



Neutral Citation Number: [2018] EWHC 3453 (Admin)

Case No: CO/1519/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2018

Before :

UPPER TRIBUNAL JUDGE MARKUS QC SITTING AS A JUDGE OF THE HIGH COURT

Between :

THE QUEEN
on the application of

AR

- and -

**LONDON BOROUGH OF HAMMERSMITH AND
FULHAM**

Claimant

Defendant

Mr James Presland (instructed by **Lawstop**) for the **claimant**
Mr Hilton Harrop-Griffiths (instructed by **Hammersmith and Fulham Legal Department**)
for the **defendant**

Hearing date: 21st November 2018

Approved Judgment

Upper Tribunal Judge Markus QC:

1. The claimant is a citizen of Lithuania. There is an order in these proceedings that he is not to be identified and is to be referred to as “AR” in any report of the proceedings. He came to the UK in 2011. For a period of time he was in receipt of jobseeker’s allowance and housing benefit. In 2012 he was assaulted and suffered a serious injury as a result of which he spent several months in hospital. At some point during his stay in or on his discharge from hospital his benefits ceased and he became homeless. He suffered a second serious assault in 2015 and once again remained in hospital for a considerable time. He was again homeless on discharge from hospital. He had tried to work for two days a week at a warehouse but was too unwell to do so and stopped after a very short time. During 2017 a charity arranged for him to be accommodated in church halls in West London.
2. The claimant had been awarded the enhanced rate of both the daily living and mobility components of personal independence payment (‘PIP’) from May 2016. However, on 21st April 2018 the DWP notified him that he was no longer entitled to PIP. His charity caseworker requested a mandatory reconsideration of that decision and an appeal to the First-tier Tribunal is pending.
3. For present purposes there is no need to rehearse the background to the claimant’s application for assistance from the defendant. It is sufficient to note that on 15th February 2018 the claimant’s caseworker requested assistance for the claimant from the defendant’s Adult Social Services Department. The defendant did not respond to that referral nor, after solicitors were instructed, to pre-action protocol correspondence. On 13th April 2018, on an urgent application, Mr Justice Dove ordered interim relief by way of accommodation and resources to meet the claimant’s essential living needs, until a hearing of the application for interim relief. Judicial review proceedings were issued shortly afterwards but no interim relief hearing took place as the defendant agreed to continue to accommodate the claimant and to carry out an assessment of the claimant’s needs for care and support under the Care Act 2014 and a human rights assessment.
4. The claimant’s solicitor had sent the order of Mr Justice Dove to the defendant’s Emergency Homeless Team which found accommodation for the claimant. An assessment was carried out as to whether the claimant was also entitled to assistance as a homeless person under Part 7 of the Housing Act 1996. On 16th April the defendant wrote to the claimant to notify him that he was not eligible for assistance under Part 7, pursuant to section 185 of the Act and regulation 6 of the Allocation of Housing and Homelessness (Eligibility)(England) Regulations 2006. Following completion of the two assessments, on 17th May the claimant’s solicitor wrote to the defendant to say that they were investigating the claimant’s immigration status including whether he had a right to reside in the UK and challenging the conclusions of the assessments. The defendant replied on 24th May resisting the challenges and explaining the basis on which it was concluded that the claimant did not have a right to reside. The claimant did not seek a review of the decision that he was ineligible for assistance under Part 7.
5. With the permission of the court, the claimant filed amended grounds to which the defendant responded. Richard Clayton QC, sitting as a Deputy High Court Judge, gave permission on all grounds on 24th August 2018.
6. The claimant’s case, as advanced by Mr Presland, was that the assessments were unlawful, that (were it not for the claimant’s nationality), the defendant had power to

support him under either the Care Act 2014 or the Localism Act 2011, and that he required such support in order to avoid a breach of his Convention or EU Treaty rights.

The Care Act 2014

7. Section 9 of the Care Act 2014 provides that, where it appears to a local authority that an adult may have needs for care and support, the authority must assess whether the adult does have such needs and, if so, what they are. If the authority is satisfied on the basis of a needs assessment that an adult has such needs it must, under section 13(1), determine whether any of those needs meet the eligibility criteria in accordance with the Care and Support (Eligibility Criteria) Regulations 2015.
8. Regulation 2 of the 2015 Regulations provides that an adult's needs meet the eligibility criteria if: (a) they arise from or are related to a physical or mental impairment or illness; (b) as a result of their needs the adult is unable to achieve two or more of the specified outcomes; and (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being. The outcomes are:
 - (a) managing and maintaining nutrition;
 - (b) maintaining personal hygiene;
 - (c) managing toilet needs;
 - (d) being appropriately clothed;
 - (e) being able to make use of the adult's home safely;
 - (f) maintaining a habitable home environment;
 - (g) developing and maintaining family or other personal relationships;
 - (h) accessing and engaging in work, training, education or volunteering;
 - (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
 - (j) carrying out any caring responsibilities the adult has for a child.
9. Section 18(1) of the Act provides that an authority must meet the adult's needs for care and support which meet the eligibility criteria if, amongst other things, they are ordinarily resident in the authority's area or are present in its area but of no settled residence. If the authority is not required to meet needs under section 18(1), section 19(1) provides that it may meet such an adult's needs for care and support.
10. The defendant's assessment of the claimant under the Care Act noted the past serious assaults suffered by him, that he had undergone neurosurgery and was due to undergo further surgery, that injuries to his shoulder and hand continued to affect him, he had difficulties with memory, and was unable to work. He suffered from periods of depression and had attempted suicide in August 2017 when under the influence of alcohol, had been assessed under the Mental Health Act and had been discharged and signposted to alcohol services. There were medical reports from May 2016 and December 2017 referring to the above injuries, as well as chronic and acute pancreatitis, a history of chronic alcoholism, acute gastritis, and anxiety disorder. The assessment recorded a number of statements by the claimant making it clear that the only assistance that he sought was in obtaining somewhere to live. The assessor noted that the claimant was no

longer receiving PIP, and concluded that the need for support identified in the previous PIP assessment (relating to the earlier PIP award) was “not apparent from his current presentation”. The only risks identified in the care assessment were those arising from his being homeless. The assessment summary identified one outcome which the claimant was unable to achieve, that he was not able to access and engage in work, training, education or volunteering independently, but the detailed assessment was that this was also due to the claimant’s homelessness. The conclusion of the assessment was:

“[AR] has a complexity of acute medical conditions as highlighted throughout this assessment. [AR] nevertheless presents as someone who is able to live independently and undertake essential day to day tasks. Due to [AR]’s current social situation his ability to further his personal development including further education, retraining is severely compromised. In addition, being homeless can also enforce a sense of social isolation, impacting on [AR]’s confidence and feeling of belonging which could lead to further self medicating behaviour including substance abuse.”

11. The assessor, Colin Pope, concluded that the claimant was not eligible for support under the Care Act because he did not satisfy the requirement of there being “two or more areas where outcome cannot be achieved and there is, or is likely to be, a significant impact on his wellbeing.”
12. Mr Presland’s first ground of challenge to the assessment was that Mr Pope had failed to explain how he was able to judge the claimant’s ability to understand questions and communicate effectively. I reject this. Mr Pope had the opportunity to discuss the claimant’s history, current circumstances and needs, and he set out in some detail what the claimant had told him. This provided Mr Pope with the opportunity to assess the claimant’s understanding and communication. Mr Pope noted the claimant’s difficulties with memory recall, a factor which might affect the claimant’s understanding and communication, and recorded that throughout the assessment the claimant was given time to consider the questions. Mr Pope also noted that there was no doubt about the claimant’s capacity.
13. Mr Presland said Mr Pope’s assessment of the claimant’s understanding was undermined by inconsistency between the claimant expressing no concerns regarding how other people had treated him while saying that he was aware of the risks associated with rough sleeping. It is not appropriate to subject the record of the claimant’s statements to minute scrutiny. It is clearly not a verbatim record. In any event the claimant’s awareness of risks, whereas lack of concern about how people treated him was an expression of how he felt about that situation. There is no inconsistency between these. In addition, the claimant gave examples of risk which Mr Pope was able to rely on as demonstrating the claimant’s understanding of risk. It was for Mr Pope to make the judgment about the claimant’s ability to understand and communicate, he was well placed to make that judgment and I am satisfied that he took into account relevant factors and reached a reasonable conclusion.
14. Second, Mr Presland submitted that the assessment did not record the claimant’s answers accurately. There was no witness statement from the claimant to explain what he said or in what way the assessment was inaccurate, nor any other evidence to support that claim, and I reject it.

15. Third, Mr Presland said that the assessment did not take into account the effects of the claimant's ill-health on his day to day living, now set out in the request for mandatory reconsideration of the PIP decision. This claim is without foundation. Mr Pope reviewed the earlier PIP assessment, addressed the potentially relevant issues arising, and explained why he did not identify any needs in those regards. The fact that he did not agree with the claimant does not demonstrate any error in the assessment.
16. Fourth, Mr Presland challenged the assessment on the basis that it was predicated on the claimant having accommodation, for example in relation to his ability to prepare meals and wash. The same submission was rejected by the Deputy High Court Judge in *R (GS) v. Camden LBC* [2017] PTSR 140 at paragraphs [36]-[38]. The judge said

“I am of the view that there is no legal obligation to disregard accommodation when considering the application of the eligibility criteria. Where accommodation-related services are provided it is the services that are to be disregarded not the accommodation per se. I am also of the view that this is consistent with what the specified outcomes are seeking to identify...in my judgement those outcomes are seeking to identify whether adults can undertake various activities, such as maintaining a habitable home environment (Regulation 2(3)(f)) or ‘accessing and engaging in work, training, education or volunteering’ (Regulation 2(3)(h)) rather than, using the same examples, the provision of accommodation or work. This reinforces my view that there is no obligation to disregard accommodation. Accordingly, I reject this ground of challenge.”
17. I agree. Regulation 2(1) requires the identified needs to have arisen from the person's physical or mental impairment or illness and not because of their lack of accommodation. A homeless person without any impairment or illness may be unable to, for example, maintain personal hygiene (regulation 2(2)(a)) or maintain a habitable home environment (regulation 2(2)(f)) by virtue of their homelessness but that is irrelevant for the purpose of the assessment of their need for care and support.
18. Moreover, there is a further factor which in my judgment provides a complete answer to the claim under the Care Act. The claimant sought only accommodation and no other care or support. The assessment did not identify any other needs. A stand alone need for accommodation is not a “need for care and support” within the Care Act: see *GS* at [29]. Mr Presland did not dispute the correctness of this decision and I respectfully agree with it and the reasoning in support at [28]. The defendant had no power to provide accommodation alone under the Care Act.
19. Mr Presland also submitted that the claimant did not only require accommodation but also required subsistence support. I have some doubt whether that was what the claimant sought but, assuming it to be so for present purposes, it does not assist him. The reasoning at [28] of *GS* applies to a need for subsistence as it applies to a need for accommodation. A “need for care and support” under the Care Act does not include a stand alone need for subsistence or for accommodation or for both subsistence and accommodation.

The Localism Act 2011

20. The key relevant provisions of the Localism Act 2014 are

“1(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

2(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

(a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or

(b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—

(i) to the general power,

(ii) to all of the authority's powers, or

(iii) to all of the authority's powers but with exceptions that do not include the general power.

...

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in an Act passed after the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 1;

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1;

“*pre-commencement power*” means power conferred by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.”

21. Mr Presland contended that accommodation could be provided to the claimant under the general power in section 1(1) of the Localism Act. Mr Harrop-Griffiths responded that section 185 of the Housing Act 1996, which provides that a person is not eligible for assistance under Part 7 of that Act if he is a person from abroad who is ineligible for housing assistance, was a pre-commencement limitation within section 2(2)(a) of the Localism Act and so the defendant was prohibited from providing the claimant with accommodation under the general power.
22. I do not need to burden this decision with a detailed analysis of the provisions, and application in this case, of section 185 and the regulations made under it. It was common ground that the claimant was not eligible for assistance unless he had a right to reside in the UK under the provisions of the Immigration (European Economic Area) Regulations 2016 (‘the EEA Regulations’). In this case the defendant decided that the claimant was ineligible because he did not have a right to reside, and as I have said the claimant did not challenge that decision by way of statutory review. I have considerable doubt whether it is appropriate for the claimant to seek to persuade this court to take a different view of his eligibility to that taken by the defendant where he has failed to challenge that decision by the statutory routes available to him. But, in any event, I am quite satisfied that the claimant has not shown that he was or is eligible.
23. Mr Presland submitted that there were “strong grounds to argue” (although he could put it no higher) that the claimant had a right to reside in the UK only on the basis that he had a permanent right to reside within the EEA Regulations. The only basis on which Mr Presland submitted that the claimant might have a permanent right to reside was under regulation 15(1)(c) of the EEA Regulations, as “a worker...who has ceased activity”. He submitted that the claimant satisfied the definition of that phrase in regulation 5(3), namely that, after the assault in 2015, the claimant had terminated his activity in the UK as a worker as a result of permanent incapacity for work and had, prior to the termination, resided in the UK continuously for more than two years.
24. The evidence does not support the claim. The claimant’s evidence was that he worked for approximately two weeks on arrival in the UK, that during the two year period prior to the 2015 assault he had been looking for work and, at times, he was in receipt of jobseeker’s allowance. These facts do not satisfy the definition of “worker” within the meaning of Article 45 as defined in EU case law. In particular, the claimant was not engaged in genuine and effective work during the relevant period. I do not need to go further but I also observe that there is no evidence that the claimant became permanently incapable of work after the assault. Mr Presland rightly did not suggest that the claimant had acquired the right pursuant to regulation 15(1)(a) by means of residence in the UK in accordance with the EEA Regulations for a period of five years. There is no evidence on the basis of which it could be said that he had been a “qualified person” within regulation 6. It follows that the claimant was ineligible for housing assistance under Part 7 of the Housing Act 1996 at the time of the local authority’s decision and remains so.

25. In *R(J) v. London Borough of Enfield* [2002] HLR 38 Elias J considered sections 2 and 3 of the Local Government Act 2000 which provided for a similar broad power and prohibition on its exercise as are now in sections 1 and 2 of the Localism Act. For present purposes there is no material difference between the two sets of provisions. Elias J decided that section 185 of the Housing Act was a “prohibition, restriction or limitation” on the authority’s power to provide accommodation to an ineligible person. He also held that, although there was no power to provide financial assistance to pay for accommodation under section 17 of the Children Act 1989, that was because the power did not extend that far but it was not a “prohibition, restriction or limitation” within section 3.
26. In *R (Khan) v. Oxfordshire County Council* [2004] HLR 41 the claimant sought accommodation and financial assistance from the local authority under section 21(1)(a) of the National Assistance Act 1948, which enabled the provision of accommodation to adults who, by reason of age, illness, disability or any other circumstances were in need of care and attention which was not otherwise available to them. Section 21(1A) of that Act provided that a person who was excluded from benefits by section 115 of the Immigration and Asylum Act 1999 may not be provided with accommodation under 21(1)(a) if their need for care and attention had arisen solely because they were destitute or because of the physical effects of being destitute.
27. The question arose whether section 21(1A) of the 1948 imposed a prohibition, restriction or limitation within section 3 of the Local Government Act 2000. Dyson LJ referred, at [30] – [32], to the distinction identified in *J* between the definition of the scope of a power and the imposition of a prohibition, etc on the exercise of a power. Dyson LJ explained that section 21(1A) prohibited *any* provision of residential accommodation to those to whom the conditions in section 21(1)(a) applied, as follows:

“40. In my view, s.3 has the effect of preventing an authority from exercising the power in s.2 of the LGA to do that which is prohibited by s.21(1A). It is true that the phrase “under subsection (1)(a)” in s.21(1A) makes it clear that what is prohibited is the provision of residential accommodation *under* s.21(1)(a) for persons who satisfy the s.21(1)(a) conditions, but who are subject to immigration control, and whose need for care and attention arises solely because of destitution. Thus if (leaving s.2 of the LGA out of account for the moment) there were some other statutory power than s.21(1)(a) by which accommodation could be provided to persons who satisfy the s.21(1)(a) conditions, then the exercise of that power would not be prohibited by s.21(1A). But it is agreed that there is no other such power....

41 The effect of s.3(1) is to prohibit the doing of “anything” which a local authority is unable to do by virtue of any prohibition on its powers contained in any enactment. In the present context, the “thing” which is under consideration is the provision of residential accommodation to persons who, but for the prohibition in s.21(1A), would be entitled to accommodation under s.21(1)(a). It is that “thing” which the local authority is prohibited from providing by s.21(1A), and which it cannot provide under any other statutory power, unless

it can do so under s.2. But the very reason why s.3(1) was enacted was to prevent s.2 being used to do that which is prohibited by another statute. If Mr Jay were right, it would seem that no statutory prohibition would trump s.2 of the LGA unless it stated expressly that it was a prohibition for the purposes of s.3 of the LGA...

42 But as Mr Swift points out, to interpret s.3 in this way is inconsistent with the language of s.3(1) itself, which refers to any prohibition etc which is contained in any enactment *whenever* passed.

43 So far as the policy consideration is concerned, I accept that s.2 has a broad purpose. The scope of the powers given by s.2 should not be narrowly construed. The local authority is given a wide discretion to exercise its powers to promote well-being. But the fact that s.2 should be construed broadly does not help in deciding the meaning and scope of a prohibition, restriction or limitation on the exercise of powers which is contained in *another* enactment whenever passed or made. It is clear from s.3 that Parliament did not intend to override legislative schemes that already existed. The prohibition contained in s.21(1A) of the NAA must be given its natural meaning. For the reasons that I have given, it cannot be circumvented by s.2 of the LGA. If the prohibition in s.21(1A) were trumped by s.2, the prohibition in s.3(1) would be severely emasculated and, at any rate in relation to pre-existing legislative schemes, of no practical effect, since they do not (and could not) refer to the LGA.”

28. In *GS*, to which I have referred above, it was held that, although accommodation could not be provided under the Care Act 2014, it could be provided under section 1 of the Localism Act. The Care Act did not expressly prohibit the provision of stand-alone accommodation, and so did not impose a post-commencement limitation on providing accommodation: [61]. The judge was not referred to any other pre- or post-commencement limitation. He was referred to the decision in *R(MK) v. London Borough of Barking and Dagenham* [2013] EWHC 3486 (Admin) in which HHJ Bidder QC sitting as a Deputy High Court Judge decided that section 185 of the Housing Act 1985 was a pre-commencement limitation, but there does not appear to have been any argument in *GS* as to whether section 185 operated as a pre-commencement limitation and the judge did not address it.
29. Mr Harrop-Griffiths submitted that *GS* was wrongly decided. He said that, following the decision in *J* and the analysis in *Khan*, section 185 of the Housing Act imposes a prohibition on provision of accommodation under *any* enactment and not merely under the Housing Act. I agree. Section 21(1A) of the National Assistance Act and section 185 of the Housing Act each state that the assistance to which the section relates may not be provided to a person to whom the specified conditions apply. In the instant case there is no other legislation (disregarding the Localism Act) under which the claimant could be provided with accommodation, as was the position in *Khan* (disregarding the Local Government Act). The reasoning of Dyson LJ at paragraph [41] of *Khan* applies to the

present case. Section 2(2)(a) of the Localism Act prevents an authority from doing under section 1 “anything” which it is unable to do by virtue of a prohibition expressly imposed by a statutory provision. The “thing” which the claimant asks the authority to do is to secure accommodation for him. Section 185 of the Housing Act prevents the local authority from providing that “thing” to the claimant, and it cannot provide it by way of any other statutory power unless it can do so under section 1. Section 2 of the Localism Act (like section 3 of the Local Government Act) prevents section 1 being used to do that which is prohibited by another statute. The effect of Mr Presland’s position is that, unless a statute expressly prohibits the exercise of section 1, that provision can be used to do anything which parliament has prohibited. That cannot have been the legislative intention of section 2 because it expressly applies to pre-commencement limitations, and pre-commencement limitations could not have expressly excluded the exercise of a statutory power which did not at that time exist.

30. It was not part of the claimant’s case that, as an alternative to providing accommodation, the defendant should provide funds to enable the claimant to secure accommodation. I have heard no submissions as to whether this would be possible under section 1 of the Localism Act and I express no concluded view on it. The position is not straight forward. It is not clear whether such provision is “assistance” within Part 7 of the Housing Act and thereby subject to the prohibition in section 185. Section 206(1) of the Housing Act, which provides for the only ways in which an authority may discharge its functions under Part 7, does not seem to cover provision of finance in order to secure accommodation. The issue was not considered in *J*. In *Khan Dyson LJ* noted the potential difficulties in respect of the corresponding issue in the context of the National Assistance Act 1948, and there are other issues identified by HHJ Bidder QC in *MK* at [98]-[103].

The Nationality Immigration and Asylum Act 2002, schedule 3

31. Even if the defendant could otherwise provide the claimant with support under either the Care Act or the Localism Act, the effect of paragraphs 1, 3 and 5 of Schedule 3 of the Nationality Immigration and Asylum Act 2002 is that he is not eligible for support or assistance under those provisions unless such support is necessary for the purpose of avoiding a breach of his Convention or EU Treaty rights.
32. Mr Presland has not advanced any basis for saying that the claimant’s EU Treaty rights are in play here. He does not have a right to reside in the UK and he has no basis in EU law for claiming the right to be accommodated by the defendant. Of course, if the claimant were able to establish a right to reside, then he would be entitled to claim mainstream benefits and would be eligible for assistance under the Housing Act, which would be available to him subject to satisfying the relevant conditions of entitlement, and no issue would arise under Schedule 3.
33. I am satisfied that the role of the Court is to assess for itself whether the claimant’s Convention rights require the provision of accommodation. In the light of the decision of Lang J in *R (de Almeida) v. Royal London Borough of Kensington and Chelsea* [2012] EWHC 1082 (Admin) at [85], it is clear that I am not limited to a review of the defendant’s decision in May 2018 and I may take into account evidence relating to the claimant’s circumstances post-dating that decision. Further it is for the claimant to prove any breach of Convention rights, but for the defendant to justify any interference: *GS* at [70].

34. In relation to the claim that support is necessary to avoid a breach of Convention rights, the observations of Dyson LJ in *R (Khan) v Oxfordshire County Council* [2004] HLR 41 at [52] are important here.

“...it is important to emphasise the extremely limited scope for the operation of articles 3 and 8 in this area. As the court said in *Anufrijeva*, the Strasbourg court has not yet given a decision that a State has infringed articles 3 or 8 as a result of failure to provide welfare support, but the court has recognised the possibility of such an infringement (para 30). Thus, while Strasbourg has recognised the possibility that article 8 may oblige a State to provide positive welfare support in special circumstances, it has made it plain that neither article 3 nor article 8 imposes such a requirement as a matter of course (para 33). It was hard to conceive of a situation in which the predicament of an individual will be such that article 8 requires him to be provided with welfare support, where his predicament is not sufficiently severe to engage article 3 (para 43)...”

35. Mr Presland relied on *R (Limbuella) v. Secretary of State for the Home Department* [2001] 1 AC 396 in support of his submission that, without accommodation, the claimant would be destitute and the deprivation and suffering which he would experience would be so severe as to amount to inhuman or degrading treatment within article 3. As for article 8, Mr Presland submitted that the claimant was particularly vulnerable, as evidenced by the assaults which he has experienced, his medical conditions and the previous attempted suicide, and that failure to provide accommodation would constitute an interference with his article 8 rights. He also submitted that the claimant could not avoid a breach of his Convention rights by returning to Lithuania because he regarded the UK as his home and, more importantly, because in Lithuania he would not receive the medical care or social welfare benefits that are required in order to avoid a breach of those rights.
36. My findings on the evidence in this case are as follows.
37. The claimant is presently accommodated by virtue of a court order. He has no funds with which to pay for accommodation and so, in the absence of accommodation provided by the defendant, would be homeless. There is no up to date evidence as to what charitable or other support would be available in those circumstances. The charitable assistance which he had previously received was winter provision and ended in April 2018. I have not been provided with any evidence as to whether or not he could obtain such assistance this winter although it has not been suggested that it would not be. I am unable to find, on the evidence, that he would be likely to be street homeless during winter. The claimant recently worked for a brief period as a Big Issue vendor and more recently was able to secure some paid work handing out free newspapers and so he is not wholly without resources.
38. The claimant has a number of medical problems, as described in the FACE assessment (see above). The claimant’s GP confirmed in July 2018 that the claimant has a number of ongoing medical conditions for which he is still under investigation or receiving treatment. At that time, he was awaiting a hospital appointment due to take place in September for severe abdominal pain caused by his chronic pancreatitis, but there is no evidence of the outcome of that appointment nor of his current condition or pain. The

medical evidence gives little indication of the severity of the claimant's other conditions nor their impact on him.

39. The claimant has family in Lithuania and no close connections with family or friends in the UK.
40. The European Commission's document, "Your Social Security Rights in Lithuania" (2018), summarises rights to health services and social assistance in Lithuania. Those who are in receipt of social assistance, those with a disability and those in receipt of social benefits are automatically insured under the compulsory health insurance scheme and have access to health services without charge. Social assistance disability pensions are payable to those who are incapable of work and are not entitled to a social insurance disability pension. Means-tested cash social assistance is payable to those registered as residing in Lithuania, including citizens. It guarantees minimum funds to satisfy the basic needs of those who are unable to earn a sufficient income to support themselves. I do not have sufficient information to know whether the claimant would receive a disability pension in Lithuania but, as Mr Presland accepted, he would at a minimum be entitled to cash social assistance and would also be entitled to free health care if he returned to Lithuania.
41. In my judgment the evidence does not establish that the claimant's circumstances in the UK, if his present accommodation was withdrawn, would get close to the threshold required by article 3. Past experience is that he has been able to access charitable support during the winter and there is no reason to suppose that it would be different this winter. Unlike the position of the claimants in *Limbuella*, experience does not suggest that he is likely to be reduced to a position where he is seriously hungry or unable to satisfy the most basic hygiene requirements. Moreover, the claimant has been able to find some paid work and so, even without state benefits, he is not likely to be entirely without funds. There is little evidence as to the severity or impact of the claimant's medical conditions, and such as there is does not show that he is particularly vulnerable as a result.
42. However, more importantly, any impact on the claimant's Convention rights can be avoided by his returning to Lithuania. The defendant has offered to pay his fare and to support him for a short time while travel and reception arrangements are made. The claimant has no family in the UK and he is in contact with his family in Lithuania. He would receive at least a basic level of welfare and health provision in Lithuania. There is no suggestion that he would be subject to inhuman or degrading treatment in Lithuania. It follows that even if the claimant were to be destitute in the UK, this would be a result of his choice not to return to Lithuania rather than any treatment of him by the defendant. Moreover, any interference with the claimant's right to respect for his private life under article 8 as a result of having to leave the UK is justified in the interests of economic well-being. The defendant has scarce resources and it is entitled to refuse to support the claimant, in circumstances where his connection with the UK is slight and he is entitled to support in Lithuania.

Conclusion

43. The defendant's decision not to provide accommodation under the Care Act 2014 was lawful. The defendant would not be able to provide accommodation to the claimant under section 1 of the Localism Act 2011, even if he were not excluded from such provision pursuant to schedule 3 of the Nationality Immigration and Asylum Act 2002. But, in any

event, the claimant is excluded from such provision pursuant to schedule 3. Accordingly, I dismiss the application for judicial review.