



Neutral Citation Number: [2023] EWHC 2701 (Admin)

Claim No.AC-2023-LON-001619:
CO/1911/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 October 2023

Before :
Dan Kolinsky KC
(sitting as a Deputy Judge of the High Court)

BETWEEN:

THE KING
(ON THE APPLICATION OF

(1) SB
(2) SBO)

Claimant

-and-

LONDON BOROUGH OF NEWHAM

Defendant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested Party

Azeem Suterwalla, instructed by **Deighton Pierce Glynn** for the **Claimants**
Catherine Rowlands instructed by **London Borough of Newham** for the **Defendant**
Sian Reeves instructed by the **Government Legal Department** for the **Interested Party**

Hearing date: 18 October 2023

FINAL JUDGMENT

This judgment was handed down remotely at 2.00pm on 30 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dan Kolinsky KC (sitting as a Deputy Judge of the High Court):

1. This judicial review claim concerns the interaction between a local authority's obligations under the Care Act 2014 ("CA 2014") and the obligations of the Secretary of State for the Home Department ("SSHD") under s.95 of the Immigration and Asylum Act 1999 ("IAA 1999") in relation to the provision of accommodation to asylum seekers with eligible care needs.
2. The Claimants are nationals of Bangladesh who made claims for asylum in the United Kingdom which are currently being processed. The First Claimant has been diagnosed with amongst other things learning disabilities, depression and an adjustment disorder. The Second Claimant (who is his mother) is his full-time carer.
3. The London Borough of Newham (the Defendant) undertook an assessment of the First Claimant's eligible needs for care and support under the CA 2014 and a carer's assessment of the Second Claimant. It provided the Claimants with accommodation and financial support (pursuant to its powers under s.19 of the CA 2014) whilst those assessments were being undertaken. The Claimants contended that the assessment identified accommodation-related care and support needs and that the Defendant should provide the Claimants with accommodation as part of its duty (under s.18 of the CA 2014) to meet the First Claimant's eligible needs.
4. By a decision dated 5 May 2023, the Defendant decided to terminate the provision of accommodation and assistance to the Claimants with effect from 2 June 2023. This claim is a challenge to legality of that decision.

The Proceedings

5. The claim was issued on 25 May 2023 challenging the decision dated 5 May 2023 and seeking interim relief. Time for responding was abridged and, following receipt of the Defendant's summary grounds of resistance, Constance J granted interim relief on 31 May 2023. He ordered the Defendant to provide the Claimants

with accommodation and financial support pending the consideration of permission. He also made an anonymity order.

6. On 9 June 2023, Eleanor Grey KC sitting as a Deputy Judge of the High Court granted permission, expedited the claim and extended the interim relief until the determination of the substantive hearing. In granting permission, the Deputy Judge observed:

“I am satisfied that there is an arguable issue as to whether the Defendant owes a duty to house the Claimants, in circumstances where the Claimant has care needs, and accommodation is required to effectively deliver care and support, but those needs do not require the provision of residential care or supported accommodation and (says the Defendant) could be met in accommodation that should be provided by the Interested Party under s95 of the [IAA 1999]”.

7. The Defendant disputes the proposition that the First Claimant has accommodation-related needs for care and support.
8. The SSHD is an interested party to this claim. There is no challenge to the legality of any decision by the SSHD. At an earlier stage of proceedings, it appeared that the correctness of the SSHD’s guidance in Asylum Seekers with Care Needs (version 2.0) (3 August 2018) (“SSHD Guidance”) was a live issue in this claim. However, this issue has fallen away. The SSHD has participated in the proceedings, adopting a position of neutrality but assisting the Court with observations as to the interplay of the applicable statutory duties.
9. This judgment is structured as follows:-
 - a. Background (including the assessments and the decision under challenge) (para 10)
 - b. The parties’ positions (para 30)
 - c. Legal Context (para 36)
 - d. Analysis (para 73)
 - i. Preliminary issue (para 74)
 - ii. Ground 1 (para 102)
 - iii. Ground 2 (para 113)

- iv. Ground 3 (para 122)
 - v. Alternative remedy (para 127)
 - vi. The position of the Second Claimant (para 130)
- e. Relief (para 132)

Part A: Background (including the assessments and the decision under challenge)

10. The First Claimant is a 28 year old who has learning disabilities, depression and adjustment disorder. He requires support from his 55 year old mother who is the Second Claimant. They are Bangladeshi nationals who came to the UK in 2010. They applied for asylum in July 2022 and are awaiting a decision on their application. They had made previous attempts to apply for leave to remain in the UK which were unsuccessful.
11. The Claimants have lived in Newham for over 10 years. They have strong links with the local community including local Bangladeshi and British Bangladeshi communities. Their supporting witness statements explain their local links, the difficulties which they have experienced as a result of the First Claimant's care needs and the impact on the Second Claimant's mental health of the combination of her caring responsibilities and their lack of recourse to public funds.
12. The Claimants were housed during the pandemic under the "Everyone In" programme. However, after that they became street homeless (in May 2022). On 11 May 2022 the Defendant agreed to carry out an assessment under the CA 2014 of the Claimants and provide emergency accommodation in a hotel. At this time, the Defendant gave support to the First Claimant including reablement work. The success of this and the extent of the First Claimant's continuing needs for care and support are analysed in the care and support assessments referred to below.
13. In August 2022 the Defendant moved the Claimants to their current accommodation which consists of two studio flats side by side.

14. On 26 October 2022 the Defendant completed a care and support assessment of the First Claimant under the CA 2014. The assessment concluded he is a vulnerable learning disabled adult with eligible care needs.

15. I set out the material parts of the assessment replacing the Claimants' names with C1/C2 respectively. The assessment:-
 - a. Set out the First Claimant's medical history (p.8), noting he has (p.9) "moderate-severe learning disabilities", "delayed movement development" and "autistic features".

 - b. Noted the role of the Second Claimant as an informal carer (p.13).

 - c. Analysed the First Claimant's care and support needs in respect of "managing and maintaining nutrition" (p.15-16), noting that this could not be met independently. The outcome was recorded as: "Based on all of the information gathered it is evident that C1 will still require support to achieve this outcome independently. C1 will need support to build his confidence in using appliances in the kitchen and choosing healthy meals to prepare". In respect of the role of C2 as carer it was noted: "C2 supports him by providing and cooking his meals. Instead it would be advised that mum supports C1 in completing these tasks alone in order to support his independence". In terms of the support needed from adult social care services, it was noted: "It is recommended that C1 has a care package to support him to meet this domain independently as the reablement period was not sufficient to meet this need independently. A period of support over 6-12 months is recommended to allow C1 to be able to meet this domain independently".

 - d. In respect of developing and maintaining relationships, noted (p.18-19) the benefit of the First Claimant attending structured activities without his mother and that he would be supported to identify activities which he could attend with support from a community link worker.

- e. In respect of accessing community facilities (p.19-20), identified the need for support to access community facilities and that the need could not be met independently.
- f. In respect of maintaining a habitable home environment (p.21-23), noted needs which could not be met independently. The outcome recorded as “C1 will still require support to achieve this outcome independently. C1 will need further ongoing support to maintain a habitable home environment”. In terms of the role of C2 as a carer, it noted that she helped him to maintain a habitable home environment but stated: “Instead, C1 would benefit from a carer to regain the skills he needs to maintain his space, complete his laundry without his mother’s help”. The assessment envisaged a role for additional support as follows: “It is recommended that C1 has a care package to support him to maintain a habitable home independently as the reablement period was not sufficient to meet this need independently”.
- g. Identified (at page 26) that the First Claimant had the following eligible needs: (i) managing and maintaining nutrition, (ii) developing and maintaining family or other personal relationships, (iii) making use of necessary facilities or services in the local community, (iv) maintaining a habitable home environment and (v) assessing and engaging in work/training.
- h. Contained (at page 30) the pro-forma question, “are the person’s needs best met in accommodation based services”. The answer given was “no”.
- i. Set out in pages 30-32 a summary and “practitioner justification”. The summary recorded the views of others including the reablement officer who noted that C1 “still requires support to access the community and in maintaining a habitable home environment”. The practitioner justification noted “it is my view that a further period of support from an external agency will further enhance C1’s capabilities to complete his day to day tasks independently, with focus in the domains below: - managing and

maintaining nutrition, making use of necessary facilities or services in the local community, including public transport, and recreational facilities or services, developing and maintaining family or other relationships, maintaining home environment, work, training, education or volunteering” (emphasis added).

- j. Contained the following recommendation (p.32): “It is my professional opinion that C1 has a commissioned care package of 4 hours per week to support him to access the community and identify activities that he can attend on a weekly basis”.
16. The care support plan is dated 6 December 2022 albeit, as is apparent from the correspondence discussed below, this was not shared with the Claimants until later. The care support plan simply replicated the analysis in the assessment to which I have referred above.
 17. A carer assessment in respect of Second Claimant was also prepared. It identified her as an eligible carer for the First Claimant. It indicates that she is willing and able to continue to provide care to the First Claimant.
 18. I refer next to the correspondence between the parties following the circulation of the draft assessment and leading to the issue of proceedings.
 19. In a letter dated 22 November 2022, the Claimants’ solicitors provided comments on the assessment (which at this stage had been shared as a draft). It observed (amongst other things) in respect of the support indicated in that assessment: “we note that the assessment does not identify the support that will be provided to meet our client’s needs in relation to food nor maintaining a habitable home in an independent manner”.
 20. The Defendant’s response dated 1 December 2022 indicated that the comments made would be considered when the assessment was finalised. In fact, it does not appear that any amendments were made to address the points identified.

21. In a letter dated 23 February 2023, the Claimants’ solicitors were chasing the finalised assessments.

22. It is at this stage of the chronology that the issue at the centre of this judicial review claim began to be articulated. It appears that the Defendant was indicating to the Claimants that they should look to the SSHD for support and accommodation. In an email, dated 24 February 2023, the Claimants’ solicitors contended:

“*R (Westminster CC) v National Asylum Support Service* [2002] UKHL 38 confirmed that asylum support is residual, and cannot be provided to individuals who are entitled to accommodation and support from a local authority, e.g. under the Care Act 2014. Your authority has accepted that my client has eligible care needs, some of which can only be met through the provision of accommodation. He is therefore not destitute and not eligible for s.95 support”.

23. The Defendant’s response dated 20 March 2023 referred to s.23 of the CA 2014 and contended that the CA 2014 “does not allow Local Authorities to meet housing needs”. It was said that this position was reiterated by the recent decision of *R (Campbell) v Ealing LBC* [2023] EWHC 10 (Admin). The Defendant contended that “[t]he Local Authority has no duty to continue providing accommodation [to the Claimants] as [they are] eligible for support under s.95 of the [IAA 1999]”.

24. In response, the Claimants’ solicitors sent a detailed letter before claim dated 12 April 2023. At para 5.1.3, that letter drew on the eligible needs identified under the assessment. It noted at para 5.1.4 that the care and support plan had not been provided. It set out a thorough analysis of the applicable statutory scheme and caselaw on local authorities’ duties in respect of meeting accommodation-related needs and contended at para 5.2.18 as follows:-

“the Claimants are entitled to accommodation and support under the Care Act 2014 because the First Claimant has eligible care needs that result from his disability and are accommodation-related. Although the Claimants are asylum seekers, the caselaw and legislation confirms that asylum support under s.95 of the [IAA 1999] is residual, and only available if there is no other form of support. As the Claimants are entitled to local authority accommodation and

support under the Care Act 2014, they are not “destitute” for the purposes of s.95 of the [IAA 1999], and therefore are not eligible to be granted s.95 support” (emphasis original).

25. The Defendant’s response dated 2 May 2023 contended that it did not have a duty to accommodate the Claimants because they were entitled to support under s.95 of the IAA (para 7.6), explained that the Defendant “continued to rely on s.23 of the Care Act 2014” (para 9.6) and relied on the fact that the First Claimant did not require any form of specialist accommodation (paras 9.2 and 9.6) referring to the SSHD Guidance which states “Local Authorities (LA) are generally only expected to provide accommodation to asylum seekers if their assessment shows that the person needs the sort of residential care that LA adult services are required to provide. An asylum seeker who has care needs which can be adequately addressed in asylum support accommodation, and is otherwise eligible, should be accommodated by the Home Office following a care assessment”.
26. It is at this stage that the Defendant’s letter dated 5 May 2023 (which contains the decision under challenge in these proceedings) was sent. The material part of that letter states (replacing the names with C1/C2):-

“C1 and his mother, C2, were provided accommodation and subsistence by the London Borough of Newham Adult Service on a non-prejudice basis. The purpose of the accommodation provided to C1 and his mother C2, was solely to undertake a Community Care Assessment which has now been completed, he was assessed as having an eligible needs and appropriate support is in place. C2 has no eligibility needs but she is deemed to be the sole carer for her son and appropriate carer assessment has been carried out under the Care Act 2014 as well. The Care Act 2014, does not allow Local Authorities to meet mainstream housing needs. Neither, C1 or his mother C2 require specialist housing. Similarly, C1 or his mother C2 was also assessed as not eligible for housing assistance under the Housing Act 1996 due to him not having recourse to public funds.

It has recently been brought to our notice that C1 & C2 have an active Asylum claim with the home office Therefore, would be eligible for accommodation and subsistence under s.95 Immigration and Asylum Act 1999.

Therefore, we are writing to inform you, the London Borough of Newham has no duty to provide accommodation or subsistence and we will terminate the current accommodation and subsistence provision in 28 days this will take us to 2nd June 2023”.

27. A further round of correspondence preceded the issue of proceedings.
28. In its letter dated 9 May 2023, the Claimants’ solicitors continued to contend that the Claimant had accommodation-related care needs identified in the assessment process and that the provision of accommodation was necessary to meet those needs.
29. The Defendant’s response dated 17 May 2023 continued to maintain the availability of support under s.95 of the IAA 1999. It also asserted that “based on the facts of your clients are both asylum seekers [the] local authority do not [have] a legal duty to care and support for them under section 18 of the Care Act 2014”. This was wrong - see s.18 of the CA 2014 discussed below. However, this error is contained in correspondence which postdates the decision under challenge.

Part B: The parties’ positions

30. The next step was the issue of proceedings. The claim raises 3 grounds of challenge.
- a. First, that the Defendant had erred in relying on the availability of asylum support under s.95 of the IAA 1999.
 - b. Second, that the Defendant failed to apply the correct test in deciding whether to accommodate the Claimants. This ground, as pleaded, took issue with the Defendant’s reliance on the fact that the First Claimant did not require specialist accommodation or residential care. It contended (at para 48): “This is a misdirection in law. The question is not whether he required “specialist accommodation” or “residential care” or “accommodation from the local authority”, or any variation of these formulations. The question is whether the care and support which the First Claimant requires is “of a sort which is normally provided in the home (whether ordinary or specialised) and would be “effectively useless” if he had no home”” (emphasis original). The grounds for judicial review made clear (at paragraph 51) that “The Court is not invited to answer this

question for itself. But the Defendant, as primary decision maker, should be required to reconsider the matter correctly”.

- c. The third ground was that the Defendant had misdirected itself in relying on s.23 of the CA 2014 because asylum seekers were excluded from eligibility to homelessness assistance under the Housing Act 1996.

31. The Defendant did not serve evidence in response to the claim. Its submissions rely in essence on the proposition that the Defendant decided that the First Claimant did not have accommodation-related needs. I discuss this as the preliminary issue in Part D below. The evidential basis for that decision is said to be the assessment and support plan documents. The Defendant’s case is that, if the nature of its decision is properly understood, the legal arguments in grounds 1 and 2 fall away. As I understood Counsel for the Defendant’s submissions in respect of ground 3, she did not contend that s.23 of the CA 2014 was relevant (because it is plain that the Claimants do not have recourse to the homelessness provisions of the Housing Act 1996 due to their immigration status). However, she submitted that the reference to s.23 of the CA 2014 by the Defendant was not material – describing this point as a “red herring”.
32. The Defendant submitted that the Claimants could not establish any entitlement to accommodation or financial support. It was asserted that the claim was circular because the alleged errors presupposed the Defendant was obliged to provide accommodation. I will consider the grounds below but as a general point, I observe this analysis rather missed (or mischaracterised) the main focus of the claim which was that the Defendant had not properly directed itself in considering whether the First Claimant had accommodation-related eligible needs for care and support under s.18 of CA 2014.
33. The Defendant also contended that the Claimants have an alternative remedy to these judicial review proceedings because they could claim accommodation and support from the SSHD (pursuant to s.95 of the IAA 1999). The Defendant argued that they had chosen not to do so but they had an alternative remedy readily available to them.

34. I consider these points in Part D below after I have addressed the statutory framework and relevant caselaw.

35. As indicated, the SSHD maintained a position of neutrality in respect of the claim. She made submissions (1) as to the status and meaning of the SSHD Guidance (2) as to the inter-relationship between local authorities' statutory duties under the CA 2014 and the "residual" role of asylum support provided by the SSHD. Her analysis accorded with the legal analysis which underpinned the claim (as discussed further in Part D below).

Part C: Legal Context

(1) CA 2014

36. The CA 2014 is the applicable statutory scheme for the provision of social care to adults.

37. Section 1 imposes on local authorities a general duty "in exercising a function" in relation to a person under the first part of the CA 2014, to promote that person's well-being.

38. Section 1(2) defines a person's well-being in terms of its relation to any of personal dignity (including treatment of the individual with respect), physical and mental health and emotional well-being, protection from abuse and neglect, 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, social and economic well-being, domestic, family and personal relationships, suitability of living accommodation, and the individual's contribution to society.

39. Section 9 imposes a duty on a local authority to undertake a "needs assessment" where it appears to a local authority that an adult may have needs for care and

support. In such circumstances, the authority must assess whether the adult does have such needs and, if so, what they are.

40. If the authority is satisfied on the basis of a needs assessment that an adult has such needs it must, under s.13(1), determine whether any of those needs meet the eligibility criteria identified in the Care and Support (Eligibility Criteria) Regulations 2015 (“the 2015 Regulations”).
41. Regulation 2 of the 2015 Regulations provides that needs will be "eligible" if they arise from physical or mental impairment or illness, cause the person to be unable to achieve two or more specified outcomes and, as a result, will have a significant impact on well-being. The specified outcomes include (a) managing and maintaining nutrition and (f) maintaining a habitable home environment.
42. Section 18(1) provides that a local authority must meet the adult's needs for care and support which meet the eligibility criteria if, amongst other things, they are ordinarily resident in the authority's area or are present in its area but of no settled residence. However, the local authority is not required to meet any needs which are being met by a carer who is willing and able to do so (s. 18(7)).
43. Section 20 creates a duty to meet a carer’s eligible need for support. Regulation 3 of the 2015 Regulations address eligibility criteria in respect of carers.
44. Section 24 sets out that the local authority must prepare a 'care and support plan'. Section 25 provides that the care and support plan must set out what needs are to be met and how the local authority is going to meet them. Section 25(3) requires the local authority to involve the adult for whom it is being prepared and the carer of that adult in preparing a care and support plan. The plan must be proportionate to the needs (s.25(6)). It must be kept under review (s.27).
45. Section 19 provides the local authority with a power to meet an adult's needs in circumstances where there is no established duty under s.18. In particular, under s.19(3) a local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in

its area) without the authority having conducted a needs or financial assessment or having made a determination under s.13(1).

46. Section 8 gives examples of what may be provided to meet needs for care and support. These include accommodation "in a care home or in premises of some other type" (s.8(1)(a)). Examples of how the local authority may meet an individual's needs are provided in s.8(2) and include: providing a service, by arranging for a person other than it to provide a service and by making direct payments.
47. There is, specific provision at s.23 (headed "exception for the provision of housing etc") to the effect that an authority: "may not meet needs under sections 18-20 by doing anything which it or another local authority is required to do under (a) the Housing Act 1996".
48. Section 21 provides that a local authority may not meet the needs for care and support of an adult to whom s.115 of the IAA 1999 (exclusion from benefits) applies and whose needs for care and support have arisen solely (a) because the adult is destitute, or (b) because of the physical effects, or anticipated physical effects of being destitute.
49. The effect of s.21 and s.23 and their relevance to the present proceedings is considered further below.
50. Section 78 provides that local authorities must act under the general guidance of the Secretary of State in exercise the functions under Part 1 of the CA 2014.
51. The statutory guidance, published by the Department of Health and Social Care explains the essence of the statutory scheme under the CA 2014 as follows:

“1.1 The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life...Underpinning all of these individual ‘care and support functions’ (that is, any process, activity or broader responsibility that the local authority performs) is the

need to ensure that doing so focuses on the needs and goals of the person concerned.”

(2) Accommodation-related needs for care and support

52. The circumstances in which a local authority may be required to provide accommodation by way of care and support pursuant to s18 CA 2014 have been considered by the High Court previously. The established position is that a need for accommodation by itself does not constitute a need for care and support but that accommodation may nevertheless need to be provided, as a vehicle to deliver care and support, where the care and support the adult requires is ‘accommodation-related’, i.e. of a sort which is normally provided in the home or would be ‘effectively useless’ if the claimant has no home. The key decisions under the CA 2014 are as follows:

- a. In R (SG) v Haringey London Borough Council [2015] EWHC Civ 2579 (Admin), at para 66, John Bowers QC sitting as a Deputy High Court Judge summarised the applicable approach as follows:-
 - i. The services provided by the council must be accommodation-related for accommodation to be potentially a duty.
 - ii. In most cases the matter is best left to the good judgment and common sense of the authority.
 - iii. Accommodation-related care and attention means care and attention of a sort which is normally provided in the home or will be effectively useless if the claimant has no home.
- b. The correctness of the approach in SG was endorsed in R (GS) v Camden LBC [2016] EWHC 1762 (Admin) paras 25-29 by Peter Marquand sitting as a Deputy High Court Judge who concluded that a need for care and assistance did not include a need for accommodation alone (para 29).

- c. In R (Aburas) v Southwark LBC [2019] EWHC 2754 (Admin) Michael Fordham QC (as he then was) sitting as a Deputy High Court Judge explained at para 6:-
- i. “the need for accommodation is not itself a “looked after need” but the provision of accommodation may be called for under CA 2014 so as to secure effective care and support for a looked after need.
 - ii. It was agreed between Counsel in that case that accommodation becomes appropriately provided pursuant to CA 2014 “when the person has a “looked after need” of care and support whose effective delivery requires accommodation”.
 - iii. the importance for a “disciplined focus on looked after needs” to avoid undermining the integrity of the statutory framework in the CA 2014 by allowing it to become a backdoor route to claims based on accommodation needs circumventing the Housing Act scheme and jumping the homelessness queue.

53. These decisions followed the approach previously adopted in respect of the provision of residential accommodation by social services under s21 National Assistance Act 1948 (“NAA 1948”), the predecessor to the CA 2014. In R (L) v Westminster City Council UKSC 27, [2013] 1 WLR 1445, the Supreme Court rejected the proposition that the duty to accommodate arose where the care and attention required was monitoring of an adult with mental health difficulties. It could be carried out anywhere and was, the Supreme Court found, in no way related to the provision of accommodation. In paragraph 48 of the judgment of the Supreme Court, Lord Carnwath JSC (with whom the other Supreme Court Justices agreed) commented on the approach under s.21 of the NAA 1948 as follows:

“The need has to be for care and attention which is not available otherwise than through the provision of such accommodation. As any guidance given on this point in this judgment is strictly obiter, it would be unwise to elaborate, but the care and attention obviously has to be accommodation-related. This means that it has at least to be care and attention of a sort which is normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant has no home. So the actual result in the Mani case may

well have been correct. The analysis may not be straightforward in every case. The matter is best left to the good judgment and common sense of the local authority and will not normally involve any issue of law requiring the intervention of the court” (emphasis added).

54. This encapsulation of the parameters of when the need for care and attention (under s.21 of the NAA 1948) is accommodation-related forms the basis of the decisions in the High Court under the CA 2014 (discussed in para 52 above). The underlined words in the extract from para 48 of Lord Carnwath’s judgment in L are the source of the encapsulation of the relevant approach to determining whether eligible care and support needs are accommodation-related set out in ground 2 of the present claim (see para 30b. above).

55. The consensus in previous cases under the CA 2014 has been that the caselaw in respect of the s.21 of the NAA 1948 remains apt when considering similar issues under the CA 2014. This was also the consensus of Counsel before me albeit that they drew attention (for completeness) to the observations of the Court of Appeal in R(BG) v Suffolk County Council [2022] EWCA Civ 1047 at para 70 which stressed the greater emphasis on the autonomy of the individual and the need for care and support in the CA 2014 (compared with care and attention under the NAA 1948). It was not suggested that this refinement makes any material difference in the present case. I therefore proceed on the basis that the guidance in para 48 of L in the Supreme Court encapsulates the correct approach for considering whether the eligible needs for care and support are accommodation-related under the CA 2014.

(3) Accommodation and financial support under IAA 1999

56. Under s.95(1) IAA 1999 the SSHD has the power to provide, or arrange for the provision of, support for asylum-seekers and their dependants, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

57. This power is converted into a duty by regulation 5(1) Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7.

58. The support provided may consist of accommodation, financial support to meet essential living needs or both – see s96(1) IAA 1999.

59. ‘Destitute’ means that the applicant ‘does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met)’ or ‘has adequate accommodation or the means of obtaining it but cannot meet his other essential living needs’ – see s95(3) IAA 1999.

60. The assessment of destitution is governed by regulation 6 Asylum Support Regulations 2000, SI 2000/704 the material parts of which provide:

“ (1) This regulation applies where it falls to the Secretary of State to determine for the purposes of section 95(1) of the Act whether– (a) a person applying for asylum support, or such an applicant and any dependants of his, or (b) a supported person, or such a person and any dependants of his, is or are destitute or likely to become so within the period prescribed by regulation 7..... (3) The Secretary of State must ignore– (a) any asylum support, and (b) any support under section 98 of the Act, which the principal or any dependant of his is provided with or, where the question is whether destitution is likely within a particular period, might be provided with in that period. (4) But he must take into account– ... (b) any other support which is available to the principal or any dependant of his, or might reasonably be expected to be so available in that period”

(4) Relationship between the CA 2014 and IAA 1999

61. As explained above, until the CA 2014 came into force, residential accommodation for adults who, by reason of age infirmity or other circumstances, were in need of care and attention which was not otherwise available, was provided by social services under s.21 NAA 1948.

62. In R v Hammersmith and Fulham LBC ex p M (1998) 30 HLR 10 the Court of Appeal held that destitute asylum-seekers who were in need of care and attention

by reason of poverty (among other things) should be supported under this provision.

63. One of the key objectives of the introduction of the asylum support regime under IAA 1999 was to reverse this decision. This objective was achieved by the introduction of s.95 support coupled with amendments to the NAA 1948 to ‘make clear that social services departments should not carry the burden of looking after healthy and able-bodied asylum-seekers’ – See Fairer, Faster and Firmer – a modern approach to immigration and asylum Cm 4018 (Home Office, 1998) at paras 8.12–8.26.
64. Section 116 of the IAA 1999 amended s.21 NAA by inserting a new subsection (1A) prohibiting social services from providing accommodation to any person falling within the ambit of IAA 1999 s.115 whose need for care and attention arose ‘solely’ from the fact they were destitute.
65. In R v Wandsworth LBC ex p O [2000] 1 WLR 2539 the Court of Appeal interpreted this provision to mean that a person subject to immigration control would be eligible for accommodation under this provision provided that their need for care and attention was made more acute by some circumstance other than the mere lack of accommodation and money. This meant that the infirm and destitute claimant in that case, who was an overstayer with chronic and relapsing psychiatric problems, fell to be accommodated by social services.
66. Section 21 of CA 2014 (see above) mirrors the provision contained in s.21(1A) NAA 1948.
67. The application of s.21(1A) of the NAA 1948 to asylum-seekers was considered by the House of Lords in R (Westminster City Council) v NASS [2002] UKHL 38, [2002] 1 WLR 2956. The court held that the new regime under Part VI of the IAA 1999 gave the SSHD residual powers to accommodate asylum seekers, available only where no other support was available. The effect of s.21(1A) NAA 1948 had only been to exclude the ‘able-bodied destitute’ from local authority support. The ‘infirm destitute’ (to use the language of Lord Hoffmann) remained

the responsibility of social services (see paras 31, 32, 35 and 41). This reasoning drew on regulation 6(4)(b) of the Asylum Support Regulations 2000 which requires the SSHD to take into account local authority support when assessing whether a claimant is destitute - see Lord Hoffmann's characterisation of the Secretary of State's power as "residual" in para 38.

68. In L in the Supreme Court, Lord Carnwath commented on the role of asylum support as follows (para 9):

"..the national scheme is designed to be a scheme of last resort. The regulations require the Secretary of State, in deciding whether an asylum seeker is destitute, to take into account any other support available to the asylum seeker, including support available under section 21 of the 1948 Act: Asylum Support Regulations 2000 (SI 2000/704), regulation 6(4)(b); the Slough case, para 27. Conversely, the local authority, in answering the questions raised by that provision, must disregard the support which might hypothetically be available under the national scheme: see e g R (O) v Barking and Dagenham London Borough Council (The Children's Society intervening) [2011] 1 WLR 1283, para 40." (emphasis added)

69. In R (SG) v Haringey London Borough Council [2015] EWHC Civ 2579 (Admin), (2015) 18 CCLR 444 the Defendant conceded, at para 15 (as numbered in the CCLR), that the same approach should apply under the CA 2014 and that "in determining whether or not accommodation must be provided under the Care Act 2014 the defendant was obliged to ignore altogether the fact that she had accommodation under the 1999 Act".

(5) Applicability of the Homelessness provisions under the Housing Act 1996

70. Parts 6 and 7 Housing Act 1996 provide respectively for the allocation of social housing and the provision of homelessness assistance. Both are subject to identical immigration based eligibility criteria, contained in ss.160ZA and 185, and regulations 3 and 5 of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, SI 2006/1294. The effect of these provisions is that persons subject to immigration control within the meaning of s.115(9) IAA 1999 cannot be eligible for assistance under Pt 6 or 7 Housing Act 1996 – see ss.160ZA(1)-(3) and 185(1)-(2A) and s115(1), (3) and (9) IAA 1999. This

excludes any person who ‘requires leave to enter or remain in the United Kingdom but does not have it’ – see s.115(9)(a) IAA 1999.

71. The relationship of the CA 2014 to the Housing Act 1996 is governed by s.23 Care Act 2014 referred to above.
72. R (Idolo) v Bromley LBC [2020] EWHC 860 (Admin) [2021] HLR 17 and R (Campbell) v Ealing LBC [2023] EWHC 10 (Admin) provide examples of the application of this provision. Both cases involved disabled adults who were assessed as having eligible needs for care and support under CA 2014, who were unsuitably housed and who were eligible for, and awaiting an allocation of, social housing under Pt 6 Housing Act 1996. In both cases the Claimants sought accommodation from social services under the CA 2014. In both cases the High Court held that s.23 of the CA 2014 operated to prevent the provision of such accommodation as it would bypass the scheme of the Housing Act 1996. A key distinguishing feature of those cases from the present case is that neither of the Claimants in the present case is eligible to be accommodated under the Housing Act 1996 due to the exclusionary provisions referred to in para 70 above.

Part D: Analysis

73. I have identified (in para 30 above) the focus of the 3 grounds of challenge which contend that the Defendant misdirected itself in deciding not to provide accommodation and support to the Claimants in its decision dated 5 May 2023.

(1) The Preliminary issue

74. The essence of the Defendant’s response is that it has made a decision that the First Claimant does not have any accommodated related needs for care and support. I start by addressing that contention.
75. The evidence base for the decision (namely the assessment documents and the letter dated 5 May 2023) do not reveal a positive decision to that effect on their face.

76. Counsel for the Defendant submitted that the reference to whether C1's care needs are best met in accommodation based services being answered "no" (p.30) was relevant but she did not contend that the answer to this question constituted consideration of whether the First Claimant's eligible needs for care and support were accommodation related.
77. The main thrust of the Defendant's argument was to rely on the recommendation (at page 32) of the assessment which states that there should be a care package of 4 hours per week to support the First Claimant to access the community. The Defendant contended that this provision plainly did not reflect an accommodation-related need for care and support. I agree that the provision identified in the specific recommendation on page 32 of the assessment is not accommodation related. But the real issue is whether, on a fair reading of the assessment, that is the extent of eligible needs of the First Claimant for care and support.
78. When I consider the assessment read fairly and as a whole, it is clear that the First Claimant's eligible needs for care and support are wider than those which would be met through the specific recommendation for 4 hours of support accessing the community. The assessment identifies areas of eligible needs where the First Claimant needs support at home which is not currently been provided by Second Claimant as his informal carer and where professional intervention is needed. The key instances of this are:-
- a. In respect of managing and maintaining nutrition, where the First Claimant is said to need support to build his confidence in using appliances in the kitchen and choosing healthy meals to prepare (p.16); and
 - b. In respect of maintaining the home environment, where it is said that the First Claimant needs ongoing support to maintain a habitable home environment and explicitly envisages this support being provided by adult social care services.

79. As such, I consider that a fair reading of the assessment identifies the need for active support to be provided to the First Claimant in the home environment to help him to live independently. In these specific areas, it is explicit that this support will not be provided by the Second Claimant (his carer) but external support is envisaged.
80. In this respect, there is at least some “nexus” (per para 30 of the Supreme Court’s decision in L) between the eligible needs for care and support and accommodation. On the established authorities, this seems to raise the question for the Defendant to answer (applying the approach set out in para 48 of L and para 66 of SH) as to whether these eligible needs for care and support are accommodation related.
81. I cannot identify anywhere in the contemporaneous documents where that question was grappled with by the Defendant.
82. The assessment itself does not address it. Rather, the need for support in the home is identified as an eligible care need but this is not then carried through into the recommendation.
83. I disagree that it is implicit that the authority decided that eligible needs were not accommodation related. I cannot identify any such decision in the assessment (expressly or by implication). Rather, it seems to me that the need for assistance in the home was not carried through into the recommendation and therefore the question which arises (applying paragraph 48 of L/para 66 of SG) was not considered.
84. This gap was raised by the Claimants in correspondence which took place before the assessment and support plan had been finalised (see the letter dated 22 November 2022 referred to in para 19 above). It would have been open to the Defendant to grapple with that contention and exercise its “good judgment and common sense” (per para 66 of SG) as to whether the identified care and support needs were accommodation related.

85. The correspondence gives no indication that the correct approach (as identified by the authorities) was applied. Rather, the correspondence reveals that the Defendant thought that it was decisive that there was no need for specialised accommodation and/or that, as the Claimants were asylum seekers, the responsibility fell to the SSHD.
86. The first of these points does not reflect an accurate reflection of the issue which the Defendant needed to address (see further ground 2 below).
87. The second of these points is wrong (because the Secretary of State's powers are residual and a matter of last resort) (see further ground 1 below).
88. In this respect, the correspondence indicates that the Defendant missed the opportunity to grapple with whether the First Claimant's eligible needs were accommodation related on a legally correct basis.
89. I therefore reject the Defendant's submission that the assessment shows that it made a decision that the First Claimant had no accommodated related need for care and support. I consider that it did not do so. The Defendant did not address the right question as to whether the eligible needs which had been identified in the assessment were accommodation related.
90. Counsel for the Defendant also submitted that the Defendant had made a positive decision in the assessments that the only eligible needs which were not met by the Second Claimant were those which related to the support package which focussed on First Claimant accessing the community.
91. I do not consider that this submission is consistent with a fair reading of the assessment. As above, the assessment identifies the need for help in the home (in respect of nutrition and in respect of managing the home) which was needed precisely because the interventions by the Second Claimant were not serving the First Claimant's need for care and support to achieve greater independence.

92. I therefore reject this argument as inconsistent with a fair reading of the assessment.

93. I mention for completeness in respect of this sub-point that a collateral dispute arose in the course of argument between Counsel for the Defendant and Counsel for the Claimant as to whether the Defendant's reliance on the role of the carer was an argument which was properly open to the Defendant. I conclude that it is open to the Defendant to take this point. I accept that this point is sufficiently identified in para 12 of the summary grounds of defence. I also accept Counsel for the Defendant's analysis of the statutory scheme that the s.18 duties do not apply where eligible needs are being met by the carer (see s.18(7) of the CA 2014). I accept, that in the present case, the reasons required by s.24(2) of the CA 2014 could be contained in the analysis of the eligible care needs in the assessment itself and/or support plan. I accept the Defendant's submission that this is materially different from the circumstances in R (P)(by her litigation friend SP) v Croydon LBC [2022] EWHC 2886 (Admin) at paras 44-5 where there was a change of position which called for an explanation and a transparently fair process due to the radical departure from the previous recommendation. That is not the situation here. Therefore, I accept that the reasons can be provided in the assessment/support plan itself (as the Defendant contends). However, as above, the key point on the facts of this case is that the reasoning identifies eligible care needs which are not being adequately met by the Second Claimant. The documents thus do not support the Defendant's contention that it made a positive decision in the assessments that the only eligible needs which were not being met by the Second Claimant were those which related to the support package to assist the First Claimant access the community. The reasoning in the assessment simply does not support that conclusion.

94. Further, Counsel for the Defendant submitted that a fair reading of the assessment indicated that the work which was required in respect of nutrition and managing the home was a "future need" which could be met on a later occasion. I can find no support for that submission in the documents. To the contrary, the identified needs appear to be current needs because these were areas where the First

Claimant continued to need care and support to build on the progress which he had made as a result of the reablement work which had taken place.

95. I therefore reject (each permutation of) the primary basis on which the Defendant has responded to the claim which is to contend that a decision has been made that the First Claimant's eligible needs for care and support are not accommodation related.
96. I find no evidence in the contemporaneous documents that the Defendant grappled with the issue of whether the identified eligible needs for support in the home in respect of nutrition and managing the home environment were accommodation related (applying the test set out in the authorities, namely making a common sense judgment as to whether such support was normally provided in the home or would be effectively useless if the First Claimant had no home).
97. Counsel for the Defendant made a further submission (albeit faintly) that there was no challenge to the assessment itself. I reject that submission which elevates form over substance and is inconsistent with a realistic analysis of the decision making process in this case.
98. I do so for three reasons. First, it is plain that the Claimants did in fact raise with the Defendant the point that the recommendation on page 32 of the assessment did not address the identified eligible needs for support with nutrition and managing the home environment (see the Claimants' solicitors letter dated 22 November 2022 (para 19 above) which made that very point).
99. Second, the issue of whether the eligible needs identified in the assessment itself were accommodation related was raised before the Claimants had received the final version of the assessment and support plan.
100. Third and in any event, the Claimants' case does not involve challenging the assessment. It relies on the substance of the assessment of eligible needs. That analysis gives rise to the critical question - namely whether applying the right legal test the identified needs for care and support were accommodation related. The Claimants case is that this question was never answered by the Defendant

on a lawful basis (despite the contents of the assessment, the Claimants' representations about them and the Claimants' prompting the Defendant to address whether the First Claimant's eligible needs for care and support were accommodation related).

101. Against the background of this evaluation of what the Defendant decided, I turn to consider the grounds of challenge.

(2) Ground 1

102. The first ground of challenge is that the Defendant erred in relying on the availability of asylum support under s.95 of the IAA 1999.

103. It is clear that the role of the local authority under the CA 2014 is to address the issue of whether there are eligible needs for care and support which are accommodation related. It should do so focussing on the Claimant's wellbeing, individual circumstances and eligible needs for care and support without reference to the SSHD's residual powers. This is made clear in the existing authorities – see Lord Hoffmann's characterisation of the Secretary of State's powers as "residual" in para 38 of R (Westminster City Council) v NASS, Lord Carnwath's explanation of the scheme being designed as one of last resort (in para 9 of L) and the concession of the Defendant in paragraph 15 of SG v Haringey.

104. By contrast, in this case the Defendant relied on the availability of accommodation from the SSHD without lawfully addressing the prior issue of whether the First Claimant had accommodation-related eligible needs for care and support.

105. Applying the legal framework described in Part C above to the Defendant's decision in its letter dated 5 May 2023, it is clear in my view, that the Defendant misdirected itself by treating the availability of accommodation under s.95 of the IAA 1999 as the answer to the request which the Claimants made to meet (what they asserted were) the First Claimant's accommodated related eligible needs for care and support.

106. It would have been open to the Defendant to engage with the premise of that contention and decide for itself whether the Claimant had accommodation-related needs for care and support (applying the correct legal approach). As I have explained above, it did not do so.
107. For these reasons, ground 1 succeeds.
108. I record the SSHD's position on the interplay of the statutory provisions.
109. First, the SSHD stressed that the focus of the CA 2014 was to undertake a person centred assessment of needs for care and support which includes the impact of decisions on the person's wellbeing.
110. Second, the SSHD emphasised that the provision of asylum support and accommodation under s. 95 IAA 1999 is provided with the ultimate aim to prevent destitution. As the Court of Appeal put it in R (JK) v Secretary of State for the Home Department [2017] EWCA Civ 433 at para 59, the aim of s.95 IAA 1999 is to avert destitution and make provision for "essential living needs", namely minimum standards to ensure a dignified standard of living, adequate for health and ensuring the subsistence of children dependants of asylum seekers.
111. Third, the SSHD supported the proposition that asylum support was residual (as set out in the authorities discussed above).
112. Despite the SSHD's formally neutral stance in these proceedings, this analysis is consistent with the Claimants' case and my conclusion that the Defendant erred in its reliance on s.95 of the IAA 1999 in making the decision under challenge.

(3) Ground 2

113. The second ground of challenge contends that the Defendant failed to apply the correct test in deciding whether to accommodate the Claimants. This ground, as pleaded, took issue with the Defendant's reliance on the fact that the First

Claimant did not require specialist accommodation or residential care. It contended: “This is a misdirection in law. The question is not whether he required “specialist accommodation” or “residential care” or “accommodation from the local authority”, or any variation of these formulations. The question is whether the care and support which the First Claimant requires is “of a sort which is normally provided in the home (whether ordinary or specialised) and would be “effectively useless” if he had no home”” (emphasis original). The claim form made clear at paragraph 51 that “The Court is not invited to answer this question for itself. But the Defendant, as primary decision maker, should be required to reconsider the matter correctly”.

114. It is clear from the analysis set out above, that I do not consider that the Defendant addressed the right legal question in considering whether there were accommodation-related needs for care and support.
115. The test as formulated in SG (at para 66) and L (at para 48) focuses on whether the care and support is provided in the home or whether it would be rendered ineffective if the Claimant had no home (see paras 52-55 above). The Defendant did not grapple with this question.
116. It is also clear from the established caselaw that the accommodation need does not have to be met in specialist institution or be of a specialised nature. The guidance given by Lord Carnwath in paragraph 48 of L makes this explicit: “it has at least to be the care and attention normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant had no home”.
117. In focussing only on the fact that the First Claimant did not require specialist accommodation, the Defendant took an unduly narrow (erroneous) approach.
118. At an earlier stage of the proceedings, there had been an issue as to the status and correctness of the SSHD Guidance relied on by the Defendant in correspondence (see para 25 above). I do not need to deal with this further

because there is no live issue in respect of this. I record that the Secretary of State's submissions on this point which were as follows:

- a. The SSHD Guidance is not intended for local authorities or to provide guidance as to how local authorities discharge obligations arising under the CA 2014.
- b. It is not accepted that the SSHD's Guidance in any way precludes the Defendant from providing the First Claimant with accommodation under the CA 2014 for 3 reasons.
 - i. First, the SSHD's guidance makes it clear that it is her understanding that "Local Authorities are generally only expected to provide accommodation to asylum seekers if their assessment shows that the person needs the sort of residential care that LA adult services are required to provide" (SSHD's emphasis).
 - ii. Second, the Guidance does not purport to fetter in any way the local authorities' discretion as to when to provide and/or the nature of support required to secure practical and effective delivery of eligible care or for "accommodation-related needs".
 - iii. The decision of the Defendant needs to be viewed against the Defendant's relevant statutory obligations and relevant case law, as opposed to the SSHD's Guidance (which in any event is not applicable to local authorities).

119. As I have indicated the Defendant misdirected itself in concluding that, as the First Claimant did not require any specialist accommodation, he did not have any accommodation-related needs for care and support. As described above, that is not the correct approach to the question set out in the authorities (see especially para 48 of L).

120. It may be that the nature of the accommodation is capable of being a relevant factor in forming the common sense judgment contemplated in SG and L but in itself it was not a legally sufficient answer to the First Claimant's contention that the assessment revealed eligible accommodation-related needs for care and support. But this was the reasoning relied on by the Defendant in its letter dated 5 May 2023.

121. Ground 2 therefore succeeds.

(4) Ground 3

122. Ground 3 focuses on the Defendant's reliance on s.23 of the CA 2014.

123. The short point is that this was erroneous because the First and Second Claimant have no recourse to the provisions of the Housing Act 1996. This is not a case like R (Campbell) v Ealing LBC where the applicant for care and support could have recourse to the homelessness support provisions under the Housing Act 1996.

124. Section 23 of the CA 2014 does not apply in the circumstances of the present case.

125. I consider that this mistaken legal analysis was a material part of the Defendant's decision as reflected in the letter dated 5 May 2023 (and other correspondence prior to the issue of the claim – see letter dated 2 May 2023).

126. Ground 3 therefore also succeeds.

(5) Alternative Remedy

127. The Defendant contended that the Claimants have an alternative remedy which is that they can obtain accommodation from the Secretary of State. The Defendant relies on the fact that the Claimants have not applied to the SSHD for support as a reason for refusing this judicial review claim. I reject that contention.

128. The whole essence of the analysis above is that the CA 2014 imposes a distinct duty on the local authorities to meet eligible needs for care and support and these should be considered separately from and prior to the application of the last resort provisions under IAA 1999.
129. As set out above, the provisions have a different focus and the SSHD's duty under s.95 of the IAA 1999 is a recourse of last resort.

(6) The Position of the Second Claimant

130. The Defendant also sought to stress that the Second Claimant herself had no eligible care needs and no claim on the Defendant for accommodation. That submission proceeds on what I consider to be a mischaracterisation of the true nature of the judicial review claim. This is a claim by both Claimants (who have standing to challenge the decision to end the provision of accommodation to them) by contending that the Defendant did not lawfully give effect to the First Claimant's eligible needs for care and support when deciding that they were not entitled to accommodation.
131. Once the nature of the challenge is so understood, there is no basis to separate the Claimants for the purpose of these proceedings. There has only ever been an evaluation of the First Claimant's needs on the basis that he lives with and is supported by the Second Claimant. There has been a single decision which affects both Claimants. If, and to the extent that, the Defendant seeks to distinguish their positions, this is not something which has featured in the decision under challenge and is not a live issue in these proceedings.

Part E: Relief

132. For the reasons set out above, this claim succeeds and the Defendant's decision dated 5 May 2023 to withdraw support and accommodation from the Claimants was not lawfully made.
133. The Defendant did not advance any case relying on s.31 of the Senior Courts Act 1981 to contend that relief should be refused. I have considered whether

there is any basis for refusing relief under s.31(2A) of the Senior Courts Act 1981 because it would be highly likely that the outcome for the Claimants would not have been substantially different if the conduct complained of had not occurred. Given that the decision is one for the Defendant and there is no evidence relied upon in support any such contention, I do not consider that there is any basis for reaching that conclusion.

134. I am satisfied that it is appropriate to make an order to quash the Defendant's decision dated 5 May 2023.
135. It is important to be clear about what the Court has decided and what remains for the Defendant to decide.
136. The claim as advanced expressly disclaimed the proposition that the Court should rule that the Claimants are entitled to accommodation under s.18 of the CA 2014. The whole premise of the claim was that the Defendant had not made a lawful decision. For the reasons given above, I agree. But I have firmly in mind the Claimants' correct framing that the decision as to provision is to be taken by the Defendant.
137. The effect of a quashing order is to restore the position before the unlawful decision was made. That restores a situation in which the Defendant has a decision to make about what provision to make under s.18 of the CA 2014. Pending making that decision it had been supporting the Claimants pursuant to its powers under s.19 of the CA 2014. It will be for the Defendant to decide how to proceed hereafter.
138. I will hear any submissions as to the form of the order and whether there is any need for declaratory relief. I am presently inclined to the view that I should simply quash the Defendant's decision dated 5 May 2023.
139. I thank Counsel for their helpful submissions orally and in writing.