Neutral Citation Number: [2020] EWHC 1989 (Admin)

Case No: CO/5076/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2020

Before :

JUDGE ALLEN SITTING AS A DEPUTY OF THE HIGH COURT

- -

THE QUEEN	**Claimant**
(on the application of JG	
(by her Litigation Friend NG))	
- and -	
LONDON BOROUGH OF SOUTHWARK	**Defendant**

- -

- -

Mr B Chataway, (instructed by **Hansen Palomares**) for the **Claimant**
Mr B Tankel (instructed by **Southwark Legal Services**) for the **Defendant**

Hearing date: 6th May 2020

- -

Approved Judgment

Judge Allen :

1. This is an application for judicial review of the defendant's needs assessment carried out on 12 March 2020. In addition, there are challenges to a claimed failure to assess the needs of the claimant's father and carer (CG) and failure to complete a care and support plan. In broad terms, the claim concerns the level of care and support provided for the claimant and her family by the defendant's Social Services under the Care Act 2014.

2. The claimant is a profoundly disabled young woman who requires care and supervision with all aspects of her daily life. She has multiple medical problems including severe learning difficulties, autism and physical disabilities. Her care and supervision is currently provided for her at home, by her parents and a team of paid carers funded by the defendant. The defendant's adult social care team has provided the claimant and her parents with care and support since 2013. All support is provided by way of direct payments, which the claimant's family can use to meet her needs as they decide. She currently receives funding for the equivalent of 58 hours of 1:1 support per week. In addition, her parents receive fifteen hours of respite care a week which they use to pay for additional hours of 1:1 support for the claimant, making a total of 73 hours of 1:1 support per week. Since December 2018 the defendant has in addition been paying for a paid carer to stay at the home for eight hours every night. This provision was originally made under an order for interim relief in previous judicial review proceedings and since then has been continued on a without prejudice basis. The defendant now contends that it is entitled to withdraw that eight hours per night funded provision. In its most recent assessment the defendant accepts that the claimant needs help from two people with personal care for two hours a day pending adaptations to her home but otherwise asserts that all her other needs can be met 1:1.

3. The claim was issued on 24 December 2019, challenging the refusal of additional support and the care and support plan. On 30 December 2019 Johnson J directed anonymity and gave abridged directions. The defendant filed summary grounds of resistance on 6 January 2020. Permission was granted by HHJ Bird, sitting as a Deputy High Court Judge, on 24 January. He refused interim relief. Following the completion of the assessment now subject to review on 12 March 2020 the claimant applied for permission to amend the claim on 26 March and also sought further interim relief. Permission to amend was granted on 7 April 2020, with further directions. The application for interim relief was adjourned but then withdrawn by consent, on the basis that the defendant agreed to provide additional funding for fourteen days pending self-isolation of the claimant's mother (NG) for suspected COVID-19. On 24 April amended detailed grounds for resistance and further evidence were filed and on 28 April the claimant filed further evidence in response.

The Law

4. The duties of local Social Services authorities to provide assistance to adults (the claimant is aged 26) in need of care and support, and to their carers, are set out in Part 1 of the Care Act 2014 ("the Act").

> "**Care Act 2014**
>
> **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 well-being 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.

(4) *'Local authority*' means—

(a) a county council in England,

(b) a district council for an area in England for which there is no county council,

(c) a London borough council, or

(d) the Common Council of the City of London.

9 Assessment of an adult's needs for care and support

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

(a) whether the adult does have needs for care and support, and

(b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a *'needs assessment'*.

(3) The duty to carry out a needs assessment applies regardless of the authority's view of—

(a) the level of the adult's needs for care and support, or

(b) the level of the adult's financial resources.

(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.

(5) A local authority, in carrying out a needs assessment, must involve—

(a) the adult,

(b) any carer that the adult has, and

(c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.

(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.

(7) This section is subject to section 11(1) to (4) (refusal by adult of assessment).

10 Assessment of a carer's needs for support

(1) Where it appears to a local authority that a carer may have needs for support (whether currently or in the future), the authority must assess—

(a) whether the carer does have needs for support (or is likely to do so in the future), and

(b) if the carer does, what those needs are (or are likely to be in the future).

(2) An assessment under subsection (1) is referred to in this Part as a '*carer's assessment*'.

(3) '*Carer*' means an adult who provides or intends to provide care for another adult (an 'adult needing care'); but see subsections (9) and (10).

(4) The duty to carry out a carer's assessment applies regardless of the authority's view of—

(a) the level of the carer's needs for support, or

(b) the level of the carer's financial resources or of those of the adult needing care.

(5) A carer's assessment must include an assessment of—

(a) whether the carer is able, and is likely to continue to be able, to provide care for the adult needing care,

(b) whether the carer is willing, and is likely to continue to be willing, to do so,

(c) the impact of the carer's needs for support on the matters specified in section 1(2),

(d) the outcomes that the carer wishes to achieve in day-to-day life, and

(e) whether, and if so to what extent, the provision of support could contribute to the achievement of those outcomes.

(6) A local authority, in carrying out a carer's assessment, must have regard to—

(a) whether the carer works or wishes to do so, and

(b) whether the carer is participating in or wishes to participate in education, training or recreation.

(7) A local authority, in carrying out a carer's assessment, must involve—

(a) the carer, and

(b) any person whom the carer asks the authority to involve.

(8) When carrying out a carer's assessment, a local authority must also consider—

(a) whether, and if so to what extent, matters other than the provision of support could contribute to the achievement of the outcomes that the carer wishes to achieve in day-to-day life, and

(b) whether the carer would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community.

(9) An adult is not to be regarded as a carer if the adult provides or intends to provide care—

(a) under or by virtue of a contract, or

(b) as voluntary work.

(10) But in a case where the local authority considers that the relationship between the adult needing care and the adult providing or intending to provide care is such that it would be appropriate for the latter to be

regarded as a carer, that adult is to be regarded as such (and subsection (9) is therefore to be ignored in that case).

(11) The references in this section to providing care include a reference to providing practical or emotional support.

(12) This section is subject to section 11(5) to (7) (refusal by carer of assessment).

13 The eligibility criteria

(1) Where a local authority is satisfied on the basis of a needs or carer's assessment that an adult has needs for care and support or that a carer has needs for support, it must determine whether any of the needs meet the eligibility criteria (see subsection (7)).

(2) Having made a determination under subsection (1), the local authority must give the adult concerned a written record of the determination and the reasons for it.

(3) Where at least some of an adult's needs for care and support meet the eligibility criteria, the local authority must—

(a) consider what could be done to meet those needs that do,

(b) ascertain whether the adult wants to have those needs met by the local authority in accordance with this Part, and

(c) establish whether the adult is ordinarily resident in the local authority's area.

(4) Where at least some of a carer's needs for support meet the eligibility criteria, the local authority must—

(a) consider what could be done to meet those needs that do, and

(b) establish whether the adult needing care is ordinarily resident in the local authority's area.

(5) Where none of the needs of the adult concerned meet the eligibility criteria, the local authority must give him or her written advice and information about—

(a) what can be done to meet or reduce the needs;

(b) what can be done to prevent or delay the development of needs for care and support, or the development of needs for support, in the future.

(6) Regulations may make provision about the making of the determination under subsection (1).

(7) Needs meet the eligibility criteria if—

(a) they are of a description specified in regulations, or

(b) they form part of a combination of needs of a description so specified.

(8) The regulations may, in particular, describe needs by reference to—

(a) the effect that the needs have on the adult concerned;

(b) the adult's circumstances.

18 Duty to meet needs for care and support

(1) A local authority, having made a determination under section 13(1), must meet the adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence,

(b) the adult's accrued costs do not exceed the cap on care costs, and

(c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.

(2) Condition 1 is met if the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are at or below the financial limit.

(3) Condition 2 is met if—

(a) the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are above the financial limit, but

(b) the adult nonetheless asks the authority to meet the adult's needs.

(4) Condition 3 is met if—

(a) the adult lacks capacity to arrange for the provision of care and support, but

(b) there is no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

(5) A local authority, having made a determination under section 13(1), must meet the adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and

(b) the adult's accrued costs exceed the cap on care costs.

(6) The reference in subsection (1) to there being no charge under section 14 for meeting an adult's needs for care and support is a reference to there being no such charge because—

(a) the authority is prohibited by regulations under section 14 from making such a charge, or

(b) the authority is entitled to make such a charge but decides not to do so.

(7) The duties under subsections (1) and (5) do not apply to such of the adult's needs as are being met by a carer.

20 Duty and power to meet a carer's needs for support

(1) A local authority, having made a determination under section 13(1), must meet a carer's needs for support which meet the eligibility criteria if—

(a) the adult needing care is ordinarily resident in the local authority's area or is present in its area but of no settled residence,

(b) in so far as meeting the carer's needs involves the provision of support to the carer, there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1 or 2 is met, and

(c) in so far as meeting the carer's needs involves the provision of care and support to the adult needing care—

(i) there is no charge under section 14 for meeting the needs and the adult needing care agrees to the needs being met in that way, or

(ii) in so far as there is such a charge, condition 3 or 4 is met.

(2) Condition 1 is met if the local authority is satisfied on the basis of the financial assessment it carried out that the carer's financial resources are at or below the financial limit.

(3) Condition 2 is met if—

(a) the local authority is satisfied on the basis of the financial assessment it carried out that the carer's financial resources are above the financial limit, but

(b) the carer nonetheless asks the authority to meet the needs in question.

(4) Condition 3 is met if—

(a) the local authority is satisfied on the basis of the financial assessment it carried out that the financial resources of the adult needing care are at or below the financial limit, and

(b) the adult needing care agrees to the authority meeting the needs in question by providing care and support to him or her.

(5) Condition 4 is met if—

(a) the local authority is satisfied on the basis of the financial assessment it carried out that the financial resources of the adult needing care are above the financial limit, but

(b) the adult needing care nonetheless asks the authority to meet the needs in question by providing care and support to him or her.

(6) A local authority may meet a carer's needs for support if it is satisfied that it is not required to meet the carer's needs under this section; but, in so far as meeting the carer's needs involves the provision of care and support to the adult needing care, it may do so only if the adult needing care agrees to the needs being met in that way.

(7) A local authority may meet some or all of a carer's needs for support in a way which involves the provision of care and support to the adult needing care, even if the authority would not be required to meet the adult's needs for care and support under section 18.

(8) Where a local authority is required by this section to meet some or all of a carer's needs for support but it does not prove feasible for it to do so by providing care and support to the adult needing care, it must, so far as it is feasible to do so, identify some other way in which to do so.

(9) The reference in subsection (1)(b) to there being no charge under section 14 for meeting a carer's needs for support is a reference to there being no such charge because—

(a) the authority is prohibited by regulations under section 14 from making such a charge, or

(b) the authority is entitled to make such a charge but decides not to do so.

(10) The reference in subsection (1)(c) to there being no charge under section 14 for meeting an adult's needs for care and support is to be construed in accordance with section 18(6).

24 The steps for the local authority to take

(1) Where a local authority is required to meet needs under section 18 or 20(1), or decides to do so under section 19(1) or (2) or 20(6), 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.

(2) Where a local authority has carried out a needs or carer's assessment but is not required to meet needs under section 18 or 20(1), and does not decide to do so under section 19(1) or (2) or 20(6), it must give the adult concerned—

(a) its written reasons for not meeting the needs, and

(b) (unless it has already done so under section 13(5)) advice and information about—

(i) what can be done to meet or reduce the needs;

(ii) what can be done to prevent or delay the development by the adult concerned of needs for care and support or of needs for support in the future.

(3) Where a local authority is not going to meet an adult's needs for care and support, it must nonetheless prepare an independent personal budget for the adult (see section 28) if—

(a) the needs meet the eligibility criteria,

(b) at least some of the needs are not being met by a carer, and

(c) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence.

25 Care and support plan, support plan

(1) A care and support plan or, in the case of a carer, a support plan is a document prepared by a local authority which—

(a) specifies the needs identified by the needs assessment or carer's assessment,

(b) specifies whether, and if so to what extent, the needs meet the eligibility criteria,

(c) specifies the needs that the local 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 to which of the matters referred to in section 10(5) and (6) the provision of support could be relevant,

(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.

(2) Where some or all of the needs are to be met by making direct payments, the plan must also specify—

(a) the needs which are to be so met, and

(b) the amount and frequency of the direct payments.

(3) In preparing a care and support plan, the local authority must involve—

(a)the adult for whom it is being prepared,

(b)any carer that the adult has, and

(c)any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.

(4) In preparing a support plan, the local authority must involve—

(a) the carer for whom it is being prepared,

(b) the adult needing care, if the carer asks the authority to do so, and

(c) any other person whom the carer asks the authority to involve.

(5) In performing the duty under subsection (3)(a) or (4)(a), the local authority must take all reasonable steps to reach agreement with the

adult or carer for whom the plan is being prepared about how the authority should meet the needs in question.

(6) In seeking to ensure that the plan is proportionate to the needs to be met, the local authority must have regard in particular—

(a) in the case of a care and support plan, to the matters referred to in section 9(4);

(b) in the case of a support plan, to the matters referred to in section 10(5) and (6).

(7) The local authority may authorise a person (including the person for whom the plan is to be prepared) to prepare the plan jointly with the authority.

(8) The local authority may do things to facilitate the preparation of the plan in a case within subsection (7); it may, for example, provide a person authorised under that subsection with—

(a) in the case of a care and support plan, information about the adult for whom the plan is being prepared;

(b) in the case of a support plan, information about the carer and the adult needing care;

(c) in either case, whatever resources, or access to whatever facilities, the authority thinks are required to prepare the plan.

(9) The local authority must give a copy of a care and support plan to—

(a) the adult for whom it has been prepared,

(b) any carer that the adult has, if the adult asks the authority to do so, and

(c) any other person to whom the adult asks the authority to give a copy.

(10) The local authority must give a copy of a support plan to—

(a) the carer for whom it has been prepared,

(b) the adult needing care, if the carer asks the authority to do so, and

(c) any other person to whom the carer asks the authority to give a copy.

(11) A local authority may combine a care and support plan or a support plan with a plan (whether or not prepared by it and whether or not under this Part) relating to another person only if the adult for whom

the care and support plan or the support plan is being prepared agrees and—

(a) where the combination would include a plan prepared for another adult, that other adult agrees;

(b) where the combination would include a plan prepared for a child (including a young carer), the consent condition is met in relation to the child.

(12) The consent condition is met in relation to a child if—

(a)the child has capacity or is competent to agree to the plans being combined and does so agree, or

(b)the child lacks capacity or is not competent so to agree but the local authority is satisfied that the combining the plans would be in the child's best interests.

(13) Regulations may specify cases or circumstances in which such of paragraphs (a) to (f) of subsection (1) and paragraphs (a) and (b) of subsection (2) as are specified do not apply.

(14) The regulations may in particular specify that the paragraphs in question do not apply as regards specified needs or matters.

Care and Support (Assessment) Regulations 2014

5.— Training, expertise and consultation

(1) A local authority must ensure that any person (other than in the case of a supported self-assessment, the individual to whom it relates) carrying out an assessment—

(a) has the skills, knowledge and competence to carry out the assessment in question; and

(b) is appropriately trained.

(2) A local authority carrying out an assessment must consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so.

(3) Such consultation may take place before, or during, the carrying out of the assessment.

Care and Support (Eligibility Criteria) Regulations 2015

3.— Needs which meet the eligibility criteria: carers

(1) A carer's needs meet the eligibility criteria if—

(a) the needs arise as a consequence of providing necessary care for an adult;

(b) the effect of the carer's needs is that any of the circumstances specified in paragraph (2) apply to the carer; and

(c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer's well-being.

(2) The circumstances specified in this paragraph are as follows—

(a) the carer's physical or mental health is, or is at risk of, deteriorating;

(b) the carer is unable to achieve any of the following outcomes—

(i) carrying out any caring responsibilities the carer has for a child;

(ii) providing care to other persons for whom the carer provides care;

(iii) maintaining a habitable home environment in the carer's home (whether or not this is also the home of the adult needing care);

(iv) managing and maintaining nutrition;

(v) developing and maintaining family or other personal relationships;

(vi) engaging in work, training, education or volunteering;

(vii) making use of necessary facilities or services in the local community, including recreational facilities or services; and

(viii) engaging in recreational activities.

(3) For the purposes of paragraph (2) a carer is to be regarded as being unable to achieve an outcome if the carer—

(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the carer significant pain, distress or anxiety; or

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the carer, or of others.

(4) Where the level of a carer's needs fluctuates, in determining whether the carer's needs meet the eligibility criteria, the local authority must take into account the carer's circumstances over such period as it considers necessary to establish accurately the carer's level of need.

Care and Support Statutory Guidance

Integrated assessments

6.75 People may have needs that are met by various bodies. Therefore, a holistic approach to assessment which aims to bring together all of the person's needs may need the input of different professionals such as adult care and support, children's services, housing, experts in the voluntary sector, relevant professionals in the criminal justice system, health or mental health professionals.

6.78 Where a person has both health and care and support needs, local authorities and the NHS should work together effectively to deliver a high quality, coordinated assessment. To achieve this, local authorities should:

- shape the process around the person, involving the person and considering their experience when coordinating an integrated assessment

- work with other professionals to ensure the person's health and care services are aligned. This will require flexibility of systems where possible, for example when sharing information. It will also be strengthened by a culture of common values and objectives at frontline level - joint visits can be helpful here

  link together various care and support plans to set out a single, shared care pathway, for example when following the Care Programme Approach for people with a severe mental disorder who need multi-agency support or intensive intervention, under the direction of a named care coordinator. See chapter 34 of the revised Code of Practice Mental Health Act 1983 .

  A multi-agency approach is particularly important where people are enrolled on the Proactive Care Programme, which was introduced through the Avoiding Unplanned Emergency Admissions

6.87 When assessing particularly complex or multiple needs, an assessor may require the support of an expert to carry out the assessment, to ensure that the person's needs are fully captured. Local authorities should consider whether additional relevant expertise is required on a case-by-case basis, taking into account the nature of the needs of the individual, and the skills of those carrying out the assessment. The local authority must ensure that the person is able to be involved as far as possible, for example by providing an interpreter where a person has a particular condition affecting

> communication – such as autism, blindness, or deafness. See the Equality Act for necessary provisions around reasonable adjustments."

5. As can be seen from the above provisions, the general duty of a local authority, in exercising a function under this Part of the Act in the case of an individual, is to promote that individual's wellbeing. This is set out in section 1(1), and subsection (2) goes on to define what is meant by wellbeing so far as relating to a number of matters including personal dignity, physical and mental health and emotional wellbeing, control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided), participation in work, education, training or recreation and the suitability of living accommodation. Under subsection 1(3) the local authority must have regard to such matters as the individual's view, wishes,feelings and beliefs, 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.

6. It is clear from section 9 that where it appears to a local authority that an adult may have needs for care and support, the authority must assess whether the adult does have needs for care and support and if the adult does, what those needs are. Such a "needs assessment" must include an assessment of the impact of the adult's needs for care and support on the matters specified in section 1(2), the outcomes that the adult wishes to achieve in day-to-day life and whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.

7. Section 10 is concerned with the assessment of a carer's needs for support and requires a local authority where it appears to it that a carer may have needs for support (whether currently or in the future) to assess whether the carer does have needs for support or is likely to do so in the future and what those needs are or are likely to be. Such a "carer's assessment" must include an assessment of such matters as (under subsection 5) whether the carer is able and is likely to continue to be able to provide care for the adult needing care, the impact of the carer's needs for support on the matters specified in section 1(2), the outcomes that the carer wishes to achieve in day-to-day life and whether, and if so to what extent, the provision of support could contribute to the achievement of those outcomes.

8. Under section 13 of the Act, where a local authority is satisfied on the basis of a needs or carer's assessment that an adult has needs for care and support or that a carer has needs for support, it must determine whether any of the needs meet the eligibility criteria which are set out in Regulation 2 of the Care and Support (Eligibility Criteria) Regulations 2014. In sum, needs are eligible if they arise from or are related to a physical or mental impairment; and as a result of the needs the adult is unable to achieve two or more outcomes specified in paragraph (2) of the Regulation; and as a consequence, there is, or is likely to be, a significant impact on the adult's wellbeing. Regulation 3 provides that a carer's needs meet the eligibility criteria if (a) the needs arise as a consequence of providing necessary care for an adult; (b) the effect of the carer's needs is that any of the circumstances specified in paragraph (2) apply; and (c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer's wellbeing. The circumstances in (2) include that the carer's physical or mental health is, or is at risk of, deteriorating.

9. There is further provision concerning the carrying out of a needs or carer's assessment in the Care and Support (Assessment) Regulations 2014, made under section 12 of the Act. It can be seen from Regulation 5(2) that:

> "A local authority carrying out an assessment must consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so".

10. Also, statutory guidance has been issued pursuant to section 78 of the Act, which authorities are required to act under in exercising their functions provided by Part 1: the "Care and Support Statutory Guidance" ("the guidance"). This contains reference to such matters as the benefits of a holistic approach to assessment aiming to bring together all of the person's needs,which may need the input of different professionals and that where a person has both health and care and support needs, local authorities and the NHS should work together effectively to deliver a high quality, coordinated assessment. Local authorities should work with other professionals to ensure that the person's health and care services are aligned, and when assessing particularly complex or multiple needs, an assessor may require the support of an expert to carry out the assessment to ensure that the person's needs are fully captured. Local authorities should consider whether additional relevant expertise is required on a case-by-case basis, taking into account the nature of the needs of the individual, and the skills of those carrying out the assessment.

11. Section 24 of the Act states that where a local authority is required to meet needs under section 18 or 20 it must prepare a "care and support plan or a support plan for the adult concerned". Section 25 states that this is

> "a document prepared by a local authority which (a) specifies the needs identified by the needs assessment or carer's assessment, (b) specifies whether, and if so to what extent, the needs meet the eligibility criteria [and] (c) specifies the needs that the local authority is going to meet and how it is going to meet them".

Intensity of Review

12. In R (Ireneschild) v Lambeth LBC [2007] EWCA Civ 234 the Court of Appeal cautioned against "overzealous textual analysis" of social worker assessments. Agreement was expressed with what had been said by Lord Brightman in Puhlhofer v Hillingdon LBC [1986] AC 484 at 518, saying among other things:

> "Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act, or abused their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed by judicial review."

13. In R (Lloyd) v London Borough of Barking & Dagenham [2001] EWCA Civ 533 the Court of Appeal held, among other things, that:

> "The court is not the appropriate organ to be prescriptive as to the degree of detail which should go into a care plan or as to the amount of consultation to be carried out with Ms L's advisers. In practice these are matters for the council, and if

> necessary its complaints procedure. If the council has failed to follow the Secretary of State's guidance and is arguably in breach of its statutory duties in relation to the way it carries out its assessment and what it puts into its care plans then aggrieved persons should in an appropriate case turn first to the Secretary of State. Where there is room for differences of judgment the Secretary of State and his advisers may have a useful input. The court is here as a last resort where there is illegality".

14. Subsequently, in R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin), Morris J said:

> "… 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, supra, paragraphs 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: Lloyd, supra, paragraph 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)".

The Decision under Challenge

15. As noted above, the decision under challenge is the assessment by the defendant's social worker, Mr Nadeem Choudry, completed on 6 March 2020.

16. Mr Choudry set out first the medication that the claimant is on and her reported health conditions, which are noted above. As regards carer details, there was an assessment of the situation of the claimant's mother, NG, noting her view that following emergency surgery on the claimant on 30 October 2019 and subsequent discharge home on 20 November 2019 her daughter's needs had changed following her hospital discharge and that she now required additional support around her personal care and activities of daily living and that she now required 2:1 support. Mr Choudry commented that she was unable to state exactly what the second carer would be doing. He also noted that during the claimant's recent hospital admission she was discharged without a recommendation to increase her care package as she was back at her functional baseline. There were no OT or physiotherapy reports to indicate that her needs had changed and these professionals were of the view that she was close to her pre-admission baseline.

17. Mr Choudry went on to remark that the recent behaviour support plan that was revised by Jennifer Preston and Leanne Bowditch on 3 February 2020 made no recommendation regarding the claimant's support needs, whether she required 1:1 or 2:1 support. However, the plan did make a number of recommendations for those supporting the claimant. As discussed, intensive interaction techniques should be used and firm touch applied when supporting her during personal care times and during the day.

18. Mr Choudry went on to refer to difficulties in arranging meetings with NG and real difficulties in obtaining objective information from her regarding her daughter's care and support needs. He said that much of the information had been gathered from past

reports and discussions with health and social care colleagues. He said that NG was acting as a second carer to support her daughter, which in effect was providing 2:1 support, which was not an assessed need, and was choosing to act as the second carer. She was also using her respite hours to provide additional support hours rather than using this as respite in order to have a break from her caring role. Mr Choudry felt that NG's needs as a carer were overshadowing her daughter's needs as she felt that the claimant needed additional support to manage her behaviour and she was providing this additional support as a means of managing her daughter's challenging behaviour without regard to the recommendations of the recent behaviour support plan. It stated that intensive interaction should be used during transition times and during personal care times by giving the claimant objects of reference to enable her to understand what was happening and also deep touch should be used rather than a light touch which caused the claimant to become quite anxious.

19. He noted that NG and the night-time carer had stated that the claimant got up during the night as she needed her pads changed and often would not go back to sleep and that as a result the carer would have to take her downstairs and sit with her until she got tired. He considered that further data from Just Checking would be required in order to ascertain whether there was a need for night-time support and how often this support was needed.

20. He considered that she could benefit from accessing leisure and recreational facilities outside the home, which would foster a degree of independence and benefit her greatly as she would have the opportunity to interact with others outside her home though there would need to be a planned transition to any leisure and recreational facilities. This would enable her mother to have a complete break from her caring role while the claimant was out in the community. In the past her mother had reported that she was unable to attend health appointments due to her caring role.

21. NG told Mr Choudry that the claimant exhibited challenging behaviours and erratic movements during personal care times and at other times. This had previously been discussed with her and she had been asked whether she had informed Jennifer Preston and Comfort Amoteng (care coordinator) of this as they would be able to help her develop techniques around managing the claimant's behaviours. He said that NG was quite dismissive of this suggestion and she said she was the claimant's mother and knew what was best for her. This had been discussed at the CPA (Care Programme Approach) on 3 February 2020 where NG stated that she needed additional 2:1 support during personal care times and when out in the community as the claimant's mobility had been impacted particularly as she now had a diagnosis of hip dysplasia and knee problems. It appeared to Mr Choudry from the behaviours described by NG that she was demonstrating her usual presentation following the hospital discharge and he could not see what had changed.

22. He considered that there had been real difficulties in obtaining objective information from NG regarding her daughter's care and support needs and with the support that she provided to her daughter, given that paid support was already in place. She informed the assessor that she was finding it difficult to manage her daughter's care and that she needed additional support, but Mr Choudry commented that she was unable to state fully what this additional support was for and this was also not reflected in the carers' logs. NG had been offered residential respite care at Orient Street and access to their sensory room, which would benefit the claimant and enable her mother to have a full

break from supporting her. Access to leisure and recreational facilities had also been offered as a means of alleviating any carer burden but to date all options had been declined by NG.

23. Mr Choudry referred to the time when the claimant was at Orchard Hill College, where she had a limited degree of independence and was able to take part in simple activities. For example, she had been able to travel on public transport with her carer, mobilise around the college with her support worker and there was a photograph of her walking up the stairs at college. This was disputed by NG, who felt that the college had exaggerated her daughter's abilities and also felt that her daughter was incapable of learning anything new due to her severe learning disability.

24. All four of the claimant's carers tended to suggest that the claimant needed 2:1 support due to her challenging behaviour and non-compliance with her care at times. They felt that she needed a great deal of support in order to keep herself safe as she had erratic movements. Mr Choudry felt that the behaviours described by NG were the claimant's usual presentation and he could not see where the situation had changed as he was not clear what tasks the second carer was performing. It appeared to him that NG and the carers were just reacting to the claimant rather than managing her behaviour during personal care times, which was placing some restrictions on the claimant. Mr Choudry was of the view that ESTIA could offer some training around supporting adults with a learning disability and their carers. This training was offered by the South London and Maudsley Trust ("SLAM"). The training would enable family and carers to support the claimant in a person-centred manner which could reduce the incidents of challenging behaviours as described by NG. He noted that there was a two hour gap when no carers were present and he was unable to ascertain from NG how she supported the claimant on her own as she did not give any detail about this.

25. Mr Choudry referred again to difficulties in arranging appointments for the assessment process. The night care logs were supplied and used as part of the assessment but the only ones that had been translated were the carers' logs from 22 December 2014 to 14 June 2019. Professor Strydom [the claimant's consultant psychiatrist] had stated that the claimant had a number of physical disabilities and a genetic disorder and congenital heart disease which was impacting on her day to day needs. However, this was not reflected in the recent Continuing Decision Support Tool assessment and would need to be revisited by the continuing health care team.

26. Mr Choudry referred to the claimant's previous attendance at Orchard Hill College every Wednesday from 9am to 3pm and the 1:1 support she had from her direct payments worker there. While at the college both as a full-time and part-time student, she made some progress around her independent living skills and was able to follow simple verbal cues and instructions from staff but did require intensive support in order to engage. She was able to mobilise independently with support whilst she was at college and there were photographs of her doing this. She did have distant support and was monitored by staff when mobilising. She was able to use Makaton to sign basic needs to let those supporting her know her likes and dislikes. She liked to be involved in the decisions around her care and liked to be supported with verbal, symbol and visual prompts. She did not attend any day activities but she did go out to the local park with her carer and other places. He noted that NG was her daughter's main carer and assisted the paid carers. Her father was unable to support the claimant or take her out into the community as he has a detached retina.

27. Mr Choudry went on to note under the heading of risks that the claimant has a tendency to rock her head back and forth and could potentially bang against objects in her immediate surroundings. She would need to be monitored to ensure she was safe. She also demonstrated self-injurious behaviours. In the assessment completed on 20 August 2019 NG said that the claimant had had a fall approximately three years ago and now said that the claimant fell almost every week, but she was unable to give the assessor any dates of recent falls or the circumstances leading to the fall, and the carers' logs had not recorded any falls either within the home or out in the community. The claimant was at risk of falling from the stairs when transferring but this potential risk could be mitigated by downstairs living. The home improvement agency had authorised the work to be carried out and that had also been agreed by the housing association which owns her home and they had agreed to pay for the aids and adaptations without the need for a Disabilities Facilities Grant. The housing association had agreed to rehouse the claimant and her mother temporarily while the work was being carried out.

28. Mr Choudry noted that the claimant has demonstrated challenging behaviours at home but these behaviours were not replicated in other environments, for example when she was a full-time student at Orchard Hill until 2016. He thought that this could be due to having a structured day while at Orchard Hill. She had a tendency to lash out physically at those who got too close to her. There was a potential risk in that regard to carers. There was also a risk of falls when transferring on the stairs with her carers as they could all potentially fall but, as he had already noted, this could be mitigated by downstairs living.

29. Mr Choudry was unable to see the claimant during the visit and could not comment on her visual appearance. He had arranged to observe her at the local park at 3pm on 24 January 2020 at a prearranged location but was unable to locate her or to establish contact with her mother.

30. As regards communication, though the claimant is non-verbal, when she was at Orchard Hill College she was able to use simple Makaton signs to convey basic needs. According to her communication passport she liked to be involved in making choices but would need visual prompts and symbols in order to assist her. She was also able to follow verbal prompts and respond accordingly with intensive support to enable her to respond. He noted that she was, however, unable to do any of these tasks now. She was able to take someone's hand and show them what she wanted. She would need to have intensive interaction where those supporting her could mirror her movements and vocalisations in order to reduce her anxiety. Her mother felt that the claimant was never able to communicate her needs and that the college had exaggerated her abilities. In the past she had informed Mr Choudry that the claimant was not capable of learning anything due to her severe learning disability. However, Mr Choudry thought that given the right level of support she would be able to communicate simple choices that would promote and enable her independence. He noted that the claimant's mother had disputed what other professionals had stated regarding the claimant's communication needs and felt it was a misrepresentation of the claimant as she was unable to communicate. He viewed her challenging behaviour as a form of communication, particularly during transition times and during personal care times, that she was distressed about something and did not want the task performed on her by her mother or carer. He noted that she had a tendency to push others away who were in close

proximity to her as she liked to have some space between them as this would reduce her anxiety and keep her calm. Her behaviours tended to escalate during transition times and particularly during personal care times. This was a form of non-verbal communication. Leanne Bowditch had informed the CPA meeting on 3 February 2020 that the claimant could benefit from a firm touch during personal care times, which could alleviate some of her anxiety. She would benefit from Makaton and objects of reference being reintroduced into her day-to-day routine. Mr Choudry had referred the claimant to a speech and language therapist.

31. As regards maintaining personal hygiene, Mr Choudry asked NG how she and the carer supported the claimant as he wanted more detail particularly in terms of tasks. She said that all the things she did prevented her from harm and that the claimant needed two people with her personal hygiene, help with changing her pads and when going out. She had a lot of movements she could not control and two workers prevented her from hurting herself. He told NG that he did not have an understanding of what tasks the carers actually did and she said that when in the bathroom one person helped to get her changed while the other person made sure she was safe and did not hit her head against the walls or window. She would stand in front of the claimant to prevent her from hitting her head against the wall. During personal care a second carer was needed to monitor her so she did not lash out at the first carer attending to her personal care, particularly if the carer had not noticed any movement from the claimant while performing personal care tasks. NG had to get everything ready during personal care times, for example laying out underwear and clothes and getting wet wipes out and getting everything ready for the day. Mr Choudry said he was unable to ascertain from NG how long these tasks took and why it was necessary for her to undertake them, as a carer could undertake these tasks as well.

32. He noted that the claimant required full assistance to undertake all aspects of her personal care and to maintain her hygiene and without support in this area she would be placed at a significant risk of poor personal hygiene/presentation and associated health implications. He noted again what NG said about the support needs and the carers had previously said that the claimant needed two people to support with personal care due to her behaviours that might place her at risk of injury (banging her head or erratic body movements). An up-to-date view from the carers had not been obtained as they had been unwilling to attend meetings in order to do this.

33. Mr Choudry noted that Professor Strydom stated in the CPA meeting on 3 February 2020 that the claimant required 2:1 in the area of personal care and when out in the community. Mr Choudry considered, however, that this view was not based on any formal health assessment but only on NG's view. It was Mr Choudry's view that NG and a paid carer were supporting the claimant in order to manage her challenging behaviours during personal care times as only one person was performing the personal care tasks.

34. He had also considered Ms Hillier's OT report regarding the claimant's needs and had discussed these with Siobhan Chapman (Southwark community OT). Many of Ms Hillier's recommendations concerned NG's view that the claimant required 2:1 support with personal care and when out in the community. Some of the recommendations discussed the claimant's stair transfers and the use of OT aids. Many of the recommendations discussed safety measures, however, these could now be mitigated as the housing association had agreed to provide a downstairs adapted bathroom and

bedroom. Mr Choudry had referred the claimant to the community OT, who would be arranging a home visit and wanted to do a full functional assessment, and had also referred her to the community physiotherapy team, who would be assessing her mobility.

35. As regards the personal care situation, it was Mr Choudry's view that the claimant would not ordinarily need 2:1 for personal care but due to the current unadapted bathroom she did at present in order to manage risks. Also, she did not need 2:1 to assist with toileting when attending college, presumably because the toilet was accessible as it would not be down to any changes in her behaviours as they were the same now as they were then. He was of the opinion that she did need the support of 2:1 for a temporary period until the adaptations had been made for a downstairs bathroom and bedroom. In order to manage her behaviours, carers were at times using physical intervention which was highly restrictive and not believed to be in her best interests as it tended to aggravate her behaviour. He said that the adaptation of the bathroom had been an ongoing recommendation which was initially made four years ago but the claimant's parents, who are the main tenants of the property, failed to agree to this work being undertaken until very recently.

36. He had identified that the claimant was not being supported in line with her communication needs and behavioural management plan and recommendations. This was impacting her specifically in the domain of maintaining personal hygiene as she was not being included or informed in the process of the undertaking of her personal care. He commented that this equated to care being done to, as opposed to being done with, the claimant, and her presenting behaviours during this task were consistent with her communicating that she was not being prepared regarding what to expect.

37. As regards managing her toilet needs, she required support from her mother and carers. She required prompting and supervision with toileting. She wore incontinence pads both day and night as she is doubly incontinent. While she was at Orchard Hill College she had one carer and was able to indicate when she needed the toilet by using a Makaton sign. Mr Choudry noted that during personal care times the carer and her mother were in close proximity to her and that in one instance the carer would hold her arms, thus restricting her movements, which could cause some anxiety to the claimant which would need to be discussed at a best interests meeting as being a restriction and deprivation of her liberty. She had difficulty when transitioning and needed to be given simple choices so she could be a part of what was happening as she needed time to process what was about to happen to her. She did not tolerate people well in her immediate space and tended to get quite anxious when this happened, particularly during personal care times. These could be reduced by some degree if she was involved in the task, for example giving her a flannel to hold. Carers needed to understand her communication and work at her pace rather than being prescriptive during personal care times.

38. The carers' logs all reported that the claimant required 2:1 in order to manage her toileting needs as she demonstrated challenging behaviour and erratic movements. Mr Choudry considered that this could be the claimant's way of communicating that she did not need or want changing and he felt that the care workers were not following any techniques from the behaviour support plan in order to manage the behaviour, the plan having been developed by Kate Blamires in March 2017. This plan had now been revised by Jennifer Preston (Behaviour Support Practitioner) and Leanne Bowditch

(Occupational Therapist) on 3 February 2020 and a translated copy had been given to the family. Mr Choudry was of the view that one carer could assist the claimant with her toileting needs as this would be the least restrictive option for her. Having two carers in a confined space would cause her to be challenging as her personal space was being encroached. When the proposed aids and adaptations had been installed this would further eliminate any risks during toileting and the need to mobilise up and down the stairs to get to the bathroom as everything that she required would be on the ground floor.

39. With regard to being able to make use of the home safely, as with other headings in his report, Mr Choudry was, he said, unable to assess this current outcome as he experienced real difficulties in arranging meetings with the family despite numerous attempts to arrange visits and the only date offered was 24 January 2020. He was unable to assess this outcome on that date and referencewas made to the assessment completed on 20 August 2019. However, he felt that the claimant would require the support of one carer in order to keep herself safe. Her bedroom and bathroom were upstairs. Currently a parent and carer transferred her on the stairs, one person standing next to her while the other person stood in front of her and walked down the stairs backwards, which he thought was very risky and could result in potential falls. He was unable to see how the second person would prevent any falls as they themselves would potentially fall. This means of stair transfers had not been assessed by an occupational therapist, but Ms Hillier had observed stair transfers via a phone video recording dated 3 February 2019 and felt that the claimant was at risk when mobilising on the stairs and recommended downstairs living, which was a recommendation made by the community OT previously and discussed earlier in the report. Mr Choudry had seen videos of the claimant mobilising on the stairs where she appeared to have some safety awareness, for example, she was able to hold on to the banister while being supported by one carer and although she was not looking where she was going she was able to feel for the step before planting her foot on the step.

40. NG felt that the claimant had difficulty sleeping and tended to wake up during the night. Usually the carer would arrive at 10pm and try to coax her to bed and keep trying every 30 minutes or so until she agreed to go to bed and she was usually ready for bed between 11.30pm and 1am. She did not sleep through the night and was up between 3am to 5.30pm. The carer along with NG would change her pads and if she was not ready for bed her father, CG, would take her downstairs with the carer.

41. Mr Choudry commented that the documents as they stood just gave a summary of events on most nights but did not give a detailed specific account over a period of time about the night-time routine. He was of the view that the claimant would need the support of one carer to enable her to make use of the home safely during the day as she has a carer who supports her for eight hours during the day: outside those hours she should be supported by family. This need could be met by NG, particularly when the aids and adaptations have been installed and the claimant had been moved downstairs.

42. With regard to the heading of developing and maintaining family or other personal relationships there were the difficulties referred to of assessing this outcome because of the problems in arranging meetings with the family. Mr Choudry said that the claimant did not take part in any activities or mix with her peers as she spent all her time at home with her family and carers but she does go to the local park and shopping centres. He said that she was somewhat isolated and could benefit from accessing recreational and

leisure facilities outside the home and have an opportunity to mix with her peers. He felt that she would require the support of her carer/mother in order to maintain family contacts and relationships with her peers through attending appropriate groups and activities.

43. With regard to accessing and engaging in work, training, educational or volunteering, Mr Choudry noted that the claimant is not currently attending college and was of the view that she would require the support of one carer in order to access community services. However, her mother had said that the claimant was not capable of learning anything as she has a severe learning disability and he considered that this view was depriving the claimant of an opportunity to learn and grow and attain a limited degree of independence away from the parental home.

44. With regard to making use of necessary facilities or services of the local community including transport or recreational facilities/services, at the Care Programme Approach (CPA) meeting on 3 February 2020, chaired by Professor Strydom, it was considered that the option of the claimant attending the sensory room at Orient Street was a good option, although NG had said she had visited Orient Street on three occasions and would not send the claimant there, giving no reason for this.

45. The claimant's mother had said that the claimant needed 2:1 support when out in the community in order to mobilise safely due to her difficulty with her mobility and the risk of falls. Mr Choudry considers that it was not clear how the second carer would prevent her from falling and the risk to carers. He had referred her to the community physiotherapy team. Until her mobility had been assessed the safest option would be for her to use an attendant-propelled wheelchair where she could be assisted by her family or carer. He was of the view that she could be supported by one carer to access the community in a wheelchair. She had been observed by various professionals when out in the community mobilising with one carer including attending the Mencap day centre. If she started to get distressed she would be taken out into the garden area and given the chance to calm down.

46. Under the heading: eligibility for ongoing social care support, Mr Choudry noted the claimant's eligibility and the fact that she needed full support in all her activities of daily living. He felt that much of her behaviours were her way of communicating her displeasure at a task particularly during transition times and during personal care times and that she needed to be given simple choices in order to prepare for any changes. Examples of this were using intensive interaction, objects of reference, using eye contact, facial expressions and taking turns during any interaction where she had an opportunity to lead the interaction. He considered that it was preferable to use deep touch during personal care times where a firm touch could be used rather than a light touch as she found it painful or uncomfortable which could cause her to feel overly alert and distressed. This had all been discussed in the recent behaviour support plan revised by Jennifer Preston and Leanne Bowditch on 3 February 2020.

47. Mr Choudry had viewed NG's witness statement where she said that when the claimant got up during the night she shouted and screamed and stamped her feet in her room. He had also looked at the carers' logs, which did not show this. He noted that when she did get up in the night there was no attempt to encourage her to go back to sleep as she was brought downstairs and quietly sat in the kitchen with her carer. If she were living in a placement or supported living scheme she would be encouraged to go back to sleep

and remain in her room. This appeared to be her night-time routine as she had learned over time that she could go downstairs when she woke. He considered that the carers' logs did not indicate that she had a significant level of need that would warrant additional support which could not reasonably be met by her parents. With regard to the logs, they were incomplete as they only covered partial months, for example, the logs for November 2019 only started on the 20th of that month as she was discharged from hospital on that day. He commented that there appeared to be no change to the claimant's routine or the support provided by the carer and parents that would warrant additional funded support to be provided to her. He agreed that the logs showed an erratic sleep pattern, but that the claimant did tend to sleep and wake up in the early hours of the morning and was far from being described as an insomniac. He said that there was no attempt to encourage her back to bed as she was taken downstairs and would spend time sitting in the kitchen not engaged with any activities as she and the carer were sitting in silence. He felt that the logs did not give a good indication of how she was supported during the night, what happened when she woke up and how the carers were alerted that she had woken up and how the carer interacted with her, as she went from waking up to being alert and wanting to go downstairs. Telecare would give a definitive view of her actual care needs. He considered that she appeared to require periodic support during the night which might include personal care in the form of changing her incontinence pads and redirection back to bed. He considered that it was clear that she was not being supported to follow a structured sleeping plan which would be beneficial to her, for example providing a clear night-time routine and a set bedtime and wake time. As he had previously described, her parents had not fully engaged in the assessment process. He was aware that they had their own health needs that were impacting on their ability to support the claimant at home. It was not clear what their long-term care and plans were for the claimant and supported living could be explored as a possible future option.

48. He felt that there was a danger that the service provision at this time was not necessarily being driven by what was the best outcome for the claimant as her needs were being lost in translation. This, he considered, was especially evident in the amount of time and effort taken up by him having to deal with the constant stream of demands and complaints from her mother's solicitors. He felt that though it was right and proper for her to have a platform to represent her daughter, this was reinforcing her low view of Southwark services. He had tried to engage with the family in the assessment process and made a referral to an independent carer advocate to support the claimant and her family in the assessment but they declined to engage with the advocate and stated that all requests for contact be made via their solicitor. He considered it to be clear from the discussions that the claimant did not have an opportunity to develop and learn and interact with her peers as she was somewhat isolated from the wider community. Her daily routine appeared to revolve around her home; family and carers, going to the local park and then back home. There appeared to be no structure to her day or stimulus other than being supported by family and carers and she did not have the opportunity to develop as an individual and attain a degree of independence which could be around making simple choices about what to eat, by being shown objects of reference or pictures of food items and other things of interest. He was not clear why she was not being supported to explore activities of interest and experiences geared towards her sensory needs and level of cognition. She was also not provided with any opportunities to develop a support network outside of the home to assist her with her development as a young woman and to be around her

peers. As noted above, her mother did not agree to her attending the sensory room at Orient Street and gave no reason. Other professionals such as Professor Strydom, Leanne Bowditch and Comfort Amoteng working with the claimant were in agreement with the assessor that the claimant would benefit from attending the sensory room. It was not clear whether she was being given an opportunity to try and attain a level of independence or whether this was due to staff training issues. Though her mother said that she was unable to learn anything, while she was at Orchard Hill she had a limited degree of independence, was able to feed herself, use simple Makaton signs and was able to access the community for support and use public transport with support, as there were photographs of her doing this in college reports. Though her mother felt that the college exaggerated her daughter's needs, the assessor had no reason to doubt the validity of the college's views.

49. He went on to conclude that the claimant's needs did not indicate that she needed a constant level of 2:1 support to meet her eligible needs as was being requested by her mother and echoed by Professor Strydom. It was clear to Mr Choudry that the claimant did require a capable home environment that could effectively and safely accommodate her needs and adapt to any changes that may occur in the future. This was in the process of being addressed with the installation of a ground floor accessible injury-reducing bathroom and her bedroom being moved downstairs. She would need a temporary increase in her support to manage safely her personal care. She required support that would be consistent in the implementation of the behavioural support guidelines that had been developed to assist with managing her behaviours and anxieties. Her ability to communicate and make basic choice pertaining to her daily life needs was to be promoted by the reintroduction of Makaton or objects of reference by those supporting her.

50. Parties involved in completing the assessment were noted as being Siobhan Chapman, Patricia Pellegrini, Ruth Sheridien and Jennifer Preston.

Discussion

51. I have had the benefit of detailed and helpful submissions, both oral and written, from both Counsel. In the interests of brevity, I propose, rather than setting out those submissions, to incorporate the points made in my analysis of the issues discussed below.

52. Ground 1 is a rationality challenge, and is supplemented by arguments that there are breaches of Regulation 5(2) and of the Guidance. I should say at this juncture that I agree with Mr Chataway that arguments relating to breach of Regulation 5(2) were sufficiently adumbrated in the grounds. Breach of the Regulation per se was not pleaded, but the duty to consult which is set out in the statutory guidance was argued, and these points were developed, more specifically with regard to Regulation 5(2), in the skeleton argument.

53. It is, I think, common ground that there are five aspects of the defendant's assessment which are said to give rise to irrationality.

(1) Behavioural Support/Management

54. An element of the reasoning in the decision under challenge is that, particularly during personal care, the claimant's challenging behaviour was likely to be her means of communicating her lack of dignity and lack of participation in decision-making, and that a positive behavioural support strategy and less restrictive approach would assist but was not being implemented. Thus, at page 114 of the bundle Mr Choudry identified that the claimant was not being supported in line with her communication needs and behavioural management plan and recommendations and this was impacting her specifically in this domain as she was not being included or informed in the process of the undertaking of her personal care. He considered that this equated to care being done to, as opposed to being done with her, and her presenting behaviours during this task were consistent with her communicating that she was not being prepared regarding what to expect. This is a point that he refers to elsewhere in his report, for example at page 101 to 102 where he said that NG was providing this additional support as a means of managing her daughter's challenging behaviour without regard to the recommendations of the recent behaviour support plan.

55. The point is made on behalf of the claimant that the assessor did not spell out the ways in which it was considered that the claimant's parents and carers were failing to follow the behaviour support plan. But the weightier point made on her behalf is that this approach failed wholly to take account of central evidence from behaviour experts as to the limited scope for any improved behavioural management. It is the case that the claimant's family and carers have been receiving advice and support from the Behaviour Support Service since 2015. In her interim report of 20 August 2019, the behaviour expert Ms Preston recommended that the "family and support staff should continue to use the strategies provided in the behaviour support plan", which would be updated to include "some minor changes" from the plan which was already in place. This can be seen at page 684 of the bundle. Relevantly, the point is made that there was no suggestion in Ms Preston's report that the earlier plan was not being implemented.

56. It is also relevant to note the joint report of Ms Preston and the claimant's consultant psychiatrist, Professor Strydom. Among the points made there can be seen at page 755 of the bundle the following:

> "Although [the claimant] benefits from consistent support following the principles set out in the positive behaviour support plan, in order to deliver this plan she requires significant levels of support not just from the family but also from paid carers for most of the day."

They went on to say the following:

> "It is unfortunately also highly likely that [the claimant] will continue to display significant levels of behavioural issues despite the support plan being in place and being delivered consistently, due to the chronic nature and complexity of her needs."

57. It is right to note that there appears to be no reference to these points in the decision under challenge.

58. A further point made on the claimant's behalf, again referring to the joint report of Ms Preston and Professor Strydom, is the expression of their view, again at page 755, that:

> "[The claimant] requires significant levels of support, including 2:1 during personal care e.g. showering and to enable her to go out without support from her family. In addition, some level of night-time support is also necessary to prevent family carer burnout."

59. The assessment refers at page 101 to the recent behaviour support plan revised by Ms Preston and Leanne Bowditch on 3 February 2020 as making no recommendation regarding the claimant's support needs and as to whether she required 1:1 or 2:1 support. Though, as the claimant's accepts, neither Ms Preston's 3 February 2020 final "Discharge Summary Report" nor the updated behaviour support plan dealt with the level of care and support required, it can be seen clearly in the record of the Care Programme Approach review meeting of that same day that though Ms Preston was not present at the meeting, she had "made recommendation in her report for 2:1 support for [the claimant] in order for her PBS plan strategies to be implemented sufficiently". The point is made on behalf of the defendant that Ms Preston had not made a recommendation for 2:1 support: this is a point, as noted above, which is accepted on behalf of the claimant. However, this has to be seen in the context of the specific recommendation made by Ms Preston and Professor Strydom referred to above. Though the point is made on behalf of the defendant that the visit and report of Ms Preston and Professor Strydom was taken into account by adding two hours of care per day to be used as 2:1 support for washing/showering the claimant, there is no reference in the decision letter to that joint report when this conclusion was reached. As regards the part of their recommendation that there be 2:1 support for walks outdoors, that will be addressed below. It is relevant to bear in mind that when interviewed in January 2019 the claimant's paid carers stated that they had not been told of the support guidelines or the plan dated in March 2017. That of course, as is argued on behalf of the claimant, does not show that the carers were acting outside the guidelines, but I see force also in the further point that it predates the involvement of the Behaviour Support Service and in particular Ms Preston during 2019, during which time she observed the claimant with both her parents and the paid carers at home, at college and in the community and described her care in consistently positive terms. Her recommendation that "family and support staff should continue to use the strategies provided in the behaviour support plan" was a good indication that whether aware by then of the support guidelines or plan or not, the carers were acting essentially in conformity with it.

60. I should say that I see nothing of any substance to the point raised at paragraph 24(d) of the claimant's skeleton and responded to at paragraph 31(d) of the defendant's skeleton. It relates to Ms Preston's interim report of 29 August 2019 in respect of which it was said in the original detailed grounds of defence that Ms Preston had not commented upon whether the plan was being followed and was in any event silent as to the need for 2:1 support. This was responded to by Ms Preston and Ms Bowditch at the claimant's solicitor's invitation, stating that conjecture that the behavioural support plan recommended PBS and not additional restraints, i.e. additional carers, or that the recommendation of limiting the number of people in the same room as the service user would extend to additional carers were not matters that were part of the remit of the behaviour support plan and that they objected to it being used in this way. The point that ultimately emerged from this is a matter that I think is common ground that at that point Ms Preston did not refer to the need for 2:1 support, although, as set out above, in due course together with Professor Strydom she did do so clearly.

61. Bringing these matters together, it appears to me to be sufficiently clear that there was evidence to show that the behaviour support plan was being followed, and that evidence was not referred to by Mr Choudry when coming to his decision. His conclusion that it was not being implemented was one which did not take full and sufficient account of the full range of the evidence before him. As a consequence, I consider that his report is materially flawed in this regard, going beyond simply disagreement to failure to take into account all evidence which a reasonable decision maker would take into account.

(2) Sleep Difficulties

62. There is a degree of common ground as to the claimant's sleep problems. She wakes almost every night in the early hours and is taken downstairs. This was the basis upon which interim relief was granted in December 2018. NG's evidence was that when she wakes she shows she wants to get up and if ignored will make a clicking noise or grunting before screaming. Before the screaming starts NG takes her to the kitchen, she sits in her activity chair and when she stops bouncing she takes her upstairs and puts her to bed until she wakes again. This account was supported by room sensors installed by Just Checking over the period October to November 2018. The data from the sensors indicated that "support required every single night, multiple times, i.e. more than once or twice". The paid carers confirmed the lack of sleep in logs after night-time funding was put in place and there was a detailed analysis of those logs provided by the claimant's solicitor for the period up to 30 June 2019. It is accepted that the claimant has a severe and entrenched history of sleep difficulties which has proven resistant to basic sleep hygiene techniques. This includes evidence going back to 2013 and the assessment of 3 January of that year which noted that even then the claimant "has difficulty sleeping and has been prescribed Melatonin to help her with this". Professor Strydom in an email of 11 February 2019 said that the best description for the claimant's night-time difficulties was insomnia, for which she was being treated with Melatonin. In a later email of 3 June 2019 Professor Strydom stated the following:

> "Furthermore [the claimant] has a long-standing history of sleep difficulties that have been refractory to medical intervention and sleep hygiene techniques. Several medications have been tried without success; no intervention that was put in place by the family has been successful … We therefore strongly recommend ongoing overnight support for the time being."

Ms Preston in her interim report of 29 August 2019 referred to the claimant having a history of long-term sleep difficulties and that it was important to understand that lack of sleep could lead to her being less able to tolerate demands and/or changes within the routine or environment.

63. Mr Choudry noted that the logs did show an erratic pattern but he said that the claimant tended to sleep and wake up in the early hours of the morning and was far from being described as an insomniac. He said that she appeared to require periodic support throughout the night which might include personal care in the form of changing her incontinence pads and redirection back to bed. He went on to observe that when she did get up there was no attempt to encourage her to go back to sleep as she was brought downstairs and quietly sat in the kitchen with her carer. He considered that if she were living in a placement or a supported living scheme she would be encouraged to go back to sleep and remain in her room. He said that this appeared to be her night-time routine as she had learned over time that she could go downstairs when she woke. He

considered that the carers' logs did not indicate that the claimant had a significant level of need that would warrant additional support which would not reasonably be met by her parents.

64. Again, there is no reference in the assessment to what was said in particular by Professor Strydom in this regard. Describing her as being far from being described as an insomniac goes entirely against the view of Professor Strydom, and I do not consider that criticising a view so directly opposite to that of an expert can be described as it is by Mr Tankel as overzealous textual analysis. It amounts, in my view, to a failure to factor in and give consideration to a material piece of evidence. The assessment under challenge does not identify any evidence upon which the assessor relied in considering that the matter could be resolved simply by the claimant being encouraged to go back to sleep rather than being brought downstairs until she settled again. There is no reference for example to NG's evidence that she makes increasing noises to the point of screaming if left in her room. The points made by Professor Strydom in the email of 3 June 2019 required to be addressed specifically rather than responded to in effect by conjecture as to how the problems might be resolved.

65. A side issue to this point is the debate between the parties as to monitoring. The point is made on behalf of the defendant that the difference between them could be between the need for waking night support or not at a cost to the defendant of approximately £50,000 a year and to the family of carer exhaustion. Disagreement appears to revolve essentially around the mode of monitoring rather than the need for monitoring per se. The defendant has proposed installing door sensors and cameras, which would inevitably involve some intrusion into the privacy of the claimant and her family, though there is a range of safeguards as described at paragraph 37 of Mr Tankel's skeleton, including the fact that the camera only turns on when it detects motion, it would only be on during the claimant's sleeping hours and the data is stored on a secured cloud. This has been refused by the claimant's parents. The local authority had agreed to fund an observer to attend for four nights but the family insisted on a three week introductory period, which the defendant considered would be unduly expensive and that in the circumstances telecare monitoring was the only reasonable and proportionate means of obtaining the relevant information.

66. The point is made on behalf of the claimant that monitoring has not been refused, but rather that issue has been taken with the kind of monitoring to be carried out. The claimant's parents have agreed to an independent carer being permitted to sleep over in the house to observe what was happening but this proposal, it seems, was never pursued. The point is further made on behalf of the claimant that it is not open to the defendant to draw any adverse inference and unreasonable to demand that further intrusive monitoring by sensors and camera is put in place until they can demonstrate that they have addressed the relevant medical evidence about the severity of the claimant's sleep problems and that if despite the medical evidence they have continuing concerns they could pursue other less intrusive steps to address those concerns such as making further enquiries with Professor Strydom and/or the sleep clinic.

67. The choice as set out by the defendant is either for the court to declare that withdrawal of support is unlawful and there may therefore be an ongoing obligation to fund £50,000 of possibly unnecessary provision for a year probably for many years or to find that withdrawal of support would in principle be lawful and that the defendant will maintain an open mind as to the need for waking night support.

68. It does not seem to me that the choice is as stark as that. I see force in the point made on behalf of the claimant that the essential issue here is the need to address the relevant evidence about the severity of the claimant's sleep problems which, as set out above, I do not consider has been done. Determining that this aspect of the assessment is unlawful does not entail the necessity of £50,000 per year funding having to be provided by the respondent in this regard. Any defects in the decision under challenge are open to being cured by a re-evaluation of the claimant's needs on the basis of a full consideration of all the relevant evidence. It is entirely possible that a lawful assessment taking into account all the evidence would reach exactly the same conclusion as has been already reached. But the matter can clearly not be prejudged, and my task in this case is to consider the lawfulness or otherwise of the decision rather than the implications that may flow from it, in any event.

(3) Occupational Therapy Evidence

69. Here it is argued on behalf of the claimant that the defendant has irrationally rejected the occupational therapy evidence of two privately instructed occupational therapists, Ms Palmer and Ms Hillier, for 2:1 support on the stairs and when out for walks. The report by Ms Hillier, in her initial assessment and manual handling plan of 25 November 2019 and final, very detailed and fully sourced, report of 29 November 2019, set out in detail reasons why the claimant needed 2:1 care including for all personal care, toileting and dressing and getting up and down the stairs in her home. It is relevant in this regard to note that her findings were based on first hand observation of the claimant at home. On behalf of the respondent the point is simply made that the two reports were taken into account but also the defendant obtained its own occupational therapy specialist input, from Ms Pellegrini and Ms Chapman, and was entitled to prefer those reports over those of the therapists privately commissioned by the claimant's family. The point is made on behalf of the claimant that the assessment only purports to address Ms Hillier's report in relation to two of the ten eligibility criteria, namely: "maintaining personal hygiene", page 113, and "being able to make use of the home safely" at page 117. Mr Choudry made it clear that he had discussed Ms Hillier's report with Ms Chapman. It is relevant to note from Miss Chapman's email to Mr Choudry of 30 January 2020 that she said she had had a very cursory look at the independent occupational therapist's report, and though she commented on a number of matters, said by way of conclusion that she could not say whether Ms Hillier's recommendations were accurate or not as it had been a year since she herself saw the claimant. She recommended further occupational therapist action as Ms Hillier had indicated a significant change in function. It does not appear that at the time when the assessment was concluded any of the occupational therapists had advised that the 2:1 support provided on the stairs was unnecessary. Advice from Ms Chapman that 1:1 support should be sufficient came after the decision in a statement dated 23 April 2020.

70. It is argued on behalf of the claimant that in any event neither the assessment nor Ms Chapman's statement properly addressed the issues raised with regard in particular to the issue of mobility on the stairs. Mr Choudry noted the process by which currently a parent and a carer would transfer the claimant on the stairs, one standing next to her while the other stood in front of her and walked down the stairs backwards, which he regarded as very risky as potentially resulting in falls. However, it can be seen from Ms Pellegrini's note of a home visit dated 29 January 2019 that the main reason why at least two people were required to support the claimant on the stairs was that she had a

tendency to bang her head on the wall, this was something that caused her carers to be very concerned. It is also relevant to note that Ms Hillier's findings were based on first hand observation.

71. Bringing these matters together, though I do not consider that there was any unlawfulness in the failure to go back to Ms Hillier for further comment, I do consider that the decision maker did not properly take into account her evidence and the weight of the evidence with regard to the need for 2:1 support. Certainly, the defendant has accepted that 2:1 care should be funded for two hours a day to reflect personal care matters and that is a point I shall come on to shortly. But the consideration given in particular to Ms Hillier's evidence is, in my view, unduly limited, and fails to take into account what Ms Chapman said, as set out above about having only had a very cursory look at Ms Hillier's report and the fact that she did not know whether her recommendations were accurate or not as it was a year since she herself had seen the claimant. It does not appear to me that there was a sufficient evidential base for the decision maker to come to the conclusions he did with regard to the occupational therapy evidence, and accordingly this aspect of the decision is also, I find, materially flawed.

72. As regards the issue of the funding of 2:1 care for two hours a day to help with personal hygiene, it is argued on behalf of the claimant that the concession mistakes the evidence as to the reasons for both the current need for 2:1 care and the need for adaptations. It is argued that there is no indication in any of the expert evidence that the problems posed by the claimant's involuntary movements and/or unpredictable behaviour would be answered by further adaptations, and reference is made to Ms Hillier's report in that regard. At the outset it is argued that the reason given for the adaptation of the ground floor bathroom and bedroom was so that the claimant did not have to use the stairs repeatedly. The assessor's view is that 2:1 support is needed for a temporary period until the adaptations have been made to the downstairs bathroom and bedroom.

73. The main point made by the claimant in this regard, to which I see force, is the argument that the limitation of additional funding for two hours a day is irrational. It is, as is argued, common ground that the claimant suffers from both urinary and faecal incontinence. She therefore requires showering not only at regular times in the morning but at unpredictable times in the day and night. As is argued, that need is not answered by a provision limited to two hours a day. Given the acceptance of the need in this regard, I agree that the limiting of this to two hours is irrational, and again this element of the decision is materially flawed.

(4) Mobility and Use of Wheelchair

74. The claimant takes issue with what is said by Mr Choudry at page 120, that he had referred the claimant to the community physiotherapy team, and that until her mobility had been assessed the safest option would be for her to use an attendant-propelled wheelchair where she could be assisted by her family or carer. Reference is made to the evidence before Mr Choudry which emphasised that physical activity and stimulation form a central part in the management of her condition and behaviour, reference in particular being made to the updated behaviour support plan of 3 February 2020 in respect of sensory needs (page 764) and activities (page 770). It is argued that in the circumstances it was not open to the defendant to conclude that her needs could properly be met by limiting her to a wheelchair and at the very least the defendant

could not rationally reach this conclusion without carefully addressing the impact of the proposal on her wellbeing generally, in accordance with the section 9(4) duty.

75. On behalf of the defendant the point is made that they accept that the claimant has the strength and ability to mobilise herself but requires 1:1 care to help and support her. It is noted that she takes long walks each day, up to five hours, when she requires such support, and this is funded by the defendant. It is argued on behalf of the defendant that five hours of walks may be overly taxing to the claimant and to the extent that it is, a wheelchair might be useful at least part of the time. The point is made that the claimant is said to suffer from frequent falls although evidence of this has not been provided. As noted above, it was said in the joint report of Ms Preston and Professor Strydom that the claimant requires 2:1 support inter alia to enable her to go out without support from her family. It does not appear that this evidence was referred to when the assessor came to the conclusion that he did with regard to making use of necessary facilities or services of the local community including transport and recreational facilities/services. He had been unable to observe her when it was arranged that he would do so, as he did not see her and was unable to make contact with her mother. A comment is made in the decision is that it is not clear how the second carer would prevent the claimant from falling and the risk to carers. This is stated in response to the claimant's mother stating that the claimant needs 2:1 support when out in the community in order to mobilise safely due to her difficulty with her mobility and risk of falls. But that was not the only evidence before the assessor. There was what was said by Ms Preston and Professor Strydom as referred to above. The conclusion at page 120 that the assessor was of the view that the claimant could be supported by one carer to access the community in a wheelchair, having been observed by various professionals when out in the community mobilising with one carer and with one carer in the group room when she used to attend the Mencap day centre, does not take account of that evidence. It was not therefore simply a matter of the evidence of NG but the evidence of the professionals and the failure to take into account that evidence in that part of the assessment is, in my view, also unlawful.

76. Bringing all these matters together, I conclude that the claimant has made out ground 1 and identified elements of the assessment which are unlawful. This is not just a matter of disagreement. The legal test, as set out above, is a high one, and I have no doubt that Mr Choudry carried out a conscientious evaluation of the claimant's circumstances. But there were, in my judgment, material pieces of evidence which he did not take into account in coming to the conclusions that he did and that the assessment is as a consequence unlawful.

Ground 2, Failure to complete a Carer's Assessment of the Claimant's Father

77. Here it is argued on behalf of the claimant that there was a failure to adhere to the undertaking in the response of 16 December 2019 to review not just the claimant's assessments but the carer's assessments also, by the anticipated date of 7 February 2020. However, the assessment of 12 March incorporated a new carer's assessment of the claimant's mother only.

78. In response to this the defendant argues first that CG is not a party. This point is, in my view, effectively answered by the argument that the purpose of the carer's assessment is to assess among other things whether the carer is able and likely to continue to be able to provide care for the adult needing care and what support should be put in place

to enable that to happen. Clearly, the claimant has a sufficient interest to pursue this point.

79. The second point made on behalf of the defendant is that the issue is academic in that there is no dispute about the level of care that CG has been assessed as providing, and carer's assessments of him were completed in March 2019 and July 2019 and these have never been challenged. The point is made on behalf of the claimant that, though those assessments did set out the care and support which CG was providing, the defendant's position remained that support was not necessary and no support should be provided to him over and above the current respite provision. The defendant contends that questions about the level of care that the claimant requires are a matter for her needs assessment, not assessment of her father's needs as a carer, which is about the support that he reasonably requires in order to support him to discharge his necessary caring role.

80. Again, I agree with the claimant on this point. The matter is not purely academic. There is an issue as to the current carer needs of the claimant's father whatever the position may have been in respect of earlier assessments, and such an assessment has to be made in the context of a proper evaluation of the claimant's needs as a whole. This point is, in my view, clearly tied in with ground 1, and the fact that I have found the assessment to be flawed in respect of the claimant brings with it the relevance of that assessment to the interests of the claimant's father and his needs.

81. This is tied in with a further argument made on behalf of the defendant that the claimant's father did not make himself available for assessment and the undertaking made was conditional and that condition was not met. This is disagreed with for reasons set out in the claimant's father's witness statement. This goes back to the disagreements between the parties and the problems in the relationship between them and the factual disputes that exist as to a number of matters. I do not think I can resolve that factual dispute in these proceedings. For the reasons set out above, there is an error of law in this regard also in my view.

Failure to complete the Care Plan

82. In this regard I take into account the agreement reached between the parties after the hearing with regard to the care and support plan. The care and support plan was served shortly before the final hearing, on 4 May 2020, and I agree that given that the challenge to the needs assessment succeeds, as a consequence the current plan and any dispute as to its adequacy falls away. Accordingly, I propose to record in the order in respect of this case the recital set out at paragraph 16 of Mr Chataway's reply.

83. This claim as a consequence of the findings above succeeds. I will hear the parties either in person or remotely as to any consequential matters at the handing down of the decision, a copy of which in the interim will be sent to them in draft.