Neutral Citation Number: [2025] EWHC 153 (Admin)

Case No: AC-2023-LON-002487

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

Wednesday, 29th January 2025

Before:
FORDHAM J

- -

Between:

THE KING (on the application of BLZ)	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
- and –	**Interested Party**
LEEDS CITY COUNCIL	

- -

- -

Stephanie Harrison KC, Grace Capel, Nadia O'Mara and **Isaac Ricca-Richardson**
(instructed by Turpin Miller LLP) for the **Claimant**
Jack Holborn, Matthew Howarth and **Ella Grodzinski**
(instructed by Government Legal Department) for the **SSHD**
David Lawson and **Katherine Hampshire** (instructed by LCC) for **Leeds City Council**
Sian Davies (instructed by the Second LA) for the **Second Local Authority**

- -

Hearing dates (BLZ No.1): 3-6, 12.9.24, 15.10.24
Hearing dates (BLZ No.2): 28 & 29.11.24
Further written submissions: 15.11.23, 5, 13 & 16.12.24
Draft judgment: 17.1.25

- -

Approved Judgment

- -

FORDHAM

Note: This judgment was handed-down virtually at 10am on 29.1.25
by circulation to the parties and uploading to the National Archives.

FORDHAM J:

I. INTRODUCTION

1. This case is about Home Office planning for the allocation of suitable Home Office Bail Accommodation ("HOBA") and for a "Safe-Release" from an immigration removal centre ("IRC"), all in the context of a foreign national offender ("FNO"). The case features potential care and support needs, statutory human rights and equality rights. HOBA is governed by Sch 10 §9 to the Immigration Act 2016. Safe-Release from an IRC is governed by a Detention Services Order called DSO 08/2016. Care and support needs are governed by the Care Act 2014; statutory human rights by the Human Rights Act 1998 ("HRA"); and equality rights by the Equality Act 2010 ("EA"). I will survey the legal landscape in Part II: §§5-33 below.

2. Everything really stems from an order made on 29.6.23 by Judge Cox at the First-Tier Tribunal ("FTT"). Judge Cox granted "immigration bail in principle" (2016 Act Sch 10 §1(3)). He imposed a residence condition: that the Claimant "must reside at an address arranged by the SSHD under her statutory powers" (ie. the powers in Sch 10 §9 to provide HOBA). The commencement of a grant of immigration bail may be made conditional on specified arrangements being in place "to ensure that the person is able to comply with the bail conditions" (Sch 10 §3(8)) and so the residence condition specified that the grant of bail "will not commence until such address has been provided or made available". I will summarise the factual context in Part III: §§34-59 below.

3. This judgment is one of a pair. I heard two linked claims for judicial review, brought by the Claimant and arising out of the same background facts. This first claim is against the SSHD. My judgment in the second claim, against Leeds City Council ("LCC"), is BLZ No.2 [2025] EWHC 154 (Admin). The substantive hearing was not a model. A 'vacation' listing of 3 days was originally secured by the parties, intended by them to deal fully with both claims. That proved significantly overambitious. The issue of anonymising local authorities alone occupied much of the single pre-reading day and the morning of Day 1. The factual and legal subject-matter which the parties had chosen to raise needed proper ventilation, explanation and testing at the oral hearing. Further hearing days had to be found within the Court's calendar. A full hearing week in term time was found and allocated, but was lost at short notice due to unforeseeable illness of a key team member. The parties were agreed that I should deliberate and rule on BLZ No.1 only after the conclusion of the hearing in BLZ No.2 (on 29.11.24), having considered all the evidence and arguments, including written submissions (up to 16.12.24). I am grateful for the assistance I received. When I refer to Lead Counsel I include their teams of solicitors and barristers. Numbering in square brackets within quotations is mine. I will analyse the issues in Part IV: §§60-89 below.

4. The Issues identified by the parties in this claim came to this:

> ***Issue (1). Policy-Gap. Did the SSHD act unlawfully in failing to have in a place a written policy (1a) helping decision-makers to identify when a person has or may have eligible care and support needs under the 2014 Act and/or (1b) requiring decision-makers to refer such persons to a local authority for a needs assessment under the 2014 Act prior to or following their release from detention to HOBA?***
>
> ***Issue (2). Policy-Adherence. Did the SSHD fail to apply these published policy guidance documents: (2a) Immigration Bail Interim Guidance, by failing to provide the Claimant with***

> ***"Level 3" accommodation within the meaning of that policy? (2b) DSO 08/2016, by failing to convene an expedited multi-disciplinary meeting to plan for the Claimant's Safe-Release from detention and/or arrange a local authority assessment of the Claimant's 2014 Act needs?***
>
> ***Issue (3). Statutory Duty/Reasonableness. Did the SSHD act unlawfully in breach of the duties under Sch 10 §9 to the 2016 Act to provide suitable HOBA and/or did she act unreasonably in: (3a) Failing to consider the need for and make the necessary arrangements for referral to a local authority for assessment under the 2014 Act prior to or following the release of the Claimant from detention to HOBA? (3b) Failing to provide the Claimant with suitable/safe HOBA on and/or after release from detention?***
>
> ***Issue (4). HRA. (4a) Does the SSHD's system for the provision of release accommodation create a real risk of a breach of fundamental rights? (4b) Did the SSHD breach the Systems Duty under Articles 2 and/or 3 ECHR, by failing to put in place effective systems and arrangements to prevent foreseeable risks to life and/or serious injury and/or serious harm to mental and/or physical health? (4c) Did the SSHD breach the Operational Duty owed to the Claimant under Articles 2 and/or 3 ECHR, because she knew or ought to have known of a real and immediate risk to life and/or serious injury and/or serious harm, and failed to take reasonable measures within the scope of her powers which might have been expected to avoid that risk? (4d) Did the SSHD breach the Claimant's substantive Article 3 rights between 3 August 2023 and 22 December 2023 because (i) the level of the Claimant's suffering or indignity crossed the severity threshold for constituting 'degrading treatment' under Article 3 (ii) for which the SSHD was responsible? (4e) Did the SSHD breach the Claimant's Article 8 rights between 3 August 2023 and 22 December 2023 because the treatment of the Claimant was a disproportionate interference with his private life as protected by Article 8?***
>
> ***Issue (5). EA. (5a) Did the SSHD breach the Public Sector Equality Duty under s.149 of the EA? (5b) Did the SSHD breach ss.20 and 29 of the EA by failing to make reasonable adjustments to: (i) the release planning process and/or (ii) the process for sourcing and providing HOBA for disabled people with complex or high-level needs? (5c) Did the SSHD discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability, in breach of s.15 of the EA?***

There are agreed prior questions which came to this:

> ***Prior Question (A). Anonymity. Should the interim anonymity order and reporting restrictions be continued and were the further restrictions sought justified based on maintenance of the administration of justice and/or harm to other legitimate interests?***
>
> ***Prior Question (B). Academic Claim. Should the Court decline to determine Issues (1)-(3), (4a) and/or (5a) on the basis that they are academic in light of the Claimant's placement in the Hotel and/or the SSHD's proposed policy review?***
>
> ***Prior Question (C). Transfer Out. Should the determination of Issues (4b), (4c), (4d), (4e), (5b) and/or (5c) be transferred to the KBD for determination as a damages claim?***

II. THE LEGAL LANDSCAPE

IRCs

5. If you are in the UK as a person who is subject to immigration control, there are three ways in which your accommodation can be provided by the Home Office. One is where you are being detained in an IRC. Immigration detention powers can also apply in a prison, but prisons are the Ministry of Justice's responsibility. In IRCs there are arrangements to protect vulnerable individuals. DSO 01/2022 addresses self-harm and suicide prevention. DSO 08/2016 addresses management of AARs (adults at risk), with three AAR "levels" applied by the Home Office in weighing the evidence of risk and

harm. By reg. 12 of SI 2012/2996, the provision of specified healthcare services in IRCs is the responsibility of the NHS authorities known as "Healthcare".

Safe-Release Planning (including Potential Care and Support Needs)

6. If you are a vulnerable person being released from an IRC, DSO 08/2016 addresses the planning of your Safe-Release, including (§63) in light of your potential care and support needs. Here are §§62-64:

> ***62. In cases where IRC or Healthcare staff have significant concerns about planned releases who are considered to be at risk, for example if the detained individual has a contagious disease or requires a mental health follow up, a multi-disciplinary meeting (or teleconference if a physical meeting is not possible due to time constraints), must be arranged by the local DET team to agree a plan to safely release the individual. This should be expedited to avoid any impact on release timings. The attendees to this multi-disciplinary meeting will depend on the circumstances and needs of the individual, as an example, attendees might include representatives from the local DET team, Compliance team, Foreign National Offender Senior Caseworker, National Removal Command Senior Caseworker, Border Force Caseworker, contracted supplier staff and Healthcare staff. The list is not exhaustive and any team that can positively contribute to these meetings are welcome to attend, for example representatives from the Mental Health Team in IRCs where there are severe mental health concerns … 63. In cases where the detained individual requires support and/or accommodation from the Local Authority, the case owner and, where allocated, the non-detained casework team, must arrange a Local Authority needs assessment prior to release… The contracted supplier or local DET team should assist the caseworker with signposting for local services wherever possible. 64. In the case of release to the community, the IRC Healthcare provider will inform the relevant Healthcare provider in the community (where known) to ensure continuity of care, and records, including any onward care plan, will be forwarded as appropriate on release. A detained individual should also be provided with a copy of their medical record and any onward care plan, on release.***

DSO 08/2016 §63 is matched – in the case of a release from a prison – by Prison Service Instruction PSI 03/2016 §8.1:

> ***If a prisoner is in receipt of care and support, or may require care and support on transfer or discharge, prisons must provide timely notice to local authorities, and to care and support service providers when a decision is made to transfer a prisoner to another establishment and must advise local authorities of planned discharge dates…***

7. If you are being released from an IRC into Home Office accommodation, your Safe-Release is being planned and so is your accommodation placement. On Day 4 (6.9.24) the SSHD provided a witness statement ("Kingham 3") exhibiting a Standing Operating Procedure on Vulnerable Adult Release (the "VARSOP"). Drafted to support DSO 08/2016, the VARSOP describes a "collective responsibility", shared by "caseworking teams", "to ensure the safe release of any vulnerable adult from immigration detention", with contingency plans giving consideration to sourcing accommodation for individuals with additional mobility needs, explaining why a release from detention may become complex, including physical health conditions or disabilities, mental health issues, social care and self-care issues. The VARSOP includes this:

> ***[1] A multi-disciplinary meeting must be held to resolve any complex issues identified with the release of a vulnerable adult (adult at risk) and to mitigate any risks and delays associated with such a release … [2] When the individual being released requires support and/or accommodation from Local Authorities, [the local Detention Engagement Team] will, where possible, support and work with the caseowner, who is the lead, and the non-detained casework team in arranging a Local Authority needs assessment prior to release … In the case of release, the IRC healthcare provider will inform the relevant healthcare provider in the community to ensure continuity of***

> ***care. [3] Referral to National Asylum Allocation Unit (NAAU) routing team. When referring an individual regarded as vulnerable to NAAU for accommodation, the caseowner's referral email must clearly set out any vulnerabilities identified and when any medical assessments have been made, it must include the outcome(s) of these. The caseowner should also include the safeguarding referral form along with their email… Medical information must be supplied to NAAU to ensure placement of the individual to meet their needs, including if the individual is taking medication and also if the individual has had a care package in the past.***

Recognised Sources for Identifying Vulnerabilities

8. The VARSOP lists "routes to identifying vulnerabilities" including detention reviews; AAR levels; ATLAS physical and mental health alerts; representations from legal representatives; and medical information including medical reports. Along similar lines, Jonathan Kingham – the Assistant Director of the Asylum Support Litigation Team at the Home Office – told the Court this in his first witness statement "Kingham 1" (15.3.24):

> ***[T]here are a number of ways in which the FNORCAT caseworker may be made aware of special requirements or vulnerabilities in relation to an FNO. [1] The first is that an FNO may themselves submit medical representations with the application itself (on the Form 409 or ASF1) which relate to their mental or physical health. These representations are referred to the independent medical assessor so that he can look through the information and provide advice on whether or not there are specific accommodation requirements. [2] Another possibility is that the individual's medical history may be included in detention reviews, such that the caseworker will become aware of the same. [3] Thirdly, in some cases the police will inform the team of specific accommodation requirements. [4] Finally, caseworkers will also consider the individual's GCID or Atlas notes, which can include information from a variety of sources and will often contain information about an individual's mental or physical health, if there are concerns about the same.***

ATLAS is an immigration case management system. GCID is the General Cases Information Database, a database of notes made by Home Office caseworkers.

Asylum Support Accommodation

9. This is the second relevant way in which – as a person subject of immigration control – you can be in accommodation for which the Home Office is responsible. Asylum support is provision for asylum-seekers (pursuant to s.95 of the Immigration and Asylum Act 1999) and failed asylum-seekers (pursuant to s.4(2) of the 1999 Act). As well as accommodation, asylum support includes "subsistence" payments pursuant to these statutory powers. There is an implied statutory duty to provide asylum support accommodation within a reasonable period of time: see R (DMA) v SSHD [2020] EWHC 3416 (Admin) [2021] 1 WLR 2374 at §178. An application for asylum support is made on a form called ASF1, to which Kingham 1 referred (§8 above at [1]). Asylum support accommodation is arranged with providers who have AASCs (asylum accommodation and support contracts) with the Home Office. AASCs contain detailed provisions about the nature and adequacy of accommodation and the responsibilities of providers, including making appropriate referrals in relevant circumstances to appropriate public authorities. There is "initial" accommodation and "dispersal" accommodation. The allocation of the accommodation in the individual case is handled by a Home Office caseworker who issues ITPs (instructions to providers). There is published Home Office policy guidance: the Allocation of Asylum Accommodation Policy (27.3.24) addresses suitability and preferences; the Healthcare Needs and Pregnancy Dispersal Policy (1.2.16) is about asylum support accommodation for those with health care needs or who

are pregnant or who are new mothers; Asylum Seekers with Care Needs (3.8.18) is about asylum support accommodation for those with a disability or who have care and support needs; Asylum Support, Section 4 Policy and Process (28.6.22) is about s.4(2) cases.

Asylum Support Accommodation and FNOs

10. An FNO can – provided they are an asylum-seeker (s.95) or a failed asylum-seeker (s.4(2)) – be allocated asylum support accommodation. The Home Office caseworkers who handle FNO cases are from a special team called FNORC (the Foreign National Offenders Returns Command). The allocation of suitable asylum support accommodation is handled by the FNORC Accommodation Team or FNORCAT, which I will call "the CAT". This is "the FNORCAT caseworker" described in Kingham 1 (§8 above). The Safe-Release of a FNO from an IRC is handled by a caseworker within the FNORC "Detained Team", which I will call "the CDT". The CAT or CDT caseworker is also known as the caseowner.

FNOs and Public Protection Needs

11. An FNO being released from an IRC and allocated Home Office accommodation may have needs which require protection. But so may the public. The criminal justice context is important. There may be ongoing licence conditions, ongoing supervision by a probation officer, conditions or registrations. There are police public protection units (PPUs) with public protection officers (PPOs). Public protection needs may be reflected in the terms of an ITP which the CAT caseworker issues. This is why Kingham 1 refers to "the police" informing the CAT of specific accommodation requirements (§8 above at [3]).

Statutory-Destitution

12. The 1999 Act s.95(3) describes the situation where an individual does not have "adequate accommodation or any means of obtaining it" and/or "cannot meet" their "other essential living needs". This concept is important in the asylum support system. I will call it "Statutory-Destitution" and will distinguish it from what I will call "Limbuela-Suffering" (§14 below). These are shorthand labels. For asylum support, Statutory-Destitution operates as a sufficient eligibility precondition for an asylum-seeker (by 1999 Act s.95(1) read with SI 2005/7 reg.5) and as a necessary eligibility precondition for a failed asylum-seeker (by SI 2005/930 reg.3).

Legally Adequate Asylum Support: Three Legal Standards

13. There are three recognised legal standards regarding the adequacy of asylum support accommodation (and subsistence). I am putting to one side any further standard arising from Adherence to policy guidance and the EA (§§32, 23 below). The first standard is sufficiency to avoid a breach of the individual's Convention rights. The fact that accommodation is necessary to avoid a breach of Convention rights is also an eligibility criterion for s.4(2) failed asylum-seekers (see SI 2005/930 reg.3(2)(e)). Convention rights include Article 3, which brings in the duty to protect against Limbuela-Suffering: §14 below. The second standard is sufficiency to eliminate Statutory-Destitution having regard to an individual's needs. For an asylum-seeker, this is explicit: asylum support is described as "providing accommodation … adequate for the needs of the supported person" (see s.96(1)(a)), taking account of their "individual circumstances" (see SI

2000/704 reg.13), and having regard to the particular needs of vulnerable persons including those with disabilities (see SI 2005/7 reg.4). These statutory provisions are drafted so as to recognise an evaluative judgment by the SSHD. But evaluative judgments must be exercised reasonably. That produces a legal obligation on the SSHD to provide accommodation (and subsistence) which has been reasonably assessed as adequate in eliminating Statutory-Destitution having regard to individual needs. The third standard is sufficiency to ensure a standard of living objectively adequate for the health of the individual and capable of ensuring their subsistence, taking account of the special situation of vulnerable persons such as disabled people. This is an EU-derived duty. It involves an objective standard which the judicial review court has a responsibility to delineate and enforce. When put alongside the second legal standard it therefore produces a "twin-track" test: see R (SA) v SSHD [2023] EWHC 1787 (Admin) at §8. Here is an illustration showing all three of these standards in action. In R (NB) v SSHD [2021] EWHC 1489 (Admin) [2021] 4 WLR 92, Linden J considered asylum support accommodation for vulnerable asylum-seekers in former military barracks. He found the accommodation breached the second and third standards, but not the first. The accommodation was not reasonably assessed as adequate and it did not meet the EU-derived objective standard (§171). It did not, however, breach Convention rights, whether by reference to the Article 2 right to life (§245), Article 3 inhuman or degrading treatment (§268) or Article 8 respect for private and family life (§278).

Limbuela-Suffering

14. Article 3 requires that asylum support accommodation and subsistence be provided where there is "an imminent prospect of serious suffering through denial of food, shelter or the most basic necessities": DMA at §21. This is protection against Limbuela-Suffering, derived from R (Limbuela) v SSHD [2005] UKHL 66 [2006] 1 AC 396 (§27 below), as an application of the Article 3 Severity-Threshold (§26 below). Limbuela-Suffering is more severe than Statutory-Destitution: see R (DXK) v SSHD [2024] EWHC 579 (Admin) [2024] 4 WLR 46 at §72.

Asylum Support Planning (including Potential Care and Support Needs)

15. I have shown that potential care and support needs feature in policy guidance on Safe-Release: DSO 08/2016 and the VARSOP (§§6, 7 above). I have also shown that the VARSOP refers to NAAU and accommodation (§7 above at [3]). Potential care and support needs also feature in the policy guidance Asylum Seekers with Care Needs, in the chapter on "Assessing and Meeting Care Needs", which includes this:

> ***[1] Referrals to local authorities. Officers and relevant commercial partners should refer for needs assessment any adult customer who appears to have a care need outlined in the following three scenarios. [i] Non-urgent needs. Where a newly arrived asylum seeker has potential care needs that do not appear to be urgent, or otherwise to require assessment prior to dispersal, assessment of those needs may await the person being dispersed. A person dispersed to a local authority's area should be considered ordinarily resident in that area, and any needs or carer's assessment will be requested from that local authority. [ii] Urgent needs. Where a person presents with urgent needs that may require any of the following: [a] residential care [b] specific accommodation [c] day to day assistance with basic personal care, a needs assessment should be requested from the local authority in whose area the adult is present at the earliest practicable point in the process. For example, where a person claiming asylum at a port of entry presents with urgent care needs, the local authority in whose area the port is situated should be requested to do an urgent assessment… [iii] Urgent needs where the person has already been accommodated by Home Office. Where, exceptionally, a person has already been accommodated***

> ***by the Home Office before an urgent care need is revealed, and therefore no request for assessment has been made, an urgent assessment must be requested from the authority in whose area the accommodation is situated. Such an assessment should be requested by the first responder (for instance the accommodation provider, the caseworker or other person, using specialist safeguarding staff where appropriate) when made aware of the care need. Where a local authority is requested to do a needs assessment either because the asylum seeker is ordinarily resident in its area, or is present in its area but of no settled residence, that local authority is obliged to do so in accordance with the terms of the Care Act 2014. [iv] Access to Initial Accommodation (IA). Those with an urgent care need, as opposed to a purely medical need (that can be addressed by the IA medical team or National Health Service as appropriate), should not be admitted into IA without a needs assessment having been conducted by a local authority… [2] Asylum support assessment… When considering asylum support requirements for someone who has or may have a care need, which has not already been referred to a local authority for assessment, the asylum seeker should be referred to the relevant local authority for a needs assessment.***

HOBA

16. This is the third relevant way – as a person subject to immigration control – that you can be in accommodation for which the Home Office is responsible. Immigration bail, pursuant to 2016 Act Sch 10 §1, is a single category of conditional liberty. It subsumed three categories, previously found in s.4(1) of the 1999 Act, one of which was called temporary admission. It applies to asylum-seekers, failed asylum-seekers and FNOs, including where they are being released from an IRC. This means asylum support accommodation is itself a form of "bail" accommodation. HOBA is governed by Sch 10 §9 to the 2016 Act, headed "powers of the Secretary of State to enable person to meet bail conditions". Sch 10 §9(1)-(3) are as follows:

> ***9.(1) Sub-paragraph (2) applies where – (a) a person is on immigration bail subject to a condition requiring the person to reside at an address specified in the condition, and (b) the person would not be able to support himself or herself at the address unless the power in sub-paragraph (2) were exercised. (2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of that person at that address. (3) But the power in sub-paragraph (2) applies only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power.***

HOBA pursuant to Sch 10 §9(2) is accommodation for those on immigration bail, in relevant need of accommodation and not accommodated through asylum support. HOBA is provision for unaffordable state-required action: the state is requiring something (living at a specified bail address) which the individual cannot afford (Sch 10 §9(1)(b)). The same idea applies to costs of travel "for the purpose of complying with a bail condition" (Sch 10 §9(4)-(5)) and asylum support covering asylum claim costs and bail hearing attendance costs (1999 Act s.96(1)(c)-(e)). HOBA decision-making must be reasonable and fair: R (Sathanatham) v SSHD [2016] EWHC [2016] 4 WLR 128 at §91. Like asylum support, HOBA is accompanied by "subsistence" payments for essential living needs: Mr Holborn says the derivation is incidental powers; Ms Harrison KC says it is implied in Sch 10 §9 itself; but nothing turns on who is right. An application for HOBA is made on form BAIL 409 (described in Kingham 1 as Form 409). HOBA is arranged with the same providers as asylum support, under the same AASCs, by the same caseworkers issuing the same sort of ITPs. As with asylum support, if you are an FNO, the CAT caseworker handles accommodation-allocation and the CDT caseworker handles Safe-Release.

17. Eligibility for HOBA is addressed in the policy guidance Immigration Bail Interim Guidance. This sets out the three types of cases where there are the statutorily-required exceptional circumstances (Sch 10 §9(2)) which "normally" justify providing HOBA. These are: (i) SIAC Cases; (ii) Harm Cases; and (iii) Article 3 Cases. SIAC cases are not relevant for present purposes. Harm Cases are addressing public protection needs (§11 above). Article 3 Cases are preventing Limbuela-Suffering (§14 above). Here is how the Immigration Bail Interim Guidance describes Harm Cases and Article 3 Cases:

> ***Harm Cases. Cases involving: [a] people – including Foreign National Offenders (FNOs) – who are granted bail and who are currently assessed by Her Majesty's Prison and Probation Service (HMPPS) as being at a high or very high risk of causing serious harm to the public [b] FNOs at high risk of harmful reoffending against an individual – for example, offences of domestic burglary, robbery, sexual assaults and violence – who are assessed using the Offender Group Reconviction Scale (OGRS) with a minimum score of 70% [in either case] where that person has nowhere suitable to live in accordance with their probation licence and/or multi-agency public protection arrangements (MAPPA), for a limited period, or otherwise at the discretion of the SSHD in the interest of public protection.***
>
> ***Article 3 Cases. It may be appropriate to consider using the power to provide accommodation under [Sch 10] paragraph 9 to accommodate individuals who are not SIAC or harm cases, but only usually where both of the following circumstances apply: [a] they do not have adequate accommodation or the means of obtaining it [b] the provision of accommodation is necessary in order to avoid a breach of their human rights (usually rights under Article 3 ECHR) … 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, this is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR (see: Limbuela).***

The Immigration Bail Interim Guidance addresses the provision of accommodation and types of bail accommodation (§71 below). It also identifies this as one of the categories of person for whose accommodation other legislation makes provision:

> ***[M]igrants accommodated under the provisions of the Care Act 2014 … [G]enerally, they will have been accommodated because they have a serious disability, exceptionally, however, accommodation may be arranged temporarily under the power in paragraph 9 whilst the case is referred to a local authority and pending a decision by that local authority as to whether the duty to provide accommodation under the Care Act 2014 (or equivalent) applies.***

Legally Adequate HOBA: Three Legal Standards

18. It is common ground that the same three legal standards of adequacy apply to HOBA as apply to asylum support accommodation (§13 above). The first standard is straightforwardly required for HOBA by the HRA: see R (Humnyntskyi) v SSHD [2020] EWHC 1912 (Admin) [2021] 1 WLR 320 at §§14-15. Mr Holborn derives the applicability to HOBA of the second and third standards from the public law duty of Adherence (§32 below) in light of the SSHD's Stated Equivalence Policy (§19 below). Ms Harrison KC derives them from the correct interpretation of the 2016 Act Sch 10 §9, or alternatively from the public law duty to act reasonably. I think the SSHD is right to accept that all three standards apply. As to the derivation, I think it suffices that it would be unreasonable – being beyond the range of reasonable responses – for the SSHD to fail to meet those standards, given the Stated Equivalence Policy.

The Stated Equivalence Policy

19. The SSHD's clearly stated policy position involves a commitment to the same approach in HOBA cases as is applied to asylum support accommodation, so far as concerns Safe-Release planning and accommodation-allocation planning, including so far as concerns potential care and support needs. That is what the Court was repeatedly told. For example, the SSHD's pleaded defence (28.3.24) said that:

> ***[The] system for the provision of Schedule 10 accommodation is, as a matter of general practice, equivalent to that in place for the provision of support to current and former asylum-seekers under the Immigration and Asylum Act 1999.***
>
> ***it is accepted that SSHD's caseworkers [in HOBA cases] should also make … referrals [for needs assessments] where a service user appears to have a care need – as already provided for in Asylum Seekers with Care Needs (the Care Needs policy) for those in receipt of support under the 1999 Act …***

Kingham 1 told the Court that:

> ***In practice, whilst there are … distinct legal regimes for accommodation and/or support to be granted to individuals by the [SSHD], there is little difference between the manner in which support under either Schedule 10 of under the 1999 Act is provided.***

HOBA Planning (including Potential Care and Support Needs)

20. I have described how potential care and support needs feature in policy guidance on Safe-Release planning and asylum support planning: DSO 08/2016; the VARSOP; and Asylum Seekers with Care Needs (§§6-7, 15 above). I have described the Stated Equivalence Policy (§19 above). Something conspicuously absent in the present case has been any policy guidance or other documented arrangement on how potential care and support feature in HOBA planning. This gap is a first striking feature of the case.

Local Authority Care and Support Duties

21. Care and support needs are governed by the Care Act 2014, together with associated regulations and the Care and Support Statutory Guidance issued pursuant to s.78 of the 2014 Act. I discuss the 2014 Act in more detail in BLZ No.2 at §§5-6, 18-21. The meeting of eligible care and support needs is the statutory responsibility of a local authority in whose area an individual is either ordinarily resident or is present but of no settled residence (2014 Act s.18). Care and support is a broad concept to reflect individual wellbeing and autonomy. Local authorities have duties to conduct needs assessments (s.9), make eligibility decisions (s.13), and meet needs (s.18) through care and support plans (s.24). Whether there is a local authority duty to conduct a needs assessment depends on a threshold question (s.9(1)): whether it appears to the local authority that the individual may have needs for care and support. Care and support duties are distinct from local authority housing duties. They apply, for an individual subject to immigration control and excluded from benefits, provided that the care and support needs do not arise "solely" from Statutory-Destitution or its effects (2014 Act s.21). Provision to meet care and support needs may be "care and support at home" (s.8(1)(b)). Or it may be "accommodation in a care home or in premises of some other type" (s.8(1)(a)). BLZ No.2 at §§25, 41-45 addresses when care and support needs require 2014 Act accommodation provided by a local authority. Here is an illustration, which shows how local authority care and support duties can arise where an individual is in Home Office asylum support

accommodation. In R (TMX) v Croydon LBC [2024] EWHC 129 (Admin), DHCJ Alan Bates decided that, by failing to step in to provide suitable accommodation for an asylum-seeker with accommodation-related care and support needs, a local authority had breached its 2014 Act duties (§§92-93), as well as violating Article 3 (§158) and Article 8 rights (§167). In that case the claimant, his wife and two children had been allocated asylum support accommodation in a hostel from June 2022 (see §13). The local authority had provided personal care visits as 'homecare' from December 2022 (see §33). The local authority's breach of its 2014 Act duties in not providing suitable accommodation arose from November 2022 onwards (§§32, 93); and it was found to have violated the claimant's Article 3 and Article 8 rights from April 2023 onwards (see §§144, 168-169). As to the Article 3 violation, see §26 below.

Why SSHD Care and Support Liaison and Referrals Matter

22. In the context of Safe-Release planning, asylum support planning and HOBA planning, it matters that there should be appropriate liaison by Home Office caseworkers with local authorities, and referrals to local authorities, in relation to potential care and support needs. That is for two reasons. First, it ensures that suitable local authority "care and support at home" (s.8(1)(b)) is promptly provided, within the asylum support accommodation or HOBA which the Home Office is providing. Second, it ensures that local authority "accommodation in a care home or in premises of some other type" (s.8(1)(a)) is promptly provided, instead of asylum support accommodation or HOBA which the Home Office would be providing, so that the individual is "accommodated under the provisions of the Care Act 2014", as described in the Immigration Bail Interim Guidance (§17 above), and as should have happened from November 2022 in TMX (§21 above).

Equality Duties

23. Equality duties are imposed by the EA on all public authorities, including the SSHD and local authorities. Three equality duties are relied on in the present claim against the SSHD. Each relates to "disability", which means a physical or mental impairment which has a substantial and long-term adverse effect on the individual's ability to carry out normal day to day activities (EA s.6). First, the duty to avoid "unjustified unfavourable treatment". It is unlawful discrimination for a public authority, except as a proportionate means of achieving a legitimate aim, to treat a disabled person unfavourably because of something arising in consequence of their disability, unless the disability was unknown and could not be expected to be known: see EA s.15. Second, the "reasonable adjustments" duty. It is unlawful discrimination for a public authority to fail to take reasonable steps to avoid a substantial disadvantage at which a disabled person (in comparison with persons who are not disabled) is put by a provision, criterion or practice: see EA ss.20(3), 21, 29(7). Third, the PSED (public sector equality duty). It is unlawful for a public authority to fail, in the exercise of its functions, to have due regard to the need (among other things) to eliminate discrimination and advance equality of opportunity between persons who share the protected characteristic of disability and persons who do not: see EA s.149. This includes having due regard to the need to remove or minimise disadvantages suffered by persons who share the protected characteristic of disability that are connected to that characteristic and take steps (including, in particular, steps to take account of disabled persons' disabilities) to meet the needs of persons who share that relevant protected characteristic that are different from the needs of persons who do not.

24. An illustration in which all three of these duties featured is DMA. That was a case about asylum support accommodation for 5 failed asylum-seekers (1999 Act s.4). One of the claimants was AA, whose needs related to mobility, medical dietary needs, and access to a clinic providing kidney dialysis (§258). AA's disability (§38) needed self-catering accommodation in London on the ground floor or with a lift (§282). The Home Office had taken 10 months to resolve the situation (§§39-47), a period of huge delay and ineffectiveness (§264). Robin Knowles J described the first EA duty (the unjustified unfavourable treatment duty pursuant to s.15) and found unfavourable treatment: see §§249 and 267. He described the second EA duty (the reasonable adjustments duty pursuant to ss.20(3), 21 and 29(7)) and found a failure to make reasonable adjustments by the lack of monitoring and the lack of an effective system for prioritising claims: see §§251-253 and 290-291. The "practice" was providing s.4 asylum support accommodation to failed asylum-seekers (§273). He then described the third EA duty (the PSED pursuant to s.149) and found a breach by reason of the failure to monitor the provision of asylum support accommodation to individuals who have a disability: see §§254 and 325.

HRA Duties

25. Duties are imposed on all public authorities by the HRA, by which public authorities are statutorily prohibited from violating Convention rights (HRA s.6) and the legislation by which they act is interpreted compatibly with Convention rights (HRA s.3). These are statutory human rights duties (common law rights have not featured in the present case). To understand how these HRA duties work, it is necessary to identify a number of components: see §§26-31 below.

The Article 3 Severity-Threshold

26. Article 3 (protection from inhuman and degrading treatment) involves a minimum level of severity, which I will call the "Severity-Threshold". Whether it is met depends on all relevant circumstances of the case, such as the nature, context and manner of the treatment, its duration, its physical or mental effects, and the sex, age and state of health of the individual: see Humnyntskyi at §202. It may be met by actual bodily injury or intense physical or mental suffering; or treatment which humiliates or debases an individual or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance; or treatment exacerbating or risking exacerbating the suffering which flows from naturally occurring physical or mental illness: see Limbuela at §54. It is what informed Limbuela-Suffering (§14 above): see Limbuela at §§7, 59. Here are three illustrations relating to the Article 3 Severity-Threshold. First, in Humnyntskyi the denial of HOBA violated Article 3 where it left the claimant street homeless for 10 months, unable to wash clothes and totally reliant on food handouts (see §§204-205, 209). Secondly, in NB the conditions in the former military barracks asylum support accommodation did not violate Article 3. Thirdly, in TMX the local authority failure to step in with 2014 Act accommodation violated Article 3, 10 months into a 17-month period (§§142, 144), in which an asylum-seeker with the onset of multiple sclerosis was in a small hotel room, which severely affected practically all of his basic daily activities, was too small for his wheelchair, leaving him unable to go outdoors, get out of bed or walk short, use the toilet or shower or go into the bathroom to wash his face or brush his teeth, with the shame and indignity of having to use the toilet and receive intimate personal care, all in a bedroom shared with his teenage

daughter (see §§9-14, 123-125). These circumstances also constituted a violation of Article 8 (see TMX §167).

Inflicted and Unprotected Article 3 Harm

27. A public authority acts incompatibly with Article 3 if it inflicts inhuman or degrading "treatment" on a person. But Article 3 has important protective dimensions too. Sometimes, the Courts distinguish between "negative" obligations (not to inflict harm) and "positive" obligations (to protect against harm). The Home Office denial of HOBA in Humnyntskyi and in the local authority denial of 2014 Act accommodation from November 2022 in TMX could be seen as examples of state-inflicted Article 3 harm; or they could be seen as failures to protect. With Article 2 (the right to life) and Article 3 (torture, inhuman and degrading treatment and punishment), it is important not to adopt a "wait and see" approach. We can trace this back to Limbuela, a case which decided three things. First, that the effects of a state measure excluding an asylum seeker from asylum support was "treatment" for Article 3 purposes (see §§6, 56). Second, that the relevant Severity-Threshold was serious suffering through denial of food, shelter or the most basic necessities (see §§7, 59): Limbuela-Suffering. Third, that the Article 3 obligation did not operate on a "wait and see" basis. That was because "avoiding a breach of a person's Convention rights" (in s.55(5)(a) of the Nationality Immigration and Asylum Act 2002) reflected an Article 3 duty to protect the asylum-seeker at the point of the "imminent prospect" of that serious suffering (see §§8, 62). Articles 2 and 3 entail obligations to step in preventively and protectively.

Unlawful Article 2/3 Exposure to Risk: The Munjaz Principle

28. The cases of Munjaz and W – discussed in A and BF – concern a distinct species of HRA-based unlawfulness of a policy, instruction or practice because it exposes those affected to an unlawful risk to life (Article 2) or an unlawful risk of torture or inhuman or degrading treatment or punishment (Article 3).

    (1) R (Munjaz) v Mersey Care NHS Trust [2005] UKHL 58 [2006] 2 AC 148 concerned the legality of Ashworth hospital's bespoke policy on periodic reviews of detained psychiatric patients held in seclusion. A key point was that, in certain circumstances, seclusion could constitute state-inflicted Article 3 harm. The context can be seen from the Court of Appeal at [2003] EWCA Civ 1036 [2004] QB 395 at §§53-60 and the argument in the House of Lords in [2006] 2 AC 148 at 161A-C and 166B-G. In asking whether the Ashworth policy failed to comply with Convention rights (§1), Lord Bingham said "the Trust must not adopt a policy which exposes patients to a significant risk or treatment prohibited by Article 3" (§29). Lord Hope – who had identified the Operational Duty (§78) – asked whether the policy "gives rise to a significant risk of ill-treatment of the kind that falls within the scope of" Article 3 (§80). The claim failed because the policy did not expose patients to, or give rise to, a significant risk of this nature (see §§29, 81-82).

    (2) The Supreme Court in R (A) v SSHD [2021] UKSC 37 [2021] 1 WLR 3931 and in R (BF (Eritrea)) v SSHD [2021] UKSC 38 [2021] 1 WLR 3967 saw Munjaz as "concerned with a distinct obligation which arises pursuant to Article 3 of the ECHR to protect an individual from being exposed to a real risk of treatment falling within the scope of that provision" (BF §72), as "a rule of law specific to Article 3" to "protect individuals against the risk of ill-treatment contrary to that provision,

even at the hands of others" (A §79, citing Soering v UK (1989) 11 EHRR 439). The Soering principle, which governs Article 2/3 protection in deportation and extradition cases, recognises that it can violate Article 2/3 to send a deportee or extraditee to a state where they face a real risk of torture or inhuman and degrading treatment. That is another context where there can be no "wait and see", because the individual would be being handed over to a foreign state's authorities.

(3) In R (W) v SSHD [2020] EWHC 1299 (Admin) [2020] 1 WLR 4420 the Divisional Court considered the lawfulness policy guidance in the context of lifting "no-recourse to public funds" (NRPF) conditions. That policy guidance was held to be unlawful because it failed to recognise the Article 3 duty to protect against Limbuela-Suffering. The unlawfulness in W was seen in A as having had two aspects. One aspect was unlawfulness under "principles of domestic law", as a complete set of instructions requiring Home Office officials to maintain the unlawful retention of NPRF conditions (see A at §74). The other, relevant for present purposes, involved "the legal obligations which arise under Article 3" as seen in Munjaz (see A at §74). All of which means that a policy or arrangement may be impugned as unlawful because it breaches an Article 3 obligation to protect. Munjaz and W are about Article 3 and effective protection. They link to Limbuela, with its aversion to a "wait and see" approach to street homelessness. This could all fit with ASY but, instead, that was analysed as a Systems Duty case (§29 below).

The Article 2/3 "Systems Duty"

29. It is unlawful under the HRA for a relevant public authority to fail to put in place appropriate legal and administrative "systems" for protecting lives (Article 2) and safeguarding against inhuman or degrading treatment (Article 3): see ASY v Home Office [2024] EWCA Civ 373 at §86. This is called the Systems Duty. It means having in place effective criminal law and effective arrangements for its enforcement. But at a so-called "lower-level", it extends to a duty to have administrative or regulatory arrangements, in particular where a public authority undertakes, organises or authorises dangerous activities, or has a sufficient control or responsibility. Where it arises, such a lower-level duty is to take proportionate administrative measures reducing risk to a reasonable minimum: see R (MG) v SSHD [2022] EWHC 1847 (Admin) [2023] 1 WLR 284 at §6; R (CSM) v SSHD [2021] EWHC 2175 (Admin) [2021] 4 WLR 110 at §§71-73; and R (SAG) v SSHD [2024] EWHC 2984 (Admin) at §§96, 102. MG was a case about the Article 2/3 duty of state investigation, after a knife attack by a resident in asylum support accommodation. There, Johnson J held that that context and those circumstances did not trigger any duty of investigation, because there was no arguable Systems Duty owed to non-vulnerable individuals in asylum accommodation (§§56, 59). CSM was a case about a IRC detainee with HIV, whose antiretroviral meds were interrupted, meaning there was a risk of severe infections and death and developing resistance to the meds (§§93-96). There, Bourne J found a breach of the Article 3 Systems Duty (§99). ASY was the Article 3 sequel to W (§28(3) above). It was about the lack of promptness in the operation of arrangements governed by immigration rules and policy guidance for lifting NRPF conditions (§§25-27, 94 and 97). Informed by the Limbuela Article 3 duty, the Court of Appeal in ASY identified a lower-level Article 3 Systems Duty (§§86-87, 95) to adopt administrative measures to prevent individuals from falling into Limbuela-Suffering. ASY has its own sequel in SAG, which found a breach by the SSHD of the Systems Duty by failing to have a suitable system to reduce to a reasonable

minimum the risk of inhuman and degrading treatment through delay in making NRPF decisions.

The Article 2/3 "Operational Duty"

30. It is unlawful under the HRA for a relevant public authority to fail to use its powers to take reasonably-expected measures to protect an individual from a real and immediate risk of death or inhuman or degrading treatment about which the public authority knows or ought to know: see MG §7; ASY §81. This is called the Operational Duty. Here are three illustrations. In Rabone v Pennine Care NHS Trust [2012] UKSC 2 [2012] 2 AC 72, the Supreme Court decided – in the context of a voluntary psychiatric patient who committed suicide on a home visit – that the NHS Trust had owed and breached the Article 2 Operational Duty. In CSM the interruption in the antiretrovirals constituted a breach of the Article 3 Operational Duty (§117). In NB the fire risk at the military barracks breached two of the standards as to legally adequate asylum support accommodation (§170), but it did not breach the Article 2 Operational Duty (§245).

Article 8

31. Arrangements for public authority accommodation can violate Article 8, as a disproportionate interference with private or family life. An illustration of such a violation was the conduct of the local authority in TMX: see §21 above. That case explains (at §§148, 156, 159) that a private life violation would need a culpable interference to a high degree with the individual's physical and psychological integrity, with a particular emphasis on privacy; while family life focuses on whether members of a family are prevented from sharing family life together. Article 8 can include notions of "quality of life": Pretty v UK (2002) 35 EHRR 1 §65. Article 8 protects the right to physical and psychological integrity which may be infringed if the claimant is unable, for example, to access a toilet or washing facilities at home for a prolonged period or if their private and family life is grossly undermined by having to look after a family member because they do not have such access: see R (McDonagh) v Enfield LBC [2018] EWHC 1287 (Admin) [2018] HLR 43 at §68. An earlier illustration is R (Bernard) v Enfield LBC [2002] EWHC 2282 [2003] HRLR 4. The claimant, with her husband and 6 children, was in local authority accommodation assessed by social services as unsuitable for her care and assistance needs, triggering a statutory duty to provide suitably adapted accommodation under s.21 of the National Assistance Act 1948 (§§10, 16). The claimant could not use her wheelchair in the property and was confined to the family's living room (§6). The circumstances were (§20): that she was doubly incontinent, frequently defecated or urinated before her husband could get her to the toilet; that the persistent need to clean carpets, clothes and bedclothes, with twice-daily visits to the laundrette, had left the family impoverished and unable to meet the rent; that her role in bringing up the children was greatly limited, because she could not access the upper part of the house at all and struggled to leave the living room, a room in which she had no privacy. The Article 3 Severity-Threshold was not crossed (§28), but there was an Article 8 violation in the local authority's 20 month failure to act on its own assessments have "showed a singular lack of respect for the claimants' private and family life", having "condemned the claimants to living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Art 8" (§34).

The Public Law "Adherence" Duty

32. A public authority decision-maker must follow relevant policy guidance unless there is good reason for not doing so: see R (Lumba) v SSHD [2011] UKSC 12 [2012] 1 AC 245 at §26. I am calling this public law duty "Adherence", as a shorthand label. An illustration of claim invoking the Adherence duty in the context of asylum support accommodation is DXK. In that case, a failed asylum-seeker provided with asylum support accommodation claimed that she should have been accommodated, not in "initial" accommodation (a hotel), but in urgent "dispersal" accommodation because of her needs as a 7-month old pregnant woman. Her Adherence-breach claim (see §36) relied on the terms of the Healthcare Needs and Pregnancy Dispersal Policy (§§36-38, 42). The Court recorded that "caseworkers must have regard to the guidance and must follow it unless good reasons are given not to do so" (§36). This part of the claim was discontinued as academic, following the claimant's transfer to dispersal accommodation (§3). The Adherence duty is the basis for the SSHD's acceptance of the three standards of legal adequacy of HOBA: see §18 above. One way to look at the Adherence duty is that policy guidance may give rise to a legitimate expectation that the public authority will exercise its power to confer a particular substantive benefit, in which case the judicial review court will give effect to the legitimate expectation unless the authority can show that departure from the policy guidance is justified as a proportionate way of promoting some countervailing public interest: see A at §3.

Duties to have Policy Guidance

33. A public authority may be under a duty to issue policy guidance. The duty may be a direct or indirect statutory duty or it may arise as a freestanding public law obligation. An example of a direct statutory duty is the Care and Support Statutory Guidance issued pursuant to s.78 of the 2014 Act. HRA statutory duties to act compatibly with Convention rights may indirectly mean that – absent a set of rules – policy guidance is needed for reasons of 'prescription': to ensure that interferences with Convention rights are "prescribed by" law, or "lawful", or "in accordance with" the law (see A §53; BF at §§52-53; and R (Northumbrian Water Ltd) v Water Services Regulation Authority [2024] EWCA Civ 842 at §61). In BF it was contemplated that a duty to have policy guidance may arise from s.55 of the Borders Citizenship and Immigration Act 2009 (see BF at §59). Policy guidance may – absent a set of rules – be needed to discharge the Systems Duty (§29 above), or the EA reasonable adjustments duty (§23 above). All of these would be statutory duties. Under some conditions, the holder of a discretionary power may be required both to formulate a policy and publish it: see A at §3. There may be an obligation to promulgate a policy to explain how a general statutory discretion might be exercised, though the same is not true of a explaining a clear statutory rule: see BF at §64. The rule of law may call for a transparent statement by the executive of the circumstances in which broad statutory criteria will be exercised: see Lumba at §34. There is no general common law duty to have policy guidance in every case where a statute creates a discretionary power: see A §53. In Northumbrian Water it was common ground in that case that public law reasonableness could give rise to a duty to have policy guidance (§57) and it was recognised that another possible source of a duty was whether its absence led to any unfairness (§67). Mr Holborn and Ms Harrison KC were agreed that what Northumbrian Water decided was (a) that no common law duty to have criteria in policy guidance arose in the context of a power to make exceptions regarding emergency interruptions in the

context of leviable charges and (b) that identifying a breach of such a duty would not in any event have been a basis for quashing the decision under challenge.

III. THE FACTUAL CONTEXT

The SSHD's Evidence: Policy Guidance

34. Asylum Seekers with Care Needs is policy guidance applicable to asylum support decision-making, addressing potential care and support needs, liaison and referrals to local authorities (see §15 above). Kingham 1 (15.3.24) told the Court that Asylum Seekers with Care Needs was policy guidance which would apply in the cases of those being given asylum support accommodation. That makes it directly applicable whenever – in the case of an FNO who is also an asylum-seeker or failed asylum-seeker – a CAT caseworker is dealing with Safe-Release or a CDT caseworker is dealing with asylum support accommodation. What about the case of an FNO who is neither an asylum-seeker nor a failed asylum-seeker, where the same CAT caseworker is dealing with Safe-Release or the same CDT caseworker is dealing with HOBA? There is a Stated Equivalence Policy (§19 above). Kingham 3 on Day 4 (6.9.24) told the Court, based on a "personal discussion" between Mr Kingham and the Executive Officer of the CAT "Litigation Team", that "they" consider that Asylum Seekers with Care Needs "applies to them and they would apply it to Schedule 10 claims, as they would for their s.95 1999 Act claims". There the evidence stood, including when the case reconvened and was adjourned part-heard after Day 5 (12.9.24). Then came "Salisbury 1" (30.9.24), a witness statement of Jackie Salisbury, the Acting Senior Executive Officer and Operations Manager for FNORC Decision Making Teams. Salisbury 1 told the Court that FNORC "did not consider" Asylum Seekers with Care Needs in HOBA cases, because the individuals concerned are not asylum-seekers. This means the Court was told, by different people at different times, that different emanations of FNORC have different understandings as to the applicability of Asylum Seekers with Care Needs. The SSHD adduced no evidence that CAT or CDT caseworkers apply Asylum Seekers with Care Needs or its substance in HOBA cases, or have been trained to do so.

35. DSO 08/2016 (§6 above) is policy guidance about CDT caseworkers ("the caseowner") dealing with Safe-Release from IRCs, addressing expedited multi-disciplinary meetings, potential care and support needs, and anticipatory local authority needs assessments. There was no mention of DSO 08/2016 in Kingham 1 (15.3.24); nor in Kingham 2 (8.8.24). Kingham 3 (6.9.24) told the Court it had "now come to my attention" that "the correct course of action" is for the CDT caseworker – within "Team 6" – to contact a local authority to arrange a needs assessment in line with DSO 08/2016, which Kingham 3 exhibited. Kingham 3 said it was correcting, as inaccurate, Mr Kingham's previous evidence that it was IRC Healthcare who "FNORC staff" regarded as being "responsible" for contacting local authorities. There the evidence stood, including at Day 5 (12.9.24). Then came Salisbury 1 (30.9.24). Ms Salisbury told the Court that CDT caseworkers "do not use" DSO 08/2016, because they regard it as being an instruction to staff "within" an IRC; that CDT caseworker training does not cover any discussion of DSO 08/2016, nor any aspect of Safe-Release of a vulnerable person or AAR (adult at risk). Ms Salisbury also told the Court that "Team 6" had been disbanded in March 2024, 6 months before Kingham 3. That means the Court has been told three different things about contacting local authorities. (i) It is left to IRC Healthcare. (ii) It is done by the CDT caseworker. (iii) It is left to IRC staff. The SSHD adduced no evidence that CAT or CDT caseworkers apply DSO 08/2016 or its substance in HOBA cases, or have been trained to do so.

36. VARSOP (§7 above) is internal policy guidance about DSO 08/2016, addressing multi-disciplinary meetings, potential care and support needs, and anticipatory local authority needs assessments; emphasising the responsibility of caseworkers to ensure the Safe-Release of any vulnerable adult, contingency plans giving consideration to sourcing accommodation for individuals with additional mobility needs, and a routing system for vulnerabilities to be notified to those dealing with asylum support accommodation; describing the importance of physical health conditions or disabilities, mental health issues, social care and self-care issues; listing routes to identifying vulnerabilities. There was no mention of the VARSOP in Kingham 1 (15.3.24) nor in Kingham 2 (8.8.24). The VARSOP was then disclosed by being exhibited to Kingham 3 for Day 4 (6.9.24). Kingham 3 told the Court that the VARSOP "has been in operation since around 2022" and "explains how" the CDT – within the "Detained safeguarding team" – is "meant to put DSO 08/2016 into action". There the evidence stood, including at Day 5 (12.9.24). Then came Salisbury 1 (30.9.24) which told the Court that FNORC Casework "were not aware of" the VARSOP; that they "only became aware of [it] as a result of" this litigation; that CDT caseworkers were not aware of the VARSOP; that the "Returns Enforcement and Detention" teams "have evidence of the VARSOP being shared with FNORC … managers on 6 January 2022"; but that Ms Salisbury and FNORC "do not have any record" of that sharing of the VARSOP having taken place. All of this was in the context of Salisbury 1 stating that DSO 08/2016 – which the VARSOP supports – is itself regarded as being only for staff "within" an IRC. That position was notwithstanding that: the stated purpose of the VARSOP is "to assist caseowners" in identifying required steps in problematic cases of releasing vulnerable individuals; and that the VARSOP refers to the "caseowner" throughout, including as being "the lead". That means the Court has been told different things by different people at different times about the VARSOP. The SSHD adduced no evidence that CAT or CDT caseworkers apply the VARSOP or its substance in HOBA cases, or have been trained to do so.

37. This evidential picture about policy guidance is a second striking feature of the case. There are three relevant policy guidance documents. They address ways in which Safe-Release and Home Office accommodation decision-making should be undertaken by caseworkers, addressing needs and vulnerabilities, considering potential care and support needs, with multi-disciplinary liaison and appropriate local authority referral. There is no evidence that CAT or CDT caseworkers apply any of these or their substance in HOBA cases. Nor that they have been trained to do so. Salisbury 1 tells the Court that CDT caseworkers are not "trained in arranging a Local Authority needs assessment in respect of a vulnerable individual"; that the only training about AARs is about "managing them in detention"; that CAT and CDT caseworkers are not given any "mechanism" for making a local authority referral, have no training "relevant to and key to making such referrals" and being untrained are "not aware of any potential expectation" as to local authority needs assessment. I was not reassured by something put forward as a "line from Arwyn", originally given to the Court orally by Mr Holborn (6.9.24) to supplement Kingham 3; and then later repeated within Salisbury 1 (30.9.24). Arwyn Williams is part of the CAT Litigation. I was told: "If it becomes apparent that there was a need for care and support, [the CAT] would take steps to liaise with the [CDT] caseworking team [who] would liaise with a local authority". This does not fit with the evidence about referrals being left to IRC Healthcare, or being left to IRC staff. It is not a statement about what "does" happen, but a "line" about what "would" happen. In the context of this case, this has a vagueness which undermines the extent to which it can be of assistance: cf. R (Gardner) v SSHSC [2022] EWHC 967 (Admin) [2022] PTSR 1338 at §258. It sits

alongside other statements. I cannot be confident that the evidence reached any reliable, or even any settled, landing point. Given the gaps and oscillations in the evidence, given the disavowal of policy guidance, given the accepted complete absence of training, and given the absence of any concrete evidence relating to this case or any case, I am unable to take any reassurance from Arwyn's line about what "would" happen.

The SSHD's Evidence: Decision-Making

38. The Claimant's individual case was dealt with by a CAT caseworker (Leah Dempster-Johnston) as to the HOBA planning; and by a CDT caseworker (Farahat Hussain) as to Safe-Release planning. On the evidence, the caseworkers and caseworking teams did not consider or use any of the published or internal policy guidance regarding potential care and support needs. I have high level witness statements, sometimes contradicting each other. I do have a lot of contemporaneous documents from which I can piece together a picture of sorts. But there are many gaps and nobody who actually dealt with this case has filled them. The SSHD adduced no witness statement evidence from anyone who was directly involved in any planning or decision-making. I have seen no contemporaneous internal records of any decision-maker's notes, or reasons for actions, or matters that were considered. This is what Ms Harrison KC's written reply (15.10.24) described as a "critical deficit" in evidence. It is a third striking feature of the case.

The Claimant's Position: Immigration Control

39. The Claimant is aged 34 and is an FNO. He came to the UK 18 years ago from Malawi, aged 15. After successive periods of leave to remain, he received indefinite leave to remain (ILR) on 15.3.09, as the adult dependant of one of his three UK-based sisters. Following a 2012 criminal conviction aged 21, by reason of which he became an FNO, he was notified on 12.8.13 of his liability to deportation. He made human rights representations against deportation, but these were rejected by the SSHD and on appeal by the FTT (25.9.14). The Upper Tribunal (UT) refused his application for permission to appeal on 3.2.15. ILR was revoked and a deportation order made (17.2.15) and served (12.5.15). No deportation took place. Following 2018 criminal convictions aged 27/28, and after then serving the custodial element of a sentence of imprisonment, the Claimant was placed in immigration detention from 11.9.20. He was granted immigration bail in principle by the FTT on 30.4.21 and then released on 21.6.21 to HOBA. He was transferred to another HOBA house (Cheveral Avenue in Coventry) on 26.8.21, and then another (Bodmin Road in Leeds) on 10.3.22. After being recalled to prison on 7.3.23, he was detained under immigration powers from 17.3.23. He applied (15.3.23) to revoke the deportation order on human rights grounds. That application was refused by the SSHD on 26.9.23 with an in-country appeal to the FTT. The Claimant is pursuing that right of appeal. Judge Cox at the FTT granted immigration bail in principle (29.6.23) and the Claimant was released on 3.8.23 to HOBA: first, a shared house (Willow Lane in Huddlesfield); then a transfer on 20.9.23 to a shared house (Rokeby Gardens in Leeds); and then on 22.12.23 ("the Hotel" in the area of the "Second Local Authority").

The Claimant's Position: Criminal Justice

40. The Claimant's 2012 conviction related to three sexual offences committed in August 2011 aged 21. The victim was a female child aged 13. The overall sentence imposed by the crown court was 3 years 4 months imprisonment. An SOPO (sexual offences prevention order) was made, which in March 2015 became an SHPO (sexual harm

prevention order), and the Claimant was placed in the Sex Offender Register. From prison, the Claimant was transferred to St Mary's psychiatric hospital on 3.7.12, pursuant to ss.47 and 49 of the Mental Health Act 1983. After completing the custodial element on 17.1.14 he remained at St Mary's, first pursuant to statutory powers to 23.7.14; and then as a voluntary patient to 4.8.14; after which he was in the community and subject to a licence until 17.9.15. The Claimant's 2018 convictions aged 27/28 related to breach of the SHPO and a sexual offence. The victim of the sexual offence was a female child aged 14. The overall sentence imposed by the crown court was 5 years imprisonment. The Claimant was transferred to detention under immigration powers after completing the custodial element on 11.9.20, then released on immigration bail on 21.6.21. He remained subject to licence conditions until 15.3.23. As to a suspected SHPO breach for which he was recalled on 7.3.23 and detained to 17.3.23, no further action was taken. Prior to that recall he was seen by PPO Natasha Harrison, who saw him again at Willow Lane, a week before he "returned to Leeds". Since 15.3.23 there have been no extant licence conditions and no offender manager who could veto HOBA. The police view – which was advisory – was that Willow Lane was unsuitable given its 'red light' vicinity. The SHPO continues in effect. The Claimant remains on the Sex Offender Register. All of which is why the sisters' homes – where there are children – are not suitable bail addresses; why the Claimant was assessed as a "Harm Case" for HOBA (§17 above), as well as an Article 3 Case; why the CAT caseworker was liaising with the police; and why PPUs and PPOs were involved in relation to the allocation of HOBA.

The Claimant's Position: Accommodation

41. After his 25 months at St Mary's psychiatric hospital from 3.7.12 to 4.8.14, the Claimant spent 6 weeks in a mental health rehabilitation home called Aspect House. He was then in 18-bed "supported" housing known as Murray Lodge from 12.9.14, for more than a year. A statutory definition of "supported" means accommodation adapted in some way for the individual's care needs (SI 2014/2828 reg.5). The FTT appeal judgment (25.9.14) described Murray Lodge as "largely unsupported". From at least May 2016, the Claimant was at Langley Trust "self-contained" accommodation. From 20.4.18 he was back in prison, first on remand (from 20.4.18); then serving sentences (from 10.10.18); then under immigration detention powers (from 11.9.20). I was given no description of the HOBA to which he was transferred on 21.6.21. He had an upstairs room at the Cheveral Avenue HOBA for the 7 months from 26.8.21 to 20.3.22. The HOBA at Bodmin Road in Leeds, during the 12 months from 10.3.22 to 7.3.23, was a four-bedroom house of multiple occupancy. The Claimant lived in Room 2, located up one flight of stairs with a bathroom and two toilets located on the same floor. He was at Leeds Prison after his recall on 7.3.23 and remained there under immigration detention powers from 17.3.23. The Claimant's room at Bodmin Road was kept open to him for 3 months from 7.3.23 before being withdrawn on 8.6.23. He was moved on 24.7.23 to Brook House IRC near Gatwick airport. When his solicitors on 30.6.23 made his BAIL 409 application for HOBA, their covering letter addressed his mental health and health conditions and addressed his "property requirements". The HOBA at Willow Lane in Huddlesfield, during the 6 weeks from 3.8.23 to 20.9.23 was another house of multiple occupancy. The Claimant lived in Room 3 up a flight of stairs with no handrail (§53 below). At the HOBA at Rokeby Gardens in Leeds, for the 3 months from 20.9.23 to 22.12.23, the Claimant had a ground floor bedroom. He had access to the outside, and to a ground floor kitchen and bathroom, but only by passing a stepped hallway of which was a stairway down to a shared lounge in the basement (§54 below). The Hotel from 22.12.23 onwards is used as

"initial" asylum support accommodation for single adult male asylum-seekers. It is fully catered. The Claimant's room has handrails in the bathroom, a walk-in shower and shower seat; and there are no stairs or other hazards. A witness statement of Simon Gallop (13.2.24) – the Home Office Senior Executive Officer Service Delivery Manager for the region – told the Court that the Hotel is being "provided on a temporary basis".

The CAT Caseworker's ITPs

42. Planning for HOBA and asylum support accommodation is secured by a caseworker issuing an ITP. In the case of an FNO the caseworker is within the CAT. The wording of the ITP identifies the nature of the accommodation being sought, gives a date for the provider to come up with a proposal and another date for it to be delivered. After Judge Cox's FTT grant of bail on 29.6.23, a sequence of 9 ITPs (ITP1 to ITP9) were issued by Leah Dempster-Johnston as the CAT caseworker, in the period 4.7.23 to 4.9.23. ITP1 on 4.7.23 included this public-protection information: "level 2 – male only – single room shared facilities – sex offence" and "no female [housemate] – HMPPS [Prison and Probation Service] to check address". ITP2 on 25.7.23 also included reference to "severe mental health" (as did ITP3 to ITP8) and to "history of self-harm" (as did ITP3 to ITP6). ITP7 on 1.9.23 added (as did ITP8 and ITP9) "ground floor or lifted" and "walk in shower" as well as "low crime area" and "not in a red-light district". It was ITP3 on 2.8.23 which led to the provision of Willow Lane. It was IPT9 on 4.9.23 which led to the provision of Rokeby Gardens.

The Claimant's Position: Disability and Health

43. The SSHD accepts that, at all material times, the Claimant had both a physical and mental "disability" (EA s.6). The parties' agreed Case Summary refers to the Claimant's mental impairments and psychiatric conditions; his cognitive and communication difficulties; his physical impairments, neurological condition, epilepsy and neuropathy. A series of five witness statements filed on behalf of the SSHD each expressly record as "accepted" that the Claimant has "complex and specific challenging needs" and accept that his "vulnerability" is "particularly serious". ITP2 on 25.7.23 referred to the Claimant's "severe mental health" and "history of self-harm". ITP7 on 1.9.23 referred to HOBA "ground floor or lifted" and with a "walk in shower". In what follows, I will focus on those sources which were available to the SSHD, having regard to the identified routes for identifying vulnerabilities (§8 above).

44. The Claimant's application (15.3.23) to revoke the deportation order on human rights grounds, which included a request not to be detained under immigration powers, enclosed a report dated 22.12.22 by Dr Vicky Hoggard (clinical psychologist). A solicitors' letter (1.6.23) enclosed a letter dated 5.5.23 from Dr Agam Jung (Consultant Neurologist) referring to neurocysticercosis, symptomatic epilepsy and ongoing seizures. Dr Hoggard wrote a second report (7.6.23) and both Hoggard reports were supplied with, and references in, the BAIL 409 Form covering letter (30.6.23). Dr Hoggard described the Claimant's "longstanding mental health problems of depression, self-harm and organic psychosis", a "long history of self-harm, suicidal and suicidal attempts" and "visual and auditory hallucinations". Judge Cox's reasons (30.6.23) referred to Dr Hoggard's "conclusions" and the "mental health issues" which the Claimant's continued detention in the IRC was likely to exacerbate.

45. The Home Office's FTT Bail Summary (29.6.23) was provided with the BAIL 409 Form covering letter (30.6.23). In the Bail Summary the Home Office referred to Dr Hoggard's assessment; to the Claimant's time (2 years to 22.7.14) in the psychiatric hospital (St Mary's) due to mental health issues; to an October 2020 report which had recorded a history of low mood and self-harm leading to overdoses and cutting of his wrists; and to the assessment as at 16.5.23 of the Claimant as AAR Level 2. It made references to a "medical issue", described by the Claimant in October 2017 as "brain injury" and "pig disease"; and to a consultant neurologist's report dated 13.3.23. It referred to a mental health medical update (17.4.23) from Healthcare at HMP Leeds, in response to a "healthcare questionnaire" (14.3.23) "to establish his current care needs and any medical treatment he may be currently receiving and if there are any known changes that may affect the AAR level". The mental health update said that the Claimant was last seen by the mental health team on 8.3.23 as part of an Assessment Care in Custody and Teamwork (ACCT) review, following his posing an increased risk to himself; that having been discharged by the team he was then on 9.3.23 subject to an incident of self-harm, making cuts to his right arm using a razor blade; that he was assessed again on 11.4.23 following concerns raised about his presenting with bizarre behaviour; that he had a history of low mood and psychosis, a documented history of suicide attempts and self-harm incidents and reported having thoughts of self-harm when he is under stress. Subsequent medical records at Leeds Prison include reference to ACCTs due to "deliberate self-harm" involving hurting himself with glass, with worsening auditory hallucinations, suicidal thoughts and intermittent confusion, including eating food from waste bins (on 26/27.4.23), evidence which prompted an observation by Constable J (on 2.6.23) that the Claimant's "vulnerability" seemed "particularly serious"; and multiple superficial cuts to the right side of his neck with a razor blade on 4.6.23. The Home Office Bail Summary also referred to a detailed description of a physical health update from Healthcare at HMP Leeds (10.5.23), which said: that the Claimant did not have a brain injury; that he was currently undergoing investigations for neurocysticercosis; that he was awaiting an outpatient's appointment for an MRI; that he had had this condition for many years; that neurocysticercosis is when dormant tape worm eggs remain on the brain and causes epilepsy which is difficult to treat; that he had been under Neurology for a number of years and had treatment to kill the eggs in 2012; that this treatment can cause changes in behaviour and severe epileptic reactions; and that in his last review with Neurology in 2022 he had no active eggs however recent blood tests indicate some changes which requires further exploration.

46. The medical records included further materials. A report dated 16.1.14 of Professor Peter Chiodini (Consultant Parasitologist) described recurrent seizures as being the result of numerous lesions on the brain and that, following if the treatment proved to have successfully killed all the parasites, "the mainstay" of "future medical care" would be to "make sure that he does not suffer further convulsions". Another letter from Dr Jung dated 30.5.22 referred to the history of seizures and identified as appropriate the MRI scan. There were records relating to two MRI brain scans on August 2022 and February 2023. The Claimant's medical records at HMP Leeds included reference on 30.4.23 the Claimant's "history of seizures" and an episode of confusion where he had "nearly fallen to the floor" when his cellmate was with him, and when he was taken by ambulance to A&E. The hospital discharge summary on 30.4.23 described the history of neurocysticercosis and seizures. Those records at HMP Leeds, post-dating the Healthcare update, describe how on 6.6.23 the Claimant's cellmate had witnessed him "collapsing

suddenly", when Healthcare attended he was lying on the floor of his cell where he remained unresponsive for 15-20 minutes, being again taken by ambulance to A&E.

The CAT Caseworker's Referral to Dr Wilson and his Advice

47. The Claimant's BAIL 409 application (30.6.23) was accompanied by the Hoggard reports and the Home Office Bail Summary. The solicitors' covering letter described the urgency of accommodation given Dr Hoggard's recent assessment, the Claimant's symptoms of psychosis and severe vulnerabilities; his depression and organic psychosis; his complex history of self-harm and frequent self-harming both in the community and detention. It also referred to the Claimant's neurocysticercosis, epilepsy and neurological condition – alongside a severe cognitive condition – which made him especially dependant on the support of his Leeds-based sister to meet his day-to-day needs. These materials were referred by the CAT caseworker to the Psychiatric Adviser to Home Office caseworkers (Dr James Wilson); there was no referral to a non-psychiatric medical adviser. In emails dated 18.7.23 and 21.7.23, headed "medical advice to the Home Office", Dr Wilson addressed the Claimant's "housing needs" in the context of the "issues" of "depression/ psychotic disorder".

(1) Dr Wilson first advised as follows on 18.7.23:

> ***The applicant is stated to have a history of depression and psychotic symptoms with a history of self-harm. The applicant is stated to have a history of contact with the criminal justice system. It is contended the applicant requires self-contained accommodation in Leeds, near to his sister, due to the applicant's underlying condition and vulnerability. The applicant currently resides in a shared house with other males in Leeds. The applicant additionally has a history of epilepsy resulting from neurocysticercosis, a tapeworm infection which he developed in his home country of Malawi. I note that the applicant was previously involved in charity work, although has not been able to sustain paid employment. The applicant additionally has a history of harmful misuse of alcohol. There is mention of possible learning disability, however this is not corroborated by any other formal assessment and there is no clear evidence to indicate a full scale IQ below 70 points and other diagnostic criteria. The applicant has previously resided in supported accommodation following discharge from being detained in hospital. I note additionally that the applicant is reported to have evidence of emotionally unstable personality difficulties. In summary, based on the evidence available to me, whilst the applicant's needs are significant, I do not think that there is any prospect that the applicant should be residing in self-contained accommodation, or specifically that the applicant requires accommodation close to his sister. My advice would be that the applicant requires supported accommodation as he has been housed in previously, which is likely to meet his complex needs. I would not make any specific recommendations regarding location and shared accommodation would not be precluded, providing the accommodation has some supported element to it.***

(2) The CAT caseworker must then have raised a question, because Dr Wilson responded with this second advice (21.7.23):

> ***In regard to the specific question regarding housing needs, supported accommodation is a specialist form of accommodation with staff in attendance on a either 24-hour or part-time basis with specialist skills in managing particular service users such as those with more severe and enduring mental illness, learning disability or forensic needs. In the applicant's case, leaving his asylum status to one side, if he were accessing statutory services in the UK he would likely require this service to be provided by either learning disability or mental health services as I am unclear that his sister is sufficient to provide the necessary support that he requires. With respect to the specific type of supported accommodation and its intensity I would advise investigating a previous supported***

> ***accommodation that was available to him upon hospital discharge to determine this information but he probably requires some form of low or medium-supported accommodation with mental health support.***

(3) This means that Dr Wilson twice advised – on 18.7.23 and 21.7.23 – that the Claimant's disabilities meant he needed accommodation with a "supported" element, making a link to the Claimant's supported accommodation in 2014 (ie. at Murray Lodge). The Home Office position was that it does not provide "supported" HOBA or asylum support accommodation, as the CAT later informed the Claimant's solicitors (18.8.23). There is no evidence that anyone within the CDT saw Dr Wilson's advice. The ITPs raised by the CAT caseworker, from ITP2 on 25.7.23 onwards, included reference to "severe mental health" and to "history of self-harm". But no multi-disciplinary meeting was convened; no anticipatory referral to a local authority for a needs assessment was made or considered; and there is no evidence that anyone – whether the CDT caseworker dealing with Safe-Release from the IRC or the CAT caseworker dealing with the allocation of HOBA – addressed the Claimant's potential care and support needs. This is a fourth striking feature of the case.

Local Authority Involvement

48. While the Claimant was at Bodmin Road (from 10.3.22) his probation officer had made a referral to LCC, leading to telephone contact with the Claimant and his sister (on 12.7.22 and 14.7.22) and an October 2022 referral to the community mental health team. There was another referral to LCC (9.1.23), by the community mental health team itself, with further contact between LCC and the Claimant's sister. No needs assessment was completed and the Claimant was recalled and detained from 7.3.23. There was no liaison with, or referral to, LCC or any other local authority at or after the time of the FTT grant of bail on 29.6.23, after transfer to Brook House on 24.7.23 or prior to the release on 3.8.23 to Willow Lane. A referral to Kirklees Council was made by the PPO (PC Richard Thorp) on 8.8.23, in line with Asylum Seekers with Care Needs (§15 above at [1][iii]), and an assessment was conducted by SW Wilson on 11.8.23. SW Wilson wrote an email on 11.8.23 to the Claimant's solicitors, which PPO Thorp sent to the CAT caseworker on 14.8.23. SW Wilson wrote up her a needs assessment, care plan and human rights assessment on 22.8.24. A care plan was implemented from 25.8.23 involving twice daily visits from carers to provide care and support with medication, hygiene and nutrition. SW Wilson's recommendation of electronic monitoring as seizure-support (Telecare) was not implemented at Willow Lane. Telecare is a Falls Device (see BLZ No.2 at §10): an alarm which can be activated by hand when experiencing the onset of a seizure, or which activates automatically in the case of a fall, where unresponsiveness to a follow-up call triggers a 999 ambulance alert. Ahead of the Claimant's transfer to Rokeby Gardens on 20.9.23, an anticipatory referral was made by Kirklees Council to LCC on 18.9.23. LCC conducted needs assessments on 23.10.23 ("the Fasisi Assessment"), 10.11.23 ("the Peters Assessment") and 8.12.23 ("the Peters Review"). From 25.9.23 until the Claimant's hospitalisation on 6.10.23, there was at Rokeby Gardens a replicatory package of the same support as at Willow Lane. From 27.10.23 until 22.12.23 – except when the Claimant was in hospital – what was in place was a package of care visits four times a day by a pair of carers to Rokeby Gardens. During this time, from 30.11.23, there was the provision of Telecare. The idea of handrails in the bathroom was not implemented at Rokeby Gardens because that proved to be inappropriate for a house in multiple occupation. Ahead of transfer to the Hotel, an anticipatory referral was made

by LCC to the Second Local Authority, who conducted an initial needs assessment with a proposed package of care and support on 14.12.23. This reduced the care package to Telecare and twice-daily care visits (15 minutes each morning and evening) by a pair of carers. There has been no challenge to the legality of the actions of Kirklees or the Second Local Authority. BLZ No.2 deals with the challenge to LCC's actions.

Hospitalisation

49. While serving his first prison sentence, the Claimant was in a psychiatric hospital (St Mary's) for two years from 3.7.12 to 4.8.14. It was recorded that prison staff were "unable to manage his epilepsy safely" and that he was vulnerable in a prison setting. While serving his second prison sentence, the Claimant was admitted to hospital from 29.2.20 to 7.3.20 and underwent surgery. This was following a seizure. He described experiencing body shakes in bed and standing up attempting to reach the call bell. He had serious burns to his arm and face from lying in contact with a hot pipe in his cell ("burning due to seizure"). During his 7 weeks at Willow Lane from 3.8.23 to 20.9.23 the Claimant had three overnight hospital admissions: one following a possible overdose on 16.8.23, two after seizures on 22.8.23 and 28.8.23. During his 3 months at Rokeby Gardens from 20.9.23 to 22.12.23 the Claimant was admitted for hospital stays 5 times, for a total of 36 days, after seizures. That was on 6.10.23 for 21 days, 7.11.23 overnight, 16.11.23 for 7 days, 26.11.23 for 6 days and 8.12.23 overnight. The 21-day admission for 6.10.23 followed an incident involving "loss of consciousness"; the ambulance service recorded that the Claimant's carers called the ambulance after they "came into patient property and found patient to be laid supine on the floor" and were "unable to wake patient". The ambulance service report for the 7-day admission on 16.11.23 refers to a seizure, says the Claimant "woke up on the floor" and records a "3cm laceration to [left] temple with small haematoma". Since being transferred to the Hotel on 22.12.23 the Claimant he has been admitted for stays in hospital following seizures at least four times: 6.3.24 for 13 days, 19.4.24 for 3 days, 13.5.24 for 8 days and 7.6.24 for 5 days. Since 3.8.23 there have been many additional hospital visits with same-day discharges.

Litigation

50. After pre-action letters dated 5.4.23 and 4.5.23, the Claimant's lawyers commenced a first judicial review claim (2.6.23) challenging the lawfulness of his immigration detention. By an Order on 2.6.23, Constable J granted expedition and anonymity. After Judge Cox's grant of bail (29.6.23), a High Court hearing for interim relief in the detention claim was vacated and an Order was made on 4.7.23, by consent, by DHCJ Clive Sheldon KC, as he then was. It recorded the SSHD "agreeing to provide accommodation within 21 days … pursuant to Sch 10 [to the 2016 Act], absent special circumstances", reflecting a HOBA decision by the SSHD to exercise Sch 10 §9 powers. The issues about the lawfulness of immigration detention were subsequently transferred to the King's Bench Division (KBD). After further pre-action letters on 15.8.23 and 22.8.23, a second judicial review claim was commenced on 25.8.23, challenging the SSHD's actions regarding HOBA and release planning. That is the claim with which I am dealing. By an Order on 5.9.23, Bourne J gave directions and granted anonymity. Hearings of the Claimant's application for interim relief – seeking an order for transfer from Willow Lane – were listed for 5.9.23 and 12.9.23 but were vacated by consent. At a relisted hearing on 20.9.23 an Order was made, by consent, recording that the SSHD would transfer the Claimant to new premises (ie. Rokeby Gardens) by midnight on 20.9.23. In light of the position with stairs at Rokeby Gardens, the application for interim

relief was restored. There were then hearings before DHCJ Robert Palmer KC on 26.10.23; and DHCJ Dan Kolinsky KC on 14.11.23 and 28.11.23. A series of rulings, interim relief orders and costs orders were made. Judge Palmer's judgment was published as [2023] EWHC 2757 (Admin). Amended Judicial Review Grounds were filed, with permission of the Court. After further pre-action letters on 19.10.23, 2.11.23 and 22.11.23, a third judicial review claim was commenced on 13.12.23, challenging LCC's actions (BLZ No.2). At a hearing on 19.12.23, Eyre J made directions.

The SSHD's Breach of a Court Order (6.11.23 to 22.12.23)

51. By reason of the litigation position, there were High Court Orders which required the SSHD to take specified actions by specified dates. The SSHD accepts that the Claimant's continued accommodation at Rokeby Gardens, during the 47 days from 6.11.23 to 22.12.23, was unlawful by reason of being in breach of an Order which had been made on 26.10.23 by DHCJ Palmer. I will make a declaration to record that unlawfulness. Ms Harrison KC's written reply (15.10.24) refers to a linked concession of a breach of the reasonable adjustments duty from 6.11.23 to 22.12.23 but I did not understand that to be conceded. I will address it (§69 below).

The Claimant's First 25 Days at Willow Lane

52. After the Claimant was released to Willow Lane (3.8.23), PPO Thorp went to see him there (8.8.23). What PPO Thorp found led him to issue a PPN (public protection notice) for a multi-agency response, including a referral to Kirklees Council. A PPN is an information-sharing document shared with partner agencies to inform a multi-agency response, in the context of safeguarding concerns. SW Wilson attended and began her care and support needs assessment. She wrote an email, the contents of which PPO Thorp sent to the CAT caseworker on 15.8.23, 12 days after the Claimant's release. SW Wilson's email said "I do not feel that the current accommodation is suitable for [the Claimant]'s needs" and "I believe [he] would be better suited to support living accommodation". It included a number of points, which included points about: [i] seizure-support; [ii] stairs; and [iii] meds (§§77-84 below). This is taken from SW Wilson's email (11.8.23). The insertions of [i], [ii] and [iii] are mine.

> ***[The Claimant] commented on being unsteady in the shower and that his legs can often shake and struggle to hold his body weight. During these times he will either fall or faint. There is no assistive technology to support [him] around these needs. Nor is there any equipment in the show[er] such as a shower stool for [him] to sit on or any handrails. [i] As [the Claimant] has epilepsy, he can experience a seizure without warning. There is [no] one in the building able to monitor [the Claimant] or even know what to do in these instances, again assistive technology may be of assistance, for example a seizure alert or falls detector. [ii] The steps up to his bedroom are steep and poorly lit with no hand rail to steady himself. The carpet is uneven in places and is a falls risk to anyone let alone with needs such as [the Claimant]'s…***
>
> ***[The Claimant] has a very basic understanding of his needs, for example he knows that he has certain diagnoses and that he has medications for these diagnoses but has no idea what medications he takes or when he should take them. [iii] Up until today when his sister has put his medications into a dispenser whilst this is arranged with his GP and local chemist [the Claimant] had no idea what he should be taking and when. This I find worrying given his past history of attempting to take his own life, his medications being loos[e] in a bag was a recipe for disaster. Having been told how he should manage the dispenser [the Claimant] now seems better able to manage but I still believe his medications should be monitored to ensure he is taking them accordingly. Although [the Claimant] can wash and dress himself, he has the instability in the shower and risk of falling. It would be ideal for someone to be supervising to maintain [the***

> ***Claimant]'s safety and wellbeing and prompting to wash in all areas. [The Claimant] would also benefit from being prompted to regularly change his clothing otherwise would be liable to wear the same clothes for extended periods. I believe [the Claimant] would benefit from a supported living environment where he would be able to benefit from support from staff to learn new skills such as activities of daily living such as doing his own laundry, cooking, budgeting etc …***

Within days of this email being forwarded to the CAT caseworker (15.8.23), the following events had occurred. As to [iii] (meds), the very next day (16.8.23) the Claimant was admitted to hospital overnight, having accidentally overdosed by taking too many tablets. As to [i] (seizure-support) six days later (22.8.23) he was admitted to hospital overnight again, having had a seizure in the house in circumstances where paramedics had to force entry to get to him. As to [ii] (stairs), another six days later (28.8.23) the Claimant was admitted to hospital overnight for a third time, this time having had a seizure and having fallen down the stairs. All of that was within 25 days of the Claimant's release. These concerns and incidents have brought into sharp focus questions about the lawfulness of arrangements for legally adequate accommodation and Safe-Release. They are a fifth striking feature of the case.

The Stairs at Willow Lane and the Fall on 28.8.23

53. At the HOBA at Willow Lane in Huddlesfield, during the 6 weeks from 3.8.23 to 20.9.23, the Claimant lived in Room 3 up a flight of stairs with no handrail. SW Wilson's email (11.8.23) said: "The steps up to his bedroom are steep and poorly lit with no hand rail to steady himself". Just over 3 weeks after being transferred to Willow Lane, the Claimant was admitted to hospital overnight on 28.8.23. It was in that context that the ITPs from 1.9.23 were issued, requesting alternative accommodation with "ground floor or lifted/ walk in shower". Mr Holborn argued that a material factual dispute arose in relation to events on 28.8.23 which requires resolution at a KBD trial with oral evidence and cross-examination. I am unable to accept that submission. I find, on the contemporaneous documentary evidence, that on 28.8.23 the Claimant fell down the stairs at Willow Lane following a seizure. Ms Harrison KC's chronology recorded that the Claimant was admitted to Huddlesfield Royal Infirmary overnight on 28.8.23 "having seizured and fallen down a full flight of stairs" at Willow Lane. Mr Holborn agreed, except that he baulked at "a full flight of", saying that the Claimant may not have been at the top when he fell. The discharge letter, which records that on examination the Claimant had "left chest" pain and tenderness, says:

> ***admitted with Fall and Seizure. Appears to have had a seizure at the top of the stairs. Fallen down full flight of stairs. Spilled hot drink on left thigh.***

The ambulance attendance document says:

> ***Pt has ? had seizure at top of stairs, he has woken up at the bottom of the stairs, he has called 999 due to being in pain on L side of ribs.***

The Home Office witness statement of Gwen Heeney, Senior Executive Operations Manager for the CAT, says – correctly – that on 4.9.23 the SSHD received:

> ***a copy of the hospital discharge letter from the Claimant's legal representatives following the incident in the accommodation on 28 August 2023, when the Claimant had fallen down the flight of stairs at his present accommodation following a seizure.***

The Stairs at Rokeby Gardens

54. Recognising that the stairs had made Willow Lane unsafe and unsuitable, the SSHD issued revised ITPs from 1.9.23 and moved the Claimant to "ground floor accommodation" at the shared house at Rokeby Gardens in Leeds on 20.9.23. During his 21-day hospital stay from 6.10.23 to 27.10.23, concerns as to the safety of Rokeby Gardens led to a LCC-devised care plan which LCC's social workers called "confined living". The Claimant was eventually moved from Rokeby Gardens on 22.12.23. That was 56 days after his discharge from hospital to "confined living" on 27.10.23. It was also 46 days after the SSHD's admitted breach of a Court-imposed deadline of 6.11.23. The position is as follows:

(1) The Claimant's room at Rokeby Gardens was on the ground floor. Outside his door there was a carpeted square landing area. Opposite, across that landing area, was the door to the kitchen and then, to the right hand side, the bathroom. That was also the route to come and go from the house. There was a single step down from his room onto the landing, and a single step up again to go into the kitchen. To the right, on the landing, was a wall with no hand rail. To the left were 8 carpeted stairs with a handrail, down to a basement with a communal lounge. This can all be seen in photos derived from a video taken by the Claimant's sister on 27.9.23. In her witness statement dated 13.10.23 the Claimant's sister said this:

> ***In order to go into [the Claimant]'s room, you have to go down a step and then you have to go up another step to get into the room. Immediately beside his door, and those small steps, is a steep staircase going into the basement. For [the Claimant] to come in or out of his room, he has to go up and down the small steps, and cross directly over the top of the steep flight of stairs to the basement.***

The Claimant's witness statement evidence says "there were steep stairs right outside my bedroom going down to a basement" and that "I had to go down a step and then up a step crossing these stairs if I wanted to get to any other part of the house from my bedroom, including the kitchen, toilet and bathroom". The layout is recorded within the Peters Assessment, written by Leeds City Council SW Olu Peters who, with Senior Social Worker (SSW) Gillian Wood, who visited the Claimant at Rokeby Gardens on 10.11.23. SW Peters recorded that that, although "the bedroom is on the ground floor, the living room is only accessible via a set of stairs"; that "the communal bathroom is right opposite his room and the communal kitchen to the right, all on the ground floor"; and that "outside of his room there's steps to the left and a drop in front of his bedroom door". CAT Litigation sent an email (6.12.23) referring to Rokeby Gardens as "not suitable for his needs as there is a flight of stairs down to a basement which poses a fall risk for him", written in the context of court orders at interim relief hearings.

(2) This is how the Claimant came to be in property with this configuration. He was being moved from Willow Lane because of the stairs there. ITP7 on 1.9.23 specified "ground floor or lifted" and "walk in shower". On 11.9.23 the CAT caseworker sent an email, cc'd to SW Wilson, identifying Rokeby Gardens and asking police colleagues to review the property. Rokeby Gardens was described by the caseworker as "an alternative property which should be more ideal as we have been advised it is a ground floor property (including the bathroom)". The description "more ideal" was in comparison to another candidate property called Bell Lane with an upstairs bathroom, about which SW Wilson had responded in an

email of 6.9.23. Also on 11.9.23 the SSHD also notified the Court that a property consisting of "a single bedroom with shared facilities" and "situated on the ground floor with a ground floor bathroom" was proposed in Leeds, subject to checks by the police and Kirklees social services. On 14.9.23 the SSHD confirmed to the Court the identification of a property on the ground floor of a Leeds address, which had been "approved by Kirklees Social Services and the Leeds Public Protection Unit"; and confirmed a dispersal date of no later than 20.9.23. On 20.9.23, by consent, the High Court made an Order. It recorded in recitals the notification of 11.9.23 and the confirmations of 14.9.23. It ordered that the Claimant be dispersed to the proposed and approved accommodation in Leeds, by 11.59pm on 20.9.23. The Claimant was transferred to Rokeby Gardens in accordance with that Court Order.

(3) This is what happened next. On 26.9.23 the Claimant's sister spoke to his solicitors and sent them the video. On 29.9.23 the solicitors emailed LCC to say they considered Rokeby Gardens "to be unsuitable as there are steep stairs immediately outside his room going down to the shared living area; he is at risk of seizure at any time due to his epilepsy, has previously fallen down a flight of stairs due to this, and Kirklees social services made clear that accommodation should be contained to one floor. We would appreciate being put in touch with the relevant social worker as soon as possible given the urgency of the matter." An attempt to send that same communication to the SSHD failed. On 3.10.23 the Claimant's solicitors wrote to the SSHD "to request the urgent relocation of our client to alternative accommodation, as … his room is directly at the top of a steep flight of stairs" and the SSHD "is fully aware of the risks posed to our client by stairs due to the risk of him suffering an epileptic fit without warning, and that this renders any such accommodation wholly unsuitable". That letter also alleged that the SSHD "knew or ought to have known that (i) the property was not in truth a 'ground floor property' and (ii) that the bedroom proposed for the Claimant's use was directly at the top of a flight of stairs".

(4) On 7.10.23 the Claimant was admitted to hospital where he remained for 21 days until 27.10.23. The ambulance service record says: "Today the carers came into patient property and found patient to be laid supine on the floor at approx 1750hrs. Carers unable to wake patient and called for ambulance service". On 10.10.23 the CAT caseworker sought, and on 11.10.23 received, confirmation that the bedroom, kitchen, bathroom and toilet at Rokeby Gardens were all on the ground floor. On 12.10.23 the Government Legal Department (GLD) wrote to the Claimant's solicitors saying that the Claimant's bedroom, bathroom and kitchen were situated on the ground floor; that it was "unfortunate" and "regrettable" that there were stairs located near to the Claimant's bedroom door; but that the SSHD had not been aware of this; that this was still a ground floor property, there had been no breach of the Court order, and the Claimant would not need to use the stairs; that the "remedial approach" had been taken of asking LCC to provide a remedy such as a stairgate; and that a further move might be away from the Leeds area and no timeframe could be given. The CAT caseworker recorded on 17.10.23 receiving information that "near to the [Claimant]'s bedroom there [are] approx 7 stairs that lead to a basement and this has been raised as a concern (in case the [Claimant] was to have a seizure and fall down them)". Although maintaining that the

accommodation was suitable, the SSHD agreed on 23.10.23 to source alternative accommodation. The Claimant's discharge from hospital was on 27.10.23.

Delayed Discharge

55. Mr Holborn argued that there was a factual dispute justifying transfer for full KBD trial with oral evidence and cross-examination. It concerned Ms Harrison KC's claim that, as at 18.10.23, the Claimant was "medically fit for discharge but remain[ed] in hospital as [his] present accommodation and support [were] unsafe for discharge purposes according to [the] discharge coordinator and Hospital OT who [were] in favour of supported living but [that he] could not remain indefinitely due to risk of infection". The Claimant's witness statement evidence included this:

> ***The hospital would initially not discharge me back to the Leeds accommodation because it was not safe due to the stairs outside of my bedroom. I was eventually discharged only because the social services had created a plan …***

In my judgment there is no issue warranting oral evidence and cross-examination, still less transfer for a full KBD trial. I accept the contents of the contemporaneous documents. A letter dated 12.10.23 from Dr O'Cofaigh said the Claimant would be "ready for discharge once he has been seen by Occupational Therapy and Physiotherapy (hopefully by the end of this week)". An email exchange on 18.10.23 records the Hospital Senior Occupational Therapist (SOT) Rebecca Dickinson confirming that the "medical team" had "advised" her that the Claimant was "now medically ready to be discharged" and recording her views: that she assessed "the presence of stairs and the single step drop outside his accommodation as posing a risk to him, given [that he] can seizure at any time without warning and these factors increase the risk to him of any fall"; that "it would not be appropriate for [the Claimant] to remain in hospital when there is no timescale for alternative accommodation to be sourced"; but that, "if discharged" she "would want certain supports in place at the property prior to discharge to lessen the risk on discharge". I find the following as facts: there was a period from 18.10.23 to 27.10.23 when the Claimant was assessed as medically fit for discharge but remained in hospital; he remained in hospital because the SOT had assessed the presence of the stairs at Rokeby Gardens as posing a risk to the Claimant and she wanted supports in place prior to discharge to lessen the risk to him on discharge.

Description of the Rokeby Gardens Stairs

56. Mr Holborn argued that there was another factual dispute justifying transfer for full KBD trial with oral evidence and cross-examination. It concerned the origin of the "confined living" arrangements at Rokeby Gardens from 27.10.23. Mr Holborn says there was a misdescription by the Claimant to SOT Dickinson on 23.10.23, stating wrongly that he had to "climb the stairs to access the kitchen and bathroom", which means "confined living" was about ensuring that "he would not have to use the stairs (for bathroom visits)". These quotations are taken from the Fasisi Assessment (23.10.23), written by SW Fasisi of LCC's Hospital Complex Team. In my judgment there is no issue warranting oral evidence and cross-examination, still less transfer for a full KBD trial. I find as a fact that the "confined living" arrangements at Rokeby Gardens from 27.10.23 were not based on any misdescription or misappreciation about the Claimant needing to "climb" a staircase to visit a kitchen or bathroom. I have arrived at that finding for the following reasons. (1) The email exchange with SOT Dickinson (18.10.23) had spoken,

accurately, of "the presence of stairs" and "the single step drop outside" his room, rather than climbing stairs. (2) There was no misdescription to Dr O'Cofaigh, whose letter of 12.10.23 spoke of "stairs to access the sitting room" and earlier in the Fasisi Assessment (23.10.23) it is recorded that the Claimant had said, correctly, that use of the stairs would be "to access the living area which he rarely does". (3) The arrangements at Rokeby Gardens were the subject of the Peters Assessment (10.11.23), in which SW Peters and SSW Wood visited Rokeby Gardens, saw the configuration for themselves, and recorded the recommended arrangements which they did not think were based on any misappreciation and which they supported (see §57 below). (4) LCC – who was the public authority directly involved – does not support Mr Holborn's suggested misdescription or misappreciation; nor does it support oral evidence or transfer for trial. (5) This was a new point, raised for the first time during the substantive hearing, as a submission about documents, unsupported by any witness statement.

"Confined Living" at Rokeby Gardens

57. What came to be described as "confined living" was this recommendation for "one room living" in the Fasisi Assessment (23.10.23):

> ***The OT [SOT Dickinson] acknowledged that [the Claimant]'s current property is not ideal and that he would benefit from being rehoused to single level living property and if able to secure this in a supportive living complex would be better as they would be onsite support. However, in order to minimise risks associated with the stairs, OT has recommended that [the Claimant] could be discharged home for one room living, with commode, urinal bottles and telecare. OT would send a referral to the community team for an assessment of the bathroom to suggest possible adaptations (fixed grab rails as pose to FSTF as safer in event of a seizures whilst using equipment). [The Claimant] was agreeable to this plan. [His] package of care would be increased to 4 visits daily to support with personal care, washing and dressing, bathroom visits, meal preparation and medication administering.***

The hospital discharge advice note (27.10.23) records that the Claimant was "waiting to hear about potential rehousing" and that "[i]n the meantime it has been deemed appropriate for him to return to his current accommodation with some modifications to help optimise his safety". This is from the Peters Assessment (10.11.23):

> ***[1] [The Claimant] shares facilities the bathroom, living area and kitchen with other residents in the property but has his own bedroom. Although the bedroom is on the ground floor, the living room is only accessible via a set of stairs. The communal bathroom is right opposite his room and the communal kitchen to the right, all on the ground floor. Whilst in hospital [the Claimant] shared that the walk-in shower in the property is quite small and that he has struggled to have a wash in there. He advised that he has had a fall in the bathroom on a couple of occasions. [He] also explained that he has had to use the stairs to access the living area which due to his continued risk of seizures, he rarely does. Given the concerns raised about the property, [the Claimant] was assessed by a Hospital Occupational Therapist. They gave the recommendation that long term [the Claimant] should be accommodated in a single level property to reduce the risks of injury/falls should a seizure occur on or near to the stairs and that if this could be provided within a supported living complex, this would be better to ensure there is onsite support.***
>
> ***[2] However it was agreed that to support a timely hospital discharge [the Claimant] could return to his current accommodation to have confined living in his bedroom on a temporary basis, during which the Home Office would continue to search for more appropriate accommodation. The recommendation was that [the Claimant] would be provided with a commode, urinal bottles, Telecare (on discharge from hospital at his request) and a referral to the Disability Services Team for grab rails to be installed in the bathroom. [The Claimant]'s package of care prior to this hospital admission was 2 visits a day (12 hours 15 minutes a week.) A Hospital Social Worker carried out a needs assessment and determined that the care package should be increased to 4***

visits a day (17 hours 30 minutes a week) as a protective measure to ensure [the Claimant] has the appropriate level of support to reduce any risks associated with the use of the stairs…

[3] [O]utside of his room there's steps to the left and a drop in front of his bedroom door, I asked how he manages with this. [The Claimant] shared he is okay to walk to the kitchen and aware of the stairs and drop. His sister has advised him to stay away from the stairs due to his seizures. [The Claimant] has everything in his room to make a drink, he has a urine bottle and a commode, hereby reducing the risks of fall on the stairs. [The Claimant] shared he doesn't usually use the commode as he could hold his bowel to wait for carers to help him access the toilet. I asked if carers have to help him in/off the toilet. [The Claimant] said yes because he has bad knees and ankles which may make him fall easily and his feet are wobbly. I asked if his bad knee and ankle is due to an injury. [The Claimant] shared its part of his condition … "Pick disease"…

[4] Surryna [from the care agency Ethicare] explained [the Claimant] currently has 3 calls a day, 45 minutes in the morning to help with shower ([the Claimant] has to have a shower every morning as part of his routine), support with medication and preparing breakfast and carers shared they normally spend some time talking to [the Claimant] for reassurance as well as emptying his urine bottles and commode. They provide a lunch call and although [the Claimant] doesn't take medication at lunch anymore due to a change of his medication, he is supported to access the toilet, empty commode, and urine bottle, prepare lunch and drinks. A 45 minute call is provided at around 6pm and carers support with evening meds and meals. [the Claimant] normally takes medication before bed, but carers leave the meds on his table, and his Sister reminds him to take it by phoning him, and this is reported to be going well. Surryna feels the current time is okay and doesn't have any issues the arrangement. [The Claimant]'s medication is now delivered weekly by the pharmacy…

[5] Social worker's recommendation… The recommendation from Adults & Health is that in the longer-term level access accommodation would be preferable. Presently his current accommodation is level access, apart from the lounge area. To mitigate the fact that [the Claimant] is unable to use the stairs to access the lounge area unsupported, social support is being explored. There is a risk to [the Claimant]'s safety if he was to use the stairs unsupported which he is aware of. [The Claimant] continues to have mental capacity to make informed decisions about his care and support needs. He recognises the risks around using the stairs and is not using the stairs without support. Due to the current accommodation being both temporary and an HMO, the Disability Services Team are not able to provide an aids or adaptations to the bathroom, however [the Claimant] is managing his care needs well with the carer's support and he has access to the items he needs in his bedroom such as the urinal bottles and commode for use in between care visits, however confined living should not be considered on a long term basis and the Home Office should continue to secure appropriate level access accommodation which can ensure both [the Claimant]'s safety but independence and quality of life.

58. The Claimant's witness statement evidence includes the following:

… the social services had created a plan where I had to stay in my room to avoid having to go past the stairs. I had to use urine bottles instead of going to the toilet, unless there were carers to help. It was very hard to live this way.

I did use the urine bottles but not really use the commode as it was too unpleasant unless desperate. It was horrible having a toilet in the room where I sleep. I was normally trying to wait for the carers to help with accompanying me to the toilet, although I of course did not like having to do this. It was embarrassing like I am a child. I used the urine bottles regularly as it was more difficult to wait. I have no problems with continence, and this was not something I want to do. I wanted to be able to use the toilet like a normal person, but the accommodation meant I could not. The urine bottles would normally stay there until the carers came to collect them, and it would leave a smell of urine in the air which was horrible. Although I was very nervous about leaving my room in Leeds and my sister told me not to, it was not possible to just stay in my room all the time. I would have to go out to get my medication from the pharmacy and sometimes I went for short walks to try to get some fresh air, once or twice per week. My sister was not happy about this, and I knew it was a risk, but I could not be a prisoner again in the bedroom 24/7. However, I did spend most of my time just lying in bed. I felt very low. I didn't want to get up and

> ***I wasn't looking after myself. I understand my sister spoke to the carers about this. My representative told me that the Home Office were trying to find different accommodation, but that it was taking a long time. It was an awful environment. The smell of the urine made being in the room for such long periods even harder. It was a damp room to begin with, and the air was only made worse by the smell of urine and being stuck in there all the time. Although I am a person who is used to being alone, it was still very hard having to stay to my room for such long periods of time with only the carers seeing me regularly. It is quite hard to explain how I felt at that time now. I have had a lot of bad things happen to me and this was just another time I had to wait and hope things would change to be better. It was very upsetting and made me feel bad most of the time.***

Findings of Fact about "Confined Living" at Rokeby Gardens

59. Mr Harrison KC and Mr Lawson each submitted that I should make findings of fact, on the documentary evidence. I will do so. I decline Mr Holborn's invitation to direct oral evidence or transfer for KBD trial. There is a wealth of documentary evidence presented in BLZ No.1 and BLZ No.2. I have received detailed written and oral submissions from Ms Harrison KC, Mr Holborn and Mr Lawson. I have had much fuller evidence, and submissions about that evidence, than was or could be presented to the judges who dealt with the interim relief hearings. I have considered the position afresh. Based on all the evidence which has been adduced, I find the facts to be as follows:

    (1) Leaving aside the periods of time when the Claimant was back in hospital, there were 35 days between his hospital discharge (27.10.23) and his transfer to the Hotel (22.12.23) when the Claimant was present at Rokeby Gardens under what the local authority professionals were describing as "one-room living" and "confined living". This was an ongoing, uncertain period. It was not a known, finite period. The Claimant did not know when the period would end with a transfer to alternative accommodation; only that he had to wait until that happened. He lived under those arrangements for those 35 days, and 35 nights. The communal basement lounge at Rokeby Gardens was inaccessible to the Claimant during that period. His bedroom was, for him, a bed-sitting room. He had originally moved to Rokeby Gardens on 20.9.23. He moved because of an assessed danger from a staircase, down which he had fallen. Within a week his sister was warning him about the stairs to the basement at Rokeby Gardens. In the period from 20.9.23 to his hospital admission on 6.10.23 he only "rarely" accessed the basement living area. That is what he told Dr O'Cofaigh (12.10.23). The unsafety of using the stairs to the basement – even though they had a hand-rail – had been reinforced when he was discharged from hospital on 27.10.23. He complied with this advice. That meant he could not be in the communal area which was intended to serve as a living area for the house in multiple occupancy. This reduced his personal autonomy and his opportunities for increased social interaction.

    (2) The Claimant knew he should avoid walking unassisted across the small square landing outside his bedroom. His discharge from hospital on 27.10.23 was on the clearly-advised basis that he should avoid the risk. That was why he had been given the urine bottles and the commode. It was why carers were coming, four times a day –later three times a day – to make his meals; empty the urine bottles and commode; and assist him with washing and showering. Because meals were prepared, the Claimant did not have to carry food or drink across the landing area from kitchen to bedroom. To a very large extent the Claimant was compliant with these instructions. He had facilities to make a drink in his room. The carers had to

complete a daily log. They consistently recorded emptying the urine bottles. That was because the Claimant had urinated in bottles in his bedroom, where the bottles remained until carers came to empty them. That meant the smell of urine in the bed-sitting room, from the time of using the bottles, for a period of several hours until the next carer visit. The commode, on the other hand, did not require frequent emptying. The Claimant had said that he preferred not to use the commode, and that he felt he could wait and use the toilet rather than the commode, during the next carer visit. He did not wish to use a commode and avoided doing so.

(3) The Claimant did for the most part stay in his bedroom, as a bed-sitting room. His room was not a place of social interaction with other house-mates. Nor was it suitable for that. He was, however, visited several times a week by his sister and by his brother in law. He could accompany them across the landing. He was taken to their house for meals. He was able to go for walks with his brother in law. The Claimant also had the visits four times a day – then three times a day – by a pair of carers. This was an increase in provision. Those visits were for functional reasons: meals, showering, toileting, prompting with meds. When the Claimant was alone, he did not stay exclusively in his room. His door was not locked. Time was passing with no alternative accommodation having been found. As he had explained to SW Peters (10.11.23), for his part he actually felt he was "okay" to walk to the kitchen being "aware" of the basement stairs, and the single-step down and up. Crossing the landing was a few steps. It was a single, forward direction. With his seizures there was a general pattern of having some warning sign. He went outside the house to smoke. He sometimes went for a walk. The position became more relaxed in this respect as time went on. Frequently, the Claimant had to go to the front door to let his carers in. That should not have been expected of him. It involved him taking the very risk against which the arrangements were designed to protect. The Claimant increasingly told his carers that he would shower after they had left, and they recorded their belief that this is how his hygiene was being managed. In passing the stairs, as the Claimant did, he was taking risks which a local authority OT and the social workers had been recommending that he should avoid. The Claimant continued to have seizures during this period. They were at a rate of around two to three a week. He was admitted to hospital several times, but none was related to the stairs or landing area. He did not have a seizure at the landing outside his room. He did not fall down the stairs to the basement.

IV. ANALYSIS

The Anonymity Question

60. This was Prior Question (A):

> ***Should the interim anonymity order and reporting restrictions be continued and were the further restrictions sought justified based on maintenance of the administration of justice and/or harm to other legitimate interests?***

My answer is "in part yes, but with liberty to apply". This issue relates to BLZ No.1 and BLZ No.2. I addressed it during Day 1 (3.9.24). The "interim" order was made by Yip J, at whose direction it was published on the Judiciary website and served on the Press Association, with a Case Summary. Any media representative or other interested person could make representations. None did. I heard submissions in private to allow all points

to be fully ventilated and explained, with as full a summary as possible then given in open court and a revised Case Summary produced. My Order, with reasons, was published on the Judiciary website, containing liberty to apply to vary or discharge it. No application has yet been made. I ruled that an anonymity order with reporting restrictions was justified as necessary, covering the Claimant, the Hotel and the Second Local Authority; but not Kirklees or LCC. Regarding the Claimant, anonymity and reporting restrictions had been ordered by Constable J on 2.6.23, Bourne J on 25.8.23 and Lane J on 14.12.23, based on evidence and submissions about vulnerability and risk. I was satisfied that the protections relating to name and address remained justified, being necessary to protect the Claimant's legitimate rights and interests. It followed that the Hotel and geographical area could not be identified since, together, these were the Claimant's address and the protection would be defeated. The application to anonymise local authorities was so as to strengthen the protection, in circumstances (in the summer of 2024) involving violent disorder and unrest. The SSHD agreed that there were risks of targeted abuse and disruption engaging legitimate interests. No question of the legality of the Second Local Authority's actions was in issue, no remedy was sought against it, there were no strong open justice reasons in favour of naming it, and no countervailing legitimate interest in knowing or communicating where the Claimant was accommodated. Having balanced the relevant interests and considered the practical implications, and in light of what I was told at the private hearing, I was satisfied that in the particular circumstances of the present case, it was necessary as well as appropriate and proportionate, to prevent identification of the Second Local Authority. But it was not necessary, appropriate or proportionate to prevent identification of Kirklees; nor LCC, the legality of whose actions were in issue in BLZ No.2.

The Academic Claim Question

61. This was Prior Question (B):

> ***Should the Court decline to determine Issues (1)-(3), (4a) and/or (5a) on the basis that they are academic in light of the Claimant's placement in the Hotel and/or the SSHD's proposed policy review?***

My answer is "no". The "proposed policy review" was described in Kingham 1 (15.3.24) as a review by the team responsible for the Immigration Bail Interim Guidance, intended to lead to publication of amended policy and guidance with a target date of 15.9.24. Kingham 2 (8.8.24) gave a new target date of 4.11.24. A letter from GLD (27.11.24) gave a new target date of 31.1.25.

(1) As the Administrative Court, Judicial Review Guide 2024 explains (at §6.3.4): where there is no longer a case to be decided which will directly affect the rights and obligations of the parties to the claim, the pursuit of judicial review is generally inappropriate; in some circumstances the public interest may justify hearing a claim for a declaration and to achieve acknowledgement of a past wrong; and in exceptional circumstances, the Court may decide to proceed with a claim whose outcome has become academic for the claimant, for example a large number (or at least some) similar cases exist or are anticipated, where the decision will not be fact-sensitive. To this, I add the following. The Court can legitimately ask whether any 'academic' issues stand alone (see Humnynstskyi at §§157-158); whether any unlawfulness is accepted (§§190-191); whether generic non fact-sensitive issues are appropriately addressed (§197; DMA at §331); whether permission has been

granted, points argued and other cases are affected (Humnynstskyi at §198; DXK at §§143, 164). In Humnynstskyi it was inappropriate to consider a challenge to an impugned policy which was no longer in force (§290). Individual claims as to the failure to move an individual to dispersal accommodation were discontinued, after such a move took place in DXK (see §§3, 11); and systemic grounds lacking a firm factual foundation were found in that case to be inapt for determination (see §8).

(2) I am unable to accept Mr Holborn's submission that it would be appropriate for me to decline to answer substantive issues in this case on the grounds that they are 'academic'. The substantive issues are issues of law, apt for a judicial review; not simply issues of policy guidance merits for a policy review. The legal issues about the system have squarely been raised, with a firm factual foundation. Permission for judicial review was granted on 14.11.23 and the case was listed for its substantive hearing. There has been a full and fair opportunity to adduce evidence. If there is, as claimed, demonstrated unlawfulness in relation to the HOBA systems and practices, the Court should in my judgment say so. Others are undoubtedly affected. It is common ground that the Court should rule on some of the issues of law. The substantive issues are linked and overlap. There are human rights arguments, including arguments which can directly affect the Claimant's rights and the SSHD's obligations through "just satisfaction". The human rights issues overlap with the statutory duty and reasonableness issues. They arise out of the same facts. There is also the overlap between the substantive issues and those in BLZ No.2 against LCC. There are grounds which involve claims for declaratory relief and which engage questions about the acknowledgment of past wrongs. It would, in my judgment, be contrary to the interests of justice and the public interest to decline to deal with substantive issues. This means that on Prior Question (B) the Claimant succeeds.

The Transfer-Out Question

62. This was Prior Question (C):

> ***Should the determination of Issues (4b), (4c), (4d), (4e), (5b) and/or (5c) be transferred to the KBD for determination as a damages claim?***

My answer is "no". I have been unable to accept Mr Holborn's submission that these issues involve material disputes of fact which require oral evidence with cross-examination, or expert evidence, or disclosure. The Court has a considerable volume of material. The duties of candid disclosure in judicial review were triggered. Mr Holborn helpfully identified in a marked-up chronology during the hearing what he said were key points of material factual dispute. But I was left unpersuaded that any of them called for oral evidence with cross-examination; nor a disclosure exercise beyond what is called for in judicial review; nor any other feature of a KBD trial. Had there been any discrete issue needing something more, my starting-point would have been thinking about whether that could be achieved within the judicial review proceedings. There were really three points which Mr Holborn submitted involved material factual disputes, addressed at §§53, 55-56 above. This means that on Prior Question (C) the Claimant succeeds.

The Policy-Gap Issue

63. This is Issue (1):

> ***Issue (1). Did the SSHD act unlawfully in failing to have in a place a written policy (1a) helping decision-makers to identify when a person has or may have eligible care and support needs under the 2014 Act and/or (1b) requiring decision-makers to refer such persons to a local authority for a needs assessment under the 2014 Act prior to or following their release from detention to HOBA?***

My answer is "yes". This issue was contested by the SSHD until after 5 days of oral argument. Emphasising DSO 08/2016 (§6 above) and the Stated Equivalence Policy (§19 above), Mr Holborn was arguing that caseworkers should be making anticipatory local authority referrals in cases of apparent care and support needs; that there was no inherent unlawfulness in the system; that confusion is not the same as unlawfulness; nor are examples of shortcomings, including in case study examples given by NGOs. Then on Day 6 (15.10.24), Mr Holborn made the following concession in open court. The SSHD now accepted that there was unlawful action. That was because there was neither a clear instruction about caseworkers considering potential care and support needs and making anticipatory local authority referrals; nor training in relation to these matters. The source of the legal obligation being breached was the Adherence duty (§32 above) in light of the Stated Equivalence Policy (§19 above). It did not follow that there was any duty to "publish" policy guidance, because a clear instruction could be sufficient in law.

64. In my judgment, the SSHD was right to accept unlawfulness on this part of the case, and I can therefore make a declaration. Here is why. The law on when there is a duty to have policy guidance is at §33 above. The starting point is the public law duty to act reasonably. The threshold of unreasonableness is a high one, allowing generous room for latitude. But potential care and support needs matter, as is recognised in Asylum Seekers with Care Needs, DSO 08/2016 and the VARSOP; as well as PSI 03/2016. The Stated Equivalence Policy is plainly both lawful and significant. But it cannot be effective unless someone within the decision-making arrangements has been given the function of considering potential care and support needs and local authority referrals. Where individuals are in immigration detention, the SSHD has a special responsibility for them; and clear routes of access to information about them (§8 above). The SSHD organises HOBA and the locality is a matter for consideration by the SSHD. The 2014 Act includes important statutory protections, which Parliament intended to be effective. True, Parliament could have imposed on the SSHD a statutory threshold question (cf. 2014 Act s.9(1)) or a notification duty (cf. 2014 Act s.37). But Parliament enacts legislation against a backcloth where public authorities have basic public law duties. There are clear reasons why local authority referrals matter (§22 above). No reasonable justification has been identified for the failure to have clear arrangements, in the context of release from an IRC. The SSHD has, at different times and in different ways, relied on Asylum Seekers with Care Needs, DSO 08/2016 and the VARSOP. The evidential picture is striking (see §§34-37 above). In all the circumstances, I agree that the failure to have arrangements in place for the discharge of the function of considering potential care and support needs and local authority referrals was unlawful. It was outside the range of reasonable responses open to the SSHD. The claim for judicial review succeeds on this part of the case. This means that on Issue (1) the Claimant succeeds.

65. There are three important further points on this part of the case. First, I cannot agree with Ms Harrison KC that the legal duty to have policy guidance is about the SSHD having criteria "for the exercise of the power" to provide HOBA; or about the law requiring a transparent statement of policy as to the circumstances for exercising the power (Lumba at §34). The criteria – whose publication in policy guidance was recognised as necessary

to meet the minimum standards of fairness in Humnyntskyi at §270(2) – are the three types of cases for providing HOBA, already identified in the Immigration Bail Interim Guidance: see §17 above. Second, I agree with Mr Holborn that the unlawfulness lies in the vacuum, not in a particular method of filling it. Clear and effective instructions could discharge the duty, though I have been unable to think of any good reason why the fact and content of such an instruction could go unpublished and unknown. In that context, it is important to record that the concerns exposed in this case relate to vulnerabilities more broadly, and not simply to potential care and support needs and anticipatory liaison with local authorities. The SSHD's pleaded defence (28.3.24) rightly recognised this broader focus, it this way (emphasis added):

> ***The SSHD accepts that there is a 'policy gap' in that – whatever the position in practice – written policies dealing with vulnerable service users in receipt of asylum support under the 1999 Act, including those with Care Act needs, are not expressly replicated for Schedule 10 claimants. SSHD has therefore committed to a policy review in order to determine the best means to remedy that discrepancy…***

Third, I do not see the unlawful vacuum as being a violation of Article 2 or 3 ECHR rights: as a policy or practice which exposes those affected to an unlawful risk to life or an unlawful risk of inhuman or degrading treatment; or as a failure to have administrative or regulatory arrangements to take proportionate administrative measures reducing such risks to a reasonable minimum; or by failing to take reasonably-expected measures to protect individuals from real and immediate risk of death or inhuman or degrading treatment about which the SSHD knows or ought to know. A HOBA decision can violate Article 3 (as in Humnyntskyi); as can a local authority breach of a 2014 Act statutory duty (as in TMX); as can the SSHD's systemic arrangements (as in W, ASY and SAG). But this vacuum does not, in my judgment, imperil individuals by reference to the Article 3 Severity-Threshold so as to constitute unlawfulness in breach of these statutory human rights.

The EA Systemic Issues

66. These are Issues (5a) and (5b):

> ***Issue (5a) Did the SSHD breach the Public Sector Equality Duty under s.149 of the EA? (5b) Did the SSHD breach ss.20 and 29 of the EA by failing to make reasonable adjustments to: (i) the release planning process and/or (ii) the process for sourcing and providing HOBA for disabled people with complex or high-level needs?***

My answer to both is "yes". Issue (5a) was contested by the SSHD until after 5 days of oral argument. Issue (5b) remained contested.

67. Ms Harrison KC submitted, in essence, as follows. First, on Issue (5a), there has been a clear breach of EA s.149, in particular because of the absence of any system or arrangement for collecting and monitoring data. The SSHD has a September 2020 Equality Statement, but it relates only to asylum support. The SSHD has a track record of recorded breaches of the EA, seen in the context of asylum support in DMA and DXK. The equivalent legal duties apply to HOBA and the position is reinforced by the Stated Equivalence Policy. This is the same breach as in DMA at §325 and in DXK §§154-157. Second, on Issue (5b), in light of the failure to collect and monitor data, there has also been a breach of the reasonable adjustments duty, so far as concerns the planning of Safe-Release and the planning of the provision of HOBA. The duty to make reasonable

adjustments includes the duty to make anticipatory adjustments for a class of people: R (VC) v SSHD [2018] EWCA Civ 57 [2018] 1 WLR 4781 at §157. The SSHD cannot discharge the onus (EA s.136) of showing compliance with this duty: see VC at §171. There is the same breach as was found in DMA at §§290-291. The same unlawful gap or vacuum as is seen in Issue (1) – in relation to potential care and support needs, liaison and local authority referrals – places people with disabilities at a substantial disadvantage and constitutes an unlawful failure to make reasonable adjustments for them.

68. Both issues were contested by the SSHD throughout the litigation and 5 days of oral argument. Kingham 1 (15.3.24) told the Court that Mr Kingham was unaware of any formal system in place for monitoring the provision of HOBA for disabled FNOs. Mr Holborn was arguing that an Equality Statement relating to asylum support, together with the Stated Equivalence Policy, combined to discharge the s.149 EA duty; and that the reasonable adjustments duty gave rise to no policy or systemic question, given the Stated Equivalence Policy and in circumstances where the pool of accommodation is the same as used for asylum support. On Day 6 (15.10.24), Mr Holborn made the following concession in open court. The SSHD now accepted that the EA s.149 duty had been breached by reason of the failure to collect and monitor data relating to HOBA decision-making and FNOs with disabilities; because in law there needed to be some sort of system of monitoring. A subsequent letter from GLD (27.11.24) told the Court that: (1) the SSHD had decided to extend, as soon as reasonably practicable, a proposed new system for monitoring the equality impacts of s.95 asylum support accommodation following mandatory orders in DXK to all FNOs including those in receipt of HOBA; and (2) the SSHD would conduct an Equality Impact Assessment in respect of the provision of HOBA, which would include consideration of the duty to make reasonable adjustments to the release planning process and/or the process for sourcing and providing HOBA for disabled people with complex or high-level needs. As I observed in open court on Day 2 of BLZ (No.2) (28.11.24), no breach of the reasonable adjustments duty had been accepted. That remained the position. In follow up submissions in writing as to remedy, Mr Holborn took a pleading point: that the issue of monitoring had been introduced only in the Claimant's skeleton argument. But the monitoring point was squarely in the amended judicial review grounds (11.12.23) and was an agreed issue. Mr Holborn proposed an order declaring that the claim succeed on Issue (5A), recording in recitals what was agreed by the SSHD in GLD's letter (27.11.24). Ms Harrison KC said that there should be declaration of breach and that the extension of the DXK monitoring system and conduct of the Equality Impact Assessment should be embodied in mandatory orders, as in DXK itself at §174. I agree. She also said that the Court should lay down a 3 month deadline for the Equality Impact Assessment. I disagree. I propose to use the SSHD's phrase – "as soon as reasonably practicable" – in both orders. But I will also include a liberty to apply to set a deadline in respect of both aspects, in light of the striking history of the absence of monitoring seen in DMA and DXK, so that if matters drag on without any explanation and justification, remedies can be revisited.

69. The SSHD was right, in my judgment, to accept a breach of the EA at a systemic level, but in my judgment the unlawfulness extends to the reasonable adjustments duty as well. Here is why. The law is at §§23-24 above.

    (1) EA s.149 requires a public authority to have due regard to the need to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function in

question: see DMA §313. This is an "important duty" to monitor provision of accommodation: see SA v SSHD [2023] EWHC 1787 (Admin) at §5. The purposes of monitoring are to identify and resolve problems where HOBA is not being provided; to see whether the system is working; and, if not, to identify solutions: see DMA §320.

(2) It would be impossible for the SSHD to say that there is "no evidence of a problem" in relation to disabled recipients of HOBA: cf. DMA §317. In DMA, there was evidence from individuals with experience and expertise from the Refugee Council, Freedom from Torture, Helen Bamber Foundation and Bristol Refugee Rights: see §§147, 314-315. That was not the first case where assistance has been derived from evidence emanating from NGOs (non-governmental organisations): see Limbuela §§35-36; Sathanatham at §§11, 23; and Humnyntskyi at §§35, 56. I had witness statement evidence from the following. First, Medical Justice (MJ). Theresa Schleicher who is MJ's Casework Manager. Her statement (18.4.24) explained why MJ sees the absence of an adequate system, to ensure that vulnerable individuals with specific needs are release safely and with appropriate support, as a long-standing issue of concern. Lisa Incledon is MJ's Senior Caseworker. Her statement (16.8.24) explained why reports identifying physical and mental health needs are not seen by MJ to lead to arrangements being put in place. Secondly, Bail for Immigration Detainees (BID). Pierre Makhlouf is BID's Legal Director. His statements (22.1.24 and 16.8.24) explain why BID sees as long-standing problems arrangements for suitable HOBA for vulnerable detainees with a disability.

(3) On 14.12.20, the High Court ruled in relation to asylum support accommodation for failed asylum-seekers with disabilities (DMA §325):

> ***the SSHD is in breach of the public sector equality duty in failing, once she has reached a decision that she has a duty to accommodate under s.4(2) of the 1999 Act, to monitor the provision of that s.4(2) accommodation to individuals who have a disability. In this respect the SSHD has not, in the exercise of her functions, had due regard to the need to eliminate discrimination and to the need to advance equality of opportunity between persons who share the protected characteristic of disability and persons who do not share it.***

The Court urged engagement over data and monitoring towards a system which would win confidence and respect (DMA §349). This would apply to decisions by the CAT and CDT caseworkers dealing with FNOs who were failed asylum seekers. In my judgment, based on the evidence in the present case, the SSHD is in equivalent breach of the public sector equality duty in failing to monitor the provision of HOBA to individuals who have a disability. In this respect the SSHD has not, in the exercise of her functions, had due regard to the need to eliminate discrimination and to the need to advance equality of opportunity between persons who share the protected characteristic of disability and persons who do not share it. No basis was put forward why any different position could apply to HOBA and individuals with a disability. There is no suggestion of any credible basis on anyone could have thought the requirements of the law were any different where decisions by the CAT and CDT caseworkers dealing with FNOs who were failed asylum seekers. In December 2023 the SSHD tried in DXK to distinguish DMA from the position of pregnant and new mother asylum-seekers and failed asylum-seekers (PNMAS) being moved from initial accommodation to dispersal accommodation: see DXK at §§152-154. Here, no attempt to distinguish the logic of DMA has even been mounted. In DXK, it failed, the Court ruling (at §157):

> ***the SSHD is in breach of the PSED in failing, once he has reached a decision that he has a duty to accommodate under s.4(2), s.98 or s.95 of the 1999 Act, to collect statistical data on the provision of that accommodation to PNMAS and to monitor that data …***

(4) As to the reasonable adjustments duty, in DMA, the Court decided (at §§290-291) that in:

> ***a lack of any monitoring of disabled people within the system operated by the SSHD by her officials … [and] a lack of an effective system for prioritising claims … the SSHD acting by her officials did not take the steps it was reasonable to take to avoid the disadvantage to disabled individuals …***

In the present case I have not been provided with, and have been unable to find, an answer to avoid the same conclusion on the same basis. It is reflected in the agreed issue (5a) that the focus of this part of the claim was known to be on reasonable adjustments to "the release planning process" and "the process for sourcing and providing HOBA for disabled people with complex or high-level needs". It is conceded that there has been no monitoring of the position of disabled people within the HOBA system. The evidence has not demonstrated an effective system for prioritising claims. This links to the evidential picture about relevant policy guidance (§§34-37 above) and the unlawfulness relating to that aspect under Issue (1) (§§63-64 above). I cannot accept that it is in law an answer, in the context and circumstances of the present case, for the SSHD to say that there is an intention to consider reasonable adjustments through a future Equality Impact Assessment. This means that on Issues (5a) and (5b) the Claimant succeeds.

The Level 3 Accommodation Issue

70. Issue (2a) is:

> ***Issue (2a). Did the SSHD fail to apply the published policy guidance document Immigration Bail Interim Guidance, by failing to provide the Claimant with "Level 3" accommodation within the meaning of that policy?***

My answer is "no". This issue concerns the lawfulness of the SSHD's actions regarding the Claimant's individual case. It is the only such issue relating to the Claimant's present HOBA at the Hotel, where he has been since 22.12.23.

71. Ms Harrison KC submitted in essence as follows. HOBA at the Hotel is unlawful as a breach of the Adherence duty (§32 above). By accommodating the Claimant other than in "Level 3" dispersal accommodation there has been a departure, without identified good reason, from paragraph [4] within this passage in the Immigration Bail Interim Guidance (emphasis added):

> ***Provision of accommodation. [1] Where a person applies for bail to the Tribunal and the Home Office considers that a residence condition is necessary were bail to be granted, the decision maker must note this in the bail summary (BAIL 505), along with information as to the type of accommodation required and the reasons why this is necessary. [2] FNOs granted bail whilst still under prison licence will need to have their proposed bail address approved by HMPPS … The agreed timeframe for HMPPS to consider an address is approximately 9 weeks. The police and other related partners may also have an interest in approving addresses for those who are not under licence.***
>
> ***Types of bail accommodation: [3] There are 3 different levels of bail accommodation as follows: [3a] level 1 – initial accommodation – high, multiple-occupancy accommodation, this: [i]***

> ***accommodates females as well as single persons of either gender and lone parents [ii] contains shared accommodation spaces used by families and individuals [iii] is located in high-density urban residential areas [iv] is unlikely to be suitable for FNOs who meet the exceptional criteria for accommodation provision. [3b] level 2 – standard dispersal accommodation, mostly high multiple-occupancy accommodation, individual accommodation but often with shared common spaces, lone adult males do not share accommodation with families or lone females [3c] level 3 – complex bail dispersal accommodation, increased liaison with local authorities in sourcing appropriate accommodation, accommodation provider's staff have specialist training and increased risk awareness, the authority can request specific location or specify how far the service user should be from local amenities, schools and so on, lone adult males do not share accommodation with families or lone females. [4] FNOs receiving support because they meet the harm criteria will require Level 3 accommodation (Complex Bail Dispersal Accommodation). For vulnerable persons who are not FNOs, the suitable accommodation level will vary according to the individual's needs.***

The Claimant is an FNO receiving support because he meets the criteria of a Harm Case (§17 above). The Hotel is not Level 3 accommodation. It is not "dispersal" accommodation; still less "complex bail dispersal accommodation". The words "will require Level 3 accommodation" in [4] are clear and unambiguous. The SSHD has failed to understand the objectively correct meaning of the policy guidance; has failed to recognise the departure from it; and has failed to provide any good reason for the departure. It follows that the SSHD has been acting unlawfully since 22.12.23. That is the argument.

72. I am unable to accept those submissions. The law as to the Adherence duty is discussed at §32 above. I do not accept that "will require Level 3 accommodation" in [4], objectively interpreted, is setting out a policy criterion entitling a FNO, if being given HOBA on the basis of Harm, to "Level 3 accommodation". Even if I am wrong about that, I would not accept that there is no identifiable good reason for departure in the present case given the failed attempts to provide level 3 accommodation and given that this case was assessed to be an exceptional case within [3a][iv] where initial accommodation at the Hotel – with its step-free access – was suitable for the Claimant as an FNO meeting the exceptional criteria for HOBA.

    (1) I do not accept that "will require" in [4] means "will – even if [3a] considerations mean initial accommodation is, exceptionally, suitable – still require". Nor do I accept that "will require" in [4] means "will permanently require". I think "will require" means "can be expected for public protection reasons to require". There is room – reconciling public protection and the circumstances of an individual who would otherwise be in immigration detention – for an initial accommodation response under [3a][iv]. The purpose of paragraphs [2] to [4] is not that it is concerned with setting out policy criteria entitling FNOs being given HOBA to particular types of accommodation. If that were the purpose, it would be found in the language of [3b] (level 2) and [3c] (level 3). It would also be found in a description of persons who satisfy different HOBA criteria, including Article 3 Cases. The Claimant is an Article 3 Case as well as a Harm Case, but Ms Harrison KC recognises that she can mount no Adherence challenge to his accommodation at the Hotel by reference to his Article 3 position. The clear purpose of these paragraphs is to guide the approach taken by decision-makers to securing public protection needs. It is only when we reach the second sentence of [4] that the text is addressing "the individual's needs" as a "vulnerable person". The guidance at [2], [3a][iv], [3b], [3c] and the first sentence of [4] is about the needs for protection of the public – including other residents – from the individual.

(2) I can accept that, in principle, even a public protection criterion within policy guidance could be the basis of an Adherence claim. I have identified as one of the three published eligibility criteria for HOBA that the Claimant is a Harm Case. That too has a public protection rationale, but it is a criterion for the exercise of the statutory power, against which an applicant is being fairly considered: Humnyntskyi at §270(2) and (4). I also accept that, in a case where an individual is eligible for Home Office accommodation, policy guidance could identify a type of accommodation suitable for the needs of the individual, to be capable of triggering the Adherence duty. But I cannot accept that the first sentence of [4] has that meaning or legal consequence. The word "require" in [4] is not about benefits or needs of the individual. It is an instruction about securing suitable public protection from the individual. This is a description of "the suitable accommodation level" from a public protection perspective. Reading this part of the policy guidance in a common sense way and as a whole, by reference to its public protection purpose, decision-makers are being guided in how they think about risk and public protection. I accept that what serves public protection may also protect the individual being allocated HOBA, in keeping them from an environment which may lead them to deteriorate or reoffend. But none of this is about "conferring a particular substantive benefit" (A at §3). There must always be a built-in evaluative judgment, and that is how this policy guidance must be read and applied. The first sentence of [4] needs to be read alongside [3a][iv], which allows flexibility (the word is "unlikely") for Level 1 accommodation to be used for a person even if they are a Harm Case. Especially if it was single males and away from high-density urban areas [3a][i]-[iii].

(3) There is, in my judgment, sufficient flexibility within the language of [1] to [4] – once the central purpose is understood – to allow for the decision-makers and those who advise about public protection and suitability, lawfully to decide not to use level 3 or level 2 accommodation in a Harm case. I accept, as the SSHD's pleaded defence puts it, that:

> ***The three accommodation 'levels' in the Interim Guidance do not mandate that a particular form of accommodation is provided, but are descriptive. The level required is assessed by the caseworker dealing with any particular outcome, and the level is then recorded on any ITP and utilised to signify the kind of steps that may need to be taken in a given case.***

It is obvious that an accommodation allocation decision may need to involve the least-worst available option, especially where the alternative for the individual is prolonged executive detention: see Sathanatham at §§30, 86. The general entitlement is to such premises as have been identified and assessed for suitability, acting fairly and reasonably: Sathanatham §§68-69. Another way of putting all of this is that, where the SSHD fairly and reasonably assesses accommodation other than Level 3 accommodation as suitable for the individual from a public protection perspective, there is good reason for any departure from paragraph [4]. All of which means that, on Issue (2a), the Claimant fails.

The Individualised Care and Support Liaison Issues

73. Issues (2b) and (3a) are:

> ***Issue (2b). Did the SSHD fail to apply the published policy guidance document DSO 08/2016, by failing to convene an expedited multi-disciplinary meeting to plan for the Claimant's Safe-Release from detention and/or arrange a local authority assessment of the Claimant's 2014 Act needs? Issue (3a). Did the SSHD act unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 to provide suitable HOBA and/or did she act unreasonably in failing to consider the need for and make the necessary arrangements for referral to a local authority for assessment under the 2014 Act prior to or following the release of the Claimant from detention to HOBA?***

My answers are "yes". These issues go together, being concerned with the lawfulness of the SSHD's actions regarding the Claimant's individual case, in planning Safe-Release (the CDT caseworker) and planning HOBA (the CAT caseworker), in relation to liaising with a local authority as to potential care and support needs. These claims were defended by the SSHD throughout the litigation and 5 days of oral argument. That was notwithstanding an express acceptance in the SSHD's pleaded defence (28.3.24) that the Claimant "requires some degree of social care". Mr Holborn was arguing that the solicitors' covering letter (30.6.23) did not request, and Dr Wilson's advice (18.7.23 and 21.7.23) did not advise, a local authority referral for a needs assessment; and that there was little practical difference between an anticipatory pre-release referral and PPO Thorp's PPN (8.8.23) alerting Kirklees 5 days after the Claimant's release from the IRC to Willow Lane. Then on Day 6 (15.10.24), Mr Holborn made the following concession in open court. The SSHD now accepted that there was unlawfulness in the Claimant's case because there was neither an expedited multi-disciplinary meeting to plan for the Claimant's Safe-Release from detention nor the pre-release arrangement of a local authority care and support needs assessment. At least one of these actions should in law have been taken. The sources of the obligation were the Adherence duty in light of the Stated Equivalence Policy. It was also unlawful, on these same bases, to have failed even to consider the Claimant's potential care and support needs; and to fail even to consider making an anticipatory referral for a local authority needs assessment.

74. The SSHD was right, in my judgment, to accept that these failures were unlawful; and I envisage making a declaration to that effect. The importance of anticipatory consideration of potential care and support needs has been seen in the context of Issue (1). The context includes the express provision in DSO 08/2016 at §§62-63 (§6 above) which, in my judgment, necessarily requires that a caseworker must address their mind to the question of potential care and support needs, the question of a multi-disciplinary meeting and the question of an anticipatory referral for a needs assessment. That is how the writer of the VARSOP saw it (§7 above). There is the striking Home Office evidence about these policy guidance documents, and about lack of training (§§34-37 above) and the finding I have made of an unlawful vacuum (§§63-65 above). The CAT and CDT caseworkers had access to information about the Claimant, his vulnerability and his disabilities. The FTT grant of bail was on 29.6.23. Dr Wilson as Home Office medical adviser had twice advised the CAT caseworker on 18.7.23 and 21.7.23 about the Claimant's needs for "supported" accommodation. It was known and acknowledged that the Home Office did not have access to HOBA which was "supported accommodation". Willow Lane was an identified candidate from 28.7.23, which put Kirklees in the frame in respect of potential care and support needs, just as it put local front-line agencies in the frame as to public protection needs. There was liaison with the public protection agencies, but not with Kirklees, until PPO Thorp's PPN raised the alert on 8.8.23. Prior to Kirklees being in the frame, there could have been liaison with the local authority for the IRC. There could have been the multi-disciplinary meeting. But no action was taken. No evidence has been adduced that the caseworkers responsible for allocation of HOBA (the CAT caseworker) and Safe-Release planning (the CDT caseworker) thought about

potential care and support needs or a multi-disciplinary meeting or an anticipatory referral. I find that they did not do so, and that they had no identified good reason for not doing so. The absence of evidence about the individual decision-making at the relevant time itself supports this adverse inference of fact: see VC at §§28, 68. It being necessarily implicit in DSO 08/2016 §§62-63 that caseworkers will think about potential care and support needs, about expedited multi-disciplinary meetings and about anticipatory local authority referral, the unjustified failure to think about those things was an Adherence breach. On the facts and in the circumstances of the present case, it was unreasonable – as being outside the range of reasonable responses – not to action either an expedited multi-disciplinary meeting or an anticipatory referral for a local authority care and support needs assessment; or even to consider doing so. This means that on Issues (2b) and (3a) the Claimant succeeds.

75. There are two further points. First, I do not accept Ms Harrison KC's additional characterisation, that these failures were breaches of statutory duties under Sch 10 §9 to the IA 2016 to provide suitable HOBA, or breaches of the three standards of legally adequate HOBA (§§13, 18 above). They were failures to engage with other agencies; and to think about the implications of potential care and support needs, in respect of which it is local authorities who owe statutory duties. Second, I am unable to accept the SSHD's pleaded position that no "material" unlawfulness took place and that any unlawfulness would "highly likely" have made no practical difference to outcome for the Claimant. Had there been an expedited multi-disciplinary meeting or consideration of potential care needs, there may not have been a local authority referral until Willow Lane was confirmed on 2.8.23; and there may not have been a social worker visit until after the Claimant's arrival on 3.8.23. But it would be speculation to characterise as highly likely that the arrangements would in substance have been no different for the Claimant. In my judgment, the arrangements for and at release and transfer may very well have been materially different if the SSHD's legal duties had been discharged. The unlawful failures were, in my judgment, material public law errors. This materiality will come into clear focus when I consider arguments about further breaches of the law: §§78, 80 below.

Six Species of Unlawfulness

76. Issues (3b), (4c), (4d), (4e), (5b) and (5c) are six different ways in which Ms Harrison KC says there was further unlawfulness in the Claimant's individual case:

> ***(3b). Did the SSHD act unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 to provide suitable HOBA and/or did she act unreasonably in failing to provide the Claimant with suitable/safe HOBA on and/or after release from detention? Issue (4c). Did the SSHD breach the Operational Duty owed to the Claimant under Articles 2 and/or 3 ECHR, because she knew or ought to have known of a real and immediate risk to life and/or serious injury and/or serious harm, and failed to take reasonable measures within the scope of her powers which might have been expected to avoid that risk? (4d) Did the SSHD breach the Claimant's substantive Article 3 rights between 3 August 2023 and 22 December 2023 because (i) the level of the Claimant's suffering or indignity crossed the severity threshold for constituting 'degrading treatment' under Article 3 (ii) for which the SSHD was responsible? (4e) Did the SSHD breach the Claimant's Article 8 ECHR rights between 3 August 2023 and 22 December 2023 because the treatment of the Claimant was a disproportionate interference with his private life as protected by Article 8? (5b) Did the SSHD breach ss.20 and 29 of the EA by failing to make reasonable adjustments (in the Claimant's case) to: (i) the release planning process and/or (ii) the process for sourcing and providing HOBA for disabled people with complex or high-level needs? (5c) Did the SSHD discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability, in breach of s.15 of the EA?***

The relevant law is at §§18, 30, 26-27, 31, 23-24 above. What came into clear focus through the oral hearing was that three distinct features of the case were being relied on by Ms Harrison KC as constituting a breach of any, each and all of these six duties. They are the three features which I identified from SW Wilson's email of 11.8.23 (§52 above at [i], [ii] and [iii]). The best way of addressing the six species of unlawfulness is to take them together, but by reference to each of the three distinct features in turn.

The Six Medication-Planning Issues

77. The first distinct feature prefaces the six questions (§76 above) with this:

> ***So far as medication-planning is concerned:***

My answer to each of those six questions is "no". Ms Harrison KC submitted in essence as follows. The Claimant was released from the IRC to Willow Lane on 3.8.23 with discharge medication which SW Wilson described in her email of 11.8.23 as being "loos[e] in a bag" and "a recipe for disaster"; and the consequence was the overdose incident on 16.8.23. The release from the IRC was in the context of ongoing concerns about health, mental health, cognitive deficit, and suicide risk. It was clearly unlawful to release the Claimant with a large bag of meds, but no support as to how and when to take them. When, in consequence, PPO Thorp conducted his welfare check on 16.8.23 he found the Claimant "in an almost unconscious and delirious state" following the "suspected unintentional overdose of his medication". The hospital discharge summary (17.8.23) records the diagnosis of "acute confusion", the Claimant having "attended due to overdose of carbamazepine and possibly other substances". It is no answer to say that medication including discharge medication is the responsibility of IRC Healthcare. It is the SSHD who is liable in law for any breach of duty: see CSM where arrangements for antiretrovirals for IRC detainees with HIV violated the Article 3 Systems Duty owed by the SSHD. It is the SSHD's responsibility to plan for Safe-Release. Providing the medication, without support as to how and when to take it, breached any, each and all of the six applicable legal obligations in Issues (3b), (4c), (4d), (4e), (5b) and (5c).

78. I accept that medication-planning provides a relevant and powerful illustration as to why it is important that potential care and support needs are addressed in conjunction with Safe-Release to HOBA. This supports and reinforces my finding on materiality at §75 above. Support in relation to taking medication can be an eligible care and support need, which it can be a local authority's duty to identify and meet. The Kirklees care plan (from 25.8.23) included carer visits to the Claimant at Willow Lane to provide this kind of care and support. This issue may well have been addressed in a multi-disciplinary meeting to plan for the Claimant's Safe-Release. It may well have been addressed in a needs assessment after an anticipatory referral. I am unable, however, to accept that the way in which medication was provided to the Claimant was a breach of any of the six duties invoked. Here is why:

    (1) The Claimant's medical records from Brook House IRC show that when he arrived from Leeds Prison on 24.7.23 he was on the following medication. The anti-seizure drug Clobazam (also known as benzodiazepine) 10mg tablets, 1 tablet once per day. The anti-depressant Fluoxetine 20mg capsules, 3 capsules once per day. The anti-seizure drug Zonisamide 100mg capsules, 3 capsules once per day. The anti-seizure drug Tegretol (also known as carbamazepine) 200mg tablets, 3 tablets twice per day. The antipsychotic drug Flupentixol 500microgram tablets, 1 tablet twice

per day. The anti-seizure drug (prolonged release) Epilim Chrono 400mg tables, 1 tablet twice a day. The folate deficiency prevention drug Folic acid 5mg tablets, once a day. On arrival (24.7.23) from Leeds Prison he had with him: Clobazam (28 tablets); Fluoxetine (84 capsules); Zonisamide (84 capsules); Tegretol (168 tablets); Flupentixol (56 tablets); Epilim Chrono (56 tablets); and Folic acid (28 tablets). That was around one month's supply.

(2) The position was addressed. An entry (24.7.23) records that the "[patient] came with medication"; that he was "on prescription medication"; that there was a "self-medication assessment"; and that from 25.7.24 the Claimant "had authorisation for medication under PGD" (Patient Group Direction). Another entry records that there was put in place an "epilepsy care plan" (from 24.7.24) and a "psychosis care plan" (from 28.7.24); and that one of the recorded "objectives" under those care plans was to "ensure medication is provided and take[n] as prescribed and monitor effect (reporting any abnormalities)". The Claimant was then under the care of IRC Healthcare for the next 9 days. It was in that context – involving these arrangements and care plans – that on 3.8.24 the Claimant then came to be recorded as being discharged with what can be seen as the remaining 22 days' supply of his medication. This was his "discharge medication": Clobazam (22 tablets); Fluoxetine (66 capsules); Zonisamide (66 capsules); Tegretol (135 tablets); Flupentixol (45 tablets); Epilim Chrono (48 tablets); and Folic acid (22 tablets). I have been shown no record or indication of any problem, which was known to or ought to have been known to the clinicians. Conscious thought was given to the appropriateness of the discharge medication, in light of the care plans and their objectives.

(3) Everything that I have recorded would have been what was visible to the SSHD. There is no indication that the clinicians, making these medical records, were not doing their jobs. Still less, that the position was known or should have been known to the SSHD through the CAT or CDT caseworkers. There is no basis for any adverse inference. There is no specific allegation of a failure, under the care plans, to ensure that medication was being taken as prescribed. There is no specific allegation of a failure to give instructions or ensure understanding. In fact – as Mr Holborn points out – the medication-planning issue was never pleaded as a standalone breach of any legal duty. It did not, in fairness, call for witness statement evidence. Even in Ms Harrison KC's skeleton argument the arrangements relating to the meds were relied on for two reasons. One was to "illustrate" the absence of an "effective process for identifying highly vulnerable detainees". The other was that the incident on 16.8.23 meant the SSHD's failure to provide suitable accommodation and Safe-Release support had diminished the Claimant's human dignity and caused intense suffering for the purposes of the Article 3 Severity-Threshold. I cannot accept the second point. As to the first, I have accepted that medication-planning provides a relevant and powerful illustration why it is important that potential care and support needs are addressed in conjunction with Safe-Release to HOBA. That is its legal relevance.

(4) I entirely accept that the incident on 16.8.23 is concerning. But the lawfulness of the SSHD's Safe-Release arrangements cannot properly be approached on a hindsight basis. Nor can I accept, on the evidence, that the incident was a consequence of the Claimant's medication being in foil strips in a bag. SW Wilson

wrote in her email on 11.8.23 – which was forwarded to the CAT caseworker on 15.8.24 – that:

> ***Up until today when his sister has put his medications into a dispenser whilst this is arranged with his GP and local chemist [the Claimant] had no idea what he should be taking and when.***

This means the incident on 16.8.23 – 15 days after transfer from the IRC – came 5 days after SW Wilson was satisfied that the Claimant's sister had now "put" the medications "into a dispenser". None of this is a criticism of SW Wilson who was alert to the issue and doing her job. When on 22.8.23, SW Wilson signed off on the Wilson Assessment, she drew attention to problems with confusion, even after instruction had been given to the Claimant. She said this:

> ***On his arrival to the property on Willow Lane East, Huddersfield [the Claimant]'s medications were clustered together in a carrier bag in their foil strips without the majority of packaging. There was no telling what medications [the Claimant] should be taking, in what dose or time of day. [The Claimant]'s medication is now dispensed in blister packs by a local chemist, these are delivered to [the Claimant] weekly on Fridays. [The Claimant] is still susceptible to taking the wrong medications, not always confident of how the blister pack works regardless of the number of times he is shown how to use the blister pack. Most recently on 16th August [the Claimant] took an accidental overdose of his prescription medication after becoming confused as to what medications he should be taking.***

On the evidence, the incident on 16.8.23 was borne out of confusion, where medication had already been taken, notwithstanding a further intervention and further clear instruction. The reference to carbamazepine (Tegretol), alongside the pattern of 3 tablets twice per day, suggests the Claimant took 3 Tegretol anti-seizure tablets not realising – despite conscientious best efforts including by his sister and a social worker – that he had already taken his daily dose. This reinforces the points about potential care and support needs, but it does not constitute any freestanding breach of any of the further legal duties being invoked, all of which I have considered individually. On this part of the case the Claimant fails.

The Six Seizure-Support Issues

79. The second distinct feature prefaces the six questions (§76 above) with this:

> ***So far as seizure-support is concerned:***

My answer to each of those six questions is "no". Ms Harrison KC submitted, in essence, as follows. The Claimant's disabilities and health conditions (§§43-46 above) were known throughout to the SSHD, including the fact that he experienced regular seizures. The SSHD released the Claimant from the IRC on 3.8.23 to the HOBA at Willow Lane where he spent 7 weeks to 20.9.23; and then transferred him to Rokeby Gardens where he spent 3 months to 22.12.23. These were not the "supported" living arrangements which the Home Office medical adviser Dr Wilson had twice advised. The seizure-support problem was immediately visible to and reported by SW Wilson in her email on 11.8.23 (§52 above at [i]), sent to the CAT caseworker on 15.8.24. Yet no action was taken by the SSHD to ensure that the Claimant was in safe and suitable accommodation which provided for his needs and vulnerabilities so far as seizure-support was concerned. The direct consequence of the ongoing default was seen in the incident at Willow Lane

on 22.8.23, less than three weeks after being transferred there, when paramedics had to force entry to gain access. The seriousness was explained in a subsequent email (18.11.23) from Dr Joanna Allen (a Consultant in Infection and Travel Medicine):

> ***With seizures such as this the risks are that [he] is not able to recognise that he is about to have a seizure so can experience trauma as he falls or as he convulses. This trauma could be significant including a risk of further head injuries. During the seizure if he is not placed on his side there is a risk of aspirating vomiting which can lead to pneumonia or death. With frequent uncontrolled seizures, there is risk of death.***

A follow up email (27.11.23) from Dr Rumana Chowdhury (Neurology Consultant) responded as follows to the Claimant's solicitors' question "What are the risks posed to [the Claimant] by his seizures if there are not people available to assist on site":

> ***If he [were] alone and were to have a seizure, he would be at risk of physical harm from injury during the seizure and if the seizure were to be prolonged then there would be a risk to his life as he would not be able to call for emergency help, also after the seizure he may be confused and not fully aware of what has happened so again at risk of harm.***

The failure by the SSHD, in the decision-making from 4.7.23 and the arrangements for HOBA from 3.8.23 to 22.8.23, to protect the Claimant and mitigate the risks from the seizures by means of safe and suitable HOBA constituted breached any, each and all of the six applicable legal obligations in Issues (3b), (4c), (4d), (4e), (5b) and (5c).

80. I accept that seizure-support provides a relevant and powerful illustration why it is important that potential care and support needs are addressed in conjunction with planning for Safe-Release and HOBA allocation. This supports and reinforces my finding of materiality at §75 above. Seizure-support can be an eligible care and support need, triggering a 2014 Act duty of the local authority. The Wilson Assessment (22.8.23) recommended a Falls Device (§48 above) and one was later provided by LCC (from 3.11.23) at Rokeby Gardens. Issues relating to seizure-support may well have been addressed in a multi-disciplinary meeting to plan for the Claimant's Safe-Release. They may well have been addressed in a needs assessment after an anticipatory referral. I am unable, however, to accept that the way in which medication was provided to the Claimant was a breach of any of the six duties invoked. Here is why. The SSHD had access to information about the ongoing seizures experienced by the Claimant, for example as described by Dr Jung (5.5.23). These were not, however, a new development. The Claimant had not been in "supported" accommodation because of any need for seizure-support, in the period prior to his recall. He had been in the HOBA provided by the SSHD at Cheveral Avenue in Coventry for 7 months from 26.8.21; then the HOBA at Bodmin Road in Leeds for 12 months from 10.3.22. That was 19 months in shared houses provided by the SSHD. Dr Wilson's advice about "supported" accommodation was referable to the Claimant's mental health, not to seizure-support. When the Claimant's solicitors made the BAIL 409 application for HOBA, the covering letter (30.6.24) referred to the Claimant's health issues and described his property requirements "self-contained accommodation as has previously been provided by [the SSHD]" near to Leeds given the role of the Claimant's sister in relation to his "day-to-day needs". There is subsequent evidence about appropriate assistance through seizure-support, whose legal relevance is in reinforcing the points about potential care and support needs and liaison. In fact. from as early as 15.8.23, the SSHD's CAT caseworker was made aware that Kirklees – as the local authority with 2014 Act duties – was addressing its mind to assistive technology as seizure-support. That is because, although the Claimant can

sometimes sense the onset of a seizure and make a 999 call, that is not always the case. In fact, the incident on 22.8.23 was one where – without seizure-support – the ambulance had been called but the Claimant was unconscious by the time of the paramedics' arrival, so that they had to force entry. The issues relating to seizure-support cannot – in the circumstances I have described – constitute a breach of any of these further duties owed by the SSHD in providing HOBA. It follows that on this aspect of the case the Claimant fails.

The Six Presence of Stairs Issues

81. The third distinct feature prefaces the six questions (§76 above) with this:

> ***So far as the presence of stairs is concerned:***

My answer to (3b), (5bii) and (5c) is "yes, from 6.11.23 to 22.12.23"; but otherwise the answer to the six questions is "no". My conclusions come to this:

> ***So far as presence of stairs is concerned, the SSHD from 6.11.23 to 22.12.23 (3b) did act unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 to provide suitable HOBA and unreasonably in failing to provide the Claimant with suitable/safe HOBA after release from detention and (5bii) did breach ss.20 and 29 of the EA by failing to make reasonable adjustments (in the Claimant's case) to the process for sourcing and providing HOBA for the Claimant as a disabled person and (5c) did discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability, in breach of s.15 of the EA.***
>
> ***But, so far as the presence of stairs is concerned, the SSHD (3b) did not otherwise act unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 to provide suitable HOBA or act unreasonably in failing to provide the Claimant with suitable/safe HOBA on and/or after release from detention and (4c) did not breach the Operational Duty owed to the Claimant under Articles 2 and/or 3 ECHR, because she knew or ought to have known of a real and immediate risk to life and/or serious injury and/or serious harm, and failed to take reasonable measures within the scope of her powers which might have been expected to avoid that risk and (4d) did not breach the Claimant's substantive Article 3 rights between 3 August 2023 and 22 December 2023, because the level of the Claimant's suffering or indignity crossed the severity threshold for constituting 'degrading treatment' under Article 3 and (4e) did not breach the Claimant's Article 8 ECHR rights between 3 August 2023 and 22 December 2023 because the treatment of the Claimant was a disproportionate interference with his private life as protected by Article 8 and (5b) did not otherwise breach ss.20 and 29 of the EA by failing to make reasonable adjustments (in the Claimant's case) to: (i) the release planning process and/or (ii) the process for sourcing and providing HOBA for disabled people with complex or high-level needs (5c) did not otherwise discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability, in breach of s.15 of the EA.***

82. Ms Harrison KC submitted in essence as follows. It was known to the SSHD that the Claimant's health conditions meant he regularly experienced seizures. That was reinforced by the frequent hospitalisations following release from the IRC. The SSHD belatedly accepted that stairs at Willow Lane posed a significant risk of injury. That is why the Claimant was transferred from Willow Lane to Rokeby Gardens on 20.9.23. The SSHD's pleaded defence accepts that Willow Lane proved "unsuitable" for the Claimant by reason of the stairs. Rokeby Gardens was no better, but worse, because of the staircase outside the Claimant's bedroom, which was why the Claimant was in "confined living" at Rokeby Gardens after his hospital discharge on 27.10.23 for two months until 22.12.23. None of this is about care and support needs and local authority duties. It is squarely a matter of safe and suitable HOBA.

(1) The unsuitability of any stairs, for the Claimant with his disabilities and health conditions, should have been obvious to the SSHD from the start. Just as "ground floor/ lift/ walk in shower" could feature in the ITPs from 1.9.23, so "no stairs" should have featured in all of the ITPs from the start. Willow Lane and Rokeby Gardens were both unsafe for the Claimant. SW Wilson spotted the dangerous unsuitability of Willow Lane immediately (11.8.23). The Claimant's sister spotted the dangerous unsuitability of Rokeby Gardens immediately (26.9.23). The professionals on the ground recognised the dangerous unsuitability of Rokeby Gardens, hence the delayed discharge and special arrangements (§§55, 57 above). The transfer from Willow Lane took place after 7 weeks; and from Rokeby Gardens only after 3 months. The SSHD rightly accepts that there was unlawfulness from 6.11.23 by reason of being in breach of a court order (§51 above). But it was far more than that. It was a failure by the SSHD, in the decision-making from 4.7.23 onwards and in the arrangements for HOBA from 3.8.23 to 22.8.23, to provide safe and suitable accommodation, by reference to the accepted legal standards (§§13, 18 above). The dangerous stairs at Willow Lane and at Rokeby Gardens were a violation of duties owed under the HRA. There was a real and immediate risk to life and of serious physical harm, which was objectively verified, present and continuing. The circumstances moreover engaged, and crossed, the Article 3 Severity-Threshold which includes actual bodily injury (Limbuela §54), especially in the context of pre-existing poor health (Limbuela §59). The Claimant fell down the stairs at Willow Lane during a seizure and was injured. He risked serious injury, and death, from the stairs at Willow Lane and at Rokeby Gardens. These dangerous conditions were incompatible with physical and moral integrity.

(2) The "confined living" at Rokeby Gardens (§57 above) was the direct consequence of the SSHD's actions in failing to provide, and failing to transfer to, safe and suitable accommodation. That placed the Claimant in conditions which, applying the relevant law (§§26-27, 31 above) plainly violated his Article 3 and Article 8 rights. He was forced to live in conditions where he stayed in his bedroom, being required to urinate in bottles and sometimes defecate in a commode, and then live with the bottles and commode in the same room. He was, consciously and by design of the arrangements, "confined". The basement stairs from the landing outside his room were assessed as a hazard and he was advised not to risk walking past them. He was placed in a position of fear for an undefined, open-ended period. The conditions were degrading and dehumanising. They were incompatible with physical and moral integrity, dignity and personal autonomy. DHCJ Kolinsky's interim relief ruling (14.11.23) rightly described the "current living accommodation living with a commode" as "unsatisfactory" and "starkly inadequate", having an "impact" on the Claimant which was of a "stark nature"; and his subsequent ruling (28.11.23) described the Claimant as "not able to access the bathroom" and "having to use a commode" which was "on any view, a patently unsatisfactory and dehumanising position which should not continue". In Article 8 terms, there was a singular lack of respect for the Claimant's private and family life and he was condemned to living conditions which made it virtually impossible for him to have a meaningful private or family life (Bernard §34).

(3) It follows from all of this that the SSHD breached any, each and all of the six applicable legal obligations in Issues (3b), (4c), (4d), (4e), (5b) and (5c). That is the argument.

83. In my judgment, the correct analysis in law is as follows. I start with Willow Lane:

(1) There was no unlawfulness, in the decision-making from 4.7.23 or in the transfer to Willow Lane on 3.8.23 in the SSHD allocating the Claimant to HOBA which had stairs. The SSHD had access to information about the seizures experienced by the Claimant, within the recognised routes for information as to vulnerabilities (§8 above). But I was shown no reference, in any of the materials available to the SSHD, to "stairs" as posing a risk or to a need for "level-access" accommodation. The picture included the Claimant's 4½ months at Leeds Prison, preceded by the periods in HOBA – which the SSHD had provided – including 12 months at Bodmin Road in Leeds from 10.3.22. At Bodmin Road there were stairs and the Claimant's bedroom was upstairs. If the Claimant's place at the Bodmin Road house had been kept open to him for more than the 3 months from his 7.3.23 recall to prison to 8.6.23, the Claimant would straightforwardly have been released back to that HOBA after the FTT bail decision on 29.6.23. He missed that option by 3 weeks. That would not have been rendered unlawful by reason of the same stairs which he had navigated there, every day, for 12 months. I was shown nothing which indicated stairs as being dangerous and needing to be avoided: in Dr Wilson's advice emails of 18.7.23 and 21.7.23; in Dr Jung's letter of 5.5.23; or in Dr Hoggard's reports of 28.12.22 and 7.6.22; in the Leeds Prison information obtained for the Home Office Bail Summary of 29.6.23; or in the medical records. And the fact is that, when the Claimant's solicitors made the Claimant's application for HOBA, the BAIL 409 form – which asks about "individual circumstances" and "individual accommodation requirements" – was accompanied by the covering letter which addressed "property requirements". It said nothing about stairs. It asked for "self-contained accommodation as he has been previously provided by SSHD". I agree with Ms Harrison KC that the solicitors' letter is not an exclusive focus and they were not the SSHD's delegate. But the point is that – having been instructed since 16.4.21 before the Claimant's previous HOBA from 21.6.21, then from 26.8.21 and then from 10.3.22 – they were addressing this topic and they too were not indicating stairs as a red flag. Nobody was.

(2) I cannot accept that there was unlawfulness, by reference to stairs, immediately after SW Wilson identified the steep and unlit staircase in her email of 11.8.23, which was sent to the CAT caseworker on 15.8.23. This was one of many points she made. The Claimant's solicitors wrote a 4-page letter before claim (15.8.23), urging the SSHD that the Claimant's "dire circumstances" violated his Article 3 and Article 8 rights. That letter included a summary of SW Wilson's email, emphasising six points including a risk of falls in the context of "struggling to use the shower" with "no shower stool or handrails". But there was no mention of stairs. A further letter before claim (22.8.23) said "accommodation should also be self-contained and with necessary adjustments, including equipment in the shower such as a handrail and shower stool". Again, no mention of stairs. The first reference to stairs was the reference to "the steps up to his bedroom are steep and poorly lit" within grounds for judicial review (25.8.23), 14 days after SW Wilson's original email. The Claimant's fall down the stairs at Willow Lane occurred 3 days later, on 28.8.23. An ITP was issued on 1.9.23 seeking accommodation which was ground floor or a lift, with a walk in shower. Time was needed to action the change, and the Claimant's solicitors sensibly recognised that fact in proposing deferral of interim relief hearing dates. When replacement accommodation (Bell Street) was

then being considered, SW Wilson's response in an email on 6.9.23 said that "a fully downstairs living residence" would be "far more ideal and less risky".

(3) The Claimant was moved from Willow Lane on 20.9.23. That was done to protect him from the acknowledged risk posed by having to use the steep and poorly lit steps at Willow Lane. I accept that if he had remained much longer at Willow Lane, that would have become unlawful, breaching the duty to provide legally suitable HOBA. I think this would have become a breach of the second and third standards of legally adequate accommodation; a breach of the duty to make reasonable adjustments; and it would have constituted discrimination against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability (Issues (3b), (5bii) and (5c)). But I am unable to accept, in all the circumstances, that the SSHD was acting unlawfully in any of the respects alleged by failing to move the Claimant from Willow Lane earlier than 20.9.23. The Claimant's representatives pursuit of judicial review, including interim relief, had the consequence of holding the SSHD to the applicable duties. The SSHD at that stage remained within the law. The Claimant needed to be moved to alternative HOBA. That happened by 20.9.23. A series of ITPs from 1.9.23 specified "ground floor/ lift/ walk in shower". Oral hearings of an application for interim relief were deferred by agreement on 1.9.23, 4.9.23 and 12.9.23, with relisting for 20.9.23. Viewed independently of the litigation and involvement of the Court, that timetable would not in my judgment constitute a breach of any of the legal duties. It was within 23 days of the fall on the stairs; within 26 days of the judicial review grounds which relied on the stairs; and within 19 days of raising an ITP specifying "ground floor/ lift/ walk in shower".

(4) I cannot accept that the stairs in the HOBA at Willow Lane to 20.9.23 constituted a breach of the Claimant's Convention rights, so as to breach the Convention-compatibility standard of legally adequate HOBA. Limbuela-Suffering – and for that matter Statutory-Destitution – were avoided by the provision of Willow Lane. There was a risk of "experiencing a fall/injury", as SW Wilson put it on 6.9.23. There was the fall down the stairs (28.8.23). There is no evidence of confinement, or any other aspect relating to private or family life. There was no real and immediate risk to life or of Article 3 ill-treatment of which the SSHD was aware or ought to have been aware. There was a changed set of known circumstances, directly related to the Claimant's known disabilities, linked to an evaluation from a social worker. A relocation was needed. That was the necessary reasonable adjustment. It would not have been justified or proportionate to allow the Claimant to move temporarily to his sister's house (in breach of public protection requirements) or return him to immigration detention, involving a deprivation of liberty and related risk to mental health.

84. I turn to Rokeby Gardens:

(1) Rokeby Gardens was identified to the SSHD as being suitable accommodation which avoided risks from stairs. I have described the circumstances: see §54(2) above. ITPs from 1.9.23 specified "ground floor/ lift/ walk in shower". SW Wilson from Kirklees was advising on 6.9.23 (in the context of Bell Street) "a fully downstairs living residence" as being "far more ideal and less risky" than the Claimant having to use a set of stairs. Nobody contests that Rokeby Gardens was "a single bedroom with shared facilities" and "situated on the ground floor with a

ground floor bathroom"; nor that it was "approved by Kirklees Social Services". The HOBA allocation of Rokeby Gardens was a conscientious response, in good faith, intended to avoid risks associated with stairs. Kirklees – whose SW Wilson had first spotted the steep, badly lit staircase at Willow Lane – had, for its part, "approved" Rokeby Gardens. Rokeby Gardens was better than Willow Lane (which he had left) and Bell Lane (which Kirklees advised against), in that he did not need to ascend or descend a flight of stairs to get to his bedroom or bathroom; still less a steep flight of badly lit stairs (as at Willow Lane). Rokeby Gardens had the seven carpeted steps down to the basement, at a right angle crossing the landing outside the Claimant's ground floor room to the ground floor kitchen and bathroom. When concerns were raised about Rokeby Gardens, and about what the SSHD "knew or ought to have known" (3.10.23), the SSHD first made an enquiry as to whether the accommodation had been misrepresented as "a single bedroom with shared facilities", "situated on the ground floor with a ground floor bathroom", meeting the description "ground floor/ lift/ walk in shower". In my judgment, there is no basis for concluding that the SSHD knew or ought to have known that there was any problem with steps and stairs at Rokeby Gardens; nor that the SSHD ought in law to have undertaken some different or further enquiry. There was no reason for the SSHD, or the Claimant's representatives or the Court, to think there was a problem with stairs and Rokeby Gardens. The SSHD also enquired as to whether a stairgate could be a satisfactory solution, but the advice was that it was not. Within 16 days of being at Rokeby Gardens, the Claimant was in hospital (from 6.10.23) – but not because of any incident regarding the stairs – where he then stayed for 21 days (to 27.10.23).

(2) It was at this point that there was a significant change in circumstances. The local professionals – including LCC's SOT Dickinson (18.10.23), SW Fasisi (23.10.23), then SW Peters with SSW Wood (10.11.23) – were advising that the presence of the stairs at Rokeby Gardens posed a risk to the Claimant. The Claimant was in hospital, where his discharge had to be delayed (§55 above). Such was the risk that LCC's social workers had to identify a "confined living" plan to mitigate it (§57 above). The information was being communicated to the SSHD, promptly, by the Claimant's solicitors. The SSHD's position (23.10.23) was to maintain that Rokeby Gardens was suitable, but to agree to source an alternative. The High Court made an order for interim relief, requiring alternative accommodation by 6.11.23, or a justified application to vary the date. The deadline was not met by the SSHD, nor was there any justified application to vary the date. This was unlawful, by virtue of being breach of a court order: §51 above. In my judgment, it was also unlawful action by the SSHD, independently of the breach of the Court Order. The risk from stairs was not itself a new point. Local authority approval was important, and these were local authority professionals in the actual area of Rokeby Gardens. The selection of Rokeby Gardens, albeit made in good faith, proved to be unsafe and unsuitable, on the assessment of professionals on the ground. Their professional assessment gave rise to a "confined living" arrangement by way of an interim protection for the Claimant. These circumstances, independently of litigation and interim relief, should in my judgment had triggered urgent action within two weeks of the Fasisi Assessment (23.10.23). The Claimant should not still have been at Rokeby Gardens when he had the seizure on 7.11.23 for which he was hospitalised overnight; or the seizure on 16.11.23 with the head injury for which he was hospitalised for 7 days; or the seizure on 26.11.23 for which he was hospitalised

for 6 days; or the seizure on 8.12.23 for which he was hospitalised overnight. There should not have been the open-ended period of delay and uncertainty. Especially in circumstances where the SSHD's approach to the applicable policy guidance allowed for the use of accommodation which was not "Level 3" (Issue (2a)). I find that, from 6.11.23 the SSHD's failure to transfer the Claimant from Rokeby Gardens was unlawful, breaching the duty to provide legally suitable HOBA. It was a breach of the second and third standards of legally adequate accommodation, not being reasonably assessed as adequate or meeting the EU-derived objective standard (as in NB at §171); a breach of the duty to make reasonable adjustments; and it constituted discrimination against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability. The relevant law is at §§13, 18, 23-24 above. I will make an appropriate declaration. In those circumstances, the Claimant succeeds from 6.11.23 to 22.12.23 under Issues (3b), (5bii) and (5c).

(3) I am unable to accept that the "confined living" arrangement from 27.10.23 to 22.12.23 placed the SSHD in breach of the Article 2/3 Operational Duty (§30 above) or violated the Claimant's substantive Article 3 or 8 rights (§§26-27, 31 above). My findings of fact are at §59 above. Rokeby Gardens was HOBA which served to protect the Claimant from Limbuela-Suffering and, for that matter, from Statutory-Destitution (§§14, 12 above). LCC's carer visits four times a day – later three times a day – to provide meals and help with hygiene, toileting and showering were a response to care and support needs by LCC to reduce risks to the Claimant. The Claimant needed to be moved to safe and suitable accommodation, speedily. But I cannot accept that his Article 2, 3 or 8 rights – or the SSHD's HRA duties – were breached by the circumstances and conditions which applied while he awaited being transferred. The evidence about risk to life from seizures is concerned with seizure-support (§79 above). I was shown no evidence of a risk of death from the seven carpeted stairs down to the basement; nor of the chance of a seizure taking place without any prior warning at the moment of crossing the small landing. The Claimant was not in fact confined. Nor was he in fact forced to use a commode or be in a confined space with a used commode. Insofar as reliance was placed on the "difference in presentation" which "shocked" PPO Harrison (in her email of 13.12.23), that was her comparison of the Claimant's presentation at Willow Lane (before being transferred to Rokeby Gardens) and prior to his March 2023 recall. The conditions and circumstances of the "confined" living did not in my judgment cross the Article 3 Severity-Threshold (cf. TMX). Nor was there the sort of interference to a high degree with the Claimant's physical and psychological integrity, with a particular emphasis on privacy and family life, to constitute an Article 8 violation (cf. TMX). The Claimant was not condemned to living in conditions which showed a singular lack of respect for his private and family life or made it virtually impossible for him to have any meaningful private or family life, still less for an extended period (cf. Bernard). As in McDonagh (see §§68-74), Article 8 was not violated here. The upshot of all of this is set out at §81 above.

The Systemic HRA Issues

85. Finally, Issues (4a) and (4b) are:

> ***(4a) Does the SSHD's system for the provision of release accommodation create a real risk of a breach of fundamental rights? (4b) Did the SSHD breach the Systems Duty under Articles 2***

> ***and/or 3 ECHR, by failing to put in place effective systems and arrangements to prevent foreseeable risks to life and/or serious injury and/or serious harm to mental and/or physical health?***

My answers are "no". Ms Harrison KC submitted, in essence, as follows. The SSHD has adopted a system which "exposes" released IRC detainees to a "significant risk" of treatment prohibited by Articles 2 and/or Article 3, in violation of the Munjaz principle (§28 above). The SSHD has also failed to put in place effective systems and arrangements to prevent foreseeable risks to life and/or serious injury and/or serious harm to mental and/or physical health, in violation of the Systems Duty (§29 above). These shortcomings are conspicuous in complex cases – which are both Harm Cases and Article 3 Cases – and the facts of the present case are illustrative as a compelling case study. The Court also has the firm factual anchorage (DXK §§111-112) of the powerful case study evidence from MJ and BID. In the context of potential care and support needs, where there is the vacuum in the SSHD's policy guidance arrangements, and where the SSHD's evidence about the arrangements is so unsatisfactory, the SSHD has both created and failed to protect against Article 2 and Article 3 harm. This is manifested through: the provision of unsafe and inadequate HOBA; delays in the provision of safe and adequate HOBA; failures in proactive liaison with local authorities; failures to convene anticipatory multi-disciplinary meetings; failures to make anticipatory local authority referrals; failures in prioritisation; an approach which is reactive, requiring email chasers; and a practice of considering candidate properties only "one at a time" (until late November 2023); all in the context of long-standing problems and concerns, seen in R (Razai) v SSHD [2010] EWHC 3151 (Admin); then in Sathanatham, Humnyntskyi and DXK.

86. I have been unable to accept these statutory human rights submissions. The relevant law is at §§28-29 above. I accept that Ms Harrison KC has shown that the SSHD's system for Home Office release accommodation for FNOs creates a real risk of delay in 2014 Act care and support needs being met by local authorities. I accept that Ms Harrison KC has shown that the SSHD has failed to put in place effective systems and arrangements to prevent foreseeable risks of delay in 2014 Act care and support needs being met by local authorities. I accept that the facts of the present case – and the MJ/BID case studies – are properly illustrative of the importance of a system which proactively considers potential care and support needs. But I cannot accept that the systems for Safe-Release planning and HOBA planning violate Article 2 or 3. It cannot be said that there is an Article 2/3 duty to convene an anticipatory multi-disciplinary meeting, or to make a local authority referral, in a case of potential care and support needs. Although there is a statutory duty of notification (2014 Act s.37), it cannot be said that there is an Article 2/3 duty to notify a local authority that a person with known care and support needs is moving to their area. I accept that a situation where care and support needs are unmet could cross the Article 3 Severity-Threshold, as was the position after 10 months in TMX (§§21, 26 above). But I am unable to equate care and support needs, and the risk in delay in meeting them, with a real risk to life or of inhuman or degrading treatment meeting the Article 3 Severity-Threshold. It is not said of the system for HOBA that it is a system which fails to protect against Limbuela-Suffering, as did the denial of HOBA on the facts in Humnyntskyi where the individual was left street homeless for 10 months, unable to wash clothes and totally reliant on food handouts (§26 above); and as did the system in ASY and SAG (§29 above). I accept that the use of dangerous accommodation could, on the facts of an individual case, engage the right to life, remembering that this threshold was not crossed in the context of the former military barracks in NB, notwithstanding the fire

risks (§30 above). Putting all of this another way, the Article 2/3 principles are not a legal underpinning for the conclusion in the Claimant's favour on Issue (1): see §65 above.

87. There is a footnote. I was not able to understand from the evidence filed in this case why it is that the SSHD's systems are insistent on considering a candidate property "one at a time", from a single provider, rather than there being a menu of currently available properties. There is no evidence before me that a single candidate property, when put forward for consideration, is placed on "hold" so that it cannot be canvassed for other individuals. It seems obvious that safe and suitable accommodation in complex cases could more effectively and speedily be considered if multiple providers were putting forward lists of multiple candidate properties for consideration. I record this unanswered concern. But given the very secondary way in which it featured in the present case, as one of many points of detail alongside a long list of agreed issues, that is sufficient. It can, if appropriate, be squarely ventilated and examined in a future case.

Conclusions

88. In this claim (BLZ No.1) I have found in the Claimant's favour as follows. First, the SSHD acted unlawfully from 6.11.23 to 22.12.23 by breaching a Court Order (§51 above). Second, the SSHD acted unlawfully in failing to have in a place a written policy or instruction (a) helping decision-makers to identify when a person has or may have eligible care and support needs under the 2014 Act and (b) requiring decision-makers to refer such persons to a local authority for a needs assessment under the 2014 Act prior to or following their release from detention to HOBA (§§63-65 above). Third, the SSHD acted unlawfully, having made decisions to provide HOBA under Sch 10 §9 to the 2016 Act, in failing to monitor the provision of that accommodation to individuals who have a disability, in consequence of which the SSHD has failed (a) to have due regard to the need to eliminate discrimination and to the need to advance equality of opportunity between persons who share the protected characteristic of disability and persons who do not share it and (b) to make reasonable adjustments pursuant to EA ss.20 and 29 to the release planning process and the process for sourcing and providing HOBA for disabled people with complex or high-level needs (§§66-69 above). Fourth, the SSHD acted unreasonably and failed to apply the published policy guidance document DSO 08/2016 in the Claimant's case, in failing (a) to consider the need for and make the necessary arrangements for referral to a local authority for assessment under the 2014 Act prior to or following the release of the Claimant from detention to HOBA and (b) to convene an expedited multi-disciplinary meeting to plan for the Claimant's Safe-Release from detention or arrange a local authority assessment of the Claimant's 2014 Act needs (§§73-75 above). Fifth, so far as presence of stairs at Rokeby Gardens is concerned, from 6.11.23 to 22.12,23 the SSHD: (a) acted unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 and unreasonably in failing to provide the Claimant safe and suitable HOBA; (b) breached EA ss.20 and 29 by failing to make reasonable adjustments in sourcing and providing HOBA for the Claimant as a disabled person; and (c) discriminated against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability in breach of s.15 of the EA (§§81, 84(2) above).

89. In this claim, I have found in the SSHD's favour as follows. First, the SSHD did not fail to apply the published policy guidance document Immigration Bail Interim Guidance, by failing to provide the Claimant with "Level 3" accommodation within the meaning of that policy (§§70-72 above). Second, so far as medication-planning, seizure-support and

the presence of stairs at Willow Lane are concerned, the SSHD did not: (a) act unlawfully in breach of the duties under Sch 10 §9 to the IA 2016 or unreasonably in failing to provide safe and suitable HOBA; or (b) breach EA ss.20 and 29 by failing to make reasonable adjustments in sourcing and providing HOBA for the Claimant as a disabled person; or (c) discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability in breach of s.15 of the EA (§§77-84 above). Third, the SSHD did not in any respect: (a) breach the Operational Duty owed to the Claimant under Articles 2 and/or 3 ECHR, because she knew or ought to have known of a real and immediate risk to life and/or serious injury and/or serious harm, and failed to take reasonable measures within the scope of her powers which might have been expected to avoid that risk; or (b) breach the Claimant's substantive Article 3 rights; or (c) breach the Claimant's Article 8 ECHR rights; nor (d) breach Articles 2 and/or 3 ECHR by a system for the provision of release accommodation which was unlawful as creating a real risk of a breach of fundamental rights; nor (e) breach the Systems Duty under Articles 2 and/or 3 ECHR, by failing to put in place effective systems and arrangements to prevent foreseeable risks to life and/or serious injury and/or serious harm to mental and/or physical health (§§65, 78, 80, 83(4), 84(3), 85-87 above).

Order

90. In the light of the contents of this judgment, circulated in draft, the parties were agreed that I should order as follows, as I do. A recital to the Order records the parties agreeing that the provisions as to costs at §§(5)-(8) of the Order are in addition to the existing costs orders in this claim dated 20.09.23, 30.10.23, 14.11.23 and 5.12.23. The Order is:

> ***The claim. (1) The claim for judicial review is granted on Issues 1(a), 1(b), 2(b), 3(a), and 5(a), and 5(b). It is also granted on Issues 3(b), 5(bii), and 5(c) in respect of the period between 6.11.23 and 22.12.23. The claim for judicial review is dismissed on all other issues.***
>
> ***Declarations. (2) It is accordingly declared that the SSHD acted unlawfully by: (a) failing between 6.11.23 and 22.12.23 to provide the Claimant with safe and suitable HOBA, in breach of the duties under: (i) Sch 10 §9 to the 2016 Act and reasonable decision-making; (ii) ss.20 and 29 of the EA to make reasonable adjustments to the process for sourcing and providing HOBA for the Claimant as a disabled person; and (iii) s.15 of the EA not to discriminate against the Claimant by failing to provide him with suitable accommodation as a consequence of his disability; (b) continuing to accommodate the Claimant at Rokeby Gardens between 6.11.23 and 22.12.23, in breach of the Order to provide alternative accommodation made by DHCJ Palmer dated 26.10.23; (c) failing to have in place a written policy or instruction (i) helping decision-makers to identify when a person has or may have eligible care and support needs under the 2014 Act and (ii) requiring decision-makers to refer such persons to a local authority for a needs assessment under the 2014 Act prior to or following their release from detention to HOBA; (d) failing in the Claimant's case, contrary to DSO 08/2016 and unreasonably, to (i) consider the need for and make the necessary arrangements for referral to a local authority for assessment under the 2014 Act prior to or following the release of the Claimant from detention to HOBA and (ii) convene an expedited multi-disciplinary meeting to plan for the Claimant's Safe-Release from detention or arrange a local authority assessment of the Claimant's 2014 Act needs; (e) failing to have "due regard" to the need to eliminate discrimination and to the need to advance equality of opportunity, in breach of the by the Public Sector Equality Duty, due to (i) the absence of any system or arrangement for collecting and monitoring data regarding the provision of HOBA to disabled persons and (ii) the absence of any Equality Impact Assessment ("EIA") relating to the provision of Schedule 10 accommodation, contrary to s.149 of the EA; (f) failing to make reasonable adjustments to the release planning process and/or the process for sourcing and providing HOBA for disabled people with complex or high-level needs, including by establishing an effective system for prioritising such cases, contrary to ss.20 and 29 of the EA.***

> ***Mandatory Orders. (3) The Court further orders that: (a) The SSHD shall, as soon as reasonably practicable, extend the system for collating and monitoring statistical data, established by the SSHD following a mandatory order in DXK [2024] EWHC 579 (Admin) [2024] 4 WLR 46, so that it applies all FNOs including those in HOBA; (b) The SSHD shall, as soon as reasonably practicable, carry out and publish an EIA relating to the provision of Sch 10 accommodation, in a manner that addresses and complies with the duty under ss.20, 21 and 29 of the EA. Liberty to Apply. (4) The Claimant has liberty to apply to set a deadline in respect of the matters ordered at §§(3)(a) and (b) above, in the event that those orders are not complied with in a reasonable time without adequate explanation or justification.***
>
> ***Costs. (5) The SSHD shall pay the 85% of Claimant's costs on the standard basis. (6) The SSHD shall make a payment on account of £75,000 of the Claimant's costs within 21 days of being served with the Claimant's bill of costs. (7) Costs shall be the subject of detailed assessment if not agreed. (8) There shall be detailed assessment of the Claimant's publicly funded costs which are payable by the Lord Chancellor under Part I of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.***

91. There was no application to me from the SSHD for permission to appeal. I refuse the Claimant's application for permission to appeal. Three grounds of appeal were identified: (1) error in the application of the Munjaz principle and the Article 2/3 Systems Duty; (2) error in failing to apply the relevant test regarding the lower-level Systems Duty; and (3) error in holding that the SSHD had not breached the Operational Duty. My summary of the law is at §§25-30 above, the correctness of which is accepted in the application for permission to appeal. All three grounds are squarely concerned with application of the law, in light of all the points and evidence in the case. I have been unable to see a viable legal point with a real prospect of success on appeal (CPR 52.6(1)(a)) and I do not see this as a "compelling reasons" case (CPR 52.6(1)(b)).