



Neutral Citation Number: [2023] EWHC 2675 (Admin)

Case No: CO/1985/2023; AC-2023-001674

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/10/2023

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

THE KING
on the application of
NS

Claimant

- and -

SECRETARY OF STATE
FOR THE HOME OFFICE

Defendant

Chris Buttler KC and Olivia Beach (instructed by **Lawstop**) for the **Claimant**
William Irwin (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 25 October 2023

Approved Judgment

This judgment was handed down remotely at 2pm on 26 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 7 main parts as follows:

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I. Overview

1. At the time this claim was issued the Claimant was an asylum seeker. On 4 October 2023, he was notified that his asylum claim had been successful. However, he remains for the immediate future in hotel accommodation in Swindon which he submits is not adequate under the governing statutory scheme. This accommodation was provided to him by the Defendant (“the SSHD”) on 1 June 2023, following an Order of this Court. On the evidence before me it is clear that the Claimant is a vulnerable young person with challenging mental health needs. Until he was moved to Swindon, the Claimant had been living in South London for about 8 years and it is argued on his behalf that the SSHD should have accommodated him in that area, where he had a support network of both friends and mental health professionals. Permission to apply for judicial review was granted on a single ground, concerning the adequacy of the accommodation in Swindon, by Kirsty Brimelow KC, sitting as a Deputy High Court Judge, by Order dated 28 July 2023. The Deputy Judge however refused permission in relation to a second ground (“the policy challenge”) which is concerned with the legality of the SSHD’s Guidance entitled “*Asylum seekers with care needs*” (Version 2, August 2018) (“the ASCN Guidance”). The Deputy Judge determined that this point had become academic. The Claimant renewed his application for permission to seek judicial review on the policy challenge at the hearing before me.
2. As to the legal framework, the relevant legislation is the Immigration and Asylum Act 1999 (“the 1999 Act”), sections 95-98, and regulations made thereunder. The primary legislation has been hyperlinked and I will not set it out. That legislation and the effect of the case law to date was comprehensively set out and analysed by Fordham J in R(SA) v Secretary of State for the Home Department [2023] EWHC 1787 (Admin) (“SA”) at [5]-[10]. The parties accepted the statement of the law in SA as correct, and I respectfully adopt it without repeating it.

II. The Facts

3. My findings in the narrative below are based on my summary of the witness statements and the contemporaneous documents. Each party emphasised different aspects of the facts. I have sought to present a neutral narrative.

Personal history

4. The Claimant is an Afghan national. He is a vulnerable individual with a need for support to manage the mental health challenges he faces. He arrived in the UK in June 2015 (when aged 15 years) as an unaccompanied asylum-seeking child. The Claimant was initially taken into care by West Sussex Children’s Services, but he went missing from this accommodation in rather disturbing circumstances in November 2015. For about 8 years between that time and 30 May 2023, he has been “couch surfing” and staying with friends in and around South London (Croydon and Lambeth).
5. The Claimant has built up a community of friends and a support network in South London. The evidence shows he is heavily reliant upon on them in circumstances where he suffers poor mental health (see further below). In addition, he attends a local mosque (Bismillah Cultural Centre at 1366 London Road, Norbury, London SW16 4DE) and is integrated into the religious community. I accept that this is not support which he could easily replicate by simply attending another mosque and starting from scratch in becoming integrated. In addition to this, the Claimant’s GP and Counsellor are based in Croydon.
6. The Claimant’s support worker from the South London Refugee Association (“SLRA”), Thea Slotover, is based in Streatham Hill. The Claimant has a very close relationship with her and they have been working regularly with one another for almost 9 months. From September 2022 until he was sent to live in Swindon, he had also been attending “in person” weekly counselling with a Counsellor based in Croydon. Thea Slotover attests to the critical importance of his friendships. On the evidence before me it is clear that not only is the Claimant dependent upon his friends, but he is incredibly reliant upon the support provided to him by Thea Slotover. As he says, she looks after him like he is her own child. I accept that the Claimant would find it hard to start anew and to build a trusting relationship with another person who he could tell about his troubling personal history.
7. The Claimant has poor mental health, typical of many vulnerable asylum seekers. Thea Slotover, a highly experienced support worker, gives evidence, which I accept, that he is a highly vulnerable young person who requires specialist support in order to manage his mental health. The Claimant has been prescribed high doses of medication to address his mental health difficulties. Until he was sent to live in Swindon he was treated by a specialist mental health service for young asylum seekers known as *Off the Record*. His Counsellor, Sophie Johnstone, has provided a series of letters from January to May 2023 which evidence his poor mental health. He is assessed as a vulnerable young man who suffers from psychological distress and presents with suicidal ideation. The local authority’s care needs assessment, to which I refer in more detail below (because it comes later in the chronology) also addresses his mental health and draws similar conclusions.

The applications to the SSHD

8. During 2023, the Claimant made three applications for support from the SSHD under s.98 and s.95 of the 1999 Act. The relevant application for the purposes of the present claim was made on 10 May 2023. By that application, the Claimant sought subsistence and accommodation support under s.98. This was refused by the SSHD by an email dated 12 May 2023 and again on 15 May 2023, with the reason being:

“...a care needs assessment needs to be carried out by a Local Authority to ensure the service provider can provide for his special needs. Once this has been carried out a suitable accommodation can be sourced...”.
9. By the end of May 2023, the Claimant was notified by the friend he was staying with at the time that he had to leave. Despite an urgent Letter Before Action being sent to the SSHD on 23 May 2023, indicating the Claimant’s imminent risk of street homelessness (as well as several follow-up emails) there was no acknowledgment of these communications by the SSHD and no response. Due to the Bank Holiday weekend and lack of response from the SSHD, the Claimant’s friend kindly allowed him to stay over the Bank Holiday weekend but said that this was an absolute maximum.
10. On 26 May 2023, contact was made by the Claimant’s solicitors with the relevant local authority (Lambeth). This was followed up on 30 May 2023 with an urgent Letter Before Action and supporting evidence, requesting Lambeth carry out an assessment. Lambeth confirmed on 30 May 2023 that they would carry out a needs assessment that same day and would accommodate the Claimant in the interim for two nights. By 31 May 2023, the SSHD had failed to respond to any pre-action correspondence. The Claimant was unable to return to staying with his friends, the temporary accommodation provided by Lambeth was ending, and therefore the Claimant was facing the imminent risk of street homelessness.

Dr Keen

11. In dealing with the application for accommodation, on 26 May 2023 the SSHD consulted a medical advisor, Dr John Keen (“Dr Keen”), regarding medical treatment for the Claimant. I will refer below in more detail to his advice of 26 May 2023. It is strongly relied upon by the SSHD.

The Care Needs Assessment (CNA)

12. Lambeth completed its care needs assessment on 31 May 2023 (“the CNA”). I will return to the terms of the CNA in more detail below but for present purposes I note that it found that the Claimant is at “*substantial risk*” of self-neglect, malnutrition, dehydration, deteriorating mental health and self-harm”. Lambeth identified measures that were needed to mitigate those risks: the Claimant needed to continue to engage with his counsellor, his youth worker, and his current support network (all of whom are in South London).

The claim is issued

13. On 31 May 2023, the present claim was issued on the Claimant’s behalf. His Solicitors and Counsel applied for, and were granted, mandatory interim relief by Constable J on

1 June 2023. The Judge directed the SSHD to provide the Claimant with temporary support in accordance with s.98 of the 1999 Act, pending determination of whether support was to be provided under s.95. The Claimant was accommodated in hotel accommodation in Swindon. He remains in this accommodation. This is a target decision for the purposes of this judicial review.

14. On the same day there was an eventual response by the SSHD to the Claimant's pre-action protocol letter. On behalf of the SSHD it was stated "If your client will be street homeless, he needs to make an urgent request for accommodation. This should be sent to Migrant Help" and that "Your client's medical evidence was assessed by the Home Office Medical Advisor. The Home Office Medical Advisor has advised that suitable medical and support services do exist in other UK cities. As a result, your client's request to stay accommodated in Lambeth or Croydon has not been accepted". This Medical Advisor is Dr Keen.
15. On 9 June 2023, the legal representatives of the SSHD said in an email "Client confirms there are no plans to move the Claimant to London, and that accommodation is offered on a "no choice" basis". I identify this because the SSHD said it amounted to a "decision" for the provision of accommodation under s.95 of the 1999 Act. This is also a target decision in this judicial review. A fuller "reasons" letter of that date was supplied to the Court and the Claimant's advisers on the morning of the hearing before me: see [35] below.
16. On 23 June 2023, the Claimant's Solicitors sent an email to the SSHD raising concerns expressed by his support worker about safeguarding at his accommodation. On 28 June 2023, an application was made to amend the Statement of Facts and Grounds, to expedite the claim, and to rely upon further evidence, namely the Claimant's fourth witness statement dated 8 June 2023, a witness statement from Ms Slotover dated 9 June 2023, a supporting letter from his GP dated 8 June 2023, and a further supporting letter from his Counsellor dated 27 June 2023. These applications were not opposed but they all involve post-decision evidence.
17. On 25 July 2023, permission was granted on Ground 1 (the challenge to the s.98/s.95 decision) and refused on Ground 2 (the policy challenge) by the Deputy Judge. The Deputy Judge also directed an expedited hearing of the claim and certified it fit for vacation business.
18. In addition to detailed grounds of resistance, the SSHD served further medical advice from a psychiatrist, Dr James Wilson. His report of 12 September 2023 post-dates the challenged decision to accommodate the Claimant in Swindon.
19. To complete the chronology, the Claimant was granted asylum on 4 October 2023. On the morning of the hearing, the parties were not agreed as to the consequences that this would have for his current accommodation and whether this claim had become academic. One thing was however clear. That is that for the immediate future (and indeed for potentially a sustained period of time) he would remain in the Swindon accommodation. The parties did not agree that the claim had become academic. I decided I would hear full argument and give judgment.

The ASCN Guidance

20. The SSHD has produced the ASCN Guidance which is a non-statutory guidance document. The version before me states it was published and last updated on 29 July 2019. On page 6 of the ASCN Guidance, the Defendant sets out the guidance in respect of assessing and meeting care needs. Under the sub-heading ‘Urgent Needs’, the ASCN Guidance states the following:

“Where a person presents with urgent needs that may require any of the following:

- residential care
- specific accommodation
- day to day assistance with basic personal care

a needs assessment should be requested from the local authority in whose area the adult is present at the earliest practicable point in the process. For example, where a person claiming asylum at a port of entry presents with urgent care needs, the local authority in whose area the port is situated should be requested to do an urgent assessment. If in immediate need of medical care, it will be necessary in the first instance to refer the individual to the nearest hospital.”

21. The ASCN Guidance states the following in respect of access to initial accommodation:

“Those with an urgent care need, as opposed to a purely medical need (that can be addressed by the IA medical team or National Health Service as appropriate), should not be admitted into IA without a needs assessment having been conducted by a local authority. Neither UKVI nor our contracted providers are responsible for, or appropriate organisations to provide for, urgent care needs. Those officers with a gatekeeping function (for instance NAAU and the Command and Control Unit), should set the expectation that the referring officer first requests the care assessment from the relevant local authority. The local authority can be expected to accommodate in the interim if the person has no accommodation to occupy whilst the assessment is carried out. Existence of a care need should not in itself be a barrier to dispersal, but the needs assessment should always be passed on to the local authority in any new area to which a claimant is routed.”

22. This aspect of the ASCN Guidance is the subject of the renewed permission application, the policy challenge. See Section IV below.

III. The complaint and the SSHD’s response

23. The essential complaint is that the Claimant should not have been sent to live in what is alleged to be inadequate accommodation in Swindon. It was forcefully argued by Leading Counsel for the Claimant that he had submitted cogent evidence to the SSHD of his need to live in South London given his personal situation. It was said that under the 1999 Act and the Guidance, the relevant caseworker was required to “grapple”

with that evidence when deciding whether a hotel bed in Swindon constituted “adequate” or “suitable” accommodation; and that there is no evidence that the caseworker did so.

24. Leading Counsel for the Claimant emphasised that the CNA found that the Claimant is at “substantial risk” of self-neglect, malnutrition, dehydration, deteriorating mental health and self-harm. He argued that the local authority identified measures that were needed to mitigate those risks and they required that he remain in South London. It was emphasised that neither Dr Keen nor the SSHD’s caseworker (“the caseworker”) who made the decision to accommodate the Claimant in Swindon, addressed the Claimant’s established relationship with his support worker or Counsellor, or what impact severing that relationship would have on the Claimant. It was also submitted that the decision is inconsistent with the SSHD’s Allocation Policy (see further at [30] below).
25. In response, Counsel for the SSHD, in his realistic and well-structured arguments, submitted that the accommodation in Swindon met an “objective minimum standard”, and satisfied the test of a “reasonable evaluative judgment”. These are references to the “twin track” questions identified in SA at [8]. In his written and oral submissions, he relied strongly upon the medical evidence of Dr Keen. His skeleton made detailed submissions as to the terms of CNA. It was argued that accommodation provided under s.95 and s.98 of the 1999 Act is an alternative to destitution and it is intended to be temporary only. It was submitted that it is only required to provide a “dignified” standard of living, which is adequate for health and can ensure subsistence. That, it was argued, was provided.
26. In relation to Dr Keen, I was taken to an email to him dated 26 May 2023 in which the relevant caseworker asked the following:

“Please see attached and email below and will you advise on the request for accommodation in the Lambeth/ Croydon areas of London on mental health grounds? Additionally, will you please advise: If the applicant is not accommodated in this area will it adversely affect their current treatment? Is it likely that the applicant’s mental health will decline if they are not accommodated in this area?”
27. Attached to that email was a copy of the Claimant’s GP patient summary covering the period August 2022 to April 2023; and a letter to the Claimant’s GP from a counsellor dated 17 February 2023. I have seen the GP notes, which make troubling reading concerning the Claimant’s mental health. Dr Keen rapidly and briefly responded to the caseworker’s inquiry on the very same day, (26 May 2023). He said:

“Suitable medical and support services do exist in other UK cities, and transfer of care is an everyday process. Given this, I don’t think relocation, or any associated delay will significantly adversely affect the applicant’s condition or treatment. I therefore don’t support the request to reside in London.”
28. In response to the Claimant’s reliance upon the CNA (which post-dated Dr Keen’s advice), Counsel for the SSHD argued that it identified no relevant care need and confirmed that the Claimant was able to manage and maintain his own nutrition with limitations, and the limitations related to low mood. The CNA explained that this factor

did not have a significant impact on his physical or mental wellbeing. As to the risks to the Claimant, Counsel for SSHD argued that “most” of these were mitigated solely by contact with a GP to obtain appropriate medication. Referring to the CNA he submitted that the risks to the Claimant of deteriorating mental health, of self-harm and to his environment/property (all of which he accepted were identified as being “substantial”) were to be mitigated partly by contact with a GP, and partly by contact with his counsellor, supportive network and youth worker. Reliance was also placed on the conclusion in the CNA that the Claimant was not identified as being eligible for services. The reasoning for that conclusion was as follows:

“[The Claimant] is a homeless refugee and currently has no recourse to public funds. Whilst there have been concerns about his mental health and history of self-harming, currently he does not present with any acutely or active suicidality requiring input from secondary mental health services. From the assessment analysis, it is clear that [the Claimant] needs accommodation and subsistence. However, as he does not have any identified eligible needs within the identified domains, it will not be the responsibility of Lambeth Adult and Social Care and would need to be sought via the Home Office. It is also to be recognised that [the Claimant] has been quite resourceful for the past 8 years and he has a lot of strengths, is able to self-manage his care and support needs which would further improve if he decides to fully comply with his medication regime.”

29. Overall, it was submitted for the SSHD that the accommodation provided to the Claimant under section 98 and then section 95 was not inadequate so that he remains destitute. As I outline further below, Counsel for the SSHD did not argue that the decisions under challenge were informed by the CNA or other information concerning the Claimant’s personal situation and mental health.

The Allocation Policy

30. The SSHD’s guidance “Allocation of asylum accommodation policy” (“the Allocation Policy”) states as follows:

“You may receive requests to provide accommodation in a particular location because the individual is receiving medical treatment in that area. Care and treatment for most medical conditions is available in all parts of the UK and the transfer of responsibility for managing an individual care and/or providing that treatment to different NHS organisations is a normal everyday occurrence within the NHS. Unless there are exceptional circumstances, requests to be provided with accommodation in a specific location solely on the grounds that medical care or treatment is already being provided in the area should therefore be refused, particularly if primary care based. The requests may sometimes be made in order to avoid unreasonable disruption of the medical care or treatment or related assistance that the individual is receiving from the NHS. These requests should be

considered carefully, balancing the degree of disruption that may be caused by a move to another area against the overriding principle of allocating accommodation on a ‘no choice basis’ and outside London and the South East.”

31. Counsel for the Claimant submitted that the decision to accommodate him in Swindon was inconsistent with the Allocation Policy. On behalf of the SSHD it was argued that there were no “exceptional circumstances” within the meaning of the policy which would arguably justify location in London.

IV. Analysis

32. I will begin with four propositions. First, s. 96(1)(a) of the 1999 Act provides that s.95 accommodation must appear “... to the Secretary of State to be adequate for the needs of the supported person...”. Second, the ASCN Guidance provides that, where the SSHD has been provided with a local authority assessment (as in this case- the CNA): “The contents must then be considered when assessing any specific accommodation requirements” and asylum accommodation (whether provided under s.95 or 98) should be “suitable in view of the assessed needs.” As a minimum, public law requires the SSHD to take the assessment into account as a mandatory relevant consideration when making her decision. Third, when assessing adequacy or suitability of accommodation, the caseworker must “ask [themselves] the right question and take reasonable steps to acquaint [themselves] with the relevant information to enable [them] to answer it correctly” (Secretary of State for Education and Science v Tameside MBC [1977] AC 1014, 1065). See also the summary of the Tameside principle in De Smith (9th Edition) at para. [6-040]). In my judgment, in this case that meant asking whether the accommodation was suitable for the Claimant’s needs and the caseworker acquainting themselves with the CNA and the other evidence of the Claimant’s needs. Fourth, the caseworker is entitled to seek medical advice on the questions of adequacy or suitability but cannot simply “rubber stamp” the adviser’s view. The statutory duty is that of the SSHD, as performed for her by the caseworker. That cannot be delegated to a person who provided a summary view in the form given by Dr Keen.
33. On the facts of the present case, the statutory adequacy of the Swindon hotel room should have been considered at two points in time: (1) when the Claimant was accommodated in Swindon on 1 June 2023 following Constable J’s Order; and (2) when the section 95 decision was taken on 9 June 2023. As I have noted above, these are the target decisions which seek to discharge the SSHD’s statutory duties. I turn to the substance of those decisions.
34. The 1 June 2023 decision states:
 - “vii. You state that your client needs accommodation in Lambeth or Croydon to ensure continuity of medical treatment for his mental health and assistance from his support networks in London.

viii. Your client's medical evidence was assessed by the Home Office Medical Adviser. The Home Office Medical Adviser has advised that suitable medical and support services do exist in other UK cities. As a result, your client's request to stay accommodated in Lambeth or Croydon has not been accepted".

35. Although there are (albeit brief) reasons for the 1 June 2023 decision, no reasons at all for the 9 June 2023 decision were received by the Claimant. However, on the morning of the hearing before me the SSHD produced for the first time a decision-letter of 9 June 2023, said to have been sent to the Claimant at his hotel in Swindon. This was not received by him, but it does contain some rather brief reasons for the decision as follows:

"The Secretary of State has carefully considered the circumstances of your application and has noted your request to be accommodated in London – Lambeth/Croydon areas due to mental health reasons. Accommodation is allocated on a no choice basis and whilst considering the person's individual circumstances. The Secretary of State is also required by section 97 of the Immigration and Asylum Act 1999 to have regard to providing accommodation in areas where there is a ready supply of accommodation. Your request and medical letter were referred to our medical advisor who advised: *'Suitable medical and support services do exist in other UK cities, and transfer of care is an everyday process ...therefore the request to reside in London is not supported.'* ...These arrangements have been made on the basis that you are fit to travel. If you have any concerns regarding your health that you have not told us about previously, you should contact Migrant Help immediately. If you are receiving treatment for a medical condition it is important that we know about it so that this can be taken into account when arranging your accommodation. You can contact Migrant Help or ask your doctor, asylum health team or your hospital doctor to telephone Asylum Support on your behalf. Continuing treatment may have to be arranged for you in your new area before you move and the health service looking after you will need to contact Migrant Help to arrange this. Once you have been informed of your dispersal date, you should ensure that you have sufficient supplies of medication you are taking so that will not run out during the move or before you have registered with a new doctor in your new area".

(Counsel for the SSHD indicated that the italicised quotation was from Dr Keen's advice)

36. In my judgment, the SSHD's process culminating in each of these decisions was flawed in public law terms for the following reasons. First, neither Dr Keen nor the caseworker addressed the Claimant's established relationship with his support worker or counsellor or what impact severing that relationship would have on the Claimant's mental health. Second, neither Dr Keen nor the caseworker addressed the Claimant's social and religious support network in London. Third, neither Dr Keen nor the

caseworker had any regard to, still less grappled with, the expert assessment of the local authority (in the CNA) that the Claimant needed to live in London so that he could access his current counsellor, youth worker and support network. Fourth, there is no evidence that the decision of 9 June 2023 addressed the question of the adequacy of the Swindon accommodation or addressed any of the relevant evidence. Counsel for the SSHD made persuasive submissions as to how the decision under challenge was consistent with the CNA, but these were submissions in the abstract. They were not supported by evidence that an evidence-based assessment, including consideration of the CNA, was in fact undertaken. Further, when I asked Counsel for the SSHD whether (given the absence of a witness statement on behalf of the SSHD) his instructions were that the caseworker had in fact considered this material, he frankly and properly indicated he had no instructions that this had in fact been done. Ultimately, Counsel for the SSHD did not seriously seek to justify the decisions as having been reached by a procedurally lawful process but argued that I should refuse relief as a matter of discretion because consideration of the evidence would have made no difference, and any error was not material. I address this below at Section V.

37. As has been explained in a number of cases including SA at [26] and R (Das) v Secretary of State for the Home Department [2014] 1 WLR 3538 (CA) at [80], where a public body fails to put before the court witness statements to explain its decision-making process and the reasoning underlying a decision they take a substantial risk. In private law, where a party elects not to call available witnesses to give evidence on a relevant matter, the court may draw inferences of fact against that party. The basis for drawing adverse inferences of fact against the SSHD in public law proceedings will be particularly strong. That is because in such proceedings a defendant is subject to the stringent and well-known obligation owed to the court by a public authority facing a challenge to its decision.
38. That said, I accept that it is not always necessary for a defendant to public law proceedings to serve a witness statement. Often a decision can stand alone because on its face it discloses the reasons for the decision, and actual (or inferred) consideration of the relevant evidence. In this case, however, one has only very briefly reasoned decisions, yet the SSHD chose to serve no witness statement with the Summary Grounds, and no evidence at all with the Detailed Grounds. Counsel for the SSHD was not able to point me to anything beyond Dr Keen's report. But that report pre-dates the CNA of 31 May 2023. Other than arguments by way of submission, I am concerned that there is no contemporaneous evidence of an assessment of the Claimant's particular situation or consideration of his circumstances. The evidence about the Claimant's mental health and suicidal ideation is most concerning. It is a matter that had to be addressed in more direct terms than the generality of Dr Keen's brief observations. In short, there is no description of any exercise of judgement and evaluation. If there was any system of decision-making, and record-keeping, it is surprising that the opportunity has not been taken to provide the relevant documents to the Court. As in IO v SSHD [2020] EWHC 3420 (Admin) at [53], there is nothing before the Court in the form of an internal record or minute evidencing a considered decision-making process.
39. In summary, I am not satisfied that the SSHD fulfilled her statutory duty by having regard to mandatory relevant considerations, still less grappled with the expert assessment of the local authority that the Claimant needed to live in London so that he could access his current counsellor, support worker and wider support network. The

ASCN Guidance required that assessment to be taken into account. There is no evidence that the decisions of 1 June or 9 June 2023 addressed the question of the adequacy of the Swindon accommodation or addressed any of the relevant evidence. Equally, there is no evidence before me that the Allocation Policy was considered, and a decision was made that the case did not fall within the “exceptional circumstances” carve-out. In making a tactical decision not to submit evidence, the SSHD has left the Court in a position where she has not shown that the statutory duty was satisfied. This case is a third example (to be added to SA and IO) of the SSHD’s failure to engage by demonstrating and evidencing any evaluative decision-making. When a Court assesses the legality of the claimed discharge of a statutory function that is a matter of real relevance. Submissions are not a replacement for evidence. The decisions in this case were plainly reached by way of an unlawful process.

40. It is a matter of concern that the SSHD sought to defend these decisions. Such a litigation approach wastes court time and resources, taxpayers’ money (on each side) and delays justice for vulnerable persons such as the Claimant. The failure of the SSHD in this case to engage with the letters before claim, or often even to respond to correspondence concerning urgent accommodation needs, is sadly common in the experience of the Administrative Court. On the evidence before me, it is clear that the mandatory interim Order which Constable J made in this case on 1 June 2023 was the only way of getting the SSHD to engage with duties imposed upon her by Parliament.

V. Post-decision evidence and Section 31(2A) of the Senior Courts Act 1981

41. I have not taken into account the post-decision evidence served on behalf of the Claimant and the SSHD because it is not relevant to the legality of the 1 and 9 June 2023 decisions. It may however be relevant to relief. The SSHD submitted a report dated 12 September 2023 from a psychiatrist, Dr James Wilson, who says that accommodation in South London is not essential given the Claimant’s particular needs. It is not clear to me whether Dr Wilson formed this view with the benefit of the CNA and full medical records, including material from those supporting the Claimant with his mental health. That may have been the case, but one cannot be sure. Counsel for the SSHD relied upon this evidence, and upon the fact that the Claimant had been resident (without apparent issues) for some months now in Swindon, in support of a submission that the errors on behalf of the SSHD in the assessment process were not material and no relief should be granted. He argued I could be satisfied that the accommodation provided was compliant with the SSHD’s duties.
42. Against this, I have recent evidence served on behalf of the Claimant in which there are serious concerns expressed by a number of professionals with substantial experience in assisting young asylum seekers with complex problems including self-harm, suicidal ideation and PTSD. That evidence is to the effect that the Claimant’s mental health has “significantly deteriorated” since being moved. It strongly suggests that not only is he incredibly vulnerable, but the current accommodation is causing him to feel the need to self-harm and to feel suicidal. These professionals note that the Claimant’s deteriorating mental health is clearly connected to being away from his support network in the Croydon and Lambeth areas. I also have evidence from the Claimant as to the adverse impact of the move on his already fragile mental health.
43. If the Claimant had not been granted asylum, and a quashing order and direction for reconsideration of the s.95 accommodation was sought, I would have made such orders.

This is far from being a case where it is “highly likely” within the statutory test that the outcome for the Claimant would not have been substantially different if the public law error I have found had not occurred. It would not have fallen within section 31(2A) of the Senior Courts Act 1981.

VI. The Renewed Ground

44. The Claimant seeks permission to challenge part of the ASCN Guidance (see [21] above) on the basis that it sets what is said to be an unlawful requirement for a care needs assessment to be completed by a local authority before a person can access initial accommodation (“IA”) from the SSHD. Kirsty Brimelow KC, sitting as a Deputy High Court Judge, refused the Claimant permission to pursue this ground on the papers. Following this refusal, the application was renewed to be heard at the substantive hearing, and the Claimant applied for that to be a “rolled-up” hearing as regards this ground. The SSHD opposed that course. On 16 October 2023, Rory Dunlop KC, sitting as a Deputy High Court Judge, directed that only the issue of permission would be addressed at the substantive hearing, and that if permission was granted there would need to be directions for evidence, grounds of resistance, and a further hearing.
45. Although I did not hear submissions from the SSHD on the issue of arguability (because under Mr Dunlop KC’s Order the SSHD was not required to address the merits), I considered there was force in the Claimant’s argument on the merits. That is because the relevant part of the ASCN Guidance might be read to suggest that if the asylum seeker has care needs (that could lead a local authority to conclude that it should accommodate the asylum seeker) the caseworker should refuse to provide s.98 accommodation, pending the conclusion of the local authority’s assessment. And it is said that this is vouched by the fact that this is how the caseworker acted in the Claimant’s case: see [8] above. In my judgment, there appears to be force in Leading Counsel for the Claimant’s submission that the SSHD’s duty under s.98 of the 1999 Act is not suspended pending the completion of a local authority assessment, and therefore the relevant part of the Guidance appears to instruct caseworkers to approach applications on an unlawful basis.
46. I have however decided to refuse permission. This is not the place for a discussion of what amounts to an academic point, but it is common ground that the Claimant is no longer personally affected by the ASCN Guidance. Indeed, he has now been granted asylum. This Court’s resources should in general be used in resolving disputes of immediate and actual concern to a litigant before it: see the Administrative Court Judicial Review Guide (2023) at [6.4.3.1]. This issue, if to be litigated, must await a case where it makes a difference on the facts. I accept that on occasion even academic points can be litigated but I do not consider it would be consistent with the Overriding Objective for resources to be spent on litigating this issue in proceedings which, insofar as they affect the Claimant, have come to an end. The SSHD may however wish to reflect on whether the ASCN Guidance should be clarified or corrected.

VII. Conclusion

47. The claim for judicial review is allowed in respect of the decisions of 1 June and 9 June 2023 accommodating the Claimant in Swindon. I refuse the renewed permission application on the policy challenge to the ASCN Guidance. Given developments notified on the morning of the hearing, Counsel agreed that because of the recent grant

of asylum and a Biometric Residence Permit to the Claimant, no relief beyond a declaration is required. I make a declaration as follows:

The Secretary of State acted unlawfully in the exercise of her functions (1) under s.98 of the Immigration and Asylum Act 1999 when, on 1 June 2023, she decided to accommodate the Claimant in Swindon, away from his support network in South London, and (2) under s.95 of the Immigration and Asylum Act 1999 when, on 9 June 2023, she decided to continue to accommodate the Claimant in Swindon. Both decisions were unlawful because the Secretary of State failed to have regard to relevant evidence in the form of a Care Needs Assessment completed by the local authority, supporting letters from the Claimant's counsellor and supporting letters from the Claimant's support worker.

48. Finally, I wish to record that the evidence before me demonstrates that Thea Slotover, the Claimant's Support Worker from the *South London Refugee Association*, and Sophie Johnstone, the Claimant's Counsellor from the Young Refugee Service within the organisation *Off the Record* in Croydon, performed an outstanding public service in addressing the needs of this particularly vulnerable young man. Their evidence to this Court was also of substantial assistance to me. These organisations perform a vital service.