Neutral Citation Number: [2023] EWHC 1833 (Admin)

Case No: CO/4140/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2023

Before :

SIR ROSS CRANSTON
Sitting as a High Court judge

- -

Between :

THE KING	**Claimant**
on the application of	
DK	
- and -	
LONDON BOROUGH OF CROYDON	**Defendant**

- -
- -

IRENA SABIC KC and ALEX GRIGG (instructed by **Youth Legal**) for the **Claimant**
HILTON HARROP-GRIFFITHS (instructed by **Croydon LBC Legal**) for the **Defendant**

Hearing dates: 27 June, 7 July 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

SIR ROSS CRANSTON:

INTRODUCTION

1. The claimant, DK, is an Albanian national, aged 23. He came to the UK and claimed asylum as an unaccompanied child. The defendant, the London Borough of Croydon (in this judgment called the Council), accommodated and looked after him as a child in need under the Children Act 1989. In May 2021, when he was 21 years old, the Council refused to support him any longer. It explained that under schedule 3 to the Nationality, Immigration and Asylum Act 2002 it no longer owed a duty to him under the Children Act 1989 since his asylum claim had been rejected and there was no barrier to his returning to Albania.

2. The claimant challenges the lawfulness of that refusal to provide him with a personal adviser and a pathway support plan as a care leaver on the basis that the Council failed to decide whether this denial of support to him was compatible with his rights under the European Convention on Human Rights ("ECHR" or "the Convention"). Specifically, the claimant submits, the Council should have conducted a "human rights assessment" of his needs. It is also said that the Council's refusal to support him was not compatible with his rights under articles 4 and 8 of the Convention. The claimant seeks a mandatory order for this support.

BACKGROUND

3. On arrival in the UK in September 2015 the claimant claimed asylum as an unaccompanied child. On his account he arrived in a lorry and then, with the help of some Albanians he met in a coffee shop, he made his way to the Home Office in Croydon, where he made the asylum claim.

Council's support until May 2021

4. The claimant also applied to the Council, which looked after him under the Children Act 1989. He lived in foster care accommodation which the Council provided and had the benefit of advice and support from its social workers. His social care records (which were examined by Kate Garbers in a report referred to later in the judgment) offer the following summary of his experiences in the years from his arrival.

5. In October 2015 the claimant was referred to the Competent Authority under the National Referral Mechanism for a determination of whether he had been trafficked into the UK. The Competent Authority made a negative Conclusive Grounds decision in April 2016.

6. In 2017 the claimant was reported missing from care and working in a car wash. By April 2017 he had moved into independent accommodation. There were reports that others were sleeping in his room while he slept on a couch. In May that year adults were again found in his accommodation. The television had been removed.

7. The claimant's evidence is that he was subject to "county lines" exploitation and was used by older men to transport drugs. He was recorded in July 2017 as having two mobile phones, "an indication of a young person involved in drug dealing". Pathway plans throughout 2017 referred to the claimant as being easily manipulated. He was

returned to foster care. In November 2017 he was absent from his foster home at least one night most weeks. He had money that he could not account for. "County lines" concerns were raised but dismissed in April 2018, on the basis that he would have more money and be missing for longer periods if that were the case.

8. When he turned 18, the Council arranged for him to move to accommodation in Plumsted, in south-east London, opposite a police station. He told a social worker that he felt safer there, because of the proximity to the police station. During this period he had the benefit of a "leaving care personal advisor". In 2019 he was evicted from his accommodation owing to anti-social behaviour and having non-residents on site. Similar issues continued in his new accommodation. Drugs paraphernalia and concerns about gang affiliation continued to be raised. In November 2019 a gang of masked men was said to have forced him out of his accommodation.

9. The Home Office refused the claimant's asylum claim in April 2019. An appeal to the First-tier Tribunal was dismissed in August 2019, and his appeal rights were exhausted in February 2020.

Council's human rights assessment, May 2021

10. In view of those Home Office decisions about his asylum claim, the Council conducted a human rights assessment in May 2021. It was conducted according to the widely used template of the No Recourse to Public Funds (NRPF) Network. (In this judgment references to a "human rights assessment" are to an assessment along these lines.) The main assessment, dated by the team manager on 25 May 2021 (by the claimant on 7 June 2021), stated that the Council could not continue supporting the claimant indefinitely and that it was necessary to undertake a human rights assessment to determine reasons to either continue or discontinue support.

11. After setting out key information about the claimant and his immigration status, the human rights assessment stated that he was appeal rights exhausted and that its ability to continue to provide financial support was restricted to only that which was necessary to avoid a breach of the claimant's human rights. There was no legitimate reason for the claimant to remain in the UK from what he had told the assessing officer. Steps should be taken to return him to Albania, making use of the Home Office Assisted Voluntary Return Home Scheme, in order to better his future there. The team manager agreed with the assessment, adding that a personal adviser was available to assist the claimant with the application process for Home Office support as a failed asylum seeker.

12. Given the human rights assessment, the claimant was informed that he had to leave his Council supported accommodation. He did so in early July 2021.

Council's addendum human rights assessment, August 2021

13. Following this, in early August 2021 the claimant's solicitor informed the Council that the claimant had lodged a fresh claim with the Home Office. She requested that the Council should revisit its human rights assessment. In support of the request she submitted further information.

14. First, she had obtained a statement by Ms Flutra Shega, from the Shpresa Programme, a charity assisting Albanian-speaking refugees and migrants in the UK. Ms Shega said that she regarded the claimant as "easily led". He presented with vulnerabilities and required intensive support. She had concerns about his mental health. A young man from Albania must be desperate to reveal his mental health issues, she explained, when these issues are hugely stigmatised within the Albanian community. He was at risk of exploitation by gangs.

15. Secondly, there was a statement from Mr Clinton Walker, an outreach manager with a youth drop-in centre in Croydon. He had worked with the claimant. He knew the claimant's mental health issues and was especially concerned about his vulnerability to gang and street violence. Mr Walker said that because of this he had offered the claimant a higher level of support.

16. Thirdly, Esme Madill of the Migrant and Refuge Children's Legal Unit at Islington Law Centre, who was assisting the claimant with his asylum claim, wrote about her concern about his exploitation by others and his mental health. She had instructed Dr Juliet Cohen, head of doctors at Freedom from Torture to prepare a report.

17. Fourthly, there was a statement from Tilda Ferree, the part-time coordinator for Breaking the Chains, a partnership project between the Migrant and Refugee Children's Legal Unit and the Shpresa Programme. From her work with the claimant, Ms Ferree said, she believed that the claimant continued to be a very vulnerable dependent young person who, without consistent proactive support, was at risk of disengaging from professionals completely, with potentially harmful consequences to his mental and physical health.

18. Finally, there was a witness statement from the claimant himself. He said that he had mental health issues, and that some four years previously he had experienced violence from a well-known gang. He wanted to attend college to study engineering.

19. On 11 August 2021 the Council produced an "Addendum to Human Rights Assessment May 2021". This addendum assessment summarised and critiqued these submissions and decided to uphold its decision to withdraw the claimant's support. The assessment concluded:

> "No new information has been provided to persuade a change about the decision made in respect of this HRA. A lot of assumptions have been made about [the claimant's] mental health but no professional diagnosis has been provided. We note that there has also been a lot of assumptions about what life would be like for [him] outside of the care of the local authority, with no evidence to support these concerns."

20. The addendum human rights assessment then considered the implications of the claimant's immigration status and the recent fresh claim application to the Home Office.

> "In reaching our decision we have also considered the acknowledgement of receipt email from the home office. The home office only acknowledged receipt of Further Submissions

> which they are yet to determine whether it amounts to a fresh claim. Further submissions do not in themselves confer a new status on a person. This would not change [his] immigration statuses listed under section 3.1(d) of NIA Act 2002. Whilst this is being decided by the home office, leaving care services has no legal duty towards [him], as to do so would be breaking the law by supporting someone who have exhausted all legal recourse to be in the country. [He] is over 21 years of age, and is currently Appeal Rights Exhausted (ARE) and not in education and therefore the local authority does not have a duty to support [him]."

Home office and modern slavery applications

21. As indicated in the Council's addendum human rights assessment, the claimant in July 2021 had made submissions to the Home Office in furtherance of a fresh human rights claim. In November 2021 the Home Office provided him with accommodation as a failed asylum seeker under section 4 of the Immigration and Asylum Act 1999.

22. At the request of the claimant's immigration solicitors, Islington Law Centre, Kate Garbers, the founder and former director of the anti-slavery NGO, Unseen, completed an impressive report on trafficking and modern slavery vis-à-vis the claimant in December 2021. She interviewed him and examined his case file. On that basis she concluded that there were indicators of his previously experiencing potential exploitation and trafficking for the purpose of county line activity. Realistically, she noted, she could not know the full picture. She went on to opine that there was also a risk of exploitation at that point as well.

23. Following a referral by his solicitors, in March 2022 the Salvation Army (a "first responder" under the National Referral Mechanism), made a new trafficking referral. The claimant was provided with a support worker through the National Referral Mechanism in early April 2022.

Dr Cohen's reports

24. Meanwhile, the claimant's immigration solicitors had arranged for the claimant to be assessed by Dr Juliet Cohen, a forensic physician, who for many years worked at the NGO, Freedom from Torture. In her first report in November 2021 she opined that the claimant required specialist psychological therapy to recover from experiences of abuse in childhood, which needed to be in a secure and stable supportive environment. She reported on the claimant's fear of returning to Albania, on his significant risk of being re-trafficked, and on his mental health issues. He met the diagnostic criteria for PTSD and he had symptoms of depression.

25. In a second report prepared in early May 2022, Dr Cohen found that the claimant continued to suffer from PTSD and depression. His condition was very little improved from November 2021. She reported that he was feeling safe in his accommodation and had a support worker, but he had run out of his antidepressant medication and was not yet able to show any proactivity in seeking direct help himself from his GP. She also reported that the claimant had told her that until very recently he continued to be forced

to carry packages for Albanian men and that he felt vulnerable and in fear of their threats to harm him if he refused.

Requests to Council for further human rights assessment

26. The claimant's solicitors had written to the Council in January 2022, explaining the safeguarding concerns and enclosing Dr Cohen's first report and Ms Garber's report on trafficking. The solicitors stated that the claimant had been the victim of exploitation throughout his time in the UK, including while under the Council's care, and that he remained at a significant risk of exploitation. He needed support from, at the least, a personal advisor. The claimant's solicitors requested a fresh human rights assessment.

27. The Council failed to reply to this and to further emails in mid-February 2022 which had chased a reply.

28. In a pre-action letter in early March 2022, the claimant's solicitors informed the Council that a judicial review was proposed because of its failure to undertake a fresh human rights assessment. The letter referred to the new material in the form of the reports of Dr Cohen and Ms Garbers. The letter reiterated the background as set out previously. There was no reply from the Council.

29. In further pre-action correspondence in August 2022, the solicitors detailed the claimant's ongoing issues. It identified the action that the Council was expected to take as being the provision under the Children Act 1989 of a personal advisor and a pathway plan. The claimant was interested in pursuing education.

30. The Council responded to the claimant's request on 9 September 2022. It stated that the claimant's immigration status was appeal rights exhausted and the Home Office not having accepted his further application as a fresh claim precluded the provision of support. The email added that the Council's position could be revisited if there was further information. This is the decision under challenge in this judicial review.

LEGAL AND POLICY FRAMEWORK

31. A range of statutory and policy provisions are relevant to this claim. Fundamental to the case is schedule 3 to the Nationality, Immigration and Asylum Act 2002, but alongside this are provisions of the Children Act 1989 and other legislation.

Nationality, Immigration and Asylum Act 2002, Schedule 3

32. Schedule 3 to the Nationality, Immigration and Asylum Act 2002 ("NIAA") provides that local authorities must not provide support under, inter alia, the Children Act 1989's care-leaver provisions to individuals who are in the UK in breach of immigration laws. The objective of Schedule 3 is clear, "to discourage from coming to, remaining in and consuming the resources of the United Kingdom certain classes of person who can reasonably be expected to look to other countries for their livelihood.": *R (Kimani) v Lambeth London Borough Council* [2003] EWCA Civ 1150, [24], per Lord Phillips MR.

33. For present purposes the relevant parts of schedule 3 of the NIAA provide:

> "1. (1) A person to whom this paragraph applies shall not be eligible for support or assistance under…
>
> > (g) section 23CZB [or] 23CA of the Children Act 1989 (welfare and other powers which can be exercised in relation to adults).
>
> (2) A power or duty under a provision referred to in sub-paragraph (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…
>
> 7. Paragraph 1 applies to a person if—
>
> > (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 50A of the British Nationality Act 1981, and
> >
> > (b) he is not an asylum-seeker."

34. One exception to the prohibition on support under paragraph 3 of schedule 3 NIAA is where its provision is required to avoid breach of the ECHR. *R (Clue) v Birmingham City Council* [2010] EWCA Civ 460 concerned a family seeking welfare support from the local authority when they had an outstanding application for leave to remain. The local authority refused to provide support and accommodation relying on schedule 3 NIAA. The applicable immigration policy in their case was that removal or deportation would not normally be enforced where a child had lived in the UK continuously for seven years or more. The Court of Appeal held where there was no outstanding application for leave to remain, a local authority was entitled to have regard to the calls of others on its budget in deciding whether an interference with article 8 ECHR rights would be justified and proportionate: [73]. However, in this case the Council should first have considered if the family was destitute. If they were satisfied that they were destitute:

> "76…upon learning that the claimant had made an application for indefinite leave to remain on grounds which expressly or implicitly raised article 8 of the Convention, they should then have considered whether the application was abusive or hopeless. If they considered that the application was not abusive or hopeless, they should not have refused assistance pending the determination of the application."

35. In *R (on the application of de Almeida) v Kensington and Chelsea Borough Council* [2012] EWHC 1082 (Admin), 127 BMLR 82, the local authority refused to provide assistance under the National Assistance Act 1948 to a claimant who had a life expectancy of a year on the basis that he fell within one of the prohibited categories in schedule 3 NIAA. Lang J held that the local authority's decision that the claimant had no eligible needs under that Act was unlawful, and that its refusal to make arrangements for the claimant under the Act was incompatible with his article 3 and 8 ECHR rights.

Local authority duties to care leavers

36. The Children (Leaving Care) Act 2000 amended the Children Act 1989 to introduce obligations requiring local authorities to support care leavers in their transition to adulthood. In *R (G) v Southwark LBC* [2009] UKHL 26 Baroness Hale said that the general aim of these responsibilities was "to provide a child or young person with the sort of parental guidance and support which most young people growing up in their own families can take for granted but which those who are separated or estranged from their families cannot": [8]

37. Section 23C of the Children Act 1989 provides for obligations towards "former relevant children". These include individuals who (i) were being looked after the relevant local authority when they attained the age of eighteen, and (ii) immediately before ceasing to be looked after, were an "eligible child": s. 23C(1)(b). The obligations in section 23C persist until the former relevant child reaches the age of 21 or, where relating to pursuit of education in accordance with an existing pathway plan, in some cases the age of 25: s. 23C(6) and (7).

38. Section 23CZB provides for further obligations towards former relevant children aged over 21 but under 25, who were formerly supported under section 23C. It provides:

> "(2) If the former relevant child informs the local authority that he or she wishes to receive advice and support under this section, the local authority has the duties provided for in subsections (3) to (6).
>
> (3) The local authority must provide the former relevant child with a personal adviser until the former relevant child—
>
> (a) reaches the age of 25, or
>
> (b) if earlier, informs the local authority that he or she no longer wants a personal adviser.
>
> (4) The local authority must—
>
> (a) carry out an assessment in relation to the former relevant child under subsection (5), and
>
> (b) prepare a pathway plan for the former relevant child."

39. Section 23CA applies to former relevant children over 21 but under 25 who are pursuing, or wish to pursue, a programme of education or training. It is the duty of the responsible local authority to provide a personal adviser: s. 23CA (2). The local

authority must carry out an assessment of the needs of a person with a view to determining what assistance (if any) it would be appropriate for them to provide to him and to prepare a pathway plan for them: s. 23CA (3). The responsible local authority also has a duty to give assistance to the extent that the person's educational or training needs require it, including contributing to expenses incurred by the person in living near the place where they receive education or training, and making a grant to enable them to meet expenses connected with the education and training: ss. 23CA (4)-(5).

40. Further provision about the contents of pathway plans, and the role of personal advisors and pathway plans is provided for in ss.23D and 23E and the Care Leavers (England) Regulations 2010.

41. Section 1 of the Children and Social Work Act 2017 lays down the "corporate parenting" principles of local authorities. So far as possible, the local authority must stand in the place of a parent for those who lack a natural parent: *R (Sabiri) v Croydon LBC* [2012] EWHC 1236 (Admin), [52], per; *R (CVN) v Croydon LBC* [2023] EWHC 464 (Admin), [53]-[54]. These corporate parenting principles apply to both looked-after children and to young people leaving care: s 1(2).

42. General statutory guidance for local authorities in this regard is contained in *Applying corporate parenting principles to looked-after children and care leavers*, February 2018. As corporate parents, the guidance states, local authorities should have regard to the need to help the children they look after and care leavers to secure the services they need. This is based on an understanding of the needs of these children and young persons: 4.12. The guidance points out that to access and use services will often require persistence: 4.14. Like any good parent, the guidance says, local authorities want the best outcomes possible: 4.15. The guidance explains that in order to thrive, looked-after children and care leavers need to feel and be safe, to have stability in their lives; for looked-after children this will mean having regard to the need to maintain, as far as possible, consistency: 4.19-4.20. Annex 2, "Categories of Care Leaver", states that in relation to victims of trafficking:

> "14. Under the Care Leavers Regulations a care leaver's needs in relation to their status as a victim of trafficking or an unaccompanied asylum seeking child must be considered when the local authority is preparing an assessment of needs and to require that, where a child is a victim of trafficking or an unaccompanied asylum seeking child the local authority must consider whether their related needs are being met when reviewing the child's pathway plan."

43. Where support obligations under the Children Act 1989 overlap with support available from other sources, the authorities suggest that local authorities cannot avoid their responsibilities as corporate parent to children in need and care-leavers: see *R (M) v Hammersmith and Fulham LBC* [2008] UKHL 14, [2008] 1 WLR 535, [4]; *R (G) v Southwark LBC* [2009] UKHL 26, [32]; *R (O) v Barking and Dagenham LBC* [2010] EWCA Civ 1101.

Child victims of modern slavery, including trafficking

44. Individuals who are referred for a trafficking assessment under the National Referral Mechanism are entitled to limited support pending a decision on their case. It reflects the United Kingdom's obligations under the *European Convention on Action Against Trafficking in Human Beings*: *MS (Pakistan) v SSHD* [2020] UKSC 9, [20]. The support is currently provided by the Salvation Army under the Modern Slavery Victim Care Contract: *National referral mechanism guidance (adult),*19 May 2022, para 6; *Modern Slavery: statutory guidance for England and Wales*, 18 May 2023, Annex F, para 8. The support may include "independent emotional and practical help". The Statutory Guidance expressly envisages that victims may seek support from various sources - of which support under the Modern Slavery Victim Care Contract forms part - including a local authority: [8.5]. This support is intended to be temporary and not to supplace support from other sources: [8.6].

45. *Care of unaccompanied migrant children and child victims of modern slavery*, November 2017, is statutory guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970. It begins with a caution that it covers a complex area of practice, exemplified by the many different pieces of statutory and practice guidance, legislation, and resources available. Under the heading "Planning transition to adulthood", it states, with reference to schedule 3 NIAA:

> "83…The extent of any care leaver duties on local authorities to provide support to former unaccompanied children who have turned 18, exhausted their appeal rights, established no lawful basis to remain in the UK and should return to their home country is subject to a Human Rights Assessment by the local authority."

46. There is a reference to the type of support and advice available generally, but there is the warning where a care leaver's outstanding application or appeal regarding their immigration status is refused:

> "94…Subject to a Human Rights Assessment by the local authority, the care leaver may then cease to be eligible for care leaver support under the restrictions on local authority support for adults without immigration status (in Schedule 3 to 30 the Nationality, Immigration and Asylum Act 2002)."

47. The guidance adds that a template for human rights assessments is published by the No Recourse to Public Funds Network: [94]. As regards financial support and accommodation for former unaccompanied children, that will reflect their needs and immigration status: [96]. As to accommodation, that may form part of the leaving care support, "[s]ubject to the Human Rights Assessment by the local authority under Schedule 3 to the Nationality, Immigration and Asylum Act 2002": [97]

Home Office asylum support

48. The Home Office provides support to asylum seekers under section 95 of the 1999 Act by means of the provision of accommodation or the payment of sums to meet a person's essential living needs: s. 96. A failed asylum seeker may be supported under section 4

of the 1999 Act and the attendant regulations. Where persons make further submissions to renew their claim, they will become an "asylum seeker" again and entitled to support under section 95 if their submissions are accepted by the Home Office as a "fresh claim".

GROUND 1: FAILURE TO CONDUCT HRA ASSESSMENT

The parties' submissions

49. The claimant's case is that absent the provision of schedule 3 of the Nationality, Immigration and Asylum Act 2002 ("NIAA"), the claimant would be entitled to support from the Council as a care leaver. He is a "former relevant child" as defined by section 23C(1) of the Children Act 1989. Being under 25 he has requested that the Council support him by providing a personal advisor and a pathway plan, and the Council's obligations under section 23CZB CA 1989 are engaged. There is also his desire to pursue education or training and the Council's obligations under section 23CA.

50. Although the claimant requested throughout 2022 that the Council provide him with support to which he would ordinarily be entitled as a care leaver, it failed to engage, and then justified its refusal on 9 September 2022 because the claimant was appeal rights exhausted and thus could not be assisted because of schedule 3 NIAA. Specifically, the claimant contended, the Council was obliged to determine whether it was in fact obliged to meet that request. It could only do so, in circumstances where schedule 3 NIAA was engaged, by conducting a "full and lawful human rights assessment".

51. At the hearing, the Council's case was that there is no statutory requirement to carry out a human rights assessment nor any departmental guidance that advised that this should be done. All that the claimant could point to was the practice guidance for local authorities issued by the No Recourse to Public Funds Network. Moreover, the question posed by paragraph 3 of Schedule 3 NIAA could lawfully be answered without a human rights assessment. Citing Lord Bingham in *R (SB) v Denbigh High School* [2006] UKHL 15, [29], the Council submitted that while it may well wish to assess for itself if there would be a breach of human rights if it did not act, and take into account representations in support, that could not be converted into a requirement to do so, failing which its decision could not stand. The claimant was a failed asylum seeker and would remain as such unless the Home Office accepted his further submissions as a fresh claim under paragraph 353 of the Immigration Rules: *R (Mustafa) v Kent County Council & SSHD* [2018] EWHC 2025 (Admin), [55], per UT Judge Markus KC.

Post-hearing

52. At the hearing, the claimant produced for the first time the statutory guidance *Care of unaccompanied migrant children and child victims of modern slavery*, November 2017 and *Applying corporate parenting principles to looked-after children and care leavers*, February 2018. As a result of considering this guidance, the Council changed its position. Shortly after the hearing, it informed the court that it was taking advice on conceding the first ground and agreeing to conduct the human rights assessment requested by the claimant, with the case to be stayed pending the outcome of that assessment. The Council then sent a proposed consent order, in which it would agree to carry out a human rights assessment if the claim was withdrawn.

53. In response the claimant sent a revised consent order proposing that a human rights assessment be conducted, with the Council providing support on an interim basis pending its outcome. However, it proposed, the court should proceed to give judgment on the first ground, although the claim would otherwise be stayed pending the outcome of the assessment. The Council's response was that it did not want the court to give judgement since it had conceded ground 1.

54. At a hearing on 7 July 2023 the parties restated their respective positions. They disagreed as to whether judgment should be given on ground 1, but both agreed that the court should not give its judgment on the second ground, pending the outcome of the human rights assessment given that ground 2 is fact sensitive.

55. Having considered the matter I decided that judgment should be given on ground 1. In *Jabbar v Aviva Insurance* [2022] EWHC 912 (QB), Chamberlain J reviewed the authorities and approved the considerations which Deputy Master Toogood had identified for this type of case where the parties had settled a matter. These included the extent to which delivering judgment despite the settlement would be in the public interest, along with the legitimate wishes of the parties. There was no need to demonstrate exceptional circumstances: [26], [49]. In *R (DMA) v Secretary of State for the Home Department* [2020] EWHC 3416 (Admin), Robin Knowles J considered the authorities on the approach to giving judgment even though a matter had become academic. He said that it would be appropriate to decide an academic claim where other similar cases were anticipated, and the decision in the instant case was not fact-sensitive: [326]-[332].

56. In this case the position is analogous to that in the *DMA* case. I accept the claimant's submission that, while aspects of the claim turn on the claimant's facts, his case is of general application and it will be of assistance to local authorities to know what they are obliged to do when confronted with requests for human rights assessments, and to individuals seeking support to know what they can expect of local authorities to whom they make requests.

The point of public interest

57. As formulated by the claimant at the 7 July 2023 hearing, the first ground is whether, as he contends, a local authority such as the Council must conduct a human rights assessment when support is requested by a person like him who, but for schedule 3 NIAA, would be entitled to support. In my view a local authority's obligation is more nuanced than this bare submission would suggest.

58. What a local authority is required to do is to consider a request for the exercise of a power, or the performance of a duty, when support is requested by a person who but for schedule 3 NIAA would be entitled to support under, for example, section 23CZB or 23CA of the Children Act 1989. In applying the prohibition in schedule 3, the local authority must consider that this does not prevent the exercise of a power or the performance of a duty if and to the extent that this is necessary for the purpose of avoiding a breach of a breach of a person's ECHR rights. It cannot adopt a blanket rule as the Council in this case seemed to have done that it simply will not consider the request.

59. That does not require the local authority to undertake a human rights assessment when support is requested. Nothing in the legislation requires this. Nor does the statutory guidance. My interpretation of the passages regarding a human rights assessment in the guidance *Care of unaccompanied migrant children and child victims of modern slavery*, November 2017 is that an assessment will be triggered by specific events, for example where a former unaccompanied child who has turned 18 has exhausted their appeal rights and so has no lawful basis to remain in the UK. If the local authority has already conducted a human rights assessment, it may readily decide on a further request for support that there will be no breach of the person's human rights by its refusal to exercise a power or to perform a duty in relation to support, in other words, that the prohibition in schedule 3 NIAA applies.

60. In other cases, however, the local authority will need to conduct a human rights assessment, and a blanket refusal on the basis of schedule 3 NIAA will not do. That is the position in circumstances such as those in this case. Here there had been a human rights assessment of the claimant in May 2021, followed by the addendum assessment some three months later in August 2021. That might have been the end of it. The claimant was a failed asylum seeker and unless the Home Office accepted that he had fresh human rights claim he remained a failed asylum seeker. However, in the circumstances the fresh human rights claim for leave to remain did not seem either abusive or hopeless. The claimant's representatives had produced additional evidence. This was sent to the Council and was not available at their previous human rights assessments in 2021. There was Ms Garber's report on trafficking and modern slavery in December 2021, and the two reports by Dr Cohen about the claimant's mental health and vulnerabilities (November 2021, May 2022). There was also the positive reasonable grounds decision in early March 2022. All of this raised possible human rights issues under articles 4 and 8 ECHR.

61. Yet the Council seem to have taken the view that it was not obliged even to consider the claimant's human rights issues because of schedule 3 NIAA. The fact is that the Council is the primary decision-maker in relation to requests for support under the Children Act 1989. It had received a request for support from a care leaver. To decide whether it had to provide support notwithstanding schedule 3 NIAA 2, it could not make that decision without considering whether the Convention exception in paragraph 3 applied. In a case where there was significant new material bearing on the claimant's human rights – the positive reasonable grounds decision, the expert report of the risk of trafficking and two reports on mental health, coupled with all the previous material – the Council might well have decided that the way properly to assess whether support was necessary in order to avoid a Convention breach was to undertake a human rights assessment. That is what the Council in this case has now decided to do.

GROUND 2: ARTICLES 4 AND 8 ECHR

62. Ground 2 is that the Council is obliged to provide support as a result of the claimant's rights under ECHR articles 4 and 8, and that its failure to do remains unlawful as contrary to section 6 of the Human Rights Act 1998 and sections 23CZB and 23CA of the Children Act 1989. Both parties agree that now that the Council has agreed to conduct a human rights assessment, the court should not give judgment on this ground pending its outcome. Should that assessment conclude that no support is to be provided, and should the claimant consider it appropriate to maintain his challenge to the lack of

support in light of that assessment, the court could then proceed to consider Ground 2, with the benefit of the human rights assessment.

63. Given that there is to be no decision on the articles 4 and 8 issues, there is no firm basis for any interim relief. In any event, the human rights assessment is to be completed imminently. I observe in passing that in April 2022 the claimant was provided with a support worker through the National Referral Mechanism.

CONCLUSION

64. For the reasons given earlier (1) the parties' agreement that the Council conduct a human rights assessment is approved; (2) notwithstanding the agreement between the parties, providing judgment on Ground 1 is justified and set out above; and (3) any judgment on Ground 2 is postponed pending the outcome of the assessment.