



Neutral Citation Number: [2019] EWHC 3465 (Admin)

Case No: CO/2550/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MR C M G OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL

Between :

The Queen on the application of
Marcin Antoniak
- and -
Westminster City Council

Claimant

Defendant

Mr Anyiam (instructed by **Topstone Solicitors**) for the **Claimant**
Mr Harrop-Griffiths (instructed by **Bi-borough Legal Services**) for the **Defendant**

Hearing date: 11 September 2019

Approved Judgment

C. M. G. Ockelton :

1. In these proceedings the claimant, Marcin Antoniak, challenges an assessment made by the defendant on 8 May 2019 under the Care Act 2014. The application for permission was ordered into Court on a “rolled up” basis by HHJ McKenna sitting as a judge of this Court.

THE LAW

The Statutory Regime

2. The Care Act 2014 replaces earlier provisions and forms a single statutory scheme for the provision of social care to adults. The scheme is made up of the Act itself, numerous regulations, and guidance made under s.78 of the Act: the current guidance is called the “Care and Support Statutory Guidance”.
3. The following provisions of the Care Act 2014 are relevant in the present proceedings:

“1. Promoting individual well-being

(1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual’s well-being.

(2) “Well-being”, in relation to an individual, means that individual’s well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual’s contribution to society.

(3) In exercising a function under this Part in the case of an individual, a local authority must have regard to the following matters in particular—

- (a) the importance of beginning with the assumption that the individual is best-placed to judge the individual’s well-being;
- (b) the individual’s views, wishes, feelings and beliefs;
- (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist;

- (d) the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behaviour which might lead others to make unjustified assumptions about the individual's well-being);
- (e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;
- (f) the importance of achieving a balance between the individual's well-being and that of any friends or relatives who are involved in caring for the individual;
- (g) the need to protect people from abuse and neglect;
- (h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

2. Preventing needs for care and support

(1) A local authority must provide or arrange for the provision of services, facilities or resources, or take other steps, which it considers will—

- (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
- (c) reduce the needs for care and support of adults in its area;
- (d) reduce the needs for support of carers in its area.

(2) In performing that duty, a local authority must have regard to—

- (a) the importance of identifying services, facilities and resources already available in the authority's area and the extent to which the authority could involve or make use of them in performing that duty;
- (b) the importance of identifying adults in the authority's area with needs for care and support which are not being met (by the authority or otherwise);
- (c) the importance of identifying carers in the authority's area with needs for support which are not being met (by the authority or otherwise).

...

8. How to meet needs

- (1) The following are examples of what may be provided to meet needs under sections 18 to 20—
 - (a) accommodation in a care home or in premises of some other type;
 - (b) care and support at home or in the community;
 - (c) counselling and other types of social work;
 - (d) goods and facilities;
 - (e) information, advice and advocacy.
- (2) The following are examples of the ways in which a local authority may meet needs under sections 18 to 20—
 - (a) by arranging for a person other than it to provide a service;
 - (b) by itself providing a service;
 - (c) by making direct payments.

...

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

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
 - (a) whether the adult does have needs for care and support, and
 - (b) if the adult does, what those needs are.
- (2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.
- (3) The duty to carry out a needs assessment applies regardless of the authority's view of—
 - (a) the level of the adult's needs for care and support, or
 - (b) the level of the adult's financial resources.
- (4) A needs assessment must include an assessment of—
 - (a) the impact of the adult's needs for care and support on the matters specified in section 1(2),
 - (b) the outcomes that the adult wishes to achieve in day-to-day life, and
 - (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.
- (5) A local authority, in carrying out a needs assessment, must involve—
 - (a) the adult,
 - (b) any carer that the adult has, and
 - (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do

that, any person who appears to the authority to be interested in the adult's welfare.

- (6) When carrying out a needs assessment, a local authority must also consider—
- (a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and
 - (b) whether the adult would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community.

....

13. The eligibility criteria

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

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

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

- (a) consider what could be done to meet those needs that do,
- (b) ascertain whether the adult wants to have those needs met by the local authority in accordance with this Part, and
- (c) establish whether the adult is ordinarily resident in the local authority's area.

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

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

and

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

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

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

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

(7) Needs meet the eligibility criteria if—

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

- (b) they form part of a combination of needs of a description so specified.
- (8) The regulations may, in particular, describe needs by reference to—
 - (a) the effect that the needs have on the adult concerned;
 - (b) the adult’s circumstances.

18. Duty to meet needs for care and support

- (1) A local authority, having made a determination under section 13(1), must meet the adult’s needs for care and support which meet the eligibility criteria if—
 - (a) the adult is ordinarily resident in the authority’s area or is present in its area but of no settled residence,

...

19. Power to meet needs for care and support

- (1) A local authority, having carried out a needs assessment and (if required to do so) a financial assessment, may meet an adult’s needs for care and support if—
 - (a) the adult is ordinarily resident in the authority’s area or is present in its area but of no settled residence, and
 - (b) the authority is satisfied that it is not required to meet the adult’s needs under section 18.

...

24. The steps for the local authority to take

- (1) Where a local authority is required to meet needs under section 18 or 20(1), or decides to do so under section 19(1) or (2) or 20(6), it must—
 - (a) prepare a care and support plan or a support plan for the adult concerned,
 - (b) tell the adult which (if any) of the needs that it is going to meet may be met by direct payments, and
 - (c) help the adult with deciding how to have the needs met....”

- 4. Section 25 provides that a Care and Support Plan is a document, and prescribes the method of its preparation, and its content. Section 27 requires the plan to be kept under review. There are exceptions to the local authority’s duties and powers under these provisions. Sections 18 and 19 are subject to financial provisions which are of no relevance in this case. Section 21 is headed “Exception for Persons Subject to Immigration Control”, and provides that a local authority may not meet needs under the Act of an adult excluded from benefits by s.115 of the Immigration and Asylum Act 1999, whose needs for care and support have arisen solely because he is destitute, or because of the physical affects or anticipated physical affects, of being destitute.
- 5. Further, Schedule 3 to the Nationality, Immigration and Asylum Act 2002 provides, so far as relevant, as follows:

“1(1). A person to whom this paragraph applies shall not be eligible for support or assistance under

...

(n) Part 1 of the Care Act 2014 (care and support provided by local authority)

....

(2) A power or duty under a provision referred to in subparagraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).

...

(3) Paragraph 1 does not prevent the exercise of a power or the performance of a duty, if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of –

(a) a person’s Convention rights, or

(b) a person’s rights under the EU Treaties.

(5) Paragraph 1 applies to a person if he

(a) has the nationality of an EEA State other than the United Kingdom

....”

6. Section 23 of the Care Act, so far as relevant, is as follows:

“23. Exception for provision of housing etc.

(1) A local authority may not meet needs under sections 18 to 20 by doing anything which it or another local authority is required to do under—

(a) the Housing Act 1996, or

(b) any other enactment specified in regulations.”

7. The regulations made for the purposes of s.13 are the Care and Support (Eligibility Criteria) Regulations 2015 (SI 2015/313). Regulation 2 of those regulations is as follows:

“Needs which meet the eligibility criteria: adults who need care and support

2.(1) An adult’s needs meet the eligibility criteria if—

(a) the adult’s needs arise from or are related to a physical or mental impairment or illness;

(b) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and

(c) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being.

(2) The specified outcomes are—

(a) managing and maintaining nutrition;

- (b) maintaining personal hygiene;
 - (c) managing toilet needs;
 - (d) being appropriately clothed;
 - (e) being able to make use of the adult's home safely;
 - (f) maintaining a habitable home environment;
 - (g) developing and maintaining family or other personal relationships;
 - (h) accessing and engaging in work, training, education or volunteering;
 - (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
 - (j) carrying out any caring responsibilities the adult has for a child.
- (3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—
- (a) is unable to achieve it without assistance;
 - (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
 - (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
 - (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.
- (4) Where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish accurately the adult's level of need.”

8. I summarise the statutory scheme as follows. Sections 1 and 2 provide the background principles and motives intended to guide all functions under the Act. The needs of adults are assessed in accordance with those principles under s.9. Eligible needs are then identified under s.13, by reference to the regulations. A Care and Support Plan then has to be prepared and kept under review (ss.24-27). The local authority must then act on the plan in accordance with the duties imposed by s.18, and may provide further assistance under s.19, in ways that it considers effective, including those listed in s.8. The local authority is, however, at all times governed by the various exceptions.

The Role of the Court

9. The Care Act 2014 does not provide for any appeal against an assessment. Judicial review is therefore the only available remedy for a person seeking to challenge an assessment made under the Act. There are few decided cases, but many of the principles applicable to earlier legislation apply to the 2014 Act equally. The prime responsibility in assessment and decision-making is given to the local authority, typically working through an experienced social worker. It is not the role of the Court to apply detailed textual analysis to what the social worker has determined or the way in which that is expressed: R (Ireneschild) v Lambeth Borough Council [2007] EWCA Civ 234 at [57] and [71]; R (P and Others) v Essex CC and Others [2004] EWHC 2027

at [32]. On the other hand, if it can be shown that the assessing social worker took into account irrelevant considerations, or failed to take into account relevant considerations, or made an assessment which is demonstrably unreasonable, the assessment will be unlawful. Again, however, the Court's role in identifying which factors are irrelevant is not unlimited: it is only if a factor must, either as a matter of law or a matter of rationality, be taken into account, that its absence will invalidate the assessment. Finally, an assessment will be unlawful if, in making it, the local authority fails to carry out the duties imposed by the Act: R (JF) v London Borough of Merton [2017] EWHC 5019 at [47]. In such circumstances the position is perhaps more exactly that the production of the assessment under challenge does not enable the local authority to show that it has carried out its duties, which therefore remain outstanding.

10. Because the claimant is, almost inevitably, a vulnerable person, the level of review will be intense, but it remains nevertheless a review. And, as in any judicial review claim, the grant of review and or remedies remains at the discretion of the Court, and remedies will not be granted if the claim is academic, if they would have no utility, or if what is sought is more than the Court on judicial review can properly order.

THE FACTS

The Claimant

11. The claimant is a national of Poland, born in 1980. He came to the United Kingdom in 2013 to work, as he was entitled to do. He worked as a painter-decorator for about four-and-a-half years. He has not been able to work since some time in 2018. He became homeless and was diagnosed as a person who appeared to be suffering from acute psychotic episodes characterised by paranoid delusions and auditory hallucinations, apparently partly brought about by the stress of homelessness. On 5 August 2018 he was involved in a serious road traffic accident, when he was run over by a coach. He was an in-patient at St Mary's Hospital in Paddington for several months. Since his discharge he has used a wheelchair for all mobility requirements.
12. It is not disputed that the defendant was the relevant local authority for the purposes of assessing the claimant's needs under the 2014 Act. There have been a number of assessments and other interventions by the defendant. Although there were no specific submissions on the matter at the hearing, it appears from the way in which the case is put on the papers, that Mr Anyiam seeks to rely to a certain extent on the contents of the earlier assessments, and also to an extent on the history of the claimant's dealings with the defendant. I can understand the frustrations of those who have been acting on behalf of the claimant, but I am concerned with whether the assessment under challenge, that is to say that made on 8 May 2019, can be shown either to be unlawful or to fail to carry out the defendant's obligations under the Act. I will turn to that assessment in detail shortly.
13. The claimant's immigration status at the time the assessment was made was that the lawfulness of his presence in the United Kingdom depended on his status as an EU National. He had, however, applied to the Home Office under the EU Settlement Scheme and on 10 May 2019, two days after the assessment, he was informed of a grant of indefinite leave to remain in the United Kingdom. That had the consequence that he became a person who could obtain housing under the Housing Act 1996.

14. Following his release from hospital, the claimant had been accommodated by the defendant for a short period of time and subsequently by a charity, Routes Home, in a hostel. Whilst the claimant's solicitor and the defendant tried to reach some agreement over what Care Act Assessments should be made and by whom, the defendant continued to pay for the claimant's accommodation. But, following the grant of indefinite leave to remain, the claimant applied on 22 May 2019 to the defendant's housing department for assistance under Part VII of the Housing Act 1996. He was provided with temporary accommodation from that date in premises in the London Borough of Islington.

The 8 May Assessment

15. The assessment under challenge was made by Kate Tabner in conjunction with the claimant. It was made by filling in a form which appears to be published by a neighbouring borough, Hammersmith and Fulham, whose name appears at the top of it. The form runs to some 20 pages in all. The first 15 pages of the completed form provide detailed information about the claimant's circumstances, his abilities and disabilities, and his aspirations, in line with the requirements of ss.1 and 9 of the 2014 Act. On page 15 begins the section "Summary of your assessment and eligibility". This is the key part of the assessment for present purposes, and I need to set it out.

"Summary of your assessment and eligibility

This section to be complete by a social care authorised person.

The Local Authority has a duty to work with you and/or your representative/s to prepare a care and support plan when all of the following statements apply:

1. Your needs arise from or are related to a physical or mental impairment or illness.
2. As a result of your needs you are unable to achieve **two or more** of the eligibility outcomes below.
3. As a result of being unable to achieve these outcomes there is, or is likely to be, a significant impact on your wellbeing.

Outcomes and Summary of Your Needs in each area Based on information entered earlier in the form

Are you able to maintain and clean your home independently?

No

Are you able to shop, prepare meals and eat and drink independently?

Yes

Are you able to manage your toileting needs independently?

Yes

Are you able to manage your hygiene independently?

Yes

Are you able to get dressed for the day and undressed at the end of the day independently?

Yes

Are you able to develop and maintain family or other personal relationships independently?

Yes

Are you able to access and make use of services in the local community independently?

No

Are you able to access and engage in work, training, education or volunteering independently?

No

Are you able to carry out child care responsibilities independently?

Yes or N/A

Are you able to stay safe within your home during the day and night independently?

No

Are there two or more areas indicated as 'No' above?

Yes

17.1 Are there two or more areas indicated as 'No' above?

Yes

Impact of your needs on your wellbeing

17.2 If 'Yes' above, is there, or is there likely to be, a significant impact on your wellbeing?

No

The impact on your wellbeing should be looked at **disregarding any support you may already have** and should take into account the following areas, as well as your (or your representative's) views:

- Personal dignity and being treated with respect
- Physical and Mental health/emotional wellbeing
- Control over daily life (including over care and support provided and the way it is provided)
- Protection from abuse and neglect
- Domestic/family/personal relationships
- Suitability of living accommodation
- Participation in work/education/training/recreation
- Social and economic wellbeing
- Your contribution to society

17.3 Details of the impact on your wellbeing (in the absence of any support you may already have in place)

- Physical and Mental health/emotional wellbeing
- Participation in work/education/training/recreation
- Your contribution to society

17.4 Assessor's Summary/Overview

An initial care Assessment was completed on December 2018 whilst Mr Antoniak was in St Mary's Hospital, which found that he was eligible for a daily reablement service to assist him with personal care. This was put in place to ease the transition from a long hospital stay in to the community. The care service also served as an assessment tool to as Mr Antoniak had completed personal care tasks himself on the ward, but it was unclear he could replicate this once at home. Once discharged he was re-assessed and found to be independent with his personal care and no longer required services.

Mr Antoniak has been further assessed under the Care Act on 25th April 2019 at the request of his solicitor. After further consideration and evaluation of the evidence presented, it was decided that Mr Antoniak managed all his daily living tasks himself, including his personal care, light shopping, medication management, laundry and finances, he did not have any eligible needs that would be met by the Local Authority under the Care Act 2014.

On further request from his solicitor Mr Antoniak was reassessed on 8th May 2019 by a different social worker. This assessment found that:

Mr Antoniak would benefit from companionship support/background supervision when accessing new areas to build his confidence and lower his anxieties. This is due to him still getting used to being a wheelchair user, and barriers linked to his mental health. This is currently being provided by Routes Home when they accompany him to the GP. However, this is not a

service they normally provide and it can't be sustained. He may benefit from signposting to the Red Cross, or Octavia befriending service for weekly 1:1 support to access the community in any new area. Once this confidence has increased in the new area he would likely be independent in this area, as he currently is in his current local environment.

Mr Antoniak experiences some symptoms of poor mental health which he reports can limit his engagement to the community. However, Mr Antoniak is accessing the community currently within certain geographical limits, as his anxiety prevents him from attempting to travel further afield. His mental health is managed by his GP who has recently made a referral to the Community Mental Health Team.

He would benefit from support to consider the options available to him for work and training options considering his physical disability and mental health needs, He is not currently considering work options. However, once he does want to explore this he can be linked in with organisation such as the Job Centre, or Scope which offers support for people with disabilities to regain employment.

He currently needs to understand and complete a lot of paperwork linked to his immigration status, benefit eligibility, and housing. He will benefit from support with this as these are specialist areas of the UK benefits and legal system which he is not familiar with. He is currently receiving support from Routes Home, which they are able to continue doing. In future he may need to access community services such as Citizens Advice Bureau for this type of assistance. Longer term support with cleaning and maintenance, and meal preparation. He currently has no needs in this area. However, if he is provided accommodation in an independent living setting he may require assessment by PT/OT and offer information and advice as to techniques to complete cleaning and cooking tasks safely from his wheelchair.

Mr Antoniak is a vulnerable younger man who as a result of a traffic accident is now using a wheelchair for all mobility. He does become anxious about his immigration status and the changes brought about by his disability. He also appears to be suffering a relapse of his diagnosed non-organic psychotic disorder, which is seeking input from the GP and CMHT for. This is not having a significant impact on his wellbeing, but is affecting him leaving the hotel regularly, and accessing the wider community. He feels that this is more than a barrier to his independence than his physical disability.

GP, Dr McDonald, (Richford Gate Medical Practice) informed that the referral to Musculoskeletal physiotherapy team was declined as he doesn't have a permanent address. He can be re-referred once he has an address.

The recommendation from this assessment is that Mr Antoniak doesn't have any Care Act eligible needs. The needs he does have can be met by existing voluntary or private sector agencies as detailed above.

Eligibility

17.5 Is this person eligible? i.e. There are two or more areas where outcome cannot be achieved, AND there is, or is likely to be, a significant impact on wellbeing.

No.”

16. In further correspondence between the parties, the defendant indicated its view that, as the only thing the claimant sought was accommodation, and that was being provided under the Housing Act, there was nothing it needed to do under the Care Act.

The Parties' Positions

17. The claimant's pleaded case is somewhat diffuse. The principal claim is that the assessment that the claimant has no eligible needs or that "the needs he does have can be met by existing voluntary or private sector agencies" is unlawful. In particular, on the claimant's behalf, Mr Anyiam argues that the assessment of 8 May does not meet the requirements of the 2015 Regulations, and that it is a breach of the defendant's duties under the Care Act. He also argues that the assessor's conclusion is "Perverse, Irrational and Unreasonable". The claimant also asserts that, in making the assessment, the defendant failed to observe the principle of wellbeing as set out in s.1 of the Act and that the failure to provide the claimant with care and support as required by the Act is a breach of article 8 of the European Convention on Human Rights. In addition, the claimant has specifically pleaded that his immigration status does not exclude him from support under the 2014 Act.
18. Before looking at the defendant's response to the claim, and before looking in detail at what appear to me to be the essential parts of the claimant's claim, I will comment on some aspects of the claimant's case. In the first place, the claimant seeks to show that in addition to the factors identified as potentially contributing to eligibility under the regulations, there are other elements of the needs assessment that ought to have led the assessor to conclude that there were additional eligible needs. It does not appear to me that that part of the claim is well-founded. As I have already indicated, the assessment is not to be read on terms other than that on which it is prepared. The particular choice of words used under individual headings is not to be subjected to the level of interpretation and analysis that this part of Mr Anyiam's case would require. Instead, the Court ought, in the absence of evidence to the contrary, to proceed on the basis that the local authority's assessment of the claimant's abilities under each head is one which is merited by the social worker's experienced assessment of the facts available. In the present case there were two or more areas "indicated as "No"", so that the claimant's case as a whole does not in any event depend on this ground.
19. So far as concerns the claimant's immigration status, the statutory position is as set out above. Contrary to the claimant's position, it is clear that, at the date of the assessment under challenge, the claimant's immigration status did indeed exclude him from support under the Care Act, subject only to paragraph 3 of schedule 3, allowing support and assistance to be provided, if, and to the extent that it was necessary to avoid a breach of human rights or EU rights. It is not easy to see any provision of schedule 3 that changes the position on the claimant's grant of indefinite leave to remain, because he remains a person to whom paragraph 1 of the schedule applies by virtue of paragraph 5(a). What is clear, however, is that the defendant does not take this point against the claimant, and I therefore assume that the defendant accepts that in the claimant's case the provision of support or assistance under the Care Act is necessary to avoid breaching either his human rights or his rights under the EU Treaties. This part of the claimant's case, and the associated claim that the assessment and its effects are in breach of his human rights, does not need any further specific determination.
20. There remain the claimant's claims that the assessment under challenge is one which is not made in accordance with the requirements of the Act and of the regulations. On behalf of the defendant, Mr Harrop-Griffiths summarises the assessment as being that the claimant did not have any eligible needs and that the needs he did have could be met by existing voluntary or private sector agencies. He did not need anything from

the defendant because his needs were being met and could be met in the future, by a therapist as regards home, by a charity as regards community and by the Job Centre or a charity as regards work. As Mr Harrop-Griffiths points out, there may be tension between reg 2(3), which is to the effect that ability or inability to achieve an outcome has to be determined without regard to any assistance that may be available, and s.9(6) requiring the local authority to take into account the matters set out there. In support of his case, Mr Harrop-Griffiths cites paragraph 6.61 and 6.62 of the Statutory Guidance:

“6.1 In parallel with assessing a person’s needs, local authorities must consider the benefits of approaches which delay or prevent the development of needs in individuals. This applies to both people with current needs that may be reduced or met through available universal services in the community, and those without needs who may otherwise require care and support in the future. This could include directing people to services such as community support groups which ensure that people feel supported, including an ability to participate in their local community. It may also include helping the person to access services which the local authority provides as part of its universal offer on prevention. Local authorities can also support the person in understanding other types of support available to them.... Such interventions at an early stage will help to sustain the independence and wellbeing of people.

6.62 Where the local authority judges that the person may benefit from such types of support, it should take steps to support the person to access those services. The local authority may “pause” the assessment process to allow time for the benefits of such activities to be realised, so that the final assessment of need (and determination of eligibility) is based on the remaining needs which have not been met through such interventions. For example, if the local authority believes that a person may benefit from a short term reablement service which is available locally, it may put that in place and complete the assessment following the provision of that service.”

21. Mr Harrop-Griffiths also argues that as s.8(1)(e) allows for the giving of information and advice as an example of how a need can be met, that too supports the defendant’s case that the assessment was a lawful one.
22. The defendant identifies the heart of the claimant’s claim as a claim for accommodation which, on 8 May he sought; but in Mr Harrop-Griffiths’ submissions it was not easy to see that his need for accommodation (as distinct from additional assistance which might be provided within any accommodation he had) was related to his Care Act needs. Any issue, however, as to whether he should have been provided with accommodation to meet any needs of his on 8 May was superseded by his change in immigration status on 10 May, and his accommodation, under the provisions of the Housing Act, outside the defendant’s area. In Mr Harrop-Griffiths’ submissions, the claimant’s claim is as a result wholly academic. His need for accommodation has been met without reference to the Care Act. His other needs are being satisfactorily met, as the assessment

indicates; and, in any event, he is now not ordinarily resident in Westminster's area, so that the defendant has no existing duty or indeed power to meet any needs of the claimant under ss.18 and 19 of the Care Act.

DISCUSSION

23. At the heart of the difference between the submissions of the claimant and of the defendant is the question of the meaning of the word "needs" in part 1 of the Care Act. There is no definition in the Act itself, and no decided authority appears to cover it. The defendant's defence of the lawfulness of the claimant's needs assessment and determination of eligibility depends on an interpretation of the concept of "need" as excluding, or potentially excluding, a need which is being, or is readily capable of being met. It is only in that context that an assertion that, for example, the claimant did not need anything from the defendant because his needs were being met could be of any relevance. The question is, therefore, whether a needs assessment, as envisaged and prescribed by the Care Act, is an assessment of what an individual needs in addition to such assistance as he is receiving at the moment, or whether the assessment should be made without regard to existing help and support. To put that another way, is a need that is being met still a "need"? That issue is clearly arguable, and merits the grant of permission.
24. Bearing in mind that the purpose of the assessment appears to be to identify the proper scope for help and support to be provided by local authorities, the answer to the question is not perhaps entirely obvious, but in my judgment, it is clear both from the structure of the Act itself and from assumptions which might be made about the general utility of the assessment process, that the word "needs" is to be interpreted in such a way as to ignore any existing way in which needs are being met.
25. The primary duty is that under s.9, to make the needs assessment. It is only after the needs assessment has been made that the question of eligibility arises under s.13, and only after that that the duty under s.18 (or the power under s.19) to meet the needs arises. The first thing to notice is that if the assessment and needs excluded needs which are being met, the process would be circular: by carrying out its duty to meet the needs under s.18, the local authority would be invalidating the needs assessment, because the needs identified would no longer be "needs". That would be by itself a powerful reason for thinking that "needs" must include needs which are in fact being met.
26. Even if that particular circularity is disregarded, there is a difficulty if "needs" does not include needs which are being met. Suppose that, in the case of particular individual, the current position is that the local authority is meeting a particular need. It would then cease to have any proper place in the needs assessment. The difficulty then would be that, if the need was not in the needs assessment, the local authority would not be able to derive from Part 1 of the Care Act either a duty or a power to expend money on satisfying the need. If a need is not in a needs assessment, the need cannot meet the eligibility criteria (because, by s.13(1), the determination of eligibility has to be based on the needs as assessed) and so would not be subject to either the duty or the power under ss.18 and 19.
27. Further although the regulations cannot of themselves modify the meaning of terms in the Act, it is clear that the regulations envisage the identification of needs independently of the way in which they may be being met: that is apparent from reg 2(3). If needs

which were being met were not “needs” of the sort that ought to feature in a needs assessment, it is difficult to see that paragraph 3 would be required.

28. There is an additional reason why, in my judgment, a needs assessment should be treated as relating to an individual’s needs regardless of the way that they may be being met. Part 1 of the Care Act makes the individual, and the individual’s wellbeing, the starting point of the delivery of such services as are required. In this context it would be surprising if a needs assessment were not also intended to be primarily about the individual, rather than merely about some residuary part of an individual’s needs that were not currently being met. Finally, if needs that are being met are not “needs” for the purposes of a needs assessment, there would need to be a new needs assessment (not a new or revised Care and Support Plan) at any time when a need began to be or ceased to be met. But although there are provisions in s.27 for review of the Care and Support Plan arising from the needs assessment, there are no provisions for regular or incidental revision of the needs assessment itself. This point appears starkly in s.37, which deals with the situation where the adult who is subject to the needs assessment moves between two local authorities, so that the support being provided by the first local authority is likely to cease. In those circumstances, the section provides for the second authority to obtain the relevant documents from the first authority and to assess whether the individual has needs for care and support, but s.37(8) makes it clear that that new assessment is not itself a “needs assessment”, although the same provisions apply to the new assessment as apply to a needs assessment.
29. In other words, it is clear from the structure of the Act and its individual provisions that the “needs” that are assessed in a needs assessment are the needs arising from the individual’s own identity and characteristics, whether or not they are, at the time of the assessment, being met.
30. It follows that a needs assessment will not fulfil the requirements of s.9 if it does not include all the individual’s needs, whether currently being met or not. It follows also that the determination of the eligibility criteria will not fulfil the requirements of s.13 unless the eligibility of needs currently being met is determined, as well as the eligibility of unmet needs.
31. In the present case, the form used by the assessor gave every possible assistance in carrying out the task as I have decided that it should be carried out, that is to say that each answer about needs was to be given “as if there is no support currently in place”. When that was done, the assessment was that the claimant was unable to achieve three of the outcomes specified. For the purposes of eligibility, the only remaining question was whether as a consequence of that there was, or was likely to be a significant impact on his wellbeing. That question is answered in the negative at para 17.2 of the assessment, but then details of the impact on the claimant’s wellbeing are given at 17.3, and at the end of the “summary/overview” at 17.4, is the statement that the needs the claimant does have can be met by existing voluntary or private sector agencies. It is clear from the supporting text that amongst the claimant’s needs are “support with cleaning and maintenance, and meal preparation”, on which the assessor says “he currently has no needs in this area”. But the reason for that, as the other entries on the form, and indeed the defendant’s submissions, made clear, is that those needs were being met in the accommodation in which he was at the date of the assessment. That was not, in my judgment, a lawful assessment of his eligible needs, because the question

of impact on his wellbeing should have been made without regard to the way in which needs were being met at the date of the assessment.

32. I therefore agree with the principal element of the claimant's claim. The assessment under challenge did not constitute a discharge of the defendant's duties under ss.9 and 13 of the Care Act. In these circumstances I do not need to consider any of the other issues raised by the claimant. I turn, therefore, to remedy.
33. The claimant seeks a declaration that the conclusion in recommendation of the assessor in the assessment on 8 May 2019 is unlawful. I think, as indicated above, that the appropriate wording is more accurately that the assessment did not discharge the defendant's duties to the claimant under ss.9 and 13 on that date but, subject to that, the declaration will be granted.
34. The claimant also seeks a mandatory order compelling the defendant to draw a Care and Support Plan and to provide the claimant with care and support forthwith. For a number of reasons, it would not be appropriate to grant that remedy. The most obvious reason is that as there is no valid needs assessment, there can be no Care and Support Plan: a Care and Support Plan emerges out of the identification of eligible needs following a needs assessment. In any event, however, it is by no means clear that the defendant currently has a duty to the claimant under the Care Act, because of his having been housed in Islington. I therefore decline to grant any other substantive remedy.
35. I should, however make it clear that I do not regard these proceedings as having been rendered academic by the claimant's move. Because of the provisions relating to those with care needs who move local authorities, the status of the assessment under challenge needed to be established even if the defendant has no continuing obligations under the Care Act.