Neutral Citation Number: [2025] EWHC 715 (Admin)

Case No: AC-2024-LON-002312

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 March 2025

Before :

HUGO KEITH KC, SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

THE KING	**Claimant**
on the application of	
MOHAMED CONDE	
- and –	
THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA	**Defendant**

- -
- -

Noah Gifford (instructed by **JHB Law (t/a Lawstop)**) for the **Claimant**
Ian Peacock (instructed by **Bi-Borough Legal Services**) for the **Defendant**

Hearing dates: 25 February 2025

- -

Approved Judgment

This judgment was handed down remotely at 10 am on 26 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HUGO KEITH KC, SITTING AS A DEPUTY HIGH COURT JUDGE

Hugo Keith KC, sitting as a Deputy High Court Judge:

1. This application for judicial review concerns section 202 of the Housing Act 1996 ("the Act"), which provides for a statutory right to request a review of certain decisions of a local housing authority. Section 202(3) provides that such a request must be made before the end of the period of 21 days beginning with the day on which a person has been notified of the authority's decision, or such longer period as the authority may in writing allow. In this case, the Claimant challenges the local authority's decision not to consider a request that was made out of time.

Background

2. The Claimant to this application for judicial review, Mohamed Conde, came to the United Kingdom from Guinea, fleeing persecution, and was granted refugee status in 2019. He suffers from a number of mental health vulnerabilities and illnesses, including complex post-traumatic stress disorder.

3. On 20 September 2019, having made a homelessness application under Part 7 of the Act, he was provided by Royal Borough of Kensington and Chelsea ("RBKC") with accommodation at 188-190 Princess Beatrice House, SW10 9BA. The accommodation provided was a single-person unit of supported accommodation.

4. At some point in 2022 the Claimant discovered he had a son. On 24 November 2023, his son, also called Mohamed, arrived in the United Kingdom from the United States, where he had been living with his mother, and came to live with the Claimant at Princess Beatrice House. The Claimant's son began school at Phoenix Academy in Shepherd's Bush, where he is undertaking a special programme to assist his settlement and academic catch-up.

5. However, his son's residence in the accommodation was deemed to be contrary to the licence under which the accommodation had been granted, and so the Claimant was evicted in November 2023.

6. In December 2023 the Claimant applied to RBKC for housing assistance under Part 7 of the Act on the basis that he was homeless, eligible for assistance and in priority need, pursuant to section 189(1)(b) of the Act (on account of the fact that his dependent son required accommodation). RBKC provided the Claimant with temporary accommodation pursuant to section 188(1) of the Act, placing him in numerous hotels, including the Travelodge in Ealing.

7. On 15 March 2024 RBKC decided that the Claimant was indeed homeless and eligible for assistance and that, as a result, it owed him a duty under section 189B(2) of the Act to take reasonable steps to help him to secure that suitable accommodation became available for his occupation. He was issued with a personalised housing plan ("PHP") and, in a letter which was emailed to him, he was made a final accommodation offer of accommodation under section 193A of the Act at 161 Church Street, Edmonton, London, N9 9HG. That property is of course outside the district of RBKC.

8. There is a dispute between the parties as to whether the Claimant refused that offer, an issue to which I will return below. Nevertheless, on 21 March 2024 RBKC wrote to the Claimant by email to say that, as he had refused the offer of the property, it had decided

that the duty under section 189B(2) had come to an end. The letter informed the Claimant of his right under section 202 of the Act to request a review of the decision, and of the 21 day period within which such a request had to be made. The period expired on 11 April 2024.

9. On 16 April 2024 the Claimant sent an email requesting a review of RBKC's decision of 21 March 2024. On 17 April 2024 RBKC replied, stating that the request was outside the 21 day period and that it was unwilling to exercise its discretion under section 202(3) of the Act to extend time for the review.

10. The Claimant therefore challenges the decision of the Defendant, dated 17 April 2024, not to extend time. Following a letter before claim on 26 April 2024, the Claimant issued an application for judicial review on 3 July 2024.

11. The Claimant seeks a quashing order to quash RBKC's decision of 17 April 2024 and a mandatory order obliging RBKC to accept the Claimant's 16 April 2024 request for a review under section 202(1) of the Act. Since 18 April 2024, the Claimant and his son have been accommodated by the London Borough of Ealing on an emergency basis.

12. I note that, whilst the Statement of Facts and Grounds rightly focuses on RBKC's decision of 17 April 2024, as does Section 8 of the claim form N461, Section 3.2 of the claim form wrongly describes the decision to be reviewed as being that of '13.05.2024'. Nothing, however, turns on this.

13. Permission to make the application for judicial review was granted on 4 October 2024 by Mr CMG Ockelton, sitting as a Deputy High Court Judge. He observed that "the grounds are arguable as pleaded, although it may be that the result will be that the decision was lawful even if harsh. The claim was filed within three months of the earlier date [of 17 April 2024] and it is clear that there was active engagement between the parties: I regard this claim as brought in time".

Events following the offer of accommodation

14. For the purposes of assessing the Claimant's contention that the decision not to consider his request for review was unlawful, it is first necessary to address the events following the offer on 15 March 2024 of a final offer of accommodation under section 193A of the Act.

15. The letter, from Khatiza Piperdi, a procurement officer at RBKC, stated that RBKC had arranged for the Claimant to view the property on Monday 18th March 2024 at 10:30am and Tuesday 19th March 2024 at 5pm. The Claimant was informed that he could contact an agent of the council on the day that he viewed the property to let them know if he was going to accept or refuse the property. Additionally, he was informed that if he needed further time to consider the offer, he must contact the agent within 24 hours of the viewing to confirm whether he was accepting or refusing the offer.

16. The letter stated: "If you do not contact the officer/team within this time, the Council may consider you to have refused this offer of accommodation….Please note that you may also be treated as having refused this offer of accommodation if you do not respond to this letter, you do not view the property or you refuse to sign the tenancy agreement."

17. The Claimant's Statement of Facts and Grounds asserts that, on 18 March 2024, the Claimant visited 161 Church Street, as instructed in the 15 March 2024 letter. His witness statement makes, however, no reference to him having visited.

18. In any event, in an email timed at 1.35pm on 18 March 2024, the Claimant's social worker from the Baobab Centre for Young Survivors in Exile ("the Baobab Centre"), Ms Jodie Bourke, emailed a housing officer at the RBKC, Mr Rafi Rahman, to say as follows:

> "Today we have tried to call you to discuss his housing case. I have seen the PHP sent to him on the 15th March 2024. The PHP does not outline the needs of Mohamed, in particular his mental health needs and our Centre's support. Mohamed said that on many occasions in his assessment he did mention his mental health needs, his history and the support the receives from our service yet this was not documented.
>
> We are concerned for Mohamed and his son. They have been offered private accommodation which is located far from their local connections. Mohamed's son has now settled into school since January 2024. They have referred him to a specialist program to assist his settlement and academic catch up. He has also started with a football club and is finally starting to settle in. Mohamed tells me that the recent properties he has viewed have been up to 1 and a half hours away from his son's school. This is extremely difficult for the family to manage. Mohamed feels that moving his son to a new school will be highly disruptive, as his son has only just moved from the US and into a totally new family environment.
>
> It would be really good to speak with you directly about their situation and our concerns. We hope you are able to find the family more suitable accommodation within closer proximity to their local connections. I have CC'd Mohamed to this email. He is here at our centre with me now until 4pm."

19. In a further email at 16.04, Ms Bourke stated:

> "Today Mohamed has come to see me about the properties he is being offered. We also went through his PHP which was signed off by you. The PHP as very sparse and does not in anyway reflect the needs of this family, in particular the mental health needs of Mohamed and his diagnosis of Complex Post Traumatic Stress Disorder. As detailed below, Mohamed disclosed this to the person who assessed him over the telephone for the PHP. He said this was not you and did not have a name only that it was a woman. Mohamed also detailed information to the Duty housing advice and support officer he first met at RBKC housing department.

> The main concern after speaking to Khatiza is that Mohamed and his son do not present as having any particular needs which should be taken into consideration when properties are being allocated. We are very concerned that the family will be placed very far away from local connection and supports. Mohamed is a single father, caring for a teenager who has only recently come into his care. He is concerned about moving him again to a different area, new school and community. It is critical that these issues and information about Mohamed's mental health are considered. Mohamed is here with me today and we would appreciate it if you could please contact us."

20. On 19 March 2024, in an email to RBKC timed at 9.49am, Ms Bourke followed up her earlier emails. Mr Rahman responded, saying "I can arrange an appointment with Mohammed Conde over the phone or in person to go over the personal housing plan and send an updated PHP including the support needs".

21. Ms Bourke and Mr Rahman debated arranging the meeting for 12pm on Tuesday 26 March 2024. Ms Bourke emailed Mr Rahman, copying in Khatiza Piperdi, as follows:

> "I will check with Mohamed. Any issues I will come back to you.
>
> I have CC'd Khatiza as she indicated they can withdraw final offer of accommodation notice if further assessment pending.
>
> Could you please confirm this is the situation so I can update Mohamed?"

22. Ms Piperdi responded: "Final accommodation offers are withdrawn if the property is no longer available".

23. The Statement of Facts and Grounds asserts that, the same day, the Claimant spoke to Mr Daniel Henry, Private Sector Housing Manager of the Defendant, and another member of the Defendant's Accommodation Solutions Team. It is said that, in the call, the Claimant expressed concern over the location of the Property and its distance from his son's school. The Statement of Facts and Grounds records "Mr Henry stated that since it was a final offer letter, the Claimant must accept the property. The Claimant said "Ok" in response. The Claimant did not, however, refuse the accommodation".

24. In the letter before claim, sent on behalf of the Claimant on 26 April 2024, it is said:

> "Our client instructs that he viewed the property then spoke with the LA on the phone expressing concern over the location of the accommodation and the distance from his son's school. He instructs that he did not refuse the offer of accommodation.
>
> After receiving the offer of accommodation, the client, through his support workers at BAOBAB, requested updates to his Personalised Housing Plan, and then undertook further assessments of his housing needs. Our client instructs that he was

> under the impression that the offer dated 15th March would not be treated as a 'final offer' due to the pending housing needs assessments.
>
> Our client then instructs that he was informed via telephone that the property was no longer available.
>
> Our client instructs that as he had not refused the accommodation and instead the offer was no longer available for him, he was not under the impression that this would be the final offer of accommodation made to him nor that the duty would be discharged. Our client instructs that he was under the impression that the offer dated 15th March would not be treated as a 'final offer' due to the pending housing needs assessments".

25. And in a note, dated 21 May 2025, in which Ms Bourke recounts her dealings with the Claimant, she stated: "Mohamed said he had received a call on the 19.3.24, from Khatiza's manager Mr Daniel Henry. He asked Mohamed what he thought of the property he viewed. Mohamed said it was OK and that he was waiting to hear back from the agency. Mohamed spoke to Daniel about the property being far and that he would prefer a west London property, but he understood that he had been issued with the final offer letter. Daniel told Mohamed he would be in contact with him. Mohamed said that he did not say that he wanted to refuse the property at any stage of the call."

26. RBKC's case, however, is that "…the Claimant refused that offer during a telephone conversation with one of its officers, Daniel Henry, on 19 March 2024": Summary of Grounds for contesting the Claim, paragraph 5.

27. In an email dated 26 March 2024, sent to Ms Bourke and copied to the Claimant, colleagues at RBKC and a social worker at the Baobab Centre, Mr Henry, a Private Sector Housing Manager at RBKC, stated:

> "To confirm I spoke with Mr Mohamed Conde myself via telephone on Tuesday 09 March 2024 [*the Defendant asserts that this was a typographical error, and that the date was in fact 19 March*] around 12:27 as he had spoken with one of my colleagues in the accommodation solutions team about this property but following my conversation with Mohamed he informed me that he did not want to proceed ahead with 161 Church Street, London N9 9HG which I understand he saw the day before".

28. However, in a later email, dated 17 April 2024, Mr Henry stated: "..I understand that Mohamed feels that he did not refuse the offer but my understand (sic) is that Mohamed did not confirm that he was accepting the property within the required time and following this the discharge of duty notification letter was sent out.."

29. No evidence has been filed on behalf of either the Claimant or the Defendant to support their respective contentions.

30. On 21 March 2024, Mr Henry sent the Claimant a letter by email, in which RBKC notified him that, under section 193A(2), it regarded its duty to him under section 189B(2) as having come to an end, on account of his refusal to accept the offer of accommodation. The letter stated:

> "I am satisfied that you did refuse the offer because you expressed in writing that you did not want to proceed with the property. As a result, I am satisfied that all the conditions in S193A are met so that the relief duty has ended and no further duty is owed to you. The temporary accommodation provided to you will be brought to an end and you will need to find your own alternative accommodation.
>
> You have the right to request a review of this end of duty decision. If you wish to request a review, you must do so within 21 days from the date of notification of this letter. You can request a review by email at housingreviews@rbkc.gov.uk, by telephone at 0207 361 3008 or by post at Housing Review Team, Royal Borough of Kensington and Chelsea, 2nd Floor Pink Zone, Kensington Town Hall, Hornton Street, London, W8 7NX.
>
> Further information about the review process can be found here: https://www.rbkc.gov.uk/sites/default/files/atoms/files/Homelessness%20asking%20for%20a%20review%20of%20a%20decision.pdf."

31. The notification letter was shown to Ms Bourke, who responded on 26 March: "I am the above's social worker - He has just shown me the email. He DID NOT REFUSE the property as stated in the letter. He was told that the property was no longer AVAILABLE." Similarly, in a later email dated 17 April 2024, Ms Bourke stated: "We spoke to Khatizia and Rafi the day the property was viewed. We said some of the issues about the property but at the same time we did not say property offer was being refused. Khatizia advised speaking to Rafi which we did. We arranged for a further PHP update meting - as all are aware…"

32. Mr Henry responded on 26 March (see above at paragraph 27). The same day, according to the Statement of Facts and Grounds, the Personalised Housing Plan was revised during a telephone meeting. It was during this telephone meeting that the Claimant contends he was informed that the Property was no longer available. I note, however, that in a note 'To Whom It May Concern' written on 21 May 2024, Ms Bourke has stated the following, without reference to the fact of a telephone call to that effect:

> "…We agreed to meet on the 26.3.2024 as this was the time Rafi was next available. I agreed to support Mohamed with this meeting as he explained he would not manage by himself and that he need support to communicate his diagnosis and current concerns relating to the stress around his homelessness….. The meeting went ahead via telephone on the 26.3.24 and the updated PHP was sent to Mohamed the same day. Rafi said he understood that a West London property would be more suitable and that he would speak to the other team once he updates the PHP. He did

> not indicate that there was any discharge of duty. He explained Mohamed's hotel accommodation would be extended and that he is in the process of making a housing duty decision which he will update Mohamed about in due course."

33. Mr Henry further emailed on 28 March 2024:

> "I'm just emailing to follow on from my conversation with Mr Conde earlier today. I understand that both Jodie and Mr Conde spoke with my colleague Rafi earlier in the week however I wanted to discuss how Mr Conde was wanting to proceed with his homeless application moving forwards.
>
> I understand the current status to be that a discharge of duty notification has been issued following Mr Conde advising that he did not want to proceed ahead with the final accommodation offer so the next steps would be that Mr Conde would need to make his own housing arrangements as per the offer process and also Mr Conde has the opportunity to request a review of this decision however this must be done within 21 days of receiving the discharge of duty notification letter in writing to the reviews team at *housingreviews@rbkc.gov.uk*."

34. There were then a number of emails between Ms Bourke and Mr Henry, in which Ms Bourke reiterated that the Claimant had not refused the offer of accommodation. One of her emails, on 3 April, stated: "As this [*the meeting on 26 March*] was being arraged Mohamed received a called to say the N9 property had been allocated to another family. Mohamed did not REFUSE did not refuse this accommodation. He was told the property was no longer available".

35. Mr Henry asked Ms Bourke to find out who had apparently told the Claimant that the property was no longer available. She said "Pretty sure he said Khatiza spoke to him Tuesday but I will confirm". Ms Piperdi confirmed however that she had not spoken to the Claimant since the date of the offer of accommodation (15 March).

36. On 3 April 2024 Mr Henry emailed Ms Bourke, copying the Claimant:

> "In addition to not proceeding ahead with the property Mr Conde spoke with me on the phone and informed me directly that he would not be proceeding ahead with this property and the reasons why so I am satisfied that Mr Conde refused this final accommodation offer. From our side we want to ensure we're giving the best possible advice which is why I mentioned the review process, perhaps @Rahman, Rafi: RBKC can advise further as he is not in the temporary accommodation team to confirm if a hotel placement would be extended or not however to confirm as there is no further duty owed to Mr Conde at present once his current booking has come to an end Mr Conde would be expected to make his own housing arrangements.

> As mentioned the reviews team can advise further on this however once again please note that there is a time limit of 21 days from when the discharge of duty letter was issued."

37. Between 4 April 2024 and 16 April 2024, Ms Bourke was on annual leave. She and Mr Henry tried to speak on the morning of 4 April, but were unable to do so. In the afternoon, Mr Henry emailed her, again copying the Claimant:

> "Ultimately its not for me to tell Mohamed what to do however from what you have advised the best advice may be that Mohamed requests a review of the decision and as mentioned there is a time limit on when a review can be requested."

38. On the 16th April 2024 at 10.18am Mr Henry emailed Ms Bourke, copying the Claimant, to say: "I'm just emailing as I understand that a review was not requested following the final accommodation offer and the discharge of duty notification therefore as a reminder as the current hotel booking is due to end on Thursday 18th April, Mohamed will need to make his own accommodation arrangements after this date."

39. Later that day, at 3.10pm, the Claimant emailed RBKC to request a review out of time:

> "Hi my name is Mohamed Conde Dob: 13/04/93 and wish to submit a review in response to attached letter. I did not refuse ANY offer of accommodation and have been treated unfairly. I have a 14 year old son and on the 18-4-2024 we will be made street homeless. I need support with accommodation. We are currently housed by RBKC in a hotel. My social worker is Jodie Bourke and she is supporting me with the review. She has been on annual leave until today. Could you please let me know next steps? I was told I have 21 working days to submit. Could someone get in touch with me."

40. On 17 April 2024, a Reviews Manager at RBKC wrote to the Claimant to inform him that RBKC had decided to refuse to exercise its section 202(3) discretion to accept the request for a review.

41. The letter referred to the fact that the Claimant had been informed of the time limit in the letter of 21 March 2024 and in the emails of 28 March, 3 April and 4 April 2024, and suggested that the Claimant had only requested a review on 16 April 2024, after he had been informed that day that he would be required to leave his temporary accommodation.

42. The letter continues as follows:

> "12. As such, on balance, in the absence of any other evidence that would support the conclusion that you did not understand the decision, or that you were not either sufficiently orientated to exercise your statutory right to request a review or that you had good reason not do so within the prescribed timescale, **I am not**

> **minded to exercise my discretion to carry out an out-of-time review in this instance.**
>
> 13. I am satisfied that your request for a review is certainly out of the 21-day statutory deadline. In *R (Dragic) v Wandsworth LBC [2012] EWHC 1241 (Admin)*, it was outlined by the High Court that Wandsworth Council had made no legal error in refusing to extend the time limit for the applicant's request for a review of the Council's decision that the applicant was intentionally homeless, which was two weeks out of time. The Judge stated that Wandsworth Council's decision to not exercise discretion in considering the out of time request for a review was not perverse or irrational. Although the particular case is not directly related to this one, nevertheless, I am of the opinion that the general principles outlined in the caselaw apply to this case. Namely, that it is not legally erroneous, perverse or irrational for a Council to refuse to consider an out of time request for a review.
>
> 14. Moreover, in the case of *B, R (on the application of) v London Borough of Redbridge* [2019] EWHC 250 in which the Court of Appeal judge agreed that **there is no absolute right to request a review after the 21-day deadline** but said that the local Authority must act rationally when considering an out of time request.
>
> 15. I have also considered your review request and the facts of your case. I am not satisfied that there is merit in your review. You were notified of the final accommodation offer in writing and you advised the PSH Manager that you would not be accepting the offer. You provided your reasons for refusal, however the offer was considered to be suitable for your housing needs.
>
> 16. Consequently, and in the absence of any other evidence that there has been an exceptional or reasonable reason for failing to request a review within the 21 day period, **I am not minded to exercise my discretion to carry out an out-of-time review in this instance.**"

43. On the same day, 17 April 2024, Mr Henry emailed Ms Bourke, copying the Claimant, as noted above in paragraph 28.

Statutory provisions

44. In so far as is relevant, section 189B of the Act provides:

> "(1) This section applies where the local housing authority are satisfied that an applicant is-
>
> (a) homeless, and

(b) eligible for assistance.

(2) Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least-

(a) 6 months, or

(b) such longer period not exceeding 12 months as may be prescribed.

(3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.

…

(9) The duty under subsection (2) can also be brought to an end under-

(a) section 193A (consequences of refusal of final accommodation offer or final Part 6 offer at the initial relief stage),..."

45. Section 193A provides, in so far is relevant:

"(1) Subsections (2) and (3) apply where-

(a) a local housing authority owe a duty to an applicant under section 189B(2), and

(b) the applicant, having been informed of the consequences of refusal and of the applicant's right to request a review of the suitability of the accommodation, refuses-

(i) a final accommodation offer, or

….

…

(2) The authority's duty to the applicant under section 189B(2) comes to an end.

(3) ….

(4) An offer is a 'final accommodation offer' if-

(a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,

(b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority in discharge of their duty under section 189B(2), and

(c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 6 months...

(5) ….

(6) The authority may not approve a final accommodation offer, or make a final Part 6 offer, unless they are satisfied that the accommodation is suitable for the applicant and that subsection (7) does not apply.

(7) …."

46. Section 202 provides, in so far as is relevant:

"(1) An applicant has the right to request a review of-

(a) ….

(b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness),

(ba) ….

….

(h) any decision of a local housing authority as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A or 193C).

(1A) ….

(1B) ….

(2) There is no right to request a review of the decision reached on an earlier review.

> (3) A request for review must be made before the end of the period of 21 days beginning with the day on which he is notified of the authority's decision or such longer period as the authority may in writing allow.
>
> (4) On a request being duly made to them, the authority or authorities concerned shall review their decision."

The parties' arguments

47. Mr Gifford, on behalf of Mr Conde, argues that the decision of 17 April 2024 was '*Wednesbury* unreasonable' within the meaning of *Associated Provisional Picture House v Wednesbury Corporation* [1948] 1 KB 223.

48. In reliance upon the approach adopted by the Court of Appeal in *R (C) v London Borough of Lewisham* [2003] EWCA Civ 927, [40]-[51], Mr Gifford contends that the substantial prospects of success of the review, the minimal length of time by which the request was out of time, and the good reasons for the delay all required the discretion as to whether the review should be entertained to be exercised in favour of the Claimant, and that the decision not to allow the request was irrational. In addition, he submits that, as a result of RBKC agreeing to revise the PHP, the Claimant had a substantive and procedural legitimate expectation that it would continue to fulfil its duty under section 189B(2) of the Act.

49. In relation to the Claimant's prospects of success on any prospective review, he suggests that the evidence establishes that the Claimant did not in fact reject the offer of accommodation, and that the Defendant's case in this regard is inconsistent and has changed over time. He contends that the property that was offered was plainly unsuitable, given the Claimant's mental health vulnerabilities and the location of the property, which would not have allowed him to access his studies and ongoing treatment at the Baobab Centre, which is in Manor Gardens, Islington. Significantly, the property was also an hour and a half away from the school in Shepherd's Bush at which the Claimant's son had settled and where he received a specialist program to assist his settlement and academic catch up.

50. Mr Gifford therefore argues that the offer breached section 208(1) of the Act, which provides that, so far as reasonably practicable a local housing authority shall secure that accommodation is available for the occupation of the applicant in their district, as well as being in breach of Articles 2(a), 2(b) and 2(c) of The Homelessness (Suitability of Accommodation) (England) Order 2012.

51. He further argues that RBKC breached the Code by failing to consider the potential impact on the health and wellbeing of an applicant or any person reasonably expected to reside with them, and by offering a property which unreasonably failed to retain established links with schools, doctors, social workers and other key services and support. He contends that the offer of the property breached the Claimant's son's right to education under Article 2 of the First Protocol, which is a convention right within section 1 of, and Schedule 1 to, the Human Rights Act 1998, as well as the duties under the Children Act 2004 and the Homelessness Code of Guidance for Local Authorities, because it interfered with his education needs.

52. As for the extent by which the request was out of time, this was minimal and caused no prejudice to the Defendant, and there were good reasons as to why the request was not made in time, not least because Ms Bourke, upon whom the Claimant critically relied, had been away on annual leave. In her absence, the Claimant had been unable to make the request - however it was made on the first day after her return.

53. The Claimant further argues that, because RBKC had agreed to review his PHP, it breached his substantive and legitimate expectations that it would fulfil its duty under section 189B(2) of the Act and that no discharge decision under section 193A would be made pending the outcome of that review. Finally, it is argued that it was unreasonable for RBKC not to have exercised its discretion to accept the review request, when there were good reasons for it having been made out of time.

54. Mr Peacock, for RBKC, submits that RBKC properly considered both the delay and the reasons for it and (more briefly) the merits of the review, and explained why it was unwilling to exercise its discretion to extend the time for a review. He argues that the decision not to extend time was well within the bounds of the wide discretion and range of decisions which might have been made by a reasonable authority.

55. He submits that the challenge concerns the lawfulness of the decision not to extend time, and not the suitability of the property or RBKC's understanding that the property had been rejected. Accordingly, it is not necessary to determine these issues substantively. In any event, the evidence demonstrates that the property was suitable, but that the Claimant rejected it without good reason. The Baobab Centre is in London N7, and its distance from the property in Edmonton is around the same as its distance from the Defendant Borough. There is no evidence concerning the contended for adverse impact on the Claimant's son of being in Edmonton, or as to whether this would make it impossible for him to attend the school in Shepherd's Bush or a suitable alternative school. Accommodation in Edmonton would not breach section 208(1) of the Act or articles 2(a), 2(b) and 2(c) of The Homelessness (Suitability of Accommodation) (England) Order 2012.

56. Mr Peacock further argues that no legitimate expectation within the meaning of *R (Alansi) v Newham LBC* [2014] HLR 25 arose. Although RBKC had agreed to review the PHP, it had not agreed that it would not make any discharge decision; still less had it made a clear and unambiguous statement to that effect.

Analysis

57. I am unable to accept Mr Gifford's submission that RBKC's decision not to accede to the request for a review was "unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to" (*Wednesbury* (supra), page 230 *per* Lord Greene MR) or "beyond the range of responses open to a reasonable decision-maker" (*R v Ministry of Defence, ex p Smith* [1996] QB 517, 554 *per* Sir Thomas Bingham MR).

58. It is important to recall, first, that the Claimant's challenge is brought against RBKC's decision not to entertain the Claimant's request for a review, and not RBKC's anterior decision to treat the relief duty as being discharged. Secondly, this is a judicial review challenge to the decision not to extend time; it is not an appeal against its merits.

59. In *C v London Borough of Lewisham* [2003] EWCA Civ 927 the Court of Appeal held that the discretion to extend time was "wide" (paragraph 46). It identified the length of the delay, the reasons for it, and the prospect of success on review, as potentially relevant factors (paragraph 49) and confirmed, in line with well-settled jurisprudence, that the decision-maker was entitled to attribute to the relevant factors such weight as it thinks fit and that the courts will not interfere unless it has acted unreasonably in the *Wednesbury* sense. The court went on to say (at paragraph 49):

> "Thus, even though the length of delay and reasons for it are often balanced against the prospect of success, it is possible to envisage circumstances in which an authority can rationally and properly conclude that even short delay for which there is a good explanation is not good enough to justify an extension of time for review. The authority might, for example, conclude that the case is so hopeless that a review would serve no useful purpose. Conversely, the authority could rationally and properly decide to grant an extension of time where there has been a long delay for which no explanation has been provided. Thus, the authority might take the view that the applicant has a powerful case on the merits and that it is able to take a relatively relaxed view when dealing with applications for an extension of time. Delay and prospects of success do not always have to be balanced against each other. An authority is entitled to reach a decision without forming a provisional view of the underlying merits of the case if, in all the circumstances, it thinks it reasonable for it to do so. It may, for example, reasonably take the view that, in the light of the length of the extension of time that is required and the poverty of the explanation, if any, for the delay, it can reasonably and properly refuse the application without any consideration of the merits at all."

60. In *R(Radhia Slaiman) v The London Borough of Richmond Upon Thames* [2006] EWHC 329 (Admin), Mr Justice Hughes (as he then was) confirmed that it was for the housing authority to decide whether to assess the merits of the applicant's claim when deciding whether to extend time [24]:

> "In the present case Mr Hutchings accepted that there might arise a case in which a failure to consider the merits of a review reached the stage of obvious perversity if such review was, on its face, clearly bound to succeed. I do not dissent from that proposition; but I am quite clear that, subject to that, the authority is entitled to say: "We are not going to go to the merits at all. We are addressing the question of whether an extension of time should be granted.""

61. In the present case the decision letter of 17 April 2024 purported to address the absence of any good explanation for the failure to adhere to the time limit, as well as, briefly, the lack of merits of the Claimant's case on review. The court's task is to consider in the round the rationality of the Defendant's weighing up of these matters and its ultimate conclusion.

62. On the issue of the merits of the review, I am unable, in the absence of evidence from either party, to resolve the first issue of whether the Claimant did in fact reject the offer of the property, as the Defendant claims he did.

63. I reject Mr Peacock's submission that there is clear evidence of a refusal. Indeed, there must be some doubt about the accuracy of the Defendant's claim that Mr Henry was expressly told by the Claimant in a telephone call that he rejected the offer of the property, given the inconsistencies between Mr Henry's letter of 21 March (in which he refers to the refusal as having been given in writing) and his emails of 26 March (in which he states that he spoke to the Claimant directly by telephone) and 17 April 2024 (in which he refers only to his 'understanding' that the Claimant had not confirmed that he was accepting the property). At the same time, there is some doubt about certain aspects of the Claimant's case, in particular his claim that he was told in a telephone call that the property was no longer available.

64. However, it is not necessary for me to resolve this factual dispute. What is required to be assessed is whether, on the material that would have been before the Defendant on a hypothesised review (and not necessarily the material that is now available to the court, such as the consultant child and adolescent psychotherapist's reports of 25 July 2019, 20 May 2024 and 28 June 2024, and Ms Bourke's report of 21 May 2024), there were such good prospects of the Claimant's argument to the effect that he had not in fact refused the property succeeding, that RBKC's conclusion on the merits is rendered irrational.

65. I cannot conclude that there would have been. It is perfectly conceivable that RBKC would have concluded that, even if the Claimant had not expressly refused the offer, his concerns over its suitability nevertheless demonstrated that, by implication, he had turned down the property. Moreover, it would have been entitled, as Mr Peacock submitted, to have concluded, based on the terms of the offer letter of 15 March, that in the absence of a positive acceptance within 24 hours of the viewing the Claimant had refused the offer of accommodation.

66. I am also unable to accept Mr Gifford's further submission that, even if RBKC had been entitled to conclude that the Claimant had refused the property, there were nevertheless good prospects of a review concluding that the property was unsuitable.

67. The Housing Solutions and Accommodation Solutions assessment form of 15 March 2024 had assessed, based on RBKC's Private Rented Sector Offer and Final Accommodation Offer Policy, that the location of the property could be anywhere in Greater London.

68. It is right to observe that, at 15 March 2024, RBKC had not had before it the information, subsequently made available (and contained in the later PHP of 26 March 2024) to the effect that the Claimant had been diagnosed with complex PTSD, anxiety and depression, received weekly therapy sessions and received support from the Baobab Centre for Young Survivors in Exile and a clinical psychotherapist, and that his son attended Phoenix Academy School in Shepherd's Bush. It had also not been aware that the Claimant sought housing within a commutable distance from his place of work (Kings Cross) and his son's school (Shepherd's Bush), that is to say, in West London.

69. However, by the time of any review, RBKC would have had all that information before it and would have been obliged to take it into account (*The Mayor and Burgesses of the London Borough of Waltham Forest v Salah* [2019] EWCA Civ 1944 at [39]). Nevertheless I do not agree that it would have been required, in light of that information, to conclude that the Claimant's medical and support needs, and his son's educational needs, whether individually or cumulatively, rendered a property in Edmonton unsuitable by sole reason of its geographical location outside the RBKC.

70. As Mr Peacock submitted, section 208(1) of the Act, which provides that, so far as reasonably practicable, a local housing authority shall secure that accommodation is available for the occupation of the applicant in their district, provides for no absolute right to be housed in the borough. It is doubtful whether the Claimant would have been able to establish a breach of section 208(1). Equally, it is unlikely that he would have been able to establish a breach of Articles 2(a), 2(b) and 2(c) of The Homelessness (Suitability of Accommodation) (England) Order 2012, given the existence of properly formulated policies setting out criteria by which applicants should be prioritised for local accommodation, for accommodation in Greater London and for accommodation outside Greater London, and as to how units of private sector accommodation may be offered by way of private rented sector offers or final accommodation offers.

71. I also do not agree that there were good prospects that the argument that the offer of a property in Edmonton breached the Claimant's son's right to education under Article 2 of the First Protocol, or the important duties under the Children Act 2004 and the Homelessness Code of Guidance for Local Authorities, would succeed on a review. There is no absolute right for a child to be housed in close proximity to where they are currently being educated. Instances where a decision to relieve homelessness will amount to a violation of the Convention, including Article 2 of the First Protocol, are likely to be very rare: *Rabah Ghaoui v London Borough of Waltham Forest* [2024] EWCA Civ 405 at [36].

72. What the Council would have been obliged to do on a review was to consider the education requirements of the Claimant's son, alongside all the needs and requirements of the Claimant and his son, and reach a proper assessment of whether the offer of housing was suitable: *R v The London Borough of Newham ex parte Aurora Sacupima* [2001] 33 HLR 1 at [20] and [24]. However, there was no evidence that the Claimant's son could not reasonably and practically have continued to attend school in Shepherd's Bush, or that he would have been unable to attend an alternative suitable school. In these circumstances it cannot be said that the argument that RBKC acted so as to deny the Claimant's son effective access to such educational facilities as the state provides would have been bound to succeed.

73. In so far as the Claimant's own position is concerned, it is submitted that the offer of a property in Edmonton unreasonably failed to retain his established links with social workers and other key services and support in Islington (the location of the Baobab centre). I am unable to accept that submission. The distance from Edmonton to Islington is relatively modest.

74. Turning to the issue of the extent to which the request was made out of time, the delay was a relatively modest one of 5 days. As for why it occurred, the Claimant had, along with Ms Bourke (prior to her departure on annual leave on 4 April 2024), received repeated reminders of the need to comply with it. The Claimant could not have been

unaware of the right to request a review, and of the time period within which it had to be made.

75. RBKC was entitled to conclude that there were no good reasons for the admittedly fairly short delay. Whilst I accept that Ms Bourke's absence on annual leave may have played a part in the Claimant's failure to make the request in time, it does not entirely excuse it, given that the request could have made at any time between 26 March, when Ms Bourke was shown the letter of 21 March, and 4 April 2024, or have been made with the assistance of another social worker at the Baobab centre.

76. The fact that the Claimant had genuine concerns over the suitability of the property and that the PHP underwent revision on 26 March 2024 also do not provide good reasons for acceding to the request out of time or render RBKC's decision irrational. RBKC's letter of 15 March strongly advised the Claimant that, in the event of disagreement over the suitability of the property, he should nevertheless accept the offer and move into the property, and simultaneously request a review.

77. With respect to the Claimant's submissions on legitimate expectation, I accept that a properly founded legitimate expectation as to the outcome of the discharge decision under section 189B(2) of the Act could be relevant to whether an out of time request for a review should have been acceded to; it directly relates to the merits of the matter under review.

78. However, although the Defendant did agree to review the Claimant's PHP (and in fact amended it), this fact alone gave rise to no clear and unambiguous representation on its part to the effect that it would not make a discharge decision in the Claimant's case under section 189B(2) of the Act.

79. Firstly, RBKC offered no assurances at any time that it would not regard its relief duty as being discharged. Certainly there is nothing in the correspondence or in the Claimant's witness statement to that effect (indeed, the Claimant's statement is notable for containing only two paragraphs – paragraphs 40 and 46 – that address at all the issue of the offer of housing outside RBKC). Secondly, the offer of a review of a PHP is unlikely in principle to be able to found such an expectation, given the Council's ability to regard the duty as discharged in the event of what it understood to have been a refusal of a final offer of accommodation. Thirdly, such an expectation sits ill with the proposition that discharge is automatic where an offer of accommodation is refused (*R(Sabhya Bano) v London Borough of Waltham Forest* [2025] EWCA Civ 92 at [55], [58]). There is no basis on the facts of this case for the conclusion that the Claimant's arguments on the existence of a substantive legitimate expectation would have had a good prospect of success on a review by the Council.

80. Not without considerable sympathy for the Claimant's position, I am bound to conclude that the Defendant's decision not to accede to the request for a review was not unlawful. Whilst it could permissibly have been different, it was not irrational or perverse, or in breach of a legitimate expectation. The application for judicial review must be refused.