Neutral Citation Number: [2018] EWHC 2180 (Admin)

Case No: CO/1810/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/08/2018

Before :

Andrew Henshaw QC (sitting as a Judge of the High Court)

- -

Between :

THE QUEEN **on the Application of VI**	**Claimant**
- and –	
LONDON BOROUGH OF LEWISHAM	**Defendant**

- -
- -

Leonie Hirst (instructed by **GT Stewart Solicitors & Advocates**) for the **Claimant**
Rhys Hadden (instructed by **London Borough of Lewisham Legal Services**) for the **Defendant**

Hearing date: 27 June 2018

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Judgment Approved

Mr Andrew Henshaw QC:

(A) INTRODUCTION

1. The Claimant applies for judicial review of an assessment (or reassessment) of needs completed by the Defendant London Borough of Lewisham pursuant to section 9 of the Care Act 2014 ("***the Act***") on 27 March 2018.

2. The Claimant is a 55-year-old woman with muscular dystrophy, who is bed and wheelchair-bound and requires carer support for all personal care. The challenged assessment, which was issued in draft form on 7 February 2018 and finalised on 27 March 2018 ("the assessment"), confirmed a reduction in her care package from 104 hours to 40 hours of care per week which in practice had occurred in August 2017. The Claimant argues that the assessment was irrational, and/or unlawful in that it failed to comply with the Care Act 2014 and associated regulations, because:

    i) the Defendant's conclusion that the Claimant's needs for care and support could be met through a reduction of over 50% in her carer hours was irrational. The Claimant's condition is degenerative and cogent reasons were therefore required for concluding that her care needs had reduced from the previously assessed level. The basis on which the Defendant asserts that the Claimant's needs had hitherto been 'over-provided' was seriously flawed;

    ii) the assessment failed to give proper consideration to the factors in section 9(4) of the Act, including the wellbeing factors in section 1(2);

    iii) the Defendant failed to have regard to the need to prevent additional care needs arising through deterioration in the Claimant's mental health and physical wellbeing (section 1(3));

iv) the assessment failed properly to assess the Claimant's care needs against the eligibility outcomes as set out in regulations made under the Act; and

v) the Defendant failed to cooperate with NHS services, particularly with occupational therapy and physiotherapy, in assessing the Claimant's needs and the best way to prevent care needs arising in the future.

3. Permission was granted by Jonathan Swift QC, sitting as a Deputy High Court Judge, on 30 May 2018. The Claimant sought urgent consideration of an application for interim relief. Jonathan Swift QC refused that application on the papers, but directed that the substantive hearing be heard by 31 July.

4. The final relief sought by the Claimant includes (i) a declaration that the assessment was unlawful; (ii) an order quashing the assessment and requiring the Defendant to undertake a fresh assessment.

(B) FACTS

(1) Events from 2011 to 2017

5. The Claimant's muscular dystrophy is a degenerative and incurable condition. The Claimant is predominantly bed-bound, unable to weight bear and has restricted dexterity in her hands. She requires a wheelchair for mobility, and is reliant on carers for all personal care including toileting. The Claimant is continent, but requires carer assistance and a hoist to use the toilet; she has to wear incontinence pads for periods during the day and night when no carers are in attendance.

6. The Claimant has received services provided by the Defendant since May 2011. These were initially commissioned by the Defendant through a care agency. Since August 2013 the Claimant has received her care package via direct payments to meet her eligible care needs.

7. In 2011, the Claimant was accommodated by the Defendant in interim homeless accommodation. At that time, she was not receiving any night time care. An independent social work report by Mr Ian Gillman-Smith dated 11 August 2011 assessed the Claimant as requiring full assistance with going to the toilet, cleaning herself after using the toilet, bathing and personal hygiene, food preparation and domestic activities, assistance in transferring from bed to chair, commode or wheelchair, and adjusting her position when in bed or in a chair. Mr Gillman-Smith noted that the Claimant *"does suffer from bed pressure sores as a result of sitting in a single place for long periods of time without moving, and this is exacerbated by sitting in her own urine and occasionally her own faeces";* that active input from both physiotherapy and occupational therapy professionals was required in order actively to promote the Claimant's physical well-being; and that she *"should continue to be supported in accessing her church as well as possibly other activities that will engage her interest and own sense of purpose".*

8. On 1 September 2011, the Defendant carried out an assessment and care plan which concluded that the Claimant required support 24 hours a day with two carers in the morning and evening (a total of 185.5 hours a week). In particular, in relation to night-time support the assessment included the following passages:

> "Following discussion with [the Claimant] – the outcome is that
>
> - [the Claimant] requires a carer to do sleep in (nights) – Monday to Sunday – 10pm - 6am (8 hours)."
>
> "LIAISON WITH OTHER PROFESSIONALS:
>
> Night care – 10pm-6am Monday to Sunday:
>
> - To change her inco-pad about 3-4 times during the night – to reduce risk of infection, and re-occurrence of pressure sores
>
> - Ensure safety at night, reduce anxiety, isolation and fear of male intruders
>
> - As client is bed and house bound, having a night carer will ensure safety and evacuation at night should there be a fire or if the fire alarm goes off."
>
> "Requires a carer to do sleep in to change inco pads and reposition her – 3-4 times a night"

9. On 16 November 2014 the Defendant implemented a care package for 104 hours a week for the Claimant, provided by direct payments. At that time the Claimant's needs for care and attention were assessed as requiring: (i) "double-handed" care three times a day amounting to 48 hours (2 carers x 24 hours) per week; and (ii) 56 hours "single handed" night sitting (8 hours a night) *"to support with turning in bed at night and change incopad"*.

10. In December 2014 a hoist was installed at the Claimant's property to assist with lifting and handling and thereby eliminate the need for double-handed care. Despite the provision of a hoist, the Defendant failed to review the Claimant's care package until February 2016. The Defendant says the number of hours previously allocated ought to have been reduced much earlier but for a failure on its part to undertake a regular review (i.e. at least every 12 months) of the care package.

11. On 21 June 2016 the Defendant wrote to the Claimant informing her that her care package would be reduced, in particular that night time care (8 hours a night) would be removed as it was considered that this need could be managed through a pressure relieving mattress and incontinence pads, which by this point the Claimant was already using during the night and day. The letter itself is not in evidence, but a later document prepared by the Defendant quotes it as having said:

> "Lewisham is unable to provide an overnight service to enable you to continue to be supported to the toilet during the night.
>
> Lewisham has limited resources and that requires that we ensure we make the best use of the resources for all clients.
>
> Lewisham social services believe that pads are the solution to managing incontinence over the night time period and that is an approach used for all clients with similar needs.

> It has therefore been recommended that your night time need should be managed through the use of incontinence pads. The use of pads is considered a practical and appropriate solution to your night-time toileting needs."

12. As counsel for the Claimant pointed out, a decision in the terms of that communication could not amount to an assessment complying with the Act, because it was a generic decision relating to the management of incontinence rather than one reflecting a consideration of the Claimant's individual needs and well-being.

13. On 12 July 2016 the Defendant completed a care and support plan that reduced the Claimant's hours to 52 hours a week. In practice, no reduction was implemented, apparently due to administrative oversight on the part of the Defendant, and the Claimant continued to receive direct payments at the rate of 104 care hours a week.

14. The Claimant contacted her local Citizens' Advice Bureau, who wrote to the Defendant on 27 July 2016 asking that the assessment be revised. The letter included the points that:

> "[The Claimant] states that she has been told to drink more fluid, and this makes her pass urine more frequently – sometimes up to 4 times per night. I do not think lying overnight in a damp incontinence pad is consistent with personal dignity, nor with a private life.
>
> [The Claimant] says the overnight service also:
>
> - provided companionship; removing this adversely affects her well-being in terms of mental health;
>
> - turn my client over when she is in bed, to alter her position; this is necessary as she cannot turn herself and states she is prone to bed sores; removing this adversely affects her well-being in terms of physical health;
>
> - when my client is in bed and the pain in her neck gets bad, moves my client's head & neck to alleviate the pain; this is necessary as she cannot move her head & neck from the pillow herself; removing this adversely affects her well-being in terms of physical health;
>
> - enabled my client to stay safe should there be an intruder or in case of fire."

15. The Claimant's GP wrote to the Defendant on 9 August 2016 stating that the Claimant *"is not able to change her own pads, this means that she will be lying overnight in a damp incontinence pad which affects her personal dignity and her private life. There is also an increased risk of infection"*, and that *"I do strongly feel that she is vulnerable adult whose care package should be increased with the deterioration of her physical health, however it has been reduced".*

16. On 31 August 2016 the Defendant agreed to undertake a further assessment prior to implementing any changes to the support, and agreed to continue to fund 104 hours a week pending the outcome. The Defendant's letter included the following:

> "From your letter I understand that you are concerned about the outcome of [the Claimant's] recent assessment and are asking for an urgent reassessment of her needs.
>
> In order to address your concerns, an investigation into [the Claimant's] complaint was carried out by Heather Byrne, the operational manager with responsibility for [the Claimant's] care and support. She has recommended that a further assessment takes place.
>
> [The Claimant] was assessed in July 2016, and currently her package remains unchanged, and has not been reduced. This will remain in place pending the reassessment.
>
> The assessment process did not identify or allocate a budget for night time needs, and this was why the night sitting service was being changed to reflect only the eligible needs which were identified during the assessment.
>
> I have asked a senior social worker, Joanne Dawson, to contact [the Claimant] to arrange this as a priority. … "

17. On 20 September 2016 Ms Dawson conducted a home visit. Following that visit, the Defendant says Ms Dawson requested that the district nursing team carry out an assessment of the Claimant's night time care needs, including turning, incontinence and risk of pressure sores.

18. The assessment of the Claimant's eligible care needs took longer than anticipated, largely due (according to the Defendant) to some difficulties in liaising with the district nurse and incontinence service.

19. On 30 June 2017 the Defendant drafted a provisional needs assessment, subject to the outcome of a meeting between the Claimant and a multi-disciplinary team ("***MDT***"). This draft assessment (a copy of which was handed up during the hearing and was the subject of submissions from both counsel) identified that the Claimant required the assistance of one person with personal care tasks. It included the following passages:

> "[The Claimant] said the district nurse advised to reduce the amount of pads used underneath her on the bed as she should feel the benefit of the pressure relieving mattress. However, [the Claimant] explained that to do so would result in urine 'spreading' around her, the bed etc and this is not good if no one there to help her. Therefore she will continue to use 2-3 pads at a time.
>
> During Sundays when [the Claimant] attends church, she manages bladder control and explained that she wears a pad. She

> is at church for several hours, leaving home about 8-8.20am and returning about 3pm. When at church [the Claimant] is not supported to use a toilet or change her pad as she said there is no hoist or safe place to transfer. She added that she will avoid snacks and drink a small amount only to avoid heavy urine leakage."
>
> "[The Claimant' is supported to transfer and turn regularly by one carer. She will transfer from bed to commode to wheelchair as required. She explained that the DN [district nurse] recently told her that she 'must lift and move her bottom area and reposition herself every 2 hours'. [The Claimant] says she does not have any pressure sores or wounds."
>
> "[The Claimant] said she experiences 'continued' severe pain in 'almost every part...of body'. She described how the pain 'may reduce after a while but to bear this amount of pain gives me depression'. She said the pain relief medication was recently increased to 600mg."
>
> "[The Claimant] is reliant on support of one other to assist her with managing her continence. She stated that she 'does not have a bladder problem' and has full awareness of her need to urinate and open her bowels. She explained she needs to wear pads for the purpose of urine only. She described using the pads for toileting purposes when no carer available to assist her with hoist transfer to commode and during the night when she 'wee on pad on the bed. 3-4 times a night'. [The Claimant] said the hoist is not used during the night despite a carer being available. At night she said the hoist may 'sometimes' be used to assist with changing position only. She described a routine of bodily function for emptying her bowels during the day and is assisted to commode via the hoist for this.
>
> [The Claimant] agreed to having an incontinence assessment and for assessor to liaise with necessary professionals."

20. At this stage the Claimant was still receiving a care package funding 104 hours per week.

21. On 11 July 2017 an MDT meeting was convened at the Claimant's home, attended by the Claimant, two social workers (Ms Dawson and Mr Rickman) and two district nurses (team leader Miana Nkwo and student Isabel Solis). Ms Dawson's typed note of the "*MDT Outcome*" states:

> "Trial 6 week period agreed for reduction of care package, removing the night time care of 7 hours for incontinence support, pad changing and body turning with close monitoring from DN [district nurse] x2 weekly.

> Exact plan to be confirmed and agreed alongside start date with DN and [the Claimant]. [Direct payments] team to be informed of change to care plan.
>
> To be reviewed as ongoing via DN assessments/visits."

22. Ms Dawson in her first witness statement says:

> "The District Nurses were present to enable a full discussion to take place concerning the impact of the proposed changes to the care plan, the risk assessment (of pressure sores and the use of pads and a specialised mattress), and to confirm what their role would be in managing and monitoring that risk. The level of monitoring required was set by them, at twice a week. An initial period of six weeks was agreed. During that period, and since, there have been no issues of concern arising from the changed support, and the monitoring, which continues, safeguards the Claimant's welfare. Were there to be any issues arising, there would be an immediate reappraisal of the support."

23. The Claimant refers to the MDT meeting as having been a service-driven reduction of support rather than an assessment of the Claimant's needs. The Claimant also refers to a subsequent set of answers provided on 19 June 2018 to questions posed to Omolola Adeosun, Neighbourhood Nurse Lead, which includes the following statements:

> "The district nurses did not make the decision that the current level of support was sufficient to meet [the Claimant's] needs and that the waking night care could be safely stepped down, I am not aware of who made this decision. I am unable to confirm if the current package is common/standard to the management of night time need and that it is sufficient to meet her needs. I confirm that [the Claimant] does not have any pressure sores and her pressure areas are currently healthy and intact. The District Nurses are visiting her weekly to monitor [the Claimant's] pressure areas."

24. Ms Adeosun was also asked whether the Claimant had reported to the district nurses that her pain at night time had increased since the reduction in the care package, i.e. since August 2017, or whether it had continued at a similar level appropriately addressed by pain relief as required. She replied:

> "[The Claimant] has not reported any pain at night time to the district nurses at the times she was visited."

25. On 22 August 2017 the Defendant completed a care and support plan for the Claimant including a reduced care package of 40 hours a week, based on four one-hour single handed personal care visits a day (3 visits on Sunday) (27 hours in total), 7 hours a week meal preparation, 3 hours weekly domestic and shopping support and 3 hours weekly community support. In relation to "*personal care*" the plan stated:

> "Care worker to support with full body wash a.m. and p.m. She is to be supported to shower once daily and body wash once daily at end of day. She needs contin[e]nce management support with pads x4 daily, un/dressing a.m. and p.m., grooming daily, medication as prescribed, transfer/mobility per visit as per need and food and drink support daily as per need and request.
>
> food and drink can be provided within the pc [personal care] task
>
> 40 hours weekly DP [direct payments] to be used flexibly according to need."

The plan also indicated that *"[the Claimant] needs support with social interaction and inclusion*" in order to reduce living in isolation and to maintain social interaction, and that the direct payment hours were "*flexible for socialising and accessing the community*". The plan was to be reviewed at 6 weeks by the social worker, with district nurse visits twice a week in the meantime to monitor and record.

26. The Defendant wrote to the Claimant on 23 August 2017 confirming this reduction in her care package. The letter added that:

> "The 40 hours was calculated based on your current care needs as per assessment completed in September 2016 and the ongoing reviews via meetings and discussions with yourself and the professionals involved."

and that:

> "As stated, the district nurse will visit you twice weekly to assess and review paying particular attention to the risk of pressure sores.
>
> The reduction of your care plan will be reviewed by me in six weeks' time. I will be in touch with you nearer the time regarding this."

27. The Claimant makes the point that the 22 August 2017 plan and 23 August 2017 letter flowed from the generic June 2016 decision (despite the apparently incorrect reference to a September 2016 assessment, of which assessment there is no evidence), and did not attempt to assess the impact on the Claimant's well-being of the removal of her night time care.

28. Following a number of telephone calls by the Claimant raising concerns about the care package, the Defendant sent a letter on 14 September 2017 acknowledging those concerns but noting that the district nurses had yet to identify any evidence of developing pressure sores or that the Claimant required a night sitting service. The Defendant agreed to refer the Claimant's personal care to an occupational therapist.

29. On 3 and 6 September 2017 an occupational therapist visited the Claimant. The resulting report stated in relation to pain:

> "Client reports pain in her arms and all over her body.

> She reports that her pain has got worse in the last month or two and that her painkillers have been increased by her GP since her care package has been reduced at night."

The assessment (i) identified that the Claimant required an additional sling and battery for the hoist; (ii) made a referral to community physiotherapy; and (iii) made a referral to "*Community Connections*", a "*preventative social-prescribing project that aims to improve the health and well-being of vulnerable adults across the borough*".

30. From 19 October 2017 onwards Community Connections provided the Claimant with opportunities for social activities and outside interests. In particular, the Claimant was noted to be interested in IT support groups, ESOL, cooking and seated exercise.

31. Miss Dawson in her first witness statement provides the following information about the course of events during this period:

i) The incontinence service recommended the use of more robust pads in 2017, which were supplied. There was some evidence of carers misusing them by cutting them up, but this appeared to have stopped. The capacity of the pads is 1 litre of liquid.

ii) The Claimant had not sought medical advice about faecal difficulties, and there was no evidence of her having raised this with social workers or the occupational therapy service. There was no sign of any link between such episodes as had occurred and the reduction in the care plan.

iii) There was no evidence of pressure sores occurring since the care plan reduction. Further, *"District Nurses have been very closely involved, their professional opinions have been sought in order to be confident that there are no significant risks of pressure sores, that toileting can be managed through use of pads and a specialised mattress used to address the issue of positioning and assist pain management, and that the Claimant is not being placed in unnecessary risk."*

iv) The occupational therapist made a Community Connections referral for the Claimant, being a portal for access to all the non-statutory community groups, support and activities. Contact had been made with the Claimant, including at least two home visits, for this purpose. Although the Claimant initially declined, she attended an exercise group on 9 January 2018, to which she was escorted; the Claimant chose to return home unescorted by bus in order to shop on the way. The Claimant had been given details and advice about how to access groups in conjunction with receiving personal care provision at home.

v) Miss Dawson made a referral on the Claimant's behalf to her GP in January 2018 for her low mood and expressed issues with pain. The GP saw the Claimant in January 2018 and indicated there was no need for a mental health referral and that the Claimant had not sought advice about further pain relief except to report a pain in her foot. Further:

> "The Claimant has raised the issue of ongoing pain both before and after the changes to her service. Her mattress has been provided, and also replaced, as required, to assist with

> management of this. Her wheelchair is to be upgraded as this may be a contributory factor to her back pain. There is no evidence that her pain management issues are in any way related to the provision, or otherwise, of waking care at night. We have been advised and [led] in this by the OT services, the District Nurses and the GP. There has also been a referral to the physiotherapist, to assist. Exercises have been recommended and the Claimant is now discharged from that service."

32. On 10 October 2017 the Claimant's representatives sent a letter to the Defendant requesting that the Claimant's care package of 104 hours be reinstated. There followed correspondence between the parties and a pre-action letter sent by the Claimant's representatives on 30 November 2017. On 14 December 2017 the Defendant agreed to reassess the Claimant's needs in response to the issues identified by the correspondence.

33. A letter dated 8 December 2017 from the Claimant's GP to her solicitors, stating that it was prepared from her computer medical record, indicated that the Claimant *"suffers with muscular dystrophy. Her symptoms have been stiffness, pain and she is unable to mobilise herself because of needing support for changing posture, personal hygiene, and nutrition … She is only able to get out once a week where she attends church … [The Claimant] has complained regarding the reduction of her care package and does feel that her needs are not being seen to by her care package. She suffers with chronic pain in her lower back and general aches and pains. Her medication generally gives her relief and her blood pressure is managed well."*

(2) The assessment process in 2018

34. During the reassessment process in early 2018 the Claimant was assisted by a Care Act advocate, Jackline Ndora. Ms Ndora met the Claimant on 11 and 23 January 2018 and supported her at the assessment meeting on 26 January 2018.

35. On 7 February 2018 a draft needs assessment was sent to the Claimant by post. The Claimant highlights a passage in the draft assessment stating:

> ""…based on reassessment Sept 2016 and MDT meeting on 11.07.17 a 40 hr per week DP was identified to meet [the Claimant]'s care needs. This will allow for 4 visits daily for pc at 1hr each visit with one care worker. Additional 12 hours weekly will allow for domestic, shopping, meal preparation and social support as needed…." (emphasis added)

36. Also on 7 February 2018, the Claimant's GP wrote to Ms Dawson indicating that the Claimant *"expressed no suicidal ideation and said that she only feels depressed because her hours of care has been cut and that she is alone during the night and as stated is left in a wet pad all night until her carers come in the morning. She has been in contact with us on three occasions in January, one for emollients, one to increase her amitriptyline that she takes at night as treatment for a burning pain that she gets in her feet. There is no indication for a CMHT referral or to the continence service."*

37. On 27 March 2018 the Defendant finalised the care needs assessment and sent it to the Claimant. The assessment included the following passages of particular relevance to

the present claim, which it is necessary to set out at length. I use the numbers interpolated below when referring to some of these passages later in this judgment:

[i] "[The Claimant] was formally diagnosed with Muscular Dystrophy … in 2007. … It was reported that there is 'no treatment or cure … and the condition is slow progress … won't be ambulant … will need a wheelchair."

[ii] "[The Claimant] was assessed in June 2016 as she was receiving a 104 hours weekly care package. This identified double handed care. However, through further assessment and review discussion [the Claimant] confirmed that she did not use the service as double handed as it was not needed and instead had used the hours to implement a night time carer service seven days a week.

Alongside the change in care needs, night time support was assessed as exceeding need and a letter was sent on 21.06.16 stating 'Lewisham is unable to provide an overnight service to enable you continue to be supported to the toilet during the night. Changes to the care plan following assessment was proposed such as recommending that her high time need should be managed through the use of incontinence pads."

[iii] "[The Claimant] said she requires a carer to do a sleep in to change inco pads and reposition her 3-4 times a night.

[The Claimant] said, the carer will provide a snack and drink if requested during the night. [The Claimant] said she doesn't sleep until about 2-3am and this will be for only a few hours. She said she is often in discomfort and pain relying on the carer to turn her, change the pads and provide emotional support. She said the carer will 'talk and pray' with her."

[iv] "A 52 hour weekly service was proposed following the assessment in July 2016. However, care packages changes were not implemented due to ongoing challenges and concerns raised by [the Claimant]. A detailed and thorough holistic approach was considered necessary in order to fully assess, identify and aim to meet [the Claimant's] needs."

[v] "MDT meeting was held on 11.07.17 with Joanne Dawson, Sam Rickman senior social worker, Miana Nkwo District Nurse team leader, Isabel Solis student district nurse with [the Claimant] at her home. MDT 11.07.17 agreement; district nurse will visit [the Claimant] twice weekly to closely monitor and record her health paying particular attention to signs of pressure sores during 6 week period of reduction in care plan.

[vi] "Based on reassessment September 2016 and MDT meeting on 11.07.17 a 40 hr per week DP was identified to meet [the Claimant]'s needs.

This will allow for 4 visits daily for pc at 1hr each visit with one care worker. Additional 12 hours weekly will allow for domestic, shopping, meal preparation and social support as needed. [The Claimant] was advised that she can use flexibly as DP is designed."

[vii] "A review of [the Claimant]'s care needs was agreed for 30.01.18.

Occupational Therapy Assessment 09.09.17 completed by Alexis Johnston.

[The Claimant] has in situ a profiling bed, mobile commode, powered chair and has had agreement from management for provision of a seating matters chair. …

Reassessment of care needs 17.10.17 and Care needs Review 30.01.18 undertaken by Joanne Dawson social worker."

[viii] "[The Claimant] reported that her condition is 'bad', she explained that 'it's the nature of my sickness, medically I am deteriorating. I am feeling it all over my body, it is seriously affecting me. My lower body is so painful'. [The Claimant] said that the deterioration has been affected by the reduction in her care plan since 28.08.17. She complained that she is in the same position for a long time during the night and is unable to turn, have her pads changed, remains in soiled pads, cannot move her legs and has on going hot pain sensation in her right leg and is at risk from intruders."

[ix] "Joanne also asked about any contact with GP pertaining to the increased pain she says she is experiencing. [The Claimant] said she saw her GP approximately two weeks ago and it was suggested she can increase her night time Gabapentin medication by one tablet at 600mg if she feels the need to. Joanne asked for written evidence of the increase. [The Claimant] showed the medication box containing the Gabapentin which [h]as printed script on the external of the box, but it did not identify increase. [The Claimant] said it was an older box and prescribed before her GP visit.

Joanne advised that the increase must be recorded by the GP to the pharmacy and herself for clarity."

[x] "Jackline [the Claimant's advocate for the assessment] suggested a night time call for [the Claimant] 'if she feels the need for someone to come in the middle of the night'. [The Claimant] was open to this suggestion and said she would like someone to attend to her personal care and help her turn about 1-2am in the morning. … Joanne explained that there is no evidence suggesting that there is a need for this additional intervention.

Joanne and Jackline advised that she could alter some of her timetable with carers to allow for her to attend community groups and was also advised that facilitators will work with her according to her abilities."

[xi] "jackline said she had spoken DN who had said they were reassessing the mattress."

[xii] "<u>All considerations noted and considered by assessor Joanne Dawson</u>

1. [The Claimant] is receiving support from Community Connections to access wider community activities and services.

2. There is no evidence of support needed during the night time for toileting assistance.

3. [The Claimant] has adequate time within care plan to allow for shopping.

4. Personal care time frames and methods [the Claimant] currently applies are based on choice and are used according to choice and control via direct payments. The Local Authority assesses based on need.

5. [The Claimant] continues to eat traditional foods. Lewisham has considered meal preparation within the care plan.

6. Assessor will explore charitable organisations for holiday support/provisions."

[xiii] "[The Claimant] also added that she has high blood pressure, suffers with heart burn and a burning sensation in both legs and feet. She explained that she suffered a right leg fracture and dislocation of her right ankle in 2013 following a fall. She reported on-going pain despite treatment."

[xiv] "District nurse progress notes report:

01.09.17 typed by Miana Nkwo 'view presented by DN at the meeting was given ... removing her night care would not put her at significant risk of developing pressure sores'.

Visits to [the Claimant] by District nurses 05.09.17, 07.09.17, 12.09.17, 15.09.17. 22.09.17 report, 'pressure areas intact and healthy'.

26.09.17 'proshields to continue to be used'.

31.10.17 'advised on proper use of inco pads as noted carer cuts pads'

03.11.17 'pt [patient] is able to change position in bed, [i]s mobile with her wheelchair indoors – all skin intact'.

10.11.17 'pt reports painful sacrum – intact and advised to change position'.

21.11.17 'pt complains of tenderness on left buttock – all intact'.

07.12.17 Adult therapy report, 'pt complained of calves/heel hurting seriously'.

Up to 16.01.18 District nurses report 'skin intact'."

[xv] "[The Claimant] said that she experiences pain at variable levels in her body. She said the reduction in the care has increased her pain and distress. She said she was advised by her GP to take another Gabapentin tablet at 600mg during the night for relief. Joanne asked if the increase has made any difference and she said, 'not much'.

[The Claimant] complained of a hot and pain sensation in her right foot. Again it was recommended by Joanne that she see her GP as this she linked to a fracture several years ago. …

[The Claimant] said, 'I can't turn to the left or right if something is hurting me'. She said her medication has been increased by the GP. She said she met with the GP approximately two weeks ago. There is no formal record of medication increase of the Gabapentin as said by [the Claimant]."

> [xvi] Sunday support differs because [the Claimant] attends church … Carer arrives between 5.15am-5.30am until approximately 3 hrs when cab arrives between 8.30am-9am … She said she arrives home about 2pm. Care worker will meet her at home to support with undressing, shower in the bathroom … [The Claimant] added that her clothes will often need to be rinsed as her 'leggings are wet' …"
>
> [xvii] "[The Claimant] needs mobility aids to maintain her mobility both indoors and outdoors. She confirmed she has travelled in her wheelchair to the local library, Lewisham via bus on her wheelchair where she met with her carer, the GP and post office. She continues to attend her church in … every Sunday."
>
> [xviii] "Emma Corcoran from Community Connections supported [the Claimant] to 'the seated exercise group at … library on Tuesday 9th January … [The Claimant] agreed she would come again next week, and that [Emma] would ring her after the class to see how she got on. On 23.01.18 Emma recorded 'Sent [the Claimant] a letter outlining the seated exercise groups taking place at … and …, as requested. Both of these groups take place in the morning.
>
> [The Claimant] complained about not being able to attend the groups suggested due to her timed care support and inability to fully engage with the programmes. Joanne and Jackline advised that she could alter some of her timetable with carers to allow for her to attend groups and was also advised that facilitators will work with her according to her abilities."
>
> [xix] "[The Claimant] has expressed concerns about being vulnerable to intruders. She explained that young people are in the area smoking and taking drugs. Joanne advised that her home is fitted with security window locks, she has immediate telephone access to make contact where/if necessary to emergency services and has declined link line due to its cost."
>
> [xx] "[The Claimant] has expressed concern pertaining to risk to her health as a result in the reduction of her care package. She is adamant that she needs night time carer to provide her with regular support with turning and pad changes. She stresses that she is at risk of pressure sores and increased pain due to remaining in one position throughout the night. [The Claimant] was keen to utilise the suggestion made by Jackline of having a carer visit during the night to attend to her personal care and turn her. It was explained that this is not based on assessed need and therefore not approved.
>
> The view presented by the DNs at the MDT meeting was that given [the Claimant's] equipment and level of mobility, removing her night care would not put her at significant risk of developing pressure sores.
>
> To manage risk, we agreed that the DNs would visit twice weekly to monitor pressure areas. This was also to manage [the Claimant's] understandable anxiety. Currently the district nurses continue to visit [the Claimant] twice weekly. All their reports state that her skin is intact and no evidence of pressure sores."

38. The assessment also included a 'summary of needs' in the form of a table setting out the Claimant's needs and wished for outcomes by reference to the well-being factors of

personal dignity and respect, improved quality of life, exercise of choice and control, making a positive contribution, and improved health.

39. On 9 April 2018 the Claimant's solicitor sent a pre-action letter to the Defendant challenging the assessment.

40. On 16 April 2018 a community neuro physiotherapist from the Lewisham Adult Therapy Team ("***LATT***") wrote following an appointment with the Claimant on 23 March 2018. The letter stated the outcome of the appointment as being:

> "[The Claimant] was assessed and it was agreed that she would be provided with a bed positioning programme to support the seating programme being completed by Occupational Therapy. The level of weakness in [the Claimant's] legs means that she is unable to complete an independent exercise programme and she does not have the support to complete a passive movement programme. Due to this it was decided that a positioning programme is the best course of treatment.
>
> This has been provided to [the Claimant]. She does not have any further physiotherapy needs and has therefore been discharged from the LATT [Lewisham Adult Therapy Team] service."

More recent email correspondence in June 2018 indicates that a passive movement programme would require 15 to 30 minutes of exercises, supported by a carer, at least 4 times a week, which the Defendant submits could be accommodated within the Claimant's existing care hours.

41. On 23 April 2018 the Defendant sent a reply resisting the challenge and inviting the Claimant, if she remained dissatisfied, to make a formal complaint.

42. A note prepared by Omolola Adeosun, Neighbourhood Nurse Lead, dating from May 2018 indicates that the district nurses were visiting the Claimant weekly to check her pressure areas, and that there had been no pressure sores since the care was reduced in August 2017. On 19 June 2018 Ms Adeosun provided the information quoted in § 23 above; in the same document she also stated that *"[The Claimant] has not reported any pain at night time to the district nurses at the times she was visited."*

43. On 11 June 2018 Ms Dawson, and interim operational manager Sam Rickman, visited the Claimant to establish whether there had been any change in needs since her last visit. On the basis of this visit the Ms Dawson considered that no change in the Claimant's needs was immediately apparent, although it was confirmed that the Defendant would continue to liaise with relevant agencies to keep the care package under review.

(C) LAW

44. The applicable legal principles were largely common ground between the parties.

45. Section 1(1) of the Care Act 2014 provides that "*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*."

46. '*Well-being*' is defined under s1(2) as including:

> "(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.

47. In exercising its functions under Part 1 of the Act, a local authority is required to have regard to the matters set out in s1(3), which include:

> "(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."

48. Section 2 of the Act requires a local authority to provide or arrange for the provision of services, facilities or resources which it considers will "*contribute towards preventing or delaying the development by adults in its area of needs for care and support*" (section 2(a)) and "*reduce the needs for care and support of adults in its area*" (section 2(d)).

49. Section 9 requires a local authority to carry out an assessment of an adult's needs for care and support where it appears that an adult may have those needs. It provides inter alia that:

> "(4) A needs assessment must include an assessment of:
>
> (a) the impact of the adult's needs for care and support on the matters specified in section 1(2);
>
> (b) the outcomes that the adult wishes to achieve in day-to-day life, and
>
> (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.
>
> …
>
> (6) When carrying out a needs assessment, a local authority must also consider:
>
> (a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and
>
> (b) Whether the adult would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community."

50. In *R (Davey) v Oxfordshire CC & Ors* [2017] EWHC 354 (Admin) at § 21, Morris J stated in relation to section 9:

> "I make the following observations on this subsection. First, the assessment duty is a duty upon the local authority and the assessment under section 9(1)(a) and (b) is an objective assessment made by the local authority (usually acting through

> its social workers or occupational therapist). Secondly, under section 9(4), there is no duty to achieve the outcomes which the adult wishes to achieve; rather it is a duty to assess whether the provision of care and support could contribute to those outcomes. On the other hand if, in the course of a needs assessment, the local authority does not assess the matters specified in section 9(4) (including the impact on well-being matters set out in section 1(2)) then there is a breach of the statutory duty. There is, thus, a duty on the part of the local authority to assess these factors."

51. At §§ 57-60 he summarised the principles from the authorities thus:

> "57 First, as to the meaning of "need" (or "in need"), this denotes something more than merely "want" but falls far short of "cannot survive without". The words "are in need of", refers to present needs and not the future. The duty should not be extended to a person who does not currently satisfy a requirement simply because he will or may do so in the future: R (M) v Slough Borough Council [2008] 1 WLR 1808, paras 54–55.
>
> 58 Secondly, as regards the relevance of a local authority's resources, once eligible needs are assessed (stages 1 and 2), a local authority is under an absolute duty to provide the user with the services that would meet those needs or a personal budget with which to purchase them, regardless of the authority's financial resources (the third and fourth stages of the process). On the other hand, it may be legitimate for a local authority, in assessing an applicant's needs and/or eligible needs to take into consideration the availability of its resources: R v Gloucestershire County Council, Ex p Barry [1997] AC 584 and KM's case (raising, but not deciding, questions as to the true interpretation of Ex p Barry, particularly in relation to the stage (i) assessment)."

and then after discussing the status of certain observations by Lord Wilson in *R (KM) v Cambridgeshire County Council* [2012] UKSC 23:

> "60 … First, the courts should be wary of overzealous textual analysis of social care needs assessments carried out by social workers for their employers with the risk of taking them away from front line duties: Ireneschild's case [2007] LGR 619 , paras 57, 71 and 72. Secondly, it is not for the court to be prescriptive as to the degree of detail in an assessment or a care plan—these are matters for the local authority, and if necessary, for its own complaints procedure or resort to the Secretary of State. The court is the last resort where there is illegality: R (L) v Barking and Dagenham London Borough Council [2001] LGR 421, para 27. Thirdly, the social worker, in the assessment, is entitled to rely upon what the service user told him at the time (even if the service user later changes evidence); there is no need for precise

> formulation of assessment of mental health impact in the needs assessment itself: R (GS) v Camden London Borough Council [2017] PTSR 140, paras 31, 33 and 47."

52. Morris J's decision was affirmed by the Court of Appeal at [2017] EWCA Civ 1308, who stated:

> "52 The judge made the following observations on this subsection with which I would agree. First, the assessment duty is a duty upon the local authority and the assessment under section 9(1)(a) and (b) is an objective assessment made by the local authority (usually acting through its social workers or occupational therapist). Secondly, under section 9(4) , there is no duty to achieve the outcomes which the adult wishes to achieve; rather it is a duty to assess whether the provision of care and support could contribute to those outcomes. On the other hand if, in the course of a needs assessment, the local authority does not assess the matters specified in section 9(4) (including the impact on well-being matters set out in section 1(2)), then there is a breach of the statutory duty.
>
> 53 Section 13 of the Act and the Care and Support (Eligibility Criteria) Regulations 2015 (SI 2015/313) make provision for eligibility criteria, set, for the first time, on a national basis. Where the local authority is satisfied that the adult has needs for care and support, it must determine whether any of the identified needs meet the eligibility criteria. Where at least some of those needs meet the criteria, the local authority must consider what could be done to meet those needs and whether the adult wants those needs to be met by the local authority.
>
> 54 Section 18 imposes a duty upon the local authority, having made a determination of the needs which are eligible under section 13 , to meet the adult's needs which meet the eligibility criteria, subject to a means-test analysis."

53. Paragraph 6.9 of the Care and Support Statutory Guidance ("***the Guidance***") reflects this approach under s.9(4) as follows:

> "The purpose of an assessment is to identify the person's needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day-today life. The assessment will support the determination of whether needs are eligible for care and support from the local authority, and understanding how the provision of care and support may assist the adult in achieving their desired outcomes…"

54. The rules governing assessments carried out under section 9 are contained in the Care and Support (Assessment) Regulations 2014/2827. Regulation 3 sets out the general requirements for an assessment of care needs:

> "(1) A local authority must carry out an assessment in a manner which—
>
> (a) is appropriate and proportionate to the needs and circumstances of the individual to whom it relates; and
>
> (b) ensures that the individual is able to participate in the process as effectively as possible.
>
> (2) In seeking to ensure that an assessment is carried out in an appropriate and proportionate manner, a local authority must have regard to—
>
> (a) the wishes and preferences of the individual to whom it relates;
>
> (b) the outcome the individual seeks from the assessment; and
>
> (c) the severity and overall extent of the individual's needs.
>
> …"

55. Section 13 provides that where a local authority is satisfied on the basis of a needs assessment that an adult has needs for care and support, it must determine whether any of the needs meet the eligibility criteria specified in regulations under section 13(7) or form part of a combination of needs of a description so specified. Where at least some of the adult's needs for care and support meet the eligibility criteria, the local authority must consider what could be done to meet those needs that do.

56. The Care and Support (Eligibility Criteria) Regulations 2015 ("***the Eligibility Criteria Regulations***") make provision for eligibility criteria. Regulation 2 provides that:

> "(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.
>
> …"

57. By Regulation 2(1)(c) of the Eligibility Criteria Regulations, eligibility requires both that the adult is unable to achieve the specified outcomes, but also that there is (or is likely to be) a significant impact on the adult's well-being. "*Significant*" is not defined, but is explained in paragraph 6.109 and 6.110 of the Guidance as follows:

> "...Local authorities will have to consider whether the adult's needs and their consequent inability to achieve the relevant outcome will have an important consequential effect on their daily lives, their independence and their wellbeing.
>
> In making this judgment, local authorities should look to understand the adult's needs in the context of what is important to him or her. Needs may affect different people differently, because of what is important to the individual's wellbeing may not be the same in all cases. Circumstances which create a significant impact on the wellbeing of one individual may not have the same effect on another."

58. Following a determination of which needs are eligible under section 13, section 18 imposes a duty upon a local authority to meet such of the adult's needs as meet the eligibility criteria, if that adult is ordinarily resident in the authority's area, subject to a means test analysis.

59. The Guidance indicates that a local authority may take account of its finances when it decides how to meet the eligible needs of an individual, although they are not relevant to whether those needs are met (Guidance, para 10.27; see also *Davey* §58 quoted in § 51 above).

60. Sections 24 to 26 of the Act make provision for care planning. Section 24(1) sets out the steps which the local authority must take following the needs assessment. It provides *inter alia* as follows:

> "(1) Where the local authority is required to meet needs under section 18 ... or decides to do so under section 19... , it must -
>
> (a) prepare a care and support plan or a support plan for the adult concerned,
>
> (b) tell the adult which (if any) of the needs that it is going to meet may be met by direct payments, and
>
> (c) help the adult with deciding how to have the needs met".

61. Section 25 then prescribes the contents of a care and support plan:

> "(1) A care and support plan ... is a document prepared by a local authority which -
>
> (a) specifies the needs identified by the needs assessment
>
> (b) specifies whether, and if so to what extent, the needs meet the eligibility criteria,
>
> (c) specifies the needs that the authority is going to meet and how it is going to meet them,
>
> (d) specifies to which of the matters referred to in section 9(4) the provision of care and support could be relevant or...
>
> (e) includes the personal budget for the adult concerned (see section 26), and
>
> (f) includes advice and information about:
>
> (i) what can be done to meet or reduce the needs in question;
>
> (ii) what can be done to prevent or delay the development of needs for care and support or of needs for support in the future"

62. By section 25(3), the local authority must involve both the adult and any carer that the adult has in the preparation of a care and support plan. By section 25(5) it must take all reasonable steps to reach agreement with the adult for whom the plan is being prepared about how the local authority should meet the needs in question. Further, by section 25(6)(a), the local authority in seeking to ensure that the plan is proportionate to the needs, must have regard in particular to the matters referred to in section 9(4).

63. Section 27 deals with review of care and support plans:

> "(1) A local authority must-
>
> (a) keep under review generally care and support plans, ... that it has prepared, and
>
> (b) on a reasonable request by or on behalf of the adult to whom a care and support plan relates ... , review the plan.
>
> (2) A local authority may revise a care and support plan; and in deciding whether or how to do so, it -
>
> (a) must have regard in particular to the matters referred to in section 9(4) (and specified in the plan under section 25(1)(d)) and
>
> (b) must involve -
>
> (i) the adult to whom the plan relates,
>
> (ii) any carer that the adult has, and ...
>
> ...
>
> (4) Where a local authority is satisfied that circumstances have changed in a way that affects a care and support plan ... , the authority must -
>
> (a) to the extent it thinks appropriate, carry out a needs... assessment, carry out a financial assessment and make a determination under section 13(1) and
>
> (b) revise the care and support plan ... accordingly.
>
> (5) Where, in a case within subsection (4), the local authority is proposing to change how it meets the needs in question, it must, in performing the duty under subsection 2(b)(i) ... take all reasonable steps to reach agreement with the adult concerned about how it should meet those needs."

64. Section 3(1) of the Act provides that a local authority must exercise its functions under Part I, *"with a view to ensuring the integration of care and support provision with health provision and health-related provision"* where it considers that this would:

> a) promote the well-being of adults in its area with needs for care and support and the well-being of carers in its area,
>
> b) contribute to the prevention or delay of the development by adults in its area of needs for care and support or the development by carers in its area of needs for support, or
>
> c) improve the quality of care and support for adults, and of support for carers, provided in its area (including the outcomes that are achieved from such provision).

65. Chapter 15 of the Guidance is concerned with the implementation of this general duty at a strategic, local and individual level. The guidance stresses the need for the local authority to focus on the needs and goals of the person concerned as opposed to the services available (see, e.g., §§ 1.1, 1.14(d), 1.21, 1.22, 2.18, 6.1, 6.9); indicates that the well-being principle involves actively seeking improvements in the aspects of well-being set out in the Act (see, e.g., § 1.7, 2.1) and explicitly considering "*the most relevant aspects of wellbeing to the individual concerned*" (§ 1.12); and refers to the need to ensure integration of care and support provision including prevention with health and health-related services (§ 2.34 and 15.3).

66. The local authority is the judge of fact, subject to review on the usual public law grounds. Lord Brightman said in *Pulhofer v Hillingdon BC* [1986] AC 484, 518 B:

> "…Where the existence or nonexistence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom parliament has entrusted the decision making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."

67. Community care assessments usually are prepared by social workers. The courts have made clear, as in *R (Ireneschild) v Lambeth Borough Council* [2007] EWCA Civ 234 at §§ 57 and 71, that community care assessments must not be subject to "*over-zealous textual analysis*". In *McDonald v Kensington & Chelsea LBC* [2011] UKSC 33, Lord Dyson SCJ observed:

> [53] In construing assessments and care plan reviews, it should not be overlooked that these are documents that are usually drafted by social workers. They are not drafted by lawyers, nor should they be. They should be construed in a practical way against the factual background in which they are written and with the aim of seeking to discover the substance of their true meaning."

68. The level of detail required in an assessment is essentially a matter for the local authority (see *R v Barking and Dagenham LBC ex p Lloyd* [2001] EWCA Civ 533 at § 27).

69. In *R (P & Ors) v Essex CC & Ors* [2004] EWHC 2027 Munby J, as he then was, said at § 32:

> "…What the claimants here seek to challenge are decisions taken by the County Council in pursuance of the statutory powers and duties conferred on it by Part III of the Act. So I am here concerned with an area of decision-making where Parliament has chosen to confer the relevant power on the County Council: not on the court or anyone else. It follows that we are here within the realm of public law, not private law. It likewise follows that the primary decision maker is the County Council and not the court. The court's function in this type of dispute is essentially one of review — review of the County Council's decision, whatever it may be — rather than of primary decision making. It is not the function of the court itself to come to a decision on the merits. The court is not concerned to come to its own assessment of what is in these children's best interests. The court is concerned only to review the County Council's decisions, and that is not a review of the merits of the County Council's decisions but a review by reference to public law criteria…"

(D) THE PARTIES' RESPECTIVE CASES IN OUTLINE

70. The Claimant contends that the Defendant's assessment of her needs for care and support, and consequent reduction in her care package, were unlawful. In summary, she says:

i) her condition is degenerative: her care needs have not decreased and will not do so in the future;

ii) the Claimant was previously assessed (by Ian Gillman-Smith in 2011 and by the Defendant in 2014) as requiring night time care. That care was provided to support her with turning and changing her incontinence pads. Social interaction with her night time carer also reduced the Claimant's isolation and anxiety. Prior to the Defendant's decision to cease night time support that care was provided by one carer;

iii) the Defendant's conclusion in June 2016 that the Claimant's needs for care and support could be met through a reduction of over 50% in her carer hours, of which the majority was the cessation of night time care, was irrational;

iv) the assessment in 2018 failed to give proper consideration to the factors set out in section 9(4) of the Act, including the wellbeing factors in section 1(2);

v) the Defendant failed to have regard to the need to prevent additional care needs arising through deterioration in the Claimant's mental health and physical wellbeing (section 1(3));

vi) the assessment failed properly to assess the Claimant's care needs against the eligibility outcomes as set out in the Regulations; and

vii) the Defendant failed to cooperate with NHS services, particularly with occupational therapy and physiotherapy, in assessing the Claimant's needs and the best way to prevent care needs arising in the future.

71. The Defendant argues that the Claimant's submissions amount to little more than a disagreement with the outcome of the assessment. A careful reading of the assessment demonstrates that it: (i) was completed with multidisciplinary input from both health and social work professionals; (ii) fully involved and consulted the Claimant; (iii) had clear regard to the factors as required by section 9(4); (iv) complied with the provisions of the Act, regulations and guidance; and (v) took into account all material considerations.

72. The Defendant also makes the point that an application for judicial review is a remedy of last resort. It says the Claimant has failed meaningfully to consider any alternative, more suitable avenue for dispute resolution, including ADR or by exhausting the Defendant's own complaints process and, if necessary, escalating any complaint to the Local Government and Social Care Ombudsman.

(E) DISCUSSION

(1) Irrationality/reasons

73. The Claimant submits that since her condition is incurable and degenerative, her need for care and support assessed on a rational and objective basis is at least as great as it was when assessed in 2011 and 2014. That in turn means that it was incumbent on the Defendant to identify clearly the basis and reasons for a reduction in either the Claimant's assessed care needs, or her care package.

74. The Claimant says the Defendant has failed to do so. First, the installation of the hoist in or around December 2014, which reduced the number of carers required from two to one, cannot have affected the Claimant's need for night time care (provided by a single carer). Secondly, the 2018 assessment relies on the 2016 'assessment' and 2017 MDT meeting, neither of which was a Care Act compliant assessment of the Claimant's needs. Thirdly, the assessment fails properly to address the impact on the Claimant of the withdrawal of night time care, including on the Claimant's toileting needs (as identified in the 2011 and 2014 assessments), pain and social isolation.

75. It is true that in passages [ii]-[vi] and [xx] quoted in § 37 above, the assessment makes reference to the June 2016 'assessment' and the July 2017 MDT meeting. However, I read the first group of those references as in substance forming part of a summary of the previous events leading up to the present assessment. The reference in passage [xx] to the MDT meeting goes on to refer to the monitoring plan then put in place and to the outcome of such monitoring to date.

76. Certain of the statements in the assessment are expressed in a somewhat conclusory way: see passage [x] ("*Joanne explained that there is no evidence suggesting that there is a need for this additional intervention*") and passage [xx] ("*It was explained that this is not based on assessed need and therefore not approved*"). Those passages might be said to lend support to the Claimant's submission that the decision-maker has taken the 2016 and 2017 decisions as read, without actually performing an assessment of the Claimant's needs and the impact on her of the reduction in care. The point might also

be made that passage [ii], referring to the June 2016 decision, appears to be erroneous in assuming that the Claimant herself had used spare care hours to implement night care, whereas in fact the 2011 and 2014 assessment both concluded that the Claimant required night care (see §§ 8 and 9 above).

77. However, as noted earlier, the case law warns against over-zealous textual analysis and indicates that a social worker's assessment should be construed in a practical way with a view to finding the real substance of the decision. Viewing the assessment in the round, I consider that the decision-maker has not simply adopted the 2016 and 2017 decisions but has had regard to all the current circumstances in considering the Claimant's needs and well-being.

78. After referring in passage [ii] to the 2016 decision, the assessment records that it was thereafter accepted that a detailed and thorough holistic approach was necessary in order fully to assess, identify and aim to meet the Claimant's needs: leading to the 2017 MDT meeting (passage [iv]). Then, after referring in passage [vi] to the 2016 decision and 2017 MDT meeting, the assessment records that a further review of the Claimant's care needs was agreed for 30 January 2018 (passage [vii]).

79. The assessment acknowledges that the Claimant's condition is degenerative (passage [i]). It notes that the trial removal of night care in August 2017 followed consultation with district nurses. It considers the evidence as it currently stands in relation to the Claimant's toileting needs, including the series of reports from the district nursing team referred to in passage [xiv] reporting an absence of pressure sores and intact skin. The Defendant has also recognised that this is a matter which needs to be kept under careful review, and has continued to do so with weekly district nurse visits and periodic social worker visits. The fact that the Claimant complained of wet leggings after outings on Sundays of approximately 5-5½ hours highlights the need for close monitoring of her needs at night during a longer period. However, viewing the assessment as a whole it is not possible in my judgment to conclude that the Defendant's approach has been irrational or that it has failed to have regard to the prescribed factors including the Claimant's individual well-being.

80. As regards pain, it is noticeable that physical and mental health, of which pain relief and pain management would form part, are not included in the list of specified outcomes forming part of the eligibility criteria for Care Act purposes (see § 56 above). However, "*physical and mental health and emotional well-being*" is one of the well-being factors referred to in section 1(2) of the Act (see § 46 above), and counsel for the Defendant was right in my view to accept that pain is therefore a relevant consideration when taking a decision under the Act. It would follow that when deciding how to meet an eligible need, a local authority should take into account the fact (if the case) that one way of meeting the need is more likely to avoid or alleviate pain than an alternative way of meeting the eligible need.

81. The assessment in passages [iii], [viii], [ix], [xiii] and [xv] indicates that consideration has been given to the Claimant's concerns about pain and her expressed need to be turned in bed at night. However, it notes that the evidence did not support the view that the Claimant had increased her pain medication, or that any increase was connected with a need to be turned in bed: as opposed to lower body pain arising from the Claimant's condition in any event, such as she reported prior to the care reduction (see § 19 above) and/or from her 2014 right leg fracture and right ankle dislocation. Passage

[xi] makes reference to the Claimant's pressure relieving mattress being reassessed. In considering the assessment it is also pertinent to bear in mind the points made in Ms Dawson's first witness statement quoted in §§ 22, 31.iii) and 31.v) above about the provision and replacement of the mattress, and the upgrading of the Claimant's wheelchair, in order to help with pain management; the district nurses' views that a specialised mattress can be used to address the issue of positioning and pain management; and the lack of evidence that the Claimant's pain management issues are related to the provision or otherwise of waking night care. Further, the available GP records do not indicate a link between removal of night care and increased pain: there was an increase in dosage in January 2018 which does not, however, appear to be connected to problems likely to be related to night time care. Again this is an area which needs to be kept under careful review.

82. So far as concerns social isolation, the Defendant makes the point that the Claimant's eligible need at night time is for support with toileting and skin management, rather than emotional or social support. The previous night care was put in place to meet that eligible need rather than to provide social companionship.

83. In any event, the Claimant's need for social interaction/support, and the measures in place to assist her in that regard, are considered in the assessment: see in particular passages [xii] (Community Connections and investigation of charitable support for holidays), [xvi] (church on Sundays) and [xvii] (outdoor mobility by wheelchair and bus enabling the Claimant to travel to the library and post office). The evidence supports the view that the Claimant has some ability to leave her home and travel independently, in addition to being able to deploy some of her care hours to help her attend activities away from her home. Once again, the adequacy of the available care hours will be a matter to be kept under review, but I see no basis for concluding that the assessment in March 2018 was irrational or failed to take account of relevant considerations in this regard.

(2) Care Act sections 1(2), 9(4) and 1(3)

84. The Claimant contends that the Defendant failed to give adequate or any consideration to the wellbeing factors in section 1(2) of the Act, as required by section 9(4). In particular, it is said:

i) the Defendant failed to give any or any adequate consideration to its duty to promote the Claimant's wellbeing; and

ii) the Defendant failed to consider the impact of the proposed reduction in care hours on the Claimant's wellbeing against the factors in section 1(2), and/or to approach the assessment under section 9(4) in a holistic way with regards to all the evidence.

85. The Claimant further contends that the Defendant failed (i) to consider whether the provision of care and support could contribute to the statutory outcomes, as required by section 9(6) of the Act, and/or (ii) to have regard to the need to prevent additional care needs arising through deterioration in the Claimant's mental health and physical wellbeing, as required by section 1(3).

86. As facets of these alleged failures, the Claimant makes the points that the 2011 assessment identified that she required support with her social and leisure needs and access to physiotherapy and hydrotherapy to ensure her health and wellbeing; and that the assessment did not give any consideration, for example, to how the provision of night time care contributed to the Claimant's personal dignity or her physical and mental health and emotional wellbeing. On the contrary, the Claimant notes that a note dated 12 June 2017 made by a senior social worker, Mrs Heather Byrne, expressed concern that without being turned at night the Claimant would be at risk of pressure ulcers, and that loss of night care might exacerbate her emotional needs.

87. As regards physiotherapy, the Claimant had as noted earlier been visited by an occupational therapist in September 2017 and referred to community physiotherapy. More recently, in March 2018 the Claimant was assessed by a community neuro physiotherapist from LATT who provided a positioning programme and discharged the Claimant. There is no indication that at the time of the assessment, which was finalised at around the same time, the Defendant was or ought to have been aware of a requirement for physiotherapy or hydrotherapy that could not be met following the August 2017 reduction in the Claimant's care package. As noted in § 40 above, recent emails following the assessment have indicated that the Claimant should be able to undertake a seated exercise programme supported by a carer requiring up to 2 hours a week of care. If it were to emerge that in practice such a programme cannot in fact properly be accommodated within the Claimant's current care package, then a reassessment may then be called for.

88. Specifically in relation to night care, the note by Mrs Byrne referred to above pre-dated the July 2017 MDT meeting and the ensuing trial period during which the Claimant was monitored for signs of pressure wounds, a process which has continued since then. The March 2018 assessment considered, as outlined earlier, the Claimant's physical and social needs and whether they required night care. The assessment also contained a section specifically addressing in tabular form well-being factors including personal dignity (see § 38 above).

89. More generally, I agree with the Defendant that the assessment gave holistic consideration to the well-being factors, including the impact of the revised care package upon the Claimant over the period of six months since it was first introduced in August 2017. The Defendant has monitored (and continues to monitor) whether the Claimant has any additional eligible care needs that may have arisen as a result. There is no or very limited evidence to support the Claimant's assertion that her mental health and physical well-being have significantly deteriorated to the extent that the care package needs to change. Neither the district nurses nor the evidence from the Claimant's GP has given reason to believe that the removal of night time care has led to deterioration in the Claimant's physical or mental well-being, whether in the form of pressure sores, increased pain or mental health problems.

90. In all the circumstances I do not find the Defendant to have acted unlawfully in the respects contended for under this heading.

(3) Failure to assess against eligibility outcomes

91. The Claimant makes the further specific complaint that the Defendant failed to assess adequately or at all whether the Claimant's care needs prevented her from achieving

the outcomes in Regulation 3 of the Eligibility Criteria Regulations, including in particular whether the Claimant's care needs prevented her from "*accessing and engaging in work, training, education or volunteering*".

92. However, the assessment does assess the Claimant's eligible needs against the specified outcomes of relevance to the Claimant's particular circumstances. The materials available, including the Claimant's evidence, do not identify accessing and engaging in work, training, education or volunteering as being of day-to-day relevance to the Claimant. That position may change, but as matters stand I do not consider the assessment to have been unlawful on this ground.

(4) Failure to cooperate with other services

93. Section 3(1) of the Act provides that a local authority must exercise its functions under Part I *"with a view to ensuring the integration of care and support provision with health provision and health-related provision"* in the circumstances referred to in § 64 above. The Guidance indicates [§2.34] that the local authority "*must ensure the integration of care and support provision, including prevention with health and health-related services*". The Claimant submits that integration of care and support is meaningful only if relevant NHS services are consulted as part of, and have input into, the care needs assessment. If, for example, there is an identified need for a particular health service which might prevent a care need arising, then input from the provider of that service is necessary to ensure that care needs are adequately and properly assessed in compliance with the Act.

94. In the present case, the Claimant says, the need for physiotherapy has been a consistent feature of assessments to date. For example, Mr Gillman-Smith's 2011 report identified (on the basis of medical evidence from the Claimant's neurological consultant Dr Warner) the Claimant's health needs as '*critical'*, and in particular identified physiotherapy as an important element in preventing or slowing the progression of the Claimant's condition. The provision of physiotherapy services is therefore a health-related service which is capable of preventing a care need from arising or increasing, and hence a relevant factor which needed to be taken into account in the care needs assessment.

95. However, the Claimant complains that the Defendant did not seek input from physiotherapy or other NHS services prior to the assessment. The Claimant points out that the MDT meeting in July 2017 did not include input from occupational therapy or physiotherapy services. She says she was not assessed by physiotherapy services until 23 March 2018, with the outcome noted earlier. The Claimant says the Defendant's assessment of needs has thus prevented her from accessing health services which are likely to have the effect of reducing her care needs.

96. I do not consider that the general duty in section 3(1) of the Act, or the associated provisions of the guidance, impose an absolute requirement to have specific health (including in this case physiotherapy) input during the course of making an assessment of care needs. In the present case the assessment noted that an occupational therapy assessment had been completed on 9 September 2017, and that the Claimant had a profiling bed, mobile commode, powered chair and agreement from management for provision of a seating matters chair (see passage [vii] quoted in § 37 above). It specifically considered the Claimant's complaint about having insufficient care hours

in order to attend seated exercise groups and concluded that the current hours should be sufficient (passage [xviii]). If that assessment were to turn out to be incorrect or doubtful, then a reassessment may well be required, but I do not consider it possible to conclude that the Defendant's decision in its March 2018 was unlawful as a result of failing to take account of needs for physiotherapy services.

97. It is true that the assessment was completed shortly very after a visit by the physiotherapist visit on 23 March 2018. However, the documents indicate that occupational therapy had been involved with the Claimant since September 2017, and that the outcome of the 23 March 2018 visit is not likely to have altered the outcome of the assessment.

98. In all the circumstances, whilst the adequacy of the number of daytime hours which the Claimant receives will require careful monitoring to ensure that in practice she is able to undertake the range of activities contemplated in the assessment (as well as in the June 2018 exchange regarding seated exercise programmes), the Defendant's assessment in March 2018 was not in my judgment unlawful.

(F) CONCLUSION

99. For these reasons, I dismiss the application for judicial review.

100. I am most grateful to counsel for both parties for their clear and helpful submissions.