Neutral Citation Number: [2022] EWHC 2143 (Admin)

Case No: CO/1839/2022

IN THE HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 August 2022

Before :

MR BENJAMIN DOUGLAS-JONES QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

THE QUEEN (on the application of SHAJMIN AKTER PARUL)	**Claimant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Craig Barlow and Olivia Beach (instructed by **Lawstop Solicitors**) for the **Claimant**
Rob Harland (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 27 July 2022

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JUDGMENT

This judgment was handed down by the Deputy Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on 15 August 2022.

Benjamin Douglas-Jones QC, sitting as a Deputy Judge of the High Court :

Introduction

1. The Claimant, Shajmin Akter Parul, applies for a judicial review of the failure of the Defendant, the Secretary of State for the Home Department ("SSHD"), to provide her with suitable accommodation in the London Borough of Tower Hamlets ("Tower Hamlets"), pursuant to section 4, Immigration and Asylum Act 1999 ("section 4" and "the 1999 Act"), and in accordance with the Defendant's agreement to provide self-contained accommodation on the ground floor, or on an upper floor with access *via* a lift, in Tower Hamlets, within a reasonable time period. The Defendant agreed to provide such accommodation in a 3 March 2022 Pre-Action Protocol ("PAP") letter ("the 3 March 2022 letter"). The single ground of challenge is that the failure to provide such accommodation is unlawful on four bases: (1) it breaches the Defendant's duty to source accommodation within a reasonable period of time; (2) it breaches the Defendant's own guidance; (3) it breaches the Defendant's statutory duty to make reasonable adjustments under sections 20 and 29(7), Equality Act 2010 ("the Equality Act"); and / or (4) it is unreasonable.

2. The Defendant's position is that, while she agrees that the Claimant should be rehoused in suitable accommodation in Tower Hamlets, she denies that the delay in finding the Claimant accommodation has been unreasonable. Through the 3 March 2022 letter, the Defendant agreed to move the Claimant to be close to the support network of her family and physicians treating her many medical conditions, in particular, specialists at The Royal London Hospital ("RLH"), in Tower Hamlets, which is where her epilepsy is treated and managed. From 26 March 2021, the Claimant has been, and continues to be, housed in a property in Lambeth. The Defendant's position is that suitable accommodation has not been arranged because none is available.

3. The Claimant's claim is brought with the permission of Ms Clare Padley, sitting as a Deputy Judge of the High Court, who granted permission for the Claimant to apply for judicial review on 24 June 2022 and ordered that the hearing of the claim be expedited.

4. Before me, Mr Craig Barlow appeared on behalf of the Claimant. Mr Rob Harland represented the Defendant. The Claimant's Statement of Facts and Grounds, Reply and skeleton argument were drafted by Ms Olivia Beach of Counsel. I am grateful to all Counsel for their clearly presented submissions.

The Claimant's immigration history

5. The Claimant was born on 25 September 1978 in Bangladesh. She arrived in the United Kingdom on 6 May 2009 and, on 23 April 2010, claimed asylum. On 21 May 2010, the Claimant's asylum claim was refused. On 21 July 2010, her appeal rights became exhausted. Since then, the Claimant has made further attempts to secure leave to remain in the UK. These claims have not been successful. In 2017, the Claimant's asylum claims were refused. On 14 October 2020, the Claimant advanced further submissions in respect of her status in the UK. These are still being considered by the Defendant.

6. During the above period, on 26 August 2017, the Claimant was granted section 4 support, whereby "The Secretary of State may provide, or arrange for the provision of,

facilities for the accommodation of a person if … his claim for asylum was rejected …".

Medical conditions

7. The Claimant suffers from multiple chronic medical conditions. They include pulmonary sarcoidosis (a disease characterised by the growth of tiny collections of inflammatory cells (granulomas) in any part of the body - most commonly the lungs and lymph nodes); focal non-lesional epilepsy, which manifests with focal to bilateral motor seizures; memory loss; dysphasia (language disorder marked by deficiency in the generation of speech); and depression. Since December 2021, the Claimant has suffered seven epileptic attacks: she takes Lamotrigine (250mg) twice daily and Lacosamide (which she stopped taking for a period of time because of its side-effects). According to a letter, dated 17 February 2022, of Ms Samantha Gough, Epilepsy Nurse Specialist, based at the Department of Neurology at RLH, "on-going epileptic seizures are a risk to [the Claimant's] health and [wellbeing]." The Claimant "… is at immediate risk of injury and death (SUDEP) from seizures" and "the after effects (she will be exhausted, confused and in pain) make it difficult for her to perform her daily activities safely such as food shopping, cooking and washing". Ms Gough further set out that, following an epileptic attack, the Claimant will be vulnerable. She will be more vulnerable and more reliant on emergency services if she suffers an attack away from her family. The family and local support can provide the Claimant with immediate assistance following seizures in a number of different respects. Being close to her family will reduce the factors which cause attacks. Her epilepsy is complex. RLH is the safest epilepsy care centre for the Claimant.

8. The Claimant has attempted suicide via overdose on more than one occasion. The Claimant also suffers from a weakened immune system from steroid treatment for her sarcoidosis. She receives treatment from three hospitals in East London, including RLH. She is registered with Chrisp Street Health Centre doctors' surgery ("CSHC") (also in Tower Hamlets). In a letter, dated 31 March 2021, Dr Ben Hart, a general practitioner based there set out that the Claimant should be moved to accommodation near CSHC because of her "… complex health problems …", including sarcoidosis and severe epilepsy. She was reliant on CSHC to "… co-ordinate her complex care and manage her problems." Being in shared accommodation (in Lambeth) "… puts her at significantly high risk of covid …". She should "... not have to share." The Claimant has been reliant on support from her sister. She stays with her sister to feel safe and to attend medical appointments. However, this arrangement is not sustainable over the long term.

Chronology of Accommodation History

9. On 26 February 2021, the Claimant was moved by the Defendant to Seth Court Accommodation Hostel, student accommodation at 53 Parmiter, Tower Hamlets, E2 9EX. She remained there for one month. On 26 March 2021, the Claimant was relocated by the Defendant to her current accommodation, 16 Palace Road, London, SW2 3NG. This is in the London Borough of Lambeth. It is ground floor accommodation in which the Claimant shares a bathroom and a kitchen with other residents. It is a journey of approximately one hour and 15 minutes from there to Tower Hamlets. On 13 January 2022, Migrant Help, a charity helping the Claimant, made a dispersal request of the Defendant by email for the Claimant to be relocated to

accommodation in Tower Hamlets to allow her to be close to her GP, CSMC, RLH and her family ("the 13 January 2022 email").

10. On 25 January 2022, the Defendant informed the Claimant that she was being moved to accommodation in Redhill. On 26 January 2022, the Claimant refused to move when transport arrived to collect her. On 27 January 2022, the Claimant sent the Defendant a PAP letter before action ("LBA"), requesting that the dispersal to Redhill be cancelled and that she be moved to Tower Hamlets in accordance with the 13 January 2022 email.

11. On 15 February 2022, the Defendant stated in a PAP response that she had not received the 13 January 2022 email; and, accordingly, "… our decision remains, and [the Claimant] will be dispersed accordingly as per previous advice given by our medical adviser". That advice was that the Claimant should be housed within a "reasonable travelling distance of [Tower Hamlets] – say max. 1 hour" in ground floor accommodation or accommodation with a lift and a shower, not a bath. That day, the Claimant resent the 13 January 2022 email to the Defendant, with confirmation from Migrant Help (of 15 February 2022) that the dispersal request had been sent to the Defendant on 13 January 2022.

12. The further email prompted a reply of the Defendant, on 3 March 2022: the Defendant confirmed that the Claimant's relocation request had been granted. She would be moved to self-contained ground floor accommodation or upper floors(s) accommodation with access *via* a lift in Tower Hamlets. The Defendant stated: "Once our accommodation provider has sourced suitable accommodation, you will be advised of the property details and any travel arrangements, if required."

13. On 17, 24 and 31 March 2022, the Claimant emailed the Defendant asking if suitable accommodation had been found. In the first email the Claimant also requested a timeframe for her relocation. The Defendant did not respond to these emails. On 7 April 2022, the Claimant sent a second LBA to the Defendant. This challenged the delay in providing suitable accommodation and requested of the Defendant a proposed timeframe within which she would secure the accommodation. On 21 April 2022, the Defendant responded in the following terms:

> *"Enquiries have been made with the Asylum Support Team who have confirmed that checks are still being conducted to find your client a suitable accommodation within the London Borough of Tower Hamlets. However, a timeframe within which an accommodation will be proposed and a dispersal date set; cannot be confirmed at this point in time. Your client will be contacted a soon as suitable accommodation has been sourced."*

14. On 18 May 2022, the Claimant's claim was issued, together with a witness statement of the Claimant of the same date ("the first witness statement"), in which she set out her medical background and a reasoned explanation as to why a move to Tower Hamlets was essential for her.

15. On 25 May 2022, the Defendant's accommodation provider, Clearsprings Ready Homes ("the provider"), had responded to the Defendant (according to the Defendant's Detailed Grounds of Defence ("DGD")):

> *"We have been checking our voids daily for this SU* [service user]*, however, we do not have anything in Tower Hamlets to offer. We do have the below* [self-contained, "lifted" accommodation in Enfield]."

16. On 16 June 2022, the Defendant filed an Acknowledgement of Service and Summary Grounds of Defence, followed, on 8 July 2022, by the DGD. In the DGD the Defendant set out that, following the issue of the claim, the provider had been asked for an update concerning the accommodation. It had responded on 25 May as set out in [15] above. In the DGD, the Defendant also stated that she was "… diligently and continuously [*sic*] looking for suitable accommodation for the Claimant in Tower Hamlets. The Defendant will continue to update the Claimant and the Court on any new developments".

17. On 12 July 2022, the Claimant filed a Reply to the DGD, in which she emphasised that the contents of the DGD "… [indicate] a necessity and therefore an urgency in sourcing the Claimant suitable accommodation." The Claimant also set out in terms that the Defendant had provided "… no further evidence of any updates received since 25 May 2002, which is now 7 weeks ago." On 13 July 2022, the Claimant filed her second witness statement ("the second witness statement") together with an application for permission to rely on it at the hearing. In this witness statement, the Claimant explained how she had been staying with her sister every other day. Her sister had been able to help her with travelling to medical appointments and back to Lambeth. However, the sister's house was full, the Claimant was having to share a bed with her or sleep on her floor when staying there and the Claimant was increasingly feeling that she was becoming a "financial and physical burden" on her sister. Their relationship was "deteriorating" and the delay was impacting adversely on her health.

Legal framework

18. The legal framework governing section 4 accommodation cases was the subject of a comprehensive review by Mr Justice Knowles CBE in *R (DMA, AHK, BK and ELN) v SSHD* [2020] EWHC 3416 (Admin). By section 4(2) the SSHD "… may provide, or arrange for the provision of, facilities for the accommodation of a person if … his claim for asylum was rejected …". By subsection (5) the SSHD may make regulations "… specifying criteria to be used in determining-"

> *"(a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;*
>
> *(b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section."*

19. In the proceedings before Knowles J, as in the proceedings before me, while the word "may" appears in subsection (2), it was common ground between the parties that the Defendant was under an obligation to exercise her powers under section 4(2) and 4(5) to promote the policy objectives of those provisions for the following reasons.

20. The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 ("the 2005 Regulations") were made pursuant to section 4(5). By regulation 3(1), subject to regulations 4 and 6, the criteria to be used in determining whether to provide accommodation, or to arrange for the provision of

accommodation or to continue to do so under section 4 are that the person falling under section 4(2) "appears to the [SSHD] to be destitute" and that one or more of the conditions in paragraph (2) are satisfied in relation to him. "[D]estitute" is to be construed in accordance with section 95(3), 1999 Act. A person is destitute if:

> *"… 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 other essential needs".*

21. As in *DMA*, the relevant "[condition] set out in paragraph (2)" of regulation 3, 2005 Regulations is:

> *"(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998."*

22. Furthermore, as in *DMA* (see [13]):

> *"For present purposes, the central Convention right is Article 3, which prohibits inhuman or degrading treatment. This prohibition is not a qualified right; it is absolute. Section 6(1) of the Human Rights Act 1998 ("the 1998 Act") provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Section 6(6) makes clear that "an act" includes a failure to act."*

23. The language of this condition under Regulation 3(2), reflecting that in section 55, Nationality, Immigration and Asylum Act 2002 [("section 55" and "the 2002 Act")], is "… a power by the [SSHD] to the extent necessary for the purpose of avoiding a breach of a person's Convention rights (within the meaning of the [1998 Act]);" *DMA* at [15].

24. In *DMA* Knowles J explained, by reference to *R (Limbuela) v SSHD* [2006] 1 AC 396, at [6], *per* Lord Bingham, that this power "mitigated a regime" under section 55, whereby the SSHD was prohibited from providing or arranging the provision of accommodation when a person was prohibited from earning so as to support himself. Such a regime amounted to "treatment" under Article 3; see [16].

25. He then proceeded to examine by reference to the authorities when the SSHD's duty arises, as follows:

> *"17. In Limbuela , Lord Bingham asked and answered the following question, at para 8:*
>
> > *"When does the Secretary of State's duty under section 55(5)(a) arise? The answer must in my opinion be: when it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life."*
>
> *18. Lord Bingham spoke further of the threshold for an article 3 breach at para 9:*

> *"It is not in my opinion possible to formulate any simple test applicable in all cases. But if there were persuasive evidence that [there, a late applicant for asylum] was obliged to sleep in the street, save perhaps for a short and foreseeably finite period, or was seriously hungry, or unable to satisfy the most basic requirements of hygiene, the threshold would, in the ordinary way, be crossed."*

Lord Bingham also commented at para 8 that it is relevant to give consideration to factors such as:

> *"age, gender, mental and physical health and condition, any facilities or sources of support available to the applicant, the weather and time of year and the period for which the applicant has already suffered or is likely to continue to suffer privation."*

26. At [17] of *DMA* Knowles J considered the speech of Lord Hope of Craighead at paras 44 and 62, where it was set out that an imminent prospect of a breach of Article 3 will occur where the conditions endured are "… on the verge of reaching the necessary degree of severity …" and the SSHD's power (in that case under section 55(5)(a)) will become the duty under section 6(1) of the 1998 Act, "… to act to avoid it." At [20] of *DMA* Knowles J noted that the Divisional Court in *R (W) v Secretary of State for the Home Department (Project 17 intervening)* [2020] 1 WLR 4420, had restated that principle at [42], applying *Limbuela:*

> *"The Divisional Court observed that the propositions of law that support this conclusion would also follow at common law even in the absence of article 3."*

27. At [21] of *DMA* it was set out that a breach of section 4(2) occurs where a person is destitute and the provision of accommodation is necessary for the purpose of avoiding a breach of Article 3; i.e.: where:

> *"it appears on a fair and objective assessment of all relevant facts and circumstances that [the destitute] individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life."*

Policy

28. The Defendant has agreed to the Claimant's relocation. She has acknowledged that the Claimant's current accommodation is one hour and 15 minutes from RLH via public transport. Pertinently, the SSHD has published "Asylum support, section 4(2): policy and process", 16 February 2018 ("the Policy"). Knowles J emphasised that it "… is focused on the decision whether there is a duty to accommodate in the case of an individual, and not on the provision of accommodation pursuant to a decision that there is a duty to accommodate that individual;" *DMA* at [25]. He also noted that, importantly, under the Policy, "… whether an individual can instead obtain accommodation and support from charitable or community sources precedes the decision by the [SSHD] through her … officials that the [SSHD] has a duty to accommodate;" *DMA* at [26].

29. The Policy sets out in relation to destitution:

"To be eligible for support under section 4(2) a person must appear to be destitute or likely to become destitute within 14 days (or 56 days if they are already in receipt of support). A person is destitute if they:

• do not have adequate accommodation or any means of obtaining it (whether their other essential living needs are met)

• have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs."

"… Generally, decisions should be made within 5 working days, but careful consideration should be given to any additional factors that call for the case to be given higher priority and the decision made more quickly.

Where the following circumstances apply, reasonable efforts should be made to decide the application within 2 working days (the list is not exhaustive):

people who are street homeless

families with minors

disabled people

elderly people

pregnant women

persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence

potential victims of trafficking".

30. The Policy provides as follows in relation to Article 3:

"The first step in determining whether accommodation and or support may need to be provided for human rights reasons is to note that in ordinary circumstances a decision that would result in a person sleeping rough or being without food, shelter or funds, is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR …. The decision maker will therefore need to assess whether the consequences of a decision to deny a person accommodation would result in a person suffering such treatment. To make that assessment it may be necessary to consider if the person can obtain accommodation and support from charitable or community sources or through the lawful endeavours of their families or friends.

Where the decision maker concludes that there is no support from any of these sources then there will be a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR. However, if the person is able to return to their country of origin and thus avoid the consequences of being left without shelter or funds, the situation outlined above is changed. …"

Guidance

31. As well as the Policy, there is guidance produced by the SSHD: (1) "Asylum Accommodation and Support Transformation Service Delivery Guide" (January 2019) ("the Guide"); (2) "Asylum Seekers with Care Needs" (version 2, 3 August 2018); and (3) "Healthcare Needs and Pregnancy Dispersal Guidance" (version 3, 1 February 2016) ("the Healthcare Guidance").

32. The Guide concerns "dispersal" of an individual to accommodation pursuant to a decision that there is a duty to accommodate that individual:

> *"6.2 The [section 4] process is the same as for [section 95 of the 1999 Act] … apart from:*
> *i. Dispersals for Section 4 should normally occur within 24 hrs, 48hrs or 9 working days of the Provider receiving the relevant accommodation request …. This will be in line with the different priority categories of Service Users*
>
> > *- Category A (Street Destitute: family or single parent): 24 hours to accommodate*
> > *- Category B (Street Destitute: Single person): 48 hours to accommodate, or*
> > *- Category C (Staying with friends or family/change in circumstances: Singles or Families): 5-9 days*
>
> *Providers will be advised if dispersal is required to occur in a different timeframe."*

33. On page 6 of the Guide there is a section concerning "location of the accommodation". It states:

> *"The caseworker may exceptionally consider providing accommodation in a particular location if there are particular reasons to do so for example medical reasons."*

34. The Healthcare Guidance states on page 13, under the heading "Prioritising Applications": "if an applicant's healthcare need requires the urgent provision of dispersal accommodation, the application for support should be prioritised wherever possible". On page 18 there is a section on location of accommodation:

> *"when determining locations of dispersal accommodation, decisions must be taken in adherence of the dispersal policy set out in the policy document - Dispersal: accommodation requests."*

Reasonable period

35. The SSHD is required to provide section 4(2) accommodation within a "reasonable period of time"; *DMA* at [178]. At [183], Knowles J emphasised the importance of the context of section 4(2) when considering what is a "reasonable period of time":

> *"The reference to context is of course particularly important for present purposes. The context is that a breach of Article 3 is imminent. The situation is best seen as one involving the prevention of inhuman and degrading treatment rather than simply as a case involving the provision of accommodation. In a particular case before a decision is reached to accept the duty to accommodate there may be a*

question whether an individual is destitute or whether a breach of Article 3 is imminent. But at the point of the Secretary of State's section 4(2) decision made through her officials that question has been answered in the affirmative."

36. At [192] to [193] of *DMA*, Knowles J considered the extent of the duty of the SSHD and addressed the suggestion in discussion in that case that it was incumbent on the SSHD to "carry [a] … stock of accommodation":

> *"192. … the argument for the Secretary of State is that she can only act*
>
> > *"with reasonable diligence to secure and provide accommodation within a period which is reasonable in all the circumstances, bearing in mind any specific urgency in any individual case, whilst at all times ensuring that the article 3 threshold is never crossed."*
>
> *Without adopting the language, in my judgment this is a fair position, but that is because it requires reasonable diligence, respects urgency, and respects article 3 as absolute.*
>
> *193. It does meet an argument of the claimants to the effect that the Secretary of State's duty includes a requirement to carry an existing stock of accommodation. I cannot accept that that argument is sound; carrying stock is one way of carrying out her duty but it is not necessarily the only one. To anticipate the discussion below where the individual is disabled, there is force in the point made on behalf of the Secretary of State that it may be unrealistic, inefficient and ineffective for the Secretary of State to require providers to maintain a stock of suitable accommodation for such individuals, when the locations and adaptations required cannot be predicted in advance."*

37. At [194] to [195] of *DMA* Knowles J distinguished between section 95, 1999 Act cases (where the SSHD may provide, or arrange for the provision of, support for asylum-seekers or their dependants who appear to the SSHD to be destitute or to be likely to become destitute), and section 4(2) cases. This was because with section 4(2) cases there will be an imminent prospect of a breach of Article 3.

38. In *DMA* the periods of time were such (nine months, 60 days, 105 days and 45 days, respectively) that "… on any view they are not reasonable. Indeed, they are so large that absent an explanation, they do question the system" [196]. The Court found that the delays could not be reconciled with the "monitoring" of performance indicators which the SSHD had said was present [197].

39. In *DMA* it was argued that the periods of time could not be said to be unreasonable because of help given to the claimants by charities, friends and the church, "… who were not prepared to see the Article 3 threshold crossed"; see [198]-[200]:

> *"[199] … It is not right to say that the policy objective of section 4(2) was achieved "accordingly", as though that was the plan. It was achieved despite a failure of the Secretary of State through her officials to provide the accommodation that in each case she had by her section 4(2) decision recognised she had a duty to provide, and provide within a reasonable time.*

> *200. Thus, I reject the argument, but the implications of advancing the argument are also concerning. If the Secretary of State through her officials anticipates that charities and community groups will provide accommodation whilst charities and community groups look to the Secretary of State through her officials to do so, matters can quickly deteriorate to "who blinks first". The victim of that situation is an individual who already faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life and who is prevented from addressing these needs in any other way."*

The Claimant's submissions

40. Mr Barlow submitted that the Defendant's failure to relocate the Claimant was a breach of her section 4(2) duty and unlawful. The Claimant had been residing in unsuitable accommodation in Lambeth for 16 months. Over 6 months had passed since the 13 January 2022 email and over 4 months had elapsed following the 3 March 2022 letter, when the Defendant had, herself, agreed to the Claimant's relocation request. He argued that whether or not the Defendant had failed to provide the Claimant with suitable accommodation within a reasonable time is for the Court to determine on the facts of the case. This had been accepted by the Defendant in the DGD.

41. Mr Barlow described the request for dispersal accommodation of 13 January 2022 as the "trigger event" which had caused the Defendant's section 4(2) duty to be engaged. Time had started to run from 3 March 2022, as on that date the Defendant had impliedly accepted that the Claimant appeared to be destitute and the provision of accommodation was necessary to avoid an imminent prospect of a breach of Article 3.

42. Mr Barlow emphasised that the Defendant must have accepted by reference to the Guide that "exceptional circumstances" existed warranting the agreement to move the Claimant to Tower Hamlets. Thus, while the DGD set out, "… the Defendant has agreed to provide her with accommodation in Tower Hamlets as being preferable," he submitted that the Defendant had not merely accepted that the move was *preferable*. She had accepted that it was *required*.

43. The Defendant's agreement to move the Claimant was ostensibly prompted by the 13 January 2022 email to which a witness statement and "medical documents" were attached. They were not included in the evidence before the Court. In order to assess what amounted to a reasonable time period in the circumstances, the Court needed to look at the period from 13 January 2022 in the context of the Claimant having been housed in unsuitable accommodation for many months before January 2022. In particular, Mr Barlow relied on the first witness statement and highlighted that between 3 and 10 December 2021 the Claimant had been admitted to hospital for epilepsy treatment, and had been referred by RLH to her GP and mental health team following her discharge from hospital. He also relied on the fact that in the 13 January 2022 letter the Claimant's solicitors had set out the nature and degree of the Claimant's vulnerability and the fact that there were "exceptional circumstances" which warranted the Claimant being moved to "a particular location".

44. Mr Barlow emphasised that all submissions on behalf of the Defendant lacked the force they might otherwise have had if the Defendant had filed evidence explaining the delay.

45. He acknowledged that "reasonable period of time" had to be seen in the context of housing stock difficulties which the Defendant had experienced during the pandemic. However, the pandemic had now abated.

46. The Defendant had given no indication as to when the Claimant might be moved pursuant to that agreement, and the Defendant had said she had not received the 13 January 2022 letter and she had failed to respond to correspondence. Mr Barlow relied on sections 20 and 29(7), Equality Act, the duty to make "reasonable adjustments", but the parties agreed that the issues relevant to the Equality Act fell to be considered in the context of the reasonableness of the Defendant's continuing failure to relocate the Claimant to Tower Hamlets. He also maintained the limb of Ms Beach's written submissions to the effect that the Defendant had breached guidance, but his position was that, without evidence, it was difficult to say with which parts of the guidance the Defendant had not complied.

The Defendant's submissions

47. Mr Harland submitted that, although the Defendant had agreed to move the Claimant, that fact should not be taken as acceptance that there was an imminent prospect of a breach of Article 3. The prospect of such a breach had been imminent when the Claimant was originally accommodated (in March 2021). However, the Defendant's agreement to move the Claimant this year was not borne out of an imminent prospect of a breach of Article 3, or exceptional circumstances. Mr Harland sought to draw an analogy with a shower breaking in a property, when the SSHD might agree to move someone accommodated pursuant to section 4, but the move to a new property in those circumstances would not be effected because of destitution and / or an imminent prospect of a breach of Article 3. This submission was made without evidence of the reason for the Defendant's decision to move the Claimant.

48. Mr Harland submitted that it followed from his submission above that it was for the Court to determine, first, whether the prospect of a breach of Article 3 was imminent (where he submitted it was not). The Court would then need to consider whether the Defendant had failed to move the Claimant within a reasonable period of time. What amounted to a reasonable period of time would be different, depending on whether the prospect of an Article 3 breach was, or was not, imminent. Where there was no imminent prospect of breach, there was still an obligation to relocate the Claimant within a reasonable period of time, but such a period would be longer in those circumstances. The failure was not yet unreasonable. Mr Harland tacitly conceded that, if the prospect of breach had been imminent when the Defendant agreed to relocate the Claimant, the Defendant would not have fulfilled her section 4(2) duty.

49. Mr Harland submitted that the "… system as a whole works with some eye on affordability". There was a significant shortage of properties of the nature sought in Tower Hamlets. Caselaw concerning section 4 recognises that accommodation cannot be created out of nothing.

50. He submitted there had been no breach of the Healthcare Guidance: the Claimant's case had been put before a medical assessor, and his/her recommendation accepted. It was not the case that the Claimant's case had not been prioritised – the Defendant's position was not that there are others before the Claimant in the queue, but rather that no appropriate accommodation in Tower Hamlets has yet been offered by the provider.

As to the Equality Act, the Claimant's medical condition had been taken into consideration and was "… being acted upon". Relying on *R (AMA) v SSHD* [2021] EWHC 2646 (Admin), a section 95 case, Mr Harland submitted that there was a difference between "adequate" and "ideal" accommodation, where "adequacy" was rooted in the context of a "statutory provision which requires accommodation designed to avoid destitution;" see [28]. Relying on *R (Molon Baraka) v SSHD* [2018] EWHC 1549 (Admin) at [32] he submitted that the Defendant could not "magic up" accommodation. *Molon Baraka* concerned complex bail accommodation where police or the probation service had to approve accommodation once it had been found by the SSHD. There the Court agreed on the evidence that the Defendant could not be expected to identify suitable accommodation within 28 days from the limited supply.

51. Thus, on the specific facts of this case, the Defendant's actions were submitted not to have been unreasonable bearing in mind the medical condition of the Claimant, the current *status quo* and the difficulties in obtaining the specifically requested accommodation in Tower Hamlets.

Discussion

52. The Defendant's agreement of 3 March 2022 to move the Claimant, and whether she has failed to provide relevant accommodation in Tower Hamlets in accordance with her section 4(2) duty within a "reasonable period of time", need to be considered against the statutory landscape. The Defendant must be satisfied that (1) the Claimant appears to be destitute (i.e.: the Defendant accepts that the Claimant's accommodation is either inadequate or the Claimant cannot meet other essential needs); and (2) the provision of accommodation is necessary to avoid the prospect of an imminent Article 3 breach. Such a prospect would render the Defendant's section 4(2) power a duty. A decision to move someone in the position of the Claimant to a particular location would follow the Defendant's consideration of the Guide, which requires the Defendant "exceptionally" to consider to provide accommodation in a particular location because there "… are particular reasons to do so for example medical reasons".

53. It was surprising that the Defendant had filed no evidence in support of her defence. In the absence of any evidence of the Defendant to suggest that a different approach might have been appropriate and/or taken by the Defendant, it would in my judgement be inappropriate and artificial to separate the Defendant's section 4 duty from the decision to move the Claimant. The decision to move the Claimant coalesces with the duty to accommodate the Claimant, against the backdrop of the imminent prospect of an Article 3 breach (*prima facie* accepted by the Defendant following her consideration of the 13 January 2022 email). The evidence before me leads powerfully to the conclusion that the Defendant formally decided on 3 March 2022 to move the Claimant in accordance with her section 4(2) duty, following the case being put before a medical assessor. Therefore, the Court does not need to determine through any assessment of the evidence whether, and if so when, the prospect of an Article 3 breach became imminent.

54. Further, in the absence of any evidence of the Defendant, Mr Harland's submissions concerning shortage of stock, and what was a reasonable period of time, were devoid of the evidential support for which they cried out. I would have expected to see evidence setting out matters such as:

    (i) whether the Claimant's case had been prioritised by the Defendant;

(ii) how prioritisation works;

(iii) whether the Claimant had been categorised under The Guide in her capacity as a "service user";

(iv) what category of service user the Defendant deemed the Claimant to be: she is ostensibly "Category C" whereby dispersal should normally occur within five to nine days of the Provider receiving the relevant accommodation request from the Defendant;

(v) in the context of the Defendant's non-delegable duty, whether the Defendant had taken steps to find out what accommodation corresponding to the Defendant's assessment of the Claimant's is available;

(vi) records of accommodation stock and/or voids of the provider;

(vii) whether any other providers had contracts with the Defendant in Tower Hamlets;

(viii) what steps had been taken to look beyond the contract with provider(s);

(ix) who had searched for accommodation for the Claimant, on what dates, and by what mechanism;

(x) whether an agency had been used to effect searches; and

(xi) what accommodation was available in Tower Hamlets offered both by the provider and generally.

55. By the date of the hearing the Defendant had failed to accommodate the Claimant in Tower Hamlets for 146 days. I accept Mr Barlow's submission that it is appropriate to look at the inertia of the Defendant between the request for relocation (13 January 2022) and 3 March 2022: an additional 49 days. Thus, the failure to move the Claimant endured for 195 days after the Claimant's request to be moved. When considering what is a reasonable period of time, it is important not to fall into the trap of placing reliance on the fact that the Claimant had the support of her sister who had been unwilling to see the Article 3 threshold crossed; see *DMA* at [198] to [200]. On any view, given my finding above that the Defendant's section 4(2) duty was engaged, the Defendant's failure was in breach of that duty and unlawful. If I were wrong in my approach at [54] above, and what amounted to a reasonable period of time had to be assessed in the context of the Defendant's failure to move the Claimant pursuant to the agreement of 3 March 2022, but where there was no breach of any section 4(2) duty, the failure would still, in my judgment, be unlawful as unreasonable given the Claimant's serious medical conditions and her specific needs.

Relief

56. The Claimant invites me to make a mandatory order. The Defendant submits that a declaration is appropriate. The Defendant relies on *R (BAG) v SSHD* [2018] EWHC 1721 (Admin), *R (Molon Baraka) v SSHD* and *R (O) v SSHD* [2019] EWHC 2734 (Admin).

57. *BAG* was an application for interim relief in the context of section 95, 1999 Act. The request for accommodation was made on 16 April 2018. It was sent to the SSHD's provider on 20 April. The hearing took place on 26 April 2018. The deadline for identifying a suitable available address was 27 April, and the provider had not said that that was outside its capacity. The Court directed that the case be listed in the week following the hearing.

58. In *Molon Baraka* the Court did not find the SSHD's actions to have been unreasonable, irrational or unlawful. Its observation at [32] that a mandatory order would not have been appropriate was in that context.

59. In *O*, a section 95 case, the SSHD had filed evidence. She had made repeated efforts to find accommodation (see [33]) but none was affordable (see [34]). There was no purpose to the grant of relief in respect of grounds of judicial review where the SSHD had "addressed the substance of the considerations" which she appeared not to have taken into account earlier (grounds 1 and 4). With other grounds (2, 3 and 5) the Court was not able to say that the SSHD's failure to provide accommodation was unlawful. It was appropriate to give declaratory relief to the effect that the failures to consider disapplying the SSHD's affordability criteria, and to discharge the SSHD's duty under s.55, Borders, Citizenship and Immigration Act 2009, were unlawful.

60. In *R (Good Law Project) v Secretary of State for Health and Social Care* [2021] EWHC 346 (Admin); [2021] PTSR 1251 Chamberlain J said at [152] a claimant who establishes that a public body has acted unlawfully will normally be entitled to a declaration, albeit the grant of any relief in judicial review proceedings is always discretionary.

61. In *R (Princess Bell v London Borough of Lambeth)* [2022] EWHC 2008 (Admin), handed down on the day of the hearing of this claim, Hill J made a mandatory order against the defendant local authority, which had been in breach of its duty under section 193(2), Housing Act 1996 ("section 193(2)), where the claimant and her children "… are being very seriously adversely affected by the failure of Lambeth to secure suitable accommodation;" see [66]. The duty in section 193(2) comprises a different statutory regime to that underpinning the claim in this case. It was recently given detailed consideration by the Court of Appeal in *R (Elkundi) v Birmingham City Council and ors* [2022] 3 WLR 71. In *Elkundi* the Court of Appeal held that where a local authority is in breach of its section 193(2) duty, a range of factors will be relevant to whether it is appropriate to grant a mandatory order requiring it to comply with its duty, including (i) the nature of the accommodation currently occupied by the homeless person and the extent to which it is unsuitable; (ii) the impact of the living conditions on the homeless person and their family; (iii) the length of time the homeless person has been left in unsuitable accommodation; and (iv) the likelihood of accommodation becoming available in the near future; see [131] and, also *Princess Bell*, at [56]. The resources of and financial constraints on the local authority are not relevant to that question. The fact that there were a limited number of suitable properties available of the type needed might be relevant to whether the authority had done all it reasonably could to secure suitable accommodation: *Elkundi* at [131]-[137], [153], [154] and [156]; see *Princess Bell* at [57].

62. In *Elkundi*, Lewis LJ (with whom Underhill and Peter Jackson LJJ agreed) said at [134]:

I consider that the correct approach is to consider whether the local housing authority has taken all reasonable steps to perform the duty. If it has done so, and has not been able to secure suitable accommodation, that may be a good indication that it may not be appropriate to grant a mandatory order as it may not be possible to secure suitable accommodation within a specified time. A local housing authority can, however, be expected to demonstrate what steps it has taken and what the difficulties are.

63. The burden was on the authority to show what steps had been taken; see *Elkundi* at [132] and [140] and *Princess Bell* at [57] and [59].

64. In this case the Defendant has placed no evidence before the Court to demonstrate what, if any, steps have been taken to rehouse the Claimant in Tower Hamlets. The statutory regime here is such that: (1) the Claimant is destitute; (2) there is an imminent prospect of a breach of Article 3; and (3) there are exceptional circumstances why the Claimant should be housed near to RLH, CSHC and her family support network. Further: (4) the failure to move the Claimant has subsisted from January 2022 (albeit the trigger date was at the beginning of March); and (5) the Claimant is at increased risk of death and injury from her epilepsy through being housed at a distance from Tower Hamlets. I have considered whether a stay might be appropriate to afford the Defendant the opportunity of placing evidence before me as to what steps have been taken to secure accommodation in Tower Hamlets. The difficulty with that course is that the Defendant has had the opportunity of doing that, as relief was something the Court obviously had to consider at the judicial review hearing. In all the circumstances the evidence is such that I cannot be satisfied that a mandatory order would serve no purpose. It cannot be said, given the absence of evidence before me, that the Defendant has taken all reasonable steps to secure accommodation for the applicant and a mandatory order should not be made because it may not be possible to comply with such an order in a specified time.

Conclusion

65. For the reasons set out above, I allow the claim, finding that the Defendant has failed to relocate the Claimant within a reasonable period of time, in breach of her section 4(2) duty. I have concluded that a mandatory order is appropriate. I direct that the Defendant secure suitable accommodation for the Claimant by no later than eight weeks of the date of the order.

Postscript

66. The hearing before me took place on 27 July 2022. On 12 August 2022 the draft judgment was circulated to the parties. The parties informed me on receipt of the draft judgment that, on 11 August 2022, the Defendant's servants or agents had given notice to the Claimant that she would be suitably re-accommodated in Tower Hamlets the next day. She was suitably re-accommodated on 12 August 2022. In those circumstances a mandatory order is no longer appropriate. The parties now agree that declaratory relief is appropriate. I shall give declaratory relief to the effect that the Defendant's failure to rehouse the Claimant in the London Borough of Tower Hamlets, prior to the 10 August 2022 and in accordance with her written decision letter of 3 March 2022, was unlawful because in all the circumstances it exceeded a reasonable length of time within which so to do.