Neutral Citation Number: [2025] EWHC 154 (Admin)

Case No: AC-2023-LON-003699

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

Wednesday, 29th January 2025

Before:
FORDHAM J

- -

Between:

THE KING (on the application of BLZ)	**Claimant**
- and -	
LEEDS CITY COUNCIL	**Defendant**
- and –	
(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT	
(2) THE SECOND LOCAL AUTHORITY	**Interested Parties**

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Stephanie Harrison KC, Grace Capel, Nadia O'Mara and **Isaac Ricca-Richardson**
(instructed by Turpin Miller LLP) for the **Claimant**
Jack Holborn, Matthew Howarth and **Ella Grodzinski**
(instructed by Government Legal Department) for the **SSHD**
David Lawson and **Katherine Hampshire** (instructed by LCC) for **Leeds City Council**
Sian Davies (instructed by the Second LA) for the **Second Local Authority**

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Hearing dates: 28 & 29.11.24
Further written submissions: 6 & 11.12.24, 5.12.24
Draft judgment: 17.1.25

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Approved Judgment

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FORDHAM J

Note: This judgment was handed-down virtually at 10am on 29.1.25
by circulation to the parties and uploading to the National Archives.

FORDHAM J:

I. INTRODUCTION

1. This case is about the approach of a local authority to the care and support needs of a foreign national offender ("FNO") who is in Home Office Bail Accommodation ("HOBA"). It raises interrelated questions about: (1) when in law a local authority must provide accommodation to meet care and support needs; and (2) whether in law a local authority must treat HOBA as "residual" and "legally irrelevant". Local authority provision to meet care and support needs is governed by the Care Act 2014; the Care and Support (Assessment) Regulations 2014 (SI 2014/2847); the Care and Support (Eligibility Criteria) Regulations 2015 (SI 2015/313); and the Care and Support Statutory Guidance (5.10.23) which a local authority must "act under" when it is exercising its functions (2014 Act s.78(1)). HOBA is governed by Sch 10 §9 to the Immigration Act 2016, together with the Immigration Bail Interim Guidance. This judgment is the second in a pair. I heard two claims for judicial review arising out of the same background facts. My judgment in the linked claim against the Home Secretary (SSHD) is BLZ No.1 [2025] EWHC 153 (Admin). There are an anonymity order and reporting restrictions in both claims, for reasons explained in BLZ No.1 at §60. Everything in this second claim, against Leeds City Council ("LCC"), really stems from the transfer of the Claimant by the SSHD on 20.9.23, from HOBA at Willow Lane in Huddlesfield to HOBA at Rokeby Gardens in Leeds.

The Issues

2. The issues identified by the parties in this claim came to this:

> ***Issue (1). Residuality and Legal Irrelevancy. (1a) Is HOBA provided by the SSHD under Sch 10 §9 to the 2016 Act "residual"? (1b) If so, did LCC misdirect itself in law in taking account of accommodation provided by the SSHD under Sch 10 §9 when assessing the Claimant's eligible needs for care and support, including his "accommodation-related" needs under the 2014 Act? Issue (2). Misdirection. In conducting its assessments of the Claimant's needs for care and support under the 2014 Act, did LCC misdirect itself in law in deciding whether it had a duty to accommodate the Claimant: (2a) By asking itself which of the Claimant's needs were not being met in the existing accommodation (provided in this case by the SSHD), instead of asking itself what the Claimant's needs were for the purposes of Part 1 of the 2014 Act? (2b) By misdirecting itself as to what constitutes "eligible needs", "care and support" and "accommodation-related" needs within the meaning of the 2014 Act? (2c) By failing to address the evidence of his needs? (2d) In focusing on whether the Claimant required supported living accommodation (specialist accommodation) to the exclusion of other forms of accommodation? Issue (3). Lawfulness and Reasonableness. Did LCC act lawfully and reasonably in the assessments of the Claimant's needs?***

3. That means nine breaches of the law are being alleged: misdirection by taking into account residual HOBA (Issue (1b)); misdirection as to "met" needs (Issue (2a); misdirection as to "eligible needs" (first part of Issue (2b)); misdirection as to "care and support" needs (second part of Issue (2b)); misdirection as to "accommodation-related" needs (third part of Issue (2b)); misdirection by failing to address evidence (Issue (2c)); misdirection by focusing on specialist accommodation (Issue (2d)); unlawful assessments (first part of Issue (3)); unreasonable assessments (second part of Issue (3)).

Resolution of HRA Issues

4. The parties had also identified these issues under the Human Rights Act 1998 (HRA):

> ***Issue (4). HRA. Did LCC breach the Claimant's substantive Article 3 and/or 8 ECHR rights between 29 September 2023 and 22 December 2023. (4a) Did the level of the Claimant's suffering or indignity during that period cross the severity threshold for constituting "degrading treatment" under Article 3 ECHR? (4b) If so, is LCC responsible? (4c) Further or alternatively, was the treatment of the Claimant during the relevant period a disproportionate interference with his private life as protected by Article 8 ECHR? (4d) If so, is LCC responsible?***

The specified period (29.9.23 to 22.12.23) limits these HRA issues to the position while the Claimant was at Rokeby Gardens (from 20.9.23), with a set of stairs outside his bedroom. The date of 29.9.23 is when the Claimant's solicitors wrote to LCC drawing attention to that situation. Included is a period of "confined living", between the date of the Claimant's hospital discharge (27.10.23) to the date when he was transferred from Rokeby Gardens (22.12.23). The Claimant cannot succeed against LCC on these human rights issues. They stand resolved by BLZ No.1. Included within Issue (4d) of BLZ No.1 was the claim that the conditions at Rokeby Gardens from 20.9.23 to 22.12.23 crossed the relevant thresholds to constitute violations of Article 3 and Article 8, for which the SSHD was said to be responsible. The parties were agreed that I should deliberate and rule on BLZ No.1 only after the conclusion of the hearing of this second claim, and having considered all the evidence and arguments. Having taken that course, I have analysed the position in detail in BLZ No.1 at §§26-27, 31, 54-59, 81-84. I have explained that the conditions experienced by the Claimant at Rokeby Gardens did not cross the relevant thresholds to constitute substantive violations of his Article 3 or Article 8 rights. In those circumstances there is no room – as a matter of legal logic – on which an Article 3 or 8 claim against LCC can succeed.

Regulation 2 Eligibility

5. The criteria for eligible care and support needs are found in reg.2 of the 2015 Regulations:

> ***2. Needs which meet the eligibility criteria: adults who need care and support. (1) An adult's needs meet the eligibility criteria if – (a) the adult's needs arise from or are related to a physical or mental impairment or illness; (b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being. (2) The specified outcomes are – (a) managing and maintaining nutrition; (b) maintaining personal hygiene; (c) managing toilet needs; (d) being appropriately clothed; (e) being able to make use of the adult's home safely; (f) maintaining a habitable home environment; (g) developing and maintaining family or other personal relationships; (h) accessing and engaging in work, training, education or volunteering; (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and (j) carrying out any caring responsibilities the adult has for a child. (3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult – (a) is unable to achieve it without assistance; (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety; (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or (d) is able to achieve it without assistance but takes significantly longer than would normally be expected. (4) Where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish accurately the adult's level of need.***

I pause to note that eligibility criteria reg.2(2)(e) and (f) presuppose that the relevant person has a "home".

Section 1 Well-being

6. Reg.2(1)(c) refers to impact on "well-being". That links to s.1(1)-(3) of the 2014 Act:

> ***1. Promoting individual well-being. (1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being. (2) "Well-being", in relation to an individual, means that individual's well-being so far as relating to any of the following – (a) personal dignity (including treatment of the individual with respect); (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (d) 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); (e) participation in work, education, training or recreation; (f) social and economic well-being; (g) domestic, family and personal relationships; (h) suitability of living accommodation; (i) the individual's contribution to society. (3) In exercising a function under this Part in the case of an individual, a local authority must have regard to the following matters in particular – (a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being; (b) the individual's views, wishes, feelings and beliefs; (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist; (d) the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behaviour which might lead others to make unjustified assumptions about the individual's well-being); (e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate; (f) the importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual; (g) the need to protect people from abuse and neglect; (h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised…***

I pause to note that s.1(2)(h) requires that consideration be given to well-being relating to "suitability of living accommodation".

Willow Lane

7. Willow Lane in Huddlesfield, in the local authority area of Kirklees, is the HOBA which the Claimant occupied for 6 weeks from 3.8.23 to 20.9.23. He had previously been at Leeds Prison from 7.3.23 to 25.7.23 and then at Brook House immigration removal centre from 25.7.23 to 3.8.23. As is recognised in a witness statement from Katie Tulip – a Team Manager within LCC's Adults and Health Service – the Claimant was known to LCC previously. Moving from Coventry on 10.3.22, he had lived in HOBA at Bodmin Road in Leeds for 12 months. He was referred to LCC on 6.7.22. On 9.1.23 the community mental health team made a referral to LCC, for an assessment of the Claimant's care and support needs. This referral said the Claimant relied on his sister for meals and indicated a range of social care needs including personal care and household management. There was a conversation with the Claimant's sister on 13.1.23, but no social worker had been allocated by the time of the Claimant's recall to prison on 7.3.23.

8. At Willow Lane, the Claimant lived in Room 3 which was an upstairs room. There was a flight of stairs with no handrail. Kirklees became involved because of a referral by the Public Protection Officer PC Thorp on 8.8.23. Kirklees social worker (SW) Emma

Wilson visited the Claimant at Willow Lane on 11.8.23. She recorded in an email that the stairs were steep and poorly lit with no hand rail for the Claimant to steady himself. She then produced "the Wilson Assessment": a 2014 Act care and support needs assessment (22.8.23), with a care plan and an ECHR assessment. SW Wilson assessed reg.2(1) as met: the Claimant's needs arose from or were related to a physical or mental impairment or illness. She assessed that seven of the specified outcomes (reg.2(2)) were applicable, namely: maintaining personal hygiene; being appropriately dressed; managing and maintaining nutrition; being able to make use of the home safely; maintaining a habitable home environment; developing and maintaining family or other personal relationships; and making use of necessary facilities or services in the local community including public transport and recreational facilities or services. She assessed that there was a reg.2(1)(c) impact in eight of the s.1(2) well-being criteria: personal dignity, including treating the individual with respect; physical and mental health and emotional wellbeing; protection from abuse and neglect; control by the individual over day-to-day life; social and economic well-being; domestic, family and personal relationships; suitability of living accommodation; and the individual's contribution to society. I pause to note that, in assessing eligible care and support needs SW Wilson had to think about "suitability of living accommodation", through the prism of reg.2(1)(c) read with s.1(2)(h).

9. From 25.8.23 until 20.9.23, SW Wilson's care plan was implemented. There were twice-daily care visits (45 minutes each morning and 30 minutes each evening) by a pair of carers visiting the Claimant at to Willow Lane. This was organised and funded by Kirklees. This was homecare provision (2014 Act s.8(1)(b)) designed to ensure that the Claimant's hygiene needs had been met, that he was appropriately dressed in clean clothing, that he had a breakfast and was left with a lunch, that he had an evening meal, and that he took his medication. There was also to be a referral at this stage for a "Falls Device" (§10 below) but it had not been actioned by 20.9.23 when the Claimant left Willow Lane and went to Rokeby Gardens. While the Claimant was at Willow Lane, the Claimant's judicial review claim against the SSHD was commenced on 25.8.23, challenging the legal suitability of Willow Lane as HOBA for the Claimant in light of his physical and mental health conditions. Against the backcloth of that litigation and events which occurred while the Claimant was at Willow Lane, the SSHD decided to transfer the Claimant to Rokeby Gardens in Leeds. And it was in light of the imminent transfer of the Claimant to Rokeby Gardens that Kirklees notified LCC on 18.9.23, pursuant to s.37 of the 2014 Act, that the Claimant was now heading to Leeds. LCC accepted responsibility pursuant to s.38 of the 2014 Act.

The Falls Device

10. A "Falls Device" – as I will call it – is also known as a "falls bracelet" or "falls pendant". Kirklees called it "Carephone". LCC calls it "Telecare". The Second Authority calls it "Care Link". It is an alarm which can be activated by hand when experiencing the onset of a seizure, and which activates automatically in the case of a fall. If activated, manually or automatically, there is a follow-up call and if the individual is unresponsive there is a 999 ambulance alert. The Claimant was due for a Falls Device at Willow Lane (from 25.8.23) but this had not been set up when he left (20.9.23). Eventually, from 30.11.23, he had a Falls Device at Rokeby Gardens. This was continued at HOBA known as "the Hotel" in the area of "the Second Local Authority" (anonymised for reasons explained in BLZ No.1 at §60). As Ms Harrison KC put it in her reply

> ***Telecare assists [the Claimant] to make use of his home safely.***

I am told there is a unit which has to be "plugged into the wall". The bracelet or pendant itself is presumably battery operated or rechargeable, so that it can be worn by the individual when moving around. Ms Tulip's evidence describes "assistive technology" in the form of sensors and alarms, to ensure contact from a professional within seconds of the alarm being activated, to determine wellbeing and whether medical intervention is required. The Falls Device is a form of "assistive technology in the home", reflecting the Statutory Guidance at §§10.10, 10.12:

> ***10.10 'Meeting needs' is an important concept under the Act and moves away from the previous terminology of 'providing services'. This enables a greater variety of approaches in how needs can be met, developed through care and support planning as described in this chapter. The concept of 'meeting needs' is intended to be broader than a duty to provide or arrange a particular service…***
>
> ***10.12. Where the local authority provides or arranges for care and support, the type of support may itself take many forms. These may include more traditional 'service' options, such as care homes or homecare, but may also include other types of support such as assistive technology in the home or equipment/adaptations, and approaches to meeting needs should be inclusive of less intensive or service-focused options.***

Rokeby Gardens

11. Rokeby Gardens in Leeds, in the local authority area of LCC, is the HOBA which the Claimant occupied for 3 months from 20.9.23 until he was transferred on 22.12.23 to the Hotel. At Rokeby Gardens the Claimant had a ground floor bedroom with access to the outside and to a ground floor kitchen and bathroom, but only by passing a stepped landing with an adjacent stairway down to a shared lounge in the basement. During his 3 months at Rokeby Gardens, the Claimant was hospitalised for 36 days: for 21 days from 6.10.23 to 27.10.23 (at St James's Hospital); overnight on 7.11.23; for 7 days from 16.11.23 to 23.11.23; for 6 days from 26.11.23 to 1.12.23 (at Leeds General Infirmary); and overnight on 8.12.23. To begin with, from 25.9.23 until the Claimant's hospitalisation on 6.10.23 at St James's hospital, LCC continued the same package of support as Kirklees. This was organised by LCC's rapid response team. It was funded by LCC who used a care provider called Ethicare. So, this was continued homecare provision to ensure that the Claimant's hygiene needs had been met, that he was appropriately dressed in clean clothing, that he had a breakfast and was left with a lunch, that he had an evening meal, and that he took his medication.

12. Those care and support arrangements changed from the date on which the Claimant was discharged from St James's hospital on 27.10.23, until the SSHD transferred him to the Hotel on 22.12.23. During this time – except when the Claimant was back in hospital – LCC implemented an increased package of care visits four times a day by a pair of Ethicare carers to Rokeby Gardens. The package of care visits was in due course reduced to three times a day by the pair of Ethicare carers. This was homecare provision designed to ensure that the Claimant's hygiene needs were met, to prompt him about being dressed in clean clothing, to prepare his meals, and to ensure he took his medication. Also during this time, from 30.11.23, there was also the Falls Device (Telecare), to help the Claimant remain safe when mobilising. A recommendation of handrails in the bathroom was not implemented at Rokeby Gardens because that proved to be inappropriate for a house in multiple occupation.

13. While the Claimant had his HOBA at Rokeby Gardens there were three care and support needs assessments by LCC. (1) The Fasisi Assessment was dated 23.10.23. It was conducted at St James's hospital by SW Olatundun Fasisi of Leeds's Hospital Complex Team, with hospital SOT (senior occupational therapist) Rebecca Dickinson. The Claimant had been admitted to the hospital on 6.10.23. He was discharged back to Rokeby Gardens on 27.10.23. This assessment was preceded by written representations on behalf of the Claimant in a letter before claim from Ben Goldberg, the Claimant's solicitor, dated 17.10.23; and documents provided to Leeds by Mr Goldberg on 13.10.23, 17.10.23 and 19.10.23. It was followed by a Care and Support Plan completed by SW Fasisi, later produced by Leeds on 1.12.23. SW Fasisi's care plan was the increased package of care to four visits a day and Telecare. On Day 2 of the hearing (29.11.24) Leeds produced an eligibility decision tool used by SW Fasisi on 23.10.23. SW Fasisi assessed reg.2(1) as met. The Claimant's needs arose from or were related to a physical or mental impairment or illness. Three of the specified outcomes (reg.2(2)) were applicable, namely: maintaining personal hygiene; managing and maintaining nutrition; and managing toilet needs. There was a reg.2(1)(c) impact in three of the s.1(2) wellbeing criteria: personal dignity, including respect; physical and mental health and emotional wellbeing; protection from abuse and neglect. (2) The Peters Assessment was dated 10.11.23. It was conducted by SW Olumide Peters, with SSW (senior social worker) Gillian Wood and an Ethicare representative referred to as Surryna. It was preceded by written representations in a further letter before claim dated 2.11.23. (3) The Peters Review was dated 8.12.23. It was conducted by SW Peters, with SSW Wood. This assessment took place at Leeds General Infirmary on 30.11.23, during the Claimant's admission there between 26.11.23 and 1.12.23. It was preceded by written representations in a further letter before claim dated 22.11.23, with further materials. The arrangements were continued.

The Hotel

14. The Hotel is the HOBA which the Claimant has occupied since 22.12.23. It is used for single adult male asylum seekers. It is fully-catered with cleaning services and welfare support officers. The Claimant has a bedroom with a double bed, with his own bathroom; down a corridor off the main reception. He has a walk-in shower, a shower seat, and handrails in the bathroom. There are no stairs or other hazards. After the Claimant's transfer to the Hotel on 22.12.23, the Second Local Authority – who had conducted an anticipatory assessment at Rokeby Gardens on 12.12.23 – reduced the care package to twice-daily care visits (15 minutes each morning and evening) by a pair of carers, together with the Falls Device (Telecare). This was homecare provision designed to ensure the Claimant took his medication.

The Wood Assessment

15. The Wood Assessment is a fourth care and support needs assessment undertaken by LCC. It is dated 6.2.24 and was conducted by SSW Wood with SW Peters. They carried out a joint assessment visit at the Hotel on 30.1.24 and various subsequent conversations. The Wood Assessment had been preceded by the judicial review claim against Leeds commenced on 13.12.23, with pleaded judicial review grounds and subsequent detailed written representations from Mr Goldberg dated 19.1.24, with a comprehensive set of written materials. It was an assessment pursuant to an Order by Eyre J on 19.12.23, which required LCC by 9.2.24 "to file and serve a further assessment of the Claimant's needs taking into account the Claimant's representations and the views expressed in the

previous assessment by Kirklees". The Order permitted a response by the Claimant's representatives, which was duly filed on 23.2.24.

Focus on the Wood Assessment

16. In addressing whether LCC has complied with its 2014 Act duties and applicable public law principles, Ms Harrison KC and Mr Lawson both started with the Wood Assessment and focused on it. I am quite sure this was the right approach. That is so, notwithstanding the reference to "assessments" in Issues (2) and (3). The position is as follows.

    (1) If the Wood Assessment is an unlawful 2014 Act needs assessment then the claim will succeed. That may be because of any one or more of the nine alleged illegalities: because of misdirection by taking into account residual HOBA (Issue (1b)); misdirection as to met needs (Issue (2a); misdirection as to "eligible needs" (first part of Issue (2b)); misdirection as to "care and support" needs (second part of Issue (2b)); misdirection as to "accommodation-related" needs (third part of Issue (2b)); misdirection by failing to address evidence (Issue (2c)); misdirection by focusing on specialist accommodation (Issue (2d)); unlawful assessment (first part of Issue (3)); or unreasonable assessment (second part of Issue (3)). The HRA issues have been resolved (§4 above).

    (2) If, however, the Wood Assessment is a lawful 2014 Act needs assessment then there could be no room for any remedy based on the 2014 Act. The reason was convincingly supplied by Mr Lawson. If LCC has lawfully and reasonably decided that there is no present 2014 Act duty to accommodate the Claimant, there could be no basis for this Court ordering it to do so. If LCC has lawfully and reasonably assessed the Claimant's eligible care and support needs, there could be no basis for this Court ordering it to reassess those needs. Ms Harrison KC submits that, if there were some historic past error of law or unreasonableness, there could be a public law duty to remedy that injustice. She cites authorities about historic injustice which may call for present remediation. An example is where children who would in law have post-18 local authority support, if only they had been accommodated when they turned 18, which unlawfully they were not. I am quite sure that this logic does not work here. Whatever was or was not required in law at some earlier stage – and even if it had been provided – would still have left unaffected the current position. LCC's duties – now – could still only be lawfully to assess and meet current eligible care and support needs. Putting it another way, if – in whatever way – the Claimant's case were now to fall within the ambit of LCC's 2014 Act duties, LCC could not be required to do more than discharge those duties.

    (3) Ms Harrison KC relied on views of Dr Makela (22.2.24) and Ms Scrivener-Fearn (22.2.24). Mr Lawson relied on documents relating to an NHS Healthcare referral and a first assessment by the Second Authority. I was not assisted by these materials, in either direction. The lawfulness of the Wood Assessment must be evaluated on its own contents. I conduct that approach in Part III (§§52-57) below, in light of having analysed the issues of law in Part II (§§17-56).

II. ANALYSING THE LAW

17. In this section I will discuss aspects of the relevant law and resolve relevant legal points which were contested. I think that a helpful way to analyse the relevant law in this case is by posing a series of questions, answering each in turn. Here is my legal Q&A:

What is the Approach on Judicial Review of a 2014 Act Needs Assessment ?

18. The answer is that ordinary judicial review principles apply, but with a suitably enhanced intensity of review. General summaries of the Court's supervisory function are found in R (Davey) v Oxfordshire CC [2017] EWHC 354 (Admin) [2017] PTSR 904 at §§59-60 and R (Antoniak) v Westminster City Council [2019] EWHC 3465 (Admin) (2020) 23 CCLRep 23 at §§9-10. For present purposes, it comes to this. A Needs Assessment is not a lawyer's determination of a dispute and should not be subjected to over-zealous textual analysis: R (Ireneschild) v Lambeth LBC [2007] EWCA Civ 234 [2007] HLR 34 at §57. It should be construed in a practical way against the factual background in which it was written and with the aim of seeking to discover the substance of its true meaning: R (McDonald) v Kensington & Chelsea RLBC [2011] UKSC 33 [2011] PTSR 1266 at §53. The local authority is the primary decision-maker, and is to be afforded latitude in the exercise of evaluative judgment. Judicial review is not a merits appeal and the Court does not have a substitutionary jurisdiction. The Court applies ordinary judicial review principles. The local authority must comply with its statutory duties and must act lawfully, reasonably and fairly. In considering the reasonableness of evaluative conclusions, the Court asks whether the primary decision-maker was reasonably entitled to take the view it did: R (L) v Westminster City Council [2013] UKSC 27 [2013] 1 WLR 1445 at §39. In applying conventional judicial review principles, given the vulnerability of an affected individual and the profundity of the impact of the local authority decisions, a suitably high intensity of review is needed: R (KM) v Cambridgeshire County Council [2012] UKSC 1218 [2012] PTSR 1189 at §59.

What Sequential Approach does the 2014 Act Require?

19. The answer is that there is a five-stage sequential approach for a local authority to follow. It was identified by the Court of Appeal in R (BG) v Suffolk County Council [2022] EWCA Civ 1047 [2022] 4 WLR 107 at §65:

> ***The [2014 Act] provides for a sequential approach to the provision of social care and support to individuals in need. Under the Act, councils are required to: (i) Carry out a needs assessment (s.9); (ii) Assess whether the needs for care and support found are "eligible needs" under the 2015 Regulations (s.13); (iii) Meet the needs identified as eligible needs unless such needs are being met by a carer (ss.18(1) and (7)); (iv) Consider whether to exercise its discretion to meet needs identified in the assessment which are not "eligible needs" (s.19(1)); (v) Draw up a care and support plan (ss.24-25).***

20. That means five distinct stages: (i) Needs Stage; (ii) Eligible-Needs Stage; (iii) Duty Stage; (iv) Power Stage; and (v) Action Stage. Each involves key questions for a local authority decision-maker. These questions are to be answered in the way prescribed by the 2014 Act, the associated regulations and the s.78 Statutory Guidance. These, as I see it, are the key questions for the local authority decision-maker:

> ***(i) Needs Stage: What, if any, needs for care and support do I assess the individual as having? (s.9) (ii) Eligible-Needs Stage: Which, if any, of the needs for care and support meet the eligibility criteria? (s.13) (iii) Duty Stage: Are the statutory preconditions met (s.18) and the statutory***

> ***prohibitions inapplicable (ss.21-23), so the duty arises to meet the eligible needs for care and support? (iv) Power Stage: If no duty arises, are the statutory preconditions met (s.19) and the statutory prohibitions inapplicable (ss.21-23), so that the power arises to meet the needs for care and support; and, if so, is it appropriate to exercise the power? (v) Action Stage: If the duty arises, or the power is being exercised, what action is the appropriate planned response? (ss.24-25)***

Who can have Eligible Care and Support Needs?

21. The answer is an adult who has "a physical or mental impairment or illness". This is seen in the reg.2(1)(a) eligibility criterion. The care and support needs must "arise from or [be] related to a physical or mental impairment or illness". That means the "relevant person" (as I will call them) is an adult whose care and support needs necessarily arise from or are related to a physical or mental impairment or illness. Three further points are linked to this. First, if you are a person subject to immigration control and excluded from welfare benefits, the duty (s.18) and also the power (s.19) to make provision to meet your care and support needs is excluded (s.21) if those care and support needs have arisen "solely" because of "Statutory-Destitution" (s.95 of the Immigration and Asylum Act 1999; §33 below). Secondly, a significant subset of relevant persons – as adults with a physical or mental impairment or illness (reg.2(1)(a)) – are persons with an Equality Act 2010 "disability". By s.6 of the EA, "disability" is "a physical or mental impairment" which "has a substantial and long-term adverse effect on [their] ability to carry out normal day-to-day activities". Thirdly, it is right to keep in mind that 2014 Act care and support eligibility (reg.2) and wellbeing (s.1) engage considerations about independence and autonomy for people whose care and support needs necessarily arise from or are related to a disability.

Are Eligible Care and Support Needs "Unmet" Needs?

22. The answer is no. At the Needs Stage, the s.9 needs assessment it is about care and support needs, and not "unmet" care and support needs. At the Eligible-Needs Stage, the s.13 decision is about eligible care and support needs, not "unmet" eligible care and support needs. Reg.3(3) requires eligibility to be assessed by reference to the relevant person's ability to achieve the outcome "without assistance". Here is it again:

> ***(3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult – (a) is unable to achieve it without assistance; (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety; (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.***

It is therefore necessary, at the Needs Stage and the Eligible-Needs Stage, to disregard any currently-received "assistance". It is at the Duty Stage and the Action Stage that other provision available to the relevant person can become relevant. At the Duty Stage, needs "being met by a carer" cannot trigger a duty on the local authority to meet care and support needs (s.18(7)). Provision already made by the local authority, and some sorts of provision which the relevant person can access from other sources, can be relevant at the Action Stage: see §31 below.

23. In Antoniak, the claimant Mr Antoniak was an EU national (Polish) who was a wheelchair-user with physical and mental health conditions (§11). He was accommodated in a hostel by a charity called Routes Home, paid for by Westminster (§14). In its 2014 Act needs assessment, conducted at the hostel, Westminster referred to

"longer term support with cleaning and maintenance and meal preparation … to complete cleaning and cooking tasks safely from his wheelchair", but said Mr Antoniak "currently has no needs in this area" and he "doesn't have any Care Act eligible needs" because "the needs he does have can be met by existing voluntary or private sector agencies as detailed above" (§15). Mr Antoniak's claim for judicial review succeeded (see §32) because this assessment did not constitute a discharge of the 2014 Act duties at the Needs Stage (s.9) and Eligible-Needs Stage (s.13). Judge Ockelton said this (at §31):

> ***It is clear from the supporting text that amongst the claimant's needs are "support with cleaning and maintenance, and meal preparation", on which the assessor says "he currently has no needs in this area". But the reason for that, as the other entries on the form, and indeed the defendant's submissions, made clear, is that those needs were being met in the accommodation in which he was at the date of the assessment. That was not, in my judgment, a lawful assessment of his eligible needs, because the question of impact on his wellbeing should have been made without regard to the way in which needs were being met at the date of the assessment.***

Antoniak is cited in the Encyclopaedia of Social Services and Child Care Law at D1-1213. It illustrates the species of legal error which features in Issue (2a).

24. I pause to note that Mr Antoniak used his wheelchair "for all mobility requirements" (§11), but considerations about the physical configuration at the hostel and the physical configuration of future "accommodation in an independent living setting" (§15) were not what featured in the Court's analysis of why Mr Antoniak's claim succeeded. The case was about support Mr Antoniak would need with "cleaning and maintenance, and meal preparation". It was not about accommodation big enough for a wheelchair, with level-access for a wheelchair user. I will return to this in the context of GS (§29 below).

Can Care and Support Needs require 2014 Act Accommodation?

25. The answer is yes. Unlike s.21 of the National Assistance Act 1948 (§34(1) below), s.18(1) of the 2014 Act is not an express statutory duty to provide accommodation. Instead, s.18 is a duty to "meet the adult's needs for care and support which meet the eligibility criteria", while s.19 is a power "to meet an adult's needs for care and support" in certain other circumstances. However, as s.8(1)(a) of the 2014 Act expressly reflects, a local authority may choose to meet care and support needs – or may have no lawful alternative than to meet eligible care and support needs – by itself providing accommodation. Under a heading "how to meet needs", s.8(1) provides as follows (emphasis added):

> ***(1) The following are examples of what may be provided to meet needs under sections 18 to 20 – (a) accommodation in a care home or in premises of some other type; (b) care and support at home or in the community; (c) counselling and other types of social work; (d) goods and facilities; (e) information, advice and advocacy.***

I pause to note that Parliament has spoken expressly of "accommodation" being provided "to meet needs".

Is 2014 Act Accommodation necessarily "specialist" accommodation?

26. The answer is no. The language of s.8(1)(a) makes clear that "accommodation" which meets care and support needs may be a "care home" (defined in s.8(3)) or it may be accommodation of "some other type". The statutory scheme refers to certain types of specialist accommodation (see §44 below). But accommodation of a s.8(1)(a) "other

type" would not need to be "specialist accommodation" at all. This was recognised in R (SB) v Newham LBC [2023] EWHC 2701 (Admin) at §§116-117; followed in R (TMX) v Croydon LBC [2024] EWHC 129 (Admin) at §52. As a historical reference-point, the same logic applied to 1948 Act s.21 "residential accommodation" for providing care and assistance. This was not limited to residential accommodation "of a specialist type" and accommodation-related needs were referable to home "whether ordinary or specialised": see L at §§44 and 48. This features in Issue (2d).

Is a Need for Accommodation a Care and Support Need?

27. The answer is no. That is notwithstanding that the eligibility criteria reg.2(2)(e) and (f) presuppose that the relevant person has a "home"; notwithstanding that s.1(2)(h) requires consideration to well-being relating to "suitability of living accommodation"; and notwithstanding that that Parliament has spoken in s.8(1) of "accommodation" being provided "to meet needs". The proposition that a need for accommodation is not of itself a 2014 Act care and support need was decided 8 years ago, in R (GS) v Camden LBC [2016] EWHC 1762 (Admin) [2017] PTSR 140 at §§28-29. The claimant GS was a Swiss national wheelchair user with physical and mental health conditions who was living in a local authority enablement flat (§§3, 8). DHCJ Peter Marquand held that Camden had lawfully decided that GS's need "was for accommodation alone" (§49). A need for accommodation was not a 2014 Act need for care and support (§§15-29). Camden nevertheless owed a duty to exercise its Localism Act 2011 powers to protect the claimant from imminent Article 3 suffering (§76). The conclusion – that a need for accommodation is not a 2014 Act need for care and support – has not subsequently been challenged or doubted. It was followed in R (Aburas) v Southwark LBC [2019] EWHC 2754 (Admin) (2019) 22 CCLR 537 §6i; SB §52b; and TMX §53. As a historical reference-point, neither accommodation nor subsistence were "care and attention" needs under the 1948 Act s.21 (§34(1) below). This was explained in R (M) v Slough Borough Council [2008] UKHL 52 [2008] 1 WLR 1808 at §21 (Lady Hale: "A mere need for housing and financial support is not a need for care and attention"), §33 (s.21 "is not a general power to provide housing"), §40 (Lord Brown: "A person must need looking after beyond merely the provision of a home and the wherewithal to survive") and §60 (Lord Neuberger: "M is not 'in need of care and attention' simply because he is without accommodation").

Is Current Living Accommodation Disregarded at the Needs and Eligible-Needs Stages?

28. The answer is no. That is notwithstanding that a need for accommodation is not, of itself, a care and support need (§27 above); that accommodation can be provision to meet care and support needs (§25 above); that reg.2(3) requires eligibility to be assessed by reference to the relevant person's ability to achieve the statutory outcomes "without assistance" (§5 above); and that the focus is on "unmet" needs (§22 above). None of this means that current living accommodation is ignored at the Needs Stage or the Eligible-Needs Stage. This point was also decided in GS. GS was the Swiss wheelchair user currently living in a local authority enablement flat (§8). She had previously been in bed and breakfast accommodation which was not wheelchair accessible (§7), and then a hotel (§8). Hers was a need for accommodation; not a care and support need (§49). That was because she had been, lawfully, assessed as being able to live independently, including washing, getting dressed, cleaning her home, showering (§§39-41, 47). DHCJ Marquand recognised that the eligibility criteria in reg.2(2)(e) and (f) "envisage accommodation that exists" (§28iii). He reasoned (at §38):

> ***there is no legal obligation to disregard accommodation when considering the application of the eligibility criteria. Where accommodation related services are provided it is the services that are to be disregarded [pursuant to reg.3(3)] not the accommodation per se.***

I agree and would add the following. The "suitability of living accommodation" is a statutory wellbeing feature (s.1(2)(h)); the local authority must promote wellbeing in discharging its needs assessment functions (s.1(1)); and at the Needs and Eligible-Needs Stages consideration must be given to the impact on wellbeing (reg.2(1)(c)). That means the legislation has treated the "suitability of living accommodation" as relevant at those Stages. Further, the specified outcome of being able to "make use the adult's home safely" (reg.2(2)(e)) requires consideration of "the adult's home"; as does "maintaining a habitable home environment" (reg.2(2)(f)). These are practical real world criteria. In applying other eligibility criteria, the social worker thinks about the reality: whether it be a home; or a child or children (reg.2(2)(j)); or a family (reg.2(2)(g)).

29. This means, where the relevant person is assessed in their current living accommodation, the social worker does not – at the Needs Stage or the Eligible-Needs Stage – have to posit them in accommodation with a different layout or configuration. This is clear by taking the position of Mr Antoniak and GS. They would both clearly need accommodation to be accessible and suitable for their wheelchairs, if they were to achieve independent living and the outcomes in the eligibility criteria. But the eligible care and support needs of Mr Antoniak and GS could be assessed in their practical real world setting, so far as concerned the configuration of accommodation. That is why layout and configuration did not feature in the unlawfulness in Antoniak and why it did not feature to mean there was any unlawfulness in GS. I interpose that another example is R (AA) v Hackney LBC [2021] EWHC 674 (Admin) where the claimant was lawfully assessed as having no eligible care and support needs (§§1, 43), being able to meet all of his care and support needs independently (§8); albeit that he may not be able to "use his home if there were stairs in it" (§26). His current accommodation had no stairs (§34).

Can "Other Provision" be Relevant at the Duty, Power and Action Stages?

30. The answer is yes. At the Duty and Power Stages there are statutory prohibitions in ss.21-23, for provision within the scope of the NHS; or the Housing Act 1996 (R (Campbell) v Ealing LBC [2024] EWCA Civ 540 [2024] HLR 34). At the Duty Stage, there is a legally relevant question whether the individual's needs are being met by a "carer", because s.18(7) of the 2014 Act disapplies the statutory duty to meet eligible care and support needs "to such of the adult's needs as are being met by a carer". The Statutory Guidance says this at §§10.23 and 10.26:

> ***10.23. Sections 21 to 23 of the Act set out the limitations on the circumstances in which local authorities may meet care and support needs. In particular, they make clear that local authorities must not meet needs by providing or arranging any health service or facility which is required to be provided by the NHS, or doing anything under the Housing Act 1996. The aim of these provisions is to avoid duplication in the provision of services and facilities, and provide clarity about the limits of care and support, and the circumstances in which care and support should be provided as opposed to health services or housing services (or vice versa).***
>
> ***10.26. Local authorities are not under a duty to meet any needs that are being met by a carer. The local authority must identify, during the assessment process, those needs which are being met by a carer at that time, and determine whether those needs would be eligible. But any eligible needs met by a carer are not required to be met by the local authority, for so long as the carer continues to do so. The local authority should record in the care and support plan which needs***

> ***are being met by a carer, and should consider putting in place plans to respond to any breakdown in the caring relationship.***

31. At the Action Stage, needs which are or can be met from other sources of provision for care and support may also be relevant. There is a significant passage about this in the Statutory Guidance. It has to be read with a point about residuality and legal irrelevancy, to which I will come (see §37 below). But subject to that, to the extent that Ms Harrison KC criticised this passage, she did not persuade me that it contains any misstatement of the law. No other party criticised the passage. Mr Holborn took a neutral position. Here is the Statutory Guidance at §§10.21-22 and §§10.24-25, under a heading "relationship with other services":

> ***10.21. Local authorities should also have regard to how needs may be met beyond the provision, or arrangement, of services by the authority. A person may already be in receipt of care and support which meets their needs (whether self-funded and arranged or not). For example, needs may be met by a carer, in an educational establishment or by another institution other than the local authority. In these circumstances the local authority remains under a duty to meet the person's eligible needs. If however, the alternative means of meeting the needs is in place and the authority is satisfied that this alternative means is, in fact, meeting the person's eligible needs, then the authority may not actually have to arrange or provide any services to comply with that duty.***
>
> ***10.22. However, the local authority should nonetheless record those needs through the assessment process, determine whether the needs meet the eligibility criteria and keep under review whether the authority needs to do anything in order to comply with its duty to meet the person's eligible needs (for example, if the alternative services being provided to meet the needs cease or the authority is no longer satisfied that the alternative services adequately meet the person's needs).***
>
> ***…***
>
> ***10.24. There may be other services to which a person is entitled under other legislation (but which could also be provided as part of the provision of care and support), which a local authority is not specifically prohibited from providing under the Act. Where there is a risk of overlapping entitlements (for example, where two different organisations may be under a duty to provide a service in relation to the same needs), local authorities should take steps to support the individual to access the support to which they are entitled under other legislation. This may include, for example, helping the person to access some disability-related benefits and allowances. It may also include working with the housing authority to ensure that there is a clear process in place for access to disabled facilities grants to avoid the risk of duplication of work in meeting the same needs.***
>
> ***10.25. The duty to meet eligible needs is not discharged just because a person has another entitlement to a different service which could meet those needs, but of which they are not availing themselves. The needs remain 'unmet' (and so the local authority remains under a duty to meet them) until those needs are actually met by the relevant service bring provided or arranged. Local authorities should therefore consider how to inform and advise people on accessing any such entitlements at the earliest stage possible, as well as working collaboratively with other local services to share information.***

Is Asylum Support Accommodation "Residual" and "Legally Irrelevant"?

32. The answer is yes. If the assessment of eligible care and support needs triggers a local authority duty (s.18) to provide accommodation, the local authority is not entitled to rely on the individual's entitlement to asylum support accommodation, whether that has been provided by the SSHD or whether it has yet to be provided. It is the local authority who is to provide the accommodation as well as the care and support being delivered. This is

an important legal qualification to the statements in the Statutory Guidance – describing the Action Stage – about an "alternative means of meeting the needs" (§10.21); about "services to which a person is entitled under other legislation (but which could also be provided as part of the provision of care and support), which a local authority is not specifically prohibited from providing under the Act"; "overlapping entitlements" where "two different organisations may be under a duty to provide a service in relation to the same needs"; and "another entitlement to a different service which could meet those needs" (§10.24).

33. Asylum support accommodation is provided pursuant to ss.4(2) and 95 of the 1999 Act. It is governed by that Act and the Asylum Support Regulations 2000 (SI 2000/704); and the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 (SI 2005/930). The 1999 Act at s.95(3) describes the situation where an individual does not have "adequate accommodation or any means of obtaining it" and/or "cannot meet" their "other essential living needs" ("Statutory-Destitution"). For asylum support, Statutory-Destitution operates as a sufficient eligibility precondition for an asylum-seeker (s.95(1) read with SI 2005/7 reg.5) and as a necessary eligibility precondition for a failed asylum-seeker (2005 Regulations reg.3). Reg.6(4)(b) of the 2000 Regulations provides that the SSHD:

> ***… must take into account … any other support which is available to the principal or any dependant of his, or might reasonably be expected to be so available in [the] period [prescribed by reg.7].***

The reg.6(4)(b) duty is straightforwardly applicable in s.95 (asylum seeker) cases, by virtue of s.95(5)(a). But since Statutory-Destitution (s.95(3)) is a necessary statutory precondition for s.4(2) (failed asylum-seeker) cases, the reg. 6(4)(b) duty is also applicable to s.4(2)(3) failed asylum-seeker cases: R (Westminster City Council) v National Asylum Support Service [2002] 1 WLR 2956 at §40 (Lord Hoffmann); R (AW) v Croydon LBC [2005] EWHC 2950 (Admin) [2006] LGR 159 at §47, endorsed by the Court of Appeal as R (W) v Croydon LBC [2007] 1 WLR 3168 at §§16(h), 17, 35 and 40-41 (Laws LJ).

34. By way of a historical reference-point, it was well-established that asylum support accommodation is "residual" and "legally irrelevant" when a local authority is deciding whether to provide accommodation to meet care and attention needs pursuant to s.21 of the 1948 Act. Here is a diversion into the legal history:

(1) Here is s.21 of the 1948 Act (as it has stood at the material times):

> ***21. Duty of local authorities to provide accommodation. (1) Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing (a) residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; and (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them. (1A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely – (a) because he is destitute; or (b) because of the physical effects, or anticipated physical effects, of his being destitute. (1B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (1A) as they apply for the purposes of that section, but for the***

> ***references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.***

The Secretary of State did make s.21(1) directions, in respect of individuals ordinarily resident in a local authority's area, such that s.21(1) became a duty ("shall") rather than a power ("may"): see M at §13.

(2) Pausing there, we can see that s.21 necessarily involves the idea of accommodation-related care and attention needs. The s.21 duty is a duty to provide "residential accommodation". The purpose of that accommodation is so that care and attention can be made available, to a person whose need for it is by reason of age, illness, disability of other circumstances. The care and attention which the person needs is being made available by the provision of the accommodation under s.21. And the care and attention which they need must not be available otherwise than by the provision of accommodation under s.21. All of this is clear on the face of s.21 itself.

(3) Lord Carnwath explained these things about s.21 in L at §§7-8:

> ***First, the requirements of s.21(1)(a) of the 1948 Act can be expressed as three cumulative conditions: "first, the person must be in need of care and attention; secondly, the need must arise by reason of age, illness, disability or 'other circumstances' and, thirdly, the care and attention which is needed must not be available otherwise than by the provision of accommodation under section 21": see M per Baroness Hale at §31, citing R (Wahid) v Tower Hamlets London Borough Council [2002] EWCA Civ 287 [2002] LGR 545 §30"…***
>
> ***Secondly, it is clear that the words "not otherwise available" in s.21(1)(a) govern "care and attention", not "accommodation": M §16 per Baroness Hale; §§50-52 per Lord Neuberger. It is equally clear … that ordinary, as opposed to special, accommodation, is not excluded: "… people who need care and attention which could be provided in their own homes, if they had them, can fall within section 21(1)(a)". (M §30 per Baroness Hale.).***

(4) Section 21 was considered in the apex cases of M (2008 in the House of Lords) and L (2013 in the Supreme Court). In both cases, asylum support accommodation under s.95 of the 1999 Act was recognised as available to the claimants, as asylum-seekers: see M at §§3 and 39; L at §4. The question was whether, under s.21 of the 1948 Act, Slough and Westminster were nevertheless obliged to provide accommodation. In M, the claim was based on the need for HIV meds to be kept in refrigerated conditions. In L the claim was based on the need for social worker monitoring. L was diagnosed with depression and post-traumatic stress disorder, who had been discharged from a mental health unit and was temporarily housed by Westminster pursuant to an order for interim relief (§10). His assessed needs were for monitoring, by a social worker care coordinator called Mr Wyman, providing support, advice and encouragement, and generally monitoring his mental health condition. Both claims failed. M's claim failed because refrigeration for the meds was not a "care and attention" need (see M at §§36, 40, 60). L's claim failed: first, because social worker monitoring was not a "care and attention" need (L at §44); and secondly, because in any event provision for social worker monitoring was "in no sense accommodation-related" (L at §45). That involved overturning the Court of Appeal, which had decided in L that the provision to meet care and attention needs would not be "reasonably practicable and efficacious" achieving their

objectives unless they were combined with a degree of stability in the claimant's living arrangements. The Supreme Court said this was too "loose and indirect" a link between care and attention needs and accommodation (L at §46).

(5) Which takes me to the "residual" accommodation which is "legally irrelevant". Lord Carnwath explained (L at §9):

> ***the national scheme [of asylum support] is designed to be a scheme of "last resort". The regulations require the Secretary of State, in deciding whether an asylum seeker is destitute, to take into account any other support available to the asylum seeker, including support available under section 21 of the 1948 Act: Asylum Support Regulations 2000 (SI 2000/704), reg. 6(4)(b); M §27. Conversely, the local authority, in answering the questions raised by [s.21], must disregard the support which might hypothetically be available under the national scheme: see eg. R (O) v Barking and Dagenham London Borough Council [2010] EWCA Civ 1101 [2011] 1 WLR 1283 §40.***

Lord Carnwath went on to say (at §27) that the High Court had "erred" because the Judge "took account" of the Home Secretary's acceptance of "responsibility to accommodate under the national scheme". He was endorsing what the Court of Appeal had decided in L [2011] EWCA Civ 954 [2012] PTSR 574 at §17 (Laws LJ):

> ***the potential availability of NASS accommodation is nothing to the point; the local authority's decision under s.21(1)(a) had to be made on the assumption that there was no such recourse.***

Looking back beyond the Court of Appeal in O (2010) and in L (2011), Lord Carnwath's "legal irrelevancy" analysis can be traced back at least as far as Westminster which said (at §38) that the SSHD's power to provide asylum support accommodation "is residual and cannot be exercised if the asylum seeker is entitled to accommodation under some other provision"; after which there was AW endorsed by the Court of Appeal as W. Some of these cases were about s.95 asylum support accommodation for asylum-seekers. Others were about s.4(2) asylum support accommodation for failed asylum-seekers.

35. Returning to the 2014 Act and relevant persons' care and support needs, three cases treat asylum support accommodation as similarly "residual" and "legally irrelevant" when a local authority is deciding whether to provide accommodation to meet care and support needs pursuant to s.21 of the 1948 Act.

(1) R (SG) v Haringey LBC [2015] EWHC 2579 (Admin) (2015) 18 CCLR 444 was a decision of DHCJ John Bowers QC on 4.8.15. The claimant, SG, was an asylum seeker from Afghanistan with severe mental health problems, who was currently in 1999 Act s.95 Home Office asylum support accommodation (§§5-7). The central question was whether Haringey had failed lawfully to address whether it owed a statutory duty to provide SG accommodation pursuant to the 2014 Act. The judicial review claim succeeded because Haringey had failed to address (§§48, 54) the question of SG's accommodation-related eligible care and support needs. DHCJ Bowers QC identified two candidates as accommodation-related eligible care and support needs: (a) support in the home involving visits by care coordinator Ms Beegun; and (b) assistance in the home with domestic and practical tasks by other residents and Ms Beegun (§§52(d) and (i); 53), which it could be "appropriate to meet through the provision of accommodation" (§53). The "residual" and "legally

irrelevant" nature of the asylum support accommodation, which in that case was undisputed, was recorded by DHCJ Bowers QC at §12.

(2) SB was a decision of DHCJ Dan Kolinsky KC on 30.10.23. In that case the claimant SB was a 28 year old asylum-seeker with learning disabilities, depression and adjustment disorder and his 55 year old mother who acted as his carer. They were currently temporarily accommodated by Newham. The central question was whether Newham had failed lawfully to address whether it owed a statutory duty to provide SB and his mother accommodation pursuant to the 2014 Act. A needs assessment had identified certain care and support needs, which SB could not meet independently in the home: in respect of managing and maintaining nutrition (§15c) and maintaining a habitable home environment (§15f). Newham said two things. First, that these care and support needs were not "best met in accommodation based service" (§15h). Second, it was the SSHD who owed the accommodation duty by way of 1999 Act s.95 asylum support accommodation (§§23, 25). The judicial review claim succeeded. In SB, Newham had not grappled with the question whether the identified care and support needs met the legal test of "accommodation-related" care and support needs giving rise to a 2014 Act duty on a local authority to provide accommodation (§§78-81, 114-115). Newham had also failed to disregard, as legally irrelevant, the availability of asylum support accommodation (§§102-106). The "residual" and legally irrelevant nature of the asylum support accommodation was addressed at §§103, 112.

(3) TMX was a decision of DHCJ Alan Bates on 26.1.24. The claimant was a 50 year old asylum-seeker with progressive multiple sclerosis, functional neurological disorder and paraesthesia. He, his wife and two children were in asylum support accommodation in a hostel from June 2022 (see §13). Croydon had provided personal care visits as 'homecare' under the 2014 Act from December 2022 (see §33). The judicial review claim succeeded. Croydon had failed to step in to provide suitable accommodation for an asylum-seeker with accommodation-related care and support needs, breaching its 2014 Act duties (§§92-93), as well as violating Article 3 (§158) and Article 8 rights (§167). Unlike SG and SB which were about failure lawfully to consider the question whether accommodation-related care and support needs triggered a duty to provide accommodation, TMX involved a finding that the answer was clear. Croydon's breach of its 2014 Act duties was in not providing suitable accommodation, a duty which arose from November 2022 onwards (§§32, 93). Croydon was also found to have violated the claimant's Article 3 and Article 8 rights from April 2023 onwards (see §§144, 168-169). In TMX, Croydon had failed to recognise that TMX's "accommodation-related" care and support needs gave rise to a 2014 Act duty on it to provide accommodation (§§64, 93-94). Croydon had also failed to disregard, as legally irrelevant, the availability of asylum support accommodation (§92). The "residual" and legally irrelevant nature of the asylum support accommodation was addressed at §§7, 76 and 92.

36. The legal consequence is that the local authority must lawfully address (SG, SB) whether candidate accommodation-related eligible care and support needs trigger a 2014 Act s.18 duty to provide accommodation to meet those needs. Where the duty is triggered, the local authority must itself provide the accommodation (TMX). The local authority cannot in law rely on the individual's entitlement to asylum support accommodation, whether that is already being provided by the SSHD (SG, TMX) or whether it has yet to be

provided (SB). Everybody in the present case accepted the correctness of this analysis. That means, if the Claimant had been an asylum-seeker or failed asylum-seeker, the asylum support accommodation available to him when released on bail would have been legally irrelevant to LCC's decision whether to provide him with accommodation. If the assessment of eligible care and support needs triggers a local authority duty (s.18) to provide accommodation, the local authority is not entitled to rely on the individual's entitlement to asylum support accommodation, whether that has been provided by the SSHD or whether it has yet to be provided. It is the local authority who is to provide the accommodation as well as the care and support being delivered.

What does "Residual" and "Legally Irrelevant" Accommodation Mean?

37. The answer, in my judgment, is this: it is accommodation which has to be disregarded by the local authority at the Duty Stage and the Action Stage. Here are my reasons. The purpose of the recognition of provision of accommodation as "residual" and "legally irrelevant" is to identify a principled delineation on the question of who – the local authority or the SSHD – provides accommodation. It is only if the relevant person has access to asylum support accommodation that the question of the local authority having regard to it, or disregarding it as "legally irrelevant", arises. The point about asylum support accommodation being "residual" and "legally irrelevant" had its origin in a s.21 decision-making function about providing accommodation by reference to needs of care and attention. The functional parallel, in making accommodation provision, under the 2014 Act happens at the Duty Stage and the Action Stage. Where a carer meets care and support needs, the legal consequence is that the s.18 duty does not apply: see 2014 Act 18(7) and Statutory Guidance §10.26. The 2014 Act ss.21 to 23 limit when local authorities may meet care and support needs: see Statutory Guidance §10.23. Other available provision can be relevant at the Action Stage (see §30 above; Statutory Guidance §§10.21-22 and §§10.24-25); but not if it is "residual" and "legally irrelevant". SG, SB and TMX were all cases about a 2014 Act duty to provide accommodation, where there were candidate accommodation-related care and support needs which could trigger that duty. It does not follow that a person's current living accommodation – in asylum support accommodation – has to be disregarded when a needs assessment is undertaken at the Needs Stage and the Eligible-Needs Stage. There, the principled position about not having to disregard current living arrangements retains its legal logic and realism: see §28 above. The social worker can, for example, look at "suitability of living accommodation" and at "being able to make use of the adult's home" in the present practical setting. The local authority does not, in my judgment, have to approach needs and eligible needs by positing that the individual is homeless. So, if SG had been an asylum-seeker in asylum support accommodation, it would not then have become necessary for Camden to disregard her current accommodation in assessing her eligible care and support needs at the Needs Stage and the Eligible-Needs Stage.

Is HOBA "Residual" and "Legally Irrelevant"?

38. The answer, in my judgment, is yes. That means I answer Issue (1a) (§2 above) in the Claimant's favour. The position, in my judgment, ends up as the same as with asylum support accommodation (§32 above) and ends up having the same legal consequence (§37 above). Mr Holborn for the SSHD joined with Ms Harrison KC in supporting this conclusion. Mr Lawson for LCC contested it.

39. Mr Lawson submitted in essence as follows.

(1) Parliament has enacted parallel and overlapping schemes so far as HOBA under Sch 10 §9 to the 2016 Act and accommodation under the 2014 Act are concerned. They are an example of the sort of situation expressly countenanced in the Statutory Guidance at §10.24 (§31 above).

(2) HOBA under Sch 10 §9 to the 2016 Act is very different from asylum support accommodation under the 1999 Act. It is a statutory power, whereas asylum support involves statutory duties.

(3) The origin story is important. Asylum support pursuant to s.95 (asylum-seekers) and s.4(2) (failed asylum seekers) was always distinct from accommodation pursuant to s.4(1) of the 1999 Act. Prior to the 2016 Act, this was s.4(1)-(3) of the 1999 Act:

> ***4. Accommodation. (1) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons – (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the 1971 Act; (b) released from detention under that paragraph; or (c) released on bail from detention under any provision of the Immigration Acts. (2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if – (a) he was (but is no longer) an asylum-seeker, and (b) his claim for asylum was rejected. (3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2).***

As was pointed out in R (Sathanatham) v SSHD [2016] EWHC [2016] 4 WLR 128 at §3:

> ***The statutory scheme … qualifies the section 95 power and, by regulations, the section 4(2) and (3) power, but not the section 4(1) power which is widely framed …***

No case or commentary has been identified which supports bail accommodation under the s.4(1)(c) power as having been "residual" or a legal irrelevancy.

(4) The Sch 10 §9 2016 Act power is the successor of s.4(1)(c) bail accommodation power. Bail accommodation under the s.4(1)(c) power was never the subject of the Statutory-Destitution precondition nor – importantly – the reg.6(4)(b) duty on which Lord Carnwath relied in L. It was Statutory-Destitution and the reg.6(4)(b) duty which were the key features – running as a strong, explicit and necessary theme throughout all the cases – in the Courts' recognition of asylum support as "residual" and legally irrelevant. The reg.6(4)(b) duty was key to the analysis in Westminster at §40 (Lord Hoffmann); AW at §47 (Lloyd Jones J); W at §§16(h), 17, 35 and 40-41 (Laws LJ). This was the analysis being adopted in the subsequent cases on s.21. It also applied in all three 2014 Act cases: SG, SB and TMX. This key is absent in the case of HOBA pursuant to Sch 10 §9 to the 2016 Act. Statutory-Destitution (s.95 of the 1999 Act) is not a precondition for HOBA. There is no route to s.95(3), let alone to s.95(5)(a) and reg.6(4)(b). The same was true in respect of pre-2016 Act bail accommodation, under the old s.4(1)(c) of the 1999 Act, to which Statutory-Destitution did not apply.

(5) When HOBA replaced s.4(1) accommodation it is recognised as "clear … that Parliament did not intend to effect any radical change": R (Kaitey) v SSHD [2021] EWCA Civ 1875 [2022] QB 695 at §107. In enacting the 2016 Act, the drafter could have used the Statutory-Destitution test or could have replicated the language

of reg.6(4)(b), but chose not to do so. Under the 2016 Act, there is no statutory duty to "take into account any other support which is available" to the individual. The contents of policy guidance cannot in law operate to have that effect: the answer must be found in the statutory scheme. In these circumstances and for all these reasons, the Claimant and SSHD are wrong to characterise HOBA as residual and legally irrelevant in the way that asylum support accommodation is.

40. This is a powerful set of submissions. But I have been unable to accept them. Here are the reasons why:

(1) I accept that the reg.6(4)(b) duty was prominent in the s.21 cases about asylum support as "residual" and a legal irrelevancy. What the reg.6(4)(b) duty was doing was informing a conclusion about the objectively-discernible statutory purpose of 1999 Act asylum support as a "last resort" national scheme. In W, the Court of Appeal thought reg.6(4)(b) may not be a necessary link in the chain of reasoning, and the claimants and SSHD were contending in that case that the position was "plain in any event" (see W at §§40-41). In s.95 and s.4(2) cases, the question of reg.6(4)(b) as a necessary link in the chain never arose, because it was always a sufficient one. I was shown no case or commentary in relation to the old 1999 Act s.4(1), repealed by the 2016 Act. I will assume, in Mr Lawson's favour, that there had been no indicator of a "last resort" nature for s.4(1) accommodation prior to its 2016 repeal.

(2) When Parliament replaced all three s.4(1) species with the new immigration bail, it provided HOBA criteria in the primary legislation. A statutory precondition (§9(1)(a)) is that "the person would not be able to support himself or herself at the address unless the power … were exercised". Another statutory precondition (§9(3)) is that the Home Secretary thinks there are "exceptional circumstances which justify the exercise of the power". These, in my judgment, are clear objective indicators of HOBA as a national scheme of "last resort". This is stronger language than the statutory duty to "take into account any other support which is available" to the individual, which Mr Lawson accepts would have been sufficient. It is found in the primary legislation; not in secondary legislation; nor in policy guidance.

(3) This means that HOBA is thus designed to be statutorily "residual" even to 1999 Act ss.4(2) and s.95 asylum support accommodation entitlements. It is common ground that they are already "residual" and legally irrelevant to the local authority's 2014 Act duties. As Ms Harrison KC put it, HOBA is designed to be "the safety net's safety net". If the Claimant had been an asylum seeker, he would have been denied HOBA and given asylum support accommodation.

(4) In TMX at §77, DHCJ Bates put all the case-law aside and looked at the 1999 Act scheme. He described a number of objective features of the 1999 Act itself which supported the analysis that it was intended as a last resort. He found that reg.6(4)(b) was no more than "further reinforcement" (see §77(5)). One central feature on which he relied was the Statutory-Destitution test itself, which describes accommodation where the individual "does not have … any means of obtaining it" (§77(2)). That would mean the answer was always in plain sight. It may have been what Mr Knafler and Ms Laing were saying in W about an answer which was "plain in any event" (W at §40). Be that as it may, I can focus on the 2016 Act. And it

suffices to say that I find the "last resort" and "residual" nature of HOBA clearly discernible from the express language of Sch 10 §9.

(5) In my judgment, a local authority conducting a 2014 Act needs assessment – in asking whether there are accommodation-related care and support needs the meeting of which requires the local authority provision of reg.8(1)(b) accommodation – must treat as a legal irrelevancy any HOBA which is being provided, or which it considers would be provided, by the Home Secretary.

(6) But suppose I am wrong. The SSHD would be entitled, consistently with the design of the Sch 10 §9 HOBA power, to ask this question. "As a matter of my discretion, do I think there are care and support needs in respect of which a local authority is obliged to provide 2014 Act accommodation which could then be a suitable bail address?" If the answer were "yes", the SSHD could then lawfully decline to exercise the Sch 10 §9 HOBA discretionary power, on the basis that the individual would be able to support themselves at a bail address by reason of their 2014 Act statutory entitlement and the local authority's 2014 Act statutory duty. That is because, as Mr Lawson points out, HOBA is a power and not a duty. The local authority, for its part, would not then be able to point to any HOBA entitlement; nor to any HOBA provision. None of this is necessary to the analysis, but it does stand as practical reinforcement.

(7) It does not follow, if HOBA is "residual" and – for a local authority acting under the 2014 Act – a legal irrelevancy, that HOBA will be declined by the SSHD in a case where a local authority needs time to assess eligible needs. Nor does it follow that public protection concerns, licence conditions, registration conditions or bail conditions will present insurmountable problems for local authorities and the SSHD. All of these considerations could arise in the context of asylum support accommodation, where Mr Lawson accepts that the residual and legal irrelevancy analysis applies. If the Claimant had been an asylum-seeker or failed asylum-seeker, his bail accommodation at Willow Lane and Rokeby Gardens would have been provided by the SSHD, but as asylum support accommodation rather than HOBA.

(8) There are two footnotes to this. The first is that I had understood from the pleadings and skeleton arguments that Mr Lawson was accepting that Article 3-based HOBA under the Interim Guidance would be residual and legally irrelevant. Ms Harrison KC seized on this, which she said was fatal in legal logic and on the facts (since the Claimant was an Article 3-based as well as a Harm-based recipient of HOBA). In the event, any such concession appeared to be withdrawn at the hearing. Nobody's argument turned on differences between classes of case in which HOBA is granted, and nor does my analysis. The second is that Mr Holborn at one point countenanced that HOBA was a legal irrelevancy but could become legally relevant at the Action Stage when a local authority is deciding whether it needs to act. This was subsequently clarified by written submissions (5.12.24) to be an acceptance that a local authority might ask the SSHD's cooperation by way of an agreed practical arrangement when it comes to the sourcing of the accommodation which the local authority has responsibility for providing for the individual pursuant to its 2014 Act duties, whether in an asylum support or a HOBA scenario.

When will Care and Support Needs Require 2014 Act Accommodation?

41. The answer, in my judgment, is this. Subject to one caveat (§46 below):

> ***The local authority will be required to provide 2014 Act accommodation where: (A) accommodation is necessary for the effective delivery of provision to meet the relevant person's eligible care and support needs, which the local authority has a s.18 duty to meet; and (B) the relevant person does not have access to any, or any "legally relevant", accommodation at which the needs can be met.***

42. Here are my reasons. I start with point (A): accommodation is necessary for the effective delivery of provision to meet the relevant person's eligible care and support needs, which the local authority has a s.18 duty to meet.

(1) Although accommodation can be provision which a local authority makes under its s.18 duty to meet the relevant person's eligible care and support needs (§25 above), a need for accommodation is not itself a care and support need (§27 above). Parliament has spoken (s.8(1)(a)) of "accommodation" being "provided to meet needs". But that is not about accommodation meeting a need for accommodation. Instead, it is about accommodation which is a vehicle – or a platform – for relevant provision to meet care and support needs. There may be a situation where accommodation is not a necessary vehicle – or a necessary platform – but it is considered desirable or optimal. Since the s.18 statutory duty is to meet eligible needs, leaving it open to a local authority to choose how to meet needs, the local authority could choose to provide accommodation in that situation. It could also make that choice at the Power Stage. Where the provision of accommodation itself becomes a 2014 Act duty, is where accommodation is a necessary vehicle – or a necessary platform – for relevant provision effectively to meet eligible care and support needs, which the local authority has a s.18 duty to meet. The word "effectively" is describing the need actually being met; it does not mean optimal provision.

(2) This is not new. In SG, DHCJ Bowers QC focused (at §47(c)) on what is "normally provided in the home or will be 'effectively useless' if the claimant has no home"; and focused (at §52) on whether "it would be effectively useless to provide services otherwise than in a home" (see §45(2) below). That was cited in GS at §25. The following passage (with adjustments in square brackets) was adopted as correct by Ms Harrison KC. It is from my judgment in Aburas at §6 and §6ii. The adjustments in square brackets remove inapt references to "looked-after needs", because care and support needs under the 2014 Act are broader than was care and attention under s.21: see BG §§69-70. Here is Aburas at §6 and §6ii:

> ***[W]hat is the relationship between the 2014 Act and duties to provide accommodation? The answer is that the need for accommodation is not itself a [care and support] need, but the provision of accommodation may be called for under the 2014 Act so as to secure effective care and support for a [care and support] 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 [care and support] needs… [I]n essence … accommodation comes to be appropriately provided pursuant to the 2014 Act … where the person has a … need of care and support whose effective delivery requires accommodation… [as] specific action addressing the … need for care and support [where] the 'accommodation' is required for its effective delivery.***

This was applied SB at §52cii and TMX at §54; also in AA at §17.

(3) Another way of putting it would be to say that the relevant person's eligible care and support needs can be met only if the individual is living in accommodation.

43. I turn to point (B). I have explained that, at the Action Stage, the local authority can rely on the individual's access to alternative provision as a reason not to act, as recognised in the Statutory Guidance: see §31 above. The local authority could therefore rely on access to alternative provision of accommodation, as that delivery platform. That is provided always that it is a suitable delivery platform. That means it is accommodation at which the needs can be met. And all of that is all subject to an important proviso. The access to alternative provision, relied on as a reason not to act, must always be "legally relevant" alternative provision. In the same way, the alternative provision of accommodation must be legally relevant. Here, legally relevant includes provision which the local authority can lawfully and reasonably be relied on. The local authority cannot rely on alternative provision, including accommodation, which is "legally irrelevant". Asylum support accommodation and HOBA are each accommodation which is legally irrelevant: §§32-40 above.

44. Before moving from this topic, I give two reference-points. The first is the language of s.39 of the 2014 Act. I make very clear that s.39 is a provision dealing with something very different. It is identifying the place of a person's "ordinary residence", by reference to the area of ordinary residence before beginning to live in specified types of specialist accommodation. Under the applicable regulations (SI 2014/2828) the specified types of accommodation, for s.39 "ordinary residence" purposes, are care home accommodation (reg.3); shared lives scheme accommodation (reg.4); and supported living accommodation (reg.5). As I have already explained, s.8(1)(a) "premises of some other type" is not limited to specialist accommodation; nor to specified types of specialist accommodation: see §26 above. In that context, within s.39, Parliament describes the position (s.39(1)):

> ***Where an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations, and the adult is living in accommodation in England of a type so specified …***

I have found this an interesting reference-point. It is a recognition by Parliament within the 2014 Act – albeit in the very specific context of specified specialist accommodation and ordinary residence – of an idea. The idea is that some care and support needs "can be met only if the adult is living in accommodation". This is coincidental. But, as it happens, I think it is in essence the same idea which features – in a very different context – in the principled approach to care and support needs and the duty to provide accommodation: see §42(3) above.

45. The second reference-point is historical. It involves another diversion into legal history:

(1) The idea of "accommodation-related" care and attention needs arose in the context of s.21 of the 1948 Act, which I have set out (§34(1) above). By statutory design, that provision is concerned with providing "residential accommodation" so that care and attention can be made available, to a person whose need for it is by reason of age, illness, disability of other circumstances. By statutory design, the care and attention which the person needs is being made available by the provision of

accommodation under s.21. And, by statutory design, the care and attention which the person needs must not be available otherwise than by the provision of accommodation under s.21.

(2) L was the case about care and attention needs which were to be met by a social worker's monitoring. Here is what Lord Carnwath said about accommodation-related care and attention needs in L at §§45-46 and 48-49:

> ***45… [A]ssuming for this purpose that Mr Wyman was meeting a need for care and attention , was it available otherwise than by the provision of accommodation under section 21?.. [I]t seems to me that the simple answer must be yes, as the judge held. The services provided by the council were in no sense accommodation-related. They were entirely independent of his actual accommodation, however provided, or his need for it. They could have been provided in the same place and in the same way, whether or not he had accommodation of any particular type, or at all.***
>
> ***46.The Court of Appeal's contrary view depended on reading the word "available" as meaning not merely available in fact, but as implying also a requirement for the care and attention to be reasonably practicable and efficacious. Thus, even the limited services provided by Mr Wyman could not be expected in practice to achieve their objectives unless combined with a degree of stability in his living arrangements…*** ***such a loose and indirect link is not in my view justified by the statutory language.***
>
> ***…***
>
> ***48.The need has to be for care and attention which is not available otherwise than through the provision of such accommodation. As any guidance given on this point in this judgment is strictly obiter, it would be unwise to elaborate, but the care and attention obviously has to be accommodation-related. This means that it has at least to be care and attention of a sort which is normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant has no home… The analysis may not be straightforward in every case. The matter is best left to the good judgment and common sense of the local authority and will not normally involve any issue of law requiring the intervention of the court.***
>
> ***49… In the present case … care and attention can be, and is provided, independently of L's need for accommodation or its location.***

(3) Reliance was placed by Ms Harrison KC on Lord Carnwath's reference to "care and attention of a sort which is normally provided in the home". This features in SG §47(c). The question is whether, based on this passage, any provision "normally provided in the home" would, of itself, trigger a duty to provide accommodation. I do not think so. In my judgment, Lord Carnwath was not deciding in L at §48 that any "care and attention of a sort which is normally provided in the home" would, in and of itself, be sufficient to be an accommodation-related care and assistance need which of itself triggered the s.21 duty to provide accommodation. It is all water under the bridge so far as the 2014 Act is concerned. But, if it mattered, I would read Lord Carnwath's phrase "or will be effectively useless if the claimant has no home" as saying "or – to be more precise – will be effectively useless if the claimant has no home". I say that for these reasons:

(4) The idea of "accommodation-related" care and assistance need was describing something which was necessary for the s.21 duty to provide accommodation to be triggered. It was a necessary starting-point. That is why Lord Carnwath was speaking of the care and attention as "obviously" needing to be "accommodation-

related" (§48). It was in the context of that necessary starting point that he added that (§48) that: "This means that it has at least to be care and assistance of a sort which is normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant has no home". That did not mean there would be a s.21 duty every time any need was for care and assistance "normally provided" in the home. The provision of meals – to take an obvious example – is something "normally provided" in the home. The phrase "at least" indicates something necessary but not sufficient.

(5) The idea of "accommodation-related" care and assistance needs did not serve to dilute or supplant the idea – based on the clear and express statutory language of s.21 – that, for the s.21 duty to be triggered, "the care and attention which is needed must not be available otherwise than by the provision of accommodation under section 21" (see M at §31), with which Lord Carnwath had expressly agreed (L at §§7, 39). The language of "not … available otherwise than by the provision of accommodation" clearly indicates needs capable of being met only if the individual has accommodation. This idea is of care and assistance needs the meeting of which can only have utility if there is accommodation for delivery of the care and assistance. That is in line with Lord Carnwath's phrase "will be effectively useless if the claimant has no home". He cannot have intended that phrase to have been made redundant because of the expansive sufficiency of "normally provided in the home".

(6) The passage needs to be read straightforwardly as a whole. Lord Carnwath started §48 by referring to care and attention which is "not available otherwise than through the provision of such accommodation", reflecting the statutory test for s.21 accommodation. He then excluded at §48 care and attention which "can be … provided independently of L's need for accommodation". Finally, he described the Court of Appeal's link to accommodation as "loose and indirect", so he cannot then have been intending a loose and indirect litmus test of sufficiency.

(7) Finally, Lord Carnwath discussed earlier caselaw in the Court of Appeal, recognising the idea of care and attention "of a kind calling for" the provision of residential accommodation, which had been recognised as reflecting the "natural and ordinary meaning" of s.21, and which mirrored the idea that "the necessary care and attention cannot be given without the provision of residential accommodation" (see L §§16, 26, 29-30). That, however, had been rejected in a case called R (Mani) v Lambeth LBC [2003] EWCA Civ 836 [2004] LGR 35, leading to the looser test ("some nexus") in the Court of Appeal in L itself, with which looser test Lord Carnwath in L was now disagreeing. He indicated that he thought Mani ("some nexus") was wrong as an approach, though "the actual result" in Mani "may well have been correct" (L §48). Pausing there, I note that Mani was a case of a disability involving impaired mobility which "led to the need for help in tasks such as bed-making [and] cleaning" (L §16).

Does Safe-Home Equipment Require 2014 Act Accommodation?

46. The answer, in my judgment, is no. I think the following proposition is correct.

> ***The fact that (a) equipment may be necessary to make use of a home safely (b) which if absent the local authority may have a s.18 duty to provide, does not mean accommodation is thereby***

> ***necessary for the effective delivery of provision to meet eligible care and support needs, so that the local authority is required to provide 2014 Act accommodation.***

This means there is a caveat to what I have said at §41 above, so as to leave aside things that may need to be done to equip a home for its safety and suitability as a home. My reasons are as follows.

47. I have identified "suitability of living accommodation" as a statutory well-being factor (s.1(2)(h)) and "being able to make use of the adult's home safely" as a statutorily-specified eligibility outcome (reg.2(2)(e)). The legislation thus recognises the ideas of safe and suitable accommodation for a relevant person. It presupposes a home, but it does not require provision of the home which is presupposed. A wheelchair user – like Mr Antoniak and GS – would need wheelchair-compatible accommodation, for independent living. That would mean level-access, or a ramp. It would mean doors and rooms big enough for the wheelchair. It could very easily also require equipment: a power-assisted front-door; a bathroom rail; a shower stool; a mains adapter to charge the electric-wheelchair. But the fact that the relevant person is a wheelchair user, for whom accommodation would need to be safe and suitable, does not trigger a 2014 Act duty to provide the accommodation within which the equipment may be needed: see GS. GS could live independently, within safe and suitable accommodation. But hers was still a need for accommodation, which did not trigger a 2014 Act duty to provide accommodation: see §27 above.

48. Ms Harrison KC submitted that a need for level-access accommodation is itself an accommodation care and support need capable of triggering a 2014 Act duty to provide accommodation, because absent level-access the relevant person who need a care package to be able to use the home safely and independently. I cannot accept that submission, which would mean GS was wrongly decided. Nor can I accept that in GS there would have been a 2014 Act accommodation duty if the argument had been that independent living would entail having a bathroom rail for mobilising between wheelchair and toilet or shower. The same would be true of a relevant person who needs a cooker to cook, or a bathroom to shower, and has a need for equipment to do these things safely and independently. The same would be true of a relevant person needing enhanced lighting; or a video-gadget to see who is at the front door. I accept of course that any equipment which is necessary to make use of a home safely is "normally provided in the home". I accept that a bathroom rail is "useless" without a bathroom; a shower is "useless" without a bathroom; a shower stool is "useless" without a shower; a powered front-door or a video gadget are "useless" without a front door; a cooker or adapted cooker is useless without a gas or electricity supply. I accept that you need accommodation in order to have a bathroom and a shower and a front-door and a kitchen. I accept that the 2014 Act is requiring local authorities to meet needs by providing bathroom rails and shower stools and other equipment to those with eligible care and support needs. But what I cannot accept is that a need for a bathroom rail can suffice to trigger the 2014 Act duty to provide accommodation. I am unable to accept that this is the effect of the legislative scheme. Here is one way in which the distinction can, I think, be explained:

> ***The situation where there is a 2014 Act duty to provide accommodation is concerned with provision of care and support for which a home is needed; but it is not concerned with provision which a home would need so as to be equipped for the relevant person to live there safely and independently.***

49. I think this fits with the following. The 2014 Act s.18 duty is a duty to meet eligible care and support needs; not, as such, a duty to provide accommodation. A need for accommodation is not, of itself, a care and support need. Accommodation is presupposed by a relevant well-being consideration, and by some of the eligibility criteria, but that does not create an accommodation care and support need; nor an accommodation care and support duty. Many aspects of the eligibility criteria relate to the home, and activities within the home, but that does not create an accommodation care and support need; nor an accommodation care and support duty. Safety and suitability of accommodation are intimately linked to the accommodation. They remain intimately linked to the accommodation where provision is made in the form of equipment to secure safety and suitability. A relevant person whose home does need equipment for safe and independent living can still look to the local authority. The 2014 Act moves away from "services" to embrace assistive technology in the home, equipment or adaptations. They will have the need met. However, if they are in asylum support or HOBA which contains a necessary piece of equipment (in this case, a bathroom rail and shower stool), or which needs from the local authority under the 2014 Act a necessary piece of equipment (in this case, a Falls Device), this does not of itself trigger a 2014 Act duty to provide accommodation. There being no such duty, the question of HOBA being "residual" and "legally irrelevant" does not affect the position: see §37 above. The relevant person will get the equipment for the home, but not the home itself, from the local authority.

50. In my judgment, this analysis fits with the authorities of which I was made aware. So far as 2014 Act cases are concerned:

(1) GS (§§27-29 above) was the claimant wheelchair user who undoubtedly needed wheelchair-accessible accommodation, in which she would be able to function independently. She was lawfully assessed only as having a need for accommodation. There were no accommodation-related eligible care and support needs triggering a 2014 duty to accommodate her. Hers was a case not concerned with provision of care and support for which a home was needed; but at most with provision which a home needed so as to be equipped for her to live there safely and independently.

(2) Antoniak (§23 above) was another claimant wheelchair user who undoubtedly needed wheelchair-accessible accommodation. The context in which Mr Antoniak succeeded was that he needed "longer term support with cleaning and maintenance and meal preparation … to complete cleaning and cooking tasks safely from his wheelchair". His was a case concerned with provision of care and support for which a home was needed; not provision which a home needed so as to be equipped for him to live there safely and independently.

(3) TMX (§35(3) above) was another claimant who was a wheelchair user. He could not independently meet his own care and support needs (§26). He relied on the care provided by his wife throughout the day and night, being unable to use the toilet, wash, dress, brush his teeth, access meals or change his bed linen (§20). He needed a bedroom separate from the children, for intimate care from his wife and external carers (§§24-25). He was unable to stand, transfer to or from the bed, to the toilet or shower, without the support of two people (§32). His was a case concerned with provision of care and support for which a home was needed; not provision which a home needed so as to be equipped for him to live there safely and independently.

(4) SB (§35(2) above) was another claimant whose care and support needs could not be met independently in the home. His was another case concerned with provision of care and support for which a home was said to be needed; not provision which a home needed so as to be equipped for him to live there safely and independently.

I interpose that in AA (§29 above) there was an argument about "a raised toilet seat and shower stool", but its absence was "no barrier to independently using toilet facilities" (§32) so the Court did not need to decide whether such a need for "some equipment" would of itself have triggered a 2014 Act duty to provide accommodation.

51. So far as the historical reference-point of s.21 cases is concerned, these are cases which Ms Harrison KC emphasised:

(1) R (Bernard) v Enfield LBC [2002] EWHC 2282 [2003] HRLR 4 was a s.21 case to which I referred in Aburas at §6iii. The claimant Mrs Bernard was a wheelchair user who was severely disabled after a stroke, doubly incontinent and totally dependent on her husband (§§1, 6). She and her family were in wholly unsuitable local authority accommodation (§5). The accommodation would not fit the wheelchair (§§6, 13). Mrs Bernard was assessed as unable to undertake personal care tasks, as depending on her husband for all aspects of personal care, personal hygiene, toileting and all domestic tasks including cooking (§§6, 12-13). As in SG, SB and TMX, Bernard involved active provision to meet needs, within the home. It was another case concerned with provision of care and support for which a home was needed; not provision which a home needed so as to be equipped for Mrs Bernard to live there safely and independently.

(2) R (Westminster City Council) v National Asylum Support Service [2002] UKHL 38 [2002] 1 WLR 2956 was a s.21 case, discussed in L at §17. The claimant was a wheelchair user (Mrs Y-Ahmed) assessed as needing carer-assistance with indoor and outdoor mobility; transfers between bed, chair, bath and wheelchair; personal care in respect of washing, dressing and toileting; all with a carer working around her in the accommodation. It was another case concerned with provision of care and support for which a home was needed; not provision which a home needed so as to be equipped for Mrs Y-Ahmed to live there safely and independently.

(3) M concerned a fridge for HIV medication (§34(4) above). It was decided on the basis that refrigeration for the meds was not a "care and attention" need (see M at §§36, 40, 60). In that case Lady Hale spoke of doing something for the relevant person which they could not be expected to do for themselves, including protection from risks such as being watched over (§§31, 33). As Ms Harrison KC's reply puts it, M was about "physical things like a fridge" where provided to "an individual perfectly capable of looking after themselves". This was in the context of "looked after needs", whereas the 2014 Act is broader: see BG §§69-70 (§42(2) above). It is not in doubt that the 2014 Act can require the provision of equipment to make a home safe. M does not answer the distinct question whether provision which a home needs so as to be equipped for an individual to live there safely and independently triggers a 2014 Act duty to provide accommodation.

III. LAWFULNESS OF THE WOOD ASSESSMENT

Layout of the Wood Assessment

52. The Wood Assessment is an eight-page document with 58 unnumbered paragraphs under a series of headings. To assist the parties in navigating this judgment, I have numbered the 58 paragraphs (they can do the same) and will give references. I do so, appreciating that to any other reader, the references do nothing other than indicate anatomy and location. The headings in the Wood Assessment cover the following topics: "Background Information" (§§1-7); "Discussion with the Claimant" (§§8-27); "Discussion with the Welfare Support Officer" (§§28-30); "Discussion with the Second Local Authority Social Worker" (§§31-37); "Discussion with Claimant's Sister" (§§38-48); "Social Worker Views and Recommendation" (§§49-54); "What Needs to Happen Now and Who Will Do It" (§§55-58). The Wood Assessment records that SSW Wood had met the Claimant on two previous occasions (§8): ie. on 10.11.23 at Rokeby Gardens; and on 30.11.23 at Leeds General Infirmary. It records that the Claimant "can communicate his needs" (§2); in light of concerns raised by medical professionals regarding cognitive and communication difficulties, that throughout this assessment the Claimant was orientated to place and time and he was able to retain and understand the information given to him (§27); that in 2014 the Claimant had lived at Murray Lodge, "a supported housing complex" (§3); and that the Wilson Assessment had established eligible care and support needs (§5). It recorded that LCC's increased care package of 4 visits per day had been identified to meet the Claimant's needs as a protective factor to reduce risks until alternative accommodation could be sourced; with a commode to limit the amount of time he had to leave his room; and with Telecare installed to ensure that help could be provided when had a seizure (§6). It recorded that the Second Local Authority had removed this increased care package at the Hotel when it became clear that the Claimant was able to meet most of his own needs there (§33). It records that SSW Wood had "taken into account and considered all the information and representations shared by [the Claimant]'s legal team relating to his physical and mental health needs" (§49).

Substance of the Wood Assessment

53. I will now describe the substance of the main body of the Wood Assessment, thematically, by taking relevant key features found within reg.2 (§5 above). This is what the Wood Assessment concludes and records:

    (1) Physical or Mental Impairment or Illness. The Claimant has neurocysticercosis, a parasitic infection of the central nervous system. He experiences frequent seizures, thought to be caused by it. He experiences periods of confusion and difficulties with his balance due to it. Added to which he has a history of anxiety, depression, psychosis and of self-harm. (§3)

    (2) Inability to Achieve (a) Managing and Maintaining Nutrition. The Claimant is independently mobilising around the Hotel, is able to walk from his room to the communal areas to get his own food, and has been able to ensure that his nutritional needs are met by getting food and drinks throughout the day (§51). He has fruit in his room which he likes to do because he does not always eat at lunchtime (§§9, 32). He goes to the communal area to collect his breakfast, which he either eats there or bring back to his bedroom (§14). He has access to three meals per day to ensure that his nutritional needs are met in this environment (§19). He can walk

down the corridor to the communal area, where he is able independently to make a drink for himself (§§19, 28, 32). Although his meals are currently provided for him, he says that, if he had access to a simple microwave, he would be able to heat himself a microwave meal (§20). He was observed walking across the reception area, making himself a warm drink and sitting in the communal area with other residents (§30). When the social worker from the Second Local Authority discussed meal preparation with him and suggested looking into cooking classes, he declined saying he was taught how to cook in prison and does not need any further lessons (§36). His sister confirmed that the Claimant used to be able to cook for himself and thought he would be able to do this now with some initial support, would be able to heat a microwave meal up independently, but would require more support if he were to make a meal from scratch (§40).

(3) Inability to Achieve (b) Maintaining Personal Hygiene. Since being in the Hotel the Claimant has been able to demonstrate the ability to meet his own personal care needs, when he has access to a level access property with a wet floor shower and appropriate equipment such as shower stool and rails (§50). Moving to a level access environment has enabled him to further develop his independent living skills and demonstrate his ability to meet his own care needs independently (§56). His independence would be maintained if he continued to have a level access property with wet floor shower, and a further OT assessment would establish any need for additional handrails (§57). His laundry is done in the Hotel where he has no access to laundry facilities (§9) but he irons his own clothes and had been able to do so for many years (§9). He has no problems in accessing his bathroom as this is on one level (§11). He showers twice a day, once in a morning and then before he goes to bed, which is much easier now that this was all on one level (§14). He dries himself in the bathroom and is already washed and dressed when his carers come around 9am (§14). He is able to explain clearly how he can independently meet his own personal care needs, with a routine in place for when he chooses to have a shower, with the level access shower and equipment that has enabled him to develop his independent skills around managing his own personal care needs (§17). His sister said she feels he has shown at the Hotel that he can manage his own personal care needs, and is starting to take care of himself, on a deeper level than just having regular showers (§39).

(4) Inability to Achieve (c) Managing Toilet Needs. Since being in the Hotel the Claimant has been able to demonstrate the ability to meet his own personal care needs, when he has access to a level access property (§50). He has no problems in accessing his bathroom as this is on one level (§11). He can walk independently from his bed to the bathroom (§16). He says he has no issues with continence either due to him not being able to get to the toilet or during a seizure and, having access to an en-suite toilet, can manage his continence needs independently (§18).

(5) Inability to Achieve (d) Being Appropriately Clothed. Since being in the Hotel the Claimant has been "able to demonstrate an ability to be able to meet his own personal care needs" including "managing to get dressed daily" (§50). It records: that the cleaners were laundering his clothes "as he had no access to laundry facilities in the hotel" (§9); that he irons his own clothes and had been able to do so for many years (§9); that the Claimant was dressed in a hoodie and tracksuit bottoms and no concerns were raised regarding the clothing he was wearing (§10);

that having got dried in the bathroom he gets dressed in his bedroom and is already dressed when the carers come around 9am (§14); that sometimes he can get tired after having a shower and will sit to rest until he feels able to get dressed (§14); that he reports being able to get dressed independently without any support, and can pick out clothes for the day from the wardrobe (§15); that the wardrobe is a few feet away from his bed, his clothes are organised, and SSW Wood felt from having seen him in his room, that the Claimant would be able to get the clothes he wants to wear for the day (§16); that he was able to explain clearly how he can ensure that he is appropriately clothed independently (§17); that he can identify when clothes require washing, put clean clothes in a laundry basket until he has ironed them, and hang his clothes in his wardrobe (§22); that the Claimant's sister said at times it can take the Claimant time to get dressed but he is able to complete independently (§39), that he likes to iron his clothes, and that he has always shown pride in how he looks (§48).

(6) Inability to Achieve (e) Being able to make use of the adult's home safely. The Wood Assessment concludes that the Claimant shows awareness of his health needs and some awareness of his own limitations due to those health needs and adapts his daily activities in line with his changes in health needs (§53); and that it is clear that the Claimant's physical and mental health can be maintained in this environment (§55). It records: that the bathroom has a "wet floor shower with a shower stool in place", with "rails on the wall" (§11); that the toilet lid was broken because the Claimant reported having slipped whilst walking to get his towel following shower (SSW advised him in future to place his towel at the side of him so he wasn't walking on a wet floor to get it) (§11); that having a shower stool has helped and this had been his only fall in the bathroom (§14); and that he is aware of his need to ensure that he has time to rest having completed his personal care routines to ensure that he has the energy to continue with the task (§17). Two specific topics are addressed, namely seizures and medication:

(7) Seizures. Specifically as to seizures, the Wood Assessment concludes that risks around his seizures have been managed in this environment with the use of the Care Link system which has enabled ambulances to be called if he doesn't respond to the main contact centre (§53); that the Care Link system has ensured that the Claimant has had access to medical review if required, and he makes informed decisions regarding whether he wants to go to hospital when ambulances have arrived at the Hotel following his alarm being triggered (§53); that living in the Hotel has not reduced the risk of the Claimant having further seizures but the provision of Care Link has enabled the Claimant to have access to health review as required (§56); and that he would benefit from the ongoing provision of Telecare to ensure that he continues to have access to medical support if he has a seizure (§58). It records that the Claimant continues to experience 1-2 seizures per week, has the Care Link system in place with a falls wrist detector (falls bracelet) which he wears and which will alert a central point if he has either a fall or seizure, gets a feeling that seizures are coming on and he can then sit on his bed to try and reduce the risk of him hurting himself by falling (§23); that his safety has been maintained while in the Hotel environment (§24); that he has demonstrated some understanding of his seizure activity, a good understanding of how his medical conditions impacts on his functional abilities, an awareness of drowsiness due to his medication or physical exertion, altering his activities and adapting his routine

depending on how he is feeling, and ensuring he wears the Care Link falls bracelet in order that he can have access to support if required (§24); that his sister feels he has benefited from the Care Link system (§44).

(8) Medication. Specifically as to management of medication, the Wood Assessment concludes that the Claimant has been able to demonstrate an ability to work towards independently administering his own medication with him often having self-administered his own medication prior to carers visits, having shown an understanding of his own needs for a medication prompt and having been able to arrange and collect a blister pack from a local chemist to support his compliance with medication (§52); that the only need being currently met through the care provided by the Second Local Authority is prompting with medication, but the Claimant has demonstrated his ability to independently take his medication and "this in itself is not an accommodation related need" (§55). It records that the Second Authority was currently providing 2 x 15 minute care call visits per day for medication prompts (§12); that, having contacted a pharmacy independently to arrange to have his medication in a blister pack and having chosen to buy a locked box in which he keeps his blister pack, goes to the local ASDA to collect his medication independently and takes his own medication from the box (§21); that, although the carers do very little to support him with medication, coming into his room and asking him to take it, he feels he would benefit from continuing to have support to manage his medication as he is concerned that he might miss some tablets (§21); that the social worker from the Second Local Authority described the 2 x 15 minutes call visits per day as aimed at developing the Claimant's skills around his medication compliance, that often the Claimant has already taken his medication before the team arrives and that he is able to collect his own medication from the ASDA pharmacy independently (§33); that the Claimant's sister told SSW Wood that he was managing his medication with a Dossett Box in place to manage his compliance but she had some concerns regarding his ability to manage specific time sensitive medication if that were prescribed (§41).

(9) Inability to Achieve (f) Maintaining a Habitable Home Environment. The Wood Assessment records: that the Claimant's bedroom was tidy and appeared ordered, he confirmed he can change his bed, and his bed was unmade because the cleaners were due to change the bedding later in the day (§9); that he can keep his room tidy in between the calls from the cleaners, can change his own bed, can identify when his clothes require washing and leave them outside his room for the laundry service, can put the clean clothes in a laundry basket until he has ironed them, and can hang his clothes in his wardrobe (§22); that his bedroom and bathroom were tidy and there was evidence of him being able to maintain this environment to a habitable state (§22).

(10) Inability to Achieve (g) Developing and Maintaining family or other personal relationships. The Wood Assessment records that the Claimant has siblings in the UK; that one sister who lives in Leeds is his main support (§2); that he likes to spend time talking to the security guards who are based in the Hotel, prefers not to interact with the other residents but has played a game of football with some of them (§25); that his main contact and most valued relationship is with his sister, who picks him up from the Hotel and takes him back to her house (§26), which she confirmed (§42); that he said he is not bothered about mixing with his peers (§26);

that the Hotel's Welfare Support Officer said the Claimant interacts with other residents, will stand outside the Hotel with other residents to have a cigarette and is seen sitting in the communal areas with other residents (§29), which was also confirmed by the social worker from the Second Local Authority (§37); that his sister felt that his previous convictions limit him as to who he can mix with, that he has longstanding issues with anxiety and prefers his own company as he can find it difficult to mix with other people (§45), and would be better off living alone (§46).

(11) Inability to Achieve (h) accessing and engaging in work, training, education or volunteering. The Wood Assessment does not address work, training, education or volunteering separately. But it does record that the Claimant does not wish to pursue any alternative social activities or explore the local community (§26).

(12) Inability to Achieve (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services. The Wood Assessment concludes that the Claimant has shown some evidence of being able to access the community independently, having attended health appointments and then been able to access taxis to return to the hotel; and having used a taxi to be able to independently collect his blister pack from a local pharmacy (§54). It records that he goes to the local ASDA to collect his medication independently, getting a taxi from the Hotel to ASDA and then returning (§21); that he likes to go for a walk (§25); that he does not wish to pursue any alternative social activities or explore the local community (§26); that the Hotel's Welfare Support Officer described the Claimant as able to approach the staff to arrange transport for hospital appointments, being given the telephone number for a taxi firm and able independently arrange the taxi lift back from his hospital appointments (§29); that the social worker from the Second Local Authority described the Claimant as having been able independently to get himself safely back to the Hotel after attending A&E at an unfamiliar local hospital on 3.1.24, by contacting a taxi firm and tell the driver where he wanted to be picked up from and taken back to (§35); that the Claimant's sister said she felt he would be able to develop his independence at accessing the community but might require some support to familiarise himself with any new area (§42), and that he is aware of his limitations regarding his mobility and if he feels that he is unsteady would stop and take rests (§43).

54. The final section of the Wood Assessment says this (§§55-58):

> ***55. Taking into consideration the above information, it is clear that [the Claimant]'s physical and mental health can be maintained in this environment and in undertaking this assessment and considering what outcomes [he] may not be achieving, it has been difficult to establish that [he] has any eligible care and support needs. The only need being currently met, through the care provided by [the Second Local Authority], is prompting with medication, however [the Claimant] has demonstrated his ability to independently take his medication and this in itself is not an accommodation related need. 56. Moving to a level access environment has enabled [the Claimant] to further develop his independent living skills and demonstrate his ability to meet his own care needs independently. Living in this environment hasn't reduced the risk of [the Claimant] having further seizures, but the provision of Care Link has enabled [the Claimant] to have access to health review as required. During this period, he has only required hospital admission on one occasion. 57. Having assessed [the Claimant], his independence would be maintained if he continued to have a level access property with wet floor shower and a further OT assessment could establish his need for additional handrails. 58. He would benefit from the***

ongoing provision of Telecare to ensure that he continues to have access to medical support if he has a seizure.

Challenge to the Wood Assessment

55. Ms Harrison KC submits, in essence, as follows. The Wood Assessment is, throughout, an evaluation of what care and support needs the Claimant exhibits in his day to day living at the Hotel, and what it is that is left for a local authority to do. It takes as its starting-point the Hotel accommodation; the physical configuration of the Hotel with its ground-floor level access; the physical configuration of the bedroom and bathroom with the level access wet shower; the appropriate equipment including the shower stools and rails; the provision by of the Falls Device (Care Link) system at the Hotel; and the provision of services by the Hotel, including the cooked meals which the Claimant collects, the cleaning service and the laundry service. The reason why "prompting with medication" is singled out (§55) is because that is the "only need" which is "currently met through care" external to the Hotel accommodation, provision and services. SSW Wood is clear and explicit in focusing on what "can be maintained in this environment", having undertaken this assessment by considering what outcomes the Claimant "may not be achieving" (§55).

56. There are several related reasons why this is unlawful. No reasoning in the Wood Assessment meets these points. They were all clearly flagged up for LCC very clearly in the detailed written representations (19.1.24) which the Wood Assessment recorded had been read and considered, but with which its substantive content did not then engage. They arise in the context of state action to address care and support needs arising from or related to a physical or mental impairment or illness, to promote autonomy and independence in the context of disabled people.

    (1) The Wood Assessment is an enquiry to see if there are "unmet needs". This is the same error of law as in Antoniak (§23 above). The statutory sequence required an assessment of needs and a decision as to eligible needs, so as then to arrive at a decision as to duty. For example, the Wood Assessment describes the Claimant being able to walk to collect his meals in the Hotel, when it needed to address independence and autonomy in being able to prepare meals for himself. This is the error in Issue (2a).

    (2) The Wood Assessment relies throughout on the very thing which is legally irrelevant (§38 above): the HOBA at the Hotel. This is the same error as Newham made in SB (§35(2) above), having failed to disregard, as legally irrelevant, the availability of asylum support accommodation (§§102-106). It is the same error as Croydon made in TMX (§35(3) above), having failed to disregard as legally irrelevant the availability of asylum support accommodation (§92). This is the error in Issue (1b).

    (3) The Wood Assessment does not lawfully and reasonably address whether LCC has a duty to accommodate the Claimant, by evaluating on the evidence which of the eligible care and support needs – whether they be met or unmet by the configuration, adaptations and services provided at the Hotel HOBA – are accommodation-related needs triggering a 2014 Act duty to provide accommodation, including by non-specialist accommodation. This includes the same error as Haringey made in failing to address the question of SG's

accommodation-related eligible care and support needs (SG §§48, 54); the same error as Newham made in not grappling with the question whether identified care and support needs met the legal test of accommodation-related care and support needs giving rise to a 2014 Act duty on a local authority to provide accommodation (SB at §§78-81, 114-115); and the same breach of duty in TMX (§35(3) above), having failed to step in to provide suitable accommodation for an asylum-seeker with accommodation-related care and support needs (§§32, 92-93), where the answer was clear.

(4) The Wood Assessment unlawfully and unreasonably fails to identify those care and support needs which are, inherently or clearly, accommodation-related so as to trigger the 2014 Act duty to provide accommodation. In particular, there is the level access wet shower; there is the shower stool; there are the shower rails; and there is the Falls Device. These are necessary adaptations as in Bernard. They are adaptations and assistive technology as described in the Statutory Guidance §10.12 (§10 above). They are what enable the Claimant to achieve "being able to make use of the adult's home safely", which is inherently itself accommodation-related. All of these are provision to meet care and support needs which are "normally provided in the home". They would also be "effectively useless if the claimant has no home". Accommodation would be necessary and appropriate for their practical and effective delivery. They are eligible care and support needs which LCC has a duty to meet, and they can be met only if the individual is living in accommodation. True, the Claimant has access to accommodation at which the needs can be met, but it is not legally relevant accommodation because it is HOBA. These are the errors in Issue (2b), (2c) and (2d). That is the argument.

Analysis

57. This is a powerful set of submissions. But I have been unable to accept them. Here are the reasons why:

(1) The Wood Assessment is the closely reasoned product of conscientious consideration by a senior professional experienced in the field, fully conversant with the relevant features of the eligibility criteria, who has addressed them. I have described the substantive content of the Wood Assessment in detail (§§52-54 above). Although not structured by separate headings to discuss each of the relevant key features found in reg.2, I have undertaken the exercise (§53 above), gathering together relevant substantive content of the Wood Assessment in respect of each.

(2) I approach the criticisms of the Wood Assessment with that in mind, and remembering that I am applying the secondary, supervisory jurisdiction of judicial review, on conventional standards, albeit with a suitably enhanced intensity of review (§18 above). SSW Wood is the primary decision-maker, so far as evaluative judgments are concerned.

(3) Ms Harrison KC is right to say that the Wood Assessment includes consideration of whether the Claimant's needs are met or unmet. But I do not accept that the Wood Assessment bypasses the question of needs and eligible needs and proceeded straight to unmet needs. I do not see an Antoniak error of law. The vice in Antoniak was that the recognised need for care and support in cleaning and maintenance and meal preparation had been rejected as needs because the care and support was

currently being provided. Although the Wood Assessment addresses the Claimant's position at the Hotel, an environment where he has meals cooked for him and cleaning and laundry services provided for him, SSW Wood has not in my judgment fixated on the Claimant as catered for in the Hotel environment. She has not ignored wider questions of independence and autonomy arising in the context of wellbeing. She has addressed independence and autonomy as to the Claimant being able to prepare meals for himself. If SSW Wood had been fixating on the Hotel where all meals are provided and collected, she would not have been assessing that "if" he had access to a simple microwave, he "would" be able to heat himself a microwave meal (§§20, 40); and that he knows "how to cook" and does not need cooking lessons (§§36, 40). She would not have been discussing possible support in starting to cook for himself again (§40) of in familiarising himself with any new area to access the local community (§42). She would not have been discussing what would be needed, for maintaining independence, in a different property (§§57-58).

(4) The Claimant had to be assessed somewhere. SSW Wood was not required by law to posit the Claimant being street homeless. At the Needs Stage and the Eligible-Needs Stage, accommodation in general (§29 above), and HOBA in particular (§37 above), was not legally irrelevant as a reference-point. Based on the assessment, carried out at the Hotel, SSW Wood has assessed that: the Claimant can walk independently (§§51, 16) and goes for walks (§25); he is able independently to make a drink for himself (§§19, 28, 32); he would be able to heat himself a microwave meal (§§20, 40); he knows how to cook for himself (§§36, 40); he can meet his own personal care needs independently (§§50, 56, 39); he irons his own clothes and has been able to do so for many years (§9); he can access the bathroom, shower and dry himself independently (§14); he can manage his continence needs independently (§18); he can get dressed and ensure he is appropriately clothed, safely and independently (§§14, 17, 50); he can make informed decisions regarding whether he wants to go to hospital after a seizure (§53); he has a good understanding of how his medical conditions impact on his functional abilities and ability to adapt his routine (§24); he has a demonstrated ability to independently collect, secure and take his medication (§§55, 12, 21); he can keep his room tidy, change his bed and identify when his clothes require washing (§22); he interacts with others (§§25, 29, 37) and regularly visits his sister (§26); he has evidenced an ability to access the community independently, including health appointments, the local pharmacy and supermarket, going for walks, and getting a hotel from an unfamiliar location (§§54, 21, 25, 29, 35). It is in the context of all this that the Wood Assessment describes it as difficult to establish that the Claimant has "any eligible care and support needs" (§55). This is a case where the Claimant has been assessed as able to deal with his care needs independently, including if he were in self-contained accommodation. I can see no unlawfulness or unreasonableness in these reasoned, evaluative judgments.

(5) Ms Harrison KC submits that the Court should "consider the realistic outcome" if the Claimant were transferred to a standard house in multiple occupation. She says that would be bound to bring the same pattern of self-neglect and failure of self-care as was seen on release at Willow Lane. I pause and step back, in the context of SSW Wood's assessment. The overall picture is as follows. Notwithstanding his physical and mental health conditions, the Claimant had been able to live

independently at Cheveral Avenue in Coventry for more than 6 months from 26.8.21 to 10.3.22. He had then been able to live independently for 12 months at Bodmin Road in Leeds from 10.3.22 to 7.3.23 and wanted to go back there. There had been the 6.7.22 and 9.1.23 referrals (§7 above), after the second of which there was his recall to prison. His condition while detained and on release caused real concerns and Kirklees stepped in with an initial package of care. There were later significant concerns raised about stairs, seizure-support and meds. Rokeby Gardens was intended by the SSHD to be level-access living. But, since there were unanticipated but assessed dangers, LCC stepped in with a special package of care. The Hotel is level-access living. As to medication-management, there has been prompting since 25.8.23 by carer visits by Kirklees, then LCC and now the Second Authority. As to seizure-support, there has been the provision of the Falls Device since 30.11.23, first by LCC and now the Second Authority. SSW Wood, for her part, assessed the Claimant as able to live independently, including in self-contained accommodation.

(6) All of which means the focus has to be on what the Wood Assessment says at the end of the conclusions (§§57-58). Here it is again:

> ***Having assessed [the Claimant], his independence would be maintained if he continued to have a level access property with wet floor shower and a further OT assessment could establish his need for additional handrails. He would benefit from the ongoing provision of Telecare to ensure that he continues to have access to medical support if he has a seizure.***

(7) SSW Wood has here acknowledged the Claimant's need of "a level access property", of a "wet floor shower", possibly with of "additional handrails" depending on the configuration of a future accommodation, and with "the ongoing provision of Telecare". The question is whether SSW Wood acted unlawfully in failing to recognise that LCC needs to step in and provide accommodation, because these are themselves accommodation-related care and support needs which trigger a 2014 Act duty to provide accommodation, in circumstances where the HOBA at the Hotel is legally irrelevant to the question of local authority action. I do not think she did. It was said under the s.21 case-law that the question of "accommodation-related" needs which trigger a duty to provide accommodation was a question for the primary decision-maker, best left to the good judgment and common sense of the local authority, which will not normally involve any issue of law requiring the intervention of the court: see L at §48. In this case, I cannot accept that SSW Wood has failed to ask the right question (GS, SB), or failed to recognise a duty to provide accommodation (TMX). The Claimant has lawfully been found, like GS, able to achieve independent living, not just in the Hotel but in ordinary self-contained accommodation. I accept that level-access, the physical configuration of a bathroom, the hand-rail on a bathroom wall, a shower-stool placed in the shower, and a wall socket for an electrical device are all features "normally" found "in the home". But I have not been persuaded by the submissions of law that these can trigger an accommodation duty. I have given my reasons at §§46-51 above.

IV. CONCLUSIONS

58. My answers to the issues identified by the parties come to this, meaning that none of the nine breaches of the law have been made out and this claim for judicial review fails:

> ***Issue (1). Residuality and Legal Irrelevancy. (1a) YES, HOBA provided by the SSHD under Sch 10 §9 to the 2016 Act is "residual". (1b) NO, LCC did not misdirect itself in law in taking account of accommodation provided by the SSHD under Sch 10 §9 when assessing the Claimant's eligible needs for care and support, including his "accommodation-related" needs under the 2014 Act. Issue (2). Misdirection. NO, in conducting the Wood Assessment of the Claimant's needs for care and support under the 2014 Act, LCC did not misdirect itself in law in deciding whether it had a duty to accommodate the Claimant: (2a) By asking itself which of the Claimant's needs were not being met in the existing accommodation (provided in this case by the SSHD), instead of asking itself what the Claimant's needs were for the purposes of Part 1 of the 2014 Act; (2b) By misdirecting itself as to what constitutes "eligible needs", "care and support" and "accommodation-related" needs within the meaning of the 2014 Act; (2c) By failing to address the evidence of his needs; (2d) In focusing on whether the Claimant required supported living accommodation (specialist accommodation) to the exclusion of other forms of accommodation. Issue (3). Lawfulness and Reasonableness. YES, LCC did act lawfully and reasonably in the Wood Assessment of the Claimant's needs.***

59. In the light of the contents of this judgment, circulated in draft, the parties were agreed that I should order as follows, as I do. (1) The claim for judicial review is refused on all grounds. (2) The Claimant shall pay LCC's costs on the standard basis. (3) Any costs order made against the Claimant is not to be enforced save in accordance with an order under s.26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. (4) Costs shall be the subject of detailed assessment if not agreed. (5) In any assessment of the amount of costs due to the Claimant pursuant to the order of 4.7.24 made in this action, the Costs Officer will set off the costs due to LCC and certify the balance due to LCC. (6) There shall be detailed assessment of the Claimant's publicly funded costs which are payable by the Lord Chancellor under Part I of the 2012 Act.

60. I am granting permission to appeal on two grounds which are legal points informing my finding as to the lawfulness of the Wood Assessment (§57). Ground 1: error in concluding that Home Office accommodation must be disregarded only at the Duty Stage and the Action Stage but is relevant at the Needs Stage and Eligible Needs Stage (§§28, 37). Ground 2: error in concluding that Safe-Home Equipment cannot require 2014 Act accommodation (§46). I am not endorsing the viability of specific arguments summarised in seeking permission to appeal – eg. as to the "logic" of the judgment – but I am satisfied that each ground crosses the threshold of arguability with a "real prospect" of success on appeal (CPR 52.6(1)(a)). I do not see this as a "compelling reasons" case (CPR 52.6(1)(b)). Since it is the premise for Ground 1, I record that I consider that a challenge by LCC (by respondent's notice) to my finding that HOBA is "residual" and "legally irrelevant" (§38) also has a realistic prospect of success. On Ground 2, I record that – in seeking permission to appeal – Ms Harrison KC submitted that, where Safe-Home Equipment is required under the 2014 Act to meet an eligible care and support need, this "may" require the provision of 2014 Act accommodation. Permission to appeal is not sought on the human rights issues. I refuse permission to appeal on a third ground relating to Antoniak (§57(3)) and my findings on the Claimant's individual case with respect to the Wood Assessment. I see all of that as squarely concerned with application of established law, turning on the reasonableness and reasoning in the Wood Assessment, and I have been unable to see a viable legal point with a real prospect.