SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 30
COS-P1164-23

Lord Justice Clerk
Lord Doherty
Lord Armstrong

OPINION OF THE COURT

delivered by LORD DOHERTY

in the petition

by

Y

Petitioner and Respondent

against

GLASGOW CITY COUNCIL

Respondent and Reclaimer

Petitioner and Respondent: J Findlay, KC, D Anderson; Drummond Miller LLP
Respondent and Reclaimer: Reid, KC, G Middleton; Harper MacLeod LLP

4 December 2025

Introduction

[1] In this reclaiming motion (appeal) the reclaimer, Glasgow City Council, appeals against the Lord Ordinary's interlocutor of 9 January 2025 which declared that the Council had failed to comply with their duties under sections 29(1)(c) and 31(2) of the Housing (Scotland) Act 1987 and ordained the Council to make suitable permanent accommodation

available to the petitioner, Y, in compliance with their section 31(2) duty. To aid comprehension, we shall refer to the parties as the Council and the petitioner.

The relevant legislation

[2] Sections 29 and 31 of the 1987 Act provide:

> "**29 Interim duty to accommodate**
> (1) If the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation
> …
> (c) where … the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for the applicant's occupation, until such accommodation becomes available.
> (3) In subsection (1), "accommodation", in the first place where the expression occurs, does not include accommodation of such description as the Scottish Ministers may, by order made by statutory instrument, specify.
> (4) Such an order may—
> (a) specify any description of accommodation subject to conditions or exceptions,
> …
> **31 Duties to persons found to be homeless.**
> (1) This section applies where a local authority are satisfied that an applicant is homeless.
> (2) Where they ... are not satisfied that he became homeless intentionally, they shall… secure that permanent accommodation becomes available for his occupation.
> …
> (5) For the purposes of subsection (2), "permanent accommodation" includes accommodation—
> (a) secured by a Scottish secure tenancy,
> …
> (c) where paragraph 1, 2 or 2A of schedule 6 to the Housing (Scotland) Act 2001 (asp10) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy.
> (d) secured by a private residential tenancy."

[3] The current order made by the Scottish Ministers under section 29(3) is the Homeless Persons (Unsuitable Accommodation)(Scotland) Order 2014 (SSI 2014/243) (relevant parts of

which were amended by the Homeless Persons (Unsuitable Accommodation)(Scotland) Amendment Order 2020 (SSI 2020/139), the Homeless Persons (Unsuitable Accommodation)(Scotland) Amendment (Coronavirus) Order 2020 (SSI 2020/268), and the Homeless Persons (Unsuitable Accommodation)(Scotland) Amendment (No.2) Order 2020 (SSI 2020/419)). It provides:

"**Interpretation**

2. In this Order—

"the 1987 Act" means the Housing (Scotland) Act 1987;

…

"household" means the applicant and any person who resides, or might reasonably be expected to reside, with the applicant;

…

"minimum accommodation safety standards" includes standards specified in an enactment for accommodation in relation to health and safety, hygiene, fire, furniture and electrical equipment; …

Application of this Order

3. This Order applies to accommodation provided to an applicant under section 29 of the 1987 Act (interim duty to accommodate an applicant who may be homeless) …

Unsuitable accommodation

4. In all circumstances, accommodation is unsuitable if it is—

(a) not wind and watertight;

(b) not suitable for occupation by a homeless household, taking into account the needs of the household; or

(c) not meeting minimum accommodation safety standards.

5. Unless any of the circumstances in article 6 apply, accommodation is also unsuitable if it—…

(b) is not in the locality of facilities and services for the purposes of health and education which are being used, or might reasonably be expected to be used, by members of the household, unless those facilities are reasonably accessible from the accommodation, taking into account the distance of travel by public transport or transport provided by a local authority;

(c) lacks within the accommodation adequate toilet and personal washing facilities for the exclusive use of the household which meet the accessibility needs of the household;

(d) lacks adequate and accessible bedrooms for the exclusive use of the household;

(e) is accommodation within which the household does not have the use of adequate and accessible cooking facilities and the use of a living room; …

6. Article 5 does not apply where—…

(b) the local authority has offered the applicant accommodation that meets the requirements of article 5, but the applicant wishes to be accommodated in other accommodation that does not meet those requirements;…"

The petition proceedings

[4] On 20 December 2023 an interlocutor was pronounced authorising intimation and service of this petition for judicial review. In paragraph 4 of the petition the petitioner sought the following remedies:

"i Declarator that the respondent has failed to comply with its duty under section 29(1)(c) of the Housing (Scotland) Act 1987 in respect of the petitioner; …

ii Declarator that the respondent has failed to comply with its duty under section 31(2) of the Housing (Scotland) Act 1987 in respect of the petitioner;

iii An order ordaining the respondent to make permanent accommodation available to the petitioner in compliance with its duty under section 31(2) of the Housing (Scotland) Act 1987;

…".

Permission to proceed was granted on 18 January 2024. Answers were lodged and the pleadings were adjusted. After sundry further procedure, a first hearing took place on 16 and 17 September 2024.

The first hearing

[5] The material before the Lord Ordinary included Council records relating to the petitioner's application; affidavit evidence from the petitioner and her eldest daughter, A, and from several Council officials; and two reports from occupational therapists.

The affidavits of Mr Howe, Ms Hogg and Ms Sheddan

Mr Howe

[6] Kevin Howe, an assistant rapid rehousing transition plan manager, explained that when a person presents as homeless the Council carry out a housing options and solutions assessment. Before permanent accommodation is secured for a homeless household the Council undertake a housing prospects interview and prepare a resettlement plan. The Council do not own housing stock. (They are one of six Scottish local authorities which have transferred their housing stock to registered social landlords (RSLs)). The Council source temporary accommodation from RSLs and the private rental sector. They have contracts with 32 RSLs for temporary accommodation. The contracts require the RSLs to allocate a proportion of their stock for use as temporary accommodation for homeless households and to make the accommodation available to the Council for allocation. Obtaining temporary accommodation from the private rental sector is more difficult because private landlords can obtain higher rents leasing their properties privately. Very often such rents exceed the local housing allowance paid to a homeless family. Some private landlords have exited the market in recent years due to market conditions, reducing the pool of available properties and impacting on rental levels. Other private landlords are reluctant to let to homeless persons due to perceived increased risks of anti-social behaviour or damage to property.

[7] The Council's provider company of private sector temporary furnished flats is contracted to supply up to 460 flats but has only been able to provide 385. The Council are working with the provider company to increase that number. The total stock of temporary furnished flats from RSLs and the private sector is around 2,176 properties. On average there are about 180-220 properties empty and available for allocation. The vast majority are one-bedroom or two-bedroom flats. Of the 2,176 properties, 21 are four-bedroom flats, all of

which are currently tenanted. Once a homeless application is received the Council consider what is available from the temporary accommodation stock. Empty properties are assessed for suitability having regard to the household's needs, relevant guidance, and the 2014 Order. If a property is assessed as suitable it is offered to the homeless household.

[8] Demand for social housing far outstrips supply. On 30 November 2023 the Council declared a housing emergency. A Home Office decision to make around 2,500 batched asylum decisions in Glasgow by the end of 2023 increased the number of persons seeking assistance under homelessness legislation. Glasgow is the main dispersal city in Scotland for asylum seekers. In 2022-2023 there were 5,251 new households accepted as homeless by the Council. The figure for 2023-2024 was 6,108.

[9] The Council are also reliant on RSLs for permanent accommodation. While in theory there is also the possibility of obtaining a private residential tenancy from a third-party landlord, the reality is that the vast majority of homeless households cannot afford to rent privately. A large household is one that requires a property with three or more bedrooms. At the start of each financial year the Council write to each RSL and request that they make a percentage of their properties available for occupation by homeless households. For 2024-2025 they asked for 67% of available properties to be so allocated. The figure for 2023-2024 was 60%. The Council monitor provision by each RSL to ensure each allocates the agreed proportion. The Council's relationships with RSLs are good, and concerns are invariably resolved by agreement. RSLs also require to provide properties to persons other than homeless households. There is a very low turnover of properties that can be offered to large households. When one becomes available it is matched to the needs of households on the waiting list for such a property. Where competing households have similar needs, generally the household which has been waiting longest is offered the property, but there is a

discretion to allocate otherwise. Households with exceptional needs that would render living in temporary accommodation for a considerable length of time intolerable may be allocated a property before households ahead of them on the list. With large households it would almost always be futile for the Council to resort to the referral process under section 5 of the Housing (Scotland) Act 2001 because the RSL would be unable to provide a property. Experience has shown that working together with RSLs is a more efficient way of securing permanent accommodation than making section 5 referrals.

[10] At the time of Mr Howe's affidavit, 16 households had been waiting for a five-bedroom property for longer than the petitioner. Forty-five households had been waiting for a four-bedroom property for longer than the petitioner. Since March 2020 the Council had secured 68 four-bedroom properties and 11 five-bedroom properties as permanent accommodation. Only a very small number of these are likely to have been ground floor properties. It would not be reasonable for the Council to seek accommodation for the petitioner's household from the private rented sector. Their income is state benefits and a private rental would not be affordable.

Ms Hogg

[11] Margaret Hogg is assistant chief officer for finance and resources. Her affidavit explained that, in accordance with the Public Bodies (Joint Working) (Scotland) Act 2014, health and social care in Glasgow is delivered by a partnership between the Council and NHS Greater Glasgow and Clyde. The Glasgow City Integration Joint Board (IJB) is the main decision-making body for the partnership. It is responsible for setting the budget for services provided by the Glasgow City Health and Social Care Partnership (HSCP). Setting the budget involves consideration of a range of factors including funding from partner

bodies, cost and demand pressures, and options to deliver a balanced budget. The budget is insufficient to meet all of the demands upon it. Every year service reductions and prioritisation require to be considered. The IJB is responsible for setting the budget for the Council's housing and homelessness services. The Council have to determine the level of funding they can provide to the IJB to deliver the services which the IJB is responsible for. Elected members of the Council have to apportion the funds available to the Council across the services that must be provided. The Council's funds come principally from the Scottish Government and from revenue raised by the Council. The IJB then determines the level of funding which can be made available to homelessness services. The IJB has to balance competing needs and apportion funds. The IJB is facing unprecedented budgetary pressure. The housing and homelessness budget for 2024-2025 is £67.369m, of which £64.215m relates to Council services and £3.154m to health services. Of that Council services figure, £14.624m funds an underlying deficit caused by increased demand over recent years. The Home Office decision to accelerate asylum decision-making has had significant financial consequences for the IJB: around 1026 additional households required temporary accommodation in 2024-2025. No additional funding was provided by the UK government for this expenditure. The full impact of the Home Office decision is estimated to be £53.4m - a figure not included in the budget for 2024-2025. The Council are preparing contingency plans to ensure that they and the IJB remain as going concerns over this challenging period. There was an overspend of £12m for homelessness services in 2023-2024. In order to recover some of that sum, cost savings of £5.7m were sought in areas not directly linked to the Council's statutory duties, and £2.9m of savings were delivered. Homelessness services are about 6% of the IJB's services. Good practice is that reserves of 2% should be maintained. However, in 2023-2024 the IJB closed the year with a general reserve of only 0.5%. That is

insufficient to meet the risks it faces, and concerns have been expressed by its auditor. The upper risk is thought to be an £18m overspend in 2024-2025. In addition, the funding gap in the medium term (2024-2025 to 2026-2027) is estimated to be £116m. Ms Hogg concluded:

> "It is clear that the general reserve of £5.7m to manage these risks will be insufficient to meet the financial risk exposure of the IJB. With this in mind, the general reserve cannot be used to comply with [the Council's] duties in relation to individual homelessness cases."

Ms Sheddan

[12] Jennifer Sheddan is Head of Housing Services in the Council's Neighbourhoods, Regeneration and Sustainability Team (NRS). NRS is responsible for the provision of corporate services such as housing strategy and planning. In her affidavit she deponed that the Council's local housing strategy (LHS) for 2023 to 2028 was approved on 18 May 2023. One of the LHS's strategic priorities is to increase the supply of housing that meets the needs of families and older people. Unfortunately, there have been significant increases in the costs of construction and development of new housing post-Covid19. The cost of borrowing has also increased, and there are issues with supply chain disruption and labour scarcity. As a result, there is a significant reduction in the number of new affordable homes being delivered. The key actions that the HSCP are focussing on to address the housing emergency include: (i) continuing to work with RSLs to accelerate and increase the development of new affordable homes under the strategic housing investment plan; (ii) exploring options with RSLs to acquire homes for social rent; (iii) exploring the allocation of mid-market rent housing to homeless households; (iv) seeking to identify potential land and repurposing opportunities for affordable housing; (v) working to bring empty homes back into use; (vi) housing-led regeneration; and (vii) relaunching the housing transfer incentive

scheme to encourage people to move out of properties that are under-occupied. The strategic housing investment plan is part of the affordable housing supply programme (AHSP). The Scottish Government provide development funding under the AHSP, which the Council manage. The funding is used to support RSLs to undertake targeted open market acquisitions of housing. In the financial year 2022-2023, 79 homes were acquired in Glasgow via the AHSP and in 2023-2024, 127 homes were acquired. For 2024-2025 the Scottish Government have reduced the Council's AHSP budget by 24% (around £25m). The housing transfer incentive scheme enables the Council to work with RSLs to assist existing tenants to downsize, freeing up larger properties that could be used for homeless households. The level of turnover in the social rented sector is estimated to have fallen by around 8% in the past two years. This has put increased pressure on the private rental sector. Advertised private rentals have risen with the average rent having risen by 92% between 2011 and 2023. The average number of listings decreased by 58% during this period.

The petitioner's circumstances until the Lincoln Avenue offer

[13] The following account draws upon the pleadings, the affidavits of the petitioner and her daughter, the report by Julie McDonald, and other documentary material.

[14] The petitioner came to the United Kingdom from Sudan. She claimed asylum. In May 2019 she was granted leave to remain, and in August 2019 she came to Glasgow. She presented to the Council as homeless. She had a housing options and solutions assessment to assess her needs. As a result, on 9 September 2019 the Council determined that she was homeless and not intentionally homeless. They secured interim accommodation for her in a one-bedroom flat. She was due to have a housing prospects interview on 2 October 2019 to

assess her needs for permanent accommodation. At her request the interview was put on hold because she expected her family to join her soon and she wished them to be added to her application. For a variety of reasons, including the Covid19 pandemic, her family (her husband, two sons, three daughters and a niece) did not arrive until 23 September 2020. On 30 September 2020 the Council secured the family interim accommodation in a four-apartment first floor flat in Anniesland, accessible from ground level by going up common stairs comprising 16 steps. The flat had 3 bedrooms, a living room/kitchen, and a bathroom with a bath and over-bath shower, a toilet and a sink. In addition, an en-suite shower room with a shower, toilet and sink adjoined one of the bedrooms. There were no larger properties available. The petitioner was then aged 45, her husband 54, her sons 18 and 17, her daughters 13, 7 and 4, and her niece 13. The petitioner and her husband shared a bedroom, her sons shared a bedroom, and her daughters and niece slept in bunk beds in the remaining bedroom. The Council considered the flat to be suitable interim accommodation for the household at that time and the petitioner did not suggest otherwise.

[15] A housing prospects interview took place on 8 May 2021 to assess the family's permanent accommodation needs. The petitioner wished the household to be housed in a single property. She said she had issues with her knees because of an overactive thyroid, but that she could manage one flight of stairs. She did not say that she wished to be considered solely for ground floor accommodation. Had she done so the Council would have requested an occupational therapy assessment. The household's needs were identified as being a five-apartment four-bedroom property.

[16] The petitioner's mobility deteriorated. On 3 February 2023 Julie McDonald, an occupational therapist with North West Glasgow Rehabilitation Service, prepared a brief report indicating that the petitioner had difficulties with activities of daily living and

increasing difficulty negotiating the stairs in the common close. Equipment had been provided to assist with bed, toilet and bath transfers. Ms McDonald observed that as the equipment stayed in place it would be in the way of the family, and that the petitioner found it difficult to use the equipment over the bath. The petitioner avoided going up and down the stairs by herself due to the risk of falling. As a result, she had given up going to college and was socially isolated at home. With eight occupants in the flat she had very little privacy and dignity. Ms McDonald supported the petitioner's application to be "considered for a more appropriate and low level property". The report was sent to the Council on 3 March 2023. For reasons which are unclear, it appears not to have come to the attention of Mr Howe until 31 July 2023, when he concluded that the interim accommodation was no longer suitable. The Council began to look for alternative interim accommodation.

The Lincoln Avenue offer

[17] On 17 October 2023 the Council offered the petitioner interim accommodation in two three-apartment flats within a block of flats at 200 Lincoln Avenue, Knightswood. One flat, 14/2, was on the 14th floor and the other, 19/6, was on the 19th floor. Each flat had 2 bedrooms, a living room, kitchen and bathroom. There was lift access to the 14th floor, but access to the 19th floor was gained by taking a lift to the 18th floor and going up stairs to the 19th floor. There were no larger flats available at the time. In her affidavit the senior homelessness officer who made the offer, Ms Henderson, set out the steps she took to assess the suitability of the accommodation. She considered the information in the housing options and solutions assessment, the housing notes, and the housing prospects interview. She had regard to: the size and makeup of the household; the petitioner's disability; the petitioner's younger son O being diabetic (but that that did not restrict the type of property that was

suitable for him); the fact that the school-age children attended schools locally; and the petitioner's desire that the girls should reside in the same property as her and her husband and should not live in separate accommodation with her sons. Ms Henderson was satisfied, taking into account the needs of the household, that the flats were suitable interim accommodation. They were within walking distance of the children's schools and were on a bus route to them. They were wind and watertight and met the required minimum accommodation safety standards. They were close enough to allow the household to live together as a family unit. The petitioner, her husband and the girls could have their bedrooms in flat 14/2 and her sons could have theirs in flat 19/6. The petitioner would have lift access between flat 14/2 and ground level. Using lifts or stairs, her sons would have no difficulty coming to flat 14/2, and her husband and the girls would have no difficulty visiting flat 19/6. The petitioner refused the offer on 19 October 2023.

Ms Deeney's report

[18] Ms Victoria Deeney, an occupational therapist, assessed the petitioner on 5 November 2023 for Shelter Scotland Housing Law Service. She prepared a report dated 29 November 2023, notingthat the petitioner suffered from arthritis, hypertension, incontinence, type 2 diabetes and depression. The petitioner's younger son, O, had poorly controlled type 1 diabetes. The petitioner indicated that O required to be around family in case he did not hear his diabetic alarm. The report discussed the family's accommodation needs. The existing accommodation was over-occupied. Ms Deeney recommended that the family be rehoused in a property that was adapted or adaptable to the petitioner's needs. It should have level or lift access, access to an adapted or adaptable bathroom, and adequate bathrooms for the family. While ideally this would be in a six-bedroom house, a four-

bedroom house of sufficient size would suffice. The petitioner told Ms Deeney that the family were willing to consider two properties next to each other. They would consider locations up to a 3-mile radius of their Anniesland accommodation. They explained that the reason they had declined the recent offer of the flats in Lincoln Avenue was that the petitioner would be unable to get to flat 19/6.

Broomhill Lane

[19] On 19 December 2023 the Council made the petitioner a further offer of interim accommodation. At that time they were aware of Ms McDonald's report, but Ms Deeney's report had not been provided to them. This offer was of two three-apartment flats within a block at 10 Broomhill Lane, Broomhill. One flat, 10C, was on the 10th floor and the other, 11F, was on the 11th floor. Each flat had 2 bedrooms, a living room, kitchen and bathroom. There was lift access to each floor, but one lift served the odd floors and one lift the even floors. To move between the 10th and 11th floors by lift it was necessary to take the lift to the ground floor and change lifts. However, there were also stairs to each floor in the block, and the stairs could be used to move between the 10th and 11th floors. In her affidavit the homelessness officer who made the offer, Ms Blackwood, set out the steps she took to assess the suitability of the accommodation. She considered the information in the housing options and solutions assessment, the housing notes, and the housing prospects interview. She had regard to: the size and makeup of the household; the petitioner's disability; O being diabetic (but that that did not restrict the type of property that was suitable for him); the school-age children attended schools locally; and the petitioner's desire that the girls should reside in the same property as her and her husband and should not live in accommodation just with her sons. There were no ground floor properties of a suitable size for the household. The

flats at 10 Broomhill Lane were the most suitable available accommodation. Ms Blackwood was satisfied, taking into account the needs of the household, that they were suitable interim accommodation. They were within walking distance of the children's schools and were on bus routes to them. They were wind and watertight and met the required minimum accommodation safety standards. They were separated by only one floor. They were close enough to allow the household to live together as a family unit. The petitioner would have lift access between ground level and each flat. Using the lift or stairs, her sons would have no difficulty coming to flat 10C and her husband and the girls would have no difficulty visiting the flat 11F. The petitioner could reach each flat by lift and could go between them using the lifts. The petitioner refused the offer shortly after it was made.

The Lord Ordinary's opinion

Breach of the section 29 duty

[20] The Lord Ordinary stated (para [62] of her opinion) that it was a matter for the Council's experienced officers to assess whether interim accommodation was suitable or not. She held (para [68]) that in September 2020 it was not irrational for the Council to conclude that the interim accommodation they provided to the household was suitable. However, as at 3 March 2023 the position had changed and the accommodation had become unsuitable. The Council accepted that it was unsuitable because the petitioner could no longer safely manage the stairs on her own. At para [70] the Lord Ordinary referred to this reason and the petitioner's consequent inability to leave the flat on her own and to other matters:

> "By this point, the property lacked adequate toilet and personal washing facilities which met the accessibility needs of the household (contrary to Article 5(c)). The petitioner had been living in cramped accommodation for well over 2 years and was mainly housebound. The decision to continue to house the petitioner and her family in the first floor three bedroom flat in these circumstances at March 2023, particularly

> in light of the petitioner's mobility difficulties and inability to use required mobility aids or leave the flat without support, was not reasonable."

[21] The Lord Ordinary recognised (para [71]) that the section 29 duty could be discharged by the provision of two units of accommodation, provided that the household was able to live together as a family in practical terms (*Sharif* v *Camden LBC* [2013] UKSC 10, [2013] HLR 16). She did not consider that the Council complied with their section 29 duty by offering the Lincoln Avenue flats or the Broomhill Lane flats (paras [72] and [73]):

> "[72] … The Lincoln Avenue flats are five floors apart, there is no lift access to one of them and the petitioner could not manage the stairs. They do not allow the household to live together in a practical sense as a family. The petitioner, her husband and their daughters and niece would have to stay in the same property in accordance with their cultural beliefs, resulting in the four girls sleeping in the same bedroom which is no different from their current situation. Alternatively, it would result in there being no living room, in breach of Article 5(e) of the 2014 Order.
>
> [73] The flats at Broomhill Lane present the same difficulties as they are also two bedroom flats. The properties are on separate floors, the 11th floor accessible from the 10th floor only by taking the lift via the ground floor. There are potential risks in the event of fire and [*sic*] they require to leave quickly or if the lift is out of order. The distance from the accommodation to the youngest daughter's school would be 40 minutes along a busy road whereas currently it is 5 minutes. They could not walk this long distance themselves and the petitioner would struggle with a bus journey or to walk that distance. The petitioner wishes to avoid multiple moves. The petitioner's refusal of these offers was reasonable for the reasons she has given. The respondent did not make offers of suitable accommodation which were unreasonably refused by the petitioner."

[22] The Lord Ordinary concluded in relation to section 29:

> "In these circumstances, where it has been at least 20 months that the petitioner has been living in these conditions, the respondent having made no other offer of interim accommodation which is reasonable, I find the respondent in breach of its duty under section 29."

Breach of section 31(2)

[23] The Lord Ordinary set out at para [75] of her opinion her reasons for finding the Council in breach of their section 31(2) duty:

> "[75] I accept the respondent has a reasonable period of time to provide suitable permanent accommodation to the petitioner. What is a reasonable time depends on the facts and circumstances. It may be that where a household is living in accommodation and the situation is not pressing, a longer time may reasonably be taken by an authority to provide permanent accommodation. On the other hand, where there is a pressing need to provide accommodation because the current accommodation is unsuitable, the timescale may well be relatively short. It is, as Lady Hale observed in [*R (Aweys)* v *Birmingham City Council* [2009] UKHL 36, [2009] 1 WLR 1506] at paragraph 51, right to take into account the practical realities that the authority finds itself in: the financial constraints the respondent is operating under, the shortage of housing and the difficulty finding larger properties to house bigger families. However, the respondent is under a statutory duty to provide permanent accommodation. The petitioner has been living in cramped accommodation and been mainly housebound since at the latest March 2023. No offer of permanent accommodation has been made to her since she became homeless in September 2019 and her family joined her in September 2020, a period of over 4–5 years. In the circumstances, the time that has elapsed without permanent accommodation being provided is not reasonable. I find the respondent in breach of its duty under section 31(2). Accordingly, I will make declaratory orders in terms of paragraph (*sic*) (i) and (ii) of Statement 4 of the petition."

Mandatory order

[24] The Lord Ordinary's reasons for ordaining the Council to make permanent accommodation available to the petitioner are contained in paras [76] to [85] of her opinion. She had regard to the judgment of Lord Sales JSC in *R (Imam)* v *Croydon LBC* [2023] UKSC 45, [2025] AC 335. She took as her starting point (para [79]) that the Council were in breach of section 31; that the onus was on them to explain why the court should not make an order ordaining them to perform their section 31(2) duty; and that they should satisfy the court that they had taken all reasonable steps to perform it. She acknowledged (para [80]) that the Council had gone some way to explaining why they had not yet secured that permanent accommodation became available for the petitioner's occupation, because of the housing crisis, the very significant difficulties they have in securing accommodation for larger homeless families, their limited resources, the increased demand for and the reduced supply

of housing, and the schemes they have adopted to address the housing shortage. There was not currently a five-apartment property available. However, she reasoned:

> "[81] … It has not been explained why suitable accommodation cannot be acquired out of the respondent's general contingency fund. If accommodation was acquired from that fund, it would not result in funds being diverted from other services which are also subject to financial pressures…"

The Lord Ordinary accepted at para [82] that the Council ought not to move the petitioner up the housing waiting list in a way which would cut across the rules in place for allocating accommodation and deprive others ahead of her in the list. However, she was not satisfied that others would necessarily be so deprived if the Council exercised their discretion to secure the petitioner permanent accommodation before others who were ahead of her. It was a relevant consideration that the petitioner's position had been pressing for over 20 months and that the two offers of interim accommodation had been reasonably refused (para [83]). She was not satisfied that the Council had taken all reasonable steps to discharge their section 31(2) duty.

The interlocutor of 9 January 2025

[25] The Lord Ordinary issued her opinion on 24 December 2024. On 9 January 2025 she pronounced orders finding and declaring that the Council had failed to comply with their section 29(1)(c) and 31(2) duties and ordaining them to make suitable permanent accommodation available by 28 February 2025.

Update

[26] On 31 January 2025 the petitioner was offered and accepted a secure tenancy that had just become available through the AHSP. The property has 5 bedrooms, one of which is only

accessible using stairs. It is situated close enough to the children's schools to be practicable for them to continue to attend there. It is further from the schools than the interim accommodation or the Lincoln Avenue or Broomhill Lane properties are.

The reclaiming motion

Submissions for the Council

[27] In *Glasgow City Council* v *X* [2025] UKSC 13, 2025 SLT 525, 2025 Hous L R 39 the Supreme Court provided authoritative guidance on the proper construction of sections 29 and 31 of the 1987 Act and article 4 of the 2014 Order. While the "needs of the household" are relevant to both the section 29 duty and the section 31 duty, they play a different role in each section. The legislation draws a fundamental distinction between the duty to meet needs in section 31(2) and the duty to take account of needs in section 29 read together with article 4(b). The first is a results or outcome driven duty, and the second is a process duty requiring needs to be considered but not requiring then to be met (Lady Simler JSC at paragraphs 44-48). At the section 29 duty stage some of the household's needs may not be met, but they must be considered in deciding whether the accommodation is suitable. It is for the local authority, with its in-house expertise and experience, to assess the needs of the household in each case (para 53). The assessment of suitability under section 29 and article 4(b) is subject to the supervisory jurisdiction of the court. The control is rationality. Provided the local authority reaches a decision within the range of reasonable decisions available, it will not be open to challenge because some needs have not been met (para 54).

[28] In so far as the Lord Ordinary suggested (at paras [69] and [70] of her opinion) unsuitability because of reasons other than those arising from the petitioner's difficulties with stairs, the Council do not accept that there was such unsuitability.

[29] The Lord Ordinary also erred in her approach to the offers of interim accommodation. The relevant questions were whether the housing officers took account of the household's needs in determining that the accommodation offered was suitable and whether their determination that it was suitable was irrational. The Lord Ordinary did not focus on those questions. She did not refer to the affidavit evidence of the officers. Rather, in each case she asked herself whether the petitioner's refusal of the offer was reasonable. She assessed for herself whether the accommodation was suitable. She also erred in reasoning that if the petitioner and the four girls used the three rooms in one flat as bedrooms they would not have "use of a living room", contrary to article 5(e). On a proper interpretation of article 5(e) there can be use of a living room where a room may be used as a living room during the day but as a bedroom at night (cf *Glasgow City Council* v *X*, para 56). In the case of Broomhill Lane she erred further in opining that the accommodation was unsuitable because there were potential risks in the event of fire. That was not a claim raised in the petitioner's pleadings, and it was contradicted by Ms Blackwood's evidence that the accommodation met minimum accommodation safety standards. The Lord Ordinary also erred in having regard to the petitioner's wish to avoid multiple moves. That was not relevant to the question whether Ms Blackwood's conclusion (that the accommodation was suitable) was a conclusion she was entitled to reach.

[30] The Lord Ordinary having erred in her approach, it was for this court to consider whether the housing officers' assessments that the accommodation at Lincoln Avenue and Broomhill Lane was suitable were irrational. They were not. In each case the officer took into account the needs of the household. In each case the officer had been entitled to conclude that the two flats were sufficiently close to each other to allow the household to live together in practical terms as a family, and that the accommodation did not lack

adequate toilet and personal washing facilities which met the accessibility needs of the household. In each case they were entitled to conclude that the accommodation had the use of a living room; and that schools were reasonably accessible from the accommodation.

[31] The Council had been in breach of their section 29 duty only for the period between 3 March 2023 and the making of the Lincoln Avenue offer of interim accommodation on 17 October 2023.

[32] The Lord Ordinary had been correct that on a proper construction of section 31 a local authority require to secure permanent accommodation within a reasonable time of becoming satisfied that an applicant is homeless and of their being not satisfied that she became homeless intentionally. The section 31 duty does not require that the Council secure that permanent accommodation becomes available for occupation immediately. The 1987 Act recognises that there is likely to be a period when an applicant is provided with interim accommodation until permanent accommodation becomes available (section 29(1)(c)); and in terms of sections 20(1) and 20(1ZA), social landlords must secure that in the selection of tenants homeless persons are to be accorded a "reasonable preference" (but no more than that).

[33] The homelessness provisions in the Housing Act 1996 and in the Housing (Scotland) Act 1987 differ in material respects. Section 31 of the 1987 Act and section 193 of the 1996 Act do not mirror each other, and they do not serve exactly the same purposes. Accordingly, caution should be exercised when considering whether observations about section 193 apply equally to section 31. Unlike the section 31(2) duty, the section 193(2) duty does not involve securing that permanent accommodation becomes available. Moreover, the better view is that although the section 193(2) duty arises immediately the requirements of the subsection are met, generally it would not be breached unless the authority had had a reasonable time

to discharge it and had failed to do so (*R (Elkundi)* v *Birmingham City Council*, [2022] EWCA Civ 601, [2022] QB 604, Lewis LJ at para 77; *R (Imam)* v *Croydon LBC*, Lord Sales JSC at paras 37-38).

[34] With section 31, in each case the reasonable time for performance will depend on the whole circumstances of the particular case, including whether the section 29 duty is being performed, the particular accommodation requirements of the applicant, and whether such accommodation is currently available. If an applicant is in suitable interim accommodation and suitable permanent accommodation is in very short supply, the reasonable time period will be longer than it would otherwise be. Since the Lord Ordinary erred in holding that the offers of Lincoln Avenue and Broomhill Lane were not suitable interim accommodation, and those were material factors, her decision that the Council were in breach of section 31(2) was flawed, and the matter was at large for this court. The court should conclude that, in the whole circumstances, at the time of the Lord Ordinary's decision the point had not been reached where the Council were in breach. With the exception of the 7 month period between 3 March and 17 October 2023, the Council had duly performed their section 29 duty by securing suitable interim accommodation and making the two offers. The particular requirements of the petitioner's household - a ground floor five-apartment property adapted or adaptable to the petitioner's disability - could only be met by a property for which there was high demand and scarce supply. It was inevitable that a significant period would be likely to elapse until such a property could be secured.

[35] If, contrary to the Council's submissions, they were in breach of their section 31(2) duty at the time of the Lord Ordinary's decision, the Lord Ordinary erred in ordaining them to perform that duty. There was no good basis for concluding that the Council would not respond appropriately to a declarator that they were in breach. There was no history of the

Council failing to respond appropriately to declarators, let alone routinely so failing. They had explained why resorting to general reserves was not an option. The Lord Ordinary failed to have due regard to the court's proper constitutional role. By ordaining performance she took the matter out of the Council's hands and made the court the primary actor. The court does not have the expertise or experience to assume that role, and it is not constitutionally appropriate that it should do so unless it is very clear indeed that there is no other option. The Lord Ordinary ought to have been more mindful of the legal consequences of an enforcement order, such as possible contempt of court proceedings (*Imam*, para 45); that such an order might undermine to an unjustified degree the ability of the authority to fulfil functions conferred on it by Parliament and act in the public interest (*Imam*, para 45); and that it risked creating an unfair situation by giving the petitioner undue priority over others with an equal or better claim (*Imam*, para 45).

Submissions for the petitioner

[36] The Council accepted that between 3 March 2023 and the offer of Lincoln Avenue accommodation the interim accommodation was unsuitable. It was unsuitable for all of the reasons the Lord Ordinary referred to. Thereafter the crucial issues were whether the accommodation offered at Lincoln Avenue and Broomhill Lane was suitable interim accommodation. Interim accommodation may be suitable even if it is not a single unit, provided it allows a household to live together as a family in practical terms (*Sharif* v *Camden LBC*, Lord Carnwath at paragraphs 17 and 23, Lord Hope of Craighead at paragraph 27.) In essence, the petitioner's case before the Lord Ordinary had been that, given her inability to climb stairs and her general mobility problems, neither of the two-unit combinations satisfied the *Sharif* test because she would not be able to access one of the flats.

If the mother of a family could not access one of two units offered as accommodation the household could not be said to be truly living together as a family. There was also a specific need for the petitioner to be able to access the flat where O lived, to monitor his diabetes. It was accepted that if access by the petitioner to both flats was not vital the thrust of the petitioner's argument that Lincoln Avenue and Broomhill Lane were unsuitable would be undermined.

[37] On a fair reading of her opinion the Lord Ordinary had applied the correct test. She had been entitled to consider all of the material placed before her and decide whether it had been reasonable of the officers to conclude that the offers of interim accommodation at Lincoln Avenue and Broomhill Lane were suitable interim accommodation. She had been entitled to decide that the conclusions of the officers had not been reasonable. She did not misdirect herself in relation to the construction or application of article 5(e) of the 2014 Order. It was accepted that the requirement that there be "the use of a living room" did not require that in every case there be a room which was used exclusively as a living room. However, the position here was that the flat the petitioner would require to live in at Lincoln Avenue or Broomhall Lane would require to have each of the three apartments used as a bedroom (because her daughters and niece had to live with her), and therefore the petitioner would not have the use of a living room. Nor had the Lord Ordinary erred in considering a potential risk to the petitioner in the event of fire. That had been a matter mentioned in the petitioner's affidavit.

[38] In the whole circumstances the Lord Ordinary was correct to find that the Council had been in continuous breach of their section 29 duty since 3 March 2023. If, contrary to the petitioner's submissions, her decision on this point was vitiated by any of the errors suggested by the Council, then the matter was at large for this court. The court should

decide for itself on the material before it whether the officers' assessments that Lincoln Avenue and Broomhill Lane were suitable interim accommodation had been irrational. It should hold that they had been.

[39] It was accepted that whether the Council continued to be in breach of their section 29 duty was a relevant consideration when it came to assessing whether they were in breach of their section 31 duty to secure permanent accommodation. The Lord Ordinary had been right to look for guidance from cases in England and Wales involving the duty under section 193(2) of the Housing Act 1996. That provision and section 31 of the 1987 Act are substantially equivalent and they have similar effect (*R (Aweys)* v *Birmingham City Council*, Lord Hope of Craighead at para 3; *X* v *Glasgow City Council* [2023] CSIH 7, 2023 SC 153, Lord Tyre at para [44]; *Glasgow City Council* v *X* , Lady Simler JSC at para [46]). Like the duty under section 193(2) of the 1996 Act, the section 31(2) duty was immediate, unqualified and undeferrable. It arose immediately an applicant was assessed as being (not intentionally) homeless (*Imam*, Lord Sales at para 37). However, although the duty arose immediately, it was accepted that a local authority would not be in beach of their duty to discharge the duty until they had had a reasonable time to do so, albeit that a reasonable time should be short (*Imam*, Lord Sales at para 38). That was the basis upon which the Lord Ordinary had proceeded and she had been correct to do so. She had been entitled to decide that in the whole circumstances, including the level of demand for and scarcity of the sort of accommodation that the petitioner required and the pressures on the Council's limited resources, that more than a reasonable time had elapsed since the section 31(2) duty had first arisen, and that the Council were in breach.

[40] If, contrary to the petitioner's submissions, the Lord Ordinary's decision in relation to breach of the section 29 duty could not be supported, or if the court concluded that she had

erred in her approach to the construction or application of section 31(2), the question whether the Council breached their section 31(2) duty would be at large for this court. Even if she had otherwise erred, the Lord Ordinary had been right to conclude that it had not been demonstrated that the Council had explored all possible options for providing permanent accommodation. In the whole circumstances the court should conclude that the Council had breached section 31(2).

[41] If the Lord Ordinary was correct to find there was a breach of section 31(2), she was entitled to make the order ordaining the Council to perform their duty. She took account of all of the relevant factors. She was mindful of the proper constitutional roles of the court and local authorities in relation to the 1987 Act, of their respective spheres of expertise and experience, of the danger of such an order producing unfairness to other claimants with equal or greater needs who may have been waiting longer for accommodation, and of the legal consequences (such as contempt of court) which could follow upon the making of such an order. Nevertheless, it had been open to her to decide that this was a case where pronouncing a declarator of breach might not suffice to make the Council secure that permanent accommodation becomes available for the petitioner.

Decision and reasons

[42] The Council secured permanent accommodation for the petitioner on 31 January 2025. Since the reclaiming motion will not affect that, it raises issues which are largely of academic interest to her. However, the courts have a discretion to hear claims involving questions of public law even if there is no longer a live issue directly affecting the rights and obligations of the parties, if there is a good reason in the public interest for doing so (*R* v *Secretary of State for the Home Department, Ex p Salem* [1999] 1 AC 450, Lord Slynn of Hadley at

p 457; *R (Brooks)* v *Islington LBC* [2016] PTSR 389, [2016] HLR 2, Lewis J at paras 25-26). We are satisfied that it is appropriate that we should adjudicate upon this reclaiming motion. Some of the issues are dependent upon the precise factual context and decisions in relation to them may be unlikely to be of assistance to housing authorities and individual applicants who are homeless in future cases; but our decision in relation to some matters may assist them.

Breach of section 29 duty?

[43] A local authority's duty to take account of a homeless household's needs (section 29 read together with article 4(b)) is a process duty requiring all of their needs to be taken into account, but not requiring that all of those needs be met (*Glasgow City Council* v *X*, Lady Simler JSC at paras 41-48). It is for the local authority, with its in-house expertise and experience, to assess the suitability of accommodation in each case (para 53). Accommodation secured under section 29 is a staging post along the way to permanent accommodation under section 31, and as a matter of practical reality there are likely to be cases where what is suitable for a homeless person to occupy on an interim basis will be different from what is suitable in the longer term (Lady Simler at para 46). The assessment of suitability under section 29 and article 4(b) is subject to the supervisory jurisdiction of the court. The control is rationality. Provided the local authority takes account of the needs of the household, its suitability assessment is not open to challenge merely because some needs have not been met (Lady Simler at para 54). In approaching a scheme of this kind the court must have regard to the practicalities of the situation (Lady Simler at para 46).

[44] It is common ground that the Anniesland flat was unsuitable interim accommodation after 3 March 2023 because the petitioner's increased problems with mobility made it very

difficult for her to negotiate the common stairs, with the result that, unless assisted, she was largely housebound. The Lord Ordinary suggested that there were also further matters making it unsuitable, namely that it lacked adequate toilet and personal washing facilities to meet the accessibility needs of the household (contrary to Article 5(c)); and that the petitioner was unable to use essential aids there. That is not a view which the Council required to reach on the material before them, and it is not a view we would have reached. The accommodation contained a bathroom with a bath, sink, and toilet where equipment had been installed to assist the petitioner. It also contained a shower room with a shower, sink and toilet. The information before the Council in March 2023 did not indicate that the petitioner could not use equipment to assist her mobility due to limited space (cf para [69] of the Lord Ordinary's opinion). That was not what Ms McDonald's report said. It stated that the petitioner found it "difficult" to use the equipment over the bath, but it seemed clear that she could and was using it. Our reading of the report from Ms Deeney, which was not prepared until 29 November 2023 (and does not appear to have been provided to the Council until sometime in 2024) is to similar effect.

[45] Ms Henderson assessed Lincoln Avenue as being suitable interim accommodation in terms of article 4(b) and Ms Blackwood came to the same view in relation to Broomhill Lane. Both were housing officers with expertise and experience. The Lord Ordinary ought not to have taken issue with those assessments unless satisfied that they were irrational having regard to the information the officers had when they made their assessments. The Lord Ordinary seems to have lost sight of that constraint.

[46] Rather than focusing upon whether each officer's assessment was one she was entitled to make, the Lord Ordinary's primary focus was whether it was reasonable for the petitioner to refuse each offer. That was not the same issue. The Lord Ordinary required to

examine the rationality of the housing officers' assessments, not the rationality of the petitioner's refusals. An applicant might well have personal preferences which make her decision to decline an offer of interim accommodation a rational one. However, it does not follow that that the officer's assessment that accommodation is suitable is irrational.

[47] Surprisingly, although the critical issue on this aspect of the case was the rationality of the officers' assessments, the Lord Ordinary's opinion contains no discussion of the terms of their affidavits.

[48] In para [72] the Lord Ordinary set out the basis upon which she considered Lincoln Avenue to be unsuitable. The gist was that because flat 19/6 is 5 floors above flat 14/2 and could only be accessed by using stairs between the 18th and 19th floors, the accommodation would not allow the household to live together in a practical sense as a family. The Lord Ordinary's primary task was not to form her own view on that issue. Her task was to consider whether the assessment the housing officer with appropriate expertise and experience had made, that the accommodation would allow the household to live together in a practical sense, was irrational. In our opinion that high threshold had not been met. The flats were within the same block. While the petitioner would have difficulty using the stairs between the 18th and 19th floors, the remainder of the family would not. The members of the family who slept in flat 19/6 could use the stairs and lift to get to flat 14/2 where the petitioner would be likely to reside, and her husband and the girls could use the stairs and lift to go to flat 19/6. In those circumstances we do not accept the contention that it was perverse of the officer not to consider it was essential that flat 19/6 be accessible by the petitioner. We are not satisfied that at the time the officer made his assessment the Council had been apprised of the petitioner's desire to have access to the place where O slept in order to monitor his diabetes medication. However, even if they had been, it would not

have affected our decision. If monitoring was required, we see no reason why it could not have been done by a member of the family other than the petitioner.

[49] None of the other issues concerning Lincoln Avenue which the Lord Ordinary mentions at para [72] cause us to conclude that the housing officer's assessment was one she was not entitled to make:

> "[72] … The petitioner, her husband and their daughters and niece would have to stay in the same property in accordance with their cultural beliefs, resulting in the four girls sleeping in the same bedroom which is no different from the current situation. Alternatively, it would result in there being no living room, in breach of Article 5(e) of the 2014 Order."

The housing officer took account of the petitioner's preference that the girls reside in the same flat as the petitioner and her husband. It would be her choice whether to have the girls in one room or for the living room to be used as a living room during the day but as a bedroom at night. On either approach, the petitioner would have had the use of a living room in terms of article 5(e). As Lady Simler observed in *Glasgow City Council* v *X* at paragraph 56:

> "56 … A four-apartment flat has three bedrooms and a living room. Although this would not be possible on a permanent basis, the living room could be used on a temporary basis for the dual purpose of living room by day and a bedroom by night … This also met the requirement of providing a living room in article 5."

In indicating otherwise, the Lord Ordinary erred. She also erred in suggesting that the household's accommodation would not be improved by moving to Lincoln Avenue. As compared to Anniesland, where there were 3 bedrooms and a living room, the household would have 4 bedrooms and 2 living rooms (one in each flat); or 4 rooms used exclusively as bedrooms, 1 used exclusively as a living room, and 1 used as a living room by day but as a bedroom by night.

[50] It follows that the Lord Ordinary did not have a sound basis for disturbing the housing officer's assessment that flats 14/2 and 19/6 were suitable interim accommodation where the household could live together as a family in a practical sense. The duty to secure interim accommodation is less stringent and demanding than the duty to secure permanent accommodation. The accommodation offered was suitable on an interim basis even though it would have been likely to be unsuitable as permanent accommodation (cf *Glasgow City Council* v *X,* Lady Simler at para 46). We are satisfied that the officers did not err in concluding that the accommodation complied with the requirements of the 2014 Order.

[51] The housing officer's assessment that the flats at Broomhill Lane were suitable interim accommodation was even less assailable. The accommodation provided was broadly similar to that at Lincoln Avenue. Most of what we have said in relation to Lincoln Avenue also applies to Broomhill Lane, but at Broomhill Lane the two flats were even closer together - only one floor apart. Contrary to a suggestion made at one point by senior counsel for the petitioner, there is both stair access and lift access to all floors. (Indeed, the petitioner avers at Sta 28 of the petition that she "cannot climb the external stairs from the 10th to the 11th floors" (*sic*)). Each flat would have been accessible by lift by all members of the household, including the petitioner. There would have been no need for her to use stairs in order to reach either flat. All of the other members of the household would have had no difficulty going up and down a single flight of stairs between the flats. The case for saying that this interim accommodation would have permitted the household to live together as a family in a practical sense is compelling.

[52] The Lord Ordinary gives some additional reasons for concluding that the accommodation is unsuitable. She suggests that there may be potential risks in the event of fire. That contention was not advanced by the petitioner before or at the time of the offer of

accommodation. Nor indeed it was it raised as a matter of averment in the petition. It is a new contention made in the petitioner's much more recent affidavit. It flies in the face of the housing officer's affidavit evidence that the accommodation complies with minimum accommodation safety standards (including fire standards)(article 4(c) of the 2014 Order, read together with the definition of minimum accommodation safety standards in article 2)). Another reason for unsuitability the Lord Ordinary adverts to is that the youngest daughter's school is further away from Broomhill Lane than from the Anniesland flat (which is very close indeed to that school). Be that as it may, there is no suggestion that the children's schools were either not in the locality of Broomhill Lane or reasonably accessible by public transport from it in terms of article 5(b) of the 2014 Order. The housing officer was satisfied that the children's schools were accessible from Broomhill Lane. There was no proper basis for the Lord Ordinary to differ from the officer's view on either of these points. The final point which the Lord Ordinary makes is that the petitioner wished to avoid multiple moves. That may be so, and it may explain her refusal of the offer, but it is not relevant to the question whether the officer's assessment that the interim accommodation offered was suitable was one which he was entitled to make.

[53] We conclude that the period between 3 March 2023 and 17 October 2023 (when the Lincoln Avenue offer was made) was the only period when the Council were in breach of their duty to secure suitable interim accommodation for the petitioner's household. The Council secured such accommodation for the household on 17 October 2023 and, despite the offer being refused, they secured further such accommodation for the household on 19 December 2023. The Council thereby discharged their section 29 duty notwithstanding the petitioner's rejection of the accommodation offered (cf *R (Brooks)* v *Islington LBC*, Lewis J at paras 31-41, 42-47).

Breach of section 31 duty?

[54] The Lord Ordinary proceeded on the basis that, although the section 31 duty to secure that permanent accommodation becomes available arises immediately that a local authority are satisfied that an applicant is homeless and are not satisfied that he became homeless intentionally, on a proper construction of the provision the authority have a reasonable time in which to discharge the duty before they ought to be treated as having breached it. Both parties considered that to be the correct approach. We shall proceed on that basis, reserving our position on the point, since we have not had the advantage in this case of hearing developed submissions in relation to it. However, we make the following observations.

[55] There is no doubt that aspects of the legislative context - in particular that section 29(1)(c) envisages that there is likely to require to be a period when interim accommodation will be secured until permanent accommodation can be secured - might be thought to provide powerful support for a construction which avoids the scenario of a local authority being in breach where they do not secure that permanent accommodation is available the instant that the section 31 duty arises. The construction also makes sense given the practical difficulties, realities and constraints surrounding the securing of permanent accommodation which Parliament must have been well aware of at the time of section 31's enactment.

[56] We also note that the duties under section 31(2) of the 1987 Act and section 193(2) of the 1996 Act are not wholly equivalent, and that because of that some caution may be required before applying judicial *dicta* concerning section 193(2) to section 31(2). Under the 1996 Act a local authority have an initial duty to take reasonable steps to secure suitable accommodation for a homeless applicant for up to 12 months (section 189B). Where the local authority remain satisfied that an applicant is homeless, become satisfied that he has a

priority need, and are not satisfied that he is homeless intentionally, the initial duty ends 56 days later (section 189B(4)). In terms of section 193(2), the authority's duty is then that "they shall secure that accommodation is available for occupation by the applicant" (often referred as the "main" or "full" duty). However, unlike the duty under section 31(2) of the 1987 Act, the section 193(2) duty does not involve securing that permanent accommodation becomes available for occupation. It is a duty relating to temporary accommodation, albeit that such accommodation may continue for lengthy periods. As Baroness Hale of Richmond observed in *R (Aweys)* v *Birmingham City Council* at para 47: "Accommodation under section 193(2) is another kind of staging post, along the way to permanent accommodation in either the public or private sector". The duty comes to an end if, *inter alia*: the applicant accepts an offer of accommodation under Part 6 (section 193(6)(c)); or accepts an offer of an assured tenancy (section 193(6)(d)); or refuses a final offer of accommodation under Part 6 (section 193(7)); or accepts a private rented sector offer or refuses such an offer (section 193(7AA)).

[57] The section 29(1)(c) duty arises at the same time as the section 31 duty, and it continues until the section 31 duty is discharged. There is no analogous duty under the 1996 Act to provide interim accommodation where the section 193(2) duty has arisen. The sole duty is under section 193(2), which duty may often be discharged by providing a series of different types of temporary accommodation, some of which, depending on the circumstances and the degree of urgency, may be more short-term than others (*Elkundi*, Lewis LJ at paras 80, 82; *Imam*, Lord Sales at paragraph 38). It is not difficult to see that the time reasonably required to discharge a duty to secure permanent accommodation is made available is likely to be longer than that which is reasonably required to secure that temporary accommodation is made available. In some cases the former period may well not be likely to be a short one (cf *Imam*, Lord Sales at paragraph 38).

[58] It is common ground that the reasonableness of the time taken to perform a local authority's section 31 duty ought to be determined in light of all of the relevant facts and circumstances, including the practicalities of the situation; whether there has been compliance with their section 29 duty; the scarcity of the particular accommodation required; and the extent to which there may be competing or higher priority demands for such permanent accommodation (*R (Aweys)* v *Birmingham City Council*, Lord Hope of Craighead at paras 3-4, Baroness Hale of Richmond at paras 50-51). The Lord Ordinary proceeded upon the basis that there had been a failure to discharge the Council's section 29 duty from 3 March 2023 until the date of her decision, a period of over 20 months. That was a material error because there was no such failure during the period from 17 October 2023. Whether at the time of the Lord Ordinary's decision there had been a failure by the Council to discharge their section 31 duty within a reasonable time is therefore at large for this court to decide. We accept that although the section 31 duty to the petitioner first arose on 9 September 2019, at her request the process was paused to await the arrival of her family. It resumed when they joined her on 23 September 2020. Thereafter, the only period when the accommodation secured (Anniesland and the offered properties) did not comply with the Council's section 29 duty was the 7 months between 3 March 2023 and 17 October 2023.

[59] This was not a case where the Council were sitting on their hands, as the affidavits of its officers make clear. There were a number of possible sources from which suitable accommodation might become available, and Mr Howe explained, convincingly, why it would be almost certainly futile with large households to resort to the referral process under section 5 of the Housing (Scotland) Act 2001, because the RSL would be unable to provide a property. Experience had shown that working together with RSLs is a more efficient way of securing permanent accommodation than making section 5 referrals.

[60] We recognise, of course, that accommodation satisfying the requirements of section 29 and the 2014 Order is interim accommodation which is suitable on a temporary basis, but may not meet all of the household's needs and may not be suitable in the longer term. The provision of such accommodation is not an alternative or a substitute for providing permanent accommodation. The time will arrive when, even with such provision, a household will simply have been in temporary accommodation for too long. However, in the whole circumstances here our judgement is that that time had not been reached when the Lord Ordinary issued her opinion. We would have reached that view even if Lincoln Avenue had not been suitable interim accommodation and the period during which there had been a breach of section 29 had been 9 months rather than 7 months.

Mandatory order?

[61] Since we find that there was no breach of section 31, the question whether the Lord Ordinary erred in making a mandatory order for performance does not arise. The relevant principles were fully discussed by Lord Sales in *Imam*. If the Council had been in breach the onus would indeed have been on them to satisfy the court that all reasonable steps to discharge the duty had been taken. If there had been a breach, and we had been in the Lord Ordinary's shoes, we would have exercised our discretion differently from her. We would not have made a mandatory order at the stage she did. We see force in the Council's submissions on this issue. The Lord Ordinary observed (para [81]) that it "had not been explained why suitable accommodation cannot be acquired out of the general contingency fund." However, the affidavit evidence from Ms Hogg (paras 20-23) made it clear that general reserves were far lower than they ought to have been and were already far below what was needed to cover the financial risks the IJB and the Council were exposed to. There

was no indication that the Council would be unlikely to discharge their duty in response to a declarator of breach, and no history of such failures in the past. In those circumstances we would have been more inclined than the Lord Ordinary was to rely upon the Council to comply with a declarator of breach and fulfil their duty (cf. *Craig* v *H M Advocate* [2022] UKSC 6, 2022 SC (UKSC) 27, Lord Reed of Allermuir PSC at paras 45-46). We would have been more reluctant to assume the Council's role, and less inclined to expose them to the possibility being in contempt of court. After pronouncing the declarator of breach, we would have continued the case for a short period (perhaps 2 to 3 months) to allow the Council to fulfil their duty. In the event of the duty not being performed by the time of the continued hearing (or the court not being satisfied that the securing of permanent accommodation was underway and imminent), the issue of making a mandatory order could be revisited.

Disposal

[62] We shall allow the reclaiming motion, recall the Lord Ordinary's interlocutor of 9 January 2025. It is unnecessary to substitute a declarator that the Council were in breach of their section 29(1)(c) duty between 3 March 2023 and 17 October 2017 – the Council accept they were in breach for that period. We shall repel the petitioner's pleas-in-law, sustain the respondent's second, third and fourth pleas-in-law, and refuse the petition. We shall reserve all questions of expenses meantime.