for emergency housing needs, I have not seen the letter from the police to which the Claimant refers in her letter of 28 November 2022 and which, it is said, shows the serious danger in which the Claimant and his family find themselves. The Defendant does not explain in its acknowledgement of service the action it took in response to that letter or why it determined that the Claimant fell within band 3 and not band 1 (and according to the claimant he never received a response to his letter of 28 November 22). In those circumstances, and in the absence of any written decision from the Defendant, I consider it

> arguable that the Defendant has not properly applied its own allocation policy on band 1, has not adequately dealt with the Claimant's request and/or has reached an unreasonable conclusion on this matter in the light of the evidence before it. I therefore give permission on this ground only."

16. The claimant did not renew his application for permission in respect of his first ground, the defendant and IP's alleged failure to take action against the tenants, either within the 7 days allowed by CPR 54.12 or at all.

17. The defendant submitted detailed grounds of defence on 4 December 2022, stating:

> "3. In the course of preparing this document, the Defendant has identified another - more important - error which it has made while dealing with the housing allocation issue. The housing officer dealing with his application has applied the Housing Allocation Policy 2017. That policy was replaced in October 2022 with the current policy.
>
> 4. In short, the 2017 policy has been applied. It is the wrong policy. The 2022 policy has not been considered and no decision reached in respect of that policy.
>
> 5. The Defendant has therefore withdrawn the decision to place the applicant in band 3. That decision relates to the wrong policy and cannot stand. It will shortly be writing to the Applicant to identify what documentation he should provide, and within what time-frame so as to enable the Defendant to make a fresh decision under the correct policy.
>
> 6. The Defendant therefore does not seek to defend the current decision and, having withdrawn it, respectfully contends that this judicial review claim is now academic and should be dismissed."

18. On the same date as the date of its detailed grounds of defence, 4 December 2023, the defendant wrote to the claimant as follows:

> "Re: Your request to join Lewisham Council's housing register
>
> As per our verification checks we have reviewed and assessed your housing application created 18th November 2022.
>
> Lewisham Council introduced a new Housing Allocations Policy from 31st October 2022. The Allocations Policy is a way the Council decides who can join Lewisham's Housing Register and the priority they have for housing.
>
> In order to qualify on Lewisham Council's Housing Register you must need to meet the following eligibility criteria and provide suitable documentations to confirm your circumstances:
>
> -You live in the UK permanently

> -You have lived in the Lewisham Borough consecutively for the past 5 years
>
> -Have an income less than £50,000 per year (singular or combined)
>
> -Have savings or assets under £16,000
>
> -Live in statutory overcrowding circumstances
>
> -You are 55 years or over and would like to be considered for Housing for Older properties only
>
> -You are in permanent employment of a minimum of 16 hours and live out of the Borough and are experiencing hardship
>
> -You or a member of your household has a medical condition which is being affected living in your current accommodation
>
> -You give or receive support in or out of the Borough
>
> -You have recently left or about to leave the Armed
>
> Forces
>
> -Children of the same sex can share a bedroom till they reach 21 years old
>
> -Children of opposite sex can share a room till one child reaches 10 years old
>
> Unfortunately, based on the information you provided, you do not qualify to go on to the Council's Housing Register because you didn't meet the criteria making you ineligible.
>
> This assessment was carried out in accordance with Lewisham Housing Allocation Policy October 2022. A copy is attached...
>
> You may also wish to consider looking for alternative accommodation in the private rented sector… as this will give you the greatest option in regard to the type of property and area you move to and will be the quickest re housing option available to you...
>
> If your circumstances changed and you wish to re apply to join the housing register, you can do so on the following website..."

19. The defendant's letter of 4 December 2023 was not, of course, the subject of the claimant's original claim. However, at the hearing before me, the claimant said he intended his "Addition to Detailed Grounds on behalf of the Claimants", submitted on 7 December 2023 to be an application to amend his claim so as to challenge the decision contained in the defendant's letter of 4 December 2023.

20. After the hearing, on 17 December 2024, I sent an email to both parties inviting further submissions. I said:

> "The Defendant Council accepts that its decision of 22 November 2022... should be quashed. I am now writing to invite further submissions in relation to the Council's later decision, contained in the letter of 4 December 2023…
>
> [1] the decision of 4 December 2023 was not the subject of Mr V…'s original claim for judicial review. At the hearing, Mr V…. said that he intended his "Addition to Detailed Grounds on behalf of the Claimants"... to be an application to amend his claim so as to challenge the decision of 4 December 2023.
>
> *Does the Council object to this amendment, and if so, on what grounds?*
>
> [2] My second question arises only if I accept the amendment of Mr V….'s claim to include a challenge to the decision of 4 December 2023.
>
> The decision of 4 December 2023 does not, of course, offer Mr V….. emergency housing, which is what he wants. However, that decision goes further still, and says that Mr V…. is not eligible to go onto the housing register at all. This is in contrast to the Council's decision of 22 November 2022, where Mr V….. was placed in band 3 - which I think must mean that he was placed on the Housing Register.
>
> I do not understand why Mr V….. was considered ineligible to join the Housing Register in December 2023, having regard particularly to the fact that in November 2022 he was placed on the Housing Register.
>
> *Can the Council explain why Mr V….. was not considered eligible to join the Housing Register in December 2023?*"

21. The defendant responded by written submissions dated 19 December 2024. In summary, the defendant said that it did object to the amendment of the claim so as to challenge the decision of 4 December 2023. It had prepared the case on the basis of Mr Ford KC's order, the claimant had made no application to amend his claim under CPR 23, and if amendment were permitted the claim would turn into a "rolling judicial review." The defendant also said that if amendment were permitted there would need to be an adjournment to enable it to file further evidence and prepare an additional skeleton argument. The defendant also explained that to deal with my question as to why in the decision of 4 December 2023 (unlike the previous decision) the claimant was said to be ineligible to join the Housing Register, further evidence would be needed. However, the band in which the claimant had previously been placed was no longer present in the 2022 policy. Nevertheless, the defendant went on to say that it intended to withdraw the decision letter of 4 December 2023 and invite the claimant to submit a fresh application to the Housing Register. A draft letter containing the withdrawal and invitation to submit a fresh application was also sent. The defendant's written submissions said that that letter would be sent to the claimant "subject to minor amendments." I set out below relevant parts of the draft letter:

> "Re: Withdrawal of Decision Letter Dated 4 December 2023
>
> Following a review of your circumstances and as part of our commitment to ensuring fair access to housing services, we are formally withdrawing the decision letter dated 4 December 2023 regarding your request to join Lewisham council's housing register.
>
> We invite you to submit a fresh application to the housing register...
>
> To support your application and ensure a thorough assessment, we would like to draw your attention to the following areas that require particular focus:
>
> 1.Your Household:
>
> Please ensure all members of your household are included in your application.
>
> 2.Medical Needs:
>
> Clearly outline any medical conditions affecting your housing requirements….
>
> 3.Current Assessed Risk:
>
> Provide any relevant evidence or documentation regarding risks associated with your current accommodation.
>
> We understand there have been historical concerns related to your housing situation, including correspondence from the Police. At the time of your previous application, the evidence provided was deemed insufficient to refer your case to the housing panel. If you have an updated referral letter from the Police or other supporting documentation, please submit it as part of your new application. This will allow us to determine whether a referral to the Housing Panel is now appropriate."

22. For the purposes of this judgment, I will assume that the letter was sent to the claimant with no material amendments.

23. The claimant responded to my email of 17 December 2024 on 20 December 2024. Essentially, he repeated the submissions previously made. However, though at the hearing he told me that he was not seeking compensation from the defendant, he concluded his submissions by claiming compensation under various headings in addition to emergency accommodation within Band 1:

> "Compensation for enormous waste of my time and energy in wrestling with the Defendants' false claims/blatant lies including these Court proceedings over the past years,
>
> Compensations for our enormous stress and psychological injuries,

> Compensations for extreme: violence, Harassment and ASB [anti-social behaviour] over a 7 year period,
>
> Compensations for our job losses,
>
> Compensation for our loss of the Home Insurance (we have only recently learned that [Z's] **flat was UNINSURABLE** for years because of the defendants' gang despite the fact that [Z] was paying for the insurance for the past years....If Defendants' gang causes further floodings, fire, damage or theft, **we will personally suffer the consequent losses.**)
>
> Compensation for water damages to [Z's] flat…
>
> Compensation for various damages to the building, etc. which [Z] had to pay through the maintenance charges,
>
> Compensation for the reduction of the sale value of [Z's] flat due to the presence of the criminal, vandal gang in our building,
>
> Compensation for our extreme inconvenience and huge upheavals in our lives
>
> (We are being uprooted from our local area after 19 years by the Defendants and their gang.)
>
> Compensation for costs of our removals.
>
> (We are being forced to evacuate [Z's] flat because of Defendants' violent gang),
>
> Any other losses."

ASSESSMENT

24. In his claim form, the claimant sought permission to apply for judicial review on two grounds:

    i) First ground; failure of the defendant and IP to take action against their tenants, the occupants of flat X:

    ii) Second ground; failure of the defendant to allocate the claimant into Band 1 of its housing allocation scheme.

25. Permission to seek judicial review on the first ground was refused by Mr Ford KC and the claimant did not renew his application for permission to rely on that ground. The sole ground on which the claimant was granted permission to apply for judicial review was in respect of the defendant's failure to allocate the claimant into Band 1 of its Allocation Policy. Paragraph 2 of Mr Ford KC's order stated that the application for permission to apply for judicial review was granted "in respect of the complaint that the defendant failed to allocate the claimant into Band 1 of its Allocation Policy

following his letter to it of 28 November 2022." The claimant's case before me therefore centred on the defendant's failure to allocate him into Band 1.

26. The claimant's essential case was that he should be provided with emergency housing by the defendant, because of the effect of the behaviour of his neighbours, the tenants of flat X, on him and his family. The claimant adduced voluminous evidence about the neighbours' behaviour and its effect on him and his family. Also, pursuant to its duty of candour, the defendant produced the evidence of its dealings with the claimant over the years. This was also helpful. The claimant asked for further disclosure from the defendant, but I am satisfied that the defendant has now produced such evidence as it has in its possession and in any case that further evidence would not assist me.

27. In his skeleton argument, the claimant sought disclosure of "the names of Defendant's employees" who have been conducting our persecution and trying to destroy our JR claim", the production of those employees at the hearing, and also disclosure of the "full names of the members of their [i.e. the defendant's] criminal gang.." The claimant did not pursue these requests at the hearing, and I am satisfied that there is no need for further disclosure in this case or production of witnesses before the court. I should also say that I saw no evidence that the defendant or anyone connected with the defendant has been persecuting the claimant or that the defendant has or ever had a criminal gang.

28. At the hearing the claimant asked to adduce further evidence, including audio and video evidence. I refused this request, as I considered I had ample evidence of the claimant's difficulties, and I could not see how further material would assist.

29. Placing the claimant in Band 1 would put him in the highest priority for the allocation of housing.

30. The defendant has made two decisions in relation to the claimant's application to be placed in Band 1; the letter of 22 November 2022 and the letter of 4 December 2023, which replaced the earlier letter. Both decisions have now been withdrawn. The decision of 22 November 2022 was withdrawn on 4 December 2023 and replaced with a new decision contained in the defendant's letter of the same date. The defendant submits that I should formally quash the decision of 22 November 2022. The decision of 4 December 2023 was withdrawn by the defendant on 19 December 2024, following the hearing before me.

31. Accordingly, both of the defendant's decisions in relation to the claimant's application to be placed in band 1 have been withdrawn. They have been replaced by a letter from the defendant of 19 December 2024, inviting the claimant to submit a fresh application to the Housing Register.

32. As invited, I will quash the decision of 22 November 2022, though I am not convinced this is necessary, because the defendant has withdrawn the decision. The decision of 4 December 2023 no longer exists, again because the defendant has withdrawn it. It will now be for the claimant to submit a fresh application to the Housing Register and for the defendant to consider the evidence he provides and reach a new decision. If that decision is adverse to the claimant, he will be able to seek a review, and if any review does not produce the result he seeks, he will have the opportunity to challenge the defendant's new decision in the courts if it is legally flawed.

33. I have considered whether I should make a mandatory order requiring the defendant to place the claimant in Band 1 and rehouse him. For the following reasons I have concluded that I should not do so.

34. For exercising its powers and fulfilling its duties under the relevant legislation the defendant is required under section 166A of the Housing Act 1996 ("the 1996 Act") to have a housing allocation scheme for determining priorities and the procedure to be followed in allocating housing accommodation. It does have such a scheme. It was not suggested to me that the current version of the scheme, the 2022 policy, is unlawful or unreasonable and I do not find it so. The defendant has limited resources, as well as specific housing duties and powers under the 1996 Act and other legislation.

35. If the claimant is seeking to be given emergency priority for housing by the defendant, he has to apply under the 2022 policy and seek to bring himself within the relevant policy provisions.

36. The section of Band 1: Emergency Priority on which the claimant relies is "Emergency priority awarded by Housing Panel." It is clear from paragraph 2.5.2 on page 19 that the application must be referred to the Council by another agency (for example the police or social services) and the Housing Panel must be satisfied that the applicant or a member of their household has an urgent need for rehousing because if they are not rehoused the consequences will be (so far as is relevant here) that their life will be in serious danger, they will suffer from a severe physical or mental illness, or public safety will be severely endangered. Paragraph 3.1.7 on page 30 makes clear that the Housing Panel will normally only consider cases which are referred by another agency, including the Police, the defendant's social care or health partners, partner landlords, MARAC, MAPPA, the national witness protection scheme or other welfare organisations.

37. At the hearing, my attention was drawn to an email dated 16 November 2022 from PC Agnes Matvejeva of the Metropolitan Police, addressed to Maria Bernardi of the defendant. So far as material, the email reads as follows (NB; I have not edited typing errors):

> "I can confirm that I am officer in charge of the current case were Mr V… both arrested and his upstairs neighbour was interviewed…
>
> In short, Mr V..'s daughter was coming home and she was verbally attacked by her female neighbour from flat [X] as she did not like how she looked at her for a split second. Female neighbour began screaming at her and Mr V..'s daughter became so intimidated that she sarted hysterically screaming and crying. ..Z…. got out of the flat as she heard her daughter outside and saw that her daughter is being verbally attacked by their female neighbour. All parties got involved and it somehow escalated. It got to the point that their neighbour took their dog to threaten [the occupants of the property] and he has admitted it during the interview, he has also admitted having a huge chain but refused to admit possessing the knife or banging at their neighbour's door while holding it. Mr V… had a knife in his hand and was at the distance to their neighbours, he has admitted it and was caught in a footage which

was filmed by their female neighbour.... Both parties said but they had weapons of self defence.

At this stage only Mr V… and his male neighbour was interviewed because they had weapons.

I can also confirm that Mr V…. was bailed with conditions to safeguard all parties as even if incident involving the weapon has happened for the first time, there is no guarantee that it cannot reoccur....

Both flats have ongoing issues for a very long time, and it looks like Pinnacle does not take it seriously....

I have also spoken to neighbours and they have confirmed that they never had problems until current neighbours at flat [X] moved in, particularly when a male neighbour moved in. Neighbours at flat [X] are very anti-social and are constantly causing nuisance to others however only [the property] is trying to speak up as other neighbours are scared from the male neighbour. As only [the property] is trying to speak up, Pinnacle assumes that [the property] is simply causing nuisance and ignores them.

Both male and female neighbours from [flat X] can be aggressive and violent. I have not disclosed that to Mr V…or .. Z…as I do not want them to panic or be in more stress than they are at the moment. I have not disclosed to them that I have spoken to neighbours as neighbours are scared to get involved in case if [flat X] turns against them as well.

I have also observed that Mr V's mental health was seriously affected by the whole situation. He has become very volatile and cannot control his emotions. He goes up and down, and it may be hard to communicate to him at times. As far as I'm aware, he has finally seen GP and was prescribed medication to calm him down. I believe his daughter and his ex-partner have done the same or is due to see GP.

Mr V… has not been put under witness protection scheme however we do understand that this situation is getting worse and someone may be injured if one of the parties are not moved. I am not saying that something will happen but I have no guarantee that it will not.

As far as I'm aware, Mr V.. lives at his ex- partner's address and does not have his own home address. His ex-partner owns the property hence why it is difficult for her to move out as she has to sell the property first. Theoretically Mr V… is homeless. I do understand that it was not the ideal situation for Mr V… to be bailed out of his ex- partner's address but his neighbour could stay there but unfortunately I was not able to do anything else as there was a high risk attached.

His daughter is seriously affected by the past events and she needs to get out of that environment too. I do understand that it will take time for

> them to recover mentally but it would be a first step in that direction if they move out from toxic environment.
>
> If you can help them find a place to live, it would be great, and it will resolve the problem which they are trying to solve with Pinnacle for years now."

38. I heard no submissions on whether this email was a referral to the defendant within the meaning of Band 1 in the 2022 policy. It seems to me at least arguable that it was. However, even if it was, it is not clear to me that the Housing Panel would be obliged to consider the claimant's case. There is nothing in the 2022 policy that provides that where a referral is made by a relevant agency, the Housing Panel is obliged to consider the case. Even if it were so obliged, it would then be for the Housing Panel to decide in its discretion whether the claimant or a member of his household had an urgent need for rehousing and therefore fell within Band 1 and should be rehoused.

39. On the evidence I have seen, I am not satisfied that the only course which the defendant could reasonably take would be to place the claimant in Band 1 and rehouse him. In other words, I am not satisfied that a failure by the defendant to place the claimant in Band 1 and rehouse him would be so unreasonable that no reasonable authority in the place of the defendant could take that course.

40. I accept that the claimant and his family have suffered much distress because of their neighbours' behaviour. However, the evidence is not such that the defendant, taking account of its statutory duties and powers as well as the 2022 policy, is bound to rehouse the claimant. In considering whether to place the claimant in Band 1, it seems to me that the Housing Panel would have to take into account the housing stock available and balance the claimant's case against other competing cases.

41. For that reason, it would not be appropriate for me to grant a mandatory order requiring the defendant to rehouse the claimant.

42. In any case, it would in my view be premature for me to do so. The defendant has invited the claimant to make a fresh application, and the defendant will consider that application on the basis of the evidence which the claimant provides. Thus, the defendant will have an up-to-date picture of the claimant's situation. My view of the claimant's situation is at least to an extent historical. In those circumstances it would be wrong for me to make a mandatory order requiring the defendant to rehouse the claimant, even if (which I do not) I considered such an order to be justified on the evidence before me.

43. If following the defendant's decision on his fresh application and any review the claimant is still aggrieved, paragraph 1.6 of the 2022 policy provides for seeking a review within 21 days of the defendant's decision being notified to the claimant. If the claimant is still dissatisfied following any review, he will be able to challenge that decision if it was reached unlawfully.

44. It is appropriate to refer to certain other issues raised by the claimant in his submissions made after Mr Ford's order granting limited permission to apply for judicial review.

45. As well as seeking relief in respect of the defendant's failure to place him in Band 1 and provide him with accommodation, the claimant seeks compensation under various heads. His attitude in relation to this issue has varied. He told me at the hearing that he did not seek compensation, but then in his written submissions of 20 December 2024 he changed his mind and sought compensation under several heads. I see no justification for any award of compensation. The sole ground on which the claimant was given permission to apply for judicial review is what he alleges was the defendant's unlawful administrative action of failing to place him within Band 1 and provide him with accommodation. The law does not recognise a right to claim damages for losses caused by unlawful administrative action. There has to be a distinct cause of action in tort or under the Human Rights Act 1998 ("the 1998 Act"); see R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2006] 1 AC 529.

46. No action in tort or under the 1998 Act has been established in the present case.

47. As to the 1998 Act, in his claim form the claimant alleged breaches of Articles 8 and 14 of the European Convention. He did not particularise his allegations in the documents he submitted and did not expand on his case at the hearing. I see no evidence to establish a breach of either of the two articles he relied on.

48. Article 8 concerns the right to respect for private and family life, home and correspondence. Article 8 can give rise to a positive obligation to provide accommodation in some circumstances; see Anufrijeva v London Borough of Southwark [2004] QB 1124 and R (TMX) v London Borough of Croydon [2024] EWHC 129 (Admin) at [150]. Breach of a positive obligation to provide accommodation may provide the requisite element of culpability provided that the impact on private or family life is sufficiently serious and was foreseeable (see Anufrijeva at [45]).

49. Even where there is a breach of a statutory duty to provide housing, that will not necessarily amount to a breach of Article 8; see R (McDonagh) v London Borough of Enfield [2018] EWHC 1287 (Admin). In that case the judge found that although the defendant local authority had breached its duty under section 188 of the 1996 Act to provide accommodation, there was no breach of Article 8, for reasons including the fact that the family in question in that case did have accommodation, though not suitable accommodation. In the present case the claimant and his family have accommodation, albeit that that their neighbours' behaviour appears to cause them substantial difficulty.

50. In any event, in the present case I have not found that there was a positive obligation on the defendant to provide the claimant and his family with alternative accommodation. The sole legal error by the defendant which has been established in this case is that the defendant made the decision of 22 November 2022 (which will in any case be quashed, on the invitation of the defendant) based on the 2017 policy rather than the 2022 policy. No case has been drawn to my attention (and I am not otherwise aware of any) in which it has been found that such an error is a breach of Article 8 rights.

51. In my judgment for the reasons set out above, a breach of the claimant's Article 8 rights has not been established. However, even if I had found there to have been a breach of his Article 8 rights, I would not have awarded damages in respect of that breach.

52. If I had found that there was a breach of the claimant's Article 8 rights, I would have jurisdiction under section 8 of the Human Rights Act 1998 to award damages if I considered it just and appropriate to do so. Damages should be awarded only where necessary to afford just satisfaction to the victim of the breach; see R (Greenfield) v Secretary of State for the Home Department [2005] 1 WLR 673. I would not have found it appropriate to award damages in the present case, as in my judgment the quashing of the decision of 22 November 2022 and consequent reconsideration by the defendant of the claimant's fresh application comprise just satisfaction of the claimant's claim. The award of damages would not have been necessary to afford just satisfaction to the claimant. After all, had the claimant's case been considered in 2022 under the 2022 policy and referred to the Housing Panel, he would not necessarily have been rehoused by the defendant.

53. Article 14 of the European Convention concerns discrimination. I have found no evidence of any unlawful discrimination by the defendant.

54. As to torts, the claimant has alleged that the defendant has committed the tort of misfeasance in public office. However, the essence of that tort is a deliberate and dishonest abuse of power by a public officer or public body. Such abuse may arise where the action is done maliciously, that is, either with the intention of injuring the claimant or knowing or being reckless as to whether the act is ultra vires the powers of the public body and knowing that the claimant will probably suffer loss; see Lewis, Judicial Remedies in Public Law, 6th edition 2020 at para 15-097, and Three Rivers DC v Governors of the Bank of England [2003] 2 AC 1. I see no evidence in the present case to satisfy the requirements for the tort of misfeasance in public office, or indeed those of any other tort.

55. It follows that I see no justification for awarding the claimant damages as compensation for the various losses which he claims he and his family have suffered.

56. At various times, the claimant has alleged criminal conduct against the defendant, including perjury, as well as contempt of court. These allegations are in my view unsupported by any evidence.

57. In those circumstances, the only substantive order which I will make is to quash the defendant's decision contained in its letter to the claimant of 22 November 2022.

58. As to costs, the claimant is a litigant in person and any costs to which he is entitled will be paid at the current rate for litigants in person, which is £19 per hour.

59. The defendant invites me to order that it should pay the claimant's costs up to the end of 2023 and that thereafter there should be no order as to costs. The defendant's reason for this suggestion is that it is at the end of 2023 that the defendant recognised that the decision of 22 November 2022 could not stand.

60. In my preliminary view, that is the right order. The sole ground on which the claimant was given permission to apply for judicial review was the complaint that the defendant failed to allocate the claimant into Band 1 of its Allocation Policy. I have concluded that I am not satisfied that the only course which the defendant could reasonably take would be to place the claimant in Band 1 and rehouse him. In other words, I am not satisfied that a failure by the defendant to place the claimant in Band 1 would be so

unreasonable that no reasonable authority in the place of the defendant could fail to place him in Band 1.

61. Furthermore, the decision of the defendant which was in place when the claimant commenced proceedings was the decision of 22 November 2022, which the defendant stated in December 2023 would be withdrawn. The claimant criticised the replacement decision of 4 December 2023. At the hearing he said that he intended his "Addition to Detailed Grounds on behalf of the Claimants" submitted on 7 December 2023 to be an application to amend his claim so as to challenge that decision too. However, as the defendant submitted, applications to amend claim forms have to be made via an application to the Court or an order under CPR Part 23, and no such application was ever submitted. Furthermore, although – I suspect in an attempt to move the matter forward in a practical way – the defendant withdrew the decision of 4 December 2023 on 19 December 2024, it has not been established that that decision was unlawful. Evidence from the defendant, further submissions from both parties and perhaps a further hearing would be required for that to be considered. This would be disproportionate given that the decision of 4 December 2023 has been withdrawn.

62. In those circumstances, my preliminary view is that the defendant should pay costs up to the end of 2023 but that thereafter there should be no order as to costs.

63. I now invite submissions as to the form of the order which I should make. Any submissions should be sent to me by 12 noon on Thursday 6 February 2025, which is also the time by which any corrections to this judgment should be suggested. If the claimant wishes to make submissions seeking to persuade me that the costs order should be other than what I have set out above, I will consider them. Such submissions should be contained in any submissions the claimant makes as to the form of my order, which as I have said must be sent to me by 12 noon on Thursday 6 February 2025.

APPENDIX
ANONYMITY ORDER MADE AT THE HEARING ON 12 DECEMBER 2024, as AMENDED BY THIS JUDGMENT

1. **Pursuant to CPR r.39.2, the identity of the Claimant, his partner and daughter shall not be directly or indirectly disclosed, and these proceedings shall be known as R (MV) v the London Borough of Lewisham and the Pinnacle Group.**

2. **Pursuant to CPR Rule 5.4C a person who is not a party to these proceedings may only obtain a copy of a statement of case, judgment, order or other document from the court records if the document has been anonymised such that: (a) the Claimant is referred to as MV, his partner is referred to as Z and his daughter is referred to as C and (b) the address of the Claimant has been deleted.**

3. **Insofar as any statement of case, judgment, order or other document to which anyone might have access pursuant to CPR Rule 5.4A-D has not been anonymised in accordance with paragraph 2 (c) above, the Claimant has permission to file with the court an anonymised copy of that document, which is to be treated for all purposes as being in substitution for the relevant original, with the original being retained by the court in a sealed envelope marked "not to be opened without the permission of a Judge or Master of the King's Bench Division."**

4. **Any interested party, whether or not a party to these proceedings, may apply to the court for an order setting aside, varying or discharging paragraphs 1 – 3 of this Order, provided that any such application is made on 7 working days' notice to the Claimant.**