CO/1534/2015

Neutral Citation Number: [2015] EWHC 2579 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 4 August 2015

B e f o r e:

JOHN BOWERS QC
(Sitting as a Deputy High Court Judge)

Between:
THE QUEEN ON THE APPLICATION OF SG
(A protected party, by Her Litigation Friend, The Official Solicitor)

Claimant

v

LONDON BOROUGH OF HARINGEY

Defendant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested Party

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Mr Jamie Burton (instructed by Wilson Solicitors) appeared on behalf of the **Claimant**
Ms Sarah Okafor (instructed by London Borough of Haringey) appeared on behalf of the **Defendant**

J U D G M E N T
(As approved)

THE DEPUTY JUDGE:

1. This case is mainly, but not entirely, concerned with the provision of accommodation to the claimant, who was until very recently an asylum seeker. She has now been granted asylum on 3 July 2015. As far as the parties are aware, this is the first case to be heard on the accommodation provisions under the Care Act 2014. I am grateful to both counsel not only for their submissions at the hearing but further detailed written submissions after it, all of which I have taken into account.

2. The claimant seeks to review the defendant's decisions of 28 January 2015, by which it refused to accommodate the claimant pursuant to section 21 of the National Assistance Act 1948, and 20 May 2015, by which the defendant decided the claimant was not eligible for care and support under the Care Act 2014 (save in limited respects) and in particular was not entitled to be provided with accommodation under the 2014 Act. Two different Acts are therefore involved.

3. It came before me as a rolled-up hearing because the issues as they were presented at the time of the order on 7 April 2015 led Andrews J to form the view that:

> "The question whether the respondent's duty under section 21 National Assistance Act is engaged and whether the care and attention provided by the complex care team is adequate for her needs is highly fact-specific. It needs to be resolved sooner rather than later ... it may be that the respondent's assessment that her need for care and attention can be met by means other than the provision of residential accommodation cannot be disturbed and that complaints about her current accommodation should be addressed elsewhere."

These are, in my view, very prescient observations.

4. I should say that the Home Office as interested party has expressed no wish to make representations at any stage.

The facts

5. The claimant is an Afghan national who arrived in the UK in October 2013. Her name has been anonymised throughout. She has seven children. She does not know the whereabouts of her children or her husband.

6. Having applied for asylum, the claimant was provided with, and continues to be provided with, asylum support pursuant to section 95 of the Immigration and Asylum Act 1999. By this route she has accommodation together with four other women and some limited financial assistance. Since February 2014, however, representations have been made that she should be housed by the local authority.

7. The claimant is a victim of torture, rape and emotional and physical abuse. She suffers from severe mental health problems, including complex PTSD, insomnia, depression and anxiety. She speaks no English and is illiterate. She is in need of services to meet her

needs for care and support. I refer to part of the letter from JS Medical Practice dated 5 January 2015 at I14 in the bundle:

> "[The claimant] faces significant limitations with her activities of daily living due to her post-traumatic stress disorder and resulting anxiety and depression. She struggles with all manner of basic tasks, including self care, preparing and eating food, management of simple tasks and even struggles to take her medication. There is no doubt that she requires significant support to ensure good concordance with taking her medication and achieving a good level of nutrition as some days she simple doesn't eat. She has lost a significant amount of weight in the last few months."

8. The defendant has filed helpful statements from the claimant's care coordinator Ms Beegun (D53 to 57 of the Bundle) and the social worker Ms Tekyi (D75 to 81), which disclosed amongst other things the intensity of the support they and others are providing to the claimant and why it is and has been beneficial to her to receive this support. Ms Beegun for example states at paragraph 9 that "since the claimant has been provided with support that she receives from this team ... she has been able to feel secure, there has been a definite improvement in her presentation". She describes the accommodation she has as "reasonably spacious ... clean and tidy". At paragraph 18 she says she is making "steady albeit slow progress". There was also an impressive witness statement from a volunteer at the North London asylum seeker drop-in centre, Anna Mohr-Pietsch, who dealt with attending appointments with her (A44 and J1-9). Her statement makes clear graphically how isolated the claimant is. Further evidence was obtained from the claimant's GP, which the claimant submits is consistent with the claimant being a vulnerable person in need of care and support.

9. The defendant completed a section 9 Care Act assessment and an adult care and support plan providing, together with a care programme approach plan set out by Dr Gupta, how the claimant's ancillary social care needs are to be met.

The issue

10. I will have to delve further into the submissions of the parties below, but it is helpful to see at this stage how battle is joined between them. The Care Act came into force on 1 April 2015 and there was simultaneous amendment of section 21 of the National Assistance Act 1948. Before that there was a relatively clear distinction that destitute asylum seekers who had a need for accommodation-related care and attention which did not arise solely because of destitution or its anticipated effects must be "looked after" by the relevant local authority, whereas able-bodied asylum seekers who did not have such a need remained the responsibility of the Home Secretary. The amendment was only made for England.

11. The claimant maintains that at the date of the January 2015 decision the defendant was under a duty to provide her with accommodation pursuant to section 21 of the 1948 Act as she has need for accommodation-related care and assistance. She further contends that in any event at the date of the decision of May 2015 she was entitled to care and support, including accommodation, from the defendant under the Care Act 2014.

12. The claimant also says that, as was the case under section 21 of the 1948 Act, in determining whether or not accommodation must be provided under the Care Act 2014 the defendant was obliged to ignore altogether the fact that she had accommodation under the 1999 Act: R (on the application of Westminster City Council) v National Asylum Support Service [2002] UKHL 38. The defendant questioned this at the hearing but concedes it in further written submissions. Furthermore and in any event, the claimant contends the May 2015 decision was unlawful on four distinct grounds, only three of which were pursued before me.

13. In response to the claimant's pre-action protocol letter, the defendant contended in its letter of 10 February 2015 that the claimant did not have a need for accommodation-related care and attention and was therefore not entitled to accommodation under the National Assistance Act. With respect to the position under the Care Act, the defendant maintains that the claimant's current community care package was adequate and therefore there is "no entitlement to having [her] needs met through the provision of accommodation" (C9 paragraph 30). The defendant also denies that the decision of May was unlawful under any of the grounds advanced by the claimant.

The law

14. It is necessary first to consider the National Assistance Act then the Care Act, since the former governs the first decision under challenge and the latter the second. I then discuss the preliminary points taken by the defendant effectively to resist permission to proceed for judicial review, the three substantive points of contention, and then the most contentious point of provision of accommodation.

15. I should say at once that I am not prepared to grant relief under the National Assistance Act because I do not think the transitional provisions apply, but I consider it necessary to consider its terms in some detail, not least to contrast its provisions with the relevant provisions of the Care Act, and also to explain why not all of the statements in the leading cases are still authoritative.

National Assistance Act

16. Section 21 of this Act states:

> "Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing—
>
> (a) residential accommodation for persons aged eighteen or over who reason by reason of ... disability or any other circumstances are in need of care and attention which is not otherwise available to them."

17. Approvals and directions under subsection (1) were made by the Secretary of State in LAC (93) 10 which "directs local authorities to make arrangements under section 21(1)(a) of the Act in relation to persons who are ordinarily resident in their area."

18. The leading cases are R (M) v Slough Borough Council [2008] UKHL 52 and R (SL) v Westminster City Council [2013] UKSC 27. One of the issues between the parties is the extent to which the guidance therein is still relevant to the new statutory regime.

19. Crucially, the statutory test poses three conditions for accommodation: (i) the person is in need of care and attention; (ii) the need arises by, amongst other things, disability; and (iii) care and attention is not available otherwise.

20. In M, the claimant, who was HIV positive, had an assessed need to keep his medication in a fridge and to see his doctor every three months. The House of Lords held that this did not amount to "a need for care and attention": and stated

> "32. My Lords, a test as strict as that proposed by Mr Howell might not even include Mrs Y-Ahmed, let alone Mrs O and Mr Bhikha. It might not include a great many people who have been accommodated in old people's homes over the years since 1948. Our ideas of when people need to be in residential care have changed a good deal since then. Much of the care which used to be provided in a residential setting can now be provided at home. Furthermore, section 26(1A) requires that if arrangements are made under section 21(1)(a) for accommodation 'together with nursing or personal care' for people who are or have been ill, people who have or have had a mental disorder, people who are disabled or infirm, or people who are or have been dependent on alcohol or drugs, then in effect the home must be registered under the Care Standards Act 2000. Thus accommodation may be arranged under section 21(1)(a) without including either nursing or personal care. So the 'care and attention' which is needed under section 21(1)(a) is a wider concept than 'nursing or personal care'. Section 21 accommodation may be provided for the purpose of preventing illness as well as caring for those who are ill.
>
> 33. But 'care and attention' must mean something more than 'accommodation'. Section 21(1)(a) is not a general power to provide housing. That is dealt with by other legislation entirely, with its own criteria for eligibility. If a simple need for housing, with or without the means of subsistence, were within section 21(1)(a), there would have been no need for the original section 21(1)(b). Furthermore, every homeless person who did not qualify for housing under the Housing Act 1996 would be able to turn to the local social services authority instead. That was definitely not what Parliament intended in 1977. This view is consistent with Ex parte M, in which Lord Woolf emphasised, at p 20, that asylum seekers were not entitled merely because they lacked money or accommodation. I remain of the view which I expressed in Wahid, at para 32, that the natural and ordinary meaning of the words 'care and attention' in this context is 'looking after'. Looking after means doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection

from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list. The provision of medical care is expressly excluded. Viewed in this light, I think it likely that all three of Mrs Y-Ahmed, Mrs O and Mr Bhikha needed some care and attention (as did Mr Wahid but in his case it was available to him in his own home, over-crowded though it was). This definition draws a reasonable line between the 'able bodied' and the 'infirm'."

21. In SL, the claimant was diagnosed as suffering from depression and PTSD. Continuing supervision was provided by his care coordinator, a social worker employed by the council. The social worker had found that SL was an "intelligent and creative young man". The claimant saw the social worker once a week. It was not considered to amount to being “looked after”. The judgment of Lord Carnwath, with whom the others of the Court agreed, included these passages:

On the meaning of "care and attention":

"41. On the first issue, authoritative guidance as to the meaning of the expression ... is given by Lady Hale's speech in the Slough case ...

42. Mr Knafler relies on Lady Hale's reference to 'doing something' for the person being cared for 'which he cannot or should not be expected to do for himself'. Echoing Laws LJ, he submits that those words are wide enough to encompass monitoring SL's condition to avoid a relapse, and arranging contact with counselling groups and befrienders. This approach divorces the concept of care and attention from the overall context of section 21(1)(a) ... Providing a refrigerator for M would in one sense have been 'doing something' for him which (if he had no money) he could not do for himself. But as Lord Neuberger said, 'care and attention' does not involve 'the mere provision of physical things', even things as important as food and accommodation...

44. What is involved in providing 'care and attention' must take some colour from its association with the duty to provide residential accommodation ... it cannot be confined to that species of care and attention that can only be delivered in residential accommodation of a specialised kind ..."

On the question whether care and attention is otherwise available:

"45. Turning to the second issue ... Although it is unnecessary for us to decide the point, or to consider the arguments in detail, it seems to me that the simple answer must be yes, as the judge held. The services provided by the council were in no sense accommodation-related. They were entirely independent of his actual accommodation, however provided, or his need for it...

> 48. ... This means that it has at least to be care and attention of a sort which is normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant has no home. So the actual result in Mani may well have been correct. The analysis may not be straightforward in every case. The matter is best left to the good judgement and common sense of the local authority and will not normally involve any issue of law requiring the intervention of the court."

22. I will summarise the key parts of these cases below.

The Care Act

23. The Care Act 2014 follows work carried out by the Law Commission and provides a single statutory scheme for the provision of social care to adults. It replaces previous powers under the 1948 Act and also the Chronically Sick and Disabled Persons Act 1970. There is a general duty in section 1 to promote the well-being of the individual in exercising any function of the Act, which Mr Burton, who appears for the claimant, relies on for the proposition that this claimant should be housed. By section 1(2) "well-being" includes the "suitability of living accommodation". Mr Burton's submission is, in my view, too ample because the general duty is worked out in many particular respects and most of them, considered below, when properly understood, accord a large measure of discretion to the local authority.

24. The scheme is made up of the Act itself, numerous regulations and the statutory guidance "Care and Support Statutory Guidance". The overall structure is that the needs of the adults are assessed under section 9, eligible needs are identified under section 13 and then a care plan is prepared, setting out how the eligible needs will be met, whether by the authority or otherwise, section 24. It does seem to me that a large amount of discretion is given to the local authority.

25. Section 13(1) of the Act states:

> "Where a local authority is satisfied on the basis of a needs ... assessment that an adult has needs for care and support ... it must determine whether any of the needs meet the eligibility criteria."

26. There are then the Care and Support (Eligibility Criteria) Regulations 2015 No 313. The specified outcomes include, most relevantly for the present case:

> "(a) managing and maintaining nutrition...
>
> (f) maintaining a habitable home environment...
>
> (i) making use of necessary facilities or services in the local community including public transport ... or services."

"Well-being" is defined as including:

> "(b) physical and mental health and emotional well-being...

(f) social and economic well-being."

27. The claimant has clearly many eligible needs. Authorities may meet eligible needs amongst other things by the provision of accommodation, whether in the form of a care home or ordinary residential accommodation by section 8. The claimant placed reliance on the consultation in relation to the proposed Care Act and in particular relied on the fact that the Government considered it likely that "the vast majority of people receiving section 21 accommodation would be unaffected by the introduction of the 2014 Act." I, of course, have to construe the provisions as finally enacted.

Exceptions for persons subject to immigration

28. I now come to the exceptions for persons subject to immigration control and the provision of asylum support. In 1999, with the creation of the system of asylum support, section 21 was amended to include :

> "A person to whom section 115 of the Immigration and Asylum Act 1999 ... applies may not be provided with residential accommodation under subsection 1(a) if his need for care and assistance has arising solely—
>
> (a) because he is destitute; or
>
> (b) because of the physical effects, or anticipated physical effects, of his being destitute."

29. The parties helpfully referred me to R v Wandsworth LBC ex parte O [2000] 1 WLR 2539 in which Simon Brown LJ, as he then was, said:

> "The word 'solely' in the new section is a strong one and its purpose there seems to me evident. Assistance under the 1948 Act is, it need hardly be emphasised, the last refuge for the destitute."

Section 21 of the Care Act 2014 replicates the effect of section 21(1)(a).

Preliminary points

30. Before addressing the substantive issues raised in the claim, I consider various points put forward by the defendant to argue that permission should not be granted. First, it is said that the claim is now academic because the claimant has now been granted asylum. I do not accept this, because although the asylum support system comes to an end for this Claimant on 6 August, so I am told by counsel, which is two days hence, and which explains the urgency with which this judgment is given, she may then apply under the Housing Act 1996, but it is likely to be some time before that is finally determined. There is a real present and pressing issue and in my view, therefore, there is nothing academic about the question of accommodation here. The letter from Wilsons, the claimant's solicitors, dated 23 July 2015 has been brought to my attention where they say, and I think this is valid:

> "We note with concern your assertion that our client can now approach the

> local authority's housing department and request housing assistance. You are aware that our client is illiterate, has severe memory difficulties, cannot count, cannot tell the time and has severe difficulty in learning her way to new places and using public transport. We are similarly concerned this overlooks completely the question of whether our client even has the mental capacity to make a housing application. We refer you to the case of R (MT) v Oxford City Council [2015] EWHC 795 in which it was held that a man without capacity to agree to a tenancy could not make a valid housing application, the duty in that case falling to the local authority to accommodate under section 21."

31. Even if the claim is academic, which I do not think it is, I think that there is a wider public interest in this matter. Ms Okafor, who has said everything that could possibly be said on behalf of the defendant both in helpful oral and written submissions, says that this case was not properly timetabled and case-managed for a matter of public interest. I do not agree. I think it must have been clear from the outset that this case was of some real significance, and I do not accept in any event that there has been any prejudice to the defendant by the way it has been case managed.

32. Furthermore, complaint is made which I should deal with that the claimant's skeleton argument was 32 pages long and was only served three working days before the hearing despite the defendant asking the claimants to serve with all reasonableness by 17 July. I appreciate that Ms Okafor, as are most counsel and solicitors, is under great time pressure as she told me that she was; I do not accept that she was in any way prejudiced, and she was able to provide polished and detailed submissions both in the advance skeleton argument and also detailed submissions thereafter.

33. Thirdly, the defendants say that this is a service provision dispute only and cites the pre-action protocol at paragraph 3.1 on the basis that there is an adequate remedy for this under the Council's complaints procedure. It is, in my view, not available to deal with contested interpretation of legislation, which this is. The defendants rely on Lambeth LBC v Irenschild [2007] EWCA Civ 234at paragraphs 71 and 72, but it seems to me that deals with a completely different situation of some claimants being used as test claimants in a case, as does Tshikangu v London Borough Of Newham, which Ms Okafor also cited, [2001] EWHC (Admin) 92.

34. As a fourth point, it is said by the defendant that the claimant is estopped from denying the efficacy of the National Assistance Act because of the consent order agreeing to another assessment. By an order dated 11 May, the parties agreed a reassessment pursuant to section 9 of the Care Act. It seems to me clear that both parties entered into that consent order without prejudice to their respective contentions and that there is no estoppel created.

28 January 2015 decision

35. I now go on to the substantive points. The claimant contends that on the basis of her assessed needs the defendant was bound to conclude that the claimant was entitled to accommodation under the 1948 Act. The ground is set out in detail in paragraphs 49 to

52 of the claimant's detailed facts and grounds. Mr Burton says that until she stabilised she could not get the medical attention she needed. It is said that the needs were plainly accommodation-related for the purposes of section 21(1) having regard to section 21(5) of the 1948 Act.

36. I do not accept that the needs identified were accommodation-related, but, in any event, it seems to me that this point on the 1948 Act (although not any other point) is academic because of the point taken by the defendant that the transitional provisions do not apply, because under article 2(5) of the Care Act 2015 (Transitional Provisions), any entitlement continues only until:

> "(5) A local authority has completed a review in a person's case when—
>
> (a) they conclude that the person does not have needs for care and support ...
>
> (b) having concluded that the person has such needs and that they are going to meet some or all of them, they begin to do so; or
>
> (c) having concluded that the person has such needs, they conclude that they are not going to meet any of those needs ..."

37. The claimant says that it is clear that the review should only be conducted where it would otherwise have taken place, not simply because of the introduction of the Act, and that the earlier statutory guidance did not specify the frequency with which assessment should be reviewed. I think the review does have an effect in preventing any continued application of the National Assistance Act. I do not accept there is any difference between a reassessment and a review under those provisions, as Mr Burton argued that there was. It is for that reason that I view the attack on the January decision as indeed academic.

<u>20 May 2015 decision: The three stand-alone grounds</u>

<u>(1) Absence of an independent advocate</u>

38. The defendant appears to accept that the claimant was entitled to but did not have an independent advocate when she was assessed under the Care Act, but contends nonetheless that this did not "lead to flawed assessment process" because referral for such an advocate was made at the time of the assessment and since then an independent advocate has been appointed in the form of Mind. Section 67(2) of the Act could not be clearer:

> "The authority must ... arrange for a person who is independent of the authority (an 'independent advocate') to be available to represent and support the individual for the purpose of facilitating the individual's involvement."

39. There are detailed criteria for being an independent advocate, as set out in the Care and Support (Independent Advocacy Support) No 2 Regulations 2014 No 2889, together

with the manner in which they are to carry out their functions. This testifies to the importance of this protection for essentially vulnerable persons.

40. Ms Okafor points to the fact that Mind have now accepted a referral and she contends that as a result of the new Care Act "demand currently outstrips supply." She says the claimant's services have not been prejudiced as a result concerning the outcome of the assessment, but I agree with Mr Burton that we simply do not know that. I do accept the defendant's submission that there may be cases in which it is unlikely the presence of an independent advocate would make any difference to the outcome. This is not one of them, because this appears to me the paradigm case where such an advocate was required, as in the absence of one the claimant was in no position to influence matters. I keep particularly in mind the account given by Ms Mohr-Pietsch. I think the assessment was flawed as a result and must be redone. This is the first of only two grounds of unlawfulness which I find to be made out in this case.

(2) Absence of any consultation with the claimant's GP and/or counsellor

41. The defendant has disclosed that the assessor, Ms Tekyi, "would have been able to access any of the GP updated relevant information on the claimant since the GP and complex care need service exchange case management information and this requires the GP to update and vice versa where patient needs require" (paragraph 34 of her statement).

42. The claimant submits that there ought to have been a more formal consultation between the GP and Ms Tekyi. The absence of such, the claimant says, appears to have led to a miscommunication or misunderstanding between the defendants and the claimant's GP assisting the claimant with attending appointments.

43. I do not think that there is much force in this ground on its own, but to some extent it is cumulative with the last one. I do not find satisfactory paragraph 21 of Ms Tekyi's statement. I do not however grant any separate relief under this heading.

(3) Eligible needs

44. The claimant says that the 20 May assessment stated that the defendant had determined the claimant did not have eligible needs pursuant to the Care Act. In fact it appears clear that services were being provided. I bear in mind what Hale LJ, as she then was, said in R (Wahid) v London Borough of Tower Hamlets [2002] EWCA Civ 287 which was brought to my attention by Ms Okafor in her supplementary submissions:

> "Need is a relative concept which trained and experienced social workers are much better equipped to assess than are lawyers and courts provided that they act rationally."

45. Mr Burton relies on section 13(1) and (2) of the Care Act and states that the adult care and support plan does not clearly specify the various matters. I do not regard this as truly academic, but I do not think relief needs to be given, given that services are being provided.

Accommodation under the Care Act

46. I now come to the central issue between the parties: the provision of accommodation under the Care Act.

47. I first reiterate that the authorities already considered stand for these propositions, which I think continue to apply under the Care Act:

(a) the services provided by the council must be accommodation-related for accommodation to be potentially a duty;

(b) in most cases the matter is best left to the good judgment and common sense of the local authority;

(c) "accommodation-related care and attention" means care and attention of a sort which is normally provided in the home or will be “effectively useless” if the claimant has no home.

48. Mr Burton submits there is a duty here to provide accommodation because it would be irrational not to do so in order to meet the adult's care and support needs. He has the lesser case, however, that the Council did not ask itself the correct questions. I agree with Mr Burton in the latter argument that the only suggestion that the question of whether or not the defendant was under a duty to provide accommodation was even considered by the defendant is contained in the pre-action letter. I also accept that there is no evidence that the defendant asked itself whether, even if services could have been provided in a non-home environment, they would have been rendered effectively useless if the claimant were homeless and sleeping on the street. This is so despite the fact that it was acknowledged that it was "agreed that [the claimant] would benefit from some structured activities to minimise her PTSD symptoms but before that she needs help with the very basic practical support before she can be referred for more structured activities." I thus think that the care plan has to be redone.

49. Mr Burton, however, goes further and says that there is only one rational answer to the question to be posed. He particularly, and I am summarising here, relies on the following:

1. The guidance, so that it may be necessary to provide accommodation in this case.

2. Having given local authorities the power, Parliament must have envisaged scenarios in which it would be necessary to use it, and he relies on RM v The Scottish Ministers [2012] UKSC 58 at paragraphs 44-47.

3. The exercise of a power is he says better understood as being an exercise in judgment and not discretion, and he also relies on the well-known passage of Lord Keith in R v Devon County Council, ex p G [1989] 1 AC 573 at 604E.

4. In the absence of any express mention of a duty there really is he argues effectively an implied duty, and that is consistent with the words "whose need for

care and support the local authority considered should be met under Part 1 of the Care Act 2014 by the provision of accommodation used in article 4(1)(a) of the Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000". He says that Parliament plainly anticipated that in some scenarios accommodation should be provided in order to meet needs for care and support.

50. I do not agree that there is only one possible outcome, although I do think that the question that should have been asked has not been properly asked, and also that those carrying out the care plan appear to have thought that it was appropriate to take into account the accommodation being provided elsewhere which the Council now accepts it should not.

51. I prefer on this the defendant's submissions that the only reference is really to discretion to meet need through the provision of accommodation and the points made in the supplementary submissions by reference to article 4(1)(a) of the Persons Subject to Immigration Order and the amendment. I also bear in mind that this is a matter really for the discretion of the experienced social workers provided they have taken into account all relevant factors and that the court should be somewhat reluctant to intervene in their conclusion.

52. The claimant says that it would be effectively useless to provide services otherwise than in a home. I will address this, although I do not think that this is the appropriate way of dealing with it because this is a public law challenge The claimant relies on these matters of provision of services to the Claimant that she:

(a) is provided assistance from Ms Beegun on a regular basis, designed to improve her resilience;

(b) is provided assistance by Ms Beegun in learning by rote certain journeys to and from her home;

(c) is accompanied to appointments when she does not know the journey;

(d) is visited at home by Ms Beegun and her home environment is checked;

(e) is given nutritional and shopping advice by Ms Beegun;

(f) is assisted by a local shopkeeper with using money in the shop;

(g) is given counselling as well as practical advice and other support by Freedom from Torture;

(h) receives some assistance with general matters, including arranging and attending appointments, booking translators, learning English by Ms Beegun and volunteers;

(i) is assisted with domestic and practical tasks in the home by other women who live there and Ms Beegun;

(j) is taken to a day centre by other women in the house.

53. I do not accept that any others than (d) and (i), as I have set them out, are truly accommodation-related, and in any event I think it is still within the discretion of the local authority to decide that notwithstanding these services it is not appropriate to meet needs through the provision of accommodation.

54. As I have already trailed, Mr Burton is, I think, on stronger ground when he says the decision-making here was defective. As he says, it is not clear that the defendant actually gave consideration to the need to provide the claimant with accommodation when it made the decision of 20 May.

55. I have thought carefully about what relief to grant and I think it is appropriate, although I will hear both counsel on the detail, to quash simply the decision of 20 May 2015 on the cumulative grounds that there was a lack of an independent advocate and for failure to properly consider accommodation. There will be no other relief.

56. I should say that I have also considered independently the question of whether the issue of relief is academic, in particular whether relief should be granted which may be for a short time, but I think it is appropriate that that is.

57. I should also add that Ms Okafor, by email, has expressed some disquiet that she was not given as much time to address the court as Mr Burton and that she was interrupted more than he was. I consider that there are some serious inaccuracies in the email, but the crucial point is that I did ask her during Mr Burton's submissions how long she would need for her response. My recollection is she said 30 minutes, but I did in fact allow her to continue for just under an hour and a half. Clearly, it took Mr Burton rather longer to both introduce the facts and also to open to me the rather complex law.

58. I do not accept in any way that she was being hurried or that she was not able to get the points across, which she did ably. Although it was necessary to take a slightly longer than usual lunch break, the court did sit until 4.50 pm to finish the case which gave ample time to both sides. She then submitted detailed submissions which did go beyond the specific liberty that she was given to supplement her oral submissions, but Mr Burton helpfully said that he had no objection to my considering them. I have indeed considered them and they do form part of the judgment. Judicial interruptions were, in my recollection, equal to both sides and were necessary to focus matters in a complex case which was listed only for one day.

Are there any applications?

MR BURTON: My Lord, if I might just first of all point out a number of matters your Lordship might wish to just correct now in the judgment. The first is I think your Lordship said that the claimant was due to leave her asylum support accommodation on 6 April, when in fact of course it is 6 August.

THE DEPUTY JUDGE: Sorry. I should have said 6 August.

MR BURTON: Just on the question of relief, I think it is proper that the court ought to actually grant permission to apply for judicial review.

THE DEPUTY JUDGE: Yes. I was going to ask you and Ms Okafor to agree the actual order, and that would be an obvious part of it, and also, if it is necessary, to grant leave for you to rely on your skeleton argument.

MR BURTON: I am most grateful. Just on one issue which I will raise with my learned friend in a moment. Obviously the consequences of the relief are there has to now be a new assessment under the Care Act, and your Lordship has given clear reasons why that is so. There is still the problem that on the 6th my client is going to be ostensibly kicked out of the accommodation that she is in. I am going to invite my learned friend now to take some instructions on whether or not they will agree now before your Lordship that she should be accommodated in some way at that time.

THE DEPUTY JUDGE: Why have you not done this before now? Why have you not spoken to Ms Okafor before?

MR BURTON: My Lord, with respect, it is not really for me to make a proposition to my learned friend about the exercise of the power that my learned friend was at pains to point out that the local authority had. The question really is when -- your Lordship is aware of when I had to deal with submissions that were raised by my learned friend over the weekend. The only time that either of us have effectively had to deal with is today. I am sorry if I should have done something sooner.

THE DEPUTY JUDGE: Well, I would have thought responsible counsel would have, bearing in mind that this matter was raised, I cannot remember whether it was by you or Ms Okafor during the hearing, would have talked about this before. But anyway, I will give you time to do that. Is there anything else?

MR BURTON: My Lord, could I ask for the usual costs order in the normal way?

THE DEPUTY JUDGE: Are you legally supported?

MR BURTON: We are indeed, yes, legally aided.

THE DEPUTY JUDGE: Would you like to say why you were not here at 10.30?

MR BURTON: I am incredibly sorry about that. I had, as your Lordship will be aware, to change some arrangements this morning in light of the change of the time of listing, which I only had yesterday to make those arrangements which I did, and then unfortunately I did not know that the door at the back of the court was going to be closed today which cost me the five minutes or so to get around, and I am terribly sorry about that. I know my instructing solicitor was here to take a note.

THE DEPUTY JUDGE: Anything else?

MR BURTON: On permission to appeal, my Lord, I am obliged, obviously, to ask this court first.

THE DEPUTY JUDGE: On what grounds?

MR BURTON: On the basis that in the manner in which your Lordship has approached the question of the discretion under the Act, it is my submission that it is clearly a duty in circumstances where a person has no accommodation and where they have care and support needs of which any are accommodation-related, and your Lordship has found at least two of those to be accommodation-related, and also taking into account your Lordship's acknowledgement that this is an issue of some wider public importance, it would be my duty, really, to ask for permission to appeal at this stage. Unless my learned friend has any further points to make about either of those applications --

THE DEPUTY JUDGE: Sorry, which applications?

MR BURTON: The application for costs.

THE DEPUTY JUDGE: She has the right to deal with the application for costs, but the issue, as you know, about permission to appeal is simply for you to make and me to decide. She may make her own application for permission.

MR BURTON: Indeed, my Lord. Yes.

THE DEPUTY JUDGE: I am going to refuse permission to appeal, although I do accept that this has wider implications, as I have said in the judgment. This case is, on my relief, is there is going to be a reconsideration and it may be that on reconsideration the claimant will succeed. I do not think this is an appropriate case in which to give leave, but thank you.

Ms Okafor?

MS OKAFOR: Good morning, my Lord. I just apologise as well for our late start, my Lord. We had a fire alarm go off in the building when we were departing Haringey this morning, and we were required to comply with certain aspects of that.

THE DEPUTY JUDGE: Did you ring the court and say that you were going to be late? Because at least the solicitor was here. Because every minute that the court sits costs an awful lot of money.

MS OKAFOR: I do apologise, my Lord. We did not call.

THE DEPUTY JUDGE: Well, if it ever happens again, I am sure everyone has mobiles.

MS OKAFOR: We will do, my Lord. My Lord, on the point of accommodation, it may please you to know that arrangements are being made. The reconsideration which my Lord has granted in terms of relief is in any event underway. There has been a referral to the Vulnerable Adults Team. The Vulnerable Adults Team, my Lord, are actually a team, a housing team, who are situated within the housing authority department itself, and their role appears to be to help vulnerable adults who may not be able to access the homelessness provisions to secure alternative provision under different

housing provisions, my Lord, and that can be by way of support, normally by way of supported living.

THE DEPUTY JUDGE: So you say that is already underway?

MS OKAFOR: It is already underway, my Lord. There has been an appointment already set up for Thursday. SG has been informed of that through her support workers, and, without obviously giving you a guarantee, my Lord, I think I have taken it as far as I can in terms of assurance. My understanding from my client department is that there has never actually been a situation where somebody with immigration status has changed and they have been allowed to become homeless where they have a mental health service.

THE DEPUTY JUDGE: Okay. Are you applying for leave to appeal or not?

MS OKAFOR: No, we are not applying, my Lord. We accept the --

THE DEPUTY JUDGE: That is fine. Costs?

MS OKAFOR: We would ask that costs on submissions, written submissions. We do not believe the case is as straightforward, that the claimant has succeeded.

THE DEPUTY JUDGE: You mean you want to make written submissions?

MS OKAFOR: Yes.

THE DEPUTY JUDGE: No, I am perfectly capable of deciding this, I can assure you.

MS OKAFOR: On the basis of the authority of M v Croydon, my Lord, as to the approach to be taken in terms of costs where various points in a judicial review, we would say that this is a case where the claimant has not succeeded on all aspects of their claim.

THE DEPUTY JUDGE: So you say there should be no order for costs?

MS OKAFOR: We accept there should be some costs, my Lord.

THE DEPUTY JUDGE: Going which way though? You mean you pay some costs?

MS OKAFOR: Yes, we accept that. They have been granted summary relief in that situation and the defendants are obliged to cover some of their costs, my Lord. But we do not accept, and we do not know the amount of costs being claimed, but we do not accept that they have succeeded wholly, they have only succeeded in part, and for those reasons we would say it may be of assistance to the court to have written submissions.

THE DEPUTY JUDGE: No, I am going to decide. Let me make it clear. The court does not operate, usually -- I have given both sides leeway in terms of written submission -- but this is something that is before me and I am going to decide now. What I propose to do, and I will hear Mr Burton, is to decide in principle who pays who

costs and then the rest can go to detailed assessment. So what I would like to hear from you is, when you say that you accept that you should pay them some costs, are you saying you should pay them 10 per cent costs? 50 per cent costs?

MS OKAFOR: We would say 50 per cent costs, my Lord.

THE DEPUTY JUDGE: 50. Do you have a schedule of costs?

MS OKAFOR: We have not. Not from the claimants, we have not received one.

MR BURTON: You cannot summarily assess costs (Inaudible).

THE DEPUTY JUDGE: Right. Okay, is there anything else?

MS OKAFOR: Not unless there is anything else you want to hear from me on that point.

THE DEPUTY JUDGE: But this is your time, because there will not be any other time if you want to make any other --

MS OKAFOR: The only issue for us, really, my Lord, is the fact that we have pointed out that accommodation is being dealt with and we would offer 50 per cent costs.

THE DEPUTY JUDGE: Yes. Okay, thank you.

Can I hear you on the costs and then on the arrangements for the housing, please?

MR BURTON: My Lord, the substantive claim has been successful in so far as the assessment is quashed. Where your Lordship has disagreed with the claimant is on precisely what relief should be granted, and I think it is significant in that regard that you have found that the local authority got the approach wrong in the sense that they had not asked the appropriate questions in relation to whether or not accommodation ought to be provided. What we know is that the local authority at the hearing before your Lordship argued all the points, including the point about whether or not the assessment was lawful, even though there was an absence of an independent advocate, and certainly did not concede at any stage that that decision was --

THE DEPUTY JUDGE: Well, also they took the preliminary points, all of which I found against them.

MR BURTON: Indeed, and all of those have had to be dealt with. With the greatest respect to my learned friend, I do not really understand how there can be any basis for saying that the claimant is entitled to all of her costs, and indeed my learned friend has not really offered a basis for that.

THE DEPUTY JUDGE: Okay, I will deal with that and then we will deal with the rehousing.

On the question of costs, Ms Okafor says that she accepts that the claimant is entitled to some costs but says that it should be only 50 per cent of the costs, bearing in mind that some issues have been found in her favour and some in the claimant's favour. I take into account that a whole range of arguments were adopted in response to this claim, and although I do think that the key issue always was the provision of accommodation on which the claimant has lost, the defendant ran on a whole host -- I am not being critical -- but did run a whole host of arguments which have failed. I think that the appropriate course, therefore, is to order the defendant to pay 75 per cent of the costs, to be assessed.

Now, I think the only remaining issue, Mr Burton, is therefore the point that you raised this morning about housing, the future housing. Is what Ms Okafor said acceptable?

MR BURTON: Well, if I understand it correctly, I think the point is that they are already looking at that issue.

THE DEPUTY JUDGE: I will tell you what she said, if you did not hear it. Arrangements have already been made. The reconsideration under the care plan is underway. There has been a reference to the Vulnerable Adults Team. There is a meeting on Thursday, and she tells me that there has never been a case in that borough where someone with asylum has been left homeless. So that is what is said.

MR BURTON: My Lord, in relation to the latter of those points, that is a submission of evidence and I am afraid on behalf of the claimant I simply --

THE DEPUTY JUDGE: What are you asking me to do, bearing in mind there is no application before me, that you had several days to discuss this matter, either you with Ms Okafor or your respective solicitors? What are you asking me to do now?

MR BURTON: What I was inviting my learned friend to do was give an undertaking now that the claimant would not find herself without accommodation on Thursday. We do not have that at the moment, which puts me in an invidious position because I am required otherwise to ask for judicial intervention in order to protect her, if I do not have the benefit of an assurance that accommodation will be provided. What I understand is two things: one, that there are steps underway to reassess. Well, that is useful, but does not necessarily tell us anything about what will be the result of that assessment in terms of accommodation, and also importantly, my Lord, that the Mental Capacity Act assessment that we learnt was being undertaken when the evidence was filed on 8 July has as yet not been completed, and so the local authority are not in a position to say that they consider her to have capacity to make a homelessness application. In which case, absent the local authority providing accommodation on Thursday, she will be homeless, and I do not understand why my learned friend is unable to tell the court now that she will not be.

THE DEPUTY JUDGE: I did not understand that she will necessarily physically have to leave on 6 August?

MR BURTON: Absolutely, she does, yes.

THE DEPUTY JUDGE: She has had notice to that effect?

MR BURTON: Absolutely.

THE DEPUTY JUDGE: Where is the notice?

MR BURTON: I do not believe there is any dispute between the parties. I am sorry this was not handed up sooner, but I am sure my learned friend accepts that she will be. (Handed). She will be without financial assistance or accommodation come Thursday.

THE DEPUTY JUDGE: Is there anything else you want to say on this point?

MR BURTON: Well, in the absence of an undertaking, it seems to me -- can I just remind the court, just in case, there is a power available to the local authority to provide accommodation pending the assessment. So there is a power to do it. My learned friend in fact raised that with the court.

THE DEPUTY JUDGE: But in the absence of an undertaking, what exactly are you asking?

MR BURTON: I will ask the court to order now that accommodation be provided pending completion of the assessment, starting on Thursday.

THE DEPUTY JUDGE: Some accommodation to be provided.

MR BURTON: By definition it would have to be suitable under the Act, and I am sure that the local authority would abide by that obligation if they were ordered.

THE DEPUTY JUDGE: I mean not necessarily this accommodation.

MR BURTON: They cannot provide this accommodation: it belongs to the Secretary of State.

THE DEPUTY JUDGE: Yes. Okay, thank you.

Yes?

MS OKAFOR: My Lord, that is completely, entirely unnecessary. The reality of the situation is that SG is no longer an asylum seeker, she is entitled to accommodation as a vulnerable adult. The issue is who provides the accommodation in housing. They will do the assessment whether they feel she has the capacity to make an application, as they do with all people who present. However, she will be presented through the Vulnerable Adults Team. It is a particular service, my Lord, within housing itself intended to assist those vulnerable people who may present for housing who are not in a position to apply themselves. Now, what happens on the ground is that if they decide the person is not going to be suitable to apply, then they are provided with accommodation through the Vulnerable Adults Team.

THE DEPUTY JUDGE: How long does it take --

MS OKAFOR: It is done on the day, my Lord.

THE DEPUTY JUDGE: No, sorry, I am speaking. Would you let me finish, please? How long does it normally take the Vulnerable Adults Team to make an assessment?

MS OKAFOR: They do it on the day. In terms of the housing, it is done on the day.

THE DEPUTY JUDGE: And that is Thursday, is it?

MS OKAFOR: Yes. My understanding is one o'clock is the appointment. I am not in a position to give an undertaking, my Lord, because I have not got instructions on that.

THE DEPUTY JUDGE: But Ms Okafor, this point was raised -- I cannot remember, as I say, whether it was you or Mr Burton raised it -- so you might have thought that you would have taken instructions on it.

MS OKAFOR: With respect, my Lord, it was Mr Burton who raised the point. With respect, my Lord, it was I who responded and said that the defendant is well aware of its powers to provide accommodation, it was the defendant who has taken it as high as they can to give the claimants some assurance that this matter is being addressed. This matter goes to a future issue, and in my respectful submission it would appear to be that the proceedings are being used to go beyond which they were actually intended to be used for. We are talking about future issue.

As my Lord has pointed out, there has been no application for interim relief made, and it is wholly unnecessary and a misuse of this process, in my respectful submission. These submissions, they are recorded, my understanding is no refugee who has complex mental health problems known to the service has been allowed to be left to be become homeless. They are either provided with provisions under the housing provisions, which is not only the Housing Act 1996, it can be the Housing Act 1985, or they will be provided with local authority social services provisions, my Lord.

THE DEPUTY JUDGE: Thank you.

Mr Burton, what I am minded to do is to make an order that suitable accommodation is provided until 10 am on 10 August, and then that will give you the opportunity, if you wish, to make a proper application. It may be that that will concentrate minds on the Council. Do you wish to argue against that?

MR BURTON: My Lord, I am perfectly content with that course. Can I just ask for one point of clarification? Is that a further application that your Lordship is inviting to be made to your Lordship or just by way of normal judicial review application if it transpires to be necessary?

THE DEPUTY JUDGE: Well, I do not know whether it is even in the High Court, is it? It could be in the County Court.

MR BURTON: No, my Lord.

THE DEPUTY JUDGE: It would have to be part of these proceedings. Well, I am not inviting you to make any particular application. What I think you should put into the order is liberty to apply. But because obviously this may become urgent on Monday, I know that I am not available to sit, so it should not be reserved to me.

Ms Okafor, in the absence of you giving an undertaking, that is what I am minded to do.

MS OKAFOR: I simply do not have instructions on that.

THE DEPUTY JUDGE: Well, then I am going to make the order, unless you want to argue against it.

MS OKAFOR: Well, my Lord, you have done as you have seen fit, but there was no application made, we did not have a chance to respond. We gave as much assurance as we could and I simply do not have instructions to give an undertaking.

THE DEPUTY JUDGE: Thank you very much. Did you want to say anything else?

MS OKAFOR: No, I did not, my Lord.

THE DEPUTY JUDGE: The issue of continuing accommodation arrangements for the claimant was raised by Mr Burton at the hearing last Monday. I asked the parties to seek to resolve the matter because it is only likely to be for a short time. Mr Burton has not issued any formal application, but it does seem to me that this can come under the heading of consequential relief. Given that it was raised quite clearly last Monday, I do not think Ms Okafor is in any way prejudiced by my dealing with it. She is not authorised to give any undertaking. She has, however, told me that arrangements are going to be made for reconsideration and that there has been a reference to the Vulnerable Adults Team of the authority, that there is a meeting due on Thursday, two days away. She assures me that no refugee with complex mental health issues has ever been made homeless in that borough.

I do think that the position needs to be dealt with, but I also think it is appropriate that if the matter cannot be resolved in the near future that a proper application, with proper evidence if considered appropriate, should be made. I am therefore going to preserve the position until 10 am on 10 August, next Monday. In the absence of any undertaking whatever by the defendant, I am going to order as requested that some suitable accommodation be provided. But that order expires at 10 am on 10 August.

Mr Burton, I know that you are going on holiday tomorrow, so you will do the order this afternoon, yes?

MR BURTON: My Lord, I will do the order this afternoon, and also if I might ask for one further indulgence. This court does have the power to extend time for making an application for permission to appeal to the Court of Appeal and also to expedite a copy of the transcript. I think the latter would have to happen anyway in this case and I would invite the court to order it, simply because it is actually the first decision under the Care Act and has some significance for other persons in similar situations. In relation to the

former, it is an indulgence for me because if I do not have some additional time I will not be able to do it.

THE DEPUTY JUDGE: But there are other people in your chambers.

MR BURTON: With the greatest of respect, my Lord, this is a case I have been doing for over two years. There is no way the Legal Aid Agency are going to pay somebody else to read up on all of this. It is just going to cause further applications to have to be made to the Court of Appeal, it is simply going to cost the public purse further money. I am only asking for a 14-day extension to the normal period in order that an application can be considered and made.

THE DEPUTY JUDGE: The normal period is 14 days?

MR BURTON: 21 days. That is the duration of my absence.

THE DEPUTY JUDGE: So you are asking for 35 days from today, are you?

MR BURTON: My Lord, yes. It is also the vacation time.

THE DEPUTY JUDGE: Ms Okafor, do you have any observations on that?

MS OKAFOR: No observations, my Lord.

THE DEPUTY JUDGE: So you do not oppose that.

MS OKAFOR: As my Lord said, it is a wider public interest issue; it is not an issue for the defendants.

THE DEPUTY JUDGE: No, but this issue, because obviously if the other side have 35 days it is a further period of uncertainty for you. So not on the point of permission to appeal, but on this point you are entitled to say anything. If you do not wish to, that is also fine.

MS OKAFOR: My Lord, it seems to me, we would not oppose but we would not support.

THE DEPUTY JUDGE: Thank you very much.

Mr Burton has finally asked for expedition of the transcript. I am happy to grant that. He has also asked for an extension of 14 days from the normal 21-day period to apply to the Court of Appeal. Although I take the point that this is vacation, I do not think it is a matter that should be hanging over the local authority for any longer than necessary. I am prepared to give a 7-day extension, so the time for appeal will be 28 days rather than the usual 21.

Thank you both very much for your assistance.