Neutral Citation Number: [2024] EWHC 3291 (Admin)

Case No: AC-2024-LON 003553

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2024

Before :

TOM LITTLE KC
Sitting as a Deputy High Court Judge

- -

Between :

THE KING (ON THE APPLICATION OF AYW AND ACR, BY HIS LITIGATION FRIEND, AYW)	**Claimants**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Ollie Persey (instructed by **Chessie Aeron-Thomas of Coram Children's Legal Centre**) for the **Claimants**
Cathrine Grubb (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 3 December 2024

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Approved Judgment

This judgment was handed down remotely at 14.00pm on 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Tom Little KC Sitting as Deputy High Court Judge :

Introduction

1. This is a claim for judicial review brought by AYW ["the First Claimant"] and ACR ["the Second Claimant"] against the Secretary of State for the Home Department ["the Defendant"] in respect of an ongoing failure to provide them with adequate asylum accommodation, in breach of sections 95 and 96 of the Immigration and Asylum Act 1999 ["IAA"].

2. I will refer in this judgment to the First Claimant and the Second Claimant on occasions collectively as the Claimants.

3. The First Claimant is a Mexican national and is the mother of the Second Claimant who is 5 years of age. He was born on 20th May 2019. He is severely disabled with diagnoses including epileptic encephalopathy. He experiences a number of seizures every day and is fed by a PEG - J feeding tube.

4. The First Claimant cares for the Second Claimant. He requires very close supervision and full adult support by the First Claimant for everything including transfers, positioning and daily life activities. The Second Claimant is non-verbal with fleeting and very limited levels of attention. He is unable to move himself around and cannot walk or crawl. He sleeps in a specialist hospital bed.

5. Given those circumstances and exceptionally for the purposes of ensuring a hearing at which the First Claimant would consider that she could fully participate I ensured, by giving directions and raising questions in advance, that both of the Claimants were able to attend the hearing in person at the Royal Courts of Justice in a wheelchair accessible Court at a time of the day that was best for them. Personal attendance is what the First Claimant had requested with the Second Claimant also being present as the First Claimant is his sole carer and there was nobody else who could have cared for the Second Claimant during the hearing. With the significant assistance of the Court staff at the Royal Courts of Justice the First Claimant's wishes were fulfilled.

Procedural background

6. The claim was lodged on 29th October 2024. On the following day the Court made an anonymity order in respect of the names of the Claimants. The Defendant's Acknowledgement of Service dated 11th November 2024 included the following:

> *"The Defendant recognises that the Claimants' current accommodation does not satisfactorily serve their needs. By letter dated 30 October 2024 (attached below), the Defendant reiterated that she does not currently have any accommodation available that would be suitable for the Claimants' needs. This is despite previous and ongoing concerted efforts by the Defendant to secure alternative accommodation*
>
> *Due to the urgent nature of this case, it has been noted on the Defendant's accommodation provider's urgent & special cases list, and marked as a priority. To date, the Defendant has*

> *considered 37 properties in the Southwark area with a view to relocating the Claimants, but has been unable to source anything suitable for the Claimants' needs.*
>
> *The Defendant understands the difficulties that would arise if the Claimants were to be relocated outside the Southwark area .....*
>
> *However, in order to provide the Claimants with suitable accommodation as quickly as possible, the Defendant has also asked them to consider the possibility of relocation outside of the Southwark area, including liaising with the Claimants' medical advisers to discuss the possibility of a transfer of care.*
>
> *In view of the above the Defendant requests that permission for judicial review be refused. The Defendant has made, and continues to make, concerned efforts to locate suitable accommodation. The proceedings are therefore pre-emptive and academic."*

7. Permission to bring the claim was granted on the papers on 15th November 2024 with directions also being given for expedition and which led to the hearing before me on 3rd December 2024. The Defendant made an unsuccessful application to adjourn that hearing which was refused on the papers by a Judge on 22nd November 2024.

8. The Defendant's Detailed Grounds of Resistance dated 26th November 2024 state [**CB p33 §1**]:

> *"It is admitted that the Defendant is in breach of sections 95 and 96 of the Immigration and Asylum Act 1999 (IAA 1999). In that the current accommodation is not adequate for the needs of C2."*

9. It follows that the Defendant accepts being in breach of her statutory duty in so far as at least the Second Claimant is concerned. The issue before me is therefore what, if any, relief to grant the Claimants on all of the material before me.

10. During the course of the hearing I was referred to an Authorities Bundle and a 234 page Core Bundle ["**CB**"] as well as a Supplementary Bundle all of which I had read in advance. There were Skeleton Arguments from both the Claimants and the Defendant and in addition the Claimants served and filed additional documentation shortly before the hearing which included a chronology and some additional authorities. Given the extent of the expedition ordered in this case it was inevitable that documentation would be filed and served shortly before the hearing but I have been able to consider it all.

Factual background

11. The Claimants arrived in the United Kingdom on 17th June 2021. They claimed asylum the following day and were admitted in to section 98 IAA accommodation. On 20th July 2021 the Claimant applied for support in accordance with section 95 of the IAA. That was granted on 20th July 2021.

12. The Claimants' asylum claim is that they fled from Mexico following the First Claimant's husband, who is the father of the Second Claimant, being killed by a gang that subsequently targeted other family members.

13. From June 2021 the Claimants have been accommodated in various different rooms in a Best Western Hotel in Peckham. They have been in the current room since 2022. That room is too small adequately to meet the Second Claimant's medical and care needs.

14. The Defendant procures and provides asylum support accommodation through a number of different third-party suppliers. The relevant provider here is Clearsprings Ready Homes ["CRH"].

15. On 13th December 2023 the Claimants' protection and human rights claims were refused and they are currently the subject of an appeal to the First Tier Tribunal. Meanwhile it is agreed that the Claimants remain eligible for support pursuant to section 95 and 96 of the IAA.

16. The Second Claimant, as indicated above, is severely disabled. His medical conditions include:

    i) Epileptic encephalopathy with seizures manifesting predominantly as epileptic spasms. He experiences 7 – 10 seizures a day.

    ii) Microcephaly. This is a congenital condition characterised by significantly smaller than average head size and impaired brain development.

    iii) Bilateral cerebral palsy with dystonia measured at the highest level.

    iv) Oropharyngeal dysphagia.

    v) Bulbar impairment. This results in difficulties swallowing safely.

    vi) Developmental impairment.

    vii) Visual impairment.

    viii) Recurrent aspiration and hypersalivation.

    ix) Gastroparesis and intestinal motility issues involving chronic constipation.

    x) Intermittent exotropia.

17. As a result of the above conditions and impairments the Second Claimant has regularly had to be taken to Hospital. For example, in the Summer of 2021 for a period of three months he was admitted to King's College Hospital. He remains under the care of a number of NHS specialist teams in the London Borough of Southwark in particular at Evelina London's Children's Hospital and King's College Hospital. In respect of the latter, the Second Claimant is under the care of the following specialists (i) paediatric neurology (ii) paediatric respiratory medicine (iii) paediatric gastroenterology and (iv) ophthalmology.

18. Whilst the Second Claimant's care needs are significant and ongoing, his appointments/check-ups occur, in general terms, on a six monthly or quarterly basis and on some occasions less frequently than that. However, in the interim there are other attendances such as the Second Claimant being admitted to Hospital with a chest infection in October 2024.

19. The Second Claimant requires accommodation that is wheelchair accessible and with a wet room. In the absence of a working and reliable lift his accommodation would need to be on the ground floor.

20. Since September 2024 the Second Claimant attends the Stephen Hawking School. That school is not in the London Borough of Southwark.

21. On 19th December 2023 the Claimants were granted expedited dispersal in the London Borough of Southwark within 3 miles of their current accommodation. That means that the Defendant was accepting that the accommodation was not adequate and that alternative accommodation was required urgently. It follows that for a period of a year the Defendant has been on notice of inadequacy and its urgency.

22. In relation to the importance or otherwise of the location of the accommodation that is required there are different strands of evidence in the form of emails from various treating Doctors and other practitioners in answer to questions from the Claimants' solicitor. The position is not uniform.

Paediatric neurology

23. Dr Jon Gadian is a Consultant in the Paediatric Neurology team at King's College Hospital. He states [**CB p86 – 88**] that:

> *"Ultimately, the bottom line is that although we would strongly recommend that his care remains in the current location and in one area from a medical perspective, in theory healthcare provision should be the same anywhere in the country and therefore there is a limit to what we can say ……*
>
> *[the Second Claimant] has complex medical needs with many medical teams involved both inside and outside the hospital, requires frequent medical appointments and monitoring. He has had multiple admissions to hospital and the teams looking after him have a good knowledge of his condition. His needs are likely to evolve over time. In my opinion his medical care will be best supported by remaining in the Southwark area for management of his complex epilepsy and neurodisability and I would very strongly advise that he is placed in the Southwark area."*

24. Dr Jon Gadian was asked whether he was aware of any alternative NHS services in another London borough that could provide equivalent treatment as he is currently accessing at Evelina London and King's College Hospital and he stated:

> *"Alternative services are available in other London boroughs, but the precise nature of them will differ, and it may involve considerable travel and support to access them. Lewisham has a good community paediatric service and would be possible, similarly Lambeth. Others I do not have personal knowledge of ……… If in Lewisham he would need to travel to Evelina for his neurology care but he may still have some of his respiratory at King's."*

25. More recently Dr Gadian [**CB p129**] stated:

> *"I would also support the family remaining in Southwark.*
>
> *If the family moved to Bromley, they would fall under the care of my colleague at King's Dr Pal-Magdics. If the family moved Lewisham (sic) they would transfer to Lewisham general paediatrics with input from the Evelina neurology team. If the family moved to Lambeth, there is some overlap and depending on the location would either remain under myself or transfer to the Evelina General paediatric/paediatric neurology team."*

Neurodevelopmental paediatrics

26. Dr Hemavathy Palanyiaya is a Consultant Neurodevelopmental Paediatrician at Evelina London Community Services. She was asked to consider whether the Claimants required accommodation in Southwark for the purposes of care and treatment and she stated [**CB p94**]:

> "Given [the Second Claimant's] complex medical needs I strongly recommend that the family remain in the Southwark area to ensure continuity and quality of care. [The Second Claimant] requires frequent medical appointments and ongoing monitoring by a multidisciplinary team, both in the community and at the hospital, where his care team has extensive knowledge of his condition. Moving the family out of Southwark could compromise the quality of care [the Second Claimant] receives ….."

27. More recently she stated [**CB p133**]:

> *"If he moved out of Lambeth and Southwark (and acquired a GP outside of the local boroughs), the Evelina London Community Services would not be able to support his health needs …… Evelina London Community Services would not be able to provide neurology input if he moves to Lewisham. His neurology input would have to come from his general paediatrics team in Lewisham with some support from the Evelina neurology team as stated by Doctor Gadian (this is a tertiary team and not the same as the Evelina Community team which I work for)"*

Respiratory paediatrics

28. Dr James Cook, a Consultant Respiratory Paediatrician at King's College Hospital states [**CB p101**]:

> *"From a respiratory perspective it would be ideal if [the Second Claimant] lived within easy access of King's for emergency respiratory care due to the complex nature of his problems, specialist emergency care available at King's (intensive care and high dependency care) and continuity. King's College Hospital catchment area is not just Southwark. Other hospitals in southeast London could provide initial emergency care.*
>
> *[The Second Claimant's] respiratory care could be transferred to another Hospital in London with a respiratory service (Royal Brompton, Royal London, Great Ormond Street). If a move was made to another borough in Southeast London [the Second Claimant] would continue respiratory follow-up at King's.*
>
> *My opinion overall is that given [the Second Claimant's] complexity and established packages of services I would not recommend a move to a different borough.*
>
> *As a tertiary referral centre the Second Claimant could still access King's paediatric respiratory medicine service if he lived in South East London borough other than Southwark"*

29. Mira Osinibi is a Specialist Paediatric Nurse who works alongside Dr Cook. She was asked whether the Second Claimant could still access the King's respiratory services if the Claimants were to move to another Southeast London Borough and, if so, whether it would just be limited to Lambeth, Lewisham and Bromley. She replied [**CB p104**] stating:

> *"Any South London Boroughs are satisfactory for care under King's. We also cover outside London at time such as Kent in some cases."*

Paediatric Gastroenterology

30. There is no evidence as to the catchment area for the Paediatric Gastroenterology service at King's College Hospital.

Ketogenic dietician

31. Caitlin Fitzgerald is a Ketogenic Diet Therapy Dietitian at the Evelina London Children's Hospital. She has informed the Claimants' solicitor [**CB p134**] that they would continue to see the Second Claimant if he lived in Southwark or Lambeth. There are three ketogenic diet services covering London. They are Evelina London Children's Hospital, Great Ormond Street and St. George's. Given the size of London and the location of those Hospitals it seems to me inevitable that Evelina London must cover more than just Southwark and Lambeth but the evidence on this issue is incomplete.

However, that is not in my judgement the most important aspect of the decision that I have to make in so far as the ambit of any mandatory order.

Ophthalmology

32. Prema Nair is the Deputy Head of Optical Services at King's College Hospital. She has confirmed [**CB p135**] that the Second Claimant would continue to be able to access King's Ophthalmology team no matter which London Borough he was residing in.

Availability of properties

33. The Defendant relies on the witness statement of Jackilyn Wood dated 27th November 2024. She is a Senior Caseworker in the Asylum Support Litigation Response Team ["ASLRT"]. The witness statement expressly states [**CB p139 §4**]:

> *"I seek to demonstrate the lack of availability of accommodation, both within the current estate and private sector, that would be suitable for meeting [the Second Claimant's] complex needs."*

34. The witness statement does not address any attempts to find accommodation before 17th September 2024. I understand that the focus may have become starker by that time because that is when the Defendant received the Pre-Action Protocol Letter from the Claimants' solicitor. However, the Defendant had been on notice of the issue for 9 months before this and there is no detailed evidence of the non-availability of suitable accommodation during that period and which would be a relevant consideration as to whether it was now impossible to comply with a mandatory order.

35. In respect of the position from 17th September 2024 onwards on 30th September 2024 the Defendant received two spreadsheets from CRH. The effect of those was that there was only one property which was wheelchair accessible within the London Borough of Southwark. That property was occupied by a family of 7 with school aged children, some of whom are currently in years at school or college where important exams are imminent.

36. On 1st October 2024 a case conference was held to review each of the wheelchair accessible properties in London alongside any relevant requirements for each family to assess if it would be appropriate to move those existing families elsewhere.

37. On 21st October 2024 CRH provided a copy of Realyse reports and spreadsheets detailing the procurement efforts taken on the open rental market.

38. Paragraphs 38 and 47 of the witness statement of Jackilyn Wood addresses the 'current position'. Those paragraphs are largely generic and non-specific. The following paragraphs illustrate a lack of specificity [CB p148 – 149 §§38, 41, 42, 46, 47]:

> *"The scarcity of accommodation which meets the needs of the claimant and her child prevents any stable timeframe for a dispersal to be given as the accommodation provider and the SSHD do not have the ability to control when a property will become available on the open market or when a client will be*

> *granted leave and therefore no longer requiring continued support. CRH continue to review availability and have confirmed that the Claimants have been placed on their Special Requirements List for procurement …….*
>
> *CRH have confirmed that the families contained on [the Special Requirements List] are priorities for any relevant properties that are identified, in addition to the active searches as outlined above at paragraphs 27 and 36.*
>
> *The SSHD via ASRLT and the contract management team for CRH will seek updates from CRH every 2 weeks regarding procurement efforts for this family in the form of its Realyse reports. The SSHD expects that CRH will provide an immediate update should a property be identified in between those regular updates.*
>
> *Given the lack of availability of suitable or potentially suitable accommodation with the area of Southwark, the SSHD is likely to have to explore options for transfer of care for this family, engaging local authorities in identified areas via its contract management team, safeguarding team and accommodation provide.*
>
> *The position of SSHD is that its accommodation providers are currently unable to suggest a stable timescale by which suitable accommodation within the area of Southwark can be made available for the Claimants …., for the reasons outlined throughout this statement. Searches will remain ongoing to continue seeking accommodation which meets the needs of the family."*

39. Those paragraphs of the witness statement do not provide any detail as to availability or the limitations on the availability of accommodation throughout November 2024 that would be appropriate for the Second Claimant.

40. In part as a response to the witness statement of Jackilyn Wood, Chessie Aeron-Thomas (the Solicitor for the Claimants), filed a second witness statement dated 28th November 2024. This addressed a number of issues including the availability of accommodation on the private rental market in November 2024. The aim was to identify any properties that appeared to or could meet the requirements of the Claimants. The result was that there are nine ground floor properties which contained two bedrooms which were available to let immediately or relatively soon, four of the properties had wet rooms. It is not known if these properties would be let by their landlords to a family seeking asylum or whether the landlords of the properties that did not have wet rooms would permit that type of change to the property. Accordingly this evidence comes with some *caveats* but it is the only specific evidence of the position at the material time of the hearing and it is not consistent with the Defendant's position of impossibility.

Legal framework

41. As the Defendant has accepted that she is in breach of sections 95 and 96 of the IAA that aspect of this claim needs no analysis save and to the extent that the duty has any relevance to the issue of the appropriate remedy/remedies and the terms of any mandatory order.

42. It is important to note in the context of relief that Regulation 4 of the Asylum Seekers (Reception Conditions) Regulations 2005 requires the Defendant to take into account the special needs of vulnerable asylum seekers. Similarly the Defendant's Allocation of Asylum Accommodation Policy (version 12 dated 27th March 2024) states in relation to requests for relocation:

> *"in considering requests to be allocated accommodation in a specific location, you must consider whether there are exceptional circumstances that make it appropriate to agree to the request. Exceptional circumstances should be considered on a case by case basis but may include, for example, serious risks around health and safety or security."*

43. In addition the Policy states:

> *"requests for accommodation in a particular location may sometimes be made in order to avoid unreasonable disruption of existing treatment or assistance to cope with the disability. These requests should be considered carefully, balancing the overriding principle of allocating accommodation on a 'no choice basis' against the level of disruption caused if the individual is required to relocate."*

44. The starting and important point, in so far as mandatory orders are concerned, is that they are a discretionary remedy to be applied on the basis of principle.

45. In relation to the approach to take when considering whether to grant or not grant a mandatory order it is not necessary to look much beyond the Supreme Court judgment in *R (Imam) v Croydon London Borough Council* [2023] UKSC 45; [2023] 3 WLR 1178 in which the judgment of Lord Sales helpfully sets out the principles which include (so far as is relevant to this claim):

    i) The starting point is to consider the duty that has been breached and the terms of that duty and whether it is qualified in any way in terms of resources [§39]

    ii) If there has been a breach of duty it is not for the Court to modify or moderate its substance by routinely declining to grant relief to compel performance on grounds of the absence of resources [§40]

    iii) Where a breach of a duty is established the ordinary position is that the remedy should be granted and a court should proceed cautiously before refusing to grant relief. However, different types of order are available and it may be the case that due enforcement of the law can be sufficiently vindicated by an order other than a mandatory order [§43]

iv) When considering whether to make a mandatory order the Court has to have regard to the way in which an order might undermine, to an unjustified degree, the ability of the authority to fulfil its functions [§44]

v) The Court should not make a mandatory order to require compliance with a statutory duty where it is impossible to comply with the order. The onus is on the Defendant to establish impossibility and a Court will not be persuaded that it is impossible to secure suitable accommodation unless satisfied that all reasonable steps have been taken [§48]

vi) When it comes to the question of resources Lord Sales set out [§§66 - 70] five non-exhaustive factors that would be relevant for the Court's consideration. These factors were summarised in *R(L) v Hampshire County Council* [2024] EWHC 1928 Admin [§51] as follows:

> *"i. The need for contingency planning in terms of allocation of resources to deal with unexpected calls for expenditure*
>
> *ii. Whether the authority has been on "notice in the past of a problem in relation to the non performance of its duty but failed to take the opportunity to react to that in good time"*
>
> *iii. The impact on the individual to whom the duty is owed. "It is the vindication of their right which is being denied, with the impact on them of the failure to comply with it is very serious and their need is very pressing, this may justify the court in issuing a mandatory order despite the wider potentially disruptive effects it may have.*
>
> *iv. Whether the authority has been taken steps to remedy the situation, "if there is no sign as things stand at the time of the matters before the court that the authority is moving to rectify the situation and satisfy the individual's rights, that is a factor pointing in favour of the making of a mandatory order. In such a case the imperative is to galvanise the authority into taking effective steps to meet its obligations more promptly will be stronger"*
>
> *v. The need not to cause unfairness to others by prioritising the Claimant"*

Grounds of review

46. There is one ground in this claim namely breach of sections 95 and 96 of the IAA. As already indicated the Defendant has conceded that she is in breach of those sections. The issues for me therefore solely relate to remedies.

Submissions

47. The Claimants' position can be stated relatively shortly. They submit that the starting (and end) point, where there is an admitted breach of this statutory duty and which has been persisting for a significant period of time, is that the court should make a mandatory order. They submit that the Defendant has failed evidentially to demonstrate why a mandatory order should not be made and specifically has failed to establish that it would be impossible for the Defendant to comply with such an order.

48. The Claimants further submit that a number of factors weigh firmly in favour of the court granting a mandatory order. They include the duration of time the Defendant has been on notice of the situation, the failure to anticipate the need for such accommodation and a lack of expedition and drift and delay on the Defendant's part. Lastly emphasis is placed on the position of the Claimants themselves and extent of the ongoing breach.

49. The Claimants therefore seek a mandatory order requiring the Defendant to secure adequate/suitable accommodation forthwith and no later than four weeks after the date of the Final Hearing. Specifically, they seek a mandatory order that accommodation should (i) be in Southwark (ii) have a wet room (iii) be located on the ground floor and (iv) be wheelchair accessible both inside and outside based on the applicable building standards.

50. The Defendant accepts that the Claimants require accommodation with a wet room and to be wheelchair accessible inside and out. However, given the difficulties that the Defendant has had in locating an appropriate property her primary position is that the court should refuse to make a mandatory order. Alternatively, it is contended that the Court should adjourn the matter for three months so that further inquiries could be made into suitable alternative accommodation.

51. The Defendant submits that compliance with a mandatory order in this claim is impossible at present. That is because it is dependent on properties being available on the open market and being capable of being procured through CRH. In particular the Defendant relies on the lack of wheelchair accessible rental properties with a wet room available in Southwark or alternatively the lack of wheelchair accessible ground floor properties in Southwark which have a bathroom that the landlord would allow to be fitted so that it has a wet room.

Discussion

52. Having reflected carefully on the evidence, the *Imam* principles and the submissions made both in writing and orally I am left in no doubt that the appropriate remedy in this case is both a declaration that the Defendant is in breach of sections 95 and 96 of the IAA and a mandatory order.

53. Inevitably when considering whether to make a mandatory order I have had to have regard to the general nature of the terms that would comprise that order to ensure that they are necessary and proportionate and do not, of themselves, make an order that should be granted impossible to perform.

54. My reasons for making a mandatory order are as follows:

i) **First** I do not accept that there is any reason here to depart from the ordinary position as it is described in *Imam*, namely that a mandatory order should be made. The Defendant has been on notice of her breach for 12 months. Very little has in reality been done. There is no evidence of any proper efforts being made before September 2024 to secure adequate accommodation and the evidence thereafter is limited. There is a lack of evidence from the Defendant as to the number of properties available in Southwark or in London more generally in November 2024. In contrast the recent evidence of the Claimants is indicative of the fact that although the stock of properties is not significant that there are a limited number that may be adequate in Southwark.

ii) **Second** whilst the Second Claimant's care needs are complex the nature of the accommodation required is not. Whilst I accept that there is not a plentiful supply of such properties I am not satisfied that the Defendant has used her best endeavours to procure such a property. If there are shortcomings with the effectiveness of CRH, which the evidence of the Claimants is indicative of, that is not a reason not to make an order.

iii) **Third** the Defendant has not got close to persuading me that it will be impossible to comply with the mandatory order that I am going to make. The evidence that she has served is, as I have indicated, insufficient to establish impossibility. It is important not to elide resources in the sense of financial resources with resources in the sense of housing stock that CRH avails itself of. I add that there is no evidence before me from anyone at CRH to support the impossibility submission.

iv) **Fourth** this claim is not an isolated incident or an outlier. Examples of authorities where the Administrative Court have made observations that are critical of the approach taken by the Defendant indicative of systemic problems and which are relevant to this claim include *R (NS) v The Secretary of State for the Home Department* [2023] EWHC 2675 (Admin) and *R (oao DXK) v The Secretary of State for the Home Department Defendant Migrant Helpline Limited (t/a 'Migrant Help') (A Charity) and Clearsprings Ready Homes Limited* [2024] EWHC 579 (Admin). If there are systemic shortcomings in the Defendant complying with sections 95 and 96 of the IAA then that is a reason to make a mandatory order providing it is not impossible to comply with its terms. It is certainly not a reason not to make a mandatory order.

v) **Fifth** I am satisfied that the Defendant's failure to comply with her statutory duty has had, and is having, an effect on both the First Claimant and the Second Claimant.

vi) **Sixth** simply making a declaration and no more would not, in my judgement, meet the justice/injustice of this case. The chronology in this case and an analysis of what has taken place and more importantly what has not taken place is proof positive of the need for a mandatory order. Refusing to make an order or adjourning these proceedings for three months would not be the correct approach.

55. The more difficult issue, in my judgement, is the precise terms of the mandatory order, by which I mean how prescriptive it should be and how limiting it should be: both in its detail and the time to be given to the Defendant.

56. I am not willing to make an order in precisely the terms sought. That is because I regard it is too narrow and it does not give the Defendant a sufficient period of time to comply. Further the terms of the order sought by the Claimants goes further than the Defendant's own guidance and policy would require them to go.

57. I have considered whether simply to order the Defendant to provide adequate accommodation by a specific date and not to go any further about where it is and what it should comprise. However, given how long this situation has persisted for I am not satisfied that that would be an effective remedy, especially as I have had to consider these issues with a degree of granularity. But the Claimants, having invited me to that level of granularity, then have to accept the terms of such granularity even if the First Claimant might prefer an order in different terms.

58. It is plainly preferable, on the evidence, for the Claimants to be accommodated in the London Borough of Southwark. However, someone in the position of the Claimants does not, as a matter of law, have the ability to dictate the location of the accommodation. At the same time the Defendant has to take into account the circumstances of the individual case and which are significant here. The evidence indicates that the Claimants could equally live in the London Borough of Lambeth without any marked impact on the provision of care and treatment. In addition, there are other local authorities in South East London which are potentially viable even if some aspects of care may have to change.

59. There is obviously a hierarchy of importance of certain aspects of the Second Claimant's care. I am acutely conscious of the advantages of continuity of care and the Second Claimant's multiple conditions and impairments as well as future educational needs. However, I must proceed on the basis of the availability of a high level of quality of paediatric care across London. I would have been willing to have taken judicial notice of that fact but it is confirmed by Dr Jon Gadian (see above). I also must proceed on the basis, given the interest that the Doctors and other practitioners have shown in this claim, that there would be a proper handover of care.

60. It follows that, in my judgement, an order which also provided for accommodation for other South East London boroughs such as Lewisham and Bromley would be appropriate but that the priority should remain Southwark and Lambeth. The way to achieve this will be for the order to make clear that the Defendant is to obtain accommodation in Southwark or Lambeth by a certain date but at the same time to make clear that other Boroughs in South East London should also be being considered in the meantime, including in particular Lewisham and Bromley.

61. There is no doubt that the accommodation must be wheelchair accessible. I have considered whether it is necessary for it to be only on the ground floor as the Claimants seek or whether providing that it is wheelchair accessible is sufficient. This is not an issue upon which I have had any evidence. It is obviously highly desirable but if a property had one or more reliable lifts then that issue may fall away but I am conscious that lifts need to be repaired on occasions and I would not envisage any circumstances in which the First Claimant would have to be carrying the Second Claimant up a number

of flights of stairs in the event that the lift stopped working. Similarly it may be that a property on a first floor could be accessed simply by walking up an incline rather than steps. I am also conscious about the practical difficulties in being overly prescriptive and have concluded that I should not include a requirement that it must be on the ground floor. However, I reiterate that if it is not on the ground floor then the Defendant is going to have to have a high degree of confidence that no difficulties will eventuate. The parties can consider how to put these observations into effect in an order.

62. That just leaves how long the Defendant should be given to comply with a mandatory order. In my judgement a balance has to be struck here. The delay so far is not acceptable but I have to be realistic that the position is not straightforward even on the Claimants' own evidence. Whilst I do not accept that it is impossible for the Defendant to comply with a mandatory order for the reasons set out above I am going to give her longer than the Claimants seek. I therefore give the Defendant until 24th February 2025 to comply with the terms of a mandatory order. That is not an invitation for the Defendant to take until then but that is the long-stop date that I am going to order.

Conclusion

63. This claim is therefore allowed. I grant declaratory relief and will make a mandatory order. In addition the Defendant will have to pay the Claimants' costs.