Neutral Citation Number: [2025] EWCA Civ 746

Case No: CA-2024-001591

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON

HHJ Saggerson

K40CL234

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 17/06/2025

**Before :**

LORD JUSTICE LEWISON

LORD JUSTICE WARBY
and

LORD JUSTICE JEREMY BAKER

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**Between :**

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

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**Lindsay Johnson** (instructed by **Hopkin Murray Beskine Solicitors**) for the **Appellant**

**Stephen Evans** (instructed by **Haringey Council Legal Services**) for the **Respondent**

Hearing date: 11/06/2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17/06/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Lewison:**

**Introduction**

1. Section 189A of the Housing Act 1996 provides:

“(1)  If the local housing authority are satisfied that an applicant is—

(a)  homeless or threatened with homelessness, and

(b)  eligible for assistance,

 the authority must make an assessment of the applicant’s case.”

1. The assessment must contain, amongst other things, an assessment of the applicant’s housing needs including what accommodation would be suitable for him and any other relevant persons. I refer to this as a “section 189A assessment”.
2. The issue on this appeal is whether a local housing authority is precluded from determining the suitability of offered accommodation if it has not prepared a lawful section 189A (1) assessment, and the further documentation required by that section. Mr Norton’s case, which HHJ Saggerson rejected, is that the preparation of a lawful section 189A assessment is a condition precedent to a lawful determination of the suitability of offered accommodation. This, as Mr Johnson on Mr Norton’s behalf accepted, is hard-edged question of law.
3. At the conclusion of Mr Johnson’s submissions, we announced that the appeal would be dismissed with reasons to follow. These are my reasons for joining in that decision.

**The legal framework**

1. The 1996 Act imposes a number of duties on a local housing authority. Section 184 (1) provides:

“(1)  If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves—

(a)  whether he is eligible for assistance, and

(b)  if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.”

1. Thus, the first decision that an authority must make is whether the applicant is eligible for assistance. If the answer is “no” then no further duty arises. But if the answer is “yes” the authority must go on to consider what duty (if any) is owed to him.
2. If the authority have reason to believe that an applicant may be homeless, eligible for assistance and in priority need, then they must secure that accommodation is available for his occupation: section 188 (1). This duty precedes the making of a section 189A assessment and enables a local housing authority to provide emergency accommodation where, for example, an applicant might otherwise be compelled to sleep rough on the street.
3. Whether or not an applicant has a priority need, the authority must make an assessment of the applicant’s case. This is the requirement of section 189A which is central to this appeal. I need to quote more of it:

“**189A Assessments and personalised plan**

(1)  If the local housing authority are satisfied that an applicant is—

(a)  homeless or threatened with homelessness, and

(b)  eligible for assistance,

 the authority must make an assessment of the applicant’s case.

(2)  The authority’s assessment of the applicant’s case must include an assessment of—

(a)  the circumstances that caused the applicant to become homeless or threatened with homelessness,

(b)  the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside (“other relevant persons”), and

(c)  what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.

(3)  The authority must notify the applicant, in writing, of the assessment that the authority make.

(4)  After the assessment has been made, the authority must try to agree with the applicant—

(a)  any steps the applicant is to be required to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation, and

(b)  the steps the authority are to take under this Part for those purposes.

…

(6)  If the authority and the applicant cannot reach an agreement, the authority must record in writing—

(a)  why they could not agree,

(b)  any steps the authority consider it would be reasonable to require the applicant to take for the purposes mentioned in subsection (4)(a), and

(c)  the steps the authority are to take under this Part for those purposes.

…

(9)  Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this Part, the authority must keep under review—

(a)  their assessment of the applicant’s case, and

(b)  the appropriateness of any agreement reached under subsection (4) or steps recorded under subsection (6)(b) or (c).”

1. The matters recorded under sub-sections (4) and (6) are referred to as a personal housing plan or “PHP”.
2. If the authority are satisfied that an applicant is homeless and eligible for assistance, then, unless they refer the application to another housing authority, they must take reasonable steps to help the applicant to secure suitable accommodation for at least 6 months: section 189B. Section 189B (3) provides:

“In deciding what steps they are to take, the authority must have regard to their assessment of the applicant’s case under section 189A.”

1. Section 190 deals with duties to eligible persons becoming homeless intentionally and who have a priority need. This duty only arises after the duty under section 189B (2) has come to an end: section 190 (1) (c). The duty in such a case is to secure accommodation for a period to give the applicant a reasonable opportunity to secure accommodation and to provide him with advice and assistance. Section 190 (4) provides:

“In deciding what advice and assistance is to be provided under this section, the authority must have regard to their assessment of the applicant’s case under section 189A.”

1. Section 193 relevantly provides:

“(1) This section applies where—

(a) the local housing authority—

(i) are satisfied that an applicant is homeless and eligible for assistance, and

(ii) are not satisfied that the applicant became homeless intentionally,

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

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

…

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

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

…

(5)  The local housing authority shall cease to be subject to the duty under this section if—

(a)  the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,

(b)  that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and

(c)  the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.”

1. Haringey accepted that Mr Norton was owed the duty under section 193 (2). They offered him what they said was suitable accommodation. The requirement that accommodation be suitable is contained in section 206. In determining whether accommodation is suitable, the authority must comply with section 210. That section provides:

“(1)  In determining for the purposes of this Part whether accommodation is suitable for a person, the local housing authority shall have regard to Parts 9 and 10 of the Housing Act 1985 (slum clearance and overcrowding) and Parts 1 to 4 of the Housing Act 2004.

(2)  The Secretary of State may by order specify—

(a)  circumstances in which accommodation is or is not to be regarded as suitable for a person, and

(b)  matters to be taken into account or disregarded in determining whether accommodation is suitable for a person.”

1. In pursuance of the power in section 210 (2) the Secretary of State has made a series of orders. They are the Homelessness (Suitability of Accommodation) Order 1996, the Homelessness (Suitability of Accommodation) (England) Order 2003 and the Homelessness (Suitability of Accommodation) (England) Order 2012. Neither section 210 itself nor the Regulations contain any cross-reference to the section 189A assessment.
2. Section 193B enables a local housing authority to bring some of its duties to an end, where an applicant has deliberately or unreasonably refused to take any step which he was required to take under a PHP (whether agreed or imposed by the authority). Section 193B (6) relevantly provides:

“… in deciding whether a refusal by the applicant is unreasonable, the authority must have regard to the particular circumstances and needs of the applicant (whether identified in the authority’s assessment of the applicant’s case under section 189A or not).”

1. The final two words suggest that in making its decision an authority is not confined to a section 189A assessment.
2. The right to a review of the suitability of accommodation is contained in section 202.
3. Section 195 deals with duties owed to an eligible applicant threatened with homelessness. The duty in such a case is to take reasonable steps to help the applicant to secure that accommodation does not cease to be available for him. Section 195 (3) provides:

“In deciding what steps they are to take, the authority must have regard to their assessment of the applicant’s case under section 189A.”

**The facts**

1. Since the issue raised is one of principle the facts of this particular case are of marginal importance. I can therefore deal with them shortly.
2. Mr Norton is a single parent who suffers from epilepsy and who lives with his son. He applied to Haringey as homeless; and Haringey accepted that he was owed the duty under section 193 (2) of the 1996 Act. On 8 January 2021 Haringey conveyed the offer of accommodation at 3 Elizabeth Blackwell House as a private rental sector offer. In subsequent proceedings it was held that that offer did not discharge Haringey’s duty.
3. Mr Norton asked for a review of Haringey’s decision, as he was entitled to do under section 202. He contended that the offered accommodation was not suitable. His complaints focussed on two particular aspects of the accommodation. First, he said that the layout of the accommodation was dangerous for him to use on account of his epilepsy. Second, he said that there was noise nuisance from a neighbour which woke both him and his son; and which therefore impacted on their welfare. Since Haringey had rejected both those complaints, Mr Norton asked for a review. The reviewing officer was Mr Minos Perdios, who has vast experience of such reviews. He rejected both complaints; and there is no extant appeal against that. But in the course of the review, Mr Norton’s solicitors took the point that no lawful decision on the suitability of the accommodation could be made in the absence of a lawful housing needs section 189A assessment.
4. There was some further correspondence on the subject. The reviewing officer pointed out that a housing needs assessment had been carried out in November 2022 (in fact this was an error: the assessment had been made in 2020). But Mr Norton’s solicitors argued that it was out of date; and was (or was to be) the subject of an application for judicial review. Mr Norton did indeed begin proceedings; but they were compromised on the basis that Haringey would prepare a revised housing needs assessment. In the event, no such assessment was prepared before the reviewing officer made his decision upholding Haringey’s position that the offered accommodation was suitable.
5. Mr Norton appealed to the county court, as he was also entitled to do. HHJ Saggerson dismissed his appeal. At [29] he rejected the argument that the existence of a lawful assessment under section 189A and a lawful PHP were pre-conditions of a valid suitability decision. Among his reasons were:
	1. Section 189A does not impose any obligations on a reviewing officer, although it could have done;
	2. The Act does not provide that an assessment of suitability is unlawful in the absence of a section 189A assessment;
	3. Although a flawed assessment under section 189A or a flawed PHP may result in a subsequent decision on suitability being also flawed if it causes or materially contributes to that decision, it does not follow that the lack of any section 189A assessment or lack of a PHP in itself means that a subsequent suitability decision is unlawful;
	4. The acid test was whether the reviewing officer had sufficient comprehensive information on which to make a determination.

**Case law**

1. There have been some cases on the lawfulness of a section 189A assessment, although none is binding on this court. For the most part, however, they concern the contents of such an assessment, and its impact on subsequent decisions about suitability of accommodation, rather than the consequences of a failure to prepare one.
2. In *XY v Haringey LBC* [2019] EWHC 2276 (Admin) Mr Sheldon QC said at [51]:

“Section 189A is prescriptive as to the matters which a local housing authority must assess: the circumstances that caused the homelessness, the “housing needs” of the applicant including the suitability of any accommodation for the applicant and others living with her, and “the support” necessary for the applicant and others living with her to have and retain suitable accommodation. This is clearly an important duty, as it informs the nature of the accommodation that must be provided for the applicant, as well as her support needs to retain that accommodation. The assessment does not, in my judgment, have to deal with and set out every need that an applicant might possibly have. It should, however, set out the key needs: those that would provide the “nuts and bolts” for any offer of accommodation: c.f. *R (S) v Waltham Forest LBC* [2016] EWHC 1240 (Admin) at [92].”

1. That description was followed by Mr Bowen KC in *R (YR) v Lambeth LBC* [2022] EWHC 2813 (Admin), [2023] HLR 16 at [28]. Lane J took a similar view in *UO v Redbridge LBC* [2023] EWHC 1355 (Admin), [2023] HLR 39 at [60].
2. In *YR* Mr Bowen KC held that the assessment made under section 189A was legally flawed. The precise reasons for that conclusion need not concern us in detail. He went on to consider whether the flaws in the assessment vitiated the authority’s decision that accommodation was suitable for the applicant; and he held that they did. He said:

“[98] The question that arises, next, is whether the Defendant’s decision that the Property is “suitable” for the purposes of s. 188(1) is vitiated by the fact that it was based on an unlawful assessment under s 189A and a failure to conduct adequate inquiries for s 184 and 188(1) purposes. In my judgment, that decision was so vitiated, for two reasons.”

1. He dealt with the first reason at [99]:

“The assessment of the Claimant’s housing needs, including the determination that the Property was ‘suitable’ accommodation, was in fact based on the authority’s s 189A assessment. The test of ‘suitability’ is identical whether s. 188(1) is considered in isolation or in the light of an assessment under s 189A. To the extent that the assessment under s 189A was flawed, those flaws also undermined the s 188(1) decision as a matter of both fact and of law.”

1. Thus the reason that the assessment of suitability was flawed was that it was based on a flawed section 189A assessment.
2. Lane J reached a similar conclusion in *UO* at [131]; namely that the decision on suitability was based on a flawed assessment under section 189A. In the second *UO* case to which we were referred (*UO v Redbridge LBC* [2024] EWHC 1989 (Admin); [2025] HLR 2) Mr Dias KC also held at [137] that a decision on suitability was unlawful because it was based on a flawed section 189A assessment.
3. I do not doubt that an assessment of suitability based on an unlawful or otherwise legally flawed assessment under section 189A is itself legally flawed. But what these cases do not address is whether an authority is precluded from independently and lawfully assessing suitability in the absence of a section 189A assessment or a PHP.

**Imperative requirements**

1. There is no doubt that a section 189A assessment fulfils an important role in the overall framework for helping the homeless. Mr Johnson rightly submitted that the purpose of the section 189A assessment and the PHP is to provide a road map which will inform subsequent decisions; and will enable a housing officer to pick up the file with relevant information. As paragraph 11.2 of the Code of Guidance puts it:

“The section 189A duties to assess an applicant’s case and develop a personalised plan provide a framework for housing authorities and applicants to work together to identify appropriate actions to prevent or relieve the applicant’s homelessness.”

1. That is why in a number of places in the overall scheme of the legislation the authority is required to have regard to its assessment under section 189A.
2. There is also no doubt that the authority’s duty to conduct a section 189A assessment is phrased as an imperative requirement. But it is a fallacy to contend, as Mr Johnson does, that a failure to comply with an imperative statutory requirement necessarily invalidates everything that follows.
3. The modern law on this topic begins with *R v Soneji* [2005] UKHL 49, [2006] 1 AC 340. That case concerned the making of confiscation orders in the Crown Court pursuant to the proceeds of crime legislation against defendants who had been convicted and sentenced in criminal proceedings, in circumstances where the stipulated statutory time limit for making such orders of six months after date of conviction had been exceeded. As Lord Steyn observed at [14]:

“A recurrent theme in the drafting of statutes is that Parliament casts its commands in imperative form without expressly spelling out the consequences of a failure to comply.”

1. He went on to deprecate the division of imperative requirements into mandatory or directory requirements. Rather, as he said at [23]:

“… the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity.”

1. The Supreme Court returned to this approach in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27; [2024] 3 WLR 601. The issue in that case was whether in the course of an application to the right to manage a block of flats a failure to serve notice on an intermediate landlord (in breach of an imperative statutory requirement) invalidated the application. The Supreme Court held that that question was to be decided in accordance with the principles laid down in *Soneji*. In their joint judgment at [58] Lord Briggs and Lord Sales said:

“As Lord Steyn held in his speech … the correct approach to a failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid.”

1. That question is posed in general terms (“some act”) and is not confined to procedural requirements.
2. At [61] they continued:

“The point of adoption of the revised analytical framework in *Soneji* was to move away from a rigid category-based approach to evaluating the consequences of a failure to comply with a statutory procedural requirement and to focus instead on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement.”

1. At [68] they added:

“In our view the correct approach in a case where there is no express statement of the consequences of non-compliance with a statutory requirement is first to look carefully at the whole of the structure within which the requirement arises and ask what consequence of non-compliance best fits the structure as a whole.”

1. Again, the question is posed in general terms (“non-compliance with a statutory requirement”) and is not restricted to procedural provisions.
2. The Supreme Court held at [91] that the failure to comply with the imperative requirement did not invalidate the claim because the intermediate landlord had lost nothing of significance as a consequence of that failure.
3. The question in *R v Layden* [2025] UKSC 12; [2025] 2 WLR 740 was whether a failure to arraign a defendant within two months after an order for a retrial (as required by section 8 of the Criminal Appeal Act 1968) invalidated the subsequent retrial. The Supreme Court held that it did not. Lord Hamblen said at [66]:

“ The fact, however, that section 8 is expressed in mandatory terms does not answer the *Soneji* issue. All statutes in relation to which the *Soneji* principle arises for consideration are likely to be expressed in mandatory terms. The problem is that the consequences of non-compliance with those mandatory requirements are not stated.”

1. Again, the question thus formulated is not confined to procedural provisions. It is perhaps unfortunate that Lord Hamblen used the word “mandatory” rather than Lord Steyn’s preferred word “imperative” when the very issue was (to use the old and now discarded expressions) whether the provision in question was “mandatory”. Lord Hamblen continued:

“[76] In order to consider whether Parliament can fairly have intended total invalidity to follow it is necessary to identify the alternative to total invalidity.

[77] In most cases involving the *Soneji* principle the alternative will be an evaluation of the consequences of the procedural failure, whether any prejudice might be caused and whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement (see, for example, *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] 3 WLR 601 at para 61).”

**Conclusion**

1. In the present case, Parliament has, as it so often does, laid down an imperative requirement without specifying what the consequences are of a failure to comply.
2. In the present case there is no extant substantive complaint about the review decision on the question of the suitability of the offered accommodation. The factual challenges to the reviewing officer’s decision on suitability were rejected by HHJ Saggerson, and Mr Norton does not have permission to appeal on those points. It is not suggested that the reviewing officer’s decision was based on a flawed housing needs assessment. The point taken on Mr Norton’s behalf is a purely procedural and technical point.
3. The starting point is the overall structure of this Part of the 1996 Act. As is shown by sections 189B, 190, and 195, when Parliament wished to cross-refer to a section 189A assessment it did so. There is no such cross-reference in section 210 or the Regulations made under it. Section 193B (6) suggests that an authority is not confined to making decisions based on the section 189A assessment. As HHJ Saggerson rightly said, section 210 does not impose any duty on a reviewing officer (or for that matter on the authority) to consider a section 189A assessment, although he is (or they are) of course free to do so if it is relevant. We have also seen that under section 188 a local housing authority may have an interim duty to secure that accommodation is available for an applicant who may be homeless, eligible for assistance and in priority need. That duty arises before a section 189A assessment is made. Nevertheless, the accommodation must be suitable, in order to comply with section 206. As Mr Bowen KC pointed out in *YR* at [99], the test for suitability is identical whether section 188 is considered in isolation or in the light of a section 189A assessment. Since a decision under section 188 may be made before the making of a section 189A assessment, and the test of suitability is the same, it must follow that a lawful decision under section 188 may be made in the absence of such an assessment. Mr Johnson’s argument entails the conclusion that the lawfulness of a decision on suitability fundamentally changes as the sequential duties come into existence. But the Act, in my judgment, gives no clue to such a radical consequence.
4. I do not accept Mr Johnson’s submission that the principles in *Soneji* and the cases that have followed it are confined to procedural provisions. The questions which the House of Lords and the Supreme Court posed are in general terms and are not confined to procedural provisions, albeit that they were considered in a procedural context.
5. Applying the approach in *A1 Properties*, Mr Norton has lost nothing of value. He was entitled to, and received, a decision on suitability which contains no legal flaw.
6. Applying the approach in *Layden*, I should evaluate the consequences if the failure to comply with the imperative requirement invalidates what follows. In my judgment the consequences of holding that compliance with the duty under section 189A is a condition precedent are stark; and unlikely to reflect Parliament’s intention. Mr Johnson argued that if no section 189A assessment was prepared, it would not be possible to prepare a PHP and consequently no duty under Part 7 (apart, perhaps, for an interim duty under section 188) could arise. Thus, if Mr Johnson’s argument is correct, in the absence of any assessment under section 189A:
	1. The authority would not be entitled to take any steps under section 189B to help an applicant to secure accommodation;
	2. The authority would not be entitled to decide what advice or assistance is to be provided to an applicant under section 190;
	3. The authority would not be able to discharge the main housing duty under section 193 by making an offer of suitable accommodation; and
	4. The authority would not be entitled to take steps under section 195 to prevent an applicant from becoming homeless.
7. In addition, as Mr Johnson recognised, the acceptance of his argument would mean that if a local housing authority, in the absence of a section 189A assessment, made an impeccable assessment of suitability, and then offered that accommodation to the applicant the offer would be unlawful. I find it impossible to conclude that Parliament can have intended that an otherwise lawful offer, which would have the direct effect of immediate relief of homelessness, would be invalid and unlawful for lack of a section 189A assessment.
8. In short, an authority would be partially paralysed; and prevented from carrying out what would otherwise be some of its duties to help the homeless or those threatened with homelessness. Parliament is unlikely to have contemplated such paralysis as being acceptable.
9. In *R (Ahamed) v Haringey LBC* [2023] EWCA Civ 975, [2024] PTSR 205 Newey LJ said at [54]:

“Ms Murray was critical of the “Assessment and Personalised Housing Plan” which the Council prepared and sent to Ms Ahamed. Mr Evans argued that, seen in the context of the “vulnerability assessment” which had already been completed, the “Assessment and Personalised Housing Plan” sufficed. Whether or not that is correct is, however, unimportant. An omission could have mattered if it had somehow resulted in Mr Perdios being unaware of something significant. There is, however, no reason to suppose that any deficiency in the “Assessment and Personalised Housing Plan” affected Mr Perdios’s decision-making.”

1. I agree.
2. For these reasons, which are in substance the reasons given by HHJ Saggerson, I joined in the decision to dismiss the appeal.

**Lord Justice Warby:**

1. I agree.

**Lord Justice Jeremy Baker:**

1. I also agree.