Neutral Citation Number: [2025] EWHC 1565 (Admin)

Case No: AC-2024-LON-003788

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 June 2025

Before :

Jonathan Moffett KC,
(sitting as a Deputy High Court Judge)

- -

Between :

THE KING

on the application of

AAM — **Claimant**

- and -

LONDON BOROUGH OF BROMLEY — **Defendant**

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- -

Amanda Weston KC and Jennifer Twite (instructed by **Coram Children's Legal Centre**) for the **Claimant**
Hilton Harrop-Griffiths (instructed by **London Borough of Bromley Legal Services**) for the **Defendant**

Hearing dates: 15 May and 4 June 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on Monday 23 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Jonathan Moffett KC, sitting as a Deputy High Court Judge

A. INTRODUCTION

1. This claim for judicial review raises the issue of whether the Defendant ("the Council") reached a lawful decision as to what assistance it should provide to the Claimant under ss 24 and 24A of the Children Act 1989 ("the 1989 Act").

2. The Claimant is a young adult and an asylum-seeker. For a brief period prior to his 18th birthday, the Claimant was provided with accommodation by the Council. The Council required the Claimant to leave that accommodation very shortly after he turned 18, and thereafter the Claimant has resided in accommodation ("NASS accommodation") provided by the Interested Party ("the Secretary of State") under s 95 of the Immigration and Asylum Act 1999 ("the 1999 Act"). On 16 August 2024, the Council finalised a pathway plan ("the pathway plan") which sets out the assistance that the Council decided to provide to the Claimant.

3. The Claimant contends that the pathway plan is unlawful, primarily on the ground that the Council's decision that it will not provide him with accommodation is said to be unlawful. One of the Claimant's grounds of challenge raises a point of law as to the relationship between the Council's functions under ss 24 and 24A of the 1989 Act and the Secretary of State's functions under s 95 of the 1999 Act. The Claimant argues that, in light of House of Lords and Court of Appeal case law on the relationship between analogous social services functions and the Secretary of State's functions, the Council was, when deciding what assistance it would provide to the Claimant, required to disregard the fact that the Claimant was being provided with NASS accommodation by the Secretary of State.

4. Permission to apply for judicial review was granted by an order of Mr CMG Ockelton, sitting as a Deputy High Court Judge, dated 14 February 2025. Mr Ockelton made an anonymity order in respect of the Claimant, and it is important to note that, as I explain below, that order remains in force. Accordingly, there must be no reporting of the Claimant's identity, or of any other information which may lead to his identification. Mr Ockelton refused an application by the Claimant for the claim to be expedited, an application which was subsequently renewed. It does not appear that the renewed application for expedition was ever formally determined by the Court, but the Court was in any event able to offer an early substantive hearing.

5. At the substantive hearing, the Claimant was represented by Ms Amanda Weston KC and Ms Jennifer Twite, and the Defendant was represented by Mr Hilton Harrop-Griffiths. I am grateful to all counsel for their submissions.

6. The Secretary of State filed an acknowledgment of service stating that she adopted a neutral position on the claim and that she did not intend to participate in the proceedings. Accordingly, the Secretary of State was not represented at the substantive hearing, and I have received no submissions from her.

7. In view of the length of this judgment, it may be of assistance to the reader if I were to provide an index to the topics that it covers:

8. The provisions which are of most relevance for the purpose of the Claimant's claim are ss 24 and 24A of the 1989 Act and s 95 of the 1989 Act. For convenience, I shall in this judgment refer to those provisions as simply "s 24", "s 24A" and "s 95", respectively.

B. ANONYMITY

9. In the claim form, the Claimant made an application for an anonymity order, on the grounds of his age and vulnerability, and the fact that he is an asylum-seeker whose claim for asylum is based on his sexuality. In his order of 14 February 2025, Mr Ockelton granted a withholding order, a restricted reporting order under s 11 of the Contempt of Court Act 1981, and an order restricting access to documents on the Court's file under CPR 5.4C(4). Mr Ockelton's orders were not expressed to be time limited, and accordingly they continue in force unless varied or discharged by the Court. Nevertheless, at the outset of the hearing I canvassed with the parties whether those orders should be maintained. For the Claimant, Ms Weston submitted that the orders should continue in force; for the Council, Mr Harrop-Griffiths adopted a neutral stance.

10. An anonymity order of the kind made by Mr Ockelton constitutes a departure from the important constitutional principle of open justice, to which significant weight must be attached: see the guidance set out in the judgment of Nicklin J in *PMC v A Local Health Board* [2024] EWHC 2969 (KB). Nevertheless, bearing in mind the fact that the Claimant is an asylum-seeker who claims a well-founded fear of persecution and the fact that at the hearing reference would be (and was) made to his sexuality and to medical matters which would otherwise be private, I considered that the derogation

from the principle of open justice was justified, and that Mr Ockelton's order should remain in force. I remain of that view. Accordingly, any report of these proceedings or this judgment must not directly or indirectly identify the Claimant.

C. THE ISSUES

11. In the statement of facts and grounds which accompanied the claim form, the Claimant advanced five grounds of challenge. As I understood them, they were to the following effect.

    (1) The Council's failure to contact the Claimant, or to keep in touch with the Claimant adequately or at all, from 9 January 2023 "to date" constituted a breach of the Council's duty under s 24A(3)(a) to advise and befriend the Claimant, and to keep in contact with the Claimant in order to discharge its functions under s 24(4).

    (2) The Council's assessment of the Claimant's needs, and the pathway plan, were unlawful and/or irrational, and did not comply with the Care Leavers (England) Regulations 2010 (SI 2010 No 2571) ("the 2010 Regulations").

    (3) There were two parts to ground three:
        (a) the Council unlawfully took into account the NASS accommodation provided by the Secretary of State when considering whether to exercise its discretion under s 24A(4) and (5)(a) to provide accommodation to the Claimant; and
        (b) in any event, the Council unlawfully failed to exercise its discretion under s 24A(4) and (5)(a) to provide the Claimant with accommodation.

    (4) The Council erred in law by misdirecting itself as to what constitute "exceptional circumstances" for the purposes of s 24A(5).

    (5) When exercising its discretion under s 24A(4) and (5)(a), the Council unlawfully failed to act in accordance with national guidance and its policy by failing to provide the Claimant with suitable accommodation and a personal advisor.

12. Mr Ockelton refused permission to apply for judicial review on ground one. He considered that ground one had been brought out of time, because it related to events which had occurred before the finalisation of the pathway plan on 16 August 2024, and which therefore occurred more than three months before the claim form was filed on 15 November 2024. Mr Ockelton took the view that the pathway plan had rendered academic any challenge to events which occurred before its preparation, and that there was no good reason for extending time in respect of a ground of challenge which had become academic. The Claimant renewed his application for permission on the first ground of challenge by way of a notice of renewal dated 21 February 2025. In accordance with the directions given by Mr Ockelton, the parties agreed that this renewed application should be dealt with at the substantive hearing.

13. In view of the way in which the various grounds of challenge were addressed in the Claimant's statement of facts and grounds and skeleton argument, and the agreed list of issues, and in view of the breadth of the matters which were addressed in the evidence on which the Claimant proposed to rely, at the outset of the hearing I sought to clarify with Ms Weston how exactly she intended to put the Claimant's case on each ground of challenge and exactly what evidence she proposed to rely on. Having done so, I afforded her some time to reflect and to take instructions before articulating the Claimant's final position.

14. Having done so, Ms Weston confirmed that the Claimant no longer pursued his application for permission to apply for judicial review on ground one. In relation to the remaining grounds of challenge, Ms Weston confirmed that the sole target of the Claimant's challenge was the pathway plan, and that (subject to her argument on the relationship between the 1989 Act and the 1999 Act) the grounds of challenge were advanced on conventional public law grounds. She accepted that the challenges to the pathway plan would have to be based on information which was (or, on the Claimant's case, should have been) available to the Council when it finalised the pathway plan. She indicated that the main remedy which the Claimant sought was a prompt re-assessment of his needs, and a new pathway plan.

15. In view of the way in which Ms Weston clarified the Claimant's case, and the way in which the oral argument developed, I consider that the following main issues arise for my determination.

    (1) When the Council decided not to provide accommodation to the Claimant under s 24A(4) and (5)(a), was it lawfully entitled to take into account the fact that the Claimant was being provided with NASS accommodation by the Secretary of State? This is the issue which raises a point of law as to the interrelationship between the Council's functions under the 1989 Act and the Secretary of State's functions under the 1999 Act.

    (2) When the Council decided not to provide accommodation to the Claimant, did it adopt an unlawful approach to the question whether there were exceptional circumstances for the purposes of s 24A(5)?

    (3) Was the pathway plan unlawful on conventional public law grounds? In particular, did the Council fail to take into account relevant considerations, fail to make reasonable inquiries, or otherwise acted irrationally?

    (4) Was the Council required to produce a pathway plan which complied with the requirements of the 2010 Regulations and, if so, did the pathway plan comply with those requirements?

16. In view of the fact that, to my mind, the Claimant's written arguments did not clearly articulate his case on the facts in relation to what I have identified as issue (3) by reference to relevant and admissible evidence, I indicated to Ms Weston the importance of her using her oral submissions to draw my attention to any evidence on which she relied in support of her arguments on those issues. As a result, before making her submissions on those issues, Ms Weston indicated that she wished to use the short adjournment to marshal her arguments on the facts and, in order to facilitate this, the

short adjournment was taken early. Having heard Ms Weston's oral submissions on the facts, Mr Harrop-Griffiths submitted that they differed somewhat from those which had been foreshadowed in writing, and he indicated that he would wish to have some time to consider his response to them. I considered that there was some force in Mr Harrop-Griffiths' submission, and that fairness required that he have the opportunity which he sought. By that stage of the hearing it was clear that, despite the fact that neither party had previously suggested that more than a day would be required, the hearing would in any event go part-heard and would have to run into an unscheduled second day. Accordingly, once Mr Harrop-Griffiths had completed his submissions on the law, the hearing was adjourned, and he made his submissions on the facts on the second day, after which Ms Weston had the customary opportunity to reply.

D. THE EVIDENCE

17. As part of the evidence which was filed with the claim form, the Claimant included a witness statement from his solicitor at Coram's Children's Legal Centre ("CCLC"), Ms Chessie Aeron-Thomas; an expert report of Dr Sarah Heke, a consultant clinical psychologist, dated 12 November 2024; and what was said to be an expert report of Phillipa Cresswell, an independent social worker, dated 13 November 2024. The two reports had been completed only days before the claim was filed on 15 November 2024 and, self-evidently, they were not available to the Council when it prepared the pathway plan. Notwithstanding the requirements of CPR Part 35 and the clear guidance from this Court that any application to rely on expert evidence should be made as soon as possible, the claim form did not include any application to rely on either Dr Heke's report or Ms Cresswell's report. Further, Ms Cresswell's report did not comply with the requirements of CPR 35.10 or CPR Practice Direction 35.

18. It was not until 23 April 2025 that the Claimant sought permission to rely on Dr Heke's report and Ms Cresswell's report. On that date, he filed an application notice seeking permission to rely on those reports and also to rely on the following evidence, which was said to be evidence in reply to the Defendant's evidence: a witness statement of the Claimant dated 22 April 2025; a third witness statement from Ms Aeron-Thomas, dated 23 April 2025 (a second witness statement from Ms Aeron-Thomas had been adduced in support of the renewed application for expedition); and a second report from Dr Heke, dated 22 April 2025. On behalf of the Council, Mr Harrop-Griffiths' initial position was to object to the admission of all of this evidence, apart from those parts of the Claimant's witness statement which addressed events pre-dating the commencement of the claim.

19. During the course of my discussion with Ms Weston at the outset of the hearing, I expressed my provisional concerns about the nature of the evidence to which the Claimant's application related. In particular, I observed that it was not clear what issues the expert evidence was said to be relevant to, or why it was said to be reasonably required to resolve the issues in the claim (see CPR 35.1). I also observed that the vast majority of the evidence in Ms Aeron-Thomas's third witness statement and in the Claimant's witness statement appeared to relate to events which not only post-dated the pathway plan, but also post-dated the commencement of the claim. I therefore inquired of Ms Weston as to why such evidence was said to constitute evidence in reply to the

Council's evidence, and why it was said to be relevant to the issues which the Court had to determine.

20. In the event, having had the opportunity to consider how she wished to put the Claimant's case, Ms Weston indicated that the Claimant did not pursue the application to rely on Dr Heke's reports and Ms Cresswell's report, but she maintained the application to rely on the Claimant's witness statement and Ms Aeron-Thomas's third witness statement. Mr Harrop-Griffiths was prepared to accept that the Claimant's witness statement be admitted in evidence, subject to the express caveat that by doing so he did not concede that the evidence of matters post-dating the pathway plan was relevant to the issues which the Court had to decide. Accordingly, I granted the Claimant permission to rely on his witness statement.

21. In relation to Ms Aeron-Thomas's third witness statement, Ms Weston told me that it addressed relevant matters on which she would wish to rely in her oral submissions, in that it demonstrated why the claim was necessary. In view of the time which had already been taken on preliminary matters, and the desirability of avoiding yet further time being taken up by a close analysis of the contents of Ms Aeron-Thomas's witness statement, I indicated that, if Ms Weston wished to refer to Ms Aeron-Thomas's third witness statement in her oral submissions, I would consider it *de bene esse*, and I would rule on its admissibility after I had heard full argument. In the event, Ms Weston did not refer to the witness statement in her oral submissions, and neither did Mr Harrop-Griffiths.

22. Having considered Ms Aeron-Thomas's third witness statement afresh in the light of the oral argument, I have decided that it should not be admitted into evidence. The vast majority of it is concerned with events which post-date the pathway plan and the commencement of the claim, matters which self-evidently could not have been taken into account by the Council when it conducted its assessment of the Claimant and drew up the pathway plan. As Ms Weston accepted at the outset of the hearing, such evidence is not relevant to the issues which I have to determine. The witness statement also refers to various critiques of NASS accommodation generally, and to the approaches adopted by other local authorities in specific cases. Again, that evidence is simply not relevant to the issues which I have to determine. Although on a claim for judicial review it may be helpful for the Court to have a summary of the up-to-date position, it seems to me that Ms Aeron-Thomas's third witness statement goes much further than that; it is, in my view, an attempt retrospectively to impugn the substantive merits of the pathway plan by reference to the Claimant's experiences since the plan was finalised. It is clear that Ms Aeron-Thomas is deeply committed to supporting the Claimant and advancing his case, and she is to be commended for that; but, as with much of the other evidence on which the Claimant sought to rely, it seems to me that her third witness statement reflects something of a misapprehension on the part of the Claimant's legal team as to the proper role of witness and expert evidence in a claim for judicial review.

23. The Council relied on a witness statement from Mr Paramjit Ahluwalia, who carried out the assessment of the Claimant's needs and who drew up the pathway plan. In the event, neither party submitted that Mr Ahluwalia's evidence added anything material to the contemporaneous documents.

24. In addition to the witness evidence, the Court was provided with a copy of the Council's internal file in respect of the Claimant, and certain other contemporaneous documents and correspondence.

E. THE FACTUAL BACKGROUND

25. This matter has a lengthy history, and there is extensive correspondence between the parties dating back to the first involvement of CCLC in or around April 2023. I shall not attempt to summarise the entirety of that correspondence, or the entirety of the Council's direct contact with the Claimant; instead, I shall focus on those elements of the chronology upon which Ms Weston particularly relied in her oral submissions.

26. The Claimant is an Algerian national who was born on 2 January 2005. He is now 20 years old.

27. On 22 February 2022, the Claimant arrived in the United Kingdom as a dependent of his grandfather, who apparently entered the United Kingdom on a tourist visa. The Claimant is bisexual, and he says that his grandfather helped him to flee Algeria because he had a well-founded fear of persecution in Algeria on grounds of his sexuality. In his witness statement, the Claimant refers to having been attacked in Algeria because of his sexuality, and to the fact that he attempted to take his own life.

28. After arriving in the United Kingdom, the Claimant stayed with his paternal uncle in Bromley. However, in December 2022, the Claimant's uncle told the Claimant that he had to leave, apparently for reasons related to the Claimant's sexuality. Thereafter, the Claimant spent several nights staying with friends or sleeping rough, until he presented himself at Kensington and Chelsea Police Station on 20 December 2022. At that point, the Claimant was 17 years old.

29. The police put the Claimant in touch with the Council. It appears that the Council initially attempted to secure the Claimant's return to his uncle's house, but this was unsuccessful. On 22 December 2024, a Council social worker accompanied the Claimant to the Home Office in Croydon, where he claimed asylum. On that date, the Council placed the Claimant in accommodation at Drake Court, which is high support accommodation in Orpington. In his witness statement, the Claimant says that he felt "safe and free" at Drake Court.

30. The Claimant turned 18 on 2 January 2023, at which point he ceased to be a child for the purposes of the 1989 Act. Prior to his 18th birthday, the Claimant had been accommodated by the Council for a total of 11 days. Although there was at one point a dispute as to whether the accommodation at Drake Court was provided by the Council pursuant to s 20(1) of the 1989 Act, the Council now accepts that the Claimant was accommodated under that provision as a child in need. Accordingly, while the Claimant was accommodated by the Council, he was "looked after" by the Council within the meaning of the 1989 Act. However, as I explain below, because the Claimant had been looked after by the Council for less than 13 weeks, he never became an "eligible child", a "relevant child" or a "former relevant child" for the purposes of the 1989 Act.

31. Ms Weston drew my attention to a letter dated 5 January 2023 from the Council to the Claimant, in which the Council stated that the Claimant had been told that it would provide support only until he turned 18, and that thereafter he would have to present himself to the Home Office. The letter stated that the Claimant had refused to leave Drake Court, and concluded as follows.

> "Bromley Children social care would like to make it clear to you that, we do not owe you any duty of care since you turned 18 years. We will not be supporting you with your Home Office application.
> We have made arrangement for a social worker to accompany you to Lunar House as per your request on Monday 9th of January 2023. The social worker will be at Drake Court by 9AM, so please be ready to leave at this time.
> Should you decide not to cooperate with us, you will be leaving us with no option than to call the police to take you out of the building."

32. In the event, it appears that the Claimant remained at Drake Court until 9 January 2023. On that date, as anticipated by the letter of 5 January 2023, one of the Council's social workers accompanied the Claimant to the Home Office in Croydon, apparently in the expectation that he would be entitled to NASS accommodation from the Secretary of State. It appears that, on or shortly after 9 January 2023, the Council closed its file for the Claimant.

33. In fact, the Claimant was not provided with NASS accommodation on 9 January 2023, and it appears that thereafter he was homeless until 13 January 2023, when he was provided with NASS accommodation by the Secretary of State at Palmers Lodge Hostel in South Hampstead ("Palmers Lodge"), under the 1999 Act.

34. In his witness statement, the Claimant explains that he hated living at Palmers Lodge. He refers to the fact that he had to share a bedroom with a number of older Muslim men, and he was afraid that, if they were to find out about his sexuality, they would harm him. He also refers to the fact that he had no proper bedclothes (and had no money to buy any), and to the fact that he struggled to eat the food which was provided. The Claimant says that, although some of the staff at Palmers Lodge were kind, they did not do much to help him and, for example, he was never registered with an NHS general practitioner ("a GP"). As Ms Weston showed me, these concerns were articulated by CCLC in their correspondence with the Council at the time.

35. CCLC first wrote to the Council on 11 April 2023, stating that the Claimant was vulnerable and asking that the Council accept that the Claimant was a qualifying young person for the purposes of s 24, and that it provide accommodation, financial support, and other assistance to the Claimant under ss 24 and 24A. CCLC explained the background to the Claimant's situation, and stated that the accommodation at Palmers Lodge Hostel was unsuitable for the Claimant, in particular because he was sharing a room with men who were significantly older than him and, because many of the men at the hostel were Muslim, he was afraid of what might happen should they find out about his sexuality. CCLC went on to state that the food provided at the hostel made the Claimant ill, that he was receiving no financial support, and that he required assistance with registering with a GP and enrolling in college. Foreshadowing one of the arguments which has come to the fore in the present claim, CCLC argued that the

Council should treat the Claimant's NASS accommodation as "residual" and as not affecting what were said to be the Council's obligations to the Claimant.

36. It appears that, apart from a holding response sent on 16 May 2023, CCLC did not receive a response to their letter of 11 April 2023, and on 16 May 2023, they sent a letter before claim to the Council, alleging an unlawful failure to comply with ss 24 and 24A. In particular, CCLC argued that the Council was required to accept that the Claimant was a qualifying young person for the purposes of s 24, to undertake a needs assessment of the Claimant, to draw up a pathway plan for him, and to provide him with accommodation and financial support. The letter repeated the concerns and arguments which had been articulated in the letter of 11 April 2023, although it acknowledged that in one respect the Claimant's situation had improved, in that many of the men with whom he had previously shared his room had been moved out of that room.

37. The Council responded substantively by way of an e-mail sent on 24 May 2023. The Council agreed to carry out an assessment of the Claimant (although without prejudice to the question whether it had previously accommodated the Claimant under s 20(1) of the 1989 Act), and explained that it had arranged for a meeting to commence the assessment to take place on 26 May 2023. It was said that it was expected that the assessment would take no longer than 20 days to complete.

38. It appears that, although the assessment process was commenced, it was not completed within the timescale envisaged, and CCLC sent a further letter before claim on 23 June 2023. In that letter, CCLC set out broadly similar concerns and arguments to those which had been articulated in the earlier correspondence. It was explained that the Claimant was now receiving £9.10 by way of a weekly subsistence allowance, but that that sum was inadequate to enable him to attend college. CCLC reported that the Claimant was struggling to sleep and was suffering from headaches. CCLC expressed the view that the Claimant's circumstances were exceptional, and that he had a high level of needs. CCLC argued that it was unlawful for the Council not to accept that the Claimant was a qualifying young person for the purposes of s 24, and that the Council was acting unlawfully by failing to assess the Claimant's needs and to provide support to him.

39. Further correspondence followed and, on 7 July 2023, the Council sent a formal response to the letter before claim. It appears that it enclosed with this letter a needs assessment completed by one of the Council's social workers, Martha Stacey. There were two versions of a needs assessment completed by Ms Stacey in the documents provided to the Court, and it was unclear which (if either) of those versions had been sent to CCLC. In its response, the Council accepted that the Claimant had between 21 December 2022 and 2 January 2023 been accommodated under s 20 of the 1989 Act, and it therefore accepted that he was a qualifying young person for the purposes of ss 24 and 24A. The Council confirmed that it had decided that the Claimant required help under s 24A, and that it had decided to provide him with the help set out in the needs assessment which was said to be enclosed with the letter. However, the Council declined to provide accommodation to the Claimant, on the ground that the Claimant's circumstances were not exceptional, because he already had adequate accommodation and assistance. The Council also contended that, when considering the exercise of its

functions under s 24A, it was entitled to take into account the fact that the Claimant was being provided with NASS accommodation by the Secretary of State.

40. Also on 7 July 2023, the Claimant was moved from Palmers Lodge to Booth House in Whitechapel ("Booth House"). Again, this was NASS accommodation provided by the Secretary of State under the 1999 Act.

41. On 17 August 2023, CCLC wrote to the Council, expressing the view that the needs assessment completed by Ms Stacey was out of date, and asking that the Council carry out an up-to-date needs assessment of, and produce a pathway plan for, the Claimant. CCLC referred to the fact that the Claimant required assistance to enrol at college, that he had financial needs, that he continued to struggle to eat and he had lost a significant amount of weight, and that he struggled to sleep at night and was persistently tired. CCLC referred to the fact that the Claimant was still not registered with a GP, and that he urgently needed a check-up and support with his mental and physical health. CCLC summarised the Claimant's position as being that of "a vulnerable 18 year old asylum seeker who requires intensive support to even register with a GP, enrol in college and, for example, with regards to malnourishment as the assessment clearly details the health concerns with him losing weight".

42. Again, further correspondence followed. On 8 September 2023, the Council sent an e-mail to CCLC which set out its understanding of the Claimant's position, apparently based on its direct contact with the Claimant, which was very different to that set out in CCLC's letter. In particular, the e-mail explained that the Claimant had told the Council that he was happy at Booth House, and that he did not wish to have any further assessment by or support from the Council. Nevertheless, in view of the discrepancies between CCLC's and the Council's understanding of the position, on 26 September 2023, the Council agreed that it would meet with the Claimant to confirm his position, to conduct a needs assessment, and (if required) to prepare a pathway plan.

43. On 29 September 2023, CCLC sent an e-mail to the Council explaining that the Claimant felt unsafe at Booth House, because when he was there he was mainly alone, and because there were drug users and homeless people outside Booth House who had approached him on several occasions. CCLC stated that the food at Booth House still made the Claimant sick, and that the tap water had a similar effect on him. CCLC pointed out that the Claimant was still not registered with a GP, that he had problems sleeping, and that he had not been supported to enrol at college.

44. On 12 October 2023, the Council wrote to CCLC, and informed them of its intention to meet with the Claimant on 18 October 2023 in order to conduct a needs assessment. It appears that this meeting did not take place as planned, because of a delay in the appointment of an independent advocate for the Claimant. Thereafter, there were further delays variously occasioned by the Claimant, his independent advocate, and his young person's advisor being ill.

45. On 22 March 2024, the Secretary of State rejected the Claimant's asylum claim and, on 24 May 2024, the Claimant appealed to the First-tier Tribunal. Ms Weston told me that the Secretary of State subsequently withdrew her decision, and that therefore the Claimant's asylum claim currently remains outstanding.

46. On 24 May 2024, CCLC wrote again to the Council. CCLC asked that the outstanding needs assessment be completed by 7 June 2024. CCLC referred to the fact that, although the Claimant was in a shared room at Booth House, he was not at that time sharing it with anyone else. However, he had to share the bathrooms with a large number of other residents, and the bathrooms were not kept clean. CCLC referred to the fact that the Claimant was receiving only £8.86 by way of subsistence support, most of which he spent on food, and as a result he was not able to enjoy other activities. CCLC also reported the Claimant's difficulties with the noise at Booth House, which affected his sleep, the poor quality of the food and the tap water, and the absence of support from the staff. CCLC explained that the Claimant required help to identify a suitable college course (and a summer course) and support to register and enrol at college. CCLC referred to the fact that the Claimant was still not registered with a GP, despite the fact that he was experiencing problems with his digestion and stomach pains. In relation to the Claimant's mental health, CCLC reported that:

> "In regard to our client's mental health, he instructs that he often feels high stress levels which lead to him feeling unmotivated and wanting to remain in bed. He reports symptoms indicative of depression. He advises that between March and April 2024 he was staying in bed for a whole week, but recently this has reduced to one or two days a week. This inactivity often affects him further, as he advises that staying in bed is not something he wishes to do. Our client advises that these low periods are often caused by the uncertainty of his status and worsened by his lack of activity. His symptoms are indicative of a potential diagnosis of major depressive disorder. He cites his poor mental state as the cause of his lack of engagement with your client, his advocate and legal representatives. He explains that he does not have any support with his mental health but does not feel ready to attend counselling but would be willing to try services which offer other activities."

47. CCLC returned to the point about the Claimant not having sufficient funds in an e-mail sent on 16 July 2024, in which it asked that the Council provide money to enable the Claimant to purchase clothes, food and toiletries.

48. It appears that there were further difficulties in relation to organising a meeting to undertake the needs assessment, and on 24 July 2024, CCLC sent a further letter before the claim. CCLC intimated an intention to challenge to what it said was the Council's failure to comply with ss 24 and 24A, to complete the needs assessment within a reasonable time, and to provide the Claimant with interim assistance pending the completion of the needs assessment.

49. In the event, Mr Ahluwalia met with the Claimant in August 2024, and he finalised the needs assessment and the pathway plan on 16 August 2024. It appears that the needs assessment (which was entitled "pathway plan needs assessment") and the pathway plan (which was entitled "part two – the plan") were sent to CCLC on 21 August 2024. The parties were agreed that there was nothing material set out in the needs assessment which was not also recorded in the pathway plan, and each made their submissions by reference to the pathway plan only.

50. The pathway plan begins by setting out some information about the Claimant, and a brief summary of his views. It then explains that the Claimant is an asylum-seeker, and that his "legal status" is that of a qualifying young person. There follows a section

which records that the Claimant, his independent advocate, his young person's advisor (Mr Steen Funk), and Mr Ahluwalia (as the assessing social worker) were consulted in the course of preparing the pathway plan.

51. The main substantive section of the pathway plan is headed "summary of needs and actions". It begins by explaining that the overall aim of the pathway plan is "[t]o support [the Claimant] with accessing education and sign posting to relevant support services in the community". The section on needs and actions is divided into various subsections, each of which addresses a specific topic: health, education/training/employment, accommodation, support, finance, family and relationships, practical and other skills, culture and identity, leisure, emotional and behavioural development, and legal and immigration issues. In each subsection, there is a narrative account of what was discussed, including an account of what the Claimant told Mr Ahluwalia, accounts which Ms Weston did not criticise as inaccurate or incomplete. In each subsection there is also a table which identifies various outcomes, and in relation to each outcome an action, the person or agency responsible for the action, and the timescale for taking action.

52. The final subsection of the section on needs and actions is headed "overall analysis", and it sets out a narrative account of the Council's conclusions in relation to each of the topics covered in the preceding subsection. The pathway plan concludes with a table of actions, again by reference to each of the topics covered in the section on needs and actions.

53. In view of the fact that the pathway plan runs to some 20 pages, much of which is closely-typed text, it would not be proportionate to set out or to summarise in this judgment the entirety of its contents. Instead, I shall refer to relevant parts of the pathway plan when I address the parties' arguments below.

54. After the pathway plan was finalised, there was further correspondence between CCLC and the Council, which culminated in a letter before claim dated 26 September 2024, by which the CCLC set out an intention to challenge the pathway plan and the Council's failure to provide the Claimant with accommodation and support. It appears that, by this time, the Claimant had enrolled at the Tottenham Centre, part of City Capital College, and in light of this CCLC also alleged an unlawful failure to provide assistance under s 24B of the 1989 Act.

55. The Council replied to the letter before claim on 14 October 2024, refuting the allegations of unlawfulness. However, the Council indicated that it would prepare an addendum to the needs assessment to address the question of accommodation and the question of living expenses under s 24B of the 1989 Act.

56. There followed further correspondence, including a letter dated 28 October 2024 from CCLC, which provided further details and photographs of the Claimant's NASS accommodation, and enclosed a copy of a letter from a Senior Specialist Primary Care Mental Health Practitioner at Blithehale Medical Centre. The latter letter referred to the Claimant's mental and physical health difficulties, and referred to the fact that he had been referred for an "holistic GP appointment" to address them.

57. On 6 November 2024, CCLC sent an e-mail to the Council reporting that the Claimant had been sexually assaulted by another resident at Booth House. On 12 November 2024, CCLC informed the Council that Dr Heke had diagnosed the Claimant as suffering from a moderately severe major depressive disorder, and that they had obtained a report from Ms Cresswell which had concluded that the Claimant's NASS accommodation was unsuitable for him as a young, vulnerable care leaver. A copy of Dr Heke's first report and a copy of Ms Cresswell's report were sent to the Council later on 12 November 2024.

58. The Council responded to CCLC's further correspondence by way of an e-mail sent on 15 November 2024. In that e-mail, the Council stated that it had not prepared an addendum to the needs assessment. Mr Ahluwalia provides an explanation of the decision not to prepare an addendum in his witness statement. In brief, he says that the Council originally considered it appropriate to revisit the question of accommodation because, in the letter before claim, CCLC had raised a point about a need for semi-supported accommodation with a key worker which had not been raised by the Claimant during the assessment process. However, on considering the matter, the Council had concluded that the Claimant did not require a key worker, and therefore it was not necessary to revisit the needs assessment or the pathway plan. In relation to the question of living expenses under s 24B of the 1989 Act, Mr Ahluwalia pointed out that, by November 2024, the Claimant was no longer attending college and therefore the question of support under s 24B no longer arose. Although there was some criticism of what was said to be a *volte face* on the part of the Council in this respect, in the event Ms Weston did not rely on it to support the arguments which she advanced at the substantive hearing.

59. The claim form was filed on 15 November 2024.

F. THE LEGISLATIVE AND POLICY FRAMEWORK

(1) Local authority functions under Part III of the 1989 Act

60. Part III of the 1989 Act makes provision for the support which must or may be provided to children and young people by local authorities in England.

(a) Functions in respect of children

61. Part III of the 1989 Act imposes duties and confers powers on local authorities in respect of children (i.e. persons under the age of 18: see s 105(1)). For example, under s 17(1), every local authority has a general duty to safeguard and promote the welfare of children within its area who are in need, by providing a range and level of services appropriate to those children's needs. Under s 20(1), every local authority has a duty to provide accommodation for any child in need (as defined by s 17(10)) within its area who appears to it to require accommodation as a result of there being no person who has parental responsibility for the child, the child being lost or having been abandoned, or the person who has been caring for the child being prevented from providing the child with suitable accommodation or care.

62. A child who is provided with accommodation by a local authority in the exercise of its social services functions (within the meaning of the Local Authority Social Services

Act 1970, s 1A and Schedule 1, other than s 17, 23B and 24B), or who is in its care under a care order, becomes a "looked after child" for the purposes of the 1989 Act once he or she has been accommodated for a continuous period of more than 24 hours (s 22(1) and (2)). Accordingly, a child who is provided with accommodation under s 20(1) for more than 24 hours is a "looked after child". It is on this basis that the Claimant was a looked after child while he was accommodated by the Council prior to his 18th birthday.

(b) Leaving care functions

63. As I have mentioned, the provisions of the 1989 Act which are of most direct relevance in the present case are ss 24 and 24A. They constitute part of a suite of provisions which were inserted into the 1989 Act by the Children (Leaving Care) Act 2000 ("the 2000 Act"). Those provisions confer various so-called "leaving care" functions on local authorities with the objective of helping young people who have been looked after with the transition from childhood and local authority accommodation into adulthood and independent living (see, for example, paragraph 5 of the Explanatory Notes to the 2000 Act).

64. As originally enacted, s 24(1) of the 1989 Act provided that, where a child was being looked after by a local authority, the local authority had a duty to "advise, assist and befriend" the child with a view to promoting the child's welfare when he or she ceased to be looked after by it (see s 24(1), as originally enacted). Further, s 24(2) to (11) provided for a so-called "aftercare duty". In brief, where a person who had been looked after by a local authority while aged 16 or 17 was in the area of the local authority, it appeared to the local authority that the person was in need of advice and being befriended, and the person had asked the local authority for help of a kind which it could give under s 24, the local authority was under a duty to "advise and befriend" the person, and it had a power to provide assistance.

65. The 2000 Act inserted new paragraphs 19A to 19C into Schedule 2 to the 1989 Act, inserted new ss 23A to 23E, and replaced the original s 24 with new ss 24 and 24A to 24D. Those provisions have since been amended, and further sections have been inserted, including by the Adoption and Children Act 2002.

66. The leaving care provisions inserted by the 2000 Act make different provision for different categories of children and young persons. In broad terms, the relevant categories are as follows. An "eligible child" is a child aged 16 or 17 who is looked after by a local authority (and who has been so looked after for a minimum period); a "relevant child" is a child aged 16 or 17 who would be an eligible child but for the fact that he or she is no longer looked after by the local authority; a "former relevant child" is a young person aged 18 or over who was previously an eligible child or a relevant child; and a "person qualifying for advice and assistance" (to whom I shall refer as a "qualifying young person") is the category into which the Claimant falls. I explain how the Claimant came to be a qualifying young person below. Although the present case is primarily concerned with the duties owed to a qualifying young person, it is necessary briefly to sketch out the position in relation to the other categories.

67. Paragraphs 19A to 19C fall within Part II of Schedule 2 to the 1989 Act, to which effect is given by s 22F. Paragraph 19A replicates the duty formerly imposed by s 24(1) as originally enacted. Paragraph 19B imposes certain duties in respect of eligible children

who are looked after by a local authority. An eligible child is a child aged 16 or 17 who has been looked after by a local authority for a period of at least 13 weeks which began after he or she had reached the age of 14 and ended after he or she reached the age of 16 (Schedule 2, paragraph 19B(2); Care Planning, Placement and Case Review (England) Regulations 2010, reg 40(1)). A local authority is under a duty to carry out an assessment of an eligible child's needs, with a view to determining what advice, assistance and support it would be appropriate for it to provide under the 1989 Act after it ceases to look after the child, and it must prepare a pathway plan for the child (paragraph 19B(4)). The pathway plan must be kept under regular review (paragraph 19B(5)). Further provision about the assessment of the needs of, and the content of pathway plans for, eligible children is made by s 23E and regs 42 and 43 of, and Schedule 8 to, the Care Planning, Placement and Case Review (England) Regulations (SI 2010 No 959). Paragraph 19C requires a local authority to arrange for an eligible child who they are looking after to have a personal advisor, the functions of whom are laid down by reg 44 of the Care Planning, Placement and Case Review (England) Regulations 2010.

68. Sections 23A to 23B of the 1989 Act impose certain duties in relation to relevant children. By virtue of s 23A(2), a relevant child is a child aged 16 or 17 who is not being looked after by a local authority, and who was, before last ceasing to be looked after, an eligible child. A local authority must take reasonable steps to keep in touch with a relevant child (whether he or she is within its area or not), it must appoint a personal advisor for the relevant child, and (unless the relevant child already has a pathway plan) the local authority must carry out an assessment of the relevant child's needs and prepare a pathway plan for him or her (s 23B(2) and (3)). Further, the local authority must safeguard and promote the relevant child's welfare and, unless it is satisfied that the child's welfare does not require it, support the child by maintaining him or her, providing the child with or maintaining him or her in suitable accommodation, and provide such other support as is prescribed (s 23B(8)). If the local authority loses touch with a relevant child, it must take reasonable steps to re-establish contact, and as long as the child remains a relevant child it must continue to take such steps until they succeed (s 23B(11)).

69. Sections 23C to 23CA of the 1989 Act impose certain duties in relation to former relevant children. By virtue of s 23C(1), a former relevant child is a person who has been a relevant child (and would be one if he were under 18), or a person who was being looked after by the local authority when he or she turned 18 and, immediately before ceasing to be looked after, was an eligible child. Until a former relevant child reaches the age of 21 (see s 23C(6)), a local authority must take reasonable steps to keep in touch with a former relevant child (whether he or she is in its area or not) and, if it loses contact with the former relevant child, to re-establish contact (s 23C(2)). A local authority must also continue the appointment of a personal advisor for the former relevant child and continue to keep his or her pathway plan under review (s 23C(3)). Further, a local authority must provide certain assistance to a former relevant child. In this respect, s 23C(4) provides as follows.

> "(4) It is the duty of the local authority to give a former relevant child –
>
> (a) assistance of the kind referred to in section 24B(1), to the extent that his welfare requires it;

(b) assistance of the kind referred to in section 24B(2), to the extent that his welfare and his educational or training needs require it;
(c) other assistance, to the extent that his welfare requires it."

70. I set out the relevant provisions of s 24B below. In *R (O) v Barking and Dagenham London Borough Council* [2010] EWCA Civ 1101, [2011] 1 WLR 1283, the Court of Appeal held that the assistance to which s 23C(4)(c) refers includes assistance by way of the provision of accommodation (see paragraph 30 *per* Tomlinson LJ).

71. A local authority also has various duties to provide advice and support to a former relevant child who is aged between 21 and 24 (s 23CZB), and various duties in relation to a former relevant child who is aged under 25 and who is pursuing, or who wishes to pursue, a programme of education (s 23CA).

72. Section 23E of the 1989 Act makes provision for pathway plans. By virtue of s 23E(1), "pathway plan" is defined as a plan setting out the support which the relevant local authority will provide to an eligible child under paragraph 19B of Schedule 2, to a relevant child under s 23B, or to a former relevant child under s 23CZB or 23CA, as the case may be. Under s 23E(2), the Secretary of State has made the 2010 Regulations, which make provision about pathway plans for relevant children and former relevant children. Regulation 6 of the 2010 Regulations provides that a pathway plan prepared under s 23B must include the matters referred to in Schedule 1 to the Regulations, and that a pathway plan prepared under s 23CA must include the matters set out in paragraph 1 to 4 of Schedule 1. Insofar as is relevant, Sch 1 to the 2010 Regulations specifies the following matters.

> "1. The nature and level of contact and personal support to be provided, and by whom, to the child or young person.
> 2. A detailed plan for the education or training of the child or young person.
> 3. How the responsible authority will assist the child or young person in relation to employment or other purposeful activity or occupation.
> 4. Contingency plans for action to be taken by the responsible authority should the pathway plan for any reason cease to be effective.
> 5. Details of the accommodation the child or young person is to occupy (including an assessment of its suitability in the light of the child's or young person's needs, and details of the considerations taken into account in assessing that suitability).
> 6. The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.
> 7. A programme to develop the practical and other skills necessary for the child or young person to live independently.
> 8. The financial support to be provided to the child or young person, in particular where it is to be provided to meet accommodation and maintenance needs.
> 9. The health needs, including any mental health needs, of the child or young person, and how they are to be met.
> 10. Details of the arrangements made by the authority to meet the child's needs in relation to identity with particular regard to their religious persuasion, racial origin and cultural and linguistic background.
> …"

(c) Sections 24, 24A and 24B of the 1989 Act

73. Section 24 makes provision for who is to be treated as a qualifying young person. Insofar as is relevant for present purposes, a qualifying person is a person who is aged under 21, who was at any time after reaching the age of 16 looked after by a local authority, and who is no longer looked after (s 24(1B) and (2)(a)). The Claimant became a qualifying young person at the point at which he turned 18: he was (and still is) under 21, he had been looked after by the Council after his 16th birthday, and he was no longer looked after by the Council.

74. In the case of such a qualifying young person, s 24(4) provides as follows.

> "…it is the duty of the local authority which last looked after him to take such steps as they think appropriate to contact him at such times as they think appropriate with a view to discharging their functions under sections 24A and 24B."

75. Section 24A makes provision for a local authority to have certain duties and powers to provide advice and assistance to a qualifying young person. Insofar as is relevant, s 24A provides as follows (for the purposes of s 24A, the "relevant authority" is the local authority which last looked after the qualifying young person: see s 24(5)).

> "**24A Advice and assistance**
>
> (1) The relevant authority shall consider whether the conditions in subsection (2) are satisfied in relation to a person qualifying for advice and assistance.
>
> (2) The conditions are that—
>
> (a) he needs help of a kind which they can give under this section or section 24B; …
>
> …
>
> (3) If the conditions are satisfied—
>
> (a) they shall advise and befriend him if…he is a person to whom section 24(1B) applies and he was being looked after by a local authority…; …
>
> …
>
> (4) Where as a result of this section a local authority are under a duty, or are empowered, to advise and befriend a person, they may also give him assistance.
>
> (5) The assistance may be in kind and, in exceptional circumstances, assistance may be given—
>
> (a) by providing accommodation, if in the circumstances assistance may not be given in respect of the accommodation under section 24B, or
>
> (b) in cash.
>
> (6) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section or section 24B as they apply in relation to assistance given under that section."

76. Section 24B makes provision for a local authority to have certain duties in respect of a qualifying young person in respect of his or her employment, education or training. Insofar as is relevant, s 24B provides as follows.

"**24B Employment, education and training**

(1) The relevant local authority may give assistance to any person who qualifies for advice and assistance by virtue of…section 24(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.

(2) The relevant local authority may give assistance to a person to whom subsection (3) applies by—

(a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or

(b) making a grant to enable him to meet expenses connected with his education or training.

(3) This subsection applies to any person who—

(a) is under twenty-five; and

(b) qualifies for advice and assistance by virtue of…section 24(2)(a)….

…

(5) Where the local authority are satisfied that a person to whom subsection (3) applies who is in full-time further or higher education needs accommodation during a vacation because his term-time accommodation is not available to him then, they shall give him assistance by—

(a) providing him with suitable accommodation during the vacation; or

(b) paying him enough to enable him to secure such accommodation himself.

…"

(d) National guidance on the leaving care functions

77. The Secretary of State for Education has issued guidance on the leaving care functions, in the form of *The Children Act 1989 guidance and regulations, Volume 3: planning transition to adulthood for care leavers*. The version which was in force at the material time was that which was last revised in January 2022 ("the Transition Guidance"); there is now a subsequent version which was last revised in February 2025. The Transition Guidance was issued under s 7 of the Local Authority Social Services Act 1970, which requires a local authority, in the exercise of its social services functions (including the exercise of any discretion conferred by any relevant enactment), to act under the general guidance of the Secretary of State.

78. Paragraphs 2.6 to 2.11 of the Transition Guidance address the position of "qualifying children". Insofar as is relevant, it states as follows:

> "2.6 Local authorities may give advice, guidance and assistance to certain groups of young people who 'qualify' for leaving care support. Some 'qualifying children' will be as vulnerable and have very similar needs to eligible, relevant or former relevant children….
>
> …
>
> 2.9 Where a qualifying child has been previously looked after, the local authority must assess their needs to establish whether they require advice and

assistance. Where, following an initial assessment, the authority concludes that support will be necessary over a period of time, they should draw up a plan with the young person outlining the support that will be provided. In order to determine the extent of the support required, a core assessment may be required and the plan that follows might follow the same format as a pathway plan for a relevant or former relevant child. The plan will outline the support to be provided to the young person, including, if necessary, any financial support. The plan should be drawn up by a social worker or suitably qualified person."

79. Paragraphs 8.43 to 8.51 of the Transition Guidance address the provision of financial assistance to qualifying young persons. Insofar as is relevant, they state as follows:

> "8.43 For care leavers who do not become relevant children but who qualify for advice and assistance under section 24(2), the primary financial support role remains with the Department for Work and Pensions. However, local authorities may also give financial assistance to these young people on account of their particular needs over and above those of other young people and, where appropriate, may provide assistance to the same level of that provided to an eligible, relevant or former relevant child.
>
> 8.44 Where a local authority has either a duty or a power to advise or befriend young people who have left care (section 24(1)(b)), it may also give assistance which may be in kind or, in exceptional circumstances, in cash (sections 24A(4) and (5)). It should, however, be borne in mind that the local authority's power to provide assistance to these care leavers extends until they reach the age of 21, or 25 where the young person is engaged in education or training. Where a young person has no parent to turn to for help, or where the parent does not have the capacity to provide assistance, it is to be expected that they will turn to the local authority for help. In these circumstances and following an assessment of need the local authority may provide support to the same level as that provided to other care leavers.
>
> 8.45 Local authorities are encouraged to be pro-active in advising young people of the circumstances in which assistance can be provided and to take into account the fact that the reference to the provision of financial assistance in 'exceptional circumstances' (section 24A(5)) refers to the individual young person rather than to the general policy of the authority. It will be for the authority to decide in each case whether the provision of financial assistance would be appropriate, but the presumption should be that such assistance should be provided where this is necessary to protect the young person's welfare and it cannot be made available by any other agency. Local authorities are encouraged to be flexible in deciding what leaving care assistance can be given for and to consider a young person's wishes about the way in which any assistance should be spent."

(e) The Council's policies

80. The Council has adopted a *Safeguarding and Social Care Division Procedures Manual*, which includes a chapter on "Leaving Care and Transition". Section 12 of that chapter deals with qualifying young people, and states as follows.

> "Services for Qualifying Young People will be determined by an assessment of need carried out by the leaving care Team.
> The support offered, which could be financial, will focus upon helping the young person to manage and cope in the community and to manage the transition to adulthood. Attempts will be made to ensure that they are able to access suitable accommodation and maintain social and family links.
> Where necessary, in addition to support, practical help should be offered to the young person. This could include helping to acquire basic living skills and consideration of health needs and choices. Where necessary, links will be made with other services and assistance can be provided when they have to have contact with other agencies. Advice and support should also be offered in relation to employment, training and educational opportunities.
> Local authorities should also set out what assistance can be provided to young people who are 'Qualifying' as a result of being looked after immediately prior to becoming subject to a Special Guardianship Order or subject to a private fostering arrangement. Local authorities will need to be clear about which local authority is responsible for the provision of services to qualifying young people.
> The young person's social worker should also help to identify, secure and pay for vacation accommodation, for those qualifying young people who have accessed higher education, or residential further education courses.
> …"

81. In accordance with s 2(1) of the Children and Social Work Act 2017, the Council has published information about the services which it offers for care leavers pursuant to its leaving care functions ("the Local Offer"). The majority of the Local Offer is concerned with eligible children, relevant children and former relevant children: page 3 states that "to get the full support of the Local Offer you must: have been in care for at least 13 weeks between the ages of 14 and 16 (including your sixteenth birthday or have been in care for 13 weeks after your 16th birthday". As I have explained the Claimant does not fall into either of these categories.

82. Page 21 of the Local Offer refers to the issue of emotional and mental health. It states as follows:

> "We will work closely with Child and Adolescent Mental Health Services (known as CAMHS) and adult mental health services if they are involved in your care and support to make sure you are receiving the best level of support possible.
> We will also assist you in considering what additional help you could access whenever you need more support, such as counselling or group sessions.
> We have a dedicated mental health practitioner in the leaving care team who can help you if you are struggling with your mental health. This could be doing visits with you one-to-one, joint visits with your social worker or YPA, or helping you to navigate what are sometimes confusing pathways in adult services, for example.
> We also have the Thrive therapeutic service who offer both one-to-one and group work support, including to care experienced parents."

83. Page 29 of the Local Offer is specifically addressed to qualifying young persons. It explains that a qualifying young person "will be entitled to support from the Leaving Care Team" and goes on to explain that:

> "If you can receive this support, you will not necessarily have an allocated worker or be eligible for all the support outlined in this offer. However, we can offer advice and guidance and can work with you to make a plan for how those needs will be met. We can also offer help with living expenses if you are in higher education, up to the age of 25."

(2) The Secretary of State's functions under the 1999 Act

84. Section 95(1) provides for the Secretary of State to have a power to provide support to certain asylum-seekers, as follows.

> "**95 Persons for whom support may be provided**
> (1) The Secretary of State may provide, or arrange for the provision of, support for—
> (a) asylum-seekers, or
> (b) dependants of asylum-seekers,
> who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed."

85. For the purposes of s 95, an "asylum-seeker" is defined as a person who is not under 18 and who has made a claim for asylum which has been recorded by the Secretary of State but which has not yet been determined (see s 94(1)). Accordingly, the Claimant is an asylum-seeker for the purposes of s 95. The period which has been prescribed for the purposes of s 95(1) is 14 days (if the asylum-seeker is not already being provided with accommodation under s 95) or 56 days (if the asylum-seekers is already being accommodated) (see reg 7 of the Asylum Support Regulations 2000 (SI 2000 No 704) ("the 2000 Regulations")).

86. The Secretary of State's functions in relation to the provision of accommodation under the 1999 Act are performed through the National Asylum Support Service, or "NASS", which is part of the Home Office; hence support and accommodation which is provided under the 1999 Act is commonly referred to as "NASS support" and "NASS accommodation".

87. By virtue of s 96(1) of the 1999 Act, support under s 95(1) may be provided in a range of ways, including by providing accommodation which appears to the Secretary of State to be adequate for the needs of the supported person (see s 95(1)(a)). Insofar as the present case is concerned with the Secretary of State's functions under s 95(1), it is primarily concerned with the provision of accommodation. Accordingly, save where it is necessary to be more specific, for simplicity I shall refer to the provision of accommodation under s 95(1).

88. Although s 95(1) confers a power on the Secretary of State, in certain circumstances the Secretary of State has a duty to provide support. In particular, under reg 5(1) of the Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005 No 7), if an

asylum-seeker applies for support under s 95, and the Secretary of State thinks that he or she is eligible for support under that section, the Secretary of State must offer the provision of such support. It would appear that this duty was considered to apply in the Claimant's case.

89. Section 95(3) and the following subsections makes provision for when an individual is to be treated as destitute. Insofar as is relevant, those subsections provide as follows:

> "(3) For the purposes of this section, a person is destitute if—
> (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
> (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
>
> …
>
> (5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—
> (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
> (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).
>
> (6) Those matters are—
> (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
> (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
> (c) the fact that the accommodation is temporary;
> (d) the location of the accommodation.
>
> (7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—
> (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
> (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.
>
> (8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part."

90. The relevant matters are prescribed by the 2000 Regulations, which were made under Schedule 8 to the 1999 Act (to which effect is given by s 95(12)). For present purposes, reg 6 of the 2000 Regulations is of particular relevance. That regulation applies where it falls to the Secretary of State to determine for the purpose of s 95(1) whether a person who is applying for, or who is in receipt of, accommodation under that section (who is referred to as "the principal": see reg 6(2)) is or is likely to become destitute. Regulation 6(3) requires the Secretary of State to ignore any support which is or might be provided under s 95, but under reg 6(4) the Secretary of State must take into account various matters, including "(b) any other support which is available to the principal or any

defendant of his, or might reasonably be expected to be so available in [the prescribed period]".

91. For completeness, it is relevant to note that s 98 of 1999 Act confers on the Secretary of State a power to provide temporary accommodation to an asylum-seeker while she determines whether she may provide accommodation under s 95. This was the power which the Secretary of State exercised in the Claimant's case until 13 February 2023, when she decided that the Claimant should be provided with NASS accommodation under s 95. From 13 February 2023, and during the period which is material for the purposes of the claim, the Secretary of State provided the Claimant with NASS accommodation under s 95.

92. Section 4 of the 1999 Act is mentioned in some of the case law to which I refer below. In brief, it confers on the Secretary of State a power to provide accommodation to a person whose claim for asylum has been rejected.

G. ISSUE 1: THE RELATIONSHIP BETWEEN THE 1989 ACT AND THE 1999 ACT

93. This case gives rise to an issue which is similar to that which confronted the Court of Appeal in *R (O) v Barking and Dagenham London Borough Council* [2010] EWCA Civ 1101, [2011] 1 WLR 1283. If, when a local authority decides whether to provide accommodation to a qualifying young person under s 24A(5)(a), it may take into account any NASS accommodation which is being, or which might be, provided to the qualifying young person by the Secretary of State under s 95, and if, when considering whether she should provide accommodation under s 95, the Secretary of State may or must take into account the accommodation which the local authority might provide under s 24A, there is potentially the opportunity for each to decline to provide accommodation by reference to the possibility that the other would or might do so.

94. As in the cases to which I shall shortly come, the parties were agreed that Parliament cannot have intended that the interaction between the 1989 Act and the 1999 Act should, or could, produce such a deadlock. Both Ms Weston and Mr Harrop-Griffiths accepted that, in order to avoid a deadlock, the legislation should be interpreted and given effect in a way which allocates the function of providing accommodation either to the Council or to the Secretary of State, but not to both at the same time. However, as I shall explain, they differed as to where the function should be allocated.

95. Before turning to the case law on which the parties relied, it is necessary to consider ss 24 and 24A in a little more detail. I was told that there is no relevant authority on ss 24 or 24A of the 1989 Act, or on their predecessor, s 24 as originally enacted.

96. At the outset, it is relevant to note that, generally, a lesser degree of previous local authority involvement is required in order to engage the functions provided for by ss 24 and 24A than is required to engage the functions provided for by s 23C: ss 24 and 24A are engaged where the relevant individual was previously accommodated by the local authority for a continuous period of more than 24 hours, whereas the s 23C functions are engaged only where the relevant individual was previously accommodated for at least 13 weeks. Further, the nature and extent of the functions imposed on a local authority by ss 24 and 24A are, at least in general terms, less onerous

than those imposed by s 23C. Ms Weston drew my attention to the submissions of Elisabeth Laing QC (as she then was) on behalf of the Secretary of State in the *O* case, to the effect that the legislative purpose of the leaving care functions is to enable a local authority to stand in the shoes of parents (see paragraph 28 *per* Tomlinson LJ). I would not quibble with that characterisation of the duties imposed by s 23C (which was the provision with which the *O* case was concerned), but I do not think that it is quite so apposite in the case of the functions provided for by ss 24 and 24A. To my mind, a local authority's role under ss 24 and 24A is perhaps better characterised as (to adopt the wording of s 24A(3)(a)) being that of a friend and advisor.

97. Sections 24 and 24A envisage that a local authority will make evaluative judgements and to consider the exercise of discretions. In particular, those sections envisage a judgement as to how and when it would be appropriate for the local authority to contact a qualifying young person (s 24(4)), a judgement as to whether a qualifying young person needs help of the kind which the local authority can give under ss 24A or 24B (s 24A(2)(a)), a judgement as to what the local authority should do to advise and befriend the qualifying young person (s 24A(3)(a)), consideration of whether to exercise the discretion to provide assistance (s 24A(4)), a judgement as to whether there are exceptional circumstances (s 24A(5)), and consideration of whether to exercise the discretion to provide accommodation or cash (s 24A(5)).

98. In the present case, the Council has accepted that the Claimant is a qualifying young person, and it has accepted that he needs help of a kind which it can give under s 24A. However, the Council decided that there were no exceptional circumstances in the Claimant's case, because he was being provided with NASS accommodation by the Secretary of State, and therefore he did not qualify for assistance by way of the provision of accommodation under s 24A(5)(a). Accordingly, the main question for me is whether, when reaching a judgement as to whether there were exceptional circumstances in the Claimant's case, the Council was entitled to take into account the fact that the Claimant was being provided with NASS accommodation.

99. The parties were agreed as to what is meant by "exceptional circumstances" in s 24A(5). Mr Harrop-Griffiths referred me to *R v Kelly* [2000] 1 QB 198, 208, where the Divisional Court (Lord Bingham CJ, Forbes and Harrison JJ) considered s 2(2) of the Crime (Sentences) Act 1997, which required a court to impose a mandatory life sentence in a case in which the defendant had been convicted of a second serious offence, "unless the court is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify it not doing so". The Divisional Court held that, in that provision, the adjective "exceptional" was used in its ordinary sense, and not as a term of art, and that:

> "It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional, a circumstance need not be unique or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered."

100. In *A Taxpayer v Revenue and Customs Commissioners* [2025] EWCA Civ 106, [2025] STC 456, Nugee LJ (with whom Falk and Males LJ agreed) adopted this definition of "exceptional" in the context of paragraph 22(4) of Schedule 45 to the Finance Act 2013.

101. Ms Weston agreed that the adjective "exceptional" in s 24A(5) was not used as a term of art, but had its ordinary English meaning, and she was content to adopt the Divisional Court's exposition of it in *R v Kelly*.

102. Also on the issue of exceptional circumstances, Ms Weston referred me to paragraph 8.45 of the Transition Guidance, which I have quoted above. In particular, she relied on the passage which states that "the presumption should be that [financial] assistance should be provided where this is necessary to protect the young person's welfare and it cannot be made available by any other agency". Although this passage does not refer to the provision of accommodation under s 24A(5)(a), Ms Weston contended, and Mr Harrop-Griffiths accepted, that it applies equally in that context.

103. As such, the parties were agreed that there would have been exceptional circumstances for the purposes of s 24A(5) if the Claimant's welfare had required the provision of accommodation, and that accommodation could not have been made available by any other agency. On the facts of the Claimant's case, therefore, the Council could only properly have concluded that there were not exceptional circumstances if it were entitled to take into account the NASS accommodation provided to the Claimant by the Secretary of State.

104. The general rule is that, when reaching a judgement or considering whether to exercise a discretion, a public body must take into account any factors which the legislation governing the decision-making function expressly or implicitly requires the body to have regard (or which it would be irrational to leave out of account), it must not take into account any factors which are legally irrelevant, and it may take into account any factors to which it is entitled to have regard (see *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, [2021] PTSR 190, paragraphs 116-118 *per* Lord Hodge DPSC and Lord Sales JSC). An irrelevant factor is one which the legislation governing the decision-making function expressly or implicitly provides must not be taken into account or, potentially, one which it would be irrational for the decision-maker to take into account.

105. There is nothing in the 1989 Act which expressly provides that a local authority may not, when determining whether there are exceptional circumstances in a particular case, take into account the fact that a qualifying young person is, or might be, provided with accommodation by another body. Further, on the face of it, it is difficult to discern anything implicit in the 1989 Act itself which would restrict the matters which a local authority may take into account when determining whether there are exceptional circumstances for the purposes of s 24A(5). Indeed, looking at the 1989 Act in isolation, it is difficult to see why such a matter should be legally irrelevant to a determination of whether there are exceptional circumstances. For example, it is difficult to see why, if a qualifying young person were provided with accommodation by a charity, or by another local authority in the exercise of its functions as a local housing authority, that fact should not be a matter which a local authority is entitled to take into account when determining whether there are exceptional circumstances for the purposes of s 24A(5).

106. Turning to the Secretary of State's functions under s 95 of the 1999 Act, Mr Harrop-Griffiths did not seek to argue that, on a conventional approach, the Secretary of State was not at least entitled to take into account the possibility of a local authority providing accommodation to a qualifying young person under s 24A(5)(a) of the 1989 Act. I think

he was right not to do so. In order to decide whether she must provide accommodation to a person under s 95(1), the Secretary of State must consider whether that person has adequate accommodation or has any means of obtaining adequate accommodation. In doing so, under reg 6(4) of the 2000 Regulations, the Secretary of State must take into account any support which is, or might reasonably be expected to be, available to the person. It seems to me that the possibility of a local authority providing accommodation under s 24A(5)(a) of the 1989 Act is, where it exists, very likely to be a factor which is relevant to this exercise; at the very least, it is very likely to be a permissible factor to which the Secretary of State is entitled to have regard.

107. It is in this way that the potential deadlock between a local authority and the Secretary of State arises. In a relevant case, if the local authority were to take into account the fact that a qualifying young person is or might be provided with NASS accommodation under s 95(1), it might be entitled to conclude that there are no exceptional circumstances which trigger the discretion to provide accommodation under s 24A(5)(a); in the words of the Transition Guidance, in such a case it might conclude that accommodation could be made available by another agency. Conversely, if the Secretary of State were to take into account the fact that a qualifying young person is or might be provided with accommodation under s 24A(5)(a), she might conclude that the person has a means of obtaining accommodation, or that it is reasonable to expect that accommodation will be available to the person, and that therefore the person is not destitute for the purposes of s 95.

108. Ms Weston's position was that the Council was not entitled to take into account the NASS accommodation which was provided to the Claimant by the Secretary of State. In this respect, Ms Weston primarily relied on the decision in the *O* case, and argued that the reasoning of Tomlinson LJ in that case applies with equal force to the Claimant's case. Although Ms Weston recognised that the Claimant's case concerns the exercise of a discretionary power under s 24A, whereas the *O* case concerned a duty under s 23C, she submitted that this was not a basis on which the *O* case could be distinguished. In particular, she drew attention to the fact that the decision in the *O* case turned primarily on the nature of the Secretary of State's functions under s 95 of the 1999 Act, which were held to be "residual", rather than on the nature of the local authority's functions.

109. In response, Mr Harrop-Griffiths argued that the fact that the local authority in the *O* case had a duty to provide accommodation was a key element of the *ratio* in that case, as it was in the earlier case of *R (Westminster City Council) v National Asylum Support Service* [2002] UKHL 38, [2002] 1 WLR 2956. Mr Harrop-Griffiths submitted that, on a proper analysis, in a case such as the present the Council's functions under s 24A are the residual functions, particularly bearing in mind the fact that s 24A(4) and (5)(a) confer a power which may be exercised only in exceptional circumstances.

110. There are a number of cases in which it has been held that the fact that an individual is being, or is entitled to be, accommodated in NASS accommodation is not a matter which a local authority is entitled to take into account when taking a decision as to whether it is under a duty to exercise its social services or children's services functions in relation to that individual.

111. The starting point is the *Westminster* case to which Mr Harrop-Griffiths referred me. That case involved a homeless disabled asylum-seeker, Mrs Y-Ahmed, who the local authority had assessed as requiring accommodation which comprised at least two rooms, which was wheelchair accessible, and which was close to a hospital. The local authority declined to provide the accommodation under s 21(1)(a) of the National Assistance Act 1948 ("the 1948 Act") because it understood that s 21(1A) excluded destitute asylum-seekers from any entitlement to accommodation under s 21(1), and because the Secretary of State was under an obligation to provide support for Mrs Y-Ahmed under s 95(1). However, the Secretary of State (through NASS) declined to provide accommodation under s 95, on the basis that the local authority was under a duty to provide accommodation under s 21(1) of the 1948 Act. The local authority brought a claim for judicial review of NASS's decision.

112. Section 21(1)(a) of the 1948 Act provided that, to such extent as the Secretary of State directed, a local authority had a duty to make arrangements for providing residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstances were in need of care and attention which was not otherwise available to them. The Secretary of State had given a direction which had the effect that the duty applied in relation to persons ordinarily resident in the local authority's area and others in urgent need. In principle, therefore, the duty applied in Mrs Y-Ahmed's case. However, s 21(1A), which was inserted by the 1999 Act, provided that a person who was subject to immigration control, including an asylum-seeker, could not be provided with residential accommodation under s 21(1)(a) if his or her need for care or attention had arisen solely (a) because he or she was destitute, or (b) because of the physical effects, or anticipated physical effects, of being destitute. Importantly, s 21(1B) provided that s 95(3) to (5) and (8) of the 1999 Act applied for the purposes of s 21(1) of the 1948 Act as they applied for the purposes of s 95(1), which brought into play reg 6(3) of the 2000 Regulations. As I have explained above, the effect of reg 6(3) is that, when determining whether a person has adequate accommodation (and therefore whether he or she is destitute), any support provided under s 95 must be ignored.

113. At first instance, Stanley Burnton J rejected the local authority's claim for judicial review (see [2001] EWHC Admin 138), and the Court of Appeal rejected the local authority's appeal (see [2001] EWCA Civ 512, (2001) 33 HLR 83). Simon Brown LJ (with whom Brooke and Mance LJ agreed) held that the decisive point was that, because reg 6(3) of the 2000 Regulations applied for the purposes of both s 95(1) and s 21(1B), when the local authority was determining whether it was under a duty to provide accommodation to Mrs Y-Ahmed under s 21(1) of the 1948 Act, it was required to disregard any NASS accommodation with which she was or might be provided (see paragraphs 24 to 28). Simon Brown LJ went on to express the view that his conclusion accorded with the overall scheme of the legislation (emphasis in original):

> "29. The 1999 Act at one and the same time took the duty to support certain asylum-seekers away from local authorities under the National Assistance Act and placed it instead upon the Secretary of State. If this were so with regard to *all* asylum-seekers, what, one wonders, would be the point of the new s 21(1A), a provision whose sole effect is to distinguish between those whose need for care and attention is, and those whose need for care and attention is not, solely due to destitution or its effects. This distinction can hardly have been made solely to affect non asylum-seeking immigrants. It is surely plain that the

1999 Act was designed to shift the responsibility only for those asylum-seekers newly excluded by s 21(1A)."

114. The House of Lords dismissed a further appeal by the local authority. The leading speech was given by Lord Hoffmann, with whom Lord Millet, Lord Rodger and (specifically in relation to paragraph 49 of Lord Hoffmann's speech) Lord Steyn agreed. Lord Slynn gave his own reasons for dismissing the appeal.

115. Lord Hoffmann drew a distinction between what he referred to as the "able-bodied destitute", i.e. individuals whose need for care and attention arose solely because they were destitute, and the "infirm destitute", i.e. individuals who had an infirmity which meant that they had a need for care and attention which did not arise solely because they were destitute (see paragraph 29). He held that s 21(1A) of the 1948 Act excluded only the able-bodied destitute from support under s 21(1), and that the infirm destitute remained potentially entitled to support (see paragraph 32). In light of the fact that it was common ground that Mrs Y-Ahmed was infirm destitute, Lord Hoffman identified the issues which arose for determination (and his conclusions on them) as follows (see paragraph 49):

> "The first question for your Lordships is whether in those circumstances she comes prima facie within section 21(1)(a) and, if so, the second is whether she is excluded by section 21(1A). In my opinion, the answers to these questions are yes and no respectively. The third question is whether the existence of a duty under section 21 excludes Mrs Y-Ahmed from consideration for asylum support. Again, in agreement with the Court of Appeal, I think that the answer is yes."

116. In essence, Lord Hoffmann accepted the Secretary of State's arguments on these points. His reasoning was set out in the following passages (emphasis in original):

> "38. The ground upon which Stanley Burnton J and the Court of Appeal found for the Secretary of State was that although section 95(1) prima facie confers a power to accommodate all destitute asylum seekers, other provisions of Part VI of the 1999 Act and regulations made under it make it clear that the power is *residual* and cannot be exercised if the asylum seeker is entitled to accommodation under some other provision. In such a case, he or she is deemed not to be destitute. If Mrs Y-Ahmed had been able bodied destitute, she would have been excluded from section 21 and therefore qualified for accommodation under section 95(1). But as she was infirm destitute, her first port of call should be the local authority.
> 39. The provisions relied upon by the Secretary of State are, first, section 95(12), which enacts Schedule 8, giving the Secretary of State power to 'make regulations supplementing this section.' Paragraph 1 of the Schedule says in general terms that the Secretary of State may make 'such further provision with respect to the powers conferred on him by section 95 as he considers appropriate'. More particularly, paragraph 2(1)(b) says that the regulations may provide that in connection with determining whether a person is destitute, the Secretary of State should take into account 'support which is, … or might reasonably be expected to be, available to him or any dependant of his.'
> 40. The next step is to look at the regulations made under these powers, the Asylum Support Regulations 2000. Regulation 6(4) says that when it falls to the Secretary of State to determine for the purposes of section 95(1) whether a person

> applying for asylum support is destitute, he *must* take into account 'any other support' which is available to him. As an infirm destitute asylum seeker, support was available to Mrs Y-Ahmed under section 21. Therefore she could not be deemed destitute for the purposes of section 95(1).
>
> 41. My Lords, like Stanley Burnton J and the Court of Appeal, I find this argument compelling. The clear purpose of the 1999 Act was to take away an area of responsibility from the local authorities and give it to the Secretary of State. It did not intend to create overlapping responsibilities. Westminster complains that Parliament should have taken away the whole of the additional burden which fell upon local authorities as a result of [the Asylum and Immigration Act 1996, which removed asylum-seekers' rights to housing under the homelessness legislation]. It should not have confined itself to the able bodied destitute. But it seems to me inescapable that this is what the new section 21(1A) of the 1948 Act has done. As Simon Brown LJ said in the Court of Appeal…what was the point of section 21(1A) if not to draw the line between the responsibilities of local authorities and those of the Secretary of State?"

117. It seems to me that the key steps in Lord Hoffmann's analysis were as follows: prior to the 1999 Act, the duty under s 21(1) of the 1948 Act applied to both able-bodied and infirm destitute asylum seekers; by inserting s 21(1A), the 1999 Act in effect transferred the duty in relation to an able-bodied destitute asylum seeker from the relevant local authority to the Secretary of State; however, the 1999 Act did not transfer the duty in relation to an infirm destitute asylum seeker, which remained with the relevant local authority; accordingly, support was available to an infirm destitute asylum-seeker under s 21(1) of the 1948 Act; and therefore an infirm destitute asylum-seeker was not destitute for the purposes of s 95 and did not qualify for support under that section.

118. Although Mr Harrop-Griffiths is correct to say that Lord Hoffmann consistently referred to the fact that s 21(1) of the 1948 Act imposed a duty and conferred an entitlement (see paragraphs 24, 29, 35, 38 and 49), I do not consider that this was a necessary part of Lord Hoffmann's reasoning. By virtue of reg 6(4) of the 2000 Regulations, the question was whether accommodation was "available" to Mrs Y-Ahmed (see paragraph 40), and accommodation which the local authority was under a duty to provide was plainly available to her. On the facts of the case, Lord Hoffmann did not need to consider whether accommodation which might be provided to an asylum-seeker pursuant to a discretionary power was "available" to him or her. Accordingly, I consider that Lord Hoffman's references to a duty were merely a reflection of the particular mechanism by which accommodation was "available" to infirm destitute asylum-seekers under s 21(1). In this context, I note that at first instance Stanley Burnton J appears to have contemplated that support might be available within the meaning of reg 6(4) of the 2000 Regulations even if there is no duty to provide it, in that he observed that support which is available to an asylum-seeker "is apt to include accommodation provided or which a local authority is under duty to provide under section 21" (see paragraph 20).

119. If my understanding of Lord Hoffmann's analysis is correct, it does not inevitably provide the answer in the present case. In particular, unlike in the *Westminster* case, ss 24 and 24A of the 1989 Act were enacted after the relevant provisions of the 1999 Act, and therefore the position cannot be analysed by reference to whether the 1999 Act affected an existing duty. However, underlying Lord Hoffmann's analysis was the idea

that the Secretary of State's functions under the 1999 Act are "residual", and this is a point which has been picked up in the subsequent case law.

120. In the *O* case, the Court of Appeal considered the duties under s 23C of the 1989 Act. On the assumed facts, the claimant was a 20 year old asylum-seeker who was a former relevant child (see paragraph 13 *per* Tomlinson LJ). He had been accommodated by the local authority, but the local authority terminated that accommodation on the ground that the claimant was eligible for support from the Secretary of State under the 1999 Act. At first instance, Calvert-Smith J had held that the assistance to which s 23C(4)(c) of the 1989 Act refers does not include accommodation and that, even if it did, the local authority was entitled to take into account the fact that the claimant was eligible for support under the 1999 Act. Tomlinson LJ (with whom Leveson and Jacob LJJ agreed) allowed the claimant's appeal against both aspects of the judge's decision.

121. The claimant and the Secretary of State argued that, in the *Westminster* case, Lord Hoffmann decided that the Secretary of State's power to provide accommodation under s 95 is residual, and cannot be exercised if the asylum seeker is entitled to accommodation under some other provision (see paragraph 37). Tomlinson LJ accepted this argument. He rejected the local authority's argument that the fact that there is in s 23C of the 1989 Act no equivalent to s 21(1B) of the 1948 Act meant that Parliament must have intended that a local authority could take into account the possibility of NASS accommodation when considering for the purposes of s 23(4)(c) whether a former relevant child's welfare requires the provision accommodation (see paragraphs 38-39). In particular, Tomlinson LJ pointed out that the conclusion of Lord Hoffmann in the *Westminster* case to the effect that the Secretary of State's functions under s 95 of the 1999 Act were residual had nothing whatsoever to do with s 21(1B) (see paragraph 39). Tomlinson LJ held as follows:

> "40. … this court is, in my judgment, bound to conclude that since the powers under s 95 (and s 4) of the Immigration and Asylum Act 1999 are residual, and cannot be exercised if the asylum seeker (or failed asylum seeker) is entitled to accommodation under some other provision, a local authority is not entitled, when considering whether a former relevant child's welfare requires that he be accommodated by it, to take into account the possibility of support from NASS…."

122. Tomlinson LJ's conclusion was endorsed by Lord Carnwath (with whom the other members of the Court agreed) in *obiter* comments in *R (L) v Westminster City Council* [2013] UKSC 27, [2013] 1 WLR 1445, paragraph 9.

123. Again, Mr Harrop-Griffiths is entitled to point out that, in the passage which I have quoted above, Tomlinson LJ referred to an "entitlement" to accommodation under s 23C of the 1989 Act (and there is a similar reference in paragraph 37 of the *O* case). However, again I do not consider that this was an essential part of Tomlinson LJ's reasoning. It is important to recognise exactly what point Tomlinson LJ was addressing in this passage. As is clear from the end of the sentence which I have quoted, he was concerned with the question of what factors a local authority may or may not take into account when making an evaluative judgement under s 23C(4)(a) of the 1989 Act as to whether a former relevant child's welfare requires the provision of accommodation. Accordingly, Tomlinson LJ was dealing with a stage of the decision-making which

precedes the crystallisation of a duty. As in the *Westminster* case, the duty imposed by s 23C(4)(c) was merely the mechanism by which accommodation would be available to a former relevant child; on the facts of the case, there was no need for Tomlinson LJ to consider a situation in which the local authority might have had a discretion to provide accommodation.

124. In *R (TMX) v London Borough of Croydon* [2024] EWHC 129 (Admin), this Court had to consider a similar issue in the context of the statutory successor to s 21 of the 1948 Act, s 18 of the Care Act 2014 ("the 2014 Act"). The local authority had accepted that the claimant had needs for care and support and that he met its eligibility criteria. However, the local authority did not accept that the claimant had a need for accommodation, because the Secretary of State was already providing accommodation to him under s 95.

125. Alan Bates, sitting as a Deputy High Court Judge, held that it was not lawfully open to the local authority to take in account any accommodation which was, or which might be, provided to the claimant by the Secretary of State under s 95 when deciding whether the claimant had accommodation-related needs under the 2014 Act (see paragraphs 76 and 78). He held that s 95 is a "'residual' safety net, i.e. the safety net of last resort", that it is "the lowest-positioned of all the various social welfare safety nets the state provides", and that it "is intended to catch only those people who have been unable to benefit from any other safety net" (see paragraph 77(1)). In reaching this conclusion, Mr Bates particularly relied on s 95(3), (5) and (6) of the 1999 Act and reg 6(4) of the 2000 Regulations, which he considered reinforced the "last resort" nature of accommodation under s 95, and he also pointed to the fact that the matters which the Secretary of State was barred from taking into account under s 95 were matters which a local authority would be expected to take into account under the 2014 Act, and that there is nothing equivalent to s 95(3), (5) and (6) in the 2014 Act (see paragraph 77(2) to (6)). Mr Bates summarised his conclusion in the following terms (see paragraph 77(7)):

> "In light of this understanding of the s 95 IAA 1999 on the one hand, and the Care Act on the other, it follows, as a matter of inexorable logic, that a local authority cannot determine that a person has no accommodation-related care need, on the basis that he does not need to be provided with accommodation as he is being – or will, or may at some future point in time, be – provided with accommodation by the Secretary of State under s 95. Mr Payne KC, for the Secretary of State, so argued with powerful simplicity: 'You can't rely on something which is a last resort for deciding whether you are obliged to provide something which is not a last resort.'"

126. Mr Bates went on to consider the *Westminster* case and the *O* case, which he considered provided strong support for his conclusion (see paragraphs 79 to 86). In particular, he held that the reasoning in the *Westminster* case as to the interplay between the 1948 Act and the 1999 Act applies equally to the interplay between the 2014 Act and the 1999 Act (see paragraph 82). I note that, in this respect, the 2014 Act includes a provision which is in very similar terms to the former s 21(1A) of the 1948 Act (see s 21(1)).

127. It is true that s 18 of the 2014 Act imposes a duty on a local authority, and Mr Bates referred to the fact that "a person who has a *right* to accommodation that is at least

'adequate' under other legislation, such as the Care Act, has no right to be accommodated under s 95, and that is so even if that *right* is not already being met in relation to him" (see paragraph 77(2); emphasis added). However, as in the *Westminster* case and the *O* case, I do not consider that the fact that s 18 of the 2014 Act imposes a duty was an essential part of Mr Bates's reasoning; again, it was merely the mechanism by which, on the facts, the claimant had accommodation available to him.

128. Ms Weston also referred me to *R (CVN) v Croydon London Borough Council* [2023] EWHC 464 (Admin), [2023] 1 WLR 3950, paragraph 18, where Dexter Dias KC, sitting as a Deputy High Court Judge, recorded a concession by the defendant local authority to the effect that it could not refuse to provide accommodation under s 23C(4)(b) of the 1989 Act on the basis that the relevant individual might be provided with support under s 4 of the 1999 Act, because such support is "a 'residual' solution, and not available if the relevant local authority on the ground has power to assist". However, Ms Weston accepted that the *CVN* case did not take matters any further.

129. I agree with Mr Harrop-Griffiths that none of the cases to which I have referred necessarily determines the outcome in the present case. As Mr Harrop-Griffiths pointed out, each case was concerned with a duty on the part of the relevant local authority, whereas s 24A confers a power and, moreover, a power which may be exercised only in exceptional circumstances. Nevertheless, in my judgment, the courts' general approach, and in particular, their reliance on the fact that the Secretary of State's functions under s 95 of the 1999 Act are "residual", points me towards the appropriate analysis in the present case.

130. Although perhaps not expressly articulated in this way, it seems to me that the approaches adopted in the *O* case and in the *TMX* case were to the effect that, although the provisions of the 1989 Act and the 2014 Act considered in those cases were enacted at different times to the relevant provisions of the 1999 Act, because in some cases they potentially occupy the same field, they must be interpreted in a way which ensures that the overall legislative scheme is coherent and does not produce absurdity (in the form of the type of deadlock to which I have referred above). Another way of approaching the question of interpretation might be to say that the legislation should be interpreted in accordance with what must have been the intention of Parliament, i.e. an intention to avoid to deadlock (although I recognise that an analysis based on the intention of Parliament would have to be squared with the correct approach to how that intention is to be divined: see, for example, *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223, paragraphs 167, 172 *per* Lord Reed PSC; *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, paragraphs 29-31 *per* Lord Hodge DPSC).

131. The way in which the courts in the *O* case and the *TMX* case ensured coherence and avoided absurdity is by recognising that the functions conferred on the Secretary of State by s 95 are "residual" functions, which are to be exercised only where no other support is available to a person, and that the possibility of accommodation being provided under those residual functions may not be taken into account by a local authority in the context of its non-residual functions under the provisions of the 1989 Act or the 2014 Act considered in those cases.

132. As I see it, this is the route by which the possibility of NASS accommodation being provided by the Secretary of State under s 95(1) has been held to be legally irrelevant. In effect, it is implicit in the legislative scheme as a whole that the possibility of NASS accommodation being provided is a legally irrelevant consideration when a local authority is exercising the relevant social services or children's services functions.

133. I consider that a similar approach should be adopted in the context of s 24A(5). I have explained above how, at least potentially, a deadlock may arise as between the Secretary of State and a local authority in the context of s 24A(5). The legislative scheme as a whole should be interpreted in such a way that it avoids such a deadlock arising. As the case law indicates, the interpretative technique for avoiding such a deadlock arising involves, as a starting point, identifying which of the functions under the 1999 Act and the functions under the 1989 Act are the residual functions. As Tomlinson LJ pointed out in the *O* case, the functions under the 1999 Act are to be treated as residual functions because that is the effect of the relevant provisions of that Act and the 2000 Regulations (see paragraph 39; see also *TMX*, paragraph 77). In this respect, I agree with Ms Weston that the courts' conclusions that the functions under s 95 are residual have been predicated on an analysis of those functions, and not on any particular feature of, or comparison with, the relevant social services or children's services functions of the local authority.

134. There has been no material change in the provisions of the 1999 Act or the 2000 Regulations since the decision in the *O* case, and therefore I consider that I should continue to treat the functions under the 1999 Act as residual, unless the fact that the present case is concerned with s 24A(5) of the 1989 Act somehow reverses the hierarchy of functions.

135. As I have already mentioned, Mr Harrop-Griffiths pointed to two features of s 24A(5) of the 1989 Act which he said should lead me to the conclusion that the hierarchy of functions is reversed in the present case, and that the Council's functions under s 24A(5) should be treated as the residual functions: the fact that s 24A(5) confers a discretionary power, and the fact that the power is triggered only where there are exceptional circumstances.

136. On the face of it, Mr Harrop-Griffiths' submission has some attraction. It might be said that a power, and especially a power which may be exercised only in exceptional circumstances, cannot sensibly be treated as being above a duty in a hierarchy of functions, and that the power under s 24A(5)(a) must therefore be residual to the duty under s 95(1). It might be said that such an approach would reflect a local authority's role as a "friend and advisor". Ultimately, however, I am unpersuaded.

137. As I have explained above, I do not consider that the fact that, in the cases which I have discussed, the relevant local authority had a duty to accommodate was a necessary part of the reasoning; it merely happened to be the mechanism pursuant to which accommodation would be made available to the relevant individual. I do not detect in the substance of the reasoning in any of those cases a suggestion that it was the fact that the relevant local authority was under a duty which led the courts to treat the Secretary of State's functions as residual. Rather, as I have noted, the characterisation of the Secretary of State's functions as residual turned on an analysis of those functions

themselves; it did not turn on a comparison between the nature of those functions and the nature of the relevant local authority's functions.

138. As such, given the focus on the Secretary of State's functions, in order for Mr Harrop-Griffiths' argument to succeed, he would have to show that, in a case such as the present, an asylum-seeker who is a qualifying young person has no means of obtaining accommodation under s 24A(5)(a) (*cf* s 95(3)(a)) and that it is not reasonable to expect accommodation under s 24A(5)(a) to become available to the qualifying young person (*cf* reg 6(4)(a) of the 2000 Regulations). In this context, I consider that it is important to have regard to the practical reality of how s 24A(5)(a) would operate in a case such as the present and, on that basis, I consider that the parties' agreement as to what constitute exceptional circumstances is relevant. As I have explained above, the parties were agreed that exceptional circumstances would arise if it is necessary for a local authority to provide accommodation to protect a qualifying young person's welfare, and accommodation cannot be made available by any other agency. Accordingly, on the parties' agreed approach to s 24A(5)(a), a local authority may provide accommodation to an asylum-seeker who is a qualifying young person if his or her welfare requires it and if the Secretary of State cannot provide it. If the discretion to provide accommodation under s 24A(5)(a) were to arise in those circumstances, it is difficult to see how a local authority could properly decline to exercise that discretion. On that basis, in general terms (and subject to any particular factual nuances), accommodation under s 24A(5)(a) might reasonably be expected to be available to the asylum-seeker.

139. I have mentioned above the fact that reg 6(3)(a) of the 2000 Regulations refers to accommodation which might reasonably be expected to be available in the period prescribed by reg 7, i.e. 14 or 56 days. However, Mr Harrop-Griffiths did not suggest that there was anything about the potential timing of a local authority decision in this respect which would affect the position.

140. On this approach, the fact that a local authority's power to provide accommodation under s 24A(5)(a) is discretionary and subject to an exceptional circumstances criterion does not make a material difference to the analysis. In a case such as the Claimant's, it is in practice reasonable to expect the exceptional circumstances criterion to be satisfied and for the discretion to be exercised. Therefore, as in the cases which I have discussed above, there is a mechanism by which accommodation is available to the asylum-seeker other than under s 95, and the Secretary of State's functions under s 95 continue to have a residual status.

141. Neither party adduced any evidence on the likely practical consequences if, under s 24A(5), a local authority were not entitled to have regard to NASS accommodation which is being provided, or which might be provided, to a qualifying young person. Ms Weston invited me to take judicial notice of the fact that the number of qualifying young persons who are asylum-seekers is likely to be a very small proportion of the total but, even if that were correct, it tells one nothing about the absolute numbers that might be involved or about the potential pressures on what are doubtless already stretched local authority resources. Accordingly, even if it were legitimate to take into account the practical consequences in deciding this issue, there is nothing before me which points towards a particular outcome.

142. Accordingly, I consider that, when a local authority is deciding whether there are exceptional circumstances for the purposes of s 24A(5), it is not entitled to take into account the fact that a qualifying young person is being provided with, or might be provided with, NASS accommodation under s 95; that is a legally irrelevant consideration. It follows that, when the Council drew up the pathway plan, it erred in law by taking into account the fact that the Claimant was being provided with NASS accommodation by the Secretary of State. As a result, the pathway plan is unlawful, and the Claimant succeeds on the first issue (originally the first part of his third ground of challenge).

143. In light of my conclusion it is, strictly speaking, unnecessary for me to go on to determine the remaining issues. As Mr Harrop-Griffiths accepted, if the Claimant were to succeed on the first issue, the pathway plan could not stand and the Council would have to re-assess the Claimant's needs on the correct basis and produce a fresh pathway plan. Accordingly, to that extent it is immaterial whether there were any other flaws in the pathway plan. Nevertheless, I heard full argument on the remaining issues and therefore, in case I am wrong on the first issue, I shall go on to address them on the now hypothetical basis that the Council was entitled to take into account the Claimant's NASS accommodation.

H. ISSUE 2: EXCEPTIONAL CIRCUMSTANCES

144. The second issue is concerned with the lawfulness of the Council's approach to the question whether there were exceptional circumstances for the purposes of s 24A(5).

145. In Ms Weston's and Ms Twite's skeleton argument, their case on exceptional circumstances was, as I understood it, to the effect that the Claimant's NASS accommodation was unsuitable for him, and that the Council had adopted an unduly narrow approach to s 24A(5) by not recognising that the fact that the Claimant was in unsuitable accommodation could constitute exceptional circumstances. This argument was primarily based the opinions expressed in Dr Heke's and Ms Cresswell's reports which, it was said, demonstrated that on any rational view the Claimant's NASS accommodation was unsuitable.

146. In light of the fact that Dr Heke's and Ms Cresswell's reports post-dated the pathway plan, Ms Weston did not pursue this argument at the hearing, I think rightly. Instead, in opening, Ms Weston's argument in relation to exceptional circumstances was to the effect that the Council had departed from paragraph 8.45 of the Transition Guidance without taking a conscious decision to do so. In particular, she said that, because the Council was not entitled to have regard to NASS accommodation provided by the Secretary of State, and because the Claimant's welfare required the provision of accommodation, the Transition Guidance indicated that the Council should have decided to provide accommodation under s 24A(5)(a). In this respect, Ms Weston pointed out that, because the Transition Guidance was issued under s 7 of the Local Authority Social Services Act 1970, the Council was under a duty to follow it unless there was a good reason not to do so (see *R v Islington LBC, ex p Rixon* (1996) 1 CCLR 119, 123 *per* Sedley J).

147. In my view, the difficulty with this argument is that its premise is that the Council cannot take into account the Claimant's NASS accommodation. As such, the argument is only available if I am correct on the first issue. However, I am considering the second issue on the basis that I am incorrect on the first issue. Approached on that hypothetical basis, the premise simply does not arise, and the argument collapses.

148. In reply, Ms Weston advanced an alternative argument, contending that the Council had adopted a legally erroneous approach to what constituted exceptional circumstances or, alternatively, had failed to have regard to a relevant consideration. As I understood this new argument, it was to the effect that most qualifying young persons are British citizens who will be entitled to accommodation by some other route, and therefore the fact that the Claimant was without accommodation was self-evidently an exceptional circumstance. There was no evidence before me to support Ms Weston's assertion as to the nationalities of qualifying young people but, in any event, this argument collapses for the same reason that her argument on the Transition Guidance collapses. In particular, the new argument is also premised on an assumption that the Claimant was without accommodation. Accordingly, it too is premised on an assumption that Council was not entitled to take into account the Claimant's NASS accommodation.

149. In my judgment, as Mr Harrop-Griffiths submitted, the only argument which is open to the Claimant in relation to exceptional circumstances is an irrationality argument; i.e. an argument that, in the particular circumstances of the Claimant's case, it was irrational for the Council to conclude that those circumstances were not exceptional for the purposes of s 24A(5). I shall address this argument in the context of the fourth issue, below.

150. Accordingly, I consider that, if I am wrong on the first issue, and subject to the question of rationality, the Claimant has not made out his case that the Council adopted an unlawful approach to the question whether there were exceptional circumstances for the purposes of s 24A(5). Accordingly, the Claimant does not succeed on the second issue.

I. ISSUE 3: THE CONVENTIONAL PUBLIC LAW CHALLENGES TO THE PATHWAY PLAN

(1) Introduction

151. I was not referred to any authority on the correct approach to a conventional public law challenge to a document such as the pathway plan, which records social workers' assessment of an individual's needs and what should be provided to meet those needs, and which is a "living document", i.e. a document which is to be updated on an ongoing basis in the light of developments. Nevertheless, I bear in mind the fact that the Court should in general respect social workers' assessment of the facts (see, for example, *Lambeth LBC v Ireneschild* [2007] EWCA Civ 234, [2007] HLR 34, paragraph 44 *per* Hallett LJ), that the Court should not adopt an overly-critical approach to the drafting of a document such as the pathway plan (see, for example, *R (Stewart) v Birmingham City Council* [2018] EWHC 61 (Admin), [2018] PTSR 1204, paragraph 71 *per* Jeremy Baker J), and that in contexts such as the present, an irrationality challenge faces a high

hurdle (see, for example, *R (TW) v Essex County Council* [2025] EWCA Civ 5, paragraph 59 *per* Baker LJ).

152. Ms Weston's oral submissions as to what she said were the conventional public law flaws in the pathway plan were somewhat diffuse, and on occasion she characterised a particular flaw in more than one way. However, considering Ms Weston's submissions in the round, as I understood them they came down to the following points. First, the Council failed to consider whether the Claimant's NASS accommodation was suitable, and as a result it failed to take into account a relevant consideration. Secondly, the Council failed to take into account the Claimant's fears for his safety in the NASS accommodation, and as a result it failed to take into account a relevant consideration. Thirdly, and also in the context of accommodation, the Council's conclusion that the Claimant's circumstances were not exceptional for the purposes of s 24A(5) was irrational. Fourthly, the Council's conclusion that the Claimant had sufficient financial resources was irrational. Fifthly, the Council had failed to make reasonable inquiries into the Claimant's mental health needs and, as a result, the pathway plan failed to set out those needs with any specificity. Sixthly, it was irrational for the Council not to identify any specific mental health services to which the Claimant would be referred.

153. I shall take these points thematically, by reference to the issues of financial resources, mental health needs, and accommodation.

154. Before turning to these points, I should make a preliminary observation. Ms Weston founded her submissions on the matters which had been raised by CCLC in correspondence, and she took me through the letters on which she relied in order to identify what she said were the themes which emerged from that correspondence (themes which are reflected in the points which I address below). However, I accept Mr Harrop-Griffiths' submission that the Council was entitled to attach most weight to what the Claimant himself told Mr Ahluwalia in the course of their discussions. As the Council's e-mail of 8 September 2023 reveals, there was on occasion a discrepancy between what the Council took from its discussions with the Claimant and the information which CCLC relayed to the Council. In those circumstances, it seems to me that the Council was entitled to pay most heed to what the Claimant told it directly. In this respect, Ms Weston did not contend that the pathway plan set out anything other than an accurate record of the discussions between Mr Ahluwalia and the Claimant, and it appears from the pathway plan that the Council did take into account the points which CCLC had made in its letters; indeed it is apparent that, on at least one occasion, Mr Ahluwalia expressly prompted the Claimant by reference to "the additional information outlined in [his] legal letters".

(2) Financial resources

155. The pathway plan expressly addressed the issue of the Claimant's financial resources. The "finance" subsection records what the Claimant told Mr Ahluwalia as follows.

> "You are currently in fully catered accommodation and therefore the weekly finance amounts that you receive from the Home Office are adjusted to take this into account.

You advise you receive £8.45 per week from the Home Office. This is the amount the home office determine that you need to live on. I appreciate this figure is not generous, but the amount is not determined by the local authority but there are things we can suggest to support you in stretching this finance.
Out of the £8.45 you tend to buy tuna, bread, biscuits and water from Poundland, which means your funds are often swallowed up on the same day."

156. In relation to the Claimant's finances, the "overall analysis" subsection of the pathway plan stated as follows (omitting contact details and website addresses, and italicising what appear to me to be headings).

"**Finance Analysis**
I appreciate £8.45 is not a lot of money to have for the week, which is compounded by the issues you feel you have around full catered food within Booth House.
Steen can signpost/directly support you as appropriate in accessing these resources.
We need to consider the type of accommodation you are in how it impacts on your finances (looking at accessing alternatives), making an application for accessing additional monetary support from the home office, accessing discounted shopping schemes, accessing food banks, accessing hot meal schemes, accessing clothing banks, applications for bursary scheme at college and application for discounted travels.
We would expect care leavers to attempt utilise all avenue of additional funding, so the plan I have set out below is quite comprehensive.

Moving to self cater accommodation – requesting additional funding from Home Office
You have requested that you would prefer to move to self catered accommodation. As I have highlighted in a earlier section of this assessment- you are able to make this request to the home office.
The home office guide to living in initial accommodation notes the following in Section 5 Money and Support Payments.
'Once you are dispersed to a self-catered property, your financial support rate will increase to £47.39 per week (accurate as of August 2023), to enable you to cover your own basic living expenses'.
It goes on to say if you have 'If you have exceptional circumstances that create significant costs which are more than the standard support levels cover, you may be eligible for extra payments (this is known as Section 96 payments).
For example, if you must travel a long distance to medical appointments (this must be applied for before travel) or have a medical condition requiring a special diet. Please contact Migrant Help and complete an ASF2 application form'.
Steen will be able to support you in making the relevant request to Migrant Help about making the request to move self catered accommodation and to explore/complete the ASF2 form mentioned.

Accessing Discounted Shopping Schemes
I would suggest accessing the Tower Hamlets Food Store

The Tower Hamlets Food Store . In return for a weekly membership fee of £3.50 you will be able to pick up £20 to £30 worth of groceries and household items. While you are a member we will also set you up with access to advice services.

Food Banks
You advised you have never been to a food bank, whilst residing in the UK, as you don't have access to cooking facilities. Food banks can make food parcels appropriate for your individual needs, where you have restricted or no cooking facilities i.e. bread, fruit, some canned food such as tuna,
Our main goal is to ensure you are moved to Home Office dispersal accommodation, were you are able to cook your own meal – though food banks remain a useful resource.

- Bethnal Green Food Bank

Hot Meal Schemes
You have occasionally had hot meals from the Mosque.
There are also other agencies which provide walk in hot meals. You would need to check whether the ingredients are Halal.
??Hot Meals - Walk In or Delivery

- Whitechapel Mission
- St John on Bethnal Green
- Methodist Church Tower Hamlets

Clothes Bank
You advised many of your clothes have been damaged and you have little or no money to spend on clothes.
You may wish to access the www.salvationarmy.org.uk/clothing-bank
I have also recommended a payment for your clothing as well.

Travel
As previously mentioned in the education section, you may be eligible for TFL Care Leavers Travel Card Scheme – Steen can explore eligibility and make this application on your behalf.

Bursary Scheme at College
You may be eligible for a discretionary bursary at any college you attend, from Sept 24. Steen can you support/signpost you in making the relevant bursary applications with a support letter of his involvement.

Other Financial Support
I have made a request for £175 monies that you were due to for the period you were looked after in December 22/January 23
Steen will be able to facilitate this these payments on our pre-paid card scheme-once you have filled a Know Your Customer Form

- £100 clothing allowance – comprised of £75 initial clothing allowance and £25 per month clothing allowance for Dec 22 and Jan 23
- I also believe you were entitled to £50, 18^th^ birthday money

I believe having regard to all of the above resources, there are multiple steps that can and should be taken in relation to your financial situation.

> I am of the opinion that based on the evidence available to me within the assessment, that the local authority is not required to exercise it powers in relation to financial assistance apart from the £150 backdating payments.
> Steen will be able to support/sign post you in accessing these resources."

157. Ms Weston's criticisms of this part of the pathway plan were very specific. First, she argued that it was irrational to conclude that the Claimant could afford the £3.50 weekly membership fee for the Tower Hamlets Food Store. Secondly, she argued that it was irrational to refer to foodbanks, because foodbanks provide only food which requires preparation in a kitchen, and the Claimant did not have access to a kitchen. I am unable to accept that either of these arguments demonstrate that the treatment of the Claimant's finances in the pathway plan was unlawful.

158. At a general level, the overall approach adopted by the Council was to recognise the Claimant's straitened financial circumstances, to explore ways of obtaining additional funds, and to explore ways of making his funds go further. In principle, I consider that this was an approach which the Council was rationally entitled to adopt. It means, however, that when considering whether it was rational for the Council to proceed on the basis that the Claimant would be able to afford the membership fee for the Tower Hamlets Food Store, one has to look at the analysis as a whole. In my view, there are two particular elements of the analysis which provide the answer to Ms Weston's first criticism. First, the Claimant was already spending the majority of his £8.45 per week at Poundland on food. The Council's suggestion was that, instead of spending almost all of his subsistence allowance in this way, he should instead spend a smaller sum to obtain access to the provisions at the Tower Hamlets Food Store, in conjunction with obtaining food at no cost at the Bethnal Green Food Bank. The suggestion was not that the Claimant should continue to spend most of his £8.45 at Poundland in addition to paying the membership fee for the Tower Hamlets Food Store. Secondly, it was envisaged that the Claimant would soon receive a payment of £150 from the Council (read in context, I think that the reference to £175 is an error), which he would be able to spend as he wished. Taking these two points together, I cannot accept that it was irrational for the Council to conclude that the Claimant would be able to afford the £3.50 per week membership fee for the Tower Hamlets Food Store.

159. As to Ms Weston's second criticism, it is inconsistent with what is said in the pathway plan itself. The pathway plan expressly states that "[f]ood banks can make food parcels appropriate for your individual needs, where you have restricted or no cooking facilities". Ms Weston's assertion to the contrary was just that; she showed me no evidence which could justify a conclusion that the Council's understanding of what might be provided by a food bank was incorrect. Accordingly, there is no basis on which I could decide that it was irrational for the Council to conclude that the Claimant might be able to obtain food from a foodbank.

160. In summary, therefore, I reject the Claimant's challenge to the approach that the Council took to finances in the pathway plan.

(3) Mental health needs

161. The Claimant's mental health difficulties were expressly addressed in the pathway plan in the "emotional and behavioural development" subsection. The discussion with the Claimant is recorded as follows.

> "You advise you have been suffering from low moods and this has often resulted in difficulties in getting out of bed. You had indicated that your low moods are caused by uncertainty about your future immigration status and being fearful of returning to Algeria.
> You advise you have not self-harmed, apart from on the day you were refused asylum and you hit two wardrobes. You currently do not feel at risk of selfharming.
> We talked about things that lift your mood.
> • Boxing
> • Going to the Gym"

162. The "overall analysis" subsection goes on to discuss emotional and behavioural development in the following terms:

> "I explained that you may wish to speak to a GP/access counselling services. They may be able to support you with regards to your low mood and refer you to other services.
> In the leisure section, I have also advised of a NHS GP exercise referral scheme.
> In addition to GP and Counselling services You may wish to explore the following well being resources.
> www.refugeecouncil.org.uk/wp-content/uploads/2020/08/Moments-for-Mindfulness.pdf
> Muslim Youth helpline :-
> …
> You can reach our free helpline any day of the week between 4pm and 10pm. Our team will offer you support in a non-judgemental and nondirective way.
>
> [Resources for LGBTQ Muslims]
> 'We have put together a resource for LGBTQ+ Muslims, to signpost to resources and events for those who wish to connect with their community via groups, food or prayer.
> Many of the LGBTQ+ Muslim young people who access our resources and services do so due to not being welcome within their own families and communities.
> There is also a lack of support for this intersectional identity within LGBTQ+ spaces.'"

163. The table in the "emotional and behavioural development" subsection specifies that, in relation to "emotional health", the action to be taken was for the Claimant, in conjunction with his young person's advisor, to make an appointment with a general practitioner by 30 August 2024 (i.e. within two weeks of the pathway plan being finalised). The table also specifies that the Claimant and his young person's advisor were to explore a self-referral for NHS talking therapies, also by 30 August 2024.

164. Ms Weston advanced two main arguments in relation to this theme. First, she argued that, before finalising the pathway plan, the Council should have arranged for the

Claimant to register with a GP and for him to have an appointment with the GP to discuss his mental health difficulties. If the Council had adopted this approach, she argued, it would have been better informed as to the nature of the Claimant's mental health difficulties and as to what steps should be taken to address them. Ms Weston framed this argument as a breach by the Council of the so-called *Tameside* duty to undertake reasonable inquiries (so-called after *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, HL, 1065 *per* Lord Diplock).

165. However, a public body breaches the *Tameside* duty only if it is irrational not to make further inquiries in relation to the matter to be decided (see *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647, para 70). In my view, Ms Weston's argument that it was irrational for the Council not to have delayed finalisation of the pathway plan to allow for the Claimant to attend an appointment with a GP is unsustainable. As is clear from the chronology which I have summarised above, CCLC were pressing for the pathway plan to be completed as soon as possible. Indeed, on 24 July 2024, just over three weeks before the pathway plan was finalised, CCLC were threatening a claim for judicial review based on a contention that the Council had failed to complete the needs assessment within a reasonable time. Bearing in mind the fact that the pathway plan could, if necessary, be updated to take into account anything that transpired as a result of the anticipated GP appointment, I do not accept that it was irrational for the Council not to act contrary to the Claimant's wishes (as articulated by CCLC) by delaying the finalisation of the pathway plan until the anticipated GP appointment had taken place.

166. Ms Weston's second argument is that the pathway plan is insufficiently specific on the steps which should be taken in relation to the Claimant's mental health difficulties. In this respect, Ms Weston drew my attention to CCLC's letter of 24 May 2024, which suggested that the Claimant might have a major depressive disorder, and argued that the pathway plan should have set out exactly what would be provided, by whom, and when. However, when I asked Ms Weston to identify exactly what she said the pathway plan should have specified by way of "what", "whom", and "when", in circumstances in which a GP appointment had not yet taken place, her initial response was that the pathway plan should have stated "we will support you to access the young person's mental health service". I consider that such a statement would have been less specific than the concrete actions which were set out in the table, and therefore this point does not assist Ms Weston.

167. Ultimately, Ms Weston alighted on the passage in the Local Offer which I have quoted in paragraph 82 above, and she argued that the Council should have referred the Claimant to the dedicated mental health practitioner to which it refers. It seems to me that, in order to succeed on this argument, the Claimant would have to show that it was irrational for the Council not immediately to refer him to the mental health practitioner, without first having an appointment with a GP. However, Ms Weston did not explain how the Council's approach, which turned on what is quintessentially a matter of judgement, could be said to be irrational, and there was no evidence before me to support such an argument.

168. In summary, therefore, I reject the Claimant's challenge to the approach that the Council took to the Claimant's mental health needs in the pathway plan.

(4) Accommodation

169. In the subsection on accommodation, the pathway plan records the concerns which the Claimant expressed about the accommodation at Booth House. In summary, the Claimant told Mr Ahluwalia that he was currently in a room on his own and that, although he understood that Booth House was intended to be initial accommodation only, he did not wish to be moved out of London. The Claimant expressed concerns about cleanliness and about the food and water at Booth House and, having been prompted by Mr Ahluwalia reference to CCLC's correspondence, he went on to set out further concerns. Those concerns related to noise; the small size of and lack of ventilation in his room; the fact that there were bedbugs; the dirty and unhygienic state of the bathrooms; the fact that, although the Claimant's room was cleaned once a week, he was not able to clean his room independently as he had no access to cleaning equipment; the lack of access to a kettle or cooking facilities; the inedible and unfamiliar nature of the food; and the fact that drinking the water from the taps gave him an upset stomach. The Claimant told Mr Ahluwalia that he had made numerous complaints but, on investigation, it appeared that the Claimant had been accessing a website on which he could give feedback, rather than a formal complaints process.

170. In the "overall analysis" subsection of the pathway plan, the issue of exceptional circumstances in the context of accommodation was addressed in the following terms:

> "Within the assessment you identified:- you would like the local authority to provide you with accommodation, were you can cook you own meals, have your own room and potentially have your own bathroom. You have made this request on the basis of the issues you have experienced within the Home Office accommodation. Your solicitor has also made this request in pre litigation correspondence and referred to Children Act 1989 s 24(5) 'the assistance may be in kind and in exceptional circumstances, assistance, may be given 24(5)(a) by providing accommodation
> Currently I don't believe the issues presented are of 'exceptional circumstances' which require the authority to provide alternative accommodation.
> I believe the current situation require further investigation and support, so that you can present your case to Migrant Help to obtain an appropriate service in line with Home Office guidance.
> I believe the more appropriate route to take at this point is for you to be supported by Steen [the Claimant's young person's advisor], in addressing your accommodations concerns and you additional requests with Migrant Help who deal with queries on behalf of the Home Office in relation to your accommodation.

171. The pathway plan went on to suggest that the Claimant should, together with his young person's advisor, go through the Home Office's guide to living in initial NASS accommodation, which advises that any complaints should be raised with Migrant Help, who would look at whether any changes could be made or whether an individual could be moved to long-term accommodation. It also suggested that the Claimant's young person advisor would support him to make complaints about the issues in relation

to noise, bed bugs, hygiene and the food and water. The pathway plan noted that the Claimant had asked the Home Office not to move him to accommodation outside London, a request which had been accepted, and referred to the fact that the Claimant's choice in this respect might limit the type of accommodation which was available to him. It also suggested that the Claimant could, with the support of his young person's advisor, request a move to self-catering accommodation in which the Claimant would have his own room. The pathway plan noted that, if the Claimant's requests were unreasonably denied, he would have the opportunity of a claim for judicial review against the Secretary of State, on which CCLC would be able to advise.

172. At a general level, and in light of the parties' agreement as to the effect of the Transition Guidance, I would accept that, if a qualifying young person is in accommodation which is not suitable for him or her, and there is no other suitable accommodation available to him or her, that may well constitute an exceptional circumstance for the purposes of s 24A(5). Similarly, I would be inclined to accept that, in a case such as the present, the issue of the suitability of a qualifying young person's current accommodation is a mandatory relevant consideration in the context of s 24A(5), whether because it is implicit in that subsection that suitability must be considered, because it would be irrational not to consider it, or because it is implicit in the Transition Guidance (as applied in accordance with the parties' agreement as to it effect) that it should be considered.

173. Ms Weston is correct to say that the pathway plan does not expressly set out a conclusion that the Claimant's NASS accommodation was or was not suitable for him (although, in view of the fact that the Council appears to have accepted that the Claimant's concerns about his NASS accommodation were valid, it seems likely that it did not conclude that the NASS accommodation was suitable). However, that is not the end of the matter. I consider that it is clear from the pathway plan that the Council concluded that each of the concerns raised by the Claimant were remediable and that there was a process by which the Claimant could have them addressed, i.e. by way of a complaint to Migrant Help (a process with which the Claimant's personal advisor would assist). The table in the subsection dealing with accommodation envisages that the process of raising a complaint would be commenced within approximately a week of the pathway plan being finalised. In my view, the pathway plan reveals that, even if the Claimant's accommodation was considered not to be suitable at the time that the plan was finalised, the Council took the view that the steps identified in the plan could result in the accommodation being made suitable. In those circumstances, I consider that the pathway plan demonstrates that the Council had sufficient regard to the issue of the suitability of the Claimant's NASS accommodation.

174. Ms Weston was particularly critical of the passage in the pathway plan which refers to the possibility of a claim for judicial review. I have some sympathy with that criticism. If the only basis on which the Council had decided that there were no exceptional circumstances in the Claimant's case had been the fact that the Claimant could have sought to remedy any problems with his NASS accommodation by taking the Secretary of State to court, I would have required some persuasion that this was a rational approach to the issue of the suitability of that accommodation. However, that is not the only basis on which the Council approached the issue of the suitability of the Claimant's accommodation, and I do not consider that the fact that it was mentioned can of itself render the Council's treatment of the issue of accommodation irrational.

175. Ms Weston placed particular emphasis on the fact that the pathway plan makes no reference to the Claimant's fears for his safety in his NASS accommodation. In this respect, she relied on the references in CCLC's correspondence to the Claimant's concerns as to how other residents would react if it were to emerge that he was bisexual. She said that, given the Claimant's experiences in Algeria, and given his poor mental health, this was a particularly important point, and one with which the Council was required to grapple. However, I consider that Mr Harrop-Griffiths has provided an answer to this point. The relevant concerns about the Claimant's safety were articulated by CCLC when he was accommodated at Palmers Lodge; those concerns were not repeated in relation to the accommodation at Booth House prior to the finalisation of the pathway plan (and Ms Weston did not rely on the different concerns about safety which were expressed in relation to Booth House). Further, despite the fact that when Mr Ahluwalia met with the Claimant there appears to have been detailed discussion of the Claimant's concerns about his accommodation, and there was some (albeit limited) discussion of the Claimant's sexuality, there is no record of the Claimant having raised the issue of his safety as part of that discussion. In circumstances in which the relevant concerns were not raised in relation to Booth House, I cannot accept that it was irrational or otherwise unlawful for the Council not to have regard to them.

176. As to the overarching question whether the Council's conclusion that the Claimant's circumstances were not exceptional for the purposes of s 24A(5) was irrational, I do not think that this question can be addressed in isolation. In particular, it seems to me that it must be considered in the context of the Claimant's other circumstances and the length of time for which they had persisted, and in particular his physical and mental health difficulties, what the Council appears to have accepted were the Claimant's experiences in Algeria and his rejection by his uncle, the fact that (as is revealed by the record of the discussion in the pathway plan) the Claimant's sexuality was clearly a matter of some sensitivity for him, the Claimant's precarious status as an asylum-seeker, and the fact that he had very limited financial resources (and, indeed, it was envisaged that he might be reliant on a food bank). I can readily envisage that some might think that it would (and, indeed, should) be "out of the ordinary course, or unusual, or special, or uncommon" for a young person in those circumstances to be in accommodation such as the Claimant's NASS accommodation, with all the problems that he identified.

177. However, I am concerned with a pure rationality challenge to an exercise of judgement by the Council, and Ms Weston did not seek to argue that I should apply a particularly intense form of review. Accordingly, the question for me is the conventional one of whether the Council's conclusion on exceptional circumstances was outwith the range of reasonable conclusions which were open to it. Not without some hesitation, I have decided that it was not.

178. It seems to me that, overall, the Council adopted a forward-looking approach in the pathway plan. In broad terms, it judged that although the Claimant had various difficulties, including his difficulties in relation to accommodation, those difficulties could be addressed by way of the support which was identified in the pathway plan. Save insofar as I have considered and dismissed them above, the Claimant did not advance any challenges to the Council's judgement in this respect. I have already referred to the fact that the pathway plan is a living document, which is to be reviewed

and updated in the light of developments, and therefore if the Claimant's difficulties were not addressed as envisaged, there would be an opportunity to revisit the issue of accommodation and consider an alternative approach. Because the Council took the view that there were actions short of providing accommodation to the Claimant which could resolve his various difficulties, including in relation to accommodation, I do not consider that the only conclusion open to the Council was a conclusion that his circumstances were exceptional such that it should consider the provision of accommodation itself.

179. Accordingly, I reject the Claimant's challenge to the approach that the Council took to his accommodation in the pathway plan.

J. ISSUE 4: COMPLIANCE WITH THE 2010 REGULATIONS

180. Ms Weston accepted that the requirements of the 2010 Regulations did not apply to the pathway plan. Indeed, I would observe that, under ss 24 and 24A, there is no duty on a local authority to prepare a pathway plan for a qualifying young person at all. Although the Transition Guidance refers to a local authority drawing up a plan, it states only that such a plan "might follow" the format of a pathway plan for a former relevant child, and Ms Weston did not argue that this gave rise to a duty on a local authority to draw up a pathway plan which complied with the 2010 Regulations. Nevertheless, Ms Weston submitted that, for the pathway plan to be fit for purpose, it was essential that it address the matters set out in Schedule 1 to the 2010 Regulations. In this respect, Ms Weston referred me to *R (J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin), [2005] 2 FLR 860, where, in the context of a pathway plan prepared for an eligible child for the purposes of paragraph 19B of Schedule 2 to the 1989 Act, Munby J was critical of a lack of detail and specificity.

181. Ms Weston identifies four respects in which she said that the pathway plan does not address the matters set out in Schedule 1 to the 2010 Regulations: it does not adequately address the Claimant's fears for his safety in his NASS accommodation, it does not adequately address the question whether the NASS accommodation is suitable for the Claimant, it does not properly address the issue of exceptional circumstances, and it does not adequately address the issue of the Claimant's finances.

182. Ms Weston did not refer me to any specific paragraph in Schedule 1 to the 2010 Regulations on which she relied, but paragraphs 5 (accommodation), 8 (financial support) and 9 (health needs, including mental health needs) appear to me to be the most relevant. As Ms Weston's argument developed, however, it became clear that the gravamen of her submissions on this issue was that the Council's treatment of the matters referred to in those paragraphs was unlawful in a conventional public law sense. In substance, therefore, the Claimant's case on this issue transpired to be an alternative way of putting his case on the third issue.

183. In light of this, the Claimant does not succeed on the fourth issue, for two reasons. First, as Ms Weston accepted, the Council was not under a free-standing duty to ensure that the pathway plan addressed each of the matters set out in Schedule 1 to the 2010 Act. Secondly, insofar as the Council's conventional public law duties required that, as a

matter of substance, the pathway plan address the specific points on which Ms Weston relied, for the reasons which I have set out in the context of issue 3, it did so.

K. POSTCRIPT

184. After I had circulated a copy of this judgment in draft, the decision of Fordham J in *R (BLZ) v Leeds City Council* [2025] EWHC 154 (Admin) came to my attention. In that case, it was held that Home Office bail accommodation provided under paragraph 9 of Schedule 10 to the Immigration Act 2016 is also residual in nature, and that a local authority may not take into account such accommodation when deciding whether it has a duty under s 18 of the 2014 Act. There is nothing in the *BLZ* case (or the further cases cited in it) which causes me to alter my conclusion on the first issue, and I did not consider that it was necessary to seek further submissions on it.

L. SUMMARY AND REMEDY

185. For the reasons set out above, the claim succeeds on what I have treated as the first issue, which was the first part of the Claimant's third ground of challenge. In particular, I consider that, when the Council drew up the pathway plan, it erred in law by taking into account the fact that the Claimant was being provided with NASS accommodation by the Secretary of State. It follows that the pathway plan is unlawful.

186. Otherwise, the claim is dismissed. For the avoidance of doubt, I refuse the renewed application for permission on the first ground of challenge.

187. Having had sight of this judgment in draft, the parties were agreed that I should grant a declaration which reflects my conclusion, set out in paragraph 142 above, that, when a local authority is deciding whether there are exceptional circumstances for the purposes of s 24A(5), it is not entitled to take into account the fact that a qualifying young person is being provided with, or might be provided with, NASS accommodation under s 95. They were also agreed that I should order the Defendant to carry out a fresh needs assessment and to produce a fresh pathway plan by 31 July 2025 (or such later date as may be agreed in writing by the parties). I am content to make an order in terms which broadly reflect those suggested by the parties.

188. The parties did not suggest that I should make any order in respect of the pathway plan itself. In particular, no one suggested that I should quash the pathway plan. However, I consider that it would be appropriate formally to record in my order my decision that the pathway plan was unlawful (also set out in paragraph 142 above), and therefore I shall also grant a declaration to reflect my conclusion that, when the Council drew up the pathway plan, it erred in law by taking into account the fact that the Claimant was being provided with NASS accommodation by the Secretary of State.

189. The parties were not able to agree on the question of costs. For the Council, Mr Harrop-Griffiths argued that the Claimant should be awarded only 50% of his costs, on the basis that the Claimant had not succeeded on the majority of his grounds of challenge, grounds to which the majority of the evidence related, and that the fact that the hearing ran into a second day was attributable to the Claimant's conduct of the claim. For the

Claimant, Ms Weston and Ms Twite submitted that he should be awarded 75% of his costs. They argued that the Claimant is the successful party, that the issue as to the relationship between the 1989 Act and the 1999 Act was always the central issue in the claim, and that it was not unreasonable for the Claimant to pursue his case on the other issues.

190. In my view, it is clear that the Claimant is the successful party; he has in practice achieved one of the main aims of the claim, i.e. a fresh needs assessment and a fresh pathway plan. In order to succeed even on the first issue, it was necessary for the Claimant to incur the costs of bringing a claim and the costs of a substantive hearing. As such, I consider that it would be appropriate to award the Claimant at least some of his costs.

191. However, the majority of the points argued by the Claimant were unsuccessful and, up until the first day of the hearing, the way that the Claimant put his case on most of those points was at best unclear and at worst unsustainable. The renewed application for permission on the first ground of challenge envisaged the Court, and the Defendant, trawling through the detail of the Council's contact with the Claimant over a period of some two years, on an issue which (as Mr Ockelton had observed) was in any real practical sense academic; this was manifestly not something which would have been achievable during a one-day hearing. Hence the need to spend considerable time at the outset of the hearing clarifying the Claimant's case. In addition, the majority of the evidence on which the Claimant sought to rely – including the purported expert evidence – was, as was eventually largely accepted, irrelevant to the issues and inadmissible. Had the Claimant properly analysed and formulated his case in advance of the hearing, it would have been unnecessary to take time clarifying it, and in my view the hearing would not have gone into a second day. I consider that the costs of bringing (and defending) the claim would have been significantly lower, and the substantive hearing would have been completed within the allocated day, had the Claimant properly focused on the issues at an earlier stage.

192. Exercising my discretion under CPR 44.2(1), and having regard to all the circumstances, including in particular the conduct of the Claimant and the extent to which the Claimant has succeeded on his case, I consider that the appropriate order as to costs is an order that the Council pay 60% of the Claimant's costs, to be subject to detailed assessment on the standard basis if not agreed.