Neutral Citation Number: [2024] EWHC 1476 (Admin)

Case No: AC-2023-LON-003806

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 14/06/2024

Before :

MR JUSTICE SWEETING

- -

Between :

ZR **Claimant**

- and -

LONDON BOROUGH OF HARINGEY (1st) **Defendant(s)**

SECRETARY OF STATE FOR THE HOME DEPARTMENT (2nd)

- -

- -

NICK ARMSTRONG KC and OLIVIA BEACH (instructed by **LAWSTOP**) for the **CLAIMANT**

NICHOLAS GRUNDY KC (instructed by **LONDON BOROUGH OF HARINGEY**) for the **1ST DEFENDANT**

ALAN PAYNE KC (in writing) and JACK ANDERSON (for the hearing) (instructed by **THE GOVERNMENT LEGAL DEPARTMENT**) for the **2nd DEFENDANT**

Hearing dates: 20th March 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWEETING

THE HONOURABLE MR JUSTICE SWEETING :

Introduction

1. The Claimant is 25 years old and originally from Sudan. He entered the UK on 17 August 2022 and applied for asylum on arrival. His asylum claim was accepted and he has refugee status. He issued these proceedings on the 20th of December 2023. They were subsequently amended on the 15th of January 2024. He challenges:

    a. The First Defendant's failure to provide him with accommodation pending a review of its decision that he was not in priority need pursuant to section 188(3) of the Housing Act 1996 ("HA 1996"). It is accepted that this claim has largely been overtaken by events.

    b. A recent change of practice on the part of the Second Defendant as to how it gives notice to newly recognised refugees of the cessation of their asylum support under s.95 of the Immigration Act 1999 (the "1999 Act") and hence notice to quit their asylum support accommodation. In short it is said that having previously given 28 days' notice to quit (or close to that), the Home Office is now giving much less notice; often as little as 7 days.

2. The Claimant submitted that the claim was best understood by reference to evidence which had been filed in another case *R(MX) v SSHD* (AC-2023-Lon-003352. I have considered that evidence notwithstanding the submission of the Second Defendant that it was inappropriate to seek to rely on grounds and evidence filed in other litigation.

The Legal Framework and the Second Defendant's Practice

3. Part VI of the 1999 Act is concerned with support for asylum seekers. Section 94(3) identifies the date on which a claim for asylum is considered to have been determined:

> *"For the purposes of this part, a claim for asylum is determined at the end of such period beginning-*
>
> *(a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or*
>
> *(b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of, as may be prescribed."*

4. The period referred to in s.94(3) is itself defined in Regulation 2(2) and 2(2A) of the Asylum Support Regulations 2000 ("ASR 2000") as follows:

> *"2(2) The period prescribed under section 94(3) of the Act (day on which a claim for asylum is determined) … is 28 days where paragraph (2A) applies, and 21 days in any other case.*
>
> *2(2A) This paragraph applies where (a) the Secretary of State notifies the claimant that his decision is to accept the asylum claim…"*

5. Regulation 2(2A) applied to the Claimant so that the statutory 28 day period began on the date of the letter granting him asylum. At that point he was living in asylum support accommodation. In those circumstances Regulation 22 of the ASR provides:

> *"(1) If—*
>
> *(a) as a result of asylum support, a person has a tenancy or licence to occupy accommodation,*
>
> *(b) one or more of the conditions mentioned in paragraph (2) is satisfied, and*
>
> *(c) he is given notice to quit in accordance with paragraph (3) or (4), his tenancy or licence is to be treated as ending with the period specified in that notice, regardless of when it could otherwise be brought to an end.*
>
> *(2) The conditions are that—*
>
> *'' (b) the relevant claim for asylum has been determined; …*
>
> *(3) A notice to quit is in accordance with this paragraph if it is in writing and…*
>
> *(b) in a case where the Secretary of State has notified his decision on the relevant claim for asylum to the claimant, specifies as the notice period a period at least as long as whichever is the greater of—*
>
> *(i) seven days; or*
>
> *(ii) the period beginning with the date of service of the notice to quit and ending with the date of determination of the relevant claim for asylum (found in accordance with section 94(3) of the Act)…"*

6. The combined effect of these provisions, for a person in the Claimant's position, is that he had a statutory entitlement to a notice period to leave his asylum support accommodation which was the later of:

    a. 28 days from the date of the letter granting leave, or

    b. 7 days from the date of the notice to quit.

7. In practice, refugees in his circumstances should receive four distinct communications in relation to the transition from asylum support:

    a. The original letter granting asylum (the "Grant letter") which triggers the statutory 28 day period.

    b. A Biometric Residence Permit ("BRP") which is issued after the Grant letter and is generally required to obtain benefits such as Universal Credit. Although correspondence from the Home Office suggests that an application for benefits may be made in advance of a BRP, it was not in issue that it is important to have a permit in order to gain access to the full range of available benefits and support.

c. An Asylum Support Discontinuation Letter ("ASDL"), which is usually issued at the same time as, or shortly after, the BRP. This letter sets out the date on which asylum support will come to an end.

d. A Notice to Quit or vacate ("NTQ") sent by the accommodation provider. This document specifies the date when the refugee is required to vacate their accommodation. To meet the notice requirement in ASR 2000 it must stipulate a period of at least seven days. In practice a further two days are added if the notice is served by post. The NTQ would normally set the same cessation date as the ASDL unless it was given some time later such that the 7 or 9 day period would only expire after the 28 day period.

8. Prior to August 2023 the practice of the Second Defendant was to commence the 28 day period from the date of the ASDL. The Claimant contends that usually the ASDL would not be sent until after the BRP had been issued and sometimes not for a significant period afterwards (although this appears to reflect variability in the handling of individual claims rather than a practice in itself). There are also a number of Home Office publications and ministerial statements which indicate that the 28 day period commences from the issue or receipt of the BRP, perhaps reflecting an assumption that the ASDL and the BRP would be issued simultaneously or within a short period of each other. This view of the practice appears to have been shared by charities and other bodies working to support refugees. A report from the Independent Chief Inspector of Borders and Immigration ("The Chief Inspector's Report") entitled "An inspection of asylum casework" and dated the 29th of February 2024 records:

> *"…stakeholders told inspectors that, as of August 2023 the Home Office counted the 28 days from the date of receipt of the decision letter rather than receipt of the BRP"*

9. In its context within the report this was a reference to the fact that in August 2023 the Second Defendant changed the notification practice so that the commencement of the 28 day period was taken from the date of the Grant Letter. Notice would expire at the end of this period or 7 to 9 days from the date of the NTQ if it had not been served during the 28 day period or where notice under the NTQ expired only after the 28 day period (the "August practice"). This was, in effect, a return to the statutory timetable.

10. There does not appear to have been any prior consultation in relation to this alteration in the prevailing practice, but some voluntary sector organisations received a note from the Home Office on 1 August entitled *'Lines on asylum support cessations'* which identified the change prospectively. On 25 August the Home Office circulated a further document, to a limited audience, entitled *'Discontinuation FAQ'*. This document stated that *"we are now taking steps to ensure that support is stopped as soon as our legal obligations end"* thus confirming the effect and purpose of the August practice and *adding "this is not a change in policy".*

11. On the 15 September 2023, as it later emerged, there was a further change so that the 28 day period was taken from the date of issue of the BRP. Notice would expire at the end of this 28 day period or 7 to 9 days from the date of the NTQ to the extent the 7/9 day NTQ period fell outside the 28 day period ("the September practice").

12. The effect of the introduction of the August practice appears to have been felt immediately. On 5 September 2023, some 143 organisations working with refugees or the homeless wrote to the Second Defendant and the Secretary of State for Levelling Up ("the 5 September letter") in relation to *"the recent changes to the process for people who have been recognised as refugees and are obliged to leave asylum support accommodation."* It was asserted that because of the changes many refugees were being given just seven days' notice and were being driven into *"destitution and homelessness"*.

13. This letter, from those well versed in the application of the legislation and the practice of the Home Office, is predicated on the 28 day period, prior to the implementation of the August practice, being tied to the receipt of the BRP:

> *"For many years the Home Office has recognised that it is impossible for someone to secure alternative accommodation, find employment, open a bank account or apply for welfare benefits until they receive their Biometric Residence Permit (BRP). That is why the department's policy has been that the 28-day "move-on" period starts when a person receives their BRP – indeed several Home Office ministers have relied on that policy when arguing against calls to extend the move-on period.*
>
> *[...]*
>
> *The recent changes worsen this situation by starting the 28 days when someone receives a grant letter telling them their protection claim has been accepted, instead of when they receive their BRP. There is usually a minimum delay of between 7 and 10 days between the receipt of the grant letter and a BRP being delivered, meaning someone will already be well into the 28 days before they can even start to engage with the processes that are vital for them to avoid homelessness and destitution. Many local authorities will also only begin to provide homelessness prevention services once someone has received a discontinuation letter informing them their asylum support will end or the notice to quit"*

14. The 5 September letter also reflects the wider objectives of those who had signed it in seeking a much greater change to the approach to notice periods for refugees so as to align their treatment with the position under The Homelessness Reduction Act 2017. This requires councils in England to support those who are homeless or at risk of becoming homeless within the next 56 days. The shorter period afforded to refugees also intersects with the 35 day period between an application for Universal Credit and a payment being made. The difficulty in practice for refugees is described in other evidence (Mr Elliot's witness statement of 15 December 2023 in the *MX* proceedings) as being that accommodation support could not be accessed until an NTQ had been issued. Neither the August or September practice in fact reduced the notice period for the NTQ itself which could run concurrently with 28 day period or, in effect, extend it.

15. The primary remedy sought in the 5 September letter for the problems described was a return to the 28 day period running from a date no earlier than receipt of the BRP so that the government was urged to:

> *"Ensure that refugees receive all their documentation at one time. Specifically, someone should receive their refugee grant letter, their BRP, the letter containing the date when their asylum support will end, and the notice to quit their accommodation on the same day. In line with recent Home Office policy, the 28 day notice period should never begin before someone has received their BRP."*

16. I note that the Claim Form in the present case seeks an interim order requiring 28 days notice to be given in every case adding:

> *"That does not restore the full previous practice (i.e. encompassing the previous practice of calculating the "deemed determination date" from the date of receipt of the BRP)."*

17. The Home Office replied to the 5 September letter by letter of 3 November from the Deputy Director of Adult and Family Asylum Accommodation:

> *"The number of asylum seekers requiring asylum support has reached record levels. One of the reasons for the large numbers on support is due to the backlog of cases awaiting decision and there are significant efforts underway to clear this. As you note, with our efforts to conclude asylum claims, an increasing number of individuals' entitlement to asylum support will end.*
>
> *It is not the case that asylum seekers are only receiving seven days' notice to leave their accommodation. Following the service of an asylum decision, an individual continues to be an asylum seeker for the purpose of asylum support until the end of the relevant prescribed period, also known as the 'grace period' or 'move on period'. This period is 28 calendar days from when an individual is notified of a decision to accept their asylum claim and grant them leave. There are no plans to extend the move on period beyond the 28 day period set out in legislation. Increasing the move on period would exacerbate existing pressures on the asylum estate and compromise efforts to provide suitable, safe accommodation for eligible asylum seekers awaiting a decision on their claim. Our focus is on ensuring that individuals granted refugee status are aware at point of decision that their support will end, and that signposting is clear and effective, to assist their move on".* (my emphasis)

18. Curiously, this letter, asserting that there would be no departure from the statutory period of 28 days from the grant of asylum (although also referring to notification of that decision), makes no mention of the September practice. It appears to be simply restating and defending the August practice although it does, later, contain an assurance that an NTQ would only be issued once a BRP had been issued. The Home office does not appear to have communicated widely the further change represented by the September practice until a voluntary sector stakeholder meeting on 5 December 2023 when it described the August practice as having been temporary and short lived.

The Local Housing Authority

19. Once an asylum seeker has been granted refugee status they become "eligible for assistance" and may make an application to be accommodated by a Local Housing

Authority under Part 7 of the HA 1996 which contains powers and duties to relieve emergency homelessness.

20. Once an application is received the Local Housing Authority has a number of immediate duties: to prepare a personalised housing plan; to consider whether it owes the applicant the "relief duty" under section 189B to take reasonable steps to assist an applicant to secure suitable accommodation is available for them for a period of at least 6 months; to inquire as to what substantive duty, if any, it owes the applicant pursuant to section 184(1) and to secure accommodation for those applicants it has reason to believe have a "priority need" as defined in section 189(1):

> *"189 Priority need for accommodation*
>
> *(1) The following have a priority need for accommodation -*
>
> *(a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;*
>
> *(b) a person with whom dependent children reside or might reasonably be expected to reside;*
>
> *(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;*
>
> *(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster;*
>
> *(e) a person who is homeless as a result of that person being a victim of domestic abuse."*

21. The only relevant priority need provision for the purpose of this claim is section 189(1)(c). Whether an applicant is "vulnerable" is a question to be determined by the Local Housing Authority rather than a medical practitioner acting on behalf of the individual (*Simms v Islington LBC* [2008] EWCA Civ 1083) and involves a comparative assessment (*Hotak v Southwark LBC* [2015] UKSC 30).

22. Where an applicant does have a priority need for accommodation and is not intentionally homeless there is an interim duty under section 188 HA 1996 to make accommodation available. In the absence of a priority need the duty is limited to preparing a personal housing plan and providing assistance and advice to the applicant to enable them secure accommodation for themselves ("the relief duty"):

> *"188 Interim duty to accommodate in case of apparent priority need*
>
> *(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.*
>
> *(1ZA) In a case in which the local housing authority conclude their inquiries under section 184 and decide that the applicant does not have a priority need -*

> *(a) where the authority decide that they do not owe the applicant a duty under section 189B(2), the duty under subsection (1) comes to an end when the authority notify the applicant of that decision, or*
>
> *(b) otherwise, the duty under subsection (1) comes to an end upon the authority notifying the applicant of their decision that, upon the duty under section 189B(2) coming to an end, they do not owe the applicant any duty under section 190 or 193.*
>
> *(1ZB) In any other case, the duty under subsection (1) comes to an end upon the later of -*
>
> *(a) the duty owed to the applicant under section 189B(2) coming to an end or the authority notifying the applicant that they have decided that they do not owe the applicant a duty under that section, and*
>
> *(b) the authority notifying the applicant of their decision as to what other duty (if any) they owe to the applicant under the following provisions of this Part upon the duty under section 189B(2) coming to an end.*
>
> *(2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).*
>
> *(3) Otherwise, the duty under this section comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review requested by the applicant under section 202. But the authority may secure that accommodation is available for the applicant's occupation pending a decision on review."*

23. A decision following the inquiry required under section 184(1) may be given to the applicant or to his legal representatives and may be sent by post or e-mail (see *Dharmaraj v Hounslow LBC* [2011] EWCA Civ 312 [22]). The Homelessness Code of Guidance 2023 ("the Code") published by the Department for Levelling up Housing and Communities states (my emphasis):

> *"18.30 Housing authorities are required to provide written notifications to applicants of certain decisions reached in relation to their applications under Part 7. In all cases notifications should be clearly written in plain language, and include information about the right to request a review and the timescales that apply. Housing authorities might also include information about independent advice services available to the applicant. In cases where the applicant may have difficulty understanding the implications of the decision, it is recommended that housing authorities consider arranging for a member of staff to provide and explain the notification in person.*
>
> *18.31 Housing authorities should consider the most appropriate way to notify applicants of decisions. The housing authority may send a written notification by email or letter, depending on the needs of the applicant.*

> *18.32 Written notification not received by the applicant can be treated as having been given to them, if it is made available at the housing authority's office for a reasonable period that would allow it to be collected by the applicant or by someone acting on their behalf."*

24. The latter method of notification (making the decision available at council offices) has a statutory basis, as section 184(6) of the HA 1996 provides:

> *"Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf."*

25. All applicants have a right to challenge a decision under section 184 by requesting a review under section 202. Where such a request is made, the Local Housing Authority has a discretionary power under section 188(3) to secure that accommodation is available pending the review.

26. How that discretion should be exercised was considered by Latham J. in *R v Camden LBC ex p Mohammed* (1998) 30 HLR 315, QBD as approved in *R v Brighton & Hove Council ex p Nacion* (1999) 31 HLR 1095, where the Court of Appeal emphasised the high hurdle which would have to be cleared in order for the court to intervene by way of judicial review, such that it would only do so in an exceptional case. The exercise of the discretion necessarily involves a balancing exercise. The guidance in *Mohammed* is incorporated in the Code:

> *"15.26 In considering whether to secure accommodation pending review housing authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, against proper consideration of the possibility that the applicant might be right. Housing authorities should consider the following, along with any other relevant factors:*
>
> *a. the merits of the applicant's case that the original decision was flawed and the extent to which it can properly be said that the decision was one which was either contrary to the apparent merits or was one which involved a very fine balance of judgment;*
>
> *b. whether any new material, information or argument has been put to them which could alter the original decision; and,*
>
> *c. the personal circumstances of the applicant and the consequences to them of a decision not to exercise the discretion to accommodate."*

27. In *ex p Nacion* (above) Tuckey L.J said (at p. 1100):

> *"the provision of temporary accommodation pending appeal (and the same applies pending review) is entirely in the discretion of the council. Where a council, as in this case, has obviously considered the material factors which Latham J. identified in his judgment, it is an entirely futile exercise to seek to say that in some way that discretion was wrongly exercised by coming to the*

> *High Court for judicial review and saying, as this applicant does, "We have an arguable case on the appeal to the County Court". Applications for judicial review on this basis should be strongly discouraged. It is only in a very exceptional case that there will really be any reasonable prospect of interesting the court by way of judicial review to interfere with the exercise of the very broad discretion which the council have, bearing in mind that they exercise it, knowing the circumstances of the applicants, the range and availability of accommodation in their area and the other matters which were identified in the passage I have cited from the case of Ali and Nairne. …"*

28. The review decision under section 202 or where appropriate the initial decision may be challenged by way of an appeal on a point of law to the County Court under section 204 HA 1996. There is then a power to secure that accommodation is made available for an applicant pending the hearing of an appeal (see section 204(4)). The County Court has a broad range of statutory powers in connection with an appeal including the power to order that interim accommodation is made available:

> *"204A Section 204(4): appeals*
>
> *(1) This section applies where an applicant has the right to appeal to the county court against a local housing authority's decision on a review.*
>
> *(2) If the applicant is dissatisfied with a decision by the authority -*
>
> *(a) not to exercise their power under section 204(4) ("the section 204(4) power") in his case;*
>
> *(b) to exercise that power for a limited period ending before the final determination by the county court of his appeal under section 204(1) ("the main appeal"); or*
>
> *(c) to cease exercising that power before that time, he may appeal to the county court against the decision.*
>
> *(3) An appeal under this section may not be brought after the final determination by the county court of the main appeal.*
>
> *(4) On an appeal under this section the court -*
>
> *(a) may order the authority to secure that accommodation is available for the applicant's occupation until the determination of the appeal (or such earlier time as the court may specify); and*
>
> *(b) shall confirm or quash the decision appealed against, and in considering whether to confirm or quash the decision the court shall apply the principles applied by the High Court on an application for judicial review.*
>
> *(5) If the court quashes the decision it may order the authority to exercise the section 204(4) power in the applicant's case for such period as may be specified in the order.*
>
> *(6) An order under subsection (5) -*

> *(a) may only be made if the court is satisfied that failure to exercise the section 204(4) power in accordance with the order would substantially prejudice the applicant's ability to pursue the main appeal;*
>
> *(b) may not specify any period ending after the final determination by the county court of the main appeal."*

29. Thus, the jurisdiction of the courts in relation to the provision of interim accommodation once a section 202 review decision has been made resides within the County Court rather than the High Court.

Background – the Claimant's Case

30. The Claimant was provided with accommodation by the Second Defendant in accordance with s.95 of the 1999 Act, in Muswell Hill, Finchley. He had been residing there since his arrival in the UK. On 30 October 2023, the Claimant received a letter from the Second Defendant confirming that he had been granted refugee status. His BRP was issued on 8 November 2023.

31. A further letter from the Second Defendant (his ASDL letter), dated 14 November 2023 stated *"you no longer qualify for support under section 95 of the Immigration and Asylum Act 1999"*. It went on to confirm that asylum support would end on 6 December 2023 and that his eligibility for accommodation at the address at which he had been living would *"cease on 6 December 2023 when you will be expected to leave"*. The Claimant's witness statement suggested that he had received both the BRP and the ASDL around 14 November, in line with the general practice described by the Second Defendant. By 17 November the Claimant was using his BRP to claim Universal Credit at his local Job Centre. On 26 November 2023, the Claimant received a further letter (his NTQ) giving notice to quit his accommodation by 6 December. The Claimant was therefore issued with his BRP prior to being sent the ASDL and NTQ. The practise of issuing the documents in this sequence rather than all together was, on the wider evidence, one which dated back until at least 2014.

32. Although the Claimant's Statement of Facts and Grounds queried which practice had been applied, it is clear that his case was dealt with under the September practice, the discontinuation date being 28 days after the issue of the BRP. He was not subject to the August practice and, despite any lack of communication on the part of the Home Office as to its existence, the details of his case suggest that the September practice was being applied to those in his position. Had the pre-August practice applied, the Claimant would have had a further six days' notice because the 28-day period would have run from the date of the ADSL. He was however afforded a period calculated by reference to the issue of the BRP rather than the date of grant. Had the period been calculated from receipt of the BRP, he would have had an additional 4 to 5 days.

33. During his notice period the Claimant says that an officer of the First Defendant (an Arabic speaker) had visited him (sometime at the end of November 2023) to assist him with filling in a homelessness application. This would appear to have been a member of the First Defendant's Resettlement Team who were providing non-statutory assistance. The Claimant gave him his e-mail address and phone number expressing, he says, a preference to be contacted by telephone. The device he used to check his e-mail was his mobile phone. In his witness statement of 19 December 2023) he says

"The employees said they could not help me find accommodation until I was actually homeless. I was asked to contact them the day before my eviction date." This account is borne out by the First Defendant's internal records (the case notes of Priscilla Garbrah) which record the Claimant giving the same explanation after he had contacted the First Defendant to seek accommodation.

34. It is necessary in considering the issues that remain between the Claimant and the First Defendant, to look at the sequence of events which led to the instruction of solicitors and the commencement of these proceedings. The Claimant's skeleton argument says, somewhat laconically: *"that after some initial confusion he managed to instruct solicitors"*.

35. His present solicitors made contact with him on 21 November having been referred by Harringey Migrant Support Centre. They were not formally instructed at that stage. There was further contact on 28 November, with the assistance of an Arabic interpreter, when instructions were taken which were used to draft an initial client care letter and a pre-action protocol letter ("PAPL"). By that date the claimant had received his ADSL which identified the date on which he would cease to be eligible to be accommodated as the 6th of December, which would have been apparent when his instructions were taken.

36. The paralegal dealing with his case drafted a PAPL and sent it to her supervisor on 28 November. The paralegal's evidence (in her witness statement of 19 December 2023) is that she believed that her supervisor did not review the PAPL until 5 December, the same day it was sent to the First Defendant (although it was in fact addressed to the London Borough of Lambeth) and the day before the Claimant was due to lose his accommodation. It is not clear why there was gap of a week between the preparation of the PAPL and it being sent to the First Defendant. The practical remedy sought in the PAPL was identified as *"interim accommodation pending the outcome of the first Defendant's inquiries into the Claimant's application as homeless."* This was essentially addressed to the question of whether the Claimant was in priority need so that the First Defendant would have been obliged to accommodate him. A report was attached to the PAPL which was described as a *"psychiatric report"*.

37. The Claimant presented himself as an urgent case at the First Defendant's offices for an in-person homelessness assessment on the 5 December 2023 at 11.45am. The Claimant says there were communication difficulties at that meeting because the interpreter, who was attending by telephone, was cut off.

38. He accepts that, following the interview, there were a number of emails requesting further information to which he responded during the course of that day and into the afternoon of the 6th of December (see further below). The email exchanges were exhibited to the First Defendant's evidence. The Claimant was able to answer the questions asked of him and to attach documents to his emails. It is evident that the First Defendant's staff dealt with him as an urgent case and notwithstanding that on 5 December he was not yet homeless.

39. The PAPL was sent at 12.12 on 5 December by email. It indicated that the solicitors were "assisting the proposed Claimant" but did not say that legal aid was yet to be granted. There was no dispute that this was intended to be a PAPL.

40. Under the pre-action protocol for judicial review a Defendant's response should normally be provided within 14 days. Paragraph 21 of the protocol provides:

> *"Where it is not possible to reply within the proposed time limit, the defendant should send an interim reply and propose a reasonable extension, giving a date by which the defendant expects to respond substantively. Where an extension is sought, reasons should be given and, where required, additional information requested. This will not affect the time limit for making a claim for judicial review nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions."*

41. In this case an immediate response was requested, by 4:00 pm on the same day. There was a reply from the First Defendant at 1:34 pm informing the Claimant's solicitors that the Claimant was in the process of being assessed. There was a further e-mail at 3:48 pm giving an initial view that the First Defendant did not consider the Claimant met the threshold for section 188 accommodation. The Claimant's solicitor then queried why he was not thought to be in priority need, pointing out that a "psychiatric assessment" had been provided with the PAPL. There was a response to that e-mail within about 15 minutes indicating that the First Defendant would issue a decision letter by the end of the week and confirming that it had had sight of the assessment. There was an immediate response from the Claimant's solicitor saying that they would be proceeding to judicial review "tomorrow".

42. The assessment which accompanied the PAPL was contained in a report of 18 July from Dr Wendy O'Neill following a meeting with the Claimant on 30th May 2023, so prior to the grant decision. She had been instructed by the Islington Law Centre in connection with the Claimant's asylum application to *"conduct a psychological assessment and prepare a report for court dealing with issues of current mental health diagnoses, symptoms and causation; barriers to disclosure; treatment needs; risk of suicide/self-harm; impact of removal to Sudan; and the ability to provide oral evidence."* She is a clinical psychologist rather than a psychiatrist although it was not in dispute that as a mental health professional, she could provide an opinion on the matters referred to her.

43. Her opinion included that the Claimant *"meets diagnostic criteria for a diagnosis of PTSD"* arising from his experiences in Sudan, Libya and when making sea crossings of the Mediterranean and the Channel. In the discussion of his state of mind at the time of the examination the focus was on the pending asylum claim. She observed that his mental health was being impacted by the uncertainty around his immigration status saying:

> *"Currently, [ZR] has no stability or security in the UK while the threat of removal is present and the worry that he may be killed should he be removed to Sudan."*

44. During his interview on the 5th of December the Claimant had been assisted to complete an application form which confirmed his e-mail address and indicated that the council could communicate with him at that address. The purpose of the interview was primarily to establish whether the council had to house him or owed him the relief duty and if so the terms of his personalised housing plan.

45. At 4:33 pm the council officer who had interviewed him requested documents via his e-mail address, including a full set of bank statements and proof of income, which were provided by the Claimant within an hour. There followed further e-mail exchanges in which the Claimant was asked for and provided a number of further documents.

46. On the following day the same officer attempted to contact him by telephone but he could not be reached. She emailed at 9.25am to ask him to answer his phone. He replied by email at 09.33 saying*: "Good morning. I was in class so I missed your call. Please call back"* (he also added that he was attending to learn English for four days of the week).

47. The vulnerability assessment and personalised housing plan were completed on the same day and sent by email to the Claimant. He responded by e-mail attaching a copy of the plan with his signature on it. The vulnerability assessment was carried out over the telephone by way of a three-way call between the Claimant, the First Defendant's officer, and an Arabic interpreter. There is a narrative section dealing with health issues which includes the following:

    a. In answer to a question as to whether he had any physical or mental health issues the Claimant's reply is*: "I used to but now I am fine so no for now."*

    b. When asked about medication he replied: *"I am not taking any medication. It was all mental health problems and I was unable to sleep and that was all. I used to have nightmares"* and *"I do not have any mental health issues but I used to have nightmares and couldn't sleep"*.

    c. In relation to a question about admittance to hospitals he said: *"I have not been admitted to hospitals but I used to go to hospitals for a rash on my skin and that's all."*

    d. He confirmed that he could use a phone and did not have any learning difficulties or disabilities saying *"No, only that I don't speak much English and I am now learning."*

    e. He said he could not read or write English (in his later witness statement he said that he had used online translation and asked a friend to help when responding in English to emails).

48. The overall presentation was therefore that he did not have any current significant mental or physical health problems and had limited support needs. He was assessed to be a young man of 25 years of age in good physical health.

49. On the 7th of December the First Defendant made its decision, pursuant to section 184(3) of the HA 1996, that the claimant was eligible for assistance and was homeless but did not have a priority need for accommodation. Thereafter the First Defendant sought to relieve the Claimant's homelessness by referring him to organisations which might provide him with accommodation. The decision letter was emailed to the Claimant who had been asked whether the council could discuss his case with his solicitors (in an earlier e-mail on the same day). No response was received to either of the First Defendant's emails of the 7th of December. There was no indication that they had not been delivered and it was not disputed that they had been received at his

account. The section 184 decision sets out and explains the decision and the relevant law in straightforward terms.

50. The evidence from the First Defendant's housing needs officer included the following:

> *"ZR was able to speak via an Arabic interpreter, he was able to answer questions in the correct context. He answered confidently and was not slow in responding. He was able to express himself and raised concerns he had about how he would cope in a situation of street homelessness. ZR has been reachable by e-mail and has responded to my emails to him promptly. We have had regular contact throughout the process to date. I believe that ZR received the council's emails dated 6.12.23as he responded to other emails I sent on 6.12.23. In respect of the emails I sent to the client on the 7 December 2023, I note that ZR has received and responded to all my emails to date. On sending the e-mail to ZR on the 7.12.3, I can confirm that I did not receive a delivery failure notification."*

51. The Claimant's evidence in relation to the emails of 7 December is that he did not remember receiving them. He added:

> *"I do not know how I would have missed this. I am generally good at checking my emails; I never just ignore them. I remember replying to most of the emails I received from the Council so it seems strange that I missed this one."*

52. His evidence was not therefore that he could not receive and deal with emails but that he must have overlooked these particular communications.

53. He went on to explain that by this stage he was homeless and it became harder for him to manage his emails and use his phone. In relation to the request for consent to speak to his solicitors he said: *"I can only think that the problems I had after I became street homeless caused me to miss it."*

54. The paralegal dealing with his case experienced difficulties contacting him by e-mail but that appears to be because she had the wrong e-mail address. She was nevertheless able to obtain documents from him via phone and WhatsApp messages between 8 and 13 of December. In due course she sent forms to him by e-mail, once she had the correct address, to which he responded. The Claimant was not, it appears, asked whether he had been sent a decision letter nor was any query raised with the First Defendant given that a decision had been promised within a matter of days on the 5th of December.

55. It is not in issue that once the notice to quit his asylum accommodation expired the Claimant had no other accommodation to go to. The Claimant was street homeless from 6 December 2023 and resorted, at times, to sleeping on a bench in a park close to the First Defendant's Council Offices. Following the decision letter of 7 December it was open to the Claimant to seek a review and accommodation pending that review. He did not do so.

56. On 13 December the Claimant was granted public funding. On 19 December the Claimant served a PAPL on the Second Defendant. In that letter the claimant threatened to issue proceedings for judicial review unless it received a response by 11 am on 20 December. There was no further communication with the First Defendant.

The Proceedings

57. The claim against both Defendants was issued on the 20th of December 2023 asserting that the First Defendant had failed to provide the Claimant with accommodation pending a decision under section 184 as to which housing duty, if any, was owed to the Claimant. The application for urgent consideration and interim relief was against the First Defendant alone. It recited that:

> *"The Defendant was informed on 5 December 2023 that action would be taken in the form of an application for judicial review. In light of this, the Defendant indicated that a decision would follow later the same week, but it never arrived."*

58. The evidence in support of the application said:

> *"No substantive response has been provided by the 1st Defendant to the pre-action correspondence and they have not issued a formal decision"*

59. On 20 December 2023, Lang J. granted the Claimant's application for urgent interim relief and ordered the First Defendant to provide suitable accommodation for the Claimant, in accordance with section 188(1) Housing Act 1996, no later than 4.00 pm on Thursday 21 December 2023. There were problems with placing the Claimant in accommodation that evening so he remained street homeless for a further night (in breach of Lang J's order) but he was finally accommodated by the First Defendant and has remained so since. The Claimant relied in argument upon the fact that the judge concluded that he was in priority need. The First Defendant submitted that the judge was wrong to arrogate to herself a decision which it was the duty of the First Defendant to make but conceded that, in the circumstances, it was perhaps not surprising that she had concluded that the Claimant was vulnerable. She had been told there was no reasoned decision by the First Defendant and was entirely unaware of the basis on which it had reached a contrary view.

60. On 21 December the First Defendant provided the Claimant's solicitors with a copy of its section 184 decision. They in turn requested a review under section 202 HA 1996 by e-mail on the following day, 22 December. It was implicit in that request that it was accepted that a decision had been made. The First Defendant considered whether it should provide the claimant with accommodation pursuant to section 188(3) HA 1996 pending the review but decided not to do so and sent a letter to the Claimant, with a copy to his solicitors, informing him of that decision.

61. On 28 December the First Defendant's Senior Housing Needs Practitioner wrote to the Claimant's solicitors addressing various points raised in the review request of 22 December. That response included the following:

> *"On the one hand it is said that the decision maker has misunderstood Dr O'Neill's report. On the other, disappointingly, it is alleged that the decision maker has not read the report at all. It is improper to make that allegation, especially when the decision itself clearly references the medical report. It still remains unclear to me on what basis this submission was formed.*

> *The decision maker did make reference to the medical report of Dr O'Neill. She simply stated that having considered its contents, and [ZR's] answers in his vulnerability assessment, she remained satisfied that he does not have a priority for accommodation. [ZR] said in his assessment that he does not have any current mental health problems and does not take medication. He said that he had not been referred to specialists regarding the mental health conditions mentioned in Dr O'Neill's report. He also said that he has no mobility issues and that he has never spent any time in detention. These answers contradict your submissions and I can confirm that we used a professional interpreting service when we asked him to answer the questions. As a result, I can see no reason for ignoring the answers he gave...*
>
> *[...]*
>
> *There are numerous other applicants whom this, and other local authorities, have decided that they are not under a duty to assist. This Authority covers an inner-city area suffering, in significant measure, from poverty and deprivation. The Authority has many and competing demands upon its limited resources. The most pressing demand, relevant for present purposes, is that of the scarce and precious resource of social housing. The Authorities own stock is finite, as is the stock of other social housing to which it may have recourse. In maintaining fairness between different homeless persons, and different types of housing applicant, it would not be right, I consider, to house your client in the interim, when such a large number of other unsuccessful applicants are not so housed. There is also a huge demand on public funds for bed and breakfast, and this must be directed towards the greatest need."*

62. On 27 December 2023, the First Defendant applied for Lang J's order to be set aside on the basis that it was based upon a factual error in that a determination pursuant to section 184 of the Housing Act 1996 had been made on 7 December 2023. This factual error had a legal consequence since the First Defendant did not owe the Claimant a duty to accommodate him pursuant to the Housing Act 1996 once the decision had been made. The First Defendant contended that the Claimant knew that this was the case when applying for relief.

63. On 5 January 2024, the Claimant responded to the application arguing that interim relief had been properly obtained and that the decision of 6 December had not been properly served and was of no effect.

64. On 8 January 2024, Stacey J. ordered the Claimant to serve an amended statement of facts and grounds within 7 days; that is by 15 January 2024. The Defendants were to file and serve any Amended Summary Grounds of Defence within 14 days thereafter.

65. On 23 January 2024 the First Defendant wrote to the claimant's solicitors to say that it would agree to accommodate the Claimant pending the section 202 review. The reasons for that decision were that the costs of opposing the claim were likely to exceed the costs of providing accommodation and that it was likely the case would not be listed until after the First Defendant had made its review decision so that the High Court would have ceased to have jurisdiction.

66. On 24 January 2024 the First Defendant made an open offer as to costs prior to filing its response to the amended statement of facts and grounds saying that it had taken a pragmatic and commercial decision in relation to accommodating the Claimant. Its offer was in the following terms:

> *"... the Council proposes that this case should be dealt with by way of settlement. The Council's offer is that your client withdraw his claim against LBH with no order as to costs. Insofar as costs are concerned the Council is very confident that it gave the S. 184 Decision to your client in a way that complies with its legal duties (see The Code of Guidance, para. 18:30 and 18:31 and Dharmaraj v Hounslow [2011] EWCA Civ 312 and Maswaku v Westminster [2012] EWCA Civ 669). If that is right, the basis on which the claim was originally issued was mistaken and the Council will, at the very least, be entitled to set-off any costs incurred prior to the amendment of the Grounds against any costs it has to pay your client."*

67. The Claimant rejected that offer on 25 January 2024, disagreeing with the First Defendant's position in relation to the section 184 decision and asserting that it had been successful in obtaining accommodation so that the proceedings were therefore justified and that the First Defendant should pay its costs.

68. On 1 February 2024 the Claimant asked for his claim against the Second Defendant to be listed as a matter of urgency but stayed as against the First Defendant.

69. By letter of the 2nd of February the First Defendant maintained its position and said that it would not pay costs but proposed an order setting aside the order of Lang J.

70. By an application dated the 1st of February 2024 the Claimant applied for permission to rely on a reply to the summary grounds of defence, for an order listing the application for interim relief and for a stay of the claim against the First Defendant pending the outcome of the claim against the Second Defendant.

71. By letter of the 2nd of February the Second Defendant objected to the Claimant's applications, giving reasons. Objection was taken to the Claimant's proposed reliance on the witness statement of Derek Bernardi which had been served after the Summary Grounds of Defence were filed.

72. On 5 February 2024 Choudhury J. ordered, amongst other things that:

    a. The Claimant had permission to rely on his reply and accompanying evidence

    b. The Claimant's application for interim relief against the Second Defendant was be listed to be heard on 21 February 2024 (or as soon as possible thereafter)

    c. The First Defendant's application to set aside order of 20 December 2023 was to be listed to be heard at the same time.

73. It is now clear that Choudhury J did not have sight of the representations made on 2 February by the Second Defendant before making his order. The Second Defendant invites the court to set aside the order granting the Claimant permission to serve a reply and to rely on evidence in support of that reply.

74. On 15 February 2024 the First Defendant made its review decision concluding that the Claimant did not have a priority need for accommodation but stating that it would secure accommodation for him until he was offered accommodation by the YMCA. The referral to the YMCA was pursuant to the relief duty. On the following day, the First Defendant again invited the Claimant to agree to the discharge of the interim order made by Lang J.

75. On 4 March 2024, Chamberlain J. made an order, the effect of which was to require the following matters to be decided:

    a. The Application by the First Defendant, the London Borough of Haringey to set aside the Order of Lang J dated 20 December 2024

    b. The Claimant's application for interim relief against the Second Defendant.

    c. The Claimant's application for permission to apply for judicial review.

76. In fact, the First Defendant's application is unopposed because it agreed to accommodate the claimant pending his appeal under section 204 of the Housing Act 1996. What remains is the question of costs, and the Claimant's Article 3 claim which, it is said arises, because the First Defendant's decision left the Claimant homeless for 15 days between 6 and 21 December 2023, including for one night after Lang J's order had been made. Thus, there is a claim for damages which is unresolved by the agreement to accommodate.

Discussion and Conclusions

77. The First Defendant's decision of the 7th of December was communicated to the claimant by e-mail. There is nothing to suggest that this was inappropriate, unreasonable, or unjustified as the Claimant has variously argued. The Code plainly envisages that e-mail may be used and it is difficult to think of a method which would have been a better substitute in the circumstances. There was extensive e-mail correspondence with the claimant on the 5th and 6th of December to which he had responded promptly and in English. The Claimant's solicitors themselves corresponded with him by electronic means using WhatsApp and e-mail, only encountering difficulties with the latter because of an incorrect e-mail address. It was not necessary for the First Defendant to ensure that the claimant understood the content of the decision (see *Ali v Birmingham CC* [2009] EWCA Civ 1279) but in the context of this case it was reasonable for the First Defendant to conclude that the Claimant would understand the purpose and effect of the decision, given his recent interviews. In any event he had the assistance of solicitors. The Claimant's own evidence suggests that he simply overlooked the emails rather than that he faced any insurmountable difficulty in dealing with them, even after he had left his accommodation.

78. The fact that there was no additional response to the PAPL does not, in my view, take the matter further. The Claimant's solicitors had waited a week after the preparation of the initial draft to send the letter to the First Defendant and had asked for a response on the same day. The First Defendant's e-mail of 5 December clearly set out its position and was understood to have done so by the Claimant's solicitors. When they received a response, they indicated immediately that they were going to proceed to judicial

review on the following day. The pre-action protocol sets out the steps that should be taken before proceedings are commenced.

79. Although the First Defendant had asked the Claimant whether it could pass the decision of 7 December onto those representing him (and did not do so because it did not receive a reply), it would have been open to the First Defendant to notify the Claimant's solicitors that a decision had been reached and had been given to him. They did not require his permission to do so. There is therefore force in the criticism that some notification, albeit brief, ought to have been given to the Claimant's solicitors. However, that omission needs to be seen in the context of the conduct of the Claimant's representatives.

80. There is no explanation for the delay in issuing proceedings between 6 and 20 December, a period when the Claimant was homeless. There was no attempt to contact the First Defendant during this period or to make any inquiry about an outstanding decision. The solicitors were in contact with the Second Defendant, sending a PAPL and, again, giving a highly truncated timetable for a response, suggesting that the case, as against the Second Defendant, was urgent. There was no good reason why the First Defendant could not have been notified of the Claimant's intention to apply for urgent interim relief. Had that been done the fact that a decision had been made would have become apparent. As it was, the application made to Lang J. was on the false premise that the First Defendant had not taken a decision and, implicitly, had not considered the medical evidence which had been obtained in July and which was placed before her. Neither was true.

81. The First Defendant had in fact made a detailed and urgent assessment of the Claimant's case as soon as he presented himself. The conclusion that he did not have a priority need was not arguably irrational, as asserted in the Amended Grounds, both on the information before the decision maker and her interviews with the Claimant. The suggestion that there was a breach of the *Tameside* duty or Article 3 does not add anything to the rationality challenge. The decision involved an assessment which a specialist local authority housing officer was well placed to make, and which took into account the material available, including the earlier psychologist's report. The Claimant was given appropriate notification of the decision. The decision of the 28 December 2023 not to provide the Claimant with interim accommodation involved the exercise of a discretion with which the court should be slow to interfere (*ex p. Mohammed* above). There is no arguable ground for judicial review which has a realistic prospect of success and it is a sensible use of the court's time and resources to determine that question now. I refuse permission as against the First Defendant.

82. The First Defendant made reasonable proposals to resolve matters in its offers of 24 January 2024 and 16 February 2024, which the Claimant rejected. Once the initial decision of 7 December 2023 was sent to the Claimant's solicitors the appropriate course was to ask for a review, not to maintain the claim. Once the review decision of 15 February 2024 had been made it should have been appreciated that the High Court no longer had jurisdiction.

83. As the Administrative Court Guide makes clear, careful consideration needs to be given to applications for urgent interim relief, and in particular whether they should be made on notice to the party against whom they are directed or whether a without notice

application can be justified. It was not justified in this case. The Order of Lang J. should be set aside.

84. The Claimant submitted that because he had obtained accommodation he should be entitled to his costs, relying on *M v Croydon* [2012] EWCA Civ 595. While the court should approach with caution arguments that a particular course was only taken for pragmatic reasons the Claimant initially obtained accommodation as a result of the flawed application before Lang J. I consider it to be a fair conclusion that the First Defendant did in fact find itself in a position where it was expedient to continue to house the Claimant rather than waste public money in an argument which was likely to be overtaken by proceedings in the County Court. In the circumstances the Claimant should pay the First Defendant's costs.

85. I was asked by the First Defendant to make an order requiring the Claimant's solicitors to show cause why a wasted costs order should not be made against them. I think it preferable for a formal application to be made if such an order is pursued. I have not entirely absolved the First Defendant in relation to its failure to inform the Claimant's representatives that a decision had been taken on 7 December 2024 even if, as I have concluded, its significance is eclipsed by what followed.

86. As far as the Second Defendant is concerned it cannot be argued that the practice adopted either in August or September of 2023 is unlawful in itself (*see R (on the application of A) v Secretary of State for the Home Department* [2021] UKSC 37), both were within the statutory scheme. The Claimant was not subject to the August practice and to the extent that it may have been implemented without consultation the representations made to the Second Defendant resulted in a modification which had the practical effect of extending the notice period beyond that required under the legislation.

87. That extension was to run the 28 day period from the BRP. This was responsive to the representations which had been made in the 5 September letter and was the practice which it appears was understood to be in place previously, at least in terms of which document would precipitate the notice period (as per the Claimant's grounds *"…the previous practice of calculating the "deemed determination date" from the date of receipt of the BRP"*). The difference in practice between the issue and receipt of the BRP is a matter of days. The same might be said in relation to the difference between using the BRP or the ADSL as the inception point for notice if the scheme operated in the way in which it was generally intended to. The Claimant's case is an example in point given that he received his BRP and ADSL either at the same time or within a few days of each other (on 14 November according to his evidence). The fact that there may be individual cases, whether under the pre- or post- August/September 2023 practices, in which errors occur or the prevalent practise is departed from is not a ground for a public law challenge and may simply be due to the facts or circumstances of those cases.

88. The Claimant suffered no obvious prejudice as a result of the September Practice. The suggestion that the detriment to him is that he would have had a further six days to obtain legal advice *and "to bring proceedings and obtain the order that was obtained"* does not lie easily with the facts. He had seen solicitors who had drafted a PAPL on his behalf a week before he appeared at the First Defendant's offices seeking accommodation. By that stage he had already (some three weeks earlier) applied for Universal Credit at his local job centre using his BRP. The Claimant's skeleton

argument asserts that the NTQ is the "critical" document because many local authorities require it before they will treat someone as homeless. If, as appears to be the case, the complaint is that local housing authorities were reluctant to act until they were provided with a copy of the NTQ then it is difficult to see what difference the Second Defendant's practice made. The NTQ had always been sent out after the BRP and ADSL and neither the August nor the September practice made any change in that respect or affected the interaction between the 28 day and the 7 day period, depending upon when the NTQ was issued. The objective of issuing all documents at the same time may well be desirable, if attainable, but there is no suggestion that it had ever been a practice or policy promulgated by the Second Defendant and then departed from. Equally there is no evidence, as the Claimant's grounds assert, that the First Defendant would not accept *"even an NTQ as triggering its responsibilities."* Further the delay in bringing proceedings and obtaining an order relates to the period after the decision of the First Defendant had been made. The Claimant's solicitors did not issue proceedings or seek injunctive relief until 20 December.

89. The assertion that there was a breach of Article 3 by the Second Defendant is said in the Claimant's grounds to arise because:

> *"The 2nd Defendant's arrangements create a real and unacceptable risk of precisely what has happened in this case, which is an obviously vulnerable man being made street homeless. Such a system will breach Article 3"*

90. As a result, it said, the Secretary of State *"..needs to understand, and confront, what happened in this case."*. This strikes me as a non-sequitur. The reason the Claimant was street homeless is because he was assessed by the First Defendant as not being in priority need, a decision which the First Defendant maintained on review. The Second Defendant's September Practice resulted in a marginal reduction in the overall notice period that might be afforded in some cases; in others, depending on when the NTQ was issued, it will have made no difference.

91. There is nothing about any of the applications before me which is urgent as far as the Claimant is concerned. The First Defendant complied with its obligations towards him as a person entitled to assistance and has in fact provided him with accommodation. Any urgency in relation to his accommodation has long since passed. The Claimant's amended grounds are dated 15 January 2024 and acknowledged that urgent relief was <u>not</u> necessary in respect of the claim against the Second Defendant. A little over a fortnight later in its Reply, dated 1 February, the Claimant reversed that position entirely and asserted that interim relief was urgently required because of *"the number of new cases which his solicitors and others are seeing, together with the scale of harm and hardship which vulnerable people are experiencing…"* The evidential basis for this statement was identified as the first witness statement of Mr Bernardi dated 1 February 2004.

92. Mr Bernardi's witness statement said that he had been instructed in 10 cases, including the present case and *MX*. The latter were clearly extant cases before the amended grounds of 15 January. My observations as to the 8 additional cases are as follows:

    a. If there are 8 cases, details are only given in relation to 6. These are: *NK, SB, MS, SM, GE* and *RN*.

b. Of these 6 cases, the Claimant's solicitors had already been instructed in two of them, *MS* and *SM*, prior to 15 January. Of the remaining 4 cases two, *SB* and *NK*, came after 15 January. No date of instruction is given for *GE* and *RN*. There were potentially therefore four additional claims after 15 January although there may have been only two.

c. *NK* made a homelessness application some 5 days after receiving his BRP on 18 December 2023. He appears to have appreciated that he would have to leave his accommodation and would have to apply to his housing authority. That is perhaps not surprising given that his BRP document was sent to the Southwark Law Centre (one of the signatories to the 5 September letter). He was given notice in accordance with one of the periods required by the September practice (28 days from the BRP) which voluntary organisations had been informed about by early December. Mr Bernardi speculates that the reason his housing authority did not deal with his application was because he did not have an ADSL or NTQ (and never received the latter). It appears that the housing authority simply did not respond to him until the day he was to be made homeless. There was a negative priority needs decision which was reversed after representations were made. If his factual account is correct there was clearly a delay and an omission in providing *NK* with his ADSL and NTQ (after the BRP had been issued). In the absence of an NTQ (which was part of the September practice requirement) he should not have been evicted from his asylum accommodation at all.

d. *SB* received his BRP on 24 November 2024, again sent to the Southwark Law Centre, but did not receive his ASDL until the 10 January 2024, notifying him that he would cease to be entitled to asylum support on 18 January 2024. He made a prompt application for accommodation to his local Housing Authority but received no response until the day on which his support ended.

e. *MS* did not receive his BRP until eight days after the date on which his support was ended pursuant to an earlier NTQ. Plainly this was not in accordance with any of the Second Defendant's practices or the assurances that had been given in November in response to the 5 September letter. After receiving notice, he made a homelessness application to his housing authority and was assessed not to be in priority need.

f. *SM* received his BRP on the 7th of December 2023 but, it appears, has never received an ADSL. He received an NTQ on 2 January 2024. He attended his Housing Authority in person on the day on which he was to be evicted but was not considered to be in priority need.

g. GE received his BRP on 22 December 2023. He did not receive his ASDL and NTQ until 7 January 2024 giving him 19 days notice to leave. He promptly sought homelessness assistance on the 10 January but appears to have received no response until the 24 January 2024 when, prompted by a letter of claim, the housing authority agreed to provide interim accommodation.

h. *RN* received his BRP shortly after his asylum claim was granted on 2 October 2023. He did not receive his ASDL and NTQ until late December. He was evicted on 3 January 2024. The details given are sparse but it appears he had

approached his housing authority on many occasions for assistance but was told that he would not be considered to be in priority need.

93. In all of these cases, where details are given, the Claimant's solicitors were not instructed until shortly before or, mostly, just after the individuals concerned had been made homeless; the event which appears to have precipitated their involvement. They have in common that they are cases where the usual sequence in which documents were issued was not followed or they involved a departure from the practice of issuing a BRP and an ADSL in close proximity to each other; further they are cases where there was either a slow or no response from the local authority (in contrast to the present case) and where a priority needs decision was not made in the Claimant's favour. They are not, however, on any logical basis examples of the September practice (since it was not followed) causing prejudice to an applicant.

94. The Chief Inspector's report gives some idea of the overall scale of asylum and accommodation claims which is the background to the contention that the September practice had caused widespread problems. At the inception of the streamlined asylum process, which was adopted in July 2023 for some claims, there were over 21,000 eligible claimants. Of these, by October 2023, some 5,208 had been granted asylum and 14,768 were still awaiting a decision. The refusal figures were very low indeed for this asylum stream so most of those processed would have been leaving asylum accommodation. These figures do not include all legacy claims which accounts for the fact that at February 2023 there was a record overall number of claimants, some 139,000, awaiting an initial decision.

95. By late 2023 there had been a very substantial increase in productivity in dealing with asylum claims which, as the Chief Inspector noted, required the Home Office to develop a strategy to address the end to end impact of issues with the service of decisions and concerns about the "move on" period in order to avoid a homelessness crisis among newly recognised refugees and the creation of significant pressures for local authorities. The Chief Inspector noted the difficulties which had been raised by charities and other organisations in relation to the August practice but not does not refer in terms to the subsequent September Practice.

96. The increase in the number of claims being processed is matched by an inevitable increase in the number of households owed a prevention duty after being required to leave accommodation provided as asylum support, as set out in the figures published by the Department for Levelling Up Housing and Communities in respect of the period from July to September 2023.

97. Mr Bernardi also referred to what he described as "anecdotal evidence". This included information from the Helen Bamber Foundation in relation to 9 refugees of whom only one had been given 28 days notice from the date of his BRP being issued. This would clearly be a departure from the September practice. In addition, he had been given information about six cases dealt with by Migrants Organise but the details given are confined to the date of eviction and the dates given on the NTQ. There was a further case shared with him by an organisation for refugee women in which the refugee had not received notification of the grant of asylum nor an ASDL.

98. Mr Bernardi provided a further witness statement dated the 8 March 2024 in which he gave details of an additional 5 clients he and his team had taken on since 1 February

each of whom were given less than 28 days notice of their eviction from asylum support accommodation over a period between November 2023 and February 2024. The Second Defendant objected to the Claimant's application to rely on this evidence on the basis that it was transforming the proceedings into a rolling review in circumstances where a new case was introduced by means of the Reply and the Second Defendant was not given any opportunity to respond (as a consequence of the terms of Choudhury J.'s order of 5 February 2024).

99. The examples given by Mr Bernardi appear to demonstrate that there are some cases in which there has been a breakdown of the system for providing refuges with the required documents and notice, in the context of very large numbers of asylum claims being processed, rather than an application of the September Practice which has caused prejudice. The details given, although brief, indicate that these cases are likely to be fact sensitive.

100. The Second Defendant submitted in relation to Mr Bernardi's evidence:

> *"Whether considered in the context of the number of monthly decisions terminating asylum support, or on the basis of limited information provided in relation to each example, this evidence provides no basis for inferring that there are significant problems arising from the September practice. If there were, then one would expect to be able to identify claims challenging the application of the September practice and yet a review undertaken by GLD on 14 March 2024 has confirmed that there are currently no such claims."*

101. This seems to me to be to be a fair assessment. The Chief Inspector's report identifies a spike in homeless refugees between August and October 2023 but attributes this to the substantial increase in the number of asylum decisions. That is hardly surprising; there would inevitably be a larger cohort who would be assessed as not meeting the priority need criteria if the overall numbers increased and more refugees were presenting themselves as homeless to local authorities.

102. As far as the Claimant is concerned, not only is the claim against the Second Defendant and the application for interim relief not urgent, it is also academic. He was not subject to the August practice which appeared to be the object of the challenge which was initially brought. He was caused little if any prejudice as a result of being subjected to the September practice and the fact that he became homeless was as a consequence of the decision taken by the First Defendant that he was not in priority need. The Claimant's reply acknowledges that "there is some force" in the latter point.

103. The starting point for considering whether a court or tribunal should permit a party to pursue an academic point in a public law case is the statement of Lord Slynn of Hadley in *R v. Secretary of State for the Home Department, ex parte Salem* [1999] 1 AC 450: [457A]:

> *"The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detained consideration of facts and*

where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

104. That approach was applied subsequently by Mr Justice Silber J in the case of *R (Zoolife International Ltd) v. Secretary of State for Environment, Food and Rural Affairs* [2007] EWHC 2995 (Admin), at [36]:

"In my view, these statements show clearly that academic issues cannot and should not be determined by courts unless there are exceptional circumstances such as where two conditions are satisfied in the type of application now before the court. The first condition is in the words of Lord Slynn in Salem (supra) that "a large number of similar cases exist or anticipated" or at least other similar cases exist or are anticipated and the second condition is that the decision in the academic case will not be fact-sensitive. If the courts entertained academic disputes in the type of application now before the court but which did not satisfy each of these two conditions, the consequence would be a regrettable waste of valuable court time and the incurring by one or more parties of unnecessary costs."

105. Silber J also observed at [13]:

"These points are particularly potent at the present time where the administrative court is completely overrun with immigration, asylum and other cases and where it would be contrary to the overriding objectives of the CPR for an academic case to be pursued, after all, one of those overriding objectives is 'dealing with a case justly [which] includes so far as practicable allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases'. (CPR part 1.1)..."

106. The Claimant's proposed approach, as explained in his skeleton argument and in submissions, would require the court to determine in the first instance whether the August practice was unlawful and then to consider whether the September practice cured the "ongoing illegality". The Claimant was not subject to the August practice which was in place for a short period of time. As far as I can tell none of the cases or anecdotal evidence put forward by Mr Bernardi arise from the August practice. Perhaps for that reason the Claimant suggested that his case should be linked with, and heard together, with the case of *MX*. As I understand that case, from the submissions made before me, proceedings were initiated after *MX* had secured alternative accommodation under the August practice. He had not experienced any period of homelessness and was already in local authority accommodation, so that there was no urgent need for the court's intervention. Despite the withdrawal of the August practice, *MX* chose not to withdraw the proceedings. Instead, a Reply was served, which the Defendant argued raised a new case, challenging the September practice, which had not been applied to *MX*.

107. The challenge to the August practice was principally articulated on the basis that it was introduced without consultation or sufficient thought being given to its impact on a group who were likely to be vulnerable. Thus it involved a breach of the *Tameside* duty (to carry out a sufficient inquiry prior to making a decision) and the Public Sector Equality Duty ("the PSED" - also requiring an assessment of the risk of an adverse impact – see *Bracking v SSWP* [2013] EWCA Civ 1345).

108. The September practice involved running the 28 day period from the date of the BRP as had been urged upon the Second Defendant by the wide group of charities and other informed bodies who were signatories to the 5 September letter. This in fact accorded with the way in which it had been understood the practice operated prior to August, even if that was technically incorrect. The PSED is a continuing duty, and the Second Defendant changed the practice in September in a way which improved the notice period and reverted to a timetable that would ensure that the crucial BRP had been issued before the notice period began to run. The NTQ provision had not been altered by any of the various practices. For the reasons given above the Claimant suffered little or no prejudice from the application of the September practice to his case; the facts hardly suggest that he has a sufficient interest to bring proceedings let alone to challenge the lawfulness of an earlier short term practice that was never applied to him. The reason why he became street homeless is because he was assessed not to be in priority need. The claim against the First Defendant was abortive for the reasons discussed. It would plainly be ideal if accommodation could be found for everyone in his position; his predicament in having to sleep rough cannot but engage sympathy. However, there are practical limitations on what can be done and difficult decisions that have to be made about the allocation of scarce resources.

109. The question I have to consider is whether the court's resources should now be used to consider a claim against the Second Defendant, which is academic as far as the Claimant is concerned. The wider evidence which the Claimant sought to rely on may indicate, as the Chief Inspector's report suggests, that thought requires to be given to the effect on Local Authorities of an increase in the processing of asylum cases, but it does not establish that the September practice is the cause of the difficulties. Most, if not all, of the individual cases are potentially examples of things that have gone wrong with the system for giving notice to refugees, in the context of very large numbers of decisions being reached at greater speed, not of the effect of the September practice had it been applied to them correctly. The failures identified are not the same as between the cases and do not appear to have a systemic cause which is connected to the September practice. If there is a case which shows that an individual has been prejudiced as a result of the notice period being run from the BRP then such a case may be an appropriate one in which to challenge the practice but I am not persuaded that it is this case. In the circumstances I do not conclude that there is an arguable ground for judicial review which has a realistic prospect of success or that the Claimant has a sufficient interest in the matter to which the application relates; accordingly I refuse permission.

110. The application for interim relief therefore falls away but clearly there is no need for any interim or urgent relief for the Claimant. I would have concluded that there is no serious issue to be tried in relation to the September practice as far as the Claimant is concerned or more widely given the conclusions I have reached as to the other evidence available. The difference between the September practice and the effect of the relief proposed, which required the Second Defendant to give 28 days' notice, would in most cases be marginal even where it made a difference. I would not have concluded that the balance of convenience favoured the granting of interim relief.

111. I leave the existing orders in the case undisturbed save for setting aside the order made by Lang J. If the Claimant contends that there is a subsisting Article 3 claim then I propose to order that it be stayed pending the outcome of the County Court

proceedings, however the parties may make further written submissions limited to that point in the light of this judgment.