Neutral Citation Number: [2023] EWHC 10 (Admin)

Case No: CO/1931/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/01/2023

Before :

JUDGE O'CONNOR
(sitting as a Judge of the High Court)

- -

Between :

The King
On the application of

Dwaine Campbell	**Claimant**
- and -	
London Borough of Ealing	**Defendant**

- -
- -

Siân McGibbon (instructed by **Hodge Jones and Allen Solicitors**) for the **Claimant**
Joshua Swirsky (instructed by **Ealing, Legal and Democratic Services**) for the **Defendant**

Hearing date: 30 November 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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JUDGE O'CONNOR

Judge O'Connor:

Introduction

1. This is an application for judicial review of the London Borough of Ealing's decision of 28 February 2022 ("the Decision") to withdraw its funding of the Claimant's bed and breakfast accommodation ("the temporary accommodation"). The application concerns the interaction between a local authority's obligations under the Care Act 2014 ("the Care Act") and its obligations under the Housing Act 1996 ("the Housing Act"). Permission to bring these proceedings was granted on 12 July 2022, upon consideration of the papers, by Deputy High Court Judge Susie Alegre.

2. The essence of the Claimant's case is that he has, at all material times, had a need for care and support under the Care Act, which requires the provision of accommodation for its effective delivery. It is contended that by withdrawing funding for the provision of accommodation, the Defendant erred in concluding either that it did not owe a duty to provide, or fund the provision of, accommodation under the Care Act, or in failing to conduct a proper assessment addressing the issue of whether it owed a duty to provide such accommodation (Ground 1). The Decision was also irrational, took account of irrelevant matters and failed to take account of relevant matters (Ground 2(a)). It is additionally submitted that the Decision was taken for an improper purpose (Ground 2(b)) and that it was taken in breach of the Equality Act 2010 ("Equality Act") in that it amounted to victimisation contrary to section 27 of that Act (Ground 2(c)).

3. The Defendant contends that the Claimant was not entitled to the provision of accommodation under the Care Act because he is eligible for housing under either Part VI or Part VII of the Housing Act. The Claimant has never been assessed as having a care and support need for accommodation, and his care and support needs are not accommodation related. An Equality Act claim is the subject of ongoing proceedings in the County Court. The decision to withdraw funding of the Claimant's accommodation was not taken for an improper purpose, nor does it amount to victimisation.

Factual Background – A Summary

4. I have before me witness statements drawn on behalf of the Defendant, authored by Charlene McLeod, team manager in Ealing's Independent Living Service, Felix Uzoigwe, Ealing's Housing Solutions Manager, Ionie Nash, Head of Service at Ealing's Independent Living Service, Nina Yusof, a Housing Demand Manager at Ealing council, and Stacey Showers, a Senior Social Worker in Ealing's Independent Living Service. No application has been made to cross-examine upon the contents of these statements. I have also been provided, on behalf of the Claimant, with witness statements authored by the Claimant, the Claimant's uncle, and Selina Salhan, who is described in the documents before me as the Claimant's partner/girlfriend and carer.

5. The Claimant was born in 1982. He suffers from Retinitis Pigmentosa, a condition which is progressive. He is partially sighted. It is also recorded that the Claimant suffers from obsessive compulsive disorder and depression. The Claimant does not have employment.

6. The Claimant was accommodated in the Defendant's area by the London Borough of Hillingdon ("Hillingdon") pursuant to its duty under Part VII of the Housing Act. The

Claimant subsequently failed to pay his rent and was evicted. Thereafter, Hillingdon placed the Claimant in temporary accommodation in a hotel in Southall. Hillingdon treated its housing duty as having been discharged on 3 February 2016. As the Claimant was a *"disabled man who was at imminent risk of being made homeless"* the Defendant took over the funding of the Claimant's accommodation at the hotel on the 4 February 2016. In its Detailed Grounds of Defence, the Defendant indicates that the abovementioned accommodation was provided to the Claimant pursuant to the exercise of its discretion under section 19(3) of the Care Act, pending completion of an assessment which had begun on 2 February.

7. This assessment, dated 17 February 2016, concluded that the Claimant had eligible domiciliary needs. The Defendant proposed to meet those needs by making direct payments. The Claimant did not complete the required financial assessment enabling direct payments to be made and he declined the receipt of a package of care from the Defendant because his needs were being met by family members. Around this time discussions took place between the Claimant and his social worker regarding the provision of assistance to the Claimant to enable him to make an application for accommodation under Part VI of the Housing Act.

8. On 18 July 2016, the hotel gave notice to the Claimant that he must leave and on 20 July 2016 the Defendant arranged for the Claimant to move to a guest house. The Claimant's allocated social worker and a sensory and visual impairment worker concluded that this accommodation was too small for the Claimant, and the Claimant subsequently moved to the temporary accommodation on 5 October 2016. The temporary accommodation is private rented sector accommodation.

9. A re-assessment of the Claimant's needs was completed on 28 October 2016, which again concluded that the Claimant had eligible needs. Shortly thereafter discussions took place between the Claimant and his social worker regarding the Claimant's housing situation, including discussions regarding previous assistance provided to the Claimant to make bids for housing using Locata, a system operated by the Defendant between 2016 and 2022 to facilitate bids for accommodation under Part VI of the Housing Act. A further assessment of the Claimant's needs was carried out on the 4 August 2017, and the Claimant's housing priority level under the Housing Act was also discussed at this time.

10. The most recent assessment of the Claimant's needs was undertaken by Charlene McLeod, on 26 November 2020. It records that the Claimant was living in *"temporary accommodation"* having been placed there by the local authority. The primary concerns raised by the Claimant at this assessment related to the unsuitability of the temporary accommodation. The Claimant's care and support needs were assessed as including, managing and maintaining nutrition, maintaining personal hygiene, being appropriately clothed, using his home safely and maintaining a habitable home environment. It was concluded that without support to meet these needs, the Claimant's wellbeing would be negatively impacted upon, because there would be a risk of loss of dignity and respect, deterioration in physical and mental health, malnutrition and living conditions that are not safe, clean and habitable. These needs were, however, being met by Claimant's partner and family at that time and, for this reason, the Claimant declined the provision of managed care or direct payments by the Defendant.

11. The Claimant was also referred to a Senior Occupational Therapist ("SOT") for *a "housing needs assessment"*. The SOT recommended *"the provision of a one bed flat (first floor preferred by client) – bath or level access shower (client can presently access either) fairly close to bus stops/local shops (so client can maintain his mobility and degree of independence)."* The Claimant has been provided with continued support in using the Locata bidding process.

12. The Defendant has at all times funded the temporary accommodation. The Claimant considers the temporary accommodation to be unsuitable to meet his housing needs. He is on the Defendant's housing register with a Band B (the second highest) priority under the housing allocation scheme adopted by the Defendant pursuant to Part VI of the Housing Act.

13. Following pre-action correspondence, on or around 19 November 2021 the Claimant brought a claim against the Defendant in the County Court for breach of the Equality Act ("the Discrimination claim"). For present purposes, it is sufficient to identify that the claim alleges that the Defendant has treated the Claimant in a directly and indirectly discriminatory manner, as a result of which he has spent several years living in accommodation which is not suitable for his needs as a disabled person. The Discrimination claim is currently stayed by consent.

14. The Claimant remains living in the temporary accommodation, funded by the Defendant.

Decision under Challenge

15. By way of a letter of 28 February 2022, the Defendant informed the Claimant's solicitors that it had taken the decision to withdraw funding of the temporary accommodation, such decision to take effect from 25 April 2022.

16. The Decision gave the following explanation for the withdrawal of funding:

> '**Why is the Council doing this?**
>
> My client department has been funding your accommodation … for more than 5 years on the understanding that you would, through Ealing Council's Housing Allocation System, bid for properties for which you were eligible.
>
> You have recently issued court proceedings against my client department and their Housing colleagues.
>
> You indicated in your claim that you are dissatisfied with the temporary accommodation, which my client department has been funding on your behalf for 5 years.
>
> You have made it clear that you wish to live elsewhere, and it had been anticipated given your view about your current accommodation that you would be eager to take steps to bid for properties and pursue other measures available to you to resolve your permanent housing situation.
>
> My client department has done its best to assist you to avail yourself of the resources available to you to resolve your housing issues.

My client department have referred you to agencies to assist you in this regard.

However, you have rejected these offers of assistance and agencies that were initially prepared to assist you have withdrawn their help."

17. The Decision goes on to state:

"**Summary of Solutions to your housing circumstances that have been presented to you but you have rejected**

1. …
2. My client department agreed to fund the accommodation to support you while you addressed and resolved issues around your housing needs and your rent arrears.
3. In 2019 you were referred to Housing solutions, who deal with homelessness applications, to assist you to transfer you to alternative temporary accommodation. You declined this support …
4. It is recorded that you have had two subsequent referrals to Housing Solutions…

5 - 8 …

9. You have a Locata account into which potential properties for which you can bid are inserted …

10 - 15 …

16. However, it is my client department's observation from its interaction with you over the 5 years that it has been funding your temporary accommodation with which you are so dissatisfied, that you do not appear willing to take the initiative and reasonably pursue opportunities available to you to secure permanent alternative accommodation for yourself.

In short, your current bed and breakfast accommodation …was a temporary measure, to allow you time to make a housing application. …

My client department has concluded that the means to remedy your housing situation and secure permanent alternative accommodation lies with you and your willingness to engage in the bidding process for alternative accommodation rather than remaining in accommodation that my client department has been funding for 5 years and with you assert you are very unhappy. …

…

It is not unreasonable for my client department to consider that the sooner you pursue the options above the sooner you are likely to identify alternative accommodation into which you can move and taking steps yourself to pursue the options above is more likely to promote your wellbeing than you refusing to take any of the above steps to remedy your housing circumstances.

'**Notice of withdrawal of funding on 25th April 2022**

My client department believes it is not unreasonable to bring it's funding of your current accommodation to an end on reasonable notice.

The withdrawal of funding for your current accommodation by my client department is on the basis that it is not unreasonable to expect an adult who is unhappy with their current temporary accommodation and seeks alternative

> permanent accommodation to be proactive in using the resources available to him to secure permanent alternative accommodation for himself as soon as possible.
>
> You appear to have been happy for my client department to fund your current accommodation for over 5 years; accommodation with which you are dissatisfied.
>
> My client department does not feel that this situation can continue indefinitely.
>
> Therefore, my client department reasonably expects that during the notice period i.e., between now and 25th April 2022 that you will vigorously pursue the above options, with the assistance of your legal advisors, for identifying alternative permanent accommodation for yourself.
>
> Please accept this letter therefore, as notice that my client department Ealing Adult Social Care will be ending the funding of your bed and breakfast accommodation in 8 weeks' time i.e. [8 weeks from 28th February 2022] on 25th April 2022. My client department will be letting your landlord know of this decision.'
>
> For the avoidance of doubt, I would make clear that your current accommodation was not funded by my client department because of any duty to provide care and support to you under the Care Act 2014. …"

Legal Background

18. At the heart of this application is the interplay between the Defendant's obligations and duties under the Housing Act and its duties under the Care Act.

Care Act 2014

19. The Care Act provides a single statutory scheme for the provision of social care to adults. It replaces previous powers under the National Assistance Act 1948. The scheme is made up of the Act itself, regulations, and the statutory guidance, *"Care and Support Statutory Guidance"*.

20. Section 1 of the Care Act imposes on local authorities a general duty *"in exercising a function"* in relation to a person under the first part of the Act, to promote that person's well-being.

21. Section 1(2) of the Care Act defines someone's 'well-being' in terms of its relation to any of: personal dignity (including treatment of the individual with respect), physical and mental health and emotional well-being, protection from abuse and neglect, control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided), participation in work, education, training or recreation, social and economic well-being, domestic, family and personal relationships, suitability of living accommodation, and the individual's contribution to society.

22. The scheme of substantive duties under the Care Act begins with the duty imposed at section 9 to undertake a *"needs assessment"* where it appears to a local authority that

an adult may have needs for care and support. In such circumstances, the authority must assess whether the adult does have such needs and, if so, what they are.

23. 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 identified in the Care and Support (Eligibility Criteria) Regulations 2015.

24. Regulation 2 of the 2015 Regulations provides that needs will be *"eligible"* if they arise from physical or mental impairment or illness, cause the person to be unable to achieve two or more specified outcomes and, as a result, will have a significant impact on well-being. The specified outcomes include maintaining personal hygiene; managing toilet needs; being appropriately clothed; accessing and engaging in work; using public transport and maintaining family relationships. Information on the care the individual is receiving must not influence the eligibility determination.

25. Section 18(1) of the Care Act provides that a local 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. However, the local authority is not required to meet any needs which are being met by a carer who is willing and able to do so (section 18(7)).

26. Section 24 sets out that the local authority must prepare a 'care and support plan'. By section 25, the care and support plan must set out what needs are to be met and how the local authority is going to meet them. The plan must be proportionate to the needs. It must be kept under review (section 27).

27. Section 19 of the Care Act provides the local authority with a power to meet an adult's needs in circumstances where there is no established duty under section 18. In particular, under section 19(3) a local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without the authority having conducted a needs or financial assessment or having made a determination under section 13(1).

28. Section 8 of the Care Act gives examples of what may be provided to meet needs for care and support. These include accommodation *"in a care home or in premises of some other type"* (section 8(1)(a)); (b) care and support at home or in the community; (d) goods and facilities and (e) information, advice, and advocacy. Examples of how the local authority may meet an individual's needs are provided in section 8(2) and include: providing a service, by arranging for a person other than it to provide a service and by making direct payments.

29. There is, however, specific provision at section 23 (which is headed *"exception for the provision of housing etc"*) to the effect that an authority:

> "may not meet needs under sections 18-20 by doing anything which it or another local authority is required to do under - (a) The Housing Act 1996, or …"

Housing Act 1996

30. Local housing authorities have power to provide housing accommodation.

31. Part VI of the Housing Act deals with the allocation of housing accommodation by local authorities. Section 159 requires the authority to comply with the provisions of Part VI when allocating housing accommodation. Section 166A requires the authority to have an allocation scheme for determining priorities in the grant of housing and to give reasonable preference to particular groups, including the homeless and those owed duties under, amongst other provisions, section 193(2) of the Housing Act. Applicants for housing are placed on the local housing authority's register and properties are allocated in accordance with the allocation scheme as properties become available.

32. The Claimant has a high priority within the Defendant's housing allocation scheme, and he has made numerous bids under the scheme. The Claimant has also received and rejected direct offers under the scheme.

33. Part VII of the Housing Act imposes duties in respect of those who are homeless or threatened with homelessness. Under Part VII when a person presents as homeless to a local authority it is under a duty to make enquiries (section 184) to determine whether: (a) that person is indeed homeless or threatened with homelessness (section 175), (b) eligible (section 185), (c) in priority need (section189), and (d) not intentionally homeless (section 191). Persons having a priority need are defined to include a person who is vulnerable as a result of specified circumstances such as old age, mental illness, or physical disability (section 189). An interim duty may be owed pending the outcome of these inquiries in cases of apparent priority need (section 188).

34. The Claimant has presented as a homeless person to the Defendant on three occasions, but on each occasion the application has not reached a conclusion.

Discussion

Grounds 1 & 2(a)

35. The Care Act provides for a sequential approach to the provision of social care and support to individuals in need. Local authorities are required to carry out a needs assessment (section 9); assess whether the established needs for care and support are *"eligible needs"* under the 2015 Regulations (section 13); meet the needs identified as eligible needs unless such needs are being met by a carer (sections 18(1) and (7)); consider whether to exercise its discretion to meet needs identified in the assessment which are not *"eligible needs"* (section 19(1)) and to draw up a care and support plan (sections 24-25).

36. The Defendant has conducted numerous needs assessments of the Claimant, the most recent being on 26 November 2020. There is no dispute that the Claimant has at all times had eligible care and support needs.

37. The Defendant has been funding the Claimant's accommodation since 4 February 2016. In her witness statement of 15 August 2022, Charlene McLeod confirms that funding for the accommodation was provided *"under powers under the Care Act 2014"* (my emphasis). No further details are given. As identified above, the Decision under challenge of 28 February 2022 states that the temporary accommodation was not funded by the Claimant *"because of any duty to provide care and support to you under the Care Act 2014"* (my emphasis). In her statement of the same date Ionie Nash asserts, in relation to the temporary accommodation, that, *"It was clearly an error and*

perhaps unlawful for Ealing to have continued to fund [the Claimant's] accommodation…."

38. It is the lawfulness of the Defendant's funding of the Claimant's accommodation under the Care Act which is at the centre of this case. The obvious starting point in an attempt to answer the question of whether the Defendant had a duty or a power under the Care Act to fund the temporary accommodation, is the Act itself.

39. It is well established that a standalone need for accommodation is not a need for care and support for the purposes of the Care Act: see R (GS) v Camden London Borough Council [2016] EWHC 1762 (Admin) [2017] PTSR 140 at [29]; R (AR) v London Borough of Hammersmith [2018] EWHC (Admin) at [18]; and, R (Aburas) v London Borough of Southwark [2019] EWHC 2754 (Admin), at [6(i)].

40. Section 8 of the Care Act provides examples of what may be provided by a local authority to meet an individual's care and support needs. One example is the provision of accommodation in a care home *"or in premises of some other type"*. This is, however, subject to section 23 of the Care Act (which is headed *"Exception for the provision of housing etc")* which states that a local authority *"may not meet needs under section 18 to 20 by doing anything which it is required to do under the Housing Act 1996…."*

41. The purpose and effect of section 23 of the Care Act was considered by Rowena Collins Rice, sitting as a Deputy Judge of the High Court (as she then was), in R (on the application of Idolo) v Bromley LBC [2020] EWHC 860 (Admin), [2021] H.L.R. 17.

42. In Idolo, the claimant, had been living with his family in an eighth-floor local authority accommodation when he suffered a medical emergency resulting in paralysis from the waist down. The local authority assessed his needs under the Care Act, and concluded that he was substantially bed-bound, he needed two people using a hoist to move him in and out of bed, and was unable, without assistance, to dress, prepare meals, wash and use the lavatory. A care plan was prepared to provide domiciliary care. A month later, the local authority reviewed the claimant's care and assessed him as needing a new home with three bedrooms, wheelchair accessibility and other adaptations to enable his care needs to be met. Three months later, the claimant applied to go on the local authority's housing register citing medical and disability grounds and, later the same year, he was placed on the housing register in a high priority band. A year later the claimant was provided with the required accommodation. The issue before the Court was whether there had been failures in the local authority's discharge of its legal duties towards the claimant and in particular whether there had been an unlawful delay in rehousing him. The claimant submitted that the local authority had erred in passing the housing issue on to the housing department rather than pursuing it as a social care solution. It was contended that the general duties under the Care Act required expedition of the housing issue beyond what the housing scheme would achieve.

43. In dismissing the claim, the Deputy Judge reasoned as follows:

> "47. It is clear that there is an intention in s.23 to give a measure of priority to the general scheme of the Housing Act over the specific scheme of the Care Act. That should not come as a surprise. On the one hand, local authorities face the irresistible force of demand to meet properly assessed needs for adult social

> care, including needs for decent adapted or adaptable housing. On the other hand, they face the immovable object of limited housing resources, and the housing duties they owe to others in the community. The solution the law appears to provide is that (re)housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within Housing Act schemes, but must find their proper place within those schemes.
>
> 48. That is not a conclusion reached simply by extrapolation from s.23 of the Care Act. It is also suggested by s.166A of the Housing Act. Subsection (3) of that section *requires* housing schemes to be framed so as to secure that "reasonable preference" is given to certain categories of people including the homeless and "people who need to move on medical or welfare grounds (including any grounds relating to a disability)", whether or not, presumably, that need itself technically amounts to 'homelessness' under s.175(3). This is a clear housing duty. The council's housing prioritisation scheme has to discharge that housing duty. Section 23 ensures that the Care Act does not cut across that duty, or that scheme of priority.
>
> 49. Of course, it is the priority need for a (suitable) home which the Housing Act duty addresses. It does not address adaptations or other care and support needs. However, a "need to *move*" on medical, disability or welfare grounds must be given some meaning in terms of the Housing Act duty. It cannot mean less than that those grounds point to a particular, and different, *kind* of accommodation from that occupied (or, under s.175(3), that a home has *become* unsuitable in a relevant way). So, it has at least to address such "ordinary" housing issues as size and suitability for family life, location, and perhaps also other "liveability" factors (accessibility and adaptability to other care and support needs). If no adaptations had been needed by Mr Idolo, it is hard to see why his primary need for three bedrooms and ground floor access would not engage the Housing Act duty. The addition of further needs for adaptability and adaptations does not obviously alter that.
>
> 50. Finding and providing homes of a particular description is what housing departments do. It is always, and quintessentially, a matter of prioritising competing demands. The legislative scheme therefore seems to envisage that where Housing Act duties are engaged, they are to be met within the housing priority allocation scheme, without prejudice of course to the possibility that further Care Act duties may be engaged in addition. Fulfilling the Care Act duties depends on fulfilling the Housing Act duties first." (my emphasis)

44. Although Idolo was a decision made in the context of a claim for damages against a local authority, it required detailed consideration of the local authority's Care Act obligations, including whether a move to an adapted or adaptable home could be a way to meet needs under the Care Act: see [3] and [44]. The Court concluded that section 23 of the Care Act prohibits the meeting of a housing need that is required to be met under the Housing Act.

45. Applied to the facts of the instant case, the rationale in Idolo as to the operation and ambit of section 23 would inexorably lead to the conclusion that there was no duty or power for the Defendant to meet the Claimant's Care Act needs by funding the temporary accommodation if the Defendant were otherwise required to meet the Claimant's housing needs under Housing Act.

46. Ms McGibbon submits that the Court should prefer the decision of this Court in Aburas, which is not referred to in the later decision of Idolo. It is contended that following Aburas, section 23 should not be read so as to prohibit the provision of accommodation, or the funding of accommodation, where the needs for care and support are of a sort that are normally provided for in the home and the provision of which *"will be effectively useless if the individual has no home."*

47. In Aburas, the claimant was a homeless failed asylum-seeker who had mental health issues. There were barriers to his removal to Kuwait. The principal issue was whether he had eligible needs for care and support under Care Act. It was accepted that, in principle, he would be eligible for support from the Home Office under the Immigration & Asylum Act 1999. A non-governmental organisation considered that he was in need of a social worker's support to ensure that he ate properly and took his medication, and that the effective delivery of such support required accommodation. The local authority assessed him under the Care Act and decided that he had no needs that triggered the local authority's duty under section 18 or its power under section 19. It considered that he should apply instead to the Home Office for support with accommodation and subsistence.

48. In dismissing the application Michael Fordham QC, sitting as a Deputy Judge of the High Court (as he then was), found that although the need for accommodation is not a *"need for care and support"* for the purposes of the Care Act, accommodation may be provided pursuant to the Care Act where the person has a 'looked-after need' of care and support whose effective delivery requires the provision of accommodation. In considering relevant needs under the Care Act, the Deputy Judge stated:

> "5. I turn to the statutory scheme as it affects Southwark's functions. I can describe it by asking and answering some key questions. First, what are relevant needs for the purposes of CA14? The answer is that they are 'looked-after needs'. CA14 is a statutory scheme for the assessing and meeting "needs for care and support". These are in the nature of needs to be 'looked-after'. That idea was well-recognised in relation to predecessor legislation concerning needs for "care and attention" and the parties were agreed that the case-law makes clear that the same idea underpins CA14. It was Lady Hale who explained the 'looked-after needs' point in *R(M) v Slough Borough Council [2008] UKHL 52 [2008] 1 WLR 1808* at §33:
>
> > "… 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."
>
> '6. …what is the relationship between CA14 and duties to provide accommodation? The answer is that the need for accommodation is not itself a 'looked-after need', but the provision of accommodation may be called for under CA14 so as to secure effective care and support for a 'looked-after need'. In other words, accommodation may be assessed to be the necessary and appropriate conduit for the practical and effective delivery of care and support for the relevant 'looked after needs'. It is important to look at accommodation

needs through that prism, for the purpose of the CA14 statutory functions'…"

49. The Deputy Judge went on, at [6(ii)], to describe the need which must be established as 'accommodation plus':

> 'Counsel were agreed as to when it is, in essence, that accommodation comes to be appropriately provided pursuant to CA14. They agreed that this is so where the person has a 'looked after need' of care and support whose effective delivery requires accommodation. Ms Mallick described that situation, where accommodation is required to deliver effective care and support for a 'looked after need' as 'accommodation plus'. In that language the 'plus' constitutes the specific action addressing the 'looked after need' for care and support, and the 'accommodation' required for its effective delivery. That language is not in my judgment inapt, provided that it is remembered that the 'plus' is what matters in leading to the 'accommodation'. The 'plus' is not an incidental extra; it is a necessary prism'.

50. It is clear that although the need for accommodation is not a need for care and support under the Care Act, local authorities have a power to provide accommodation under the Care Act in circumstances where accommodation is required to effectively deliver care and support. This follows from the decision in Aburas and is also flows from the decision of the Court of Appeal in R (SG) v London Borough of Haringey and the Secretary of State for the Home Department [2017] EWCA Civ 322. This power is not however unfettered and the difficulty the Claimant faces is in establishing that this power extends to scenarios in which section 23 of the Care Act bites.

51. Both Aburas and SG were cases involving Claimants who were excluded from the provision of accommodation under the Housing Act by virtue of their immigration status. In neither case was it asserted that there were prevailing circumstances which gave section 23 a foothold; indeed, the court in Aburas referred to section 23 only once during the course of its judgment, at [6(iv)], stating:

> "Maintaining a disciplined focus on 'looked-after needs' makes sense. There is a distinct statutory scheme for the principled and orderly approach to local authority housing, including local authority duties owed to those who are homeless. That distinct scheme is to be found in the Housing Act 1996 (HA96), and there are boundaries between the statutory schemes (see too CA14 section 23). It would undermine the integrity of a coherent statutory framework if CA14 became a 'back-door' route to claims based on accommodation needs, circumventing the scheme of HA96 and jumping the homelessness queue. As Lady Hale said of the predecessor legislation in the *M (Slough)* case at §33, the local authority function of addressing 'looked-after needs' for care and support:
>
> > "… is not a general power to provide housing. That is dealt with by other legislation entirely, with its own criteria for eligibility … [Otherwise,] 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 …"

52. Insofar as the Court in Aburas sought to extend the 'accommodation plus' principle to cases which engage section 23 of the Care Act, this was plainly *obiter dicta* and, in my conclusion, I do not regard it as precedent on the interpretation of section 23, and I do not follow it.

53. There is only one decision before me on the application and interpretation of section 23 of the Care Act, and that is the decision in Idolo. I can see no reason to depart from, and agree entirely with, the conclusion therein (at [47]) that there is an intention in section 23 to give a measure of priority to the general scheme of the Housing Act over the specific scheme of the Care Act. Housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within Housing Act schemes, but must find their proper place within those schemes.

54. In the circumstances of the instant case, this leads me to conclude that if section 23 is of application, the Defendant has no power or duty under the Care Act to meet the Claimant's care and supports needs with the provision, or funding, of accommodation under the Care Act.

55. In anticipation of the possibility of the Court concluding as I have done above, Ms McGibbon contended in the alternative that section 23 does not bite on the facts of the instant case because the Defendant does not presently owe the Claimant a duty to provide him with accommodation under the Housing Act. Ms McGibbon seeks to draw a distinction between a duty on a local authority to provide accommodation under the Housing Act, and the duty under Part VI of the Housing Act to appropriately prioritise the claimant for adapted accommodation through its allocation system, which it is accepted is a duty owed to the Claimant. In response, Mr Swirsky avers that the Claimant is not entitled to accommodation under the Care Act because he is eligible for housing under either Part VI or Part VII of the Housing Act,

56. I reject Ms McGibbon's submission. The Defendant's housing allocation, and prioritisation, scheme discharges the duty under section 166A of the Housing Act and it is not said that the scheme is unlawful. As the Court identified in Idolo, at [48], section 23 ensures that the Care Act does not cut across that duty or the scheme of priority.

57. The Defendant is, and was at the material time, required to provide the Claimant with housing under the Housing Act. The Claimant is a qualifying person under Part VI of the Housing Act, as supported by the fact that he has been put on the Defendant's housing register and is still on that register. The Defendant's housing allocation scheme takes account of reasonable preference to be given to certain categories of people. In March 2019, the Claimant was allocated to Band B of the scheme, the second highest banding category, after a successful challenge to an earlier banding decision. The Claimant has made a number of unsuccessful bids for accommodation. Since January 2022, the Defendant has also made four direct offers of accommodation to the Claimant outside of the usual bidding process. The Claimant rejected those offers on the basis that he considered the properties to be unsuitable. The fact the Defendant has not yet provided accommodation to the Claimant under Part VI of the Housing Act does not mean that it is not 'required' to do so.

58. It may also be the case that the Claimant became homeless within the terms of section 175(3) of the Housing Act, in the sense that the accommodation in which he was living was not accommodation which it was reasonable for him to continue to occupy. Ms McGibbon contends that this is speculative in that the Claimant has never been found to be statutorily homeless by the local authority so as to give rise to a duty. I observe that the Claimant has made three unsuccessful applications under Part VII of the Housing Act. The details of these three applications, made on 4 February 2020, 15 November 2021 and 21 March 2022, are set out in the witness statement of Felix Uzoigwe, and are

also confirmed in the Claimant's own witness statement. Each of the applications was closed by the Defendant not because the Defendant concluded that the Claimant was not owed a duty under Part VII of the Housing Act, but rather because the Claimant indicated that he wanted a particular housing solution that was unavailable under the Part VII process, and his preference was to continue to pursue suitable accommodation under the Part VI process.

59. Drawing this together, I reject the Claimant's contention that the Defendant had an ongoing duty under Part I of the Care Act to provide him with, or to fund his, accommodation. The consequence of this finding is that the Claimant's Ground 1 must fail. The Defendant's conclusion that it did not owe the Claimant a duty to provide accommodation under the Care Act in order to meet his accommodation related needs was not made in error. It also follows that the Defendant did not err in failing to carry out a care and support assessment addressing the question of whether it owed a duty to provide accommodation in order to meet the Claimant's accommodation related needs, because there was no such duty.

60. The same reasoning also disposes of Ground 2(a). Given my finding that the Defendant neither had a duty nor a power under the Care Act to provide the Claimant with accommodation, or to fund the Claimant's accommodation, the decision to withdraw funding cannot be said to have been irrational.

61. I do, however, agree with Ms McGibbon's contention that given that the previous assessments of the Claimant's needs for care and support took place through the prism of the Claimant's accommodation being funded by the Defendant, the withdrawal of such funding leads to the obvious conclusion that there should be a further assessment of the Claimant's needs, viewed outwith the aforementioned prism. Whilst a further assessment cannot lead to the provision of accommodation by the Defendant under the Care Act, there may very well be additional needs for care and support that arise as a consequence of the withdrawal of funding for the temporary accommodation, for example the need for enhanced assistance for information, advice and advocacy in attempts to find a Housing Act solution to the Claimant's accommodation needs.

62. I do not accept, however, that the Defendant acted unlawfully in failing to undertaking such an assessment prior to issuing the Decision under challenge, particularly in light of the fact that the Claimant was provided with 8 weeks' notice of the withdrawal of funding and, as I have already alluded to, the Claimant is still living in the temporary accommodation funded by the Defendant.

Grounds 2(b) & 2(c)

63. Although separately pleaded, Ms McGibbon elided Grounds 2(b) and 2(c) during her oral submissions, focusing on the latter. By the former ground, which was pleaded and presented in the barest of terms, the Claimant contends that the Decision was taken for an improper purpose, namely: (i) in response to his decision to issue a claim against the Defendant for breach of the Equality Act 2010; and/or (ii) to deter him from pursuing that Claim; and/or (iii) putting pressure on him to source alternative accommodation independently.

64. By Ground 2(c), it is submitted that the Decision amounts to victimisation of the Claimant, contrary to section 27 of the Equality Act 2010.

65. It is prudent to consider the Equality Act ground first, and I start with the applicable statutory provisions. Section 27 of the Equality Act defines victimisation but does not of itself prohibit victimisation.

66. So far as is relevant for our purposes, section 27 reads:

> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because —
> (a) B does a protected act, or
> (b) …
>
> (2) Each of the following is a protected act –
> (a) bringing proceedings under the Act
> (b) – (d) …"

67. Prohibitions against victimisation are found throughout the Equality Act. More specifically, Part 3 of the Act relates to *"Services and Public Functions"* and Part 4 to *"Premises"*, and both Parts contain prohibitions against victimisation. Victimisation, which is prohibited under Part 4 cannot also fall within Part 3: see, section 28(2) of the Equality Act.

68. In R (Ward and others) v Hillingdon LBC [2019] PTSR 1738, Lewison LJ concluded, at [9], that in allocating accommodation under Part VI of the Housing Act, the local authority was providing services to a section of the public and that, accordingly, Part 3 of the Equality Act was in play. I can see no reason the same rationale would not apply to the provision of accommodation, or funding for such accommodation, by a local authority under the Care Act and, consequently, I conclude that Part 3 of the Equality Act is applicable in the instant scenario. The significance of this conclusion is found in sections 29(4) and (5) of the Equality Act, which read:

> "(4) A service-provider must not victimise a person requiring the service by not providing the person with the service.
>
> (5) A service-provider (A) must not, in providing the service, victimise a person (B)—
> (a) as to the terms on which A provides the service to B;
> (b) by terminating the provision of the service to B;
> (c) by subjecting B to any other detriment."

69. The Claimant contends that the lodging of the Discrimination claim in the County Court (Claim number H02CL679), on 23 November 2021, alleging breaches by the Defendant of the Equality Act, constitutes a *"protected act"* within the meaning of section 27 the Equality Act. The Defendant has not sought to persuade the Court that the lodging of the County Court proceedings is not a protected act, and I conclude that it is.

70. Having established that the Claimant has performed a protected act, it is then necessary to consider whether the Claimant has been subjected to a detriment. Detriment is not defined in the Equality Act but is a word to be interpreted widely: see, Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065, per Lord Mackay of Clashfern, at [37].

71. The Claimant relies upon the Defendant's decision to withdraw funding of the temporary accommodation, as set out in the letter of the 28 February 2022, as the relevant detriment for the purposes of the Equality Act. I accept that the withdrawal of funding is a detriment to the Claimant within the meaning of section 27.

72. The final question that falls for consideration is whether the Claimant was subjected to the detriment because of the protected act,

73. The Defendant's pleaded case is summarised as follows in its Skeleton Argument:

> "69. The reality is that the Country Court proceedings brought C's case into focus and D realised it was under no legal obligation to continue to pay for his accommodation.
>
> 70. While it is accepted that the letter informing C that the funding was being terminated could have been worded better that does not mean that D did not follow a legitimate course of action given that C had no right to be accommodated indefinitely at public expense.
>
> 71. It is also significant that D has agreed to extend the funding pending the outcome of these proceedings."

74. The Claimant's position is that the issuing of the Discrimination claim had a significant influence on the Defendant's decision to withdraw funding which, it is said, is plain from the terms of the Decision letter of 28 February 2022. It is contended that the Defendant's subsequent assertion that the withdrawal of funding was not a retaliation for the lodging of the Claim but a realisation of the true legal position, is irrelevant because it was not the basis upon which the decision to withdraw funding was taken. Ms McGibbon points to the fact that the Decision neither refers to the 'realisation of the true legal position' nor does it assert that the Defendant had no power to continue to provide accommodation under the Care Act. Attention is also drawn to [53] of the Detailed Grounds of Defence, in which it is accepted by the Defendant that the withdrawal of funding *"was intended to encourage the Claimant to regularise his accommodation"*. Ms McGibbon avers that whilst this is consistent with the terms of the Decision, it is at odds with the assertion that funding was withdrawn because of a realisation of the true legal position.

75. Victimisation does not require conscious motivation on the part of the perpetrator: see, Nagarajan v London Regional Transport [2000] 1 AC 501, HL. In the leading case under the Equality Act on direct discrimination (section 13(1)) and victimisation (section 27), Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425, Underhill LJ said as follows:

> "12. Both sections use the term "because"/"because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36, [2000] 1 AC 501, referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also

> well-established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan, at p. 513B."

76. The evidence before me includes witness statements drawn on the Defendant's behalf. There is not, however, a statement from the author of the Decision, and I could find no evidence to support the Defendant's submission that it was the crystallisation of the understanding of the application of section 23 which led to the decision under challenge being issued. I further observe that although the Decision makes reference to the fact that the Claimant's accommodation was not being funded out of a duty to provide care and support under the Care Act, the absence of such a duty, or the recent realisation of the absence of such a duty, is not specified in the Decision as a reason for the withdrawal of funding.

77. Relevant evidence as to the reason for the decision to withdraw funding of the Claimant's accommodation is, however, provided in Ionie Nash's statement of 15 August 2022, where she states as follows:

> "12. …Ealing Council social services has funded and continues to fund Mr Campbell's current accommodation when he has alternative resources available to him to identify and obtain alternative accommodation and leave his current accommodation which he says is unsuitable for him.
>
> 13. It has been an oversight for Ealing Social Services not to have withdrawn the funding for Mr Campbell's accommodation before now and force him to avail himself of the resources available to him to obtain alternative accommodation.
>
> …
>
> 16. It is recorded that at an Independent Living Team ILT Panel meeting on 12th September 2019. Minutes 12/09/2019: *"Noted in Panel – LH to write to DC informing him 4 weeks' notice is given for end of B&B funding. He is to be advised to bid for accommodation on Locata or seek himself a B&B which will take Housing Benefit."*
>
> 17. The withdrawal of funding was not in retaliation for Mr Campbell issuing disability discrimination proceedings but to encourage him to pursue the options available to him to obtain alternative accommodation which is what he maintains he wants."

78. A judicial review court should be slow to refuse to accept evidence filed by a public body unless it can be demonstrated that the evidence is plainly wrong. If there is any real doubt about the proper interpretation of a state of affairs, the case should be assessed on the basis that the public body's evidence is accepted. The principles were summarised by Nicola Davies LJ in R (Safeer & Ors) v Secretary of State for the Home Department [2018] EWCA Civ 2518 who said:

> "16. The respondent relies upon the documents, paragraph 13 and 14 above and upon the approach to be followed by the court in judicial review proceedings where there is a dispute upon the evidence. In R (McVey and Others) v Secretary of State for Health [2010] EWHC 437 (Admin) at [35] Silber J stated:
>
> "In my view, the proper approach to disputed evidence is that:-

> i) The basic rule is that where there is a dispute on evidence in a judicial review application, then in the absence of cross-examination, the facts in the defendants' evidence must be assumed to be correct;
>
> ii) An exception to this rule arises where the documents show that the defendant's evidence cannot be correct; and that
>
> iii) The proper course for a claimant who wishes to challenge the correctness of an important aspect of the defendant's evidence relating to a factual matter on which the judge will have to make a critical factual finding is to apply to cross-examine the maker of the witness statement on which the defendant relies."

17. The basic rule reflects the approach of Lane LJ (as he then was) in R v Board of Visitors of Hull Prison ex p St Germaine No. 2 [1979] 1 WLR 1401 at 1410:

> "Since we have had to decide this matter on affidavit evidence without the benefit of cross-examination, we are obliged to take the facts where they are in issue as they are deposed to on behalf of the Board"

18. Stanley Burnton J (as he then was) in S v Airedale NHS Trust [2002] All ER (D) 79 at [18-19] stated:

> "18. It is a convention of our litigation that at a trial in general the evidence of a witness is accepted unless he is cross-examined and thus given the opportunity to rebut the allegations made against him. There may be an exception where there is undisputed objective evidence inconsistent with that of the witness that cannot sensibly be explained away (in other words, the witness's testimony is manifestly wrong), but that is not the present case. The general rule applies as much in judicial review proceedings as in other litigation although in judicial review proceedings it is relatively unusual for there to be a conflict of testimony and even more unusual for there to be cross-examination of witnesses.
>
> 19. … I think I should adhere to the general rule except where the contemporaneous documents dictate that a witness statement must be incorrect."

19. The basic rule is clear, namely that where there is a dispute on the evidence in a judicial review application then in the absence of cross-examination the facts in the defendant's evidence must be assumed to be correct. The appellant relies on the exception to the rule identified in R (McVey and Others) at (ii), namely that the documents must show that the defendant's evidence cannot be correct. Mr Sharma on behalf of the appellant realistically accepts that the test identified at (ii) is a high one…"

79. No application has been made to cross-examine Ionie Nash, and I am thus obliged to accept her evidence unless I conclude that it *"cannot be correct"*.

80. As I have alluded to above, the Claimant's case is that the Decision speaks for itself and makes clear that the decision to withdraw funding of the Claimant's accommodation (the detriment) was significantly influenced by the Claimant lodging the Discrimination claim in the County Court (the protected act).

81. An analysis of the Decision identifies that under the heading *"Why the Council is doing this?"*, information is provided to the Claimant as to why the Defendant's Adult Social Care Service made the decision to withdraw funding of the Claimant's accommodation. The second paragraph of this rationale reads, *"you have recently issued court proceedings against my client department and their Housing colleagues"*. Read on its own, this sentence provides supporting evidence for the contention that the issuing of the Discrimination claim did have an influence on the decision to withdraw funding.

82. However, this single sentence cannot be read in isolation. It must be read both in the context of the other paragraphs under the same heading, and also of the Decision as a whole. Immediately following the aforementioned sentence, the Defendant goes on to state that *"in the claim"* the Claimant indicated that he was dissatisfied with the temporary accommodation. There then follows a series of paragraphs which relay the Claimant's wish to live elsewhere, as well as observations about the Defendant's attempts to assist in resolving the Claimant's housing issues. Read as a whole, this section of the Decision relays the Defendant's position that its Adult Social Services team had done all it reasonably could to assist the Claimant to resolve his permanent housing situation, including funding temporary accommodation whilst the situation was resolved. In my conclusion, the sentence referring to the lodging of the claim in the Country Court is not obviously a statement that the lodging of the claim led to, or significantly influenced, the decision to withdraw funding, but rather a convenient reference point for the Claimant's expression of his dissatisfaction with the temporary accommodation.

83. The subsequent section of the Decision is headed *"Summary of Solutions to your housing circumstances that have been presented to you but which you have rejected."* As can be readily anticipated, this section of the Decision sets out in considerable detail the assistance that the Defendant's Adult Social Services team have provided to the Claimant in an attempt to assist him in resolving his housing issues. Towards the end of this section the following is said:

> "16. However, it is my client department's observation from its interaction with you over the 5 years that it has been funding your temporary accommodation with which you are so dissatisfied, that you do not appear to be willing to take the initiative and reasonably pursue opportunities available to you to secure permanent alternative accommodation for yourself. …"

84. Following this paragraph there is set out a list of mechanisms said to be available to the Claimant to enable him to find a resolution to his housing issues, and the section concludes as follows:

> "My client department has concluded that the means to remedy your housing situation and secure permanent alternative accommodation lies with you and your willingness to engage in the bidding process for alternative accommodation rather than remaining in accommodation that my client department has been funding for 5 years and with you assert you are very unhappy."

85. In my conclusion, when the Decision is read as a whole it is not inconsistent with the evidence provided by Ionie Nash that, *"The withdrawal of funding was not in retaliation for Mr Campbell issuing disability discrimination proceedings but to*

encourage him to pursue the options available to him to obtain alternative accommodation which is what he maintains he wants."

86. Looking at the evidence before me in totality, and having particularly observed: the 2019 Panel minute referred to at [16] of Ionie Nash's statement; the length of time between the lodging of the Discrimination claim, which was filed on the 23 November 2021, and the Decision of 28 February 2022; the fact that the Pre-Action Protocol correspondence in relation to the Discrimination claim was sent by the Claimant as long ago as the 4 June 2021; and, that the first direct offer of a property made by the Defendant's Housing team was on 20 January 2022, i.e. after the lodging of the Discrimination claim, I find that there is nothing in the evidence before me, including that contained in the Decision letter, which leads me to conclude that the evidence of Ionie Nash is not correct, and I am satisfied that it is true and accurate.

87. I find, looking at the evidence before me as a whole, that the Defendant's decision to withdraw funding of the Claimant's accommodation was not significantly influenced by the Claimant lodging the Discrimination claim against the Defendant. To put this in terms of the Equality Act, I am satisfied that the Defendant did not withdraw funding of the Claimant's accommodation because of the Claimant lodging the Discrimination claim. The Claimant's claim of victimisation under the Equality Act, pleaded as Ground 2(c), must therefore fail.

88. Finally, I reject the Claimant's contention that the decision to withdraw funding was taken for an improper purpose (Ground 2(b)). I have accepted the evidence provided by Ionie Nash as to the purpose of the Decision, which was to encourage the Claimant to pursue the options available to him under the Housing Act to obtain alternative accommodation. I do not accept, looking at the facts of this matter as a whole, that the Claimant has established that this was an 'improper purpose' such that the Decision should be quashed. In particular, and in any event, for the reasons I have set out above, the Defendant had no duty or power to maintain funding of the Claimant's accommodation under the Care Act and the resolution of the Claimant's housing issue was properly to be addressed under the Housing Act.

Conclusion

89. For the reasons explained above, I am satisfied that London Borough of Ealing's decision of 28 February 2022 was not unlawful and the application for judicial review is dismissed.