Neutral Citation Number: [2022] EWHC 3933 (Admin)

Case No: CO/3933/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18th August 2023

Before:

KIRSTY BRIMELOW KC (SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between:

THE KING	**Claimant**
(On the application of)	
1. SHAMSUL ISLAM	
2. RAHIMA HAQUE	
- and -	
The London Borough of Haringey	**Defendant**

- -
- -

Jenn Lawrence (instructed by **Osbornes Law**) for the Claimants
David Mold (instructed by (instructed by the London Borough of Haringey Corporate Legal Services)) for the **Defendant**

- -

Judgment Approved by the court for handing down

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Kirsty Brimelow KC:

1. This is a claim for judicial review of a decision made by the London Borough of Haringey ("the LB of Haringey") on 6 August 2022, which upheld a previous decision from 21 July 2021 that the claimants be placed in Band B of LB of Haringey's housing allocation scheme and that the First claimant, Shamsul Islam (Mr. Islam) did not meet the housing needs of Band A ("the Decision"). Band A would have afforded the Claimants' higher priority in relation to bidding on available permanent accommodation.

2. Mr. Islam and the Second Claimant Rahima Haque (Ms. Haque) are husband and wife who, since 29 May 2016, have lived with their four children, aged between 7 and 19, in their current temporary accommodation provided by the LB of Haringey. Mr. Islam turned 44 years' old in July 2023.

3. The LB of Haringey does not own this property but has a lease of it and there is a three-month break clause in the lease between the LB of Haringey and the Head Landlord (clause 6.4.1). The clause includes that the process of gaining vacant possession may take up to 9 months.

4. The lease renewals are for periods of three years. The Claimants will remain in temporary accommodation until they are successful in securing a permanent offer of accommodation.

5. The last term of lease completed on the 19th of August 2022 with a lease overrun until 20 September 2022. The lease was renewed on the 26th of August 2022 for a further period of three years.

6. There is no suggestion from the LB of Haringey that the Claimants will be required to move. However, Mr. Islam and Ms. Haque point to insecurity as the Defendant is not the Head Landlord and so does not have ultimate control.

7. The Islam/Haque family accommodation is the second accommodation that has been provided by the LB of Haringey to Mr. Islam and Ms. Haque and their family since they had to leave their private-rented accommodation on 27 May 2015. Mr. Islam and Ms. Haque and family were first accommodated by the LB of Haringey at a property in Tottenham and then moved to their current address following a suitability review.

8. The LB of Haringey placed Mr. Islam in Band B on its housing register on the 30th of July 2015. Mr. Islam had lived on his own in council property from 2008 until 2013, with his health conditions being diagnosed from 2005.

9. It is a significant feature in this case that by the time of the Claim, on 22 October 2022, the Claimants had been in their present accommodation for 6 years and 5 months. By the time of the hearing, they had been in the property for 7 years.

10. The LB of Haringey is a local authority with obligations under Parts 6 and 7 of the Housing Act 1996.

The Decision

11. The Decision dated 6 August 2022, which upheld a previous decision from 21 July 2021 that Mr. Islam be placed in Band B of LB of Haringey's housing allocation scheme and that Mr. Islam did not meet the housing needs of Band A was made by a Reviews Manager who is a senior person to the original decision maker.

12. The evidence from the Claimants' solicitor was that the average wait time for a three-bedroom property for applicants in Band A is currently 1 year and 8 months. For applicants in Band B, it is 11 years and 8 months. In June 2018, the LB of Haringey informed the Claimants that the average waiting time for applicants requiring a three-bedroom property in priority Band B is 10 to 12 years.

Haringey Council's Housing Allocation Scheme

13. Part 7 of the Housing Act 1996 (as amended by the Homelessness Act 2002) governs the provision by local housing authorities of assistance to homeless persons. Part 6 of the Housing Act 1996 governs the allocation of housing by a local housing authority.

14. Every local housing authority is required by s.166A(1) of the Housing Act 1996 to have an allocation scheme to determine priorities in how it allocates its housing stock.

15. The Claimants' current Temporary Accommodation is provided under the duty in s.193(2) of the Housing Act 1996. Accommodation provided under s.193(2) must be suitable but is not provided on a choice-basis.

16. The LB of Haringey published its allocation scheme under s.166A(1) of the Housing Act in 2015, and it was most recently amended on 9 February 2021 ("the Scheme").

17. At a high level, applicants who are entitled to join the Defendant's Housing Register are allocated to Band A, Band B or Band C with descending order of priority with Band A being for those with the most urgent housing need.

18. Paragraph 15.8 of the Scheme provides that households which are owed the full housing duty, and are therefore normally placed in Band B, will be placed in Band A if they are assessed as being in "severe need".

19. "Severe need" is defined in the Scheme as follows:

> 15.8.2 An "accepted" homeless household will be regarded as being in "severe need" (so may be placed in Housing Needs Band A) if any of the following situations applies to the applicant or a member of their household:
> 15.8.3:
> - They have a terminal or life-threatening illness.
> - They are permanent wheelchair users.
> - They are frail and elderly.
> - They have severe mental health problems and/or have been "sectioned" under the Mental Health Act and have been unable (or are likely to be unable) to cope with living in temporary accommodation.
> - They have a critical medical or welfare need, including situations where there are critical safeguarding implications
> - They are especially vulnerable and the Council is unable to provide them with suitable temporary accommodation.
>
> 15.8.4 The Council will decide which of these applicants will be placed in Housing Needs Band A.

20. In this case the relevant situation is (fourth bullet point of paragraph 15.8.3):

"They have severe mental health problems and/or have been "sectioned" under the Mental Health Act and have been unable (or are likely to be unable) to cope with living in temporary accommodation."
36.

21. The Defendant has accepted that the First Claimant has "severe mental health problems".

The Decision

22. The LB of Haringey, in the Decision, considered each of the situations listed above and the challenge focuses on the third bullet point of 15.8.3 as set out above.

23. The Claimants challenge the lawfulness of the Decision that Mr. Islam was not in severe need. In summary, there is no dispute between the LB of Haringey and the Claimants that Mr. Islam has severe mental health problems (Limb A). The contended part of the Decision is that LB of Haringey was not satisfied that Mr. Islam has been unable or likely to be unable to cope with living in temporary accommodation (Limb B).

24. The LB of Haringey considered Mr. Islam's medical conditions which included that he has not required hospitalisation or detention under the Mental Health Act. It accepted that Mr. Islam's mental health could impact on his ability to control his diabetes which required diet management as well as taking medication. The LB of Haringey noted that there was one hospital admission in relation to his diabetes and that had not been recently but was in 2021.

25. In reaching the Decision, the LB of Haringey appreciated that it may be beneficial to Mr. Islam's mental health if he had permanent accommodation but that did not lead to the conclusion that he was unable to live in temporary accommodation.

26. On 23 June 2022, the LB of Haringey sent its preliminary decision ("minded to decision") that Mr. Islam was not unable to cope in his accommodation to Ms. Haque.

27. It sent the same "minded to" decision to Dr. Wilson of Now Medical Limited (NowMedical) requesting advice, together with all representations made by Mr. Islam's solicitors and all medical information relating to Mr. Islam. Dr. Wilson already had advised the LB of Haringey on the case, on 14 January 2022, where he set out that Mr. Islam has a relapsing, remitting condition which is unlikely to have resulted from accommodation alone. He acknowledged that Mr. Islam is referred to secondary mental health services if there are additional concerns but noted that there had been no specific referral to the home treatment team nor any other acute care pathways.

28. Dr. Wilson's second opinion, and the focus of part of this Claim, is contained in a short report dated 11 July 2022. His view was that Mr. Islam could cope with living in temporary accommodation and highlighted that he had not required secondary mental health services since 2016, which was the time of his last move. He agreed with the minded to decision. It is the treatment by LB of Haringey of this report that forms part of the Claim.

29. The LB of Haringey's conclusion was that Mr. Islam would remain in the temporary accommodation "for some time further*"* and that, in fact, the continuation in the accommodation in itself should give Mr. Islam some stability whilst being able to access the support, both medical and family, that he needs and is available to him locally.

30. The Claimants' challenge to the Decision focuses on the following paragraphs. I have added two explanatory notes in square brackets, for clarity of both context and correcting an accepted typographical error:

It has also been put to his GP that he has moved several times since then [a reference to 2016]. For example, Dr. Mukhtar stated in his letter dated 17th May 2021 [accepted to be an error; it should read March] "my understanding is that constantly having to be re-housed due to temporary accommodation is having serious impact on Mr. Islam's mental health and well-being." However, it is totally incorrect for his GP to state that you are "constantly having to be rehoused". I have detailed that you moved into the property in May 2016 and therefore have been in it for 6 years. The accommodation has therefore provided you with significant stability and whilst this is not permanent accommodation the renewals have been on a three year basis giving you stability. If there is a serious impact on your husband's mental health it cannot be due to your current temporary accommodation as he has not been constantly moving

as has been suggested to his GP. The conclusions of his GP are therefore wrong and cannot be relied upon by you (§13)

{The First Claimant} *"will remain in this temporary accommodation for some time further, giving him stability"*. *(§20)*

I also sent my minded to letter to Dr Wilson, Psychiatric Adviser, along with all the representations made and medical information available to me. His conclusion was that your husband does suffer from a severe mental health issue which I fully accept. However, taking a composite of a number of factors he advised that your husband can cope with living in temporary accommodation. He supports my conclusion and highlighted that the factual evidence is that your husband has not required ongoing involvement from secondary mental health services since 2016, has not required hospitalisation or detention under the Mental Health Act and has not displayed significant risk related behaviour. (§21).

The Claim for Judicial Review

31. On 6 December 2022, permission to proceed with the claim to judicially review the Decision was refused on papers. An application for anonymity was refused.

32. On 26 January 2023, after a renewal hearing, permission was granted.

33. The LB of Haringey and Ms. Haque and Mr. Islam agree that the Mr. Islam has "severe mental health problems" (Limb A). The disagreement and core issue is the LB of Haringey's decision that Mr. Islam is able to cope in temporary accommodation (Limb B).

34. The Claimants advance one overarching ground of challenge, namely that that Decision was unreasonable because the Defendant's process of reasoning involved demonstrable flaws (applying *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) [2019] 1 WLR).

35. They rely on three demonstrable flaws, reduced from four before the renewal hearing, as follows:
    a. dismissing Mr. Islam's GP's evidence, contained in a letter dated 27 April 2022, as to why the First Claimant satisfies Limb B, on the basis of an error of fact as to the basis of that letter and/or failing to take that basis into account.

    b. failing to take into account that Dr Wilson of NowMedical was not the First Claimant's treating doctor and had never met with or examined the First Claimant.

    c. failing to take account of the fact that the Claimants could be moved at any time for so long as they are in temporary accommodation.

The Facts

Mr. Islam and Ms. Haque and Family

36. Mr. Islam is a man who benefits from close family support and who suffers from multiple, serious mental and physical health conditions, including paranoid schizophrenia which was diagnosed in 2005 and type II diabetes. These conditions pre-dated him moving into the property and from 2008 until 2013 Mr. Islam lived on his own in a council property with Ms. Haque living with the children in another property. They moved into a private rented property together in January 2013 and remained there until their eviction which rendered them homeless. Their eviction was not due to any fault on their part.

37. Ms. Haque describes how Mr. Islam's mental health condition means that he suffers from paranoia and that he becomes obsessed or fixates on one thing and will not let it go. She says that being outside helps him manage his emotions and that not having a garden is difficult. She says that she does not want a review of the property as they do not want to be moved away from Mr. Islam's family which would be "disastrous" for his mental health. In some respects, therefore, Ms. Haque wishes to stay where they are.

38. However, Ms. Haque says that being in temporary accommodation has made Mr. Islam's physical and mental wellbeing worse. She referred to a letter being received from the landlord in October 2019 about renewal of the temporary accommodation and that they had then heard nothing further, triggering anxiety. They do not appear to have been aware of the landlord hierarchy at that time or of the three-month break clause or of renewal being for a period of three years. Ms. Haque said that Mr. Islam also worries about their children and also struggled because of the pandemic and so refers to multiple factors underpinning his anxiety.

39. Ms Haque clearly shoulders a significant caring role for her husband and describes his illness with the detail that only a person living with it and dealing with it can know.

40. Mr. Islam benefits from many family members living nearby, with immediate family located at a 10-minute walk from his accommodation.

41. She says that Mr. Islam goes to his parents' house every Thursday evening for a curry and goes to the football with his brother Nasir every Saturday. They also call him three or four times a day and visit if they are concerned.

42. Ms. Haque describes Mr. Islam as having a serious mental health episode every six months or so since they have been in temporary accommodation. She also says that he needs reassurance that he will not have to move, which she gives him. There is no evidence that this is provided by those independent of the family. In the absence of the reassurance, Ms. Haque says that he could have another major episode. Mr. Islam needs daily support, and his schizophrenia is treatment resistant.

43. She also says that Mr. Islam coped badly with the move in 2016 and further was affected in 2022 by her brother being given one week's notice to leave his property.

GP Medical Letters

44. There are a series of letters written by Dr. Mukhtar, Mr. Islam's hard-working GP of 20 years, in support of his application to be placed in Band A. They are dated 7 May 2019, 17 March 2021, 17 August 2021 and 27 April 2022 (the April letter). There also is a report from Dr. Walters, Consultant Psychiatrist in Forensic and Addiction Psychiatry, dated 31 January 2022.

45. Dr. Mukhtar, in his letter dated 7 of May 2019, refers to Mr. Islam having moved four times in the previous six years and refers to the potential for unfamiliar surroundings to worsen his condition. The letter primarily focuses upon mobility. It is not disputed by the Claimants that the assertion on the number of Mr. Islam's moves is not correct.

46. The April letter is a short letter where the GP refers back to his previous letter. The most recent letter prior to the April letter is the letter of 17 of August 2021. This is also the letter referred to by the Claimants' solicitors in their letter of instruction dated 12 of April 2022 to Dr. Mukhtar (letter of instruction).

47. Taking together the letters in 2021, Dr. Mukhtar, in the 17th of March letter, sets out his understanding that Mr. Islam is "*constantly having to be rehoused due to temporary accommodation*." In August 2021, Dr. Mukhtar refers to the constant changing of Mr. Islam's accommodation. Both these assertions are wrong.

48. Ms. Lawrence relies on the letter of instruction before the April letter, as it includes that Mr. Islam has been in his accommodation since 2016. It thanks the GP for the previous letters and says that the LB of Haringey "*continues to insist that there is no significant impact to our client from the uncertainty of being in temporary accommodation."* It doesn't point out the errors in relation to housing in Dr. Mukhtar's previous letters but rather sets out a request for nine points to be address, with the seventh being:

"*Mr. Islam has been in the same (temporary) accommodation since 2016. Temporary accommodation means that he could be moved by the council at short notice, to alternative accommodation, without even being given the option to view accommodation prior to having to make a decision on whether to accept or refuse it. Do you consider that this situation would impact Mr. Islam's health in any way? If so, please provide details."* (§7).

49. Ms. Lawrence places some reliance on the letter of instruction as, she argues, it makes clear to Dr. Mukhtar that Mr. Islam had been in his accommodation since 2016 and so he would have known this when he wrote his April letter.

50. In the April letter, Dr. Mukhtar states that Mr. Islam *"could be required to move areas quite suddenly by the council which is a natural source of anxiety for anyone who would be well and without a serious mental health condition*" and that given Mr. Islam's serious mental health condition "*can only serve to cause more harm in the long term*". He said that offering a sense of permanence "*would go a long way in alleviating these fears*".

51. However, he does not correct his previous beliefs that Mr. Islam had been constantly moving. The Claimants continued to rely on the previous letters of Dr. Mukhtar but also placed reliance on purported demonstrable flaws in how the LB of Haringey considered the April letter.

52. In the April letter, Dr. Mukhtar sets out that he had recently referred Mr. Islam to the Community Mental Health Team for additional support, due to anxiety outbursts.

53. The LB of Haringey also considered the psychiatric report of Dr. Pamela Walters and took into account Mr. Islam's brother's view that Mr. Islam's mental health had deteriorated over the past few years. The LB of Haringey referred to the 200 pages of GP medical notes which they stated did not show a significant deterioration in Mr. Islam's mental health and highlighted the lack of referral by Dr. Walters to those notes. The LB of Haringey opined that the notes set out that Mr. Islam continued to have his reviews every 4 to 6 months with the capacity to have them more frequently if so required. The LB of Haringey looked at the reviews and found that there did not appear to have been any significant change.

54. The LB of Haringey noted that Dr. Walters did not refer to any deterioration in mental health as evidenced by Mr. Islam's medical records. She recorded it as reported by Mr. Islam's brother and gave her opinion that it could partly be accounted for by the pandemic restrictions as well as protracted insecurity over a definitive decision on his housing, including appropriate banding. She therefore found the possible cause to be multi-faceted.

55. Within Dr. Walters' report, she sets out that at interview she did not find evidence of immediate risk to Mr. Islam and/or others. She considered that he was at the point where he should access support and care from secondary mental health services.

56. In the Decision, the medication was analysed by the LB of Haringey. The LB of Haringey noted that the referral to Community Mental Health was over Mr. Islam's fears at his being moved away from his family. His current accommodation is near his family and the LB of Haringey noted that at present Mr. Islam can access family support.

NowMedical Reports

57. According to its website: "*NowMedical are the UK's leading provider of housing medical advice. Created in 2004, we now advise over 150 local authorities, housing associations and organisations across the UK, providing prompt and professional medical and psychiatric advice on housing applications*".

58. The Claimants' solicitor's understanding is that NowMedical never examines housing applicants (see also Henderson LJ in *Guiste* at §7 supra).

59. Dr. James Wilson, a consultant psychiatrist who acted as the NowMedical psychiatric adviser to the LB of Haringey, produced two reports dated 14 January 2022 and 11 July 2022, with the LB of Haringey's method of reliance upon the latter report forming ground 2 of the Claim.

60. Dr. Wilson reviewed the additional evidence produced by Mr. Islam's solicitors, including the report by Dr. Walters, dated 31st of January 2022 and Dr. Mukhtar's April letter.

61. Dr. Wilson concluded that there was supporting evidence that Mr. Islam has a severe mental health problem or illness due to his treatment resistant condition and the fact that he remains psychotic. This is not an area of dispute.

62. In relation to Limb B, Dr. Wilson considered Mr. Islam's family support around his current accommodation and reviewed Mr. Islam's medical progress. He found that Mr. Islam had not displayed significant risk related behaviour and had not required secondary mental health services since 2016. His view was that Mr. Islam was able to cope living in temporary accommodation.

Legal Framework and Application to Facts

63. *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) does not set out a new principle of unlawfulness but is relied upon by the Claimants to frame their Claim. In §98 (emphasis added):

> *"The first is concerned with whether the decision under review is capable of being justified or whether in the classic Wednesbury formulation it is "so unreasonable that no reasonable authority could ever have come to it"... The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached.* ***A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it*** *– for example, that significance reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error. Factual error, although it has been recognised as a separate principle, can also be regarded as an example of flawed reasoning...*".

64. The Claimants rely on the principle that a mistake of fact giving rise to unfairness is a basis for challenging the legality of a decision. As held by the Court of Appeal in the leading case of **E v Secretary of State for the Home Department** [2004] Q.B. 1044 at §66 in order to succeed in such a challenge it must ordinarily be shown that:

    a. The decision-maker made a mistake as to an existing fact.
    b. The mistake is "established" in the sense that it is uncontentious and objectively verifiable.
    c. The claimant (or his advisers) was not responsible for the mistake and
    d. The mistake played a material, though not necessarily decisive, part in the reasoning of the decision.

65. **E** criteria can be satisfied where there is an incorrect factual assumption by a decision-maker (*R (Ground Rents (Regisport) LTD*) *v Upper Tribunal* [2013] EWHC 2638 (Admin); [2014] A.C.D. 38 per Leggatt J at §§ 1 and 26.

66. The use of NowMedical advice was considered in *Guiste v Lambeth LBC* [2019] EWCA Civ 1758, [2020] H.L.R. 12 ("***Guiste***").

67. The Court of Appeal confirmed at §64 that "*if the review officer was going to depart from it [the applicant's psychiatric evidence] …, it was necessary for her to provide a rational explanation of why she was doing so*".

68. *In Guiste* at §58:
"*it is not an error of law for [the decision-maker] to fail to mention each and every occasion where [he] disagrees with the doctor's assessment of what the [the patient] had told [him]*".

69. *Shala v Birmingham CC* [2007] EWCA Civ 624, [2008] H.L.R. 8, where a local housing authority decision in relation to vulnerability pursuant to s.189 of the Housing Act 1996 was challenged, Sedley LJ said:

70. *"It is entirely right that local authority officers, themselves without any medical expertise, should not be expected to make their own critical evaluation of applicants' medical evidence and should have access to specialist advice about it."*

71. Section 31(2A) of the Senior Courts Act 1981 states that the High Court "*must refuse to grant relief on an application for judicial review*" … "*if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred*." This provision is where there has been some flaw in the decision-making process which might render the decision unlawful, where the other circumstances mean that quashing the decision would be a waste of time and public money, because even when the adjustment was made for the error, it is highly likely that the same decision would be reached, the decision must not be quashed and the application should instead be rejected. (R (Gathercole) v Suffolk County Council at [38], [78] and [79].

72. The relevant principles in applying this test were recently set out in *R (Cava Bien Limited) v Milton Keynes Council* [2021] EWHC 3003 (Admin); [2022] A.C.D. 11 at [52].

Flaw 1 – the handling of the April Letter

The April Letter

73. On behalf of the Defendant, Mr. Mold's overall position in response to the Claim is that the Claimants are engaged in a "nitpicking" exercise. Examining the April letter, it comprises a single page, including the following:

> *"He remains in a precarious situation that he could be required to move areas quite suddenly by the council which is a natural source of anxiety for anyone who would be well and without a serious mental health condition. However, given the context of paranoid schizophrenia, this can only serve to cause more harm in the long term. Offering a sense of permanence would go a long way to alleviating these fears.*
>
> *The medical opinion is based on the length of time observing and interacting with Shamsul over the course of many years……The continuous possibility of potential movement remains a concern for Shamsul and his immediate family, particularly if this support becomes more physically distant."*

Mistake of fact

74. The Claimants argue that the LB of Haringey rejected Dr. Mukhtar's evidence, including his April letter with the flawed reasoning that Dr. Mukhtar was incorrect in asserting in March 2021 that Mr. Islam was being constantly rehoused and so his conclusion in April 2022 could not be relied upon (as set out in the Decision above).

75. The LB of Haringey did not specifically address the April letter assertion that Mr. Islam remained in a "precarious situation". The Claimants point to this as being the corrected version and that by the time of writing the April letter, Dr. Mukhtar was appraised of the correct information upon which to base his conclusion that remaining in temporary accommodation "*can only serve to cause more harm in the long term"*.

76. This argument was at the forefront of Ms. Lawrence's oral submissions and, in my view, does not withstand scrutiny. Applying the case of *E (supra §*49*):*

    1. The starting point is that the mistake that Mr. Islam was constantly being rehoused was by Dr. Mukhtar, not by the LB of Haringey. There was no correction by him in the April letter.

1. The facts are that there was no constant rehousing of Mr. Islam. There had been no rehousing of him for five years by the time of the 2021 letters and, by 2022, Mr. Islam had been in the same property for another year, with another renewal for three years pending. It remains difficult to reconcile the fact of a constant address for so many years with Dr. Mukhtar's latest description that it was precarious.

2. The Claimants continued to rely on all letters by Dr. Mukthar in its submissions to the LB of Haringey and the LB of Haringey was entitled to point out the significant errors of fact in the early letter(s). Further, Dr. Mukhtar refers back to an earlier letter and so continues to rely upon them.
3. The Claimants rely on Dr. Mukhtar's instructions for the writing of the April letter, which set out that Mr. Islam had been in the property since 2016. However, the instructions do not point to errors in his earlier letters for Dr. Mukhtar to consider and reassess his conclusion.
4. The Claimants' contention that the LB of Haringey operated under a mistake as to Dr. Mukhtar's belief, namely that he continued to believe that Mr. Islam was constantly being rehoused, is in itself a belief of the Claimants and not an objectively verifiable fact. It is unclear what Dr. Mukhtar believed by April 2022, as he did not correct his previous mistakes and pointed to a precariousness which did not match the fact of the same address for 6 years with no change anticipated in the future. Responsibility was with the Claimants' lawyers to clarify the housing position for Dr. Mukhtar, rather than present a worst-case scenario. It is unfortunate that this did not happen.
5. In sum, the first two requirements identified in the case of **E** for a challenge based on a mistake of fact are not satisfied.
6. For completeness, I consider the other requirements. The Defendant argues that the errors of fact must have come from the Claimants and/or their legal advisors. I agree. I also find that the lawyers did not correct Dr. Mukhtar's mistake and neither did Mr. Mukhtar correct his former assertions that Mr. Islam was being constantly rehoused. The third requirement of the case of E therefore is not satisfied.
7. Reading the whole of the Decision, it addresses 200 pages of medical records and implicitly places Dr. Mukhtar's opinion, which generally supported that Mr. Islam be moved to permanent accommodation, in the context of the previous six years, family support of Mr. Islam and his lack of requirement of secondary mental health services since 2016.
8. The Defendant argues that Dr. Mukhtar did not identify a period where Mr. Islam had not been able to cope living in the property and the LB of Haringey applied this to Mr. Islam's present and future ability to cope. The Claimant's argue that the LB of Haringey did not take the April letter into account. However, I don't see substance in the Claimants' position as the April letter is the only GP letter that the LB of Haringey forwarded to Dr. Wilson. I do not see that the LB of Haringey's focus on Mr. Mukhtar's initial mistake in the earlier letter, rather than upon the assertion of "precariousness" in later letter, play a material part in the reasoning of the Decision.

77. In these circumstances, I do not find there to be any misconception or any misconception which comes close to amounting to a mistake as to an established fact.

Irrelevant Consideration

78. Mr. Islam further argues that the Decision took into account an irrelevant consideration, namely that Dr Mukhtar incorrectly believed Mr. Islam was constantly having to be rehoused when drafting the April letter. This overlaps with the above argument but I consider it separately.

79. It is difficult to ascertain what Dr. Mukhtar believed at the time of the April letter. He does not refer to his instructions and makes no mention of how 6 years in the same accommodation is "precarious".

80. The Claimants argue that the LB of Haringey was required to specifically address the April letter as it was the most recent piece of evidence which was directed to the key legal issue of Limb B. They submit that the Defendant was required to address the most recent piece of evidence from Mr. Islam's treating doctor which was "directed to the key legal point in issue" (*Guiste* at §64). The case of *Guiste* does not require the treating doctor to be given precedence over a specialist such as Dr. Walters. In *Guiste* the Court had to grapple with the local authority's preference of the evidence of a lesser qualified medical practitioner to that of a distinguished consultant psychiatrist and they could not find a rational explanation in the Review decision.

81. The Claimants rely heavily on Dr. Mukhtar's opinion, or prediction without caveat, that Mr. Islam's current accommodation "*can only serve to cause more harm*" in advancing their arguments. As I pointed out during oral submissions, the Claimants' focus on the GP's evidence is over and above that of Dr. Walters who provides the fullest and most authoritative assessment of Mr. Islam's mental health problems. She also is the specialist, and the LB of Haringey was entitled to give her report more prominence in its decision making.

82. This case is very different to *Guiste* where the Court of Appeal held that a local housing authority erred in law when it rejected the opinion of a consultant psychiatrist, without good reasons, that being made homeless would heighten the applicant's depression and anxiety leaving him at risk of self-harm and suicide.

83. *Shala v Birmingham CC* [2007] EWCA Civ 624, [2008] H.L.R. 8 also is a different case and the Claimants cannot derive the assistance that they seek. In *Shala*, the Court of Appeal found that the local authority's decision was flawed as it had excluded from consideration two additional medical reports, which contained information of "possibly decisive" relevance (§15). In the reports, doctors described graver and different medical conditions to that described by the doctor instructed by the local authority to advise at an earlier stage.

84. In Mr. Islam's case, all the medical information was considered, and the LB of Haringey was entitled to consider the letters as a whole, particularly as Dr. Mukhtar himself referred back to his previous letter.

85. There is nothing irrational in the LB of Haringey referring to the initial assertion by Dr. Mukhtar that constant rehousing was the cause of a decline in Mr. Islam's mental health when this was a wrong factual basis for the conclusion.

86. Dr. Mukhtar's view that temporary accommodation would "only serve to cause more harm" lacks certainty and is open to caveats. Indeed, Dr. Wilson looks at an alternative of Mr. Islam living alone in permanent accommodation but being further away from his family as being an example of where he would be less able to cope than in temporary accommodation. This isn't a test, as recognised by Dr. Wilson, but is a convenient way of testing Dr. Mukhtar's broad view.

87. Dr. Mukhtar's April letter conclusion also is premised on the accommodation being "precarious" rather than on a premise that it has been secure for 6 years with no change anticipated over the following 3 years.

88. I agree with the Defendant's arguments that the LB of Haringey was entitled to give the weight they did to the April letter and refer fully to the more detailed earlier letter. As said by Henderson LJ in *Guiste* at §58: "*it is not an error of law for [the decision-maker] to fail to mention each and every occasion where [he] disagrees with the doctor's assessment of what the [the patient] had told [him]*".

89. The LB of Haringey, in its process, also was entitled to focus upon the findings of the consultant psychiatrist instructed by the Claimant. Dr. Mukhtar is not a qualified psychiatrist.

90. As Lewison LJ observed in *Horada v Secretary of State for Communities and Local Government* [2016] EWCA Civ 169, there is no duty on a decision- maker to give reasons for his reasons (§40).

91. I do not find there to have been any procedural flaws in the LB of Haringey's consideration of Dr. Mukhtar's evidence.

92. In any event, the LB of Haringey assert that it is highly likely that the outcome would not have been substantially different, pursuant to section 31(2A) of the Senior Courts Act 1981. The test is applicable to substantive and not just procedural or technical conduct: **R (Goring-on-Thames Parish Council) v South Oxfordshire District Council** [2018] EWCA Civ 860 at §47.

93. In light of my findings, I do not need to consider s.31(2A) of the Senior Courts Act 1981. However, I indicate that the Defendant's argument, that there is nothing in the GP letter dated 27.04.2022 that would lead to the conclusion that Limb B would be met, has considerable force.

Flaw 2: **Failure to take into account that NowMedical was not the treating doctor**

94. The report provided by Dr. Wilson of NowMedical itself sets out that there had been no examination. NowMedical services are frequently used by the LB of Haringey and routinely do not examine subjects of decision- making. In the case of *Guiste,*

Henderson LJ set out his understanding that it was NowMedical's usual practice not to interview or examine the person (§7).

95. The Defendant points out that the Reviews manager was senior and was asking for advice on her decision, not on the medical condition of Mr. Islam, which is not in dispute. I agree.

96. The Decision is detailed, and the Reviews Manager refers to Dr. Wilson as a Psychiatric Adviser, rather than as consultant psychiatrist carrying out an examination.

97. It is unlikely that the Reviews Manager did not take into account that NowMedical was not the treating Doctor and had not examined Mr. Islam. In my view, it is obvious that she did so, from the Decision itself. The Reviews Manager sets out that Dr. Wilson "supports my conclusion" after having considered the documents, which, I add, included those who had examined Mr. Islam.

98. The Claimants refer to the case of *Shala* and the words of Sedley LJ in the case of *Shala,* as to the importance of local housing authorities taking care not appearing to be using professional medical advisers (also NowMedical) "*simply to provide or to shore up reasons for a refusal*" (§19). However, he also said that it is entirely right that local authorities, themselves without any medical expertise, should not be expected to make their own critical evaluation of applicants' medical evidence and should have access to specialist advice about it. There is simply no evidence that there was a utilisation of Dr. Wilson's services other than to obtain a medically qualified opinion of the Decision. There also was no such evidence in the *Shala* case.

99. Considering the Claimants' arguments and applying *Shala (*§22*),* this is not a case where there is an attempt by the LB of Haringey to raise Dr. Wilson's agreement with its decision to the status of Dr. Wilson giving expert evidence of the applicant's condition. Nor is it seriously argued by the Claimants. It is apparent on the face of the Dr. Wilson's short opinion that Dr. Wilson evidences his opinion through reliance on documents, namely medical records, and lack of requirement for hospitalisation or detention under the Mental Health Act.

100. I find no error in the LB of Haringey's approach to or application of the advice from Dr. Wilson. The local authority was expecting an additional document analysis from an advisor who was appropriately medically qualified. That is what it received. The examinations of Mr. Islam by his GP and Dr. Walters were taken into account, alongside the GP medical records. The LB of Haringey also argue that the lack of examination of Mr. Islam by Dr. Wilson would have made no material difference as it would have had no effect upon its Decision.

101. In light of my findings, I do not need to consider this argument in detail save to note that it has considerable force. The contrary argument is difficult to sustain and was not advanced in oral hearing beyond pointing to the GP having experience of treating Mr. Islam for 20 years. Without underplaying the work of the GP, this argument omitted that the specialist medical report was provided by the consultant

psychiatrist, Dr. Walters and so the LB of Haringey normally would have been expected to focus upon the fullest and most authoritative assessment of Mr. Islam.

102. Further, as Mr. Mold argues, the Decision focused on Limb B and the medical condition of Mr. Islam was agreed.

Flaw *3 – failing to take into account the material consideration that the Claimants could be moved at any time.*

103. The challenge under this ground refers to reasoning in the Decision that the Claimants have stability and so failed to take into account the break clause in the Defendant's lease with the landlord.

104. The LB of Haringey argues that the LB of Haringey sets out accurate facts as the accommodation had been stable for over 6 years and was renewed every 3 years, with the latest renewal pending. It also argues that this was not a material consideration.

105. This cannot be characterised as irrational, and it is not possible to infer that there was a failure to take into account a material consideration. The Claimants did not know that there was a three-month break clause, and this was not a consideration advanced to the LB of Haringey.

106. One feature of this case's history, and a matter I queried during the hearing, is that there is no evidence of attempts outside the family to reassure Mr. Islam that he would not be evicted at a week's notice and that time allowed to rehouse could be up to 9 months, although there was no intention by the LB of Haringey to give notice.

107. It might have been that if reassurance is given to Mr. Islam, for example that he will not be required to move in a week, by medical professionals and by the LB of Haringey, it would have lessened his anxiety and may still do so. It might provide another alternative to Dr. Mukhtar's broad view in the April letter.

108. Put simply, this is not a case where the Claimants were constantly moving and in considering the past, the LB of Haringey was also assessing reasons for any deterioration in Mr. Islam's mental health and that moving house was not a factor.

109. In light of the above, I do not need to consider section 31(2A) of the Senior Courts Act 1981. However, as above, there is force in the Defendant's argument that the outcome would have been the same even if the LB of Haringey had addressed that there was a three- month break clause with the Head Landlord. The LB of Haringey addressed the facts of there having been stable accommodation for 6 years, with an anticipated further 3 years of provision of the same address with its accompanying benefits of closeness to a supportive family network and access to secondary mental health services if required.

Conclusion

110. Following from the above conclusions, the claim for judicial review is dismissed.