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Case Nos: AC-2023-LON-003447
AC-2024-LON-000210
AC-2024-LON-000224
AC-2024-LON-000189

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

Date: 14/03/2025

Before :

MR JUSTICE MOULD

- -

Between :

(1) TG
(2) MN
(3) HAA
(4) MJ **Claimants**

- and –

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

- -
- -

ANGUS McCULLOUGH KC, SHU SHIN LUH, BEN AMUNWA AND SARAH DOBBIE (instructed by (1) **Gold Jennings** (2)(3) **Deighton Pierce Glynn**) for the **First, Second and Third Claimants**
ALEX GOODMAN KC AND MIRANDA BUTLER (instructed by **Duncan Lewis LLP**) for the **Fourth Claimant**
LISA GIOVANNETTI KC, DAVID MANKNELL KC, SIAN REEVES AND EDWARD WALDEGRAVE (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 23, 24, 25 and 26 July 2024

- -

Approved Judgment

This judgment was handed down remotely at 2pm on Friday 14th March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

MR JUSTICE MOULD :

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Introduction

1. These cases concern the defendant's exercise of her power under section 95 of the Immigration and Asylum Act 1999 **['IAA 1999']** to provide support for asylum seekers who appear to her to be destitute or likely to become so. Such support may take the form of the provision of accommodation which appears to the defendant to be adequate to meet the needs of the supported person. In a case in which an asylum seeker applies for support and the defendant considers him or her to be eligible, she is under a duty to provide it.

2. In the present case, the four claimants are asylum seekers. Each of them arrived in the United Kingdom during the course of 2023 and claimed asylum. It is not in issue that following their arrival in this country, each of the claimants was destitute and became eligible for support under section 95 of IAA 1999.

3. On 12 July 2023, the defendant began to use a former Royal Air Force base at Wethersfield near Braintree in Essex for the purpose of providing accommodation to asylum seekers in the exercise of her power under section 95 of IAA 1999. Initially, 43 such persons were accommodated at Wethersfield.

4. A brief description of the Wethersfield site, its purpose and operation is given in the introduction to an independent report commissioned by the defendant's Senior Responsible Officer for the site from Management and Training Corporation Limited entitled *"Review of contingency asylum accommodation at Wethersfield Essex"* dated February 2024 **["the MTC Report"]** –

> *"Wethersfield is a former RAF base located near Braintree in Essex. The Home Office took over the site and developed it for the accommodation of migrants to reduce the number of people accommodated in hotels. Development plans were set out in March 2023. The first residents arrived at site on 12th July 2023. The Home Office has permission to operate the site until April 2024, although a three-year extension is currently being sought.*
>
> *Wethersfield is operated by Clearsprings Ready Homes, a provider of asylum seeker accommodation to the Home Office in the South of England. The site accommodates single adult males between the age of 25 and 65. Wethersfield is a non-detained site where residents can remain for up to nine months. Since opening, the site has operated significantly below its stated capacity of 1,700 individuals. During our visit there were an average of 585 residents on site.*
>
> *Additional funding has been provided to the NHS locally to reduce demand on health services in the vicinity. The site has a welfare facility and an accredited mental health nurse service. Residents are not detained on site and can leave if they wish to, provided they return by 2300".*

5. On 11 April 2024, the Town and Country Planning (Former RAF Airfield Wethersfield) (Accommodation for Asylum Seekers) Special Development Order 2024 **['the SDO']** came into force extending planning permission for the use of the facility to accommodate asylum seekers until 10 October 2027.

6. In the exercise of her powers under section 95 of IAA 1999, the defendant decided that accommodation at Wethersfield was adequate to meet the needs of each of the four claimants. Each claimant was accommodated at Wethersfield for a period of time before being transferred to alternative accommodation either in late 2023 or early 2024 –

   (1) TG was at Wethersfield from 24 August 2023 until 20 November 2023.

   (2) MN was at Wethersfield from 12 July 2023 until 23 February 2024.

   (3) HAA was at Wethersfield from 4 October 2023 until 26 January 2024.

   (4) MJ was at Wethersfield from 21 September 2023 until 6 March 2024.

The claimants' complaint

7. At the heart of this case is the contention advanced on behalf of each of the four claimants that the defendant acted unlawfully in deciding that accommodating them at Wethersfield

was adequate for their needs. Each claimant contends that he was a vulnerable person, whose disabilities and experiences of torture, serious physical and/or psychological violence and human trafficking were either known to the defendant, should have been discovered by the defendant on reasonable inquiry or were drawn to her attention during the period of their accommodation at Wethersfield. The claimants say that the evidence filed in support of their claims shows that being accommodated at Wethersfield resulted in a significant deterioration in their mental health and worsening of their underlying mental disorders. The defendant is said to have acted unlawfully in failing to act on that evidence in a timely way and to transfer the claimants out of Wethersfield, failing to do so until either claims for judicial review or applications for interim relief had been made on their behalf.

Procedural background

8. These four individual claims were brought in late 2023 or early 2024. During that period, further claims were brought by or on behalf of asylum seekers accommodated at Wethersfield raising similar issues to those raised in these claims. Following a case management hearing on 27 February 2024, McGowan J ordered that these four claims should proceed as linked lead claims and be listed to be heard together on 23-26 July 2024. McGowan J ordered that a further six claims be stayed until 21 days after the final determination of these claims (or further order). McGowan J also made anonymity orders which remain in effect and will continue in effect hereafter. At the date of the case management hearing, only MJ remained at Wethersfield. On 1 March 2024, on MJ's application for interim relief, McGowan J ordered the defendant to transfer MJ from Wethersfield to adequate accommodation under section 95 of IAA 1999 within two working days.

9. On 28 February 2024, McGowan J gave directions for the filing of consolidated amended grounds of claim on behalf of claimants TG, MN and HAA, of detailed grounds of resistance and the defendant's evidence in response to the claims.

10. The case advanced on behalf of TG, MN and HAA is stated in their consolidated statement of facts and grounds **['the consolidated claim']** filed on 26 March 2024. The consolidated claim is supported by an annex containing factual summaries for TG, MN and HAA.

11. On 22 May 2024, the defendant filed her detailed grounds of defence responding not only to the grounds advanced by TG, MN and HAA but also the statement of facts and grounds filed on behalf of MJ dated 18 January 2024. The detailed grounds of defence were also supported by an annex summarising the facts in relation to each of the four claimants.

12. On 18 June 2024 an amended statement of facts and grounds was filed on behalf of the fourth claimant, MJ **['the MJ claim']**.

13. I gave permission for consolidated skeleton arguments of greater than usual length to be filed on behalf of TG, MN and HAA and on behalf of the defendant in response to all four claims. A separate skeleton argument was filed on behalf of MJ.

14. The hearing took place before me over 4 days. Given the very large volume of documents to consider and the extensive range of issues which counsel wished to address, it was not possible to hear full oral submissions during the course of the hearing. In particular, the defendant's oral response to the claims had to be abbreviated and none of the claimants were able to make a full oral reply. Both during and after the hearing, I received further written

materials from counsel in both narrative and tabular form. In particular, following the hearing I received detailed written replies in both the consolidated claim and in the MJ claim.

15. On 24 October 2024, the report of the Independent Chief Inspector of Borders and Immigration **["ICIBI"]** entitled "An inspection of contingency asylum accommodation (November 2023- June 2024)" **["the ICIBI Report"]** was laid before Parliament. On the same day, the government published its response to the ICIBI Report. I received further written representations from both the claimants and the defendant drawing my attention to a number of the findings in the ICIBI Report. In letters dated 25 October 2024, the claimants said that the ICIBI Report represented the most up-to-date evidence regarding the situation at Wethersfield from the period leading up to the hearing of these claims. They contended that the ICIBI Report found in late June 2024 that there remained *"fundamental systemic issues with the provision of asylum accommodation at Wethersfield that have not been recognised or resolved"*. The claimants drew attention to a number of specific findings in the ICIBI Report which were said to support that contention. On 11 November 2024, the defendant provided a response to the specific points relied upon by the claimants, whilst indicating that the matters raised in the ICIBI report had been extensively addressed in the voluminous evidence and submissions already before the court.

16. I have carefully considered the points raised in the ICIBI Report and drawn to my attention by the parties. I note that the ICIBI's statutory functions under section 48 of the UK Borders Act 2007 include inspecting the efficiency and effectiveness of the defendant's performance of functions relating to asylum, and those exercising those functions on her behalf. The ICIBI is able to monitor, to report and to make recommendations on a range of matters listed in section 48(2) of the 2007 Act, including the procedure in making decisions and the treatment of claimants and applicants. Section 48(4) states that the ICIBI shall not aim to investigate individual cases, although he or she may consider or draw conclusions about an individual case for the purpose of or in the context of considering a general issue. In other words, the focus of the ICIBI's inquiries is the operation of the asylum system rather than making decisions about the treatment of individual asylum seekers.

The grounds of challenge

17. Paragraph 5 of the consolidated claim stated 8 grounds of challenge to the defendant's decision to accommodate TG, MN and HAA at Wethersfield. Those claimants re-ordered and somewhat reformulated those grounds of challenge in paragraph 5 of their skeleton argument, as follows –

    (1) Ground 1 - The process for applying the defendant's policy criteria for selecting persons to be accommodated at Wethersfield is unlawful and fails to comply with her duty of reasonable inquiry under the principle established in Secretary of State for Education and Science v Tameside MBC [1977] AC 1014, 1065 **['*Tameside*']**, both in relation to the initial decision to accommodate individuals at Wethersfield and the ongoing review of suitability following their being accommodated there. This has resulted in asylum seekers whom, as a matter of policy, the defendant later recognises not to be suitable for accommodation at ex-MoD sites nevertheless being accommodated at Wethersfield, and/or not being promptly identified and relocated to suitable accommodation.

    (2) Ground 2 – In accommodating TG, MN and HAA at Wethersfield, the defendant was in breach of her duty under sections 95 and 96 of IAA 1999. Under the suitability criteria

stated in the defendant's *"Allocation of asylum accommodation policy"* **["the Allocation Policy"]** those claimants were not suitable for accommodation at Wethersfield because each of them is a victim of torture or other serious physical violence, a victim of trafficking, and suffering from mental ill health which adversely and substantially affects their day-to-day functioning.

(3) Ground 3 - The suitability criteria published in version 11 and maintained in version 12 of the defendant's Allocation Policy are unlawful both on their own terms (applying R (A) v Secretary of State for the Home Department [2021] 1 WLR 3931 **['*R(A)*']**) and in their operation. The claimants also contend that in promulgating versions 11 and 12 of the Allocation Policy, the defendant was in breach of the public sector equality duty **['PSED']** under section 149 of the Equality Act 2010 **['EA 2010']**.

(4) Ground 4 - The defendant is in breach of section 20 and section 29(7) of EA 2010 by failing to make reasonable adjustments to avoid disadvantage to disabled asylum seekers, including the claimants, as a result of their being accommodated at Wethersfield, in particular as a result of her unlawful acts and omissions identified under grounds 1 and 3.

(5) Ground 5 – The defendant's policy in version 10 and maintained in versions 11 and 12 of the Allocation Policy is unlawful and in breach of Article 4 of the European Convention of Human Rights **['ECHR']** in treating asylum seekers who are potential victims of modern slavery as being unsuitable for accommodation at ex-MoD sites only in the event of a positive reasonable grounds decision under the National Referral Mechanism **['NRM']**.

(6) Ground 6a – The defendant is in breach of the PSED by failing to have sufficient regard to the risk of racial harassment, undertake effective monitoring or mitigation of that risk and ensure that caseworkers are properly advised as to the effective safeguarding of ethnic minority asylum seekers at Wethersfield. The defendant was in breach of the PSED in failing to consider the risk to HAA and other Black African asylum seekers accommodated at Wethersfield of being subjected to violent racial harassment.

(7) Ground 6b – Contrary to sections 13, 19, 27 and 29(6) of EA 2010, the defendant and/or her agents subjected HAA to race discrimination and/or victimisation by reason of inadequate safeguarding and/or ineffective responses to reports of racial harassment or the risk of such harassment.

(8) Ground 7 – In accommodating TG, MN and HAA at Wethersfield and given the resulting impact upon those vulnerable claimants of being placed in accommodation which was not adequate for their needs and for which they were not suitable on the proper application of the Allocation Policy, the defendant has contravened the claimants' rights protected under article 8 ECHR.

18. The fourth claimant advances three grounds of challenge in the MJ claim –

(1) Ground 1(A) – The defendant acted unlawfully and in breach of sections 95 and 96 of IAA 1999 in failing to provide MJ with adequate accommodation. Acting reasonably, it was not open to the defendant to decide that Wethersfield provided, or continued to provide adequate accommodation for MJ, in the light of his needs. As result, MJ's

mental health deteriorated to the extent that he developed an adjustment disorder as was acknowledged subsequently by the defendant's expert adviser.

(2) Ground 1(B) – The defendant has acted unlawfully and in breach of sections 95 and 96 of IAA 1999 in accommodating asylum seekers at Wethersfield in accommodation which is inadequate to meet the needs of many (if not all) persons accommodated there. In particular, the evidence before the court establishes that being accommodated at Wethersfield has resulted in deterioration in the mental health of many residents in consequence of the inadequate conditions in which asylum seekers are accommodated at the site.

(3) Ground 2 – The Defendant has failed to put in place a system of allocations and monitoring at Wethersfield which enables her lawfully and reasonably to discharge her functions under section 95 and 96 of IAA 1999. In requiring caseworkers to allocate accommodation on the basis of the suitability criteria published in the Allocation Policy, the defendant misdirects caseworkers into making unlawful allocation decisions. Moreover, the system of inquiry operated by the defendant is legally deficient for the purpose of eliciting the information that she reasonably requires in order properly to apply her suitability criteria and/or to discharge her functions under sections 95 and 96 of IAA 1999.

Systemic and individual grounds of challenge

19. The issues raised by these grounds of challenge break down into two broad categories.

20. The first broad category is in the nature of a systemic challenge to the lawfulness of the Allocation Policy and procedures upon which decisions to provide asylum seekers with accommodation at Wethersfield in the exercise of the functions under section 95 and 96 of IAA 1999 are based.

21. There are two main themes to this systemic challenge. The first theme is the contention that the defendant operates an unlawful policy in deciding whether vulnerable asylum seekers are suitable to be accommodated at Wethersfield. The second theme is that the defendant's allocations process is ineffective for the purpose of ensuring that vulnerable asylum seekers for whom accommodation at Wethersfield is not adequate are not accommodated at that site. There is a clear overlap between these two themes, since it is argued that the defendant's Allocation Policy casts the burden of inquiry onto the vulnerable asylum seeker who lacks the resources to discharge it; whereas the duty of reasonable inquiry is placed by law upon the defendant herself under the *Tameside* principle.

22. In advancing their systemic challenge, the claimants rely heavily on *R (NB and others) v Secretary of State for the Home Department* [2021] 4 WLR 92 **["*NB*"]**. In NB, the defendant had promulgated policy criteria against which, in discharging her functions under sections 95 and 96 of IAA 1999, she would assess the suitability of asylum seekers to be accommodated at Napier Barracks near Folkestone. At [233]-[238], on the evidence before him Linden J held that the system which the defendant operated in that case for the purposes of applying that policy criteria was unlawful, because contrary to the *Tameside* principle, that system did not gather the information that was reasonably necessary for those purposes. In the present case, the claimants invite the court to draw the same conclusion, and for similar reasons, in relation to the system operated by the defendant in assessing the suitability of asylum seekers to be accommodated at Wethersfield.

23. The second theme of challenge consists of the grounds advanced by each of the four individual claimants in relation to the defendant's decision to accommodate them at Wethersfield. In each case, the claimant contends that, in the light of his vulnerabilities, the defendant acted unreasonably and unlawfully in the exercise of her functions under sections 95 and 96 of IAA 1999 in deciding to accommodate him at Wethersfield; and/or in continuing to accommodate him at Wethersfield and failing to transfer him to alternative accommodation earlier than she in fact did.

24. These individual claims are conventional claims for judicial review by claimants who each complain that they have been the victim of unlawful or unreasonable administrative acts or omissions by a minister exercising statutory powers and discharging statutory and public law duties. As in each case, as the claimant is no longer accommodated at Wethersfield, the appropriate relief in the event that the claim is upheld is likely to be declaratory relief and, potentially, damages.

25. In paragraph 17 above, the consolidated claim advances systemic grounds of challenge under grounds 1, 3 and 5. I shall also address ground 6a in that context. Grounds 2, 4, 6b and 7 are focused on those individual claimants, although grounds 2 and 4 also include systemic elements.

26. In paragraph 18 above, the MJ claim advances what is primarily a systemic challenge under grounds 1B and 2. Ground 1A is focused upon MJ's individual experience of being accommodated at Wethersfield.

The evidence before the court

27. The following evidence was filed on behalf of the defendant in response to the consolidated claim and to the MJ claim –

    (1) The witness statement of Dave Butler, the defendant's Senior Responsible Officer **["SRO"]** at Wethersfield, dated 22 May 2024.

    (2) The witness statement of Helen Mascurine, the defendant's Head of Asylum Support Casework and Compliance within the Asylum Support, Resettlement and Accommodation team, dated 22 May 2024.

    (3) The witness statement of Catherine Stratton, the defendant's Accommodation Transformation Policy Lead for the Asylum and Protection Unit, dated 22 May 2024.

    (4) The second witness statement of Andrea Churton, Head of the defendant's National Asylum Allocation Unit **["NAAU"]**, dated 22 May 2024.

    (5) The witness statement of Scott Murray, assistant director for Manston operations at the defendant's Illegal Migration Intake Unit **["IMIU"]**, dated 22 May 2024.

    (6) The witness statement of Peter Dobson, of the defendant's Asylum Accommodation Programme (Non-Detained Team), dated 20 May 2024.

28. Each of the four claimants has filed his own evidence in support of his individual claim. TG and MN have each filed two witness statements. HAA has filed a single witness statement. MJ has filed four witness statements. Witness statements in support of each claimant's

individual claim have also been filed by solicitors and members of non-governmental organisations acting on behalf of the claimants. Witness statements have also been placed before the court made by solicitors and members of non-governmental organisations in relation to the claims which have been stayed behind the four lead claims.

29. Further evidence was filed on behalf of the claimants alongside the consolidated claim –

(1) The third witness statement of Emily Soothill of Deighton Pierce Glynn Solicitors.

(2) The fourth witness statement of Clare Jennings of Gold Jennings Solicitors.

(3) The third witness statement of Maddie Harris of Human for Rights Network.

(4) The witness statement of Anna Miller of Doctors of the World.

(5) The Second Witness Statement of Unkhankhu Banda of Deighton Pierce Glynn.

30. Witness statements filed on 18 June 2024 in reply to the defendant's evidence are as follows –

(1) The fourth witness statement of Emily Soothill.

(2) The second witness statement of Anna Miller.

(3) The fifth witness statement of Clare Jennings.

(4) The second witness statement of Shalini Patel of Duncan Lewis Solicitors.

(5) The third witness statement of Hanna Marwood of Care 4 Calais.

(6) The second witness statement of Maria Wilby of Refugee, Asylum Seeker and Migrant Action (RAMA).

(7) The witness statement of Kat Hacker of the Helen Bamber Foundation.

31. The claimants have filed the following expert reports which were submitted to the defendant during the period of their subjects' accommodation at Wethersfield –

(1) A report in the form of a letter dated 23 October 2023 prepared by Dr Miriam Beeks, a volunteer general practitioner, in respect of TG.

(2) A report dated 15 February 2024 by Dr Yasmin Pethania, a clinical psychologist, in respect of MN.

(3) A report dated 3 January 2024 by Dr Nuwan Galappathie, a consultant forensic psychiatrist, in respect of MJ.

32. The Defendant has filed the following expert reports in response to MN's, HAA's and MJ's respective claims –

(1) A report dated 16 May 2024 by Professor Neil Greenberg, a consultant psychiatrist, in respect of MN.

(2) A report dated 3 July 2024 by Professor Greenberg in respect of HAA.

(3) A report dated 15 May 2024 by Professor Greenberg in respect of MJ.

33. The claimants MN, HAA and MJ have filed the following expert reports in support of their respective individual claims –

(1) An addendum medico-legal report dated 18 June 2024 by Dr Pethania in respect of MN.

(2) A medico-legal report dated 18 June 2024 by Professor Cornelius Katona in respect of HAA.

(3) An addendum medico-legal report dated 18 June 2024 by Dr Galappathie in respect of MJ.

34. I also have the benefit of a note of discussions between Professor Greenberg and Professor Katona in respect of HAA, dated 10 July 2024; and of a statement of agreement and disagreement prepared by Professor Greenberg and Dr Galappathie in respect of MJ, also dated 10 July 2024.

35. In addition to the findings of the MTC Report and the ICIBI Report, the claimants also rely on findings in a report by the British Red Cross entitled "British Red Cross Needs Assessment of the Wethersfield Site" **["the BRC Report"]** submitted to the defendant in May 2024. I was also referred to correspondence from the ICIBI dated 20 December 2023 and 9 February 2024 to the defendant, which raised initial concerns (later picked up in the ICIBI Report) following his visits to Wethersfield on 19 December 2023 and 9 February 2024. On 10 January 2024 and 16 February 2024, letters were sent on behalf of the defendant responding to those initial concerns.

Approach to the evidence

36. The evidence before the court is on any view extensive. In addition to the witness statements and expert reports to which I have referred, the parties filed a hearing bundle which includes documentation filling 12 lever arch files and running to several thousands of pages. None of the parties applied to cross-examine any of the witnesses of fact or any expert who had prepared a report. There was nevertheless some debate about the approach which the court should take to the evidence.

37. My approach to the evidence has been that stated by Cavanagh J in R (Soltany) v Secretary of State for the Home Department [2020] EWHC 2291 which was adopted by Linden J at [36]-[37] in *NB* –

"Faced with a number of disputes of fact, in these circumstances, I think that the correct approach is that summarised by the authors of Auburn, Moffett and Sharland, Judicial Review, Principles and Procedures, 1st ed, 2013, at para 27-98: "…[the Court] will generally proceed on the basis of the facts as stated in the defendant's written evidence. This is because, as the claimant bears the burden of proof, if there is no reason to doubt the defendant's version of the facts, the claimant will have failed to discharge the burden on him or her. As the defendant's witnesses will not have been cross examined, there will be little basis for the court to reject their evidence. However, in certain cases there may be something about the defendant's evidence (e.g. where it is internally contradictory,

inherently implausible, or inconsistent with other incontrovertible evidence) which will lead the court not to accept it"."

38. Cavanagh J's approach reflects the principle stated in R (Talpada) v Secretary of State for the Home Department [2018] EWCA Civ 841 at [2] by Hallett LJ -

"If there is a dispute of fact, and it is relevant to the legal issues which arise in a claim for judicial review, the court usually proceeds on written evidence. Since the burden of proof is usually on the person who asserts a fact to be true, if that burden is not discharged, the court will proceed on the basis that the fact has not been proved."

39. The claimants say that the initial concerns raised by the ICIBI, and the findings of the MTC Report, the BRC Report and subsequently the ICIBI Report, attest to serious inadequacies in the accommodation conditions and arrangements at Wethersfield. It is said that these reports show that those deficiencies have been drawn to the defendant's attention over many months but that little, if any, progress has been made in addressing them. The claimants contend that the findings of those reports align with the evidence given by the claimants themselves and those who give evidence on their behalf with the benefit of extensive experience of providing legal, medical and welfare support services to asylum seekers accommodated by the defendant at Wethersfield. They argue that this extensive body of evidence casts significant doubt on the *"correctness, candour and credibility of the defendant's witnesses as to their description of the site and its onsite arrangements"*.

40. I have carefully read and considered the evidence of the defendants' witnesses filed in response to the consolidated claim and the MJ claim. I do not find any reason to question their candour or credibility. In my view, each of the defendant's witnesses has provided a candid and careful account of the matters which fell to them to address in response to these claims. The defendant submitted that her witnesses gave evidence from their perspective, based on the matters which they witnessed and what they had been told by others including staff and residents. To that might also be added the information which they have drawn from the documentary record which describes procedures and individual events and case histories. I agree. The same is of course also true of the witnesses who have given evidence in witness statements on behalf of the claimants. I regard their evidence also as both candid and carefully given. As the defendant says, it is unsurprising that witnesses who base their evidence to some degree at least on different sources will gain and offer a different impression to others. That does not justify treating their evidence as lacking in credibility, although it does mean that the court should be alive to the differences and the sources which lead to them.

41. It is important to bear in mind that the main thrust of the defendant's case in response to the systemic challenge is that the proper focus for judicial review is the constituent elements of the system under challenge, and the policies, procedures and arrangements of which it consists. It is not, the defendant contends, for the judicial review court to audit the performance of that system, to rule on how effectively or ineffectively it is being operated. In other words, the question for the judicial review court is whether the system under challenge is capable of being operated so as lawfully to discharge the statutory duties placed upon the defendant to provide accommodation in support of asylum seekers under IAA 1999. The defendant's evidence in response to the systemic challenge is primarily guided by that approach to the systemic challenge. I did not understand there to be any significant factual dispute as to what the defendant's system for discharging her functions under

sections 95, 96 and 98 of IAA 1999 consists of, insofar as is relevant to decision making which results in asylum seekers being accommodated at Wethersfield.

42. Insofar as it is necessary to form a view as to whether the defendant's witnesses' account of conditions and the actual operation of asylum accommodation at Wethersfield is *"correct"*, on the basis of the authorities to which I have referred, my approach must be to accept that evidence subject to being persuaded that it is internally contradictory or inherently implausible, or that there is other evidence, itself incontrovertible, with which the defendant's evidence is inconsistent.

43. In relation particularly to the systemic issues raised by the grounds of challenge, I was invited to base my conclusions *"on the position at the present time"*. Ordinarily, in determining a claim for judicial review of administrative action, the court will focus on the state of relevant matters as at the time of the decision which is the subject of the challenge and the sequence of events which culminated in that decision. What happens after the decision was taken will ordinarily be of less significance, since the focus will be on the legality, rationality or procedural propriety of the decision challenged, considered in the context of the legal framework and factual circumstances in which it was taken. However, I accept that in the circumstances of the present claims, in considering the systemic grounds of challenge it is appropriate for me, insofar as I am able to do so on the evidence before the court, to take account of the current position. Thus, by way of example, in considering grounds 3 and 5 which challenge the lawfulness of the Allocation Policy, I shall base my conclusions on version 12 of that policy published on 27 March 2024, notwithstanding that none of the four claimants was accommodated at Wethersfield under sections 95 and 96 of IAA 1999 when version 12 was in operation.

Asylum support accommodation at Wethersfield

44. The following summary is based upon the detailed grounds of defence and the evidence given by the defendant's witnesses, which provide a summary of the Wethersfield facility and its operation.

Asylum support – growing demand for accommodation

45. Catherine Stratton provides statistical information showing the growing demand for asylum accommodation over recent years. Since 2020, small boats have been the predominant recorded method of entry for irregular arrivals. The year 2022 saw an increase of upwards of 60% in the number of people detected arriving and entering the United Kingdom illegally by means of small boats and applying for asylum, when compared with 2021. This represents upwards of a 14,000% increase since 2018. Combined with the increased time taken to deal with asylum applications and a nationwide housing shortage, this meant that demand for asylum accommodation was far outstripping supply. In September 2023, it was estimated that the defendant was accommodating over 119,010 asylum seekers. Of those, around 56,042 were in hotels at a total cost to the public purse of approximately £8 million per day. By contrast, at the previous peak in 2002, just over 12,000 people had been placed in short term emergency accommodation.

46. Against that background, the defendant decided to explore the availability of alternative sites, including ex-MoD sites such as Wethersfield and vessels such as the Bibby Stockholm. Wethersfield and other large-scale sites were considered by the defendant to provide adequate and functional accommodation with which to discharge her functions under

sections 95 and 96 of IAA 1999. Such sites were designed to be as self-sufficient as possible, helping to minimise the impact on local communities and services. Ms Stratton says that the defendant considers that the efforts to reduce hotel usage are working, with a reduction in the supported population in hotels by around 18% in the quarter between September and December 2023.

Wethersfield

47. The site used for asylum accommodation at Wethersfield extends to some 6.5 acres in extent. It forms part of a larger 800-acre site which includes an airfield. The area used to accommodate asylum seekers was previously used for accommodating service personnel and their families (including children). It includes buildings used for living quarters, social, leisure and religious activities. It is separated by fencing from the rest of the larger site.

48. Wethersfield is in a rural location. There is a small village about one mile away which lacks any shops or amenities. Braintree, about twenty minutes' drive away, is the nearest town.

49. The defendant initially proposed to use the Wethersfield site for asylum accommodation on a temporary basis, for 12 months, but subsequently decided to extend its use beyond that period. On 11 April 2024 the SDO took effect, authorising the use of Wethersfield for the provision of asylum accommodation until 10 October 2027.

50. Wethersfield is used to accommodate single adult male asylum seekers, aged between 18 and 65 years old. The site has capacity to accommodate about 1,700 residents. Since July 2023, the largest number of residents who have in fact been accommodated at Wethersfield at any one time is 658. From 5 April 2024, the number of asylum seekers accommodated at Wethersfield was temporarily capped at 580, in accordance with the terms of the SDO. In February 2025 the cap was increased to 800. The maximum length of stay for individuals at Wethersfield is nine months, except where the defendant is unable to find suitable onward dispersal accommodation despite reasonable efforts to do so.

Operational arrangements

51. The defendant has retained Clearsprings Ready Homes **['CRH']** as the service provider to operate the Wethersfield facility. CRH is responsible for the day-to-day operational management of the asylum support accommodation site at Wethersfield. CRH manages the Home Office's asylum accommodation estate across the south of England and Wales, providing accommodation support for some 43,000 asylum seekers. The defendant's operational requirements for the Wethersfield facility are stated in the "Wethersfield Large Accommodation Site Operational Management Plan" **['OMP']**. Version 3.0 of the OMP has been in effect since 19 January 2024. The OMP states operational requirements across 60 topic headings and is supported by some 37 annexes. CRH is responsible for maintaining and updating the OMP.

52. Dave Butler gives evidence as the defendant's SRO for the Wethersfield facility, a role which he has fulfilled since 21 November 2023. Mr Butler says that as the main service provider at Wethersfield, CRH provides services itself and manages the delivery of services by sub-contractors. Mr Butler refers to the following sub-contractual arrangements made by CRH –

(1) Lead Element Security **['LES']** is the primary security provider for the asylum accommodation facility;

(2) Supreme Guarding Services provide catering and cleaning services, and some welfare officers;

(3) Foster Hartley provide transport services, including shuttle bus services between Wethersfield and nearby towns, including Braintree;

(4) CRH provide welfare services directly, but with assistance from welfare officers provided by Supreme Guarding Services.

53. The defendant has arranged for provision of security by Mitie Security for those parts of the larger Wethersfield site which are not used for asylum accommodation. Facilities management and maintenance services for the Home Office at Wethersfield are provided by Kier.

54. Mr Butler says that the Home Office has four members of staff based at Wethersfield. As SRO, he works on site between 9am and 5pm on Mondays to Fridays. In addition to those Home Office staff, there are around 141 staff at Wethersfield employed either by CRH or their sub-contractors. The breakdown of staff on site is as follows: 3 site managers (day), 2 site managers (night), 17 welfare officers (day), 9 welfare officers (night), a facilities management co-ordinator, 3 team leaders, 40 security personnel (day), 25 security personnel (night), 20 cleaning and laundry staff, 2 kitchen managers and 19 kitchen staff.

55. Staff training requirements are set out in the OMP. Mr Butler states that as a minimum, the OMP requires all CRH and sub-contractual staff to be trained on the following matters: infection prevention and control in care, first aid, conflict resolution, modern slavery, fire awareness, the safe handling of large and heavy objects, mental health awareness, safeguarding children and adults, essential health and safety and equality, diversity and inclusion. The OMP also includes staff training requirements on how to conduct room inspections on site, trauma informed care, maintaining professional boundaries, unconscious bias, managing race relations and cultural awareness and mental health first aid. Mr Butler says that the Home Office does not currently monitor training by staff but has identified that as an issue that needs addressing.

56. Medical services at the Wethersfield facility are provided by Commisceo, a health care organisation which has contracted with the National Health Service to provide those services. Commisceo have been commissioned by the NHS to provide a range of healthcare services and facilities onsite at Wethersfield. That contract is funded by the defendant via the Department of Health and Social Care.

The statutory framework

IAA 1999

57. Sections 95 to 98 of IAA 1999 empower the defendant to provide or to arrange the provision of support, including temporary support, for asylum seekers and their dependants. For these purposes, an asylum seeker is a person aged 18 or above who has made a claim for asylum in the United Kingdom which has been recorded but not yet determined: see section 94(1) of IAA 1999.

58. Section 95 of IAA 1999 provides as follows (omitting those provisions which do not bear upon the present claims) –

"(1) The Secretary of State may provide, or arrange for the provision of, support for –

(a) asylum-seekers,

(b) dependents of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period may be prescribed.

…

(3) For the purposes of this section, a person is destitute if –

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

…

(4) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State –

(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).

(6) Those matters are –

(a) the fact that the person concerned has no enforceable right to occupy the accommodation;

(b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;

(c) the fact that the accommodation is temporary;

(d) the location of the accommodation.

…

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section. …".

59. Section 96 of IAA 1999 states the ways in which the Secretary of State may provide support to an asylum seeker in the exercise of her powers under section 95(1), including -

"(a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependents (if any)…".

60. Subsections 97(1) and 97(2) of IAA 1999 provide –

"(1) When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to –

(a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim;

(b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and

(c) such other matters (if any) as may be prescribed.

(2) But he may not have regard to –

(a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided;

(b) such other matters (if any) as may be prescribed".

61. Pending a decision whether to provide support under section 95 of IAA 1999, the defendant has power under section 98 of IAA 1999 to provide temporary accommodation to asylum seekers who appear to her to be destitute –

"(1) the Secretary of State may provide, or arrange for the provision of, support for –

(a) asylum-seekers, or

(b) dependants of asylum seekers,

who it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.

(3) Subsections (2) to (11) of section 95 apply for the purposes of this section as they apply for the purposes of that section.

…".

62. Paragraphs 1 and 12 of schedule 8 to IAA 1999 elaborate on the defendant's power to make regulations in relation to section 95 –

"1. The Secretary of State made by regulations make such further provision with respect to the powers conferred on him by section 95 as he considers appropriate.

…

12. The regulations may make provision with respect to procedural requirements including, in particular, provision as to –

(a) the procedure to be followed in making an application for support;

(b) the information which must be provided by the applicant;

(c) the circumstances in which an application may not be entertained (which may, in particular, provide for an application not to be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with inquiries under paragraph d));

(d) the making of further inquiries by the Secretary of State;

(e) the circumstances in which, and person by whom, a change of circumstances of a prescribed description must be notified to the Secretary of State".

The 2000 Regulations

63. Regulation 3 of the Asylum Support Regulations 2000 **['the 2000 Regulations']** permits an asylum seeker to apply to the defendant for asylum support to be provided under section 95 of IAA 1999. Paragraphs (3)-(5) of regulation 3 state –

"(3) The application must be made by completing in full and in English the form for the time being issued by the Secretary of State for the purpose;…

(4) The application may not be entertained by the Secretary of State unless it is made in accordance with paragraph (3).

(5) The Secretary of State may make further inquiries of the applicant about any matter connected with the application".

64. At the date of hearing of these claims, the application form *"for the time being issued"* by the defendant was version 4 of the Asylum Support Application Form **['ASF1']**, a 36-page form in 29 sections to be completed by an asylum seeker applying for support under section 95 of IAA 1999.

65. Regulation 8(3) of the 2000 Regulations prescribes those matters to which the defendant must have regard in determining whether the accommodation of an asylum seeker applying for support under section 95 of IAA 1999 is adequate (see section 95(5)(a)) –

"The matters…are –

(a) whether it would be reasonable for the person to continue to occupy the accommodation;

(b) whether the accommodation is affordable for him;

(c) whether the accommodation is provided under section 98 of the act, or otherwise on an emergency basis, only while the claim for asylum support is being determined;

(d) whether the person can secure entry to the accommodation;

(e) where the accommodation consists of a movable structure, vehicle or vessel designed or adapted for human habitation, whether there is a place where the person is entitled or permitted both to place it and reside in it;

(f) whether the accommodation is available for occupation by the person's dependants together with him;

(g) whether it is probable that the person's continued occupation of the accommodation will lead to domestic violence against him or any of his dependants".

66. Regulation 8(4) of the 2000 Regulations states –

"In determining whether it would be reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local Housing Authority where the accommodation is".

67. Regulation 13(2) of the 2000 Regulations prescribes matters to which the defendant may not have regard when exercising the power under section 95 of the IAA 1999 to provide accommodation for an asylum seeker (see section 97(2)(b)) –

"Those matters are –

(a) his personal preference as to the nature of the accommodation to be provided;

(b) his personal preference as to the nature and standard of fixtures and fittings;

but this shall not be taken to prevent the person's individual circumstances, as they relate to his accommodation needs, being taken into account".

The 2005 Regulations

68. Regulations 4 and 5 of the Asylum Seekers (Reception Conditions) Regulations 2005 **['the 2005 Regulations']** are relevant to the issues arising in the present claims.

69. Regulation 4 applies in the case of an application for support or temporary support under sections 95 or 98 of IAA 1999 made by an asylum seeker who has special needs –

"(1) This regulation applies to an asylum seeker or the family member of an asylum seeker who is a vulnerable person.

(2)When the Secretary of State is providing support or considering whether to provide support under section 95 or 98 of the 1999 Act to an asylum seeker or his family member who is a vulnerable person, he shall take into account the special needs of that asylum seeker or his family member.

(3) A vulnerable person is –

(a) a minor;

(b) a disabled person;

(c) an elderly person;

(d) a pregnant woman;

(e) a lone parent with a minor child; or

(f) a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence;

who has had an individual evaluation of his situation that confirms he has special needs.

(4) Nothing in this regulation obliges the Secretary of State to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person's situation to determine whether he has special needs".

70. In any case where the defendant thinks that an asylum seeker is eligible for support under section 95 of IAA 1999 or temporary support under section 98, regulation 5 of the 2005 Regulations converts the powers under sections 95 and 98 of IAA 1999 into duties to offer such support –

"(1) if an asylum seeker or his family member applies for support under section 95 of the 1999 Act and the Secretary of State thinks that the asylum seeker or his family member is eligible for support under that section he must offer the provision of support to the asylum seeker or his family member.

…

(4) If the Secretary of State thinks that the asylum seeker or his family member is eligible for support under section 98 of the 1999 Act he must offer the provision of support to the asylum seeker or his family member".

The standard of judicial review

71. In *NB* at [161] Linden J applied a standard of review of the adequacy of accommodation provided by the defendant under sections 95 and 96 of IAA 1999 which was informed by the objective minimum standard required by Council Directive 2003/9/EC dated 27 January 2003 on reception conditions **["the RCD"]** –

"I accept that the hurdle for the claimants is a high one. They must show that the accommodation at the Barracks failed to meet the minimum standard required by the RCD i.e. it failed "to ensure a standard of living adequate for the health of [the claimants] and capable of ensuring their subsistence" and/or that insofar as the accommodation appeared to the defendant to be adequate for their needs, her view was irrational. On either argument the standard of "adequacy" is a low one."

72. In the present case, the defendant submits that the RCD is now neither recognised nor has any effect in domestic law. She relies upon two legislative provisions: (i) section 1 of and schedule 1 paragraph 6 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, which was in force from 31 December 2020 until 31 December 2023; and (ii) the Retained EU Law (Revocation and Reform) Act 2023 which came into force on the same date. The defendant submits -

(1) The effect of section 1 of the 2020 Act was to end EU-derived rights and repeal EU retained law relating to immigration, which was held by the Supreme Court at [129]-[134] in R (AAA (Syria)) v Secretary of State for the Home Department [2023] 1 WLR 4433 to include asylum law. Paragraph 6(1)(a) of schedule 1 to the 2020 Act provided that any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures ceased to be recognised and available in domestic law so far as they are

inconsistent with, or otherwise capable of affecting the interpretation, application or operation of, any provision made by or under the Immigration Acts; or otherwise capable of affecting the exercise of functions in connection with immigration.

(2) Section 2 of the 2023 Act repealed section 4 of the European Union (Withdrawal) Act 2018 at the end of 2023, with the effect that *"anything which immediately before the end of 2023 is retained law by virtue of that section is not recognised or available in domestic law at or after that time (and accordingly is not to be enforced, allowed or followed)".* The defendant also referred to and relied upon amendments to the 2018 Act by section 3 of the 2023 Act which had the effect of revoking the principle of the supremacy of EU law. Accordingly, it was submitted, there was no longer any requirement to interpret EU-derived domestic law consistently with the applicable EU obligation.

(3) Given that the RCD is no longer recognised nor has any effect in domestic law, the minimum standard that it imposed which informed Linden J's formulation of the test to be applied at [161] in *NB* has fallen away. It follows that the question for the court is whether insofar as the accommodation appeared to the defendant to be adequate for each claimant's needs, her view was irrational.

73. I did not understand the claimants seriously to quarrel with the defendant's analysis of the applicability of the RCD which I have set out above – and which is taken from her detailed grounds of defence. Having reviewed the legislative provisions to which the defendant referred me, I am satisfied that her submissions are correct.

74. In any event, in my view, putting aside the minimum standard set by the RCD has no significant impact on the proper consideration of the issues raised by the claimants in the present claim. In R (*JK (Burundi)) v Secretary of State for the Home Department [2017] 1 WLR 4567* ***["JK(Burundi)"]*** at [59] the Court of Appeal saw no material distinction between sections 95 and 96 of IAA 1999 and the RCD insofar as the standard of subsistence is concerned. It connotes making provision for the asylum seeker's essential living needs, at a level to ensure a dignified standard of living, which is adequate for the health of the asylum seeker.

75. I draw attention to and emphasise the observations made both at first instance and on appeal in *JK(Burundi)* about the importance of judicial restraint and a proper appreciation of the *"different provinces"* of the executive and the judiciary. Flaux J's observations at first instance are set out at [50] in *JK(Burundi)* –

"In the light of the sustained criticisms of the Secretary of State's approach by the claimants and their experts, it is important to emphasise that, provided that the Secretary of State achieved the minimum standard required by the [RCD] and did not act irrationally or in a manner which was Wednesbury unreasonable, the setting of asylum support rates, including in relation to children, is a matter for the discretion of the Secretary of State, not the court…To the extent that the claimants… have concerns about the setting of asylum support rates, save to the limited extent that the court can interfere if the objective minimum standard is not met or the assessment of essential living needs is irrational or Wednesbury unreasonable, it is for Parliament to address those concerns, not unelected judges".

76. Agreeing with that approach, at [86]-[87] Gross LJ said –

"86. …the Secretary of State must decide upon what are essential living needs in a manner which is neither irrational nor Wednesbury unreasonable. Should the Secretary of State fail to meet the RCD minimum standard or act irrationally or Wednesbury unreasonably as to what constitutes essential living needs, then the court may properly intervene; the question of whether she has done so is a matter upon which the court is entitled and, if asked, obliged to rule.

87. Provided, however, that the Secretary of State has complied with the RCD minimum standard and assessed essential living needs rationally and reasonably, then the value judgement of what does and does not comprise an essential living need is for her and not for the court. Within the boundary thus demarcated, the inclusion or exclusion of any particular item belongs within the Secretary of State's sphere rather than that of the court. Policy choices in such areas, concerning resource allocation and implications for the public purse, fall properly to the Secretary of State for decision. In this way, while the court retains the power and the duty to adjudicate upon threshold questions, the "judicialisation" of public administration, very much including the provision of welfare services, can beneficially be avoided; so too, the realities of public sector finances can be taken into account…".

The Allocation Policy

Introduction

77. In successive versions of the Allocation Policy, the defendant has promulgated a policy on allocating asylum seekers to accommodation provided in the exercise of her functions under sections 95 and 96 of IAA 1999. The initial cohort of asylum seekers to be accommodated at Wethersfield arrived at that ex-Ministry of Defence (MoD) site on 12 July 2023. On the same day, the defendant published version 9 of the Allocation Policy. Since that date, the defendant has revised the Allocation Policy on three occasions, publishing version 10 on 9 October 2023, version 11 on 12 February 2024 and version 12 on 27 March 2024. Each of those versions of the Allocation Policy has contained *"suitability criteria"*, against which caseworkers are required to assess an individual asylum seeker's suitability to receive support under sections 95 and 96 of IAA 1999 in the form of accommodation at an ex-MoD site, including Wethersfield.

78. Since version 9 was published on 12 July 2023, it has been the defendant's policy that (i) ex-MoD sites are not to be used to accommodate asylum seekers other than single, adult males aged between 18 and 65 years old; and (ii) that an individual's maximum length of stay at an ex-MoD site is not to exceed 9 months (save in cases where the defendant has been unable to find suitable dispersal accommodation despite reasonable efforts to do so).

79. However, the defendant's policy on the suitability of vulnerable asylum seekers to be accommodated at ex-MoD sites such as Wethersfield has changed since version 9 was published in July 2023. The changes to the suitability criteria made on publication of versions 10 and 11 of the Allocation Policy relate (amongst other categories) to asylum seekers who are potential victims of modern slavery, to those who would be defined as *"vulnerable"* under regulation 4(3) of the 2005 Regulations and to those with complex health needs including serious mental health issues. It is necessary to set out how those suitability criteria have changed as each successive version of the Allocation Policy has been promulgated during the period since 12 July 2023. Catherine Stratton explains those changes in her witness statement.

Version 9 of the Allocation Policy

80. Under the heading *"Suitability criteria"*, version 9 gave the following guidance to Home Office staff –

"When assessing an individual's suitability to be accommodated at ex-MoD sites vessels or Napier accommodation, you should consider all of the evidence available. This includes, but is not limited to:

- *asylum screening interviews*
- *ASF1s, where available*
- *information on Home Office systems*
- *supporting correspondence from the applicant or their representative".*

81. The suitability criteria were as follows –

"Males under the age of 18 or over the age of 65 are not to be accommodated at these sites.

Additionally, if an individual meets any of the following criteria they are ***not*** *suitable for Napier, ex-MoD sites and vessels, or room sharing:*

- *they may be a victim of modern slavery, including that they have been referred to the National Referral Mechanism and it has been found there are reasonable grounds or conclusive grounds to believe they are a victim of modern slavery or a decision is still pending*
- *they would be defined as vulnerable under the Asylum Seekers (Reception Conditions) Regulations 2005 regulation 4(3) and have had an individual evaluation of their situation that confirms they have special needs for support under section 95 of the Immigration and Asylum Act 1999 - the relevant points in these regulations are that a vulnerable individual is:*
  - *a disabled person*
  - *an elderly person*
  - *an individual who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence; and in each case, has had an individual evaluation of his situation that confirms he has special needs*
- *they have serious mobility problems or physical disability*
- *they have complex health needs within the meaning given by the Health Care Needs and Pregnancy Dispersal Policy at paragraph 4.16 - the relevant complex health needs are:*
  - *active tuberculosis and infectious/active communicable diseases (when making dispersal arrangements for applicants with Tuberculosis also refer to Chapter 7.2: Tuberculosis – Dispersal Guidelines)*

- *serious mental health issues where there is a high risk of suicide, serious self-harm or risk to others (when making dispersal arrangements for applicants with mental health issues, also refer to chapter 7.3: Mental Health – Dispersal Guidelines)*
- *chronic disease, for example, kidney disease where the patient requires regular dialysis*
- *HIV (when making dispersal arrangements for applicants with HIV, also refer to chapter 7.1: HIV – Dispersal Guidelines)*

- *the following cases:*
  - *they have a history of disruptive behaviour*
  - *cases being dealt with by the Foreign National Offenders- Returns Command*
  - *they have been granted refugee status or other forms of leave to remain*
  - *they are awaiting removal".*

82. Version 9 emphasised the need both for individual assessment of suitability for accommodation at an ex-MoD site and to keep that question under review in the light of new information coming to light –

"Each case should be individually assessed and if you are unsure about whether an individual is suitable to be accommodated, you should discuss the matter with a senior case worker or manager…

You should ensure the relevant information and evidence obtained from the above documents is sent to the accommodation provider

Should an individual be allocated accommodation at an ex-MoD site, vessel or Napier and new information on their suitability to remain comes to light from the accommodation provider or statutory bodies, the case should be reviewed and alternative accommodation may be allocated. In addition, asylum seekers allocated to the accommodation have full access to the advisory services provided by Migrant Help and are able to raise issues about their suitability to be accommodated at the site...".

83. Home Office caseworkers were advised that, in the case of ex-MoD accommodation sites, including Wethersfield –

"You are required to apply the suitability criteria in considering who to place in this accommodation".

84. That advice to caseworkers has been maintained in subsequent versions of the Allocation Policy.

Version 10 of the Allocation Policy

85. Version 10 of the Allocation Policy retained the policy focus on an evidence-based approach, adding a further category of information to be considered when assessing whether an individual was suitable to be accommodated at an ex-MoD site -

"When assessing an individual's suitability to be accommodated at ex-MoD sites, vessels or Napier accommodation, you should consider all of the evidence available. This includes, but is not limited to:

- *asylum screening interviews*
- *ASF1s where available*
- *information on Home Office systems*
- *supporting correspondence from the applicant or their representative*
- ***any other information that may inform the decision-making process**".*

(my emphasis)

86. Version 10 also maintained the position that certain categories of vulnerable individuals were not suitable to be accommodated at ex-MoD sites, but with one significant amendment in respect of victims of modern slavery. The revised criterion in version 10 stated that an individual was not suitable for such accommodation if –

"they have received a positive reasonable grounds decision, having been referred into the National Referral Mechanism (NRM)".

87. Under that revised policy, an individual was now to be treated as at least potentially suitable for accommodation at an ex-MoD site notwithstanding that he may be the victim of modern slavery. In order for it to be unsuitable, as a matter of policy, to accommodate him at such a site, it was necessary that such an individual had both been referred into the NRM and received a positive reasonable grounds decision. Version 10 also gave the following guidance to Home Office caseworkers –

"Individuals who have been referred into the NRM have an initial risk and needs assessment by the Salvation Army. If they raise any issues about their suitability to be accommodated at the site during this assessment, the Salvation Army can raise this with the asylum accommodation provider who should review and consider allocating alternative accommodation, if necessary".

88. The lawfulness of the change in policy under version 10 in respect of the suitability of asylum seekers who may be the victims of modern slavery for accommodation at ex-MoD sites is challenged under ground 5 of the consolidated grounds.

Version 11 of the Allocation Policy

89. Version 11 of the Allocation Policy maintained the evidence-based approach to assessing whether an individual was suitable to be accommodated at an ex-MoD site –

"When assessing an individual's suitability to be accommodated at ex-MoD sites, vessels or Napier accommodation, you should consider all of the evidence available. This includes, but is not limited to:

- *asylum screening interviews*
- *ASF1s where available*
- *information on Home Office systems*
- *supporting correspondence from the applicant or their representative*
- *any other information that may inform the decision-making process".*

90. Version 11 again emphasised the importance of assessing whether an individual was suitable to be accommodated at an ex-MoD site on the basis of the available evidence of that individual's needs –

"As the Home Office has a legal obligation to provide accommodation to those who would otherwise be destitute, there may be some occasions where accommodation is provided before we have information about an individual's needs. Where information and evidence is available, this must be considered against the suitability criteria.

Each case should be individually assessed and a decision made about suitability for accommodation based on the individual's needs. If you are unsure about whether an individual is suitable to be accommodated, you should discuss the matter with a senior case worker or manager.

The Home Office should ensure any relevant information about an individual's needs or circumstances is sent to the Home Office Accommodation Provider".

91. Under version 11, the categories of vulnerable individuals who were not suitable to be accommodated at ex-MoD sites under sections 95 and 96 of IAA 1999 was much more limited in extent, in comparison to versions 9 and 10 –

"if an individual meets any of the following criteria they are not suitable for Napier, ex-MoD sites, vessels, and/or room sharing:

- *where an individual has been referred to the National Referral Mechanism (NRM) as a potential victim of modern slavery, and has received a positive reasonable grounds decision - if an individual subsequently receives a negative conclusive grounds decision or public order disqualification, they are suitable for Napier, ex-MoD sites, vessels, and/or room sharing*
- *cases being dealt with by the Foreign National Offenders - Returns Command".*

92. Version 11 instead introduced a new policy identifying suitability criteria by reference to which an individual asylum seeker *"may"* not be suitable for accommodation at ex-MoD sites such as Wethersfield -

"Additionally, if an individual meets any of the following criteria and provides evidence that they have had an individual evaluation of their situation that confirms they have special

*needs, they may **not** be suitable for Napier, ex-MoD sites, vessels, and/or room sharing depending on whether those needs can be met at the accommodation:*

- *they would be defined as vulnerable under the Asylum Seekers (Reception Conditions) Regulations 2005 regulation 4(3) and have had an individual evaluation of their situation that confirms they have special needs for support under section 95 of the Immigration and Asylum Act 1999 - the relevant points in these regulations are that a vulnerable individual is:*
    - *a disabled person*
    - *an elderly person*
    - *an individual who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence; and in each case, has had an individual evaluation of his situation that confirms he has special needs*
- *they have serious mobility problems or physical disability*
- *they have complex health needs within the meaning given by the Health Care Needs and Pregnancy Dispersal Policy at paragraph 4.16 - the relevant complex health needs are:*
    - *active tuberculosis and infectious/active communicable diseases (when making dispersal arrangements for applicants with Tuberculosis also refer to Chapter 7.2: Tuberculosis – Dispersal Guidelines)*
    - *serious mental health issues where there is a high risk of suicide, serious self-harm or risk to others (when making dispersal arrangements for applicants with mental health issues, also refer to chapter 7.3: Mental Health – Dispersal Guidelines)*
    - *chronic disease, for example, kidney disease where the patient requires regular dialysis*
    - *HIV (when making dispersal arrangements for applicants with HIV, also refer to chapter 7.1: HIV – Dispersal Guidelines)*

93. In the context of this new policy, version 11 stated that each case should be individually assessed and a decision made by caseworkers or Home Office Accommodation Providers –

"based on the individual's needs as set out in evidence an individual provides".

94. Version 11 introduced detailed policy guidance on the individual evaluation of *"special needs"* for those who meet criteria which may make them unsuitable for accommodation at ex-MoD sites, including Wethersfield –

"Where individuals claim to meet criteria which may make them unsuitable, they should provide evidence supporting their claim for unsuitability. All information provided will be considered by Home Office accommodation providers or caseworkers on a case-by-case basis. Where required, Home Office accommodation providers can refer information to Home Office caseworkers to consider evidence.

The type of evidence provided by individuals will be a significant consideration in you making decisions about allocation of accommodation.

Where possible, individuals should provide one or more of the following pieces of verifiable expert or professional evidence (based on considerations set out below) in order to support their claim for unsuitability:

- *a healthcare record, which may include information about an individual's diagnosis, treatment, hospital admissions, and any risk assessment based on the individual's current needs*
- *evidence of ongoing treatment which would be interrupted by a move to accommodation*
- *personalised assessments and/or psychiatric evidence setting out their specific, individual needs, completed by expert healthcare or medical professionals.*

This may be supported by documentation from support services or verifiable, expert or professional health care practitioners. Documentation provided without supporting evidence from one of the above carries less weight and should generally not be accepted alone as evidence of unsuitability.

You should review any evidence on a case by case basis, including with reference to the following considerations:

- *expertise of the author, including where their medical qualifications, training and experience have been provided. You can seek to verify legitimacy of the author through searching on the General Medical Council [Register] if required*
- *the level of investigation the author undertook in assessing the individual circumstances, and whether the evidence is essentially a self-report or whether the evidence reflects a balanced and objective medical assessment*
- *the level of detail provided in the evidence, including the standards and framework that the evidence is set out within*
- *the variety of evidence provided, including whether there are multiple reports from practitioners with different areas of expertise.*

For any evidence of complex health needs, you should consider the following when allocating individuals to Napier, ex-MoD sites, vessels and/or room sharing:

- *whether any conditions are currently active*
- *whether any conditions are currently being treated and managed adequately to enable the individual to be moved and accommodated*
- *availability of health care and treatment to meet the individual's requirements in the new accommodation, particularly where an individual is receiving specialist treatment which is only available in some parts of the country*

- *continuity of healthcare and the impact of disrupting healthcare and or treatment on the individual.*

Where evidence of vulnerabilities and or complex health needs is provided, you can, where required, refer information to the Home Office Asylum Support Medical Adviser and/or Home Office Psychiatrist for their expert opinion. When they have provided their opinions, you should use this to inform your decision about whether the individual is suitable for these sites and/or for room sharing in light of the suitability criteria.

You should consider all evidence provided to determine whether the individual has special needs. If the individual is found to have special needs on the basis of their individual circumstances, you should then assess whether these needs can be met at Napier, ex-MoD sites vessels and/or room sharing. This will be with reference to the services available to individuals within this accommodation, including but not limited to access to health care and mental health services".

95. Version 11 also introduced guidance to caseworkers on ongoing monitoring of an individual's suitability to be accommodated at ex-MoD sites –

"Monitoring of suitability is an ongoing process and an individual's suitability may change over time. There may be circumstances in which new information is identified or provided on an individual's suitability to be accommodated or remain at an ex-MoD site, vessel or Napier, and/or room sharing. The information may suggest that an individual circumstances or needs may make them unsuitable for these sites and/or room sharing. In these circumstances, the case should be reviewed, and suitability reassessed as soon as practicable and in timelines proportionate to the seriousness of the issue raised. Depending on the information raised or provided, alternative accommodation may be allocated.

Individuals allocated to accommodation have full access to the advisory services provided by Migrant Help and can raise issues about their suitability to be accommodated at the site. Where an individual's needs and/or suitability changes, and/or they want to share further information about their needs, they can submit a Change of Circumstances to Migrant Help.

Individuals who have been referred to the NRM have an initial risk and needs assessment by The Salvation Army. If they raise any issues about their suitability to be accommodated at the site during this assessment, the Salvation Army can raise this with the Home Office Asylum Accommodation provider who should review and consider allocating alternative accommodation, if necessary".

Version 12 of the Allocation Policy

96. Version 12 has not materially changed the policy promulgated in version 11 on the approach to assessing an individual's needs and suitability for accommodation at Wethersfield. In particular, version 12 retains without amendment: (i) the suitability criteria which, if met, may result in an individual asylum seeker being assessed as not suitable for accommodation at Wethersfield; (ii) the guidance on obtaining and evaluating information and evidence about the special needs of an asylum seeker who meets those criteria; and (iii) the policy on the ongoing monitoring of an individual's suitability to be accommodated at Wethersfield following his placement there. It is those elements of the Allocation Policy which are the focus of the challenge under ground 3 of the consolidated grounds.

Ground 1 - Unlawful accommodation allocation process

97. Under this heading, I address ground 1 of the consolidated claim and the systemic complaints made under ground 2(b) of the MJ claim.

Asylum seekers at Wethersfield

98. In her witness statement, Catherine Stratton says that the defendant has had to manage a growing demand for asylum support and accommodation in response to the very large increase since 2020 in the number of individuals arriving in the United Kingdom in small boats and claiming asylum. Such persons will almost invariably be destitute on arrival and require immediate and ongoing support. The decision to bring Wethersfield into use as asylum accommodation was made primarily for the purpose of accommodating adult males who have arrived in the United Kingdom via that means of entry. Wethersfield is currently used for that purpose.

99. Since July 2023, when Wethersfield began to be used for the purpose of providing accommodation to asylum seekers under sections 95 and 96 of IAA 1999, it has been the defendant's policy that men aged between 18 and 65 years only should be accommodated there, ordinarily for periods of no longer than 9 months, and that the suitability of any individual asylum seeker within that cohort to be accommodated at Wethersfield should be assessed against suitability criteria published for that purpose in successive versions of the Allocations Policy.

The accommodation allocation process

100. The defendant's procedures for deciding whether adult male asylum seekers are suitable to be accommodated at Wethersfield, initially pursuant to section 98 of IAA 1999 but thereafter following an assessment made under sections 95 and 96 of IAA 1999, are explained in the witness statements of Scott Murray, Andrea Churton, Dave Butler and Helen Mascurine. Ms Mascurine also explains the arrangements for monitoring asylum seekers' suitability to be accommodated at Wethersfield whilst they remain at that site. In the following paragraphs I set out what I consider to be the material points in the very detailed evidence and exhibits of those witnesses.

Summary of the allocation process

101. The defendant summarises the system of allocation and assessment as comprising the following key elements –

(1) The current version, version 12, of the Allocation Policy.

(2) The "First Scribe" or initial sift, and "Second Scribe" process, which identifies any immediate medical issues.

(3) The Screening Interview process and Screening Questionnaire prior to allocation.

(4) Consideration of eligibility and triaging of asylum seekers for onward accommodation by the NAAU on the basis of the sifting template and sifting spreadsheet.

(5) The induction process at Wethersfield (including medical screening), incorporating the Induction Briefing and induction documents.

(6) Completion by asylum seekers of the ASF1 forms at Wethersfield with the assistance of Migrant Help. Migrant Help is a long established independent charitable organisation whose object is to provide welfare support to refugees and asylum seekers following their arrival in the United Kingdom. Since 2014, Migrant Help have been funded by government to deliver publicly funded advice and support to asylum seekers across the UK.

(7) Assessment of suitability on the basis of the asylum seeker's completed ASF1, in accordance with the interim guidance *"Interim instruction – ASF1s at Wethersfield"* **["the Interim Instruction"]**.

(8) Consideration of any referral from that assessment by the Large Sites Team, in accordance with the Large Sites Ongoing Suitability Standard Operating Procedure and the Suitability Assessment Flowchart.

(9) Ongoing monitoring of asylum seekers' suitability to be accommodated at Wethersfield, through the arrangements explained by Ms Mascurine.

Current policy arrangements

102. As I have already explained, version 12 of the Allocation Policy essentially carries forward the arrangements put in place on publication of version 11 of that policy on 12 February 2024. Under the Allocation Policy, caseworkers are required to assess each applicant for asylum accommodation against the suitability criteria and on the basis of their individual needs and on the basis of all the available evidence. Particular reference is made to the asylum screening interview and to the ASF1 form where available. Caseworkers are also advised to consider information on Home Office systems, any supporting correspondence from the applicant or his representative and any other relevant information. Caseworkers are advised to make their assessments of an applicant's suitability to be accommodated at Wethersfield against the suitability criteria.

Arrival in the UK and the screening interview

103. Andrea Churton has headed the NAAU since November 2017. She is responsible for overseeing a team who arrange initial accommodation for destitute asylum seekers in accordance with the defendant's duty under section 98 of IAA 1999. Ms Churton says that before deciding to accommodate an asylum seeker at Wethersfield under section 98 of IAA 1999, the Home Office will assess their suitability for that accommodation. She says that assessment is informed by that person's initial asylum screening interview **["screening interview"]** carried out either at the asylum reception centre at Manston **["Manston"]** or, if he has been accommodated following arrival in hotel accommodation, at that location.

104. Ms Churton says that an individual's completed screening interview is uploaded onto the Home Office's immigration case-working system **["Atlas"]** by IMIU interviewing officers. That information is available on Atlas to NAAU staff who assess that individual's suitability for transfer to accommodation at Wethersfield under section 98 of IAA 1999 on the basis of the Allocation Policy.

105. Ms Churton emphasises the pace at which decisions on accommodation provided under section 98 of IAA 1999 need to be taken, in order to avoid destitution –

"NAAU's priority is to respond to individuals in a timely manner, granting section 98 support as appropriate, in order to ensure that individuals are not left destitute. As part of NAAU's role to arrange onward routing to initial accommodation across the UK (such as Wethersfield, which is a small part of the estate we deal with), NAAU will undertake a triage of occupants at ring-fenced asylum accommodation to sift for their potential suitability for onward placement at the Wethersfield site. This triage is undertaken by conducting a review of electronic records, where the results are used to inform decisions on the allocation of accommodation. One of the most significant records is the screening interview".

106. In paragraphs 7 to 50 of his witness statement, Scott Murray describes the "1st Scribe" and "2nd Scribe" procedures and the screening interview process carried out at Manston or the asylum seeker's ring-fenced accommodation, which inform the NAAU's assessment of that individual for the purposes of accommodation provided under section 98 of IAA 1999.

107. Mr Murray says that asylum seekers subsequently accommodated at Wethersfield will have been taken to the Western Jet Foil base **["WJF"]** for initial processing. They will then go to Manston or, if considered to be unsuitable for onward transfer to Manston due to medical or safeguarding concerns, to "ring-fenced accommodation" in one of a small number of hotels near Manston which are used to accommodate such persons on a short term basis.

108. The 1st Scribe is an initial screening process carried out at WJF by the Small Boats Operational Command **["SBOC"]**. Medical staff at WJF carry out a basic health check of new arrivals from small boats, from which a paper record is made of any medical conditions observed in or raised by the applicant. SBOC staff record any medical or safeguarding issues observed by them or the medical team in the Irregular Migration Arrivals Record **["IMAR"]** which tracks the progress of individual cases through the arrival and screening processes. It is through this initial process that individuals are identified as being unsuitable for onward transfer to Manston and accordingly transferred to ring-fenced accommodation. SBOC is a First Responder for the purposes of the NRM. If a newly arrived individual discloses information at his initial processing at WJF which leads SBOC to believe that he is a potential victim of modern slavery, SBOC staff will refer him under the NRM.

109. Any information about a newly arrived individual on his IMAR will be available to the staff in the IMIU who carry out his screening interview at Manston or at his ring-fenced accommodation. Such information can also be transferred onto the Atlas system.

110. Individuals transferred from WJF to Manston are generally held there for no longer than 24 hours, during which period the screening interview is carried out. Otherwise, they will complete their screening interview at ring-fenced accommodation.

111. IMIU is responsible for all screening interviews, whether conducted at Manston or at ring-fenced accommodation. At Manston, the screening interview is conducted by an interviewing officer either by video call to a private booth or face to face in a private room. Screening interviews with individuals in hotel accommodation are conducted by telephone. Before the interview begins, the interviewing officer will ask the interviewee whether they require an interpreter and if so, for which language. If an interpreter is required, the interviewing officer will arrange for the interpreter to join the call and will seek confirmation from the interviewee that they understand everything that is being asked of them by the interpreter, before and during the screening interview. The duration of screening interviews varies, with the shortest interview typically lasting for no less than 45 minutes. Screening interviews do not take place between 11pm and 7am.

112. Mr Murray states the objective of the screening interview procedure as –

> *"establishing any vulnerabilities, any threat to the UK or its interests, their journey to and/or history in the UK, and the basis of their claim. Questions are asked which relate to the individual's mental and physical health, and regarding whether the individual has experienced exploitation. This information is used to understand the individual's needs in terms of asylum support, to provide information on which to consider the admissibility of the asylum claim, to identify any potential for removal to a safe third country, and to support the initial stages of the asylum decision making process. The screening interview is used in assisting decision makers to prepare for the substantive asylum interview, so it is important that the information contained in the screening interview is an accurate account of what was said by the individual".*

The screening interview questionnaire

113. Interviewing officers will be either Home Office staff or agency workers. Interviewing officers conduct screening interviews through a questionnaire headed *"Initial contact and asylum registration questionnaire"* **["the questionnaire"]**. The questionnaire in current use requires the interviewing officer (or in a case where an interpreter is required, the interpreter) to read out seven short introductory paragraphs, including the following –

> *"I am going to ask you some questions about your identity, family, background, travel history and some health and welfare questions".*
>
> The interviewee is told that he must answer all the questions fully and truthfully and asked at that initial stage in the interview whether there is anything that he would like to be repeated or explained.

114. Part 1 of the questionnaire covers the interviewee's personal details and identity. The interviewee is asked to state his main language or dialect, his religion and his racial, ethnic or tribal group. He is also asked to state his occupation in his home country. Part 2 is headed *"Health/Special Needs"*. The interviewing officer is required to read out the following introduction –

> *"It is important that you tell us as early as possible, of any information relating to your health including any possibility of contagious diseases. It will not negatively affect your claim. Any medical information you disclose may help you with accessing health services. You can enrol with a doctor and seek medical advice without charge".*

115. The questions posed under part 2 include *"Do you have any medical conditions – chronic disease, disabilities, infectious diseases, medication that you are or should be taking?"*; and *"By exploitation we mean things like being forced into prostitution or other forms of sexual exploitation, being forced to carry out work, or forced to commit a crime. Have you ever been exploited or reason to believe you were going to be exploited?"* If the answer to the latter question is *"yes"*, the interviewing officer is advised to use a continuation sheet to get brief details that can be used for an NRM referral – *"who/where/what/when/how"*.

116. Part 3 of the questionnaire ask the interviewee a series of question about his travel history and any asylum claims he has made in third countries. Part 4 asks questions about the basis for the interviewee's asylum claim. He is asked briefly to explain all of the reasons why he

cannot return to his home country. Part 5 asks a series of questions about criminality and security.

117. Part 6 of the questionnaire is headed *"Non-detained accommodation suitability"*. Mr Murray says that it was added to the questionnaire and circulated to IMIU staff on 12 January 2024. It is to be completed in any case where the interviewee does not have their own accommodation or somebody with whom they can stay pending consideration of their claim for asylum. The interviewing officer is required to read out the following script –

"During your asylum claim, you may be detained. If you are granted bail, you may be eligible to be provided with asylum accommodation as part of your asylum support. If this applies to you, you will be allocated to asylum accommodation depending on what is available, and it could be anywhere across the UK.

Initially, you could be allocated accommodation in any of the following (although this list is not exhaustive): hotels, houses with multiple occupants, hostels, refurbished accommodation that previously housed military personnel, large sites with communal living and communal sleeping quarters, or moored vessels. You may also be required to room share in any of the above accommodation.

Generally, you have no choice which asylum accommodation you may be given. However, when we allocate your asylum accommodation, we will consider your specific situation to ensure your accommodation is suitable and adequate for your needs. This includes the information you provide here and whether you are part of a family group, elderly, disabled, pregnant, have experienced torture, rape or other serious forms of psychological, physical or sexual violence".

118. The interviewing officer is then required to ask the following question –

"6.1 In light of the above, are there any factors we need to be aware of when allocating your accommodation to ensure it is suitable and adequate for you?"

119. The interviewing officer is then given the following *"lines to take"* if the interviewee asks a further question about allocation of accommodation –

"At this stage, I am not able to confirm what type of Home Office accommodation you will be moved into. You may be provided accommodation at any of the sites I have mentioned. Accommodation is provided on a no-choice basis. A decision will be taken by Home Office caseworkers once they have considered all the information about your suitability which you provide to me.

Your circumstances will be taken into account and you will be allocated to accommodation which is adequate and suitable for your needs. If you refuse to accept the accommodation provided, you may not be provided any further support or alternative accommodation. It is therefore important, if applicable, that you provide full details of why you believe you may not be suitable to be accommodated at any of the accommodation sites referred to".

120. Part 7 of the questionnaire is headed *"Detention suitability"* and to be completed only if the case is referred for detention. At the conclusion of the screening interview, the interviewee is asked *"Have you understood all the questions asked?"* and *"Is there anything you would like to add or change to your response?"*.

121. Mr Murray says that interviewing officers have received training on asylum screening, modern slavery and trafficking, and safeguarding. Interviewing officers have access to the interviewee's IMAR and are trained to question him on medical conditions indicated there which he has not raised during interview. Interviewing officers are also required to ensure that anything relevant from IMAR and the screening interview with respect to health, vulnerability and safeguarding is recorded on Atlas.

122. The current training materials do not specifically cover Part 6 and the question posed in 6.1 of the questionnaire about factors which may need to be considered in order to ensure that accommodation provided to an asylum seeker is suitable and adequate for his needs. Mr Murray says that the training design team have been asked to review and revise the training materials to address this. Following the screening interview, the completed questionnaire is uploaded onto Atlas.

Transfer to Wethersfield

123. In paragraphs 10 to 25 of her witness statement, Andrea Churton explains the role of NAAU in assessing individual asylum seekers as suitable to be transferred to accommodation at Wethersfield under section 98 of IAA 1999.

124. Following consideration of the information on Atlas, the NAAU caseworker will complete the sifting and triage process in respect of that individual asylum seeker. Ms Churton says that if the NAAU caseworker concludes that the asylum seeker appears suitable for accommodation at an ex-MoD site under the Allocation Policy, and there is a vacancy to accommodate him at Wethersfield, that individual's case will be assessed by a *"second pair of eyes"* check usually undertaken by an NAAU manager. Unless the case is clear cut, the *"second pair of eyes"* checker may make inquiries from the Home Office Oversight Team at Wethersfield, to assess whether that individual's needs can be met on site. The asylum seekers transfer to accommodation at Wethersfield depends upon the second pair of eyes checker confirming that he is suitable to be accommodated at that site.

125. NAAU case workers carry out the sifting process using a sifting template which they complete on the basis of the information provided by the screening interview and any other information gathered on the Atlas system in respect of the individual asylum seeker. The sifting template has been updated to be consistent with the suitability criteria promulgated under version 12 of the Allocation Policy. NAAU caseworkers are also provided with guidance by the NAAU Wethersfield Process – Standard Operating Procedure **["NAAU SOP"]** on the suitability criteria in version 12 of the Allocation Policy. The NAAU SOP guides NAAU caseworkers that *"the primary sources of information available to NAAU will be the asylum screening interview form and Person Alert flags on Atlas (but this is not exhaustive)"*. Caseworkers are required to check cases listed on Home Office systems *"to see if the applicant is suitable for Wethersfield in accordance with the Suitability Criteria in the policy and fill in the Pathfinder sifting spreadsheet…"*.

126. The NAAU SOP offers the following advice to caseworkers –

> *"Where an individual meets the criteria above which may make them unsuitable (i.e. they fall under a category of vulnerability or have complex health needs), please consider any information or evidence provided by the applicant about their accommodation. If an individual comes under criteria which may make them unsuitable, but their accommodation needs can still be met at Wethersfield then they deemed suitable for site".*

Caseworkers are reminded that –

"All cases must be assessed on a case-by-case basis on the information available and should take into account of any specific needs arising from the circumstances declared by the applicant…It is important that all the information provided is considered on a case-by-case basis and that declared needs arising from an applicant's circumstances are considered".

127. An example is then given in the NAAU SOP for the assistance of caseworkers –

"Example: Where an individual has simply stated that they are a victim of torture without providing any info in the screening interview or at any other stage about the needs which arise from this, then they would still be deemed as suitable for sifting into Wethersfield and comments should reflect that. An individual may have mental health needs arising from their experiences as a victim of torture, for example access to a GP or to get regular prescriptions. Where needs can be met within existing services Wethersfield, they are suitable for sifting into Wethersfield".

128. Samples of cases in which NAAU caseworkers have assessed individual asylum seekers as being not suitable for accommodation at Wethersfield are checked by second pairs of eyes for quality assurance purposes. Ms Churton offers a *"preliminary and unverified"* estimate that between July 2023 and March 2024 some 20% of adult male asylum seekers were assessed by NAAU caseworkers as not being suitable for transfer to accommodation at Wethersfield.

129. If an asylum seeker is assessed as suitable for transfer to Wethersfield, NAAU prepares instructions for the accommodation provider, CRH, including the screening interview and information shown on Atlas. Where safeguarding concerns are recorded on Atlas, these are alerted to the Home Office Safeguarding Hub and CRH's Safeguarding Team. NAAU completes a Service Commission Form for the asylum seeker which provides the contractual basis for the provision by CRH of accommodation and other support to the asylum seeker. The form includes boxes headed *"Special needs/additional information"* and *"Safeguarding"*. Individuals assessed as suitable are then transferred to Wethersfield, with the individual informed as soon as possible on the day before travel.

The induction process at Wethersfield

130. On arrival at Wethersfield, asylum seekers go through an induction process. Dave Butler describes the induction process in paragraphs 124 to 132 of his witness statement. Since 9 May 2024, when the process was updated in response to the feedback reported in the MTC report, the induction process takes place across two days as described by Mr Butler.

131. On arrival on the first day, asylum seekers are taken to a briefing room at the induction centre. They are given refreshments and a short welcome speech is delivered. They then fill in forms, sign occupancy agreements and have lunch. As part of the induction process, newly arrived asylum seekers also receive health screening from the on-site medical provider, Commisceo. The health screening has two main elements. First, residents are asked about their medical history, and a record is made of this. Secondly, blood samples are taken. New arrivals are then shown to their rooms.

132. On the second day of the induction process, each newly arrived asylum seeker is asked to fill in his ASF1. I return to the arrangements for doing so below. Newly arrived asylum

seekers then attend talks from staff in relation to the main facilities on site. These include information about transport arrangements, medical facilities and procedures on site. They also include a talk by the police about their role and how to report a crime. New arrivals are also informed about catering facilities and arrangements, housekeeping rules and on-site activities. Migrant Help provide information about their role. The induction process is run by welfare officers, with the assistance of interpreters where necessary. The induction process is supported by the use of induction packs which include information about the Wethersfield facility. At the time of the hearing, induction packs were written in English, but CRH were in the process of arranging the induction packs to be translated into the most commonly spoken languages amongst asylum seekers accommodated at the site.

133. In paragraph 14 of her witness statement, Helen Mascurine says that the health screening of newly arrived asylum seekers at Wethersfield on day one of the induction process provides the opportunity to the site medical team to identify immediate safeguarding concerns, such as evidence of self-harm or disclosure of a history of serious violence. In such cases, the medical team may seek the asylum seeker's consent to disclose their safeguarding concern to the welfare team in line with the safeguarding policy. An incident report will be created and the matter escalated to CRH's on-site safeguarding hub and thence to the Home Office Asylum Safeguarding Hub. The Home Office Oversight Team is also informed, who are then able to consider whether to action the relocation of the individual to other accommodation.

The ASF1 form

134. The current version of the ASF1 form begins with the *"Destitution message"* –

> *"As set out in the Immigration and Asylum Act 1999, the Secretary of State may provide, or arrange for the provision of, support for asylum seekers, dependents of asylum seekers, failed asylum seekers or inadmissible asylum seekers who appear to be destitute or likely to become destitute within a 14-day period.*
>
> *An applicant is deemed destitute if:*
>
> > *"They and their dependants do not have adequate accommodation or any means of obtaining it, even if other essential living needs are met, or they and their dependants have adequate accommodation or the means of obtaining it but cannot meet essential living needs."*
>
> *As an applicant, you should note that:*
>
> 1. ***You must complete <u>all</u> fields that are relevant to your application;***
> 2. *failure to disclose all necessary information or to knowingly provide false information about yourself or any dependant may lead to information being passed to the police or other agencies for investigation and possible further action by them;*
> 3. *failure to supply the required information may result in your application for support being refused.*
>
> - ***I have read and understood the destitution message****".*

135. The ASF1 includes section 14 *"Individual circumstances"* and section 15 *"Individual accommodation requirements"*.

136. Section 14 -

> *"**Section 14 Individual circumstances – Tell us about any individual circumstances for you or your dependants that we should be aware of?***
>
> *Provide details of your individual circumstances*
>
> - *Pregnant*
> - *Learning disabilities*
> - *Physical health problems (include any mobility issues)*
> - *Chronic disease*
> - *Mental health problems (include high risk of suicide, serious self-harm or risk to others)*
> - *Victim of domestic violence*
> - *Victim of modern slavery (If yes, have you already being referred into the national referral mechanism? Have you received a decision?)*
> - *Other*
> - *No additional reasons*
>
> *Brief description –*
>
> *Do you hold any supporting documents? Yes/No"*

Boxes are provided on the ASF1 form to state a brief description of any individual circumstances identified by the applicant and to identify and list any supporting documents. The applicant is also asked to say whether or not they are currently registered with a doctor in the UK and if so, to provide the doctor's name and address.

137. Section 15 of form ASF1 –

> *"**Section 15 Individual accommodation requirements – Tell us about any accommodation requirements specific to you or your dependants' individual needs we should be aware of.***
>
> *Provide details, with evidence, about any specific accommodation requirements you or your dependants have.*
>
> *In making decisions about the allocation of asylum accommodation, the Home Office has regard to the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Do any of these apply to you? If so, which?*

> ***Asylum accommodation is allocated on a no choice basis****, so it could be in any location in the UK. Accommodation types vary across the UK depending on availability. Initially, you will be allocated accommodation in any of the following (although this list is not exhaustive): hotels, Houses of Multiple Occupancy, hostels, refurbished accommodation that previously housed military personnel, large sites with communal living and communal sleeping quarters, or moored vessels.*
>
> *You may be required to room share in any of the above accommodation.*
>
> *Are there any factors we need to be aware of when allocating your accommodation?"*
>
> A box is provided on the ASF1 form in which the applicant may provide details explaining how and why he is vulnerable and of any factors of which he wishes the Home Office to be aware in allocating him asylum accommodation.

138. Section 17 of the ASF1 form asks the applicant to identify any person who has helped him in completing the form. He is informed that the Home Office will use the personal information provided in the completed form to consider his application for accommodation. He is required to sign a declaration. Finally, section 27 of the form provides a box to answer the question *"Is there any other information you would like us to consider?"*.

139. Ms Mascurine says that if the applicant does not have copies of supporting documents to hand and needs time to obtain them, Migrant Help will allow 5 days for him to do so before submitting his completed ASF1 form. If the applicant does not supply the documents within that period, Migrant Help will upload his completed ASF1 to Atlas having recorded that his supporting documents are outstanding. If the documents become available later, Migrant Help are able to arrange for them to be uploaded to Atlas at that time. If during completion of his ASF1 the applicant raises a safeguarding concern with Migrant Help, they will note this on the completed form and make a reference to the Home Office Safeguarding Hub and to the site welfare team.

140. Ms Mascurine says that section 15 was first included in the ASF1 form with effect from 9 December 2020, for the purpose of eliciting information from asylum seekers relevant to the suitability criteria at the time to enable caseworkers to assess whether asylum seekers are suitable to be accommodated at Wethersfield on the basis of the suitability criteria in the Allocation Policy. Migrant Help was instructed to ask this question as part of the application process. Section 15 was not inserted into the ASF1 form published online until 16 October 2023. For that reason, section 15 would not have been completed by a person at Wethersfield applying for asylum support under sections 95 and 96 of IAA 1999 without the assistance of Migrant Help before that date.

Completing form ASF1 at Wethersfield

141. In paragraphs 23 to 44 of her witness statement, Ms Mascurine describes the contents of and current arrangements for asylum seekers to complete form ASF1 following their arrival at Wethersfield.

142. In almost all cases, asylum seekers will complete form ASF1 after they have arrived at Wethersfield, doing so typically within 5 days of arrival at the site. The majority of asylum seekers complete their ASF1 forms with the assistance of Migrant Help. As part of Migrant

Help's training, they have been provided with Home Office guidance on how to assist with completing an ASF1 form.

143. In late May 2024 when Ms Mascurine wrote her witness statement, Migrant Help were operating without an on-site presence at Wethersfield. They therefore provided assistance over the telephone to asylum seekers in completing their ASF1 forms. Migrant Help were notified of new arrivals at Wethersfield and provided with a list of new residents. The site welfare team booked telephone appointments with Migrant Help for newly arrived asylum seekers to complete their ASF1 form.

144. During the telephone interview, Migrant Help's representative inputs the asylum seeker's answers to the questions posed in the ASF1 form directly onto their case working platform ELLIS which in turn populates Atlas –

"The ASF1 is filled out by Migrant Help, using the resident's instructions and in their presence (currently, this is still usually via telephone) – and, where necessary, with the assistance of an interpreter - in a similar manner to how the Screening Interview is completed…

When completing an ASF1…, Migrant Help representatives read out the questions, with an interpreter, noting the resident's response on Migrant Help's platform ELLIS. With longer responses the Migrant Help representative may read back the answer, to check it is recorded accurately. The resident can return to any question at any point and change their answers. While Migrant Help representatives are primarily there to record the resident's answer and not identify any issues with suitability, if something which is said is bare or inconsistent, the representative may probe.

…

At the end of the ASF1, the resident is able to go back and change any answers. Migrant Help then submit the responses to Atlas via Migrant Help's platform ELLIS, for the [Asylum Support, Resettlement and Accommodation – ASRA] team to consider the application for section 95 assistance".

145. Ms Mascurine says that if during that telephone interview an asylum seeker indicated to the Migrant Help representative that he was the potential victim of modern slavery, the representative would flag that in the ASF1, raise an internal safeguarding incident report and send a request for assistance to the Home Office Safeguarding Hub.

Section 95 accommodation assessment

146. In paragraphs 48 to 71 of her witness statement, Ms Mascurine describes the process of assessing an asylum seeker's application for accommodation support under sections 95 and 96 of IAA 1999.

147. When the asylum seeker's completed ASF1 form has been uploaded onto Atlas by Migrant Help, it is reviewed by the Assessment Team. The Assessment Team is responsible for reviewing completed ASF1 forms and assessing asylum seekers' eligibility for accommodation support under sections 95 and 96 of IAA 1999. Following the coming into operation of asylum accommodation at Wethersfield in July 2023, caseworkers in the Assessment Team were given internal guidance on the suitability criteria for the purpose of reviewing completed ASF1 forms. On 17 May 2024, the defendant produced the Interim

Instruction, which gives such guidance in line with version 12 of the Allocation Policy. The Interim Instruction reminds caseworkers to ensure that they consider the suitability criteria when processing ASF1 forms for asylum seekers residing at large sites (especially Wethersfield) and continues -

"If a customer is at Wethersfield and does not raise any accommodation needs that might indicate they are unsuitable for the site, the ASF1 should be progressed as normal.

If the customer is at Wethersfield and raises any accommodation needs that might indicate they are unsuitable for the site on the ASF1 but does not provide evidence to support this, the Assessment Team send a Request for Information (RFI) letter to the individual, preferably via e-mail if they provided one on the ASF1, requesting that they provide evidence to demonstrate they have a special need that they believe cannot be met at the site.

- *If the customer does not respond to the RFI, an e-mail should be sent to the Asylum Support Large Sites Team to decide on the evidence available.*

- *If the customer provides supporting evidence e.g. an individual evaluation of their situation that confirms they have special needs, the Assessment Team may refer this to the Home Office Independent Medical Adviser (who can advise on medical evidence provided), to confirm whether the customer has special needs and if so, what those special needs are.*

- *Evidence, including the Home Office Independent Medical Adviser's opinion where relevant is to be sent to the Asylum Support Large Sites Team for decision making. ASF1 process temporarily pauses.*

If the customer is at Wethersfield, raises accommodation needs that might indicate they are unsuitable for the site on the ASF1 and provides supporting evidence e.g. an individual evaluation of their situation at confirmed they have special needs, the Assessment Team may refer this to the Home Office Independent Medical Adviser (who can advise on medical evidence provided) to confirm the customer has special needs and, if so, what those special needs are.

- *Evidence, including the Home Office Independent Medical Adviser's opinion where relevant to be sent to the Asylum Support Large Sites Team for decision making. ASF1 process temporarily pauses.*

On consideration of all evidence, the individual is assessed not suitable to be at Wethersfield:

- *Asylum Support Large Sites Team will take steps to relocate the customer from Wethersfield.*

- *When relocation from Wethersfield is complete, Asylum Support Large Sites Team will advise the Assessment Team.*

- *ASF1 process can be followed as per BAU.*

On consideration of all evidence, the individual is assessed suitable to remain at Wethersfield:

- *Asylum Support Large Sites Team will inform Assessment Team of the outcome of the suitability assessment.*

- *ASF1 process can re-start.*

- *If customer is to be granted support under s95, the suitability decision will be reflected in the s95 grant letter".*

148. Ms Mascurine says that the Interim Instruction *"largely reflects existing practice, informed by the [Allocation] Policy"*. If an applicant needs time to produce his supporting documents or to respond to a Request for Further Information, the Assessment Team allows a period of 5 days for him to do so. In the absence of any further documents being supplied or a response to the RFI, the Assessment Team continues with the assessment process on the basis of the information that they have about the applicant, in order to avoid delay in determining his application for section 95 support jeopardising his receipt of subsistence support.

149. In addition, if a completed ASF1 form raises a matter which relates to modern slavery, but the asylum seeker has not yet been the subject of an NRM referral, his case will be sent to the First Responder team so that he may be interviewed and his case referred under the NRM. If the Assessment Team considers that the completed ASF1 form raises a possible safeguarding issue, that matter may be notified via Atlas and the Home Office Safeguarding Hub to CRH to carry out a welfare check.

150. The Interim Instruction indicates that where an asylum seeker's completed ASF1 form does not raise accommodation needs that indicate that he may not be suitable for section 95 accommodation support at Wethersfield, the Assessment Team will determine his application on the basis of his ASF1 and any other information shown on Atlas. The role of the Large Sites Team is to take final decisions on accommodating asylum seekers at Wethersfield who have raised accommodation needs on their ASF1 forms that might indicate they are unsuitable for the site. Ms Mascurine says that all such cases are considered on a case by case basis using all available information, including the completed ASF1, any response to Requests for Further Information and any advice from the Home Office Asylum Support Medical Adviser (HOMA) and/or the Home Office Asylum Support Psychiatric Adviser (HOPA). She says –

"If the resident raises accommodation needs that might indicate they are unsuitable for Wethersfield on the AFS1 and provides supporting evidence (with the ASF1 or in response to an RFI), the Assessment Team may refer this to the [HOMA] and/or the [HOPA] for their expert medical opinion. These Advisers can provide expert medical advice on whether the resident meets the suitability criteria (e.g. has a chronic disease) and/or has special needs and if so, what those special needs are.

The assessment team will then refer the question of the resident's suitability to be accommodated at Wethersfield to the Large Sites Team, who will take the final decision on suitability, considering all the evidence provided by the Assessment Team, including:

(a) the ASF1;

(b) existing records on Atlas;

(c) the response to the RFI and any medical records provided;

(d) any medical advice provided by the HOMA or HOPA.

As part of the ASF1 interim instruction, if a case is referred to the Large Sites Team, the Assessment Team will not make a decision on the overall section 95 support application until the issue of suitability is resolved by the Large Sites Team. This is to ensure that, if a resident is deemed unsuitable for Wethersfield and is moved to alternative asylum accommodation, the decision granting the resident section 95 support and ASPEN card is sent to the correct address".

151. Ms Mascurine then explains the process to be followed in a case where the applicant has been referred into the NRM but has yet to receive a reasonable grounds decision –

"If at ASF1 stage an individual has already been referred under the NRM, but is either awaiting a reasonable grounds decision, or has received a negative reasonable grounds decision, this will not automatically render them unsuitable according to the [Allocation Policy]. However, if a referral to the NRM has not yet been made at this point, and a relevant matter is raised on the ASF1 (for example an individual makes reference to forced labour), the case will be sent to the Asylum Support NRM First Responder Team for the individual to be interviewed and the case referred under the NRM. Where a reasonable grounds decision is received by the Asylum Support NRM First Responder Team, it will notify the Large Sites Team regarding any positive reasonable grounds decision received so that the Large Sites Team can make a decision regarding the resident's suitability".

152. Ms Mascurine says that where the evidence calls into question an asylum seeker's suitability to be accommodated at Wethersfield, the decision on his suitability is taken by the Large Sites Team, guided by the Allocation Policy. All cases are considered individually and on the basis of the available information, including the completed ASF1, any response to RFI, advice (if any) from the HOMA and/or HOPA and any other evidence. She continues -

"A caseworker in the Large Sites Team will have regard to the advice given by the HOMA in coming to a decision. The role of the HOMA is to provide advice on whether a person satisfies the suitability criteria and/or whether the person has any special accommodation needs. This is because caseworkers are not medically trained. However, the caseworker still has a case-working function in applying the [Allocation Policy], including determining whether any special accommodation needs can be met on-site at Wethersfield. The ultimate decision on whether a resident is suitable to be accommodated at Wethersfield is for the caseworker in the Large Sites Team, not the HOMA.

…

In all the circumstances where an ASF1 case is sent to the Large Sites Team, if upon a review of the ASF1 and any other supporting evidence, they are satisfied that the individual is unsuitable for Wethersfield or if they have received a positive reasonable grounds decision from the Single Competent Authority - they will upload the email notifying the Assessment Team of the decision, the reasons for it and any needs for future accommodation on Atlas as an update.

…

If the Large Sites Team makes a decision that the individual is suitable for Wethersfield after reviewing the ASF1 and any supporting evidence, they will inform the Assessment Team of their decision. In line with the [Interim Instruction] the Assessment Team will issue a decision on the ASF1 and grant or decline section 95 support".

Monitoring of suitability

153. Ms Mascurine says that after a decision has been made to provide accommodation support under sections 95 and 96 of IAA 1999 at Wethersfield, the asylum seeker's suitability to be accommodated at the site will continue to be monitored under the arrangements which she describes in paragraphs 75 to 122 of her witness statement.

154. Ms Mascurine states that the welfare team at the site are the *"first port of call"* for ensuring residents' welfare and safety. The welfare team has a site wide record of all asylum seekers accommodated at Wethersfield. They will conduct welfare checks on all residents at least twice a month. Welfare checks typically take place in residents' bedrooms. They take the form of a comprehensive conversation about the resident's well-being. If there are sensitive matters to discuss, the welfare check can take place in private at the welfare office on site. Welfare checks are completed using a standard form. The responses are recorded so that the Home Office is able to request sight of the welfare check record of any asylum seeker accommodated at the site. Ms Mascurine gives a sample of questions included on the standard form –

"since our last talk, have there been any changes to your mental health you would like to discuss? What has changed? Are you currently receiving any support for your mental health? If yes, from whom? Have you spoken to your GP or mental health team about how you are feeling? Would you like our safeguarding team to make a referral for someone to support you? If YES, we will need your GP's details to make the referral. GP's details. Since our last talk, have there been any other issues regarding your welfare you would like to discuss?"

155. The welfare team will signpost residents to the appropriate services depending on the issues that they raise, such as the on-site medical team or Migrant Help. If the welfare team has a safeguarding concern of their own about an asylum seeker accommodated at the site, they will refer that concern to CRH's safeguarding hub. CRH has its own internal safeguarding policies and will assess whether it should refer the matter to the Home Office safeguarding hub.

156. The welfare team communicate and work closely with the Home Office Oversight and Assurance Team **["HOAT"]**. HOAT is headed by the SRO and is responsible for oversight and assurance of delivery of services for the operation of Wethersfield under CRH's contract. The welfare team will communicate directly to HOAT any concerns which they have about an asylum seeker's suitability to remain accommodated at Wethersfield. The welfare team can also contact HOAT and the Home Office safeguarding hub directly to raise a concern about a resident's welfare.

157. Welfare officers are able to make appointments for residents at the site medical centre (in addition to the appointments system available to the residents themselves). CRH provides training to welfare officers on equality and diversity, customer service, health and safety, mental health awareness and safeguarding. The Home Office has not provided specific

training to the welfare team on the defendant's suitability criteria, although the welfare team are aware of those criteria and have copies of the current Allocation Policy.

158. If an asylum seeker discloses to the welfare team that he is a potential victim of modern slavery, the welfare team should pass that information to HOAT who then arrange for referral into the NRM. Arrangements are then made to enable the resident to complete the NRM referral appointment.

159. The on-site medical team also have an ongoing role in assisting with identifying safeguarding and suitability concerns. They are aware of the suitability criteria, and if they have concerns, should seek the resident's consent to share their medical information with the Home Office. Any immediate risks are notified to CRH.

160. The Home Office safeguarding hub is responsible for responding to safeguarding referrals across all asylum accommodation, including Wethersfield. Upon receipt of a referral, hub staff will assess the level of risk and respond depending on the level of risk. In any case in which suicidal ideation is disclosed, the on-site medical team at Wethersfield will be notified to make them aware of that vulnerability and a welfare check requested of the site welfare team.

161. If a safeguarding referral raises a concern supported by evidence about the asylum seeker's accommodation needs and continuing suitability to be accommodated at Wethersfield, the matter will be referred to HOAT, who will either refer the matter to the Large Sites Team or, in an exceptional case, may decide that the individual is no longer suitable to be accommodated at the site and arrange his relocation to alternative accommodation. If the concern is not supported by evidence, the matter will be referred to the welfare team with a request for a welfare update and that the resident provide such evidence for consideration by the Large Sites Team. The Home Office safeguarding hub prioritises referrals on the basis of their degree of risk. There may therefore be a delay in acting on referrals judged to be low risk.

162. Individual asylum seekers can also themselves request to be relocated from Wethersfield to alternative asylum accommodation. This can be done via Migrant Help or directly to the Home Office (usually via the welfare team). Such a request can and in the case of many asylum seekers transferred to Wethersfield has been made via a third party such as a charitable body or legal representatives. Such requests were made in the case of each of the four claimants.

163. In the majority of cases, it is the responsibility of the Large Sites Team to decide whether an asylum seeker accommodated at Wethersfield under sections 95 and 96 of IAA 1999 should be relocated to alternative accommodation. In such cases, the decision is made by reference to the Allocation Policy and the Large Sites Ongoing Suitability SOP **["Large Sites SOP"]**. The Large Sites Team considers all the available evidence, which may include the referral request itself, on-site medical records and/or evidence from external medical professionals, evidence from the site welfare team including incident reports and welfare checks, and any medical advice received from HOMA or HOPA.

164. The Large Sites SOP gives guidance on the procedures for processing a request for relocation, depending on the source of the request – from HOAT, from the asylum seeker or his representatives, from Migrant Help, from the Assessment Team or from the Home Office Safeguarding Hub. Where the request is made by the resident asylum seeker himself

or his representatives, caseworkers in the Large Sites Team are told that if the request is not supported by appropriate evidence, the applicant should be advised to submit the request via Migrant Help and that supporting evidence will be required.

165. The Large Sites SOP states that if the relocation request is supported by evidence which indicates that the asylum seeker may be unsuitable for accommodation at Wethersfield, the caseworker should follow one of two options –

(1) If the asylum seeker is in imminent danger to themselves or others, the caseworker should ensure that the appropriate actions are taken to relocate him from Wethersfield.

(2) If the asylum seeker has submitted medical evidence that may be assessed to ascertain his suitability for accommodation at Wethersfield, the caseworker may refer the medical information to the HOMA and/or the HOPA for advice on whether the asylum seeker's needs can be met at the site. If the advice is that the asylum seeker is unsuitable for continuing accommodation at Wethersfield, the caseworker should look to relocate him to adequate accommodation elsewhere.

166. If the Large Sites Team decide that the asylum seeker remains suitable for accommodation at Wethersfield, that decision will be recorded in a letter to him, his legal representatives or to HOAT (if the request came from the latter). If the Large Sites Team consider that the asylum seeker is no longer suitable for accommodation at Wethersfield, they will inform HOAT who will arrange his relocation to alternative accommodation, usually within 48 hours.

167. Ms Mascurine has received advice from HOAT that approximately 271 asylum seekers accommodated at Wethersfield were relocated elsewhere between 17 July 2023 and 20 May 2024, because they were found no longer to be suitable to be accommodated at the site or for other reasons, including *"pragmatic and precautionary reasons"*. Of these, approximately 236 are said to have been relocated to alternative accommodation following receipt of a pre-action protocol letter, which frequently contained information regarding the individual's alleged unsuitability to be accommodated at the site but which had not previously been provided to the defendant.

Submissions

168. The claimants contend that the *Tameside* principle requires the defendant to put in place a system which enables caseworkers to have available to them the information that they reasonably require for the purposes of assessing any individual adult male asylum seeker's suitability to be accommodated at Wethersfield. Such a system must provide the basis for a properly informed understanding of his individual needs in order to apply the defendant's published suitability criteria. Application of the *Tameside* principle requires such a system to be in place not only in order reasonably to inform the defendant's decision to accommodate an asylum seeker at Wethersfield, but also thereafter to enable his suitability to be monitored and a reasonably informed decision to be made whether to remove him elsewhere.

169. Mr McCullough KC submitted on behalf of the consolidated claimants that the accommodation allocation arrangements described in the defendant's detailed grounds of defence and in the evidence given on her behalf are deficient, ineffective in their operation and lack the hallmarks of a *Tameside* compliant system for making properly informed

decisions about an asylum seeker's suitability to be accommodated, or to continue to be accommodated, at Wethersfield. He contended that the deficiency in the allocation arrangements for those purposes is evidenced by the fact that each of the claimants in the consolidated claim was a vulnerable asylum seeker, who was unsuitable to be accommodated at Wethersfield on the application of the suitability criteria in effect at the date of the allocation decision in their case. Nevertheless, each had been wrongly accommodated at Wethersfield, initially under section 98 but subsequently under sections 95 and 96 of IAA 1999, primarily because the defendant's allocations procedures did not provide an effective, *Tameside* compliant system to obtain the information needed to assess them properly against the suitability criteria.

170. On behalf of MJ, Mr Goodman KC advanced similar submissions. He emphasised that the defendant's statutory duty under sections 95 and 96 of IAA 1999 is to make informed decisions which properly respond to the needs of the individual asylum seeker for whom support is to be provided in the form of accommodation. In order to discharge that duty in a *Tameside* compliant way, it was incumbent on the defendant to operate an allocations process which not only enabled caseworkers to identify individual asylum seekers who were unsuitable for accommodation at Wethersfield on the application of the suitability criteria, but also such a person who was properly to be judged as unsuitable by reason of his individual needs notwithstanding those criteria. MJ had been such a person, as a result of the deficiencies in the defendant's accommodation allocation procedures, he had been wrongly accommodated at Wethersfield until relocated pursuant to the order of McGowan J on 6 March 2024.

171. In response on behalf of the defendant, Ms Giovannetti KC submitted that the question for the court was whether the accommodation allocations and suitability assessment procedure described in the defendant's evidence was capable of being operated in a lawful, *Tameside* compliant way by the defendant. Ms Giovannetti KC referred me to R (AM) v Secretary of State for the Home Department [2024] 4 WLR 5 at [182] where Lane J said –

> *"182. It is important to bear in mind that "systems" challenges involve the ultimate question of whether the system in question is capable of being operated lawfully: R (A) v Secretary of State for the Home Department [2021] UKSC 37. A systems challenge must show more than the possibility of aberrant decisions and unfairness in individual cases. It must show unfairness that is inherent in the system itself".*

172. Ms Giovannetti KC submitted that, applying that proper approach, the system comprising the policy and procedures described in the defendant's evidence had not been shown to be one that was incapable of being operated lawfully, albeit that it was acknowledged that there might be cases where, on the facts, it had not been so operated. The case of TG was a regrettable example of an asylum seeker whose unsuitability for accommodation at Wethersfield ought to have been identified on the basis of information which he had provided during his screening interview. But the fact that there were instances of the suitability criteria not being properly applied did not justify the conclusion that the allocations procedures themselves did not enable the defendant to make *Tameside* compliant decisions under sections 95, 96 and 98 of IAA 1999.

Tameside challenges – the court's approach

173. In R (Balajigari) v Secretary of State for the Home Department [2019] 1 WLR 4647, the Court of Appeal drew upon R (Plantagenet Alliance Ltd) v Secretary of State for Justice

[2015] 3 All ER 261 at [99]-[100] for the following summary of the court's approach to a challenge to an administrative decision relying on the *Tameside* principle–

"…. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a Wednesbury challenge (Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223, it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken: see R (Khatun) v Newham London Borough Council [2005] QB 37, para 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries, they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of States duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it."

Discussion and conclusions

174. As I have indicated, the gravamen of the claimants' complaint is that the defendant's allocation procedure for accommodating asylum seekers at Wethersfield is not *Tameside* compliant, because it does not enable her to gather the information which she needs in order properly to apply the suitability criteria set out in version 12 of the Allocation Policy. That was the complaint which succeeded on the facts in *NB* in relation to Napier Barracks. The claimants contend that it should succeed on the facts in the present case.

175. At [234] in *NB*, Linden J observed that it was not sufficient for the defendant simply to put suitability criteria in place, there also had to be a reasonable system for gathering the information to which those criteria would be applied. That encapsulates the issue which I have to resolve in the present case on the basis of the allocation procedure which I have outlined above.

176. Each successive version of the Allocation Policy has required caseworkers to assess each asylum seeker's suitability to be accommodated at Wethersfield on the basis of all the available information and evidence. The Allocation Policy has consistently stated that each case should be individually assessed and a decision made about suitability for Wethersfield based upon each asylum seeker's individual needs. That guidance properly reflects sections 95, 96 and 98 of IAA 1999 and regulation 13(2) of the 2000 Regulations.

177. All versions of the Allocation Policy have identified asylum screening interviews and ASF1 forms as principal sources of information to be considered in assessing asylum seekers' suitability to be accommodated at Wethersfield. As I have explained, the defendant's witnesses place considerable reliance on the screening interview process and the current content of the questionnaire as the basis for a reasonable system of gathering information for initial decisions about accommodating asylum seekers. The defendant requires each asylum seeker to complete a questionnaire shortly after arrival in the UK. Where a decision

is made to transfer an asylum seeker to Wethersfield, the evidence is that the asylum seeker's suitability for accommodation at that site is based primarily on the information which he gives in response to the questionnaire during his screening interview.

178. At [234] in *NB*, Linden J held that the screening interview procedure in use by the defendant in that case did not ask specific questions which were directed at the suitability criteria and gave interviewees the misleading impression that they would be able to provide a more detailed account at a later stage. The evidential basis for that finding is set out in [197]-[204] of the judgment in *NB*. In summary, the screening interview process in that case had been truncated and lasted typically fifteen to eighteen minutes in each case. Part 3 of the questionnaire which asked for information about the asylum seeker's travel history, including "Why have you come to the UK?" had been omitted. In R (DA) v Secretary of State for the Home Department [2020] EWHC 3080 (Admin) Fordham J had made an order that Part 3 be restored to the screening interview, as the questions posed were key to discovering evidence that the applicant was a potential victim of trafficking at the screening stage. The screening interview procedure in evidence before Linden J did not require the interviewer to ask the applicant any specific questions about torture, rape or other serious forms of psychological, physical or sexual violence.

179. The position is different now. The evidence in the present case establishes that the questionnaire requires an asylum seeker to provide information about his health in answer to questions under Part 2; about his journey to the UK in answer to questions under Part 3; and in Part 6, to provide information about any factors of which the defendant needs to be aware when allocating accommodation to him, so as to ensure that the accommodation is suitable and adequate for his needs. Part 6 of the questionnaire specifically requires the asylum seeker to inform the interviewing officer whether he is disabled or has experienced torture, rape or other serious forms of psychological, physical or sexual violence. The screening interview based on each asylum seeker having the opportunity to provide information in response to these and other questions posed in the questionnaire is expected to last about forty five minutes.

180. In paragraphs 34 to 36 of her witness statement, Catherine Stratton says that Part 6 was approved for inclusion in the questionnaire in late 2023 for the specific purpose of eliciting further information from individuals about their suitability for different types of non-detained accommodation. She says that when Wethersfield began to be used to accommodate asylum seekers in July 2023, new arrivals were being transferred to the site before they had completed their ASF1 forms and any decision had been made by the defendant on their suitability to be accommodated at the site under section 95 of IAA 1999. As a matter of policy, the purpose of including Part 6 was to gather information from asylum seekers through their screening interviews about any potential needs which may inform decisions as to where they are initially accommodated upon arrival in the UK, and before any decision to transfer them to Wethersfield.

181. In summary, the evidence is that the defendant added Part 6 to the questionnaire for the purpose of gathering information from asylum seekers to enable caseworkers in the NAAU to assess their suitability for accommodation at Wethersfield, pending a decision on providing accommodation to meet their needs under sections 95 and 96 of IAA 1999. That initial allocation decision fell to be made under section 98 of IAA 1999. Ms Churton's evidence is that the procedure for deciding whether Wethersfield provides adequate temporary accommodation for an asylum seeker under section 98 of IAA 1999 is primarily based on information provided through the screening interview. Under the NAAU SOP, that

information will be the primary source of information against which NAAU caseworkers will assess an asylum seeker's suitability for initial transfer to Wethersfield, applying the suitability criteria in the Allocation Policy.

182. In my view, in its current form the questionnaire no longer suffers from the failings identified in *NB*. The defendant has taken the necessary steps to remedy its former deficiencies. As a result, the questions which an asylum seeker is now required to answer in response to the questionnaire at his screening interview are a reasonable system for gathering the information reasonably required to enable the defendant to make an initial decision as to whether that person is suitable for accommodation at Wethersfield, applying the suitability criteria in the Allocation Policy. In light of the evidence of Mr Murray and Ms Churton, I am satisfied that the screening interview and the initial accommodation assessment under the NAAU SOP provides a *Tameside* compliant procedure for allocating accommodation at Wethersfield on the basis of that information, for the purposes of section 98 of IAA 1999.

183. The ASF1 form is central to the defendant's decision making under sections 95 and 96 of IAA 1999. Regulation 3 of the 2000 Regulations requires an asylum seeker who applies for accommodation support under sections 95 and 96 of IAA 1999 to do so by completing *"in full and in English the form for the time being issued by the Secretary of State for that purpose"* - that is to say, the ASF1 form. The defendant is prohibited from entertaining the application unless it is made by completing the ASF1 form in full and in English. The defendant is permitted to make further enquiries, but it is clear that information provided by the applicant in completing his ASF1 form is ordinarily expected to provide the basis for the defendant's decision.

184. At [235] in *NB*, Linden J held that the ASF1 form in use by the defendant in that case was flawed as a basis for gathering information about an asylum seeker's suitability for accommodation at Napier Barracks. Not only did that version of the ASF1 form fail to seek information specifically directed to the suitability criteria, but also the applicants in that case were required to complete their ASF1 forms at a stage before either they or Migrant Help could have appreciated that the questions posed in sections 14 and 15 might affect the defendant's decision, i.e. as to whether they were suitable to be transferred to a former military barracks for accommodation under sections 95 and 96 of IAA 1999.

185. Again, the factual position is different in the present case. As was foreshadowed in *NB*, section 15 of the ASF1 form now includes a question which is directed at the suitability criteria under the Allocation Policy (which merits repetition here) –

> *"In making decisions about the allocation of asylum accommodation, the Home Office has regard to the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Do any of these apply to you? If so, which?"*

186. Moreover, in the present case applicants almost invariably complete their ASF1 forms some days after they have been transferred to Wethersfield. They will have had the opportunity to form an initial view of the accommodation offered at the site. They are able to seek assistance from Migrant Help in completing their ASF1 form. In contrast to the applicants in *NB*, asylum seekers completing their ASF1 forms when already at Wethersfield following their initial transfer to the site under section 98 of IAA 1999 will be in a position to answer

the question now posed in section 15 of ASF1 with the benefit of some personal experience of the site.

187. In my view, as with the questionnaire, the ASF1 form now in use no longer suffers from the failings identified in *NB*. Again, the defendant has taken the necessary steps to remedy its former deficiencies. The questions which an asylum seeker is now required to answer in completing his ASF1 form at Wethersfield are a reasonable system for gathering the information reasonably required to enable the defendant to make a decision as to whether he is suitable for accommodation at Wethersfield under sections 95 and 96 of IAA 1999, applying the suitability criteria in the Allocation Policy. The arrangements described by Ms Mascurine for asylum seekers to complete their ASF1 forms at Wethersfield provide a basic level of assurance that applicants will be in a position to provide the information reasonably required by the defendant's caseworkers to apply the suitability criteria appropriately to their case. Applicants are able to seek assistance from Migrant Help in completing their ASF1 forms. The arrangements described by Ms Mascurine for section 95 accommodation assessments show that caseworkers in the Assessment Team and the Large Sites Team are directed under the Interim Instruction to make decisions on asylum seekers' accommodation needs under sections 95 and 96 of IAA 1999 guided by version 12 of the Allocation Policy, and applying the suitability criteria.

188. The current ASF1 form and these arrangements for allocating accommodation at Wethersfield on the basis of information provided by the asylum seeker in response to the questions posed in that form are, in my view, a *Tameside* compliant procedure, which enables the defendant to obtain the information which she reasonably requires for the purpose of determining whether asylum seekers are suitable for accommodation at Wethersfield under sections 95 and 96 of IAA 1999, as envisaged by regulation 3 of the 2000 Regulations.

189. The third area of deficiency identified by Linden J at [237] in *NB* was the inadequacy of arrangements then in place at Napier Barracks for gathering information about asylum seekers already at the site, for the purpose of monitoring and assessing whether they were no longer suitable to be accommodated there applying the suitability criteria.

190. I have set out in some detail the corresponding arrangements in place at Wethersfield which Ms Mascurine describes in her evidence. The claimants' evidence includes wide ranging and trenchant criticisms of the monitoring arrangements in place at the site. The claimants' evidence is that those arrangements are ineffective and those who are tasked with operating them lack proper training and are overwhelmed. Those criticisms also feature in the independent reports.

191. In the light of the evidence, it would be idle to deny that there is force in the criticisms made by and on behalf of the claimants of the adequacy of the current arrangements for monitoring the suitability of asylum seekers to continue to be accommodated at Wethersfield. The fact that the defendant's witnesses acknowledge the need for improvements in staff training is of particular concern, as are the observations made by the MTC Report about the pressure on welfare staff at the site.

192. However, the relevant question is whether the monitoring arrangements described by Ms Mascurine are so deficient as a system, that they are incapable of enabling the defendant to obtain the information which she reasonably requires for the purpose of determining whether asylum seekers at Wethersfield remain suitable to be accommodated there, by

reference to the suitability criteria in the Allocation Policy. I am satisfied that is not the position. The system provides for regular welfare and safeguarding checks on individual asylum seekers by the welfare team. The welfare team are given general training on mental health awareness and safeguarding. They are made aware of the suitability criteria and the current Allocation Policy. Welfare checks and the responses to standard questions are recorded. That provides information upon the basis of which welfare officers are able to communicate concerns about an asylum seeker's suitability to remain accommodated at Wethersfield directly to the HOAT, which is headed by the SRO. The same line of communication is in place to enable the welfare team to report an asylum seeker as a potential victim of modern slavery. The on-site medical team are aware of the suitability criteria and are able to raise concerns about asylum seekers' suitability to remain at the site. Subject to the asylum seeker's consent, the medical team is able to report medical information to HOAT in support of their concern. The role of the Large Sites Team in assessing referrals under the Large Sites SOP, which gives guidance on the procedures for processing requests for relocation, provides further assurance that on referral (including self-referral or referral by the asylum seeker's representatives), an asylum seeker's suitability to remain at the site will be assessed on the basis of the suitability criteria.

193. In *NB* at [238] Linden J concluded that the allocation procedure in evidence before him did not have –

"the hallmarks of a Tameside compliant, rational, system to ensure that the defendant was reasonably well-informed as to the suitability or otherwise of the Barracks to accommodate a given asylum seeker, whether at the point of allocation or on a continuing basis".

194. For the reasons I have given, I am unable to draw the same conclusion in the present case. Linden J based his conclusion on the accommodation allocation process in evidence before him. It was necessarily a fact specific inquiry, as it is in the present case. The screening process which Linden J found to have been deficient in *NB* was different from that now in place, as described in the defendant's evidence. The current version of form ASF1 had been modified in order to overcome the inadequacies identified by Linden J in *NB*. The system in place is sufficient to enable the defendant to gather adequate information upon which to determine whether an asylum seeker is suitable for initial transfer to Wethersfield under section 98 of IAA 1999 and for subsequent accommodation there under sections 95 and 96 of IAA 1999. The monitoring arrangements in place at Wethersfield are sufficient to enable the defendant to gather adequate information upon which to determine whether an asylum seeker remains suitable to be accommodated at the site under sections 95 and 96 of IAA 1999.

195. I conclude that the claimants' challenges to the accommodation allocation procedure for Wethersfield relying on the *Tameside* principle have not been made out. I am unable to reach the same conclusion in the present case as Linden J in *NB*. In the case of Wethersfield, the allocation procedure as a system accords with the *Tameside* principle, as it does allow the defendant to gather the information that is reasonably required for the purpose of assessing the suitability of asylum seekers to be and to remain accommodated at Wethersfield.

Ground 2 – Inadequate Accommodation

The Issue

196. Under this heading, I address the systemic element of ground 2 of the consolidated claim and ground 1(B) of the MJ claim.

197. By way of context, it is relevant to note that the main issue raised by each of the individual claims is whether the defendant erred in law in judging that the accommodation provided to each claimant at Wethersfield was adequate to meet his needs during the period in which he was accommodated at the site. In the case of the three claimants who bring the consolidated claim, that contention is primarily rooted in the submission that the defendant failed properly to apply the suitability criteria in her Allocation Policy in judging them to be suitable to be accommodated at Wethersfield and so failed to discharge her statutory duty under sections 95 and 96 of IAA 1999. The case advanced on behalf of MJ is that he was an asylum seeker whose individual needs rendered him unsuitable to be accommodated at Wethersfield, even if those needs did not necessarily fall within the scope of the suitability criteria promulgated in the Allocation Policy. In adhering too strictly to those policy criteria, it was submitted, the defendant had lost sight of MJ's individual vulnerability which should have led the defendant, acting reasonably, to decide that accommodation at Wethersfield was not adequate to meet his needs. None of these arguments raises a systemic issue. They are instead focused upon the legality of decisions made by the defendant in respect of each of the individual claimants. I shall address each of those individual claims later.

198. Nevertheless, ground 1(B) of the MJ claim raises a wider, systemic argument that the accommodation provided at Wethersfield is inadequate to meet the needs of the great majority of asylum seekers who are accommodated at the site under sections 95 and 96 of IAA 1996. That wider argument is also advanced in support of ground 2 of the consolidated grounds.

199. The systemic issue is, therefore, whether conditions at Wethersfield show that the accommodation provided to asylum seekers at the site is generally inadequate for the purposes of discharging the defendant's statutory duty under sections 95 and 96 of IAA 1999 and regulation 5 of the 2005 Regulations.

The standard of adequacy

200. In *JK(Burundi)* at [59], the Court of Appeal said that the aim of section 95 of IAA 1999 is to avert destitution by providing, in the language of that enactment, for an asylum seeker's essential living needs. The court held that, as a matter of language, the standard set in the context of section 95 of IAA 1999 was *"one of subsistence rather than anything more"*.

201. In R (A) v National Asylum Support Service [2004] 1 WLR 752 at [53], Waller LJ said that the question of adequacy arises in the context of providing accommodation which prevents asylum seekers being destitute and which provides for their essential living needs. Furthermore, in considering the adequacy or suitability of accommodation the individual circumstances of each individual must be considered. At [55] he said –

> *"In considering whether the Secretary of State is fulfilling a duty to provide adequate accommodation, the position may become different over the passage of time. Just as under homelessness legislation the duty to provide accommodation is a continuing one and thus*

what may have been suitable at one moment may become unsuitable later…so the same would be true under the 1999 Act".

202. The question whether accommodation that the defendant offers to provide in support of an asylum seeker under sections 95 and 96 of IAA 1999 is or will be adequate to meet that person's needs is for the defendant to answer. In the language of section 96(1)(a) of IAA 1999, that accommodation must appear to the defendant to be adequate to meet the individual's needs. If it appears to the defendant that the accommodation will be adequate for that purpose, she is in a position lawfully to discharge her duty under section 95 of IAA 1999 and regulation 5 of the 2005 Regulations by providing that accommodation to that asylum seeker. Applying ordinary public law principles, provided that the defendant's view on the adequacy of the accommodation was one which was reasonably open to her, the language of section 96 leaves it to the defendant to judge whether accommodation is adequate to meet the needs of that individual at least to the level of subsistence support.

Conditions at Wethersfield

203. Dave Butler describes the facilities at Wethersfield in paragraphs 76 to 123 of his witness statement.

204. The asylum accommodation at Wethersfield comprises six dormitory-style accommodation blocks (of which three are in use) and one isolation block. There is also a *"portacabin village"* comprised of modular units. There is a variety of room types.

205. With the exception of the isolation block (which has single occupancy rooms for residents suffering from infectious diseases), all rooms for residents at Wethersfield involve room-sharing. In the three permanent accommodation blocks, rooms can accommodate up to three individuals. In each room, residents are provided with a single bed, duvet, pillow, bedsheets, and lockable wardrobe unit. Some rooms have ensuite bathrooms. Bathroom facilities are shared between residents at a 5:1 ratio and include toilets, showers, and sinks.

206. The portacabin village comprises three separate accommodation areas, with a total of 457 beds. It provides sleeping accommodation, toilet blocks, shower blocks, laundry facilities and recreation rooms. Each bedroom in the portacabins has space to accommodate 5 or 6 beds, but usually no more than three residents are accommodated in any one room. A single bed with sheets, pillow and duvet and a wardrobe/locker are provided for each resident. The bathroom facilities in the portacabin village include 90 showers (a ratio of one shower to every 5.1 residents) and 88 toilets (a ratio of one toilet to every 5.2 residents). The portacabin village also has a number of communal areas which include a recreation room with two table tennis tables, and a quiet room which is locked, but available for use by residents on request to welfare staff.

207. Mr Butler says that although there is no policy of segregation on the basis of nationality or ethnic group, CRH seek to accommodate asylum seekers of the same nationality or who speak the same language together, to enable them to build rapport with each other.

Catering services

208. Residents are provided with three meals per day. Set mealtimes of between 1 hour 15 minutes and 1 hour 45 minutes are in operation, which is driven by the logistics of providing food for large numbers of residents. Queues at mealtimes are managed to alleviate delay and

the tensions that have arisen on occasion in the dining hall. Residents are also able to purchase food and drink from an on-site shop in the recreation room. Snacks are available without charge in the Welfare Centre and recreation rooms in the afternoons.

209. Meals are designed to be healthy and balanced and to conform to the NHS Eatwell Guide. The menus are regularly reviewed with input from a nutritionist. During induction, residents are asked to inform welfare officers of any dietary requirements. Drinking water and juice dispensers are located in various buildings at Wethersfield. The tap water is tested regularly and is safe to drink.

210. Mr Butler says that steps have been taken to manage disagreements in the canteen. They include directing the catering services suppliers to provide better staff training on interacting with residents and creating a *"front of house"* staff role to manage and de-escalate tense situations between residents as and when they arise.

Hygiene and cleanliness

211. Asylum seekers accommodated at Wethersfield are provided with toiletries such as shower gel, a toothbrush and toothpaste. The accommodation blocks are cleaned twice each day, seven days a week. Other areas are cleaned daily. Residents can also ask the Welfare Office to call cleaners outside the normal routine if necessary. The water supply at Wethersfield is subject to regular testing, including for legionella as Mr Butler explains in some detail. The water supply at the accommodation site is now classified as a private water supply and testing results are shared with the responsible local authority, Braintree District Council. A Water Assurance Group meets regularly and is provided with regular test results for water quality.

Activities, Entertainment and Worship

212. The range of activities available for those accommodated at Wethersfield include English language lessons, art classes, gym fitness classes, martial art classes, a Christian wellbeing spiritual group, a chess group, playing cards competitions and a gardening club. There are also organised sports, including football, cricket, running, table tennis and basketball. The sporting facilities at Wethersfield include a fitness centre, a gymnasium with a hardwood court suitable for use for basketball, indoor football and indoor cricket, and outdoor football, cricket and baseball pitches. There is a large recreation room at Wethersfield, which contains pool tables, table tennis tables, a television, books, a collection of DVD players, a DVD library and games (including board games and gaming consoles). Residents are able to borrow DVD players to watch films or use the consoles in the dedicated gaming area located in the recreation room. Organisations appointed to provide services to residents include ArtRefuge, St Vincent De Paul Volunteers, Essex County Cricket and Changing Lives.

213. The former American chapel at Wethersfield has been converted for use as a Multi-faith Centre, a dedicated place for worship for residents of any religion.

Security

214. Mr Butler describes security at the Wethersfield facility in paragraphs 40 to 60 of his witness statement.

215. The site is surrounded by a perimeter fence which was in place when the site passed into the control of the Defendant. The perimeter fence has barbed wire in some parts, but these

are not visible from the areas used for accommodation for asylum seekers. That area is separated from the remainder of the overall site by a green palisade fence erected by the Defendant. The purpose of that palisade fence is to prevent access to the former airfield which houses derelict and unsafe buildings and hangars.

216. Entry and exit from the site are managed through the use of two gates. Main entry and exit are via a double metal pedestrian gate at the front of the site which is supervised at all times by security staff from the security hut by the gate. Residents are no longer required to hand in their keys but are encouraged to sign out when leaving the site. The second gate at the back of the site is used for staff and service vehicles. The gates are kept secured at all times and operated by security staff who open them to allow entry and exit to authorised persons, including asylum seekers who are resident at Wethersfield. Visitors to the site require authorisation to enter and security staff keep a daily visitors log.

217. Legal representatives require authorisation as visitors but may attend to consult with their client residents. A legal visitors centre is located near to the main gates.

218. CCTV on site is provided for the safety of residents and the security of the site. It is not used to monitor residents' day to day activities.

219. LES' staff are licensed by the Security Industry Authority. They are provided with training to licensable standard and specific to their roles, which includes de-escalation training. Every security officer joining the team has to go through a 28-day probationary period. All of LES' staff are also required to sign a statement which makes clear that Wethersfield is a non-detained site and that security staff have no authority to prevent residents from leaving the site. Security staff carry out routine security checks on accommodation blocks and the site perimeter. They are also required to respond to callouts.

220. Residents can raise concerns and complaints about behaviour of security and other site staff by –

(i) speaking to welfare staff or the CRH site manager;

(ii) through their weekly Live Call; and

(iii) by using a QR code located in the welfare office.

221. Where the Home Office have on occasion raised specific incidents with CRH about the behaviour of security staff, CRH have taken appropriate action, including removing a security staff member from site on one occasion for rude and aggressive behaviour to a resident.

Residents' movement in and out of the accommodation site

222. Wethersfield is operated as a non-detained site. Asylum seekers accommodated there are free to come and go from the site. They are specifically informed of this fact during the induction process. Residents are asked (but are not required) to sign in and out when they arrive at/leave Wethersfield. This enables staff to know how many residents are present on the site at any time in order to enable safe management of the site, for example in the event of a fire. There is no curfew. If a resident has not returned to the site by 11 pm, a welfare check will be conducted. The site's main gate closes at 11pm but residents are free to return to the site after that time if they wish.

223. Residents can and do leave the site on foot, for example to meet with charitable organisations who have based themselves outside. However, as the accommodation provided at Wethersfield is in a rural location and some distance from the nearest towns with amenities, free shuttle buses operate on a regular schedule. They provide residents with transport from the site to Braintree, Colchester and Chelmsford. For each scheduled service to a particular location, there will be multiple buses operating, and if necessary to meet demand they will undertake more than one trip.

Medical services

224. Mr Butler describes medical provision at Wethersfield in paragraphs 133 to 155 of his witness statement. On-site healthcare is operated from the medical centre at Wethersfield. The medical centre is staffed by a medical team which includes at least two general practitioners, an advanced nurse practitioner, a general nurse, a mental health nurse, and two health care assistants. The medical centre provides the following services to residents: (i) medical health screening for residents on arrival; (ii) an immunisation programme; (iii) provision of prescribed medications; (iv) treatment for minor illnesses and injuries; (v) a low-level trauma-informed mental health support service; (vi) confidential health advice; (vii) emergency dental care; and (viii) eye tests. Where an asylum seeker accommodated at Wethersfield requires care beyond that which can be provided by the on-site medical centre, he will be referred for the appropriate specialist care. In this way residents at Wethersfield are able to access the same healthcare facilities as other residents of Mid Essex. Transport is provided to take residents to and from off-site medical appointments.

225. The on-site medical centre was initially open from 9.00 am to 5.00 pm, but these hours of operation have since been amended to 10.00 am to 6.00 pm (in response to demand). Residents can make appointments themselves, via an online portal. Appointments can also be booked in person. The overall healthcare provision made available to asylum seekers accommodated at Wethersfield is in line with the provision of NHS facilities in the country as a whole.

226. On inspection in 2024 both the Care Quality Commission and the local Integrated Care Board in 2024 were satisfied with the standard of medical facilities and services provided on-site at Wethersfield. Asylum seekers accommodated at the site are permitted to register with GP services offsite. The rules on registering with a GP are the same as in the rest of the country, namely they can register at any practice with an open list whose catchment boundaries include Wethersfield. However, in practical terms, it is likely to be significantly easier for those accommodated at Wethersfield to gain access to medical services at the on-site medical centre, which has the added advantage of being equipped with facilities (such as access to interpreters) which mean that it may be better able to support asylum seekers.

227. CRH has put in place an Infectious Diseases Prevention and Control Management Plan which provides for health screening on arrival and the availability of isolation accommodation. Asylum seekers who are isolating are encouraged not to be in close proximity with others accommodated at the site. Welfare officers will deliver meals to isolating residents at the standard mealtimes. Under the Allocation Policy, those with active tuberculosis and infectious or active communicable diseases are likely to be regarded as unsuitable for room-sharing, although individuals with latent disease or infection may be suitable for room sharing, subject to ongoing monitoring.

228. The defendant says that she is not directly responsible for the quality of health and medical services provided to residents of the asylum accommodation at Wethersfield. She says that it is the NHS which is responsible for the arrangements under which healthcare is provided to asylum seekers accommodated at Wethersfield; and the Department of Health and Social Care is responsible for assessing and ensuring the quality of healthcare.

Welfare services

229. Mr Butler describes welfare services at the site in paragraphs 156 to 164 of his witness statement. The provision of welfare services at Wethersfield is managed by CRH. The role of the Welfare Team is to conduct welfare checks on the residents in light of any information which on-site staff or the Home Office are aware of. Welfare Officers also act as points of contact for any issues which residents may have. They can also assist with the transfer of information from residents to the Home Office on-site service providers. There are 26 welfare staff, with 17 welfare officers present on site during the day between 7am and 7pm and 9 welfare officers at night between 7pm and 7am.

230. Mr Butler describes the role of welfare officers in responding to safeguarding concerns –

> *"Welfare staff also play an integral role responding to safeguarding concerns following welfare checks and incident reports, or by safeguarding referrals being made by NGOs or legal representatives. If a welfare officer has a safeguarding concern, that concern will be referred to the CRH safeguarding team. The CRH safeguarding team will then consider the concern raised and, if action is required, refer to the Home Office Safeguarding Hub with any other relevant information. I am aware the claimants have said that safeguarding complaints made by third parties such as NGOs are routinely ignored. This is incorrect. Although a response will not always be provided to the person or organisation that made the safeguarding referral, it will always be actioned by welfare and home office staff".*

231. Welfare officers receive general training in line with their roles. Training on completing welfare checks is *"on the job"* training. New staff shadow existing staff on site and learn the process in this way. Staff also undergo e-learning training on safeguarding adults. Three welfare team leaders have been appointed to improve management of welfare staff.

232. Support services are also provided by Migrant Help. As noted earlier, as at late May 2024, Migrant Help had only a limited physical presence at Wethersfield and communicated with residents by telephone. In his witness statement, Mr Butler says that he was making arrangements as SRO for office space at the site to be made available for Migrant Help's use from late June 2024. His understanding was that Migrant Help would have five staff on site, including a manager, who would be available in person from 9am to 5pm from Monday to Friday. Outside those hours, residents could continue to contact Migrant Help by telephone and web chat on a 24-hour basis.

The claimants' complaints

233. Evidence given on behalf of the claimants and others accommodated at Wethersfield is strongly critical of the physical and operational conditions of the asylum accommodation at Wethersfield. The claimants rely strongly on the extensive complaints and critical findings reported in the ICIBI correspondence, the MTC report, the BRC report and the ICIBI report published in late October 2024 following the hearing of these claims. The claimants contend that the evidence given by Mr Butler and other witnesses for the defendant fails to grapple

with the reality for asylum seekers of being accommodated at Wethersfield for up to 9 months as contemplated by the Allocation Policy. It is submitted that the conditions under which asylum seekers are accommodated at Wethersfield are so seriously inadequate as to make it unlawful for the defendant to use as accommodation for asylum seekers.

234. The evidence relied upon in support of these contentions is very extensive. Drawing upon that extensive evidence, the claimants in the consolidated claims have set out a detailed summary of their concerns in section D of their skeleton argument.

235. It is said that the site is not accessible, by virtue of its remote, rural location. It appears like a prison with a perimeter security fence, guarded entry and exit and a heavy security presence on site. For the claimants and many other asylum seekers accommodated there, it is redolent of their experiences of detention, torture and psychological and physical violence. Traumatic memories are triggered by the sound of gunshots from a nearby clay pigeon shooting range.

236. It is served by narrow country roads with no pavements. The only safe and practicable means of leaving the site and using nearby shops and services is by using the shuttle bus services. Those services are often oversubscribed. Although the site is said to be a non-detained site, in practice residents' movements to and from the site are heavily regulated by security personnel, particularly at night.

237. Catering facilities are inadequate. The pressure created by the need to feed large numbers of asylum seekers during set mealtimes leads to tensions and outbreaks of violence between residents. Residents complain about the quantity and quality of the food provided. Residents lack the money needed to take advantage of the onsite food van.

238. The accommodation and sanitary arrangements are very basic. Residents have to share rooms and lack privacy. Shared rooms are noisy. Many residents complain of disrupted and inadequate sleep. Residents are disturbed by their neighbours making telephone calls at night to family and friends in different time zones. A common complaint is that residents sleep poorly because they do not feel safe.

239. Faith and worship facilities are inadequate to serve the multiplicity of faiths present amongst asylum seekers accommodated at the site. There is a real dearth of purposeful activities available to residents, leading to the ICIBI drawing attention to residents' sense of hopelessness and boredom. The MTC report referred to a lack of structure in the daily lives of residents. Wi-Fi coverage was poor and confined to communal areas. Promised improvements had not been forthcoming. Concerns were raised by the ICIBI and in the MTC report that a large community of single, adult males experiencing these matters might lead to violence.

240. Triaging for clinical appointments at the onsite medical centre were carried out by untrained welfare officers. The medical centre was inadequately staffed and resourced to serve the needs of the large number of asylum seekers, many with physical and mental health issues, accommodated at the site. Initial health checks upon arrival were chaotic and newly arrived residents felt inhibited about revealing sensitive issues which might be relevant to their suitability for accommodation at the site. BRC were told by the onsite healthcare team that 10% of asylum seekers they saw had suicidal ideation, which BRC considered may be an underestimate. A report prepared in May 2024 by Doctors of the World *"Like a prison, no control, no sleep"* referred to the situation at Wethersfield as an unfolding mental health

crisis with extensive levels of psychological distress, anxiety and depression; and residents being prescribed anti-depressants and sleeping tablets with no alternative forms of treatment offered.

241. The MTC report had noted that welfare staff on site were overwhelmed and struggling to provide more than a very basic service. The structured induction arrangements described by Mr Butler were found by BRC not to be reflected in the chaotic process they observed during their visit to the site. BRC reported that welfare officers lacking any background in mental health or clinical expertise were nevertheless responsible for welfare checks and out of hours support. Welfare staff are said to be given no guidance on how to monitor and identify residents as falling within the unsuitability criteria in the Allocations Policy. Migrant Help cannot provide effective support without a meaningful presence on the site.

242. In their report BRC had identified what they saw from their discussions with medical, welfare and security staff as a culture of disbelief about the deterioration in asylum seekers' psychological wellbeing and mental health caused by being accommodated in these conditions at Wethersfield. In consequence, staff tended to diminish the significance of incidents of self-harm and evidence of distress and trauma amongst residents. The MTC report found that the safeguarding policy had been neither used nor understood.

243. A prevailing theme at Wethersfield raised by witnesses and in the reports was the risk of serious violence. There were frequent outbreaks of violence in queues in the canteen, for the shuttle buses and outside the welfare office. There have been numerous outbreaks of racial violence. Although Mr Butler has acknowledged the occurrence of violent incidents, particularly in late 2023 coinciding with significant increases in the number of asylum seekers accommodated at the site, he is said to have downplayed the prevalence of racially motivated violent incidents. Many residents report physical safety as a major concern and have resorted to widespread self-confinement in their rooms. Interracial violent incidents are said to be under reported, with the result that safeguarding actions are inadequate.

244. MJ's skeleton argument also drew on the extensive evidence and reporting of serious complaints and criticisms of conditions at Wethersfield. MJ laid particular emphasis on the impact on the mental health of the great majority of asylum seekers accommodated at the site. MJ drew upon certain statistics which were said to provide clear evidence in support of the complaint that all but a small minority of asylum seekers accommodated at Wethersfield had experienced a significant deterioration in their mental health and wellbeing. Mr Goodman KC and Ms Butler submitted that it cannot have been the legislative intention of sections 95 and 96 of IAA 1999 and regulation 5 of the 2005 Regulations that accommodation provided to asylum seekers should damage and degrade such persons' mental health and wellbeing.

The defendant's response

245. The defendant denies that the asylum accommodation site at Wethersfield is prison-like. She relies on Mr Butler's evidence as demonstrating the physical security and access arrangements are reasonable and consistent with operation of the site as an open facility. The defendant compares the security arrangements to those that might be typical of university student halls' accommodation. The defendant reiterates that residents are free to come and go from the site, with shuttle bus arrangements to overcome the relative remoteness of the location.

246. The defendant does not accept that the catering arrangements are inadequate to serve the needs of residents at the site. Set mealtimes are a reasonable means of managing the process of providing food and drink to substantial numbers of residents. Mr Butler has explained the management measures taken to address tensions arising between residents during queuing at mealtimes.

247. The defendant contends that sleeping arrangements at Wethersfield as described by Mr Butler provide accommodation which is adequate to meet residents' needs and fulfil the purpose of section 95 of IAA 1999. Reference is made to Mr Butler's evidence in response to the alleged insufficiency of activities and recreational facilities available to residents at the site.

248. The defendant contends that the healthcare, welfare and support services available to residents at Wethersfield as described by Mr Butler cannot be characterised as inadequate. Although the BRC report has raised strong concerns about a culture of disbelief amongst staff and a lack of effective safeguarding of residents, the MTC report had found the welfare team to be well led and to display high levels of motivation and a keenness to support those in their care. The MTC report had made recommendations for a more integrated approach to enable them to provide more than a basic level of service. Mr Butler himself had instructed MTC to report in the light of the concerns raised by the ICIBI in correspondence in later 2023 and early 2024. In his witness statement Mr Butler explains that in response to MTC's recommendations, the Home Office and CRH have taken steps to improve the induction process, provide more enrichment activities for residents, and install better Wi-Fi service and consider improvements to the roles of security and welfare staff. Discussions were taking place with Commisceo in relation to information sharing arrangements.

249. The defendant draws attention to paragraphs 165 to 195 of Mr Butler's witness statement which provides a detailed response to the claimants' concerns about violent behaviour amongst residents, the perceived threat of violence and racially motivated violence. Mr Butler says that the defendant operates a policy of zero tolerance of bullying, harassment or abuse of any nature, including racially motivated behaviour of that kind. Residents are informed of this policy following their arrival at the site and during the induction process; and in the terms of the occupancy agreement. Mr Butler's evidence is that violent and aggressive incidents between residents at the site are generally the result of disagreements and personal animosity; and not caused by tension between cultural or racial groups. Home Office and CRH staff are trained on diversity and inclusion, bullying, harassment and abuse. Mr Butler describes the role of security officers in maintaining good order at the site. His operational judgment as SRO is that no specific safeguarding measures are needed to prevent and manage the risk of racial violence and harassment at the site.

250. The defendant observes that staff performance will inevitably vary in quality. Incidents of inappropriate behaviour of the kind mentioned in the claimants' evidence and observed in the MTC and BRC reports should be seen in that context. There are complaints mechanisms available to residents. The evidence shows that the defendant will require appropriate action to be taken in response to such complaints.

251. More generally, the defendant concedes that the ICIBI correspondence and subsequent reports have been critical of conditions at Wethersfield and of the operation of the asylum accommodation at the site. Nevertheless, the defendant points out that in commissioning the reports and responding to their findings, the Home Office is able to learn lessons and to assess and improve the operation of the site. In other words, the findings and

recommendations of the reports, both those produced by the ICIBI under statutory powers and those produced on commission by MTC and BRC, form part of the means whereby the defendant seeks to ensure that asylum accommodation at Wethersfield continues to be adequate to meet the needs of asylum seekers accommodated there under sections 95 and 96 of IAA 1999.

Discussion and conclusions

252. The fundamental basis for each of the claimant's individual claims is the contention that insofar as accommodation at Wethersfield appeared to the defendant to be adequate for their needs, her view was irrational and her decision to provide them with that accommodation under sections 95 and 96 of IAA 1999 was accordingly unlawful. I address that contention in relation to each individual claimant later.

253. At this stage, however, the contention is systemic. The systemic issue was raised in the consolidated grounds. At the hearing, the systemic issue was pursued by MJ only. MJ argued that so deficient are the conditions of accommodation at Wethersfield that the site is incapable of appearing to the defendant, viewing the matter rationally, of providing accommodation that is adequate to meet the needs of the great majority of, if not all, asylum seekers.

254. The case law shows that the legislative standard of adequacy requires the defendant to be satisfied that accommodation provided under sections 95 and 96 of IAA 1999 supports an asylum seeker accommodated there at least to the subsistence level, consistent with his individual needs. The accommodation must therefore at least be capable of offering asylum seekers with the basic elements required for reasonably dignified day-to-day existence for the period that they are accommodated at the site.

255. In my view, the arrangements described by Mr Butler in his evidence satisfy that requirement. It is understandable that asylum seekers accommodated at Wethersfield grow unhappy with aspects of their living conditions at the site. Room sharing over a period of up to nine months with strangers is an understandable source of unhappiness. It is easy to see how the relative isolation of the site could cause discontentment. There is evidence that the arrangements for mealtimes have been difficult to manage and led to disruption, including outbreaks of violence on occasions. The monotony and boredom of daily life for those accommodated at the site is understandable, and a particular cause for concern voiced in the independent reports.

256. However, these and other complaints voiced by the claimants, their representatives and independent reports must be seen in the context of the statutory provisions and the policy arrangements promulgated under the Allocation Policy. Subsections 95(4) and (6)(c) of IAA 1999 make clear that room sharing with one or more persons is not to be taken as an indicator that accommodation is inadequate for the purposes of sections 95 and 96. Nor is the asylum seeker's preference as to the location in which accommodation is to be provided to be taken into account: see subsection 97(2)(a) of IAA 1999. By virtue of regulation 13(2) of the 2000 Regulations, the asylum seeker's personal preference as to the nature of the accommodation provided to him is to be left out of account, as is his preference as to the nature and standard of fixtures and fittings. Regulation 14 authorises the defendant to provide education, including English language lessons, and sporting or other developmental activities to persons receiving asylum support, but *"only for the purpose of maintaining good order among such persons"*.

257. In promulgating the Allocation Policy, the defendant has recognised that accommodation at Wethersfield is likely to be adequate only to accommodate adult, male asylum seekers; and that within that cohort there will be individuals with special needs arising through vulnerability or health conditions which make them unsuitable for accommodation at Wethersfield.

258. When considered in the context of the statutory arrangements and the Allocation Policy, in my view, the alleged inherent inadequacies in the accommodation arrangements at Wethersfield advanced by the claimants have been satisfactorily addressed by the defendant. Room sharing is far from ideal as a sleeping arrangement, but it is not necessarily inconsistent with a subsistence level of accommodation, even for a relatively prolonged period of up to nine months. The relative isolation of the site is reasonably accommodated through the provision of shuttle bus services. The security arrangements at the gate do not unreasonably interfere with asylum seeker's freedom of movement to and from the site. The need for them is satisfactorily explained by the defendant in evidence. It is reasonable for the defendant to take the view that the presence of the existing perimeter fencing does not result in "prison-like" accommodation that is necessarily inadequate for asylum seekers accommodated there on the basis of her Allocation Policy. Nor is it unreasonable to fence off the accommodation from other areas of the former airfield which present dangers to trespassers. The defendant has taken steps to improve the management of queues and the risk of disorder arising at set mealtimes. Medical and health services are provided at the site. I see no good reason to doubt the defendant's assertion that the level of healthcare provision available to asylum seekers accommodated at the site is in line with the provision of NHS facilities generally. Welfare and support services are available at the site. The site does provide recreational activities and a dedicated place of worship.

259. Overall, I do not accept that the conditions of accommodation provided for asylum seekers at Wethersfield as described in the evidence before the court have been shown to be so deficient as to be incapable of providing adequate accommodation for asylum seekers under section 95 and 96 of IAA 1999. In my view, the defendant does not act irrationally in judging that the accommodation arrangements provided for asylum seekers at Wethersfield are able to provide support to asylum seekers accommodated there in accordance with the Allocation Policy at least to the level of subsistence. For that reason, the defendant is not in breach of her statutory duty arising under section 95 and 96 of IAA 1999 and regulation 5 of the 2005 Regulations in providing accommodation for asylum seekers at Wethersfield. This ground of challenge fails.

Ground 3 – Version 11 of the Allocation Policy is unlawful

Issue

260. The claimants contend that by introducing the guidance to caseworkers under the heading *"Individual evaluation of special needs for those who meet criteria which may make them unsuitable"* into version 11 of the Allocation Policy, the defendant has promulgated an unlawful policy. The defendant has retained that unlawful policy unchanged in version 12 of the Allocation Policy.

261. The claimants say that this new guidance fails to advise caseworkers of the need to take reasonable steps to gather information in accordance with the defendant's *Tameside* duty. Instead, the new guidance shifts the responsibility to gather information about the asylum seeker's special needs for the purpose of applying the suitability criteria onto the asylum

seeker. The guidance is therefore unlawful as it contains a positive statement which is in conflict with the defendant's *Tameside* duty. Moreover, the new guidance is unlawful in purporting to give comprehensive guidance to caseworkers on the correct approach in law to discharging the defendant's duty under sections 95 and 96 of IAA 1999, since it omits to guide caseworkers on the need to comply with the defendant's *Tameside* duty.

262. The claimants also contend that the new guidance promulgated in version 11 (and now version 12) of the Allocation Policy is unlawful in its operation. In requiring asylum seekers to provide verifiable expert or professional evidence in support of a claim that they are unsuitable to be accommodated at Wethersfield under the suitability criteria, the policy is incapable of operating in accordance with the *Tameside* principle. Instead, it results inevitably in asylum seekers who are unsuitable for accommodation at Wethersfield by virtue of their vulnerabilities or health needs nevertheless being accommodated there, in contravention of the Allocation Policy and of sections 95 and 96 of IAA 1999.

263. The claimants further contend that in promulgating versions 11 and 12 of the Allocation Policy the defendant failed to comply with the PSED under section 149 of EA 2010.

The lawfulness of policy – the correct approach to judicial review

264. In *R(A)* and in R (BF (Eritrea) v Secretary of State for the Home Department [2021] 1 WLR 3967, the Supreme Court has given authoritative guidance on the correct approach to apply in order to determine whether a policy promulgated by a public authority for the purpose of giving guidance on the exercise of statutory powers and duties is unlawful.

265. At [46] in *R(A)*, the Supreme Court said that in broad terms, there are three types of case where a policy may be found to be unlawful by reason of what it says or omits to say about the law when giving guidance to others –

(1) Where the policy includes a positive statement of law which is wrong and which will induce a person who follows the policy to breach their legal duty in some way.

(2) Where the authority which promulgates the policy does so pursuant to a duty to provide accurate advice about the law but fails to do so, either because of a misstatement of the law or because of an omission to explain the legal position.

(3) Where the authority, albeit not under a duty to issue a policy, decides to promulgate one and in so doing purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position.

266. The court said where the Secretary of State issues guidance to his or her own staff explaining the legal framework in which they perform their functions is likely to come with the third category of case. Staff receiving that guidance would be expected to take direction about the performance of their functions on behalf of their department from the Secretary of State, rather than seeking independent advice of their own. However, whether that is the position will depend upon the context: *R(A)* was a case in which the guidance was directed at the police, who were independent of the defendant and were well aware that they had relevant legal duties which may require them to seek further legal advice.

267. At [47], the court said that in a case in the third category, it will not usually be incumbent on the person promulgating the policy to go into full detail about how exactly a discretion should be exercised in every case. A policy needs to be practical and useful. A policy may be sufficiently congruent with the law if it identifies broad categories of case which potentially call for more detailed consideration, without particularising precisely how that should be done.

268. In *R(A)* at [63], following Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112), the Supreme Court approved the following approach to the question of whether a policy is unlawful –

"where the question is whether a policy is unlawful, that issue must be addressed looking at whether the policy can be operated in a lawful way or whether it imposes requirements which mean that it can be seen at the outset that a material and identifiable number of cases will be dealt with in an unlawful way".

269. In *RA* at [57], the Supreme Court had considered R (Refugee Legal Centre) v Secretary of State for the Home Department [2005] 1 WLR 2219, a case which involved a challenge to a fast-track scheme for decision making and appeals in relation to asylum claims by immigrants who fell within specified categories. The scheme was composed of policy guidance to officials and procedure rules which governed the timetable in relation to appeals for cases within the scheme. At the first stage, officials were required to conduct interviews and arrive at decisions within three days. The scheme had a degree of flexibility built into it to allow for more complex cases to be removed from it and diverted into normal, slower decision-making procedures –

"It was accepted that in straightforward cases the scheme was capable of operating fairly…The Court of Appeal held that the relevant question was…"does the system provide a fair opportunity to asylum seekers to put their case?" and said that there would be "something justifiably wrong with a system which places asylum seekers at the point of entry [into the system] at unacceptable risk of being processed unfairly".

270. At [63]-[66] in *RA*, the Supreme Court disapproved of the formulation of the question in *Refugee Legal Centre*. The lawfulness of policy does not turn on an assessment of whether those affected by its operation are likely be placed at an unacceptable risk of unfair or unlawful treatment. In the event that such a person did suffer unfair or unlawful treatment, he or she would be entitled to bring a claim for relief on the facts of that individual case. But where the focus of the challenge is the lawfulness of the policy, practice, scheme or system itself, then –

"[65] …in principle, the test for the lawfulness of a policy should be capable of application at the time the policy is promulgated, which will be before any practical experience of how it works from which statistics could be produced. The test for the lawfulness of a policy is not a statistical test but should depend, as the Gillick test does, on a comparison of the law and what is stated to be the behaviour required if the policy is followed. Both aspects of this test are matters on which the court is competent and has the authority to pronounce".

Grounds 3(a) – version 11 unlawful on its terms - discussion and conclusions

271. As I have explained above when charting the development of the defendant's Allocation Policy over the course of the period since Wethersfield came into operation in July 2023,

version 11 of that policy introduced a new policy of identifying certain classes of persons who may not be suitable for accommodation at the site, that question being resolved by determining whether in each case the individual's special needs can be met at Wethersfield. The classes of person include those who would be defined as *"vulnerable"* under regulation 4 of the 2005 Regulations and those with complex health needs within the terms of paragraph 4.16 of the Healthcare Needs and Dispersal Policy (which includes individuals with certain serious mental health issues).

272. Under the previous version of the Allocation Policy, such persons were not considered suitable for accommodation at Wethersfield. Under version 11 and now version 12, such persons are considered suitable if their special needs can be met at Wethersfield.

273. In both the previous and the current versions of the Allocation Policy, in order to meet the suitability criteria under which such vulnerable persons were not, and now may not be suitable for accommodation at the site, an asylum seeker is required to provide evidence that he has had an individual evaluation of his situation that confirms that he has special needs.

274. That particular requirement reflects the terms of regulation 4 of the 2005 Regulations. Regulation 5(2) requires the defendant to *"have regard"* to the special needs of an asylum seeker who is a vulnerable person, when considering whether to provide support for that person under sections 95 or 98 of IAA 1999. In that context, the classes of vulnerability include disabled persons and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. However, in order to understand clearly the extent of the duty placed on the defendant by regulation 4(2), it is important to understand that it is dependent upon the person's special needs having been confirmed by an individual evaluation of his situation. Moreover, regulation 4(4) makes clear that the defendant is under no obligation herself to carry out or to arrange for such an evaluation for the purpose of confirming whether the person does have special needs by virtue of his disability or being the victim of serious violence.

275. Under versions 9 and 10 of the Allocation Policy, the defendant's policy was to fulfil her duty under regulation 4(2) of the 2005 Regulations by regarding a vulnerable person whose special needs had been confirmed by individual evaluation as not suitable for accommodation at Wethersfield. Under versions 11 and 12, she fulfils that duty by regarding such a person as potentially unsuitable for accommodation at Wethersfield, the matter to be decided in each case on the basis of the ability of the site to meet his confirmed special needs.

276. Both of those policy approaches are self-evidently consistent with the defendant's statutory duty under regulation 4(2) of the 2005 Regulations, which is to have regard to a vulnerable person's special needs, insofar as those needs have been confirmed by an individual evaluation.

277. It is also consistent with the defendant's discharge of her statutory duty under regulation 4(2) of the 2005 Regulations that, as a matter of policy, she seeks information about an individual asylum seeker's special needs from that applicant. Regulation 4(4) of the 2005 Regulations expressly absolves the defendant from any obligation to carry out or to arrange for an evaluation of the applicant to determine whether he has special needs.

278. The defendant's policy lead, Catherine Stratton, explains the reasons for introducing the changes made in version 11 of the Allocation Policy, subsequently carried forward in version 12 of that policy. She says that the amendments made to the suitability criteria in version 11 of the Allocation Policy were intended to revise the *"blanket prohibition on specific cohorts being accommodated at Wethersfield"* in favour of a system which ensures that the accommodation needs of all individual asylum seekers are assessed on a case-by-case basis and they are accommodated according to their specific needs. She says that version 11 introduced the new section headed *"Individual evaluation of special needs for those who meet criteria which may make them unsuitable"* to mitigate against the risk that individual asylum seekers may abuse the system by making unsubstantiated claims of being unsuitable, which might frustrate the defendant's policy objective of reducing reliance on hotels to provide section 95 accommodation and so lessen the overall cost of accommodating asylum seekers.

279. That explanation, including the policy objective of reducing the risk of unsubstantiated claims of unsuitability for accommodation at Wethersfield, is also consistent with the statutory duty placed upon the defendant by regulation 4(2) of the 2005 Regulations. That provision clearly envisages a case-by-case approach to consideration of an applicant asylum seeker's special needs; and rests upon confirmation being given to the defendant of those special needs which result from the applicant's disability or his exposure to serious violence of the kind described in regulation 4(3) of the 2005 Regulations.

280. The allegedly unlawful policy guidance of which the claimants complain is encapsulated in the introductory paragraph of the new section introduced in version 11 of the Allocation Policy –

> *"Where individuals claim to meet criteria which may make them unsuitable, they should provide evidence supporting their claim for unsuitability. All information provided will be considered by Home Office accommodation providers or caseworkers on a case-by-case basis."*.

281. In my view, that guidance is consistent with the statutory arrangements for the defendant's consideration of special needs when making decisions on applications for support under sections 95 or 98 of IAA 1999. I find it difficult to discern any statement of law in it, but insofar as it may be thought to make any such positive statement, it is in accordance with the terms in which the defendant's statutory duty is expressed in regulation 4 of the 2005 Regulations.

282. The same analysis applies to the guidance that an individual should *"provide evidence that they have had an individual evaluation of their situation that confirms they have special needs"*. That does no more than to reflect the clear intention of regulation 4(3) of the 2005 Regulations. The guidance that *"Where possible, individuals should provide one or more of the following pieces of verifiable expert or professional evidence"* is consistent with regulation 4(4) of the 2005 Regulations. Given that no obligation rests on the defendant to carry out or arrange an evaluation of a person's claimed special needs, it is legally correct for her as a matter of policy to encourage that person to obtain reliable evidence to confirm those needs.

283. When considered in the context of regulation 4 of the 2005 Regulations, it is clear that the new guidance of which the claimants complain in versions 11 and 12 of the Allocation Policy contains neither any erroneous statement of law nor any inducement to caseworkers

to breach the defendant's *Tameside* duty of inquiry. The defendant's duty to take such steps to inform herself as are reasonable is not breached by promulgating policy guidance which founds upon practical application of regulation 4 of the 2005 Regulations, for the purposes of enabling her to have regard to an applicant's special needs.

284. For the same reasons, there is no merit in the claimants' argument that the new guidance in version 11 (now version 12) of the Allocation Policy is unlawful because by omitting reference to the defendant's *Tameside* duty of inquiry, it presents a misleading picture of the true legal position. I have already concluded that in their current form, both the questionnaire and the ASF1 are sufficient to gather the information which the defendant reasonably requires to enable her to comply with her duty of reasonable inquiry in making decisions under sections 95, 96 and 98 of IAA 1999. As was submitted by the defendant, the basic thrust of the Allocation Policy has been consistent throughout successive versions, that caseworkers should assess an asylum seeker's suitability to be accommodated at Wethersfield on a case-by-case basis, having regard to each individual's needs and all the available evidence, but specifically the screening interview and the completed ASF1 form. The new guidance which sits in the context of regulation 4 of the 2005 Regulations does not affect that conclusion. Finally, the claimants' complaint about unpublished operating procedures adds nothing to their argument, which is based on the published version 11 of the Allocation Policy.

285. Ground 3(a) is rejected.

Ground 3(b) – version 11 unlawful in its operation – discussion and conclusions

286. At [63] in *RA*, the Supreme Court said –

> *"…If it is established that there has in fact been a breach of the duty of fairness in an individual's case, he is of course entitled to redress wrong done to him. It does not matter whether the unfairness was produced by application of a policy or occurred for other reasons. But where the question is whether a policy is unlawful, that issue must be addressed looking at whether the policy can be operated in a lawful way or whether it imposes requirements which mean that it can be seen at the outset that a material and identifiable number of cases will be dealt with in an unlawful way".*

287. The claimants' case is that unless a system is in place under which *"independent verifiable evidence"* can reasonably be obtained prior to and after the defendant makes a decision to accommodate applicants at Wethersfield, such decisions will inevitably be reached in breach of the defendant's *Tameside* duty. There is therefore a systemic flaw in versions 11 and 12 of the Allocation Policy.

288. That argument fails essentially for the same reasons as I have rejected ground 3(a) above. The new guidance does not impose requirements which mean that it can be seen at the outset that a material and identifiable number of cases will be dealt with in an unlawful way. On the contrary, the new guidance provides advice to caseworkers on the information which they should expect to be provided to enable the defendant to apply the suitability criteria against the relevant statutory framework set by regulation 4 of the 2005 Regulations. As I have explained, regulation 4 is founded upon the defendant inquiring into information which has been provided to her by or on behalf of the applicant for the purpose of taking account of his special needs.

289. Guidance to caseworkers that they should generally look for supporting documentation, particularly verifiable expert or professional evidence, when an applicant asserts that he has special needs is in accordance with that statutory context. It is not unlawful for the defendant to give policy guidance to caseworkers on the relative weight which she expects to give to different categories of evidence. Had the policy guidance advised caseworkers that in the absence of supporting documentation from support services or verifiable expert or professional healthcare practitioners, the applicant is suitable for accommodation at Wethersfield, its lawfulness might be open to question as being too rigid an approach to case-by-case decision making. But that is not what the guidance says. The guidance advises caseworkers that the absence of supporting evidence from such sources *"carries less weight and should not generally be accepted alone"* as evidence of unsuitability. In other words, unsupported documentation may still carry some weight and may in the given case be judged to be sufficient to justify the conclusion that the applicant is unsuitable for accommodation at Wethersfield. The new guidance concludes with the overarching advice that *"you should consider all evidence provided to determine whether the individual has special needs"*.

290. The new guidance thus properly leaves a valuable element of flexibility and judgement to caseworkers to apply in assessing whether, in any given case, the supporting evidence establishes that the applicant for accommodation and support under sections 95 and 96 of IAA 1999 has special needs which may make him unsuitable for accommodation at Wethersfield. That in turn addresses the claimants' concern that the new guidance imposes a practically insuperable barrier to newly arrived asylum seekers who may not have had the opportunity to seek the supporting documentation and evidence which, as a matter of policy, the defendant identifies as likely to carry the greatest weight.

291. In such cases, it is within the contemplation of the new guidance that the applicant may nevertheless be assessed as having established that he has special needs which may make him unsuitable for transfer to Wethersfield. It may be necessary in appropriate cases for caseworkers to take a precautionary approach in the light of the evidence which the applicant is able to produce at his screening interview (for example, medication or his physical condition). The new guidance does not preclude such an approach. On the contrary, each case is to be considered on the basis of all the available evidence. It is necessary to have in mind that the claimants' case under this ground is systemic. As the Supreme Court said in *R(A)*, that a policy is able to operate lawfully leaves open the opportunity to argue that it has not in fact been applied lawfully to the facts of the given case.

292. The question of whether policy guidance is unable to operate in a lawful way must be addressed by considering its application across the range of scenarios for which it is promulgated. The new policy guidance on individual evaluation of special needs applies both in relation to initial accommodation decisions and in relation to referrals on behalf of asylum seekers accommodated at Wethersfield who seek a review of their suitability for the site. As the evidence before the court in the present claims shows, in such cases applicants are generally able to seek supporting evidence from a range of support services, including medical practitioners and other professionals.

293. In her evidence, Catherine Stratton offers the following explanation for the new guidance under version 11 of the Allocation Policy –

> *"Where an individual has a specific need, such as a health condition, which they believe renders them unsuitable for accommodation at Wethersfield, the [defendant] anticipates*

that in most cases individuals have evidence of this already in their medical records. In the pre-allocation stage, some individuals arrive in the UK with medical notes and prescriptions, which would be considered. Some disabilities or health conditions are apparent without the need for medical records, such as mobility impairments. Once allocated, any evidence from on-site medical services as well as other professional evidence, such as from off-site clinicians or NGOs who are supporting individuals, will be considered along with all information held about the individual and their specific needs.

In some cases, evidence relating to suitability will change over time, as individuals progress through their asylum claim and have more opportunities for engagement with professionals on-site and off-site. Accordingly, no allocation decision is final and suitability is monitored on an ongoing basis. So, if information later comes to light about a specific need that an individual accommodated at Wethersfield has which cannot be met on-site, the [Allocation Policy] ensures that this evidence is considered and the individual is moved off site."

294. That seems to me to be a fair and accurate encapsulation of the new guidance. For the reasons I have given, the behaviour required of caseworkers in following that new policy guidance will be in accordance with the statutory framework set by regulation 4 of the 2005 Regulations, will not lead caseworkers to fail to comply with the defendant's *Tameside* duty and will enable them to reach decisions founded upon the individual needs of applicants, including any confirmed special needs, in accordance with sections 95 and 96 of IAA 1999.

295. The claimants also argued that the new guidance on referring individual cases *"where evidence of vulnerabilities and or complex health needs is provided"* to the HOMA or HOPA for an expert opinion, imposes a requirement to the effect of which is that such cases will be dealt with in an unlawful way. Unlawfulness in such cases is said to arise in two respects. Firstly, there is said to be an inescapable internal inconsistency in the policy in that the HOMA or HOPA advisers who receive such referrals do not examine the applicant and are unable to satisfy the defendant's requirement for supporting medical assessments to be *"balanced and objective"*. Secondly, it is said that the guidance introduces a practice which inevitably results in delay in the defendant's determination of the asylum seeker's suitability to be accommodated at Wethersfield, in circumstances where there will already be verifiable and professional supporting evidence for his special needs and the inability of those special needs to be met at the site.

296. In my view, neither of these two contentions is justified. Under the new policy guidance, the role of the HOMA or HOPA adviser on referral is clear. It is to provide an expert opinion on the information provided to them by the caseworker in relation to the applicant's vulnerabilities or special needs. There is no room for confusion as to whether the HOMA or HOPA adviser has examined the applicant. In R (Shala) v Birmingham City Council [2007] EWCA Civ 624; [2008] HLR 8 at [23] the court said –

"…There is no rule that a doctor cannot advise on the implications of other doctors' reports without examining the patient; but if he or she does so, the decision-maker needs to take the absence of an examination into account…".

The new guidance advises caseworkers that they should use any opinions provided by HOMA or HOPA advisers to inform their decision about whether the applicant is suitable for accommodation at Wethersfield in the light of the suitability criteria. That is in my view consistent with the approach stated by the Court of Appeal in *Shala's* case. Should the caseworker not take proper account of the absence of an examination of the applicant by the

HOMA or HOPA adviser, that may provide the basis for a challenge to the determination in that applicant's case.

297. The second argument complains of *"a practice of routine deferral*" of considering asylum seekers' suitability pending the HOMA or HOPA adviser's response. The policy guidance, however, is not that caseworkers should refer cases to HOMA or HOPA advisers as a matter of routine. It is that they should consider whether such a referral is required in the given case. Although by no means every case is likely to merit referral, there will be cases in which it is reasonable for the caseworker to seek the opinion of a HOMA or HOPA adviser in order to inform the defendant's determination of the asylum seeker's suitability for Wethersfield. In such cases, some delay is the inevitable consequence of that referral. Whether referral in the given case has resulted in unjustifiable delay in the removal of an asylum seeker from unsuitable accommodation at Wethersfield, is a potential ground for challenge on the basis that the new policy guidance has been unlawfully applied in the circumstances of that case.

298. Ground 3(b) is rejected.

Ground 3(c) Failure to comply with the PSED in promulgating version 11 of the Allocation Policy

The PSED

299. The defendant is a public authority. In exercising her functions, she must fulfil the PSED. Section 149(1) of EA 2010 obliges the defendant to have due regard to the need to -

(1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under EA 2010.

(2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

(3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

300. The relevant protected characteristics include disability, race and religion or belief: section 149(7) of EA 2010. By subsections 149(3) of EA 2010 –

"(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to -

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities".

Principles of judicial review

301. At [10]-[18] in R (Sheakh) v Lambeth Borough Council [2022] PTSR 1315, the Court of Appeal provided a detailed analysis of the extensive jurisprudence on the meaning and effect of section 149 of EA 2010. At [10] the court stated the following principles –

(1) Section 149 does not require a substantive result.

(2) Section 149 does not prescribe a particular procedure. It does not, for example, mandate the production of an equality impact assessment at any particular moment in a process of decision-making, or indeed at all.

(3) As with other public law duties, section 149 implies a duty of reasonable enquiry under the *Tameside* principle.

(4) Section 149 requires a decision-maker to understand the obvious equality impacts of a decision before adopting a policy.

(5) The courts should not engage in an unduly legalistic investigation of the way in which a local authority has assessed the impact of a decision on the equality needs protected under section 149 of EA 2010.

302. In R (Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345; [2014] Eq LR 60, the Court of Appeal drew certain principles from the relevant case law. They include the following –

(1) The PSED is an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.

(2) An important evidential element in the demonstration of the discharge of the PSED is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required.

(3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice. Officials reporting to or advising Ministers on matters material to the discharge of the PSED must not merely tell the Minister what he or she wants to hear but they have to be rigorous in both enquiring and reporting to them.

(4) The Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision.

(5) The PSED must be fulfilled before and at the time when a particular policy is being considered.

(6) The duty must be exercised in substance, with rigour, and with an open mind. It is not a question of "ticking boxes". General regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria. The duty is a continuing one. It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(7) The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, it is for the decision maker to decide how much weight should be given to the various factors informing the decision.

(8) In short, the decision maker must be clear precisely what the equality implications are when he or she puts them in the balance, and must recognise the desirability of achieving them, but ultimately it is for the Ministers to decide what weight they should be given in the light of all relevant factors.

The defendant's evidence

303. Ministerial approval was sought for the changes proposed to the suitability criteria in version 11 of the Allocation Policy in a departmental submission dated 10 January 2024. The overall recommendation to ministers was as follows –

"We recommend removing the blanket prohibition in the [Allocation Policy] preventing some vulnerable individuals from being moved to large sites. Instead, we propose that claims are decided on a case-by-case basis, and that vulnerabilities should ordinarily be substantiated by the evidence of medical professionals".

304. The reasons offered to ministers in support of that recommendation included the following –

"… the current [Allocation Policy] strictly requires those who are vulnerable and have special needs to be moved off site where they have an independent evaluation supporting their claim, even if we assess that those needs can be met on these accommodation sites. We have professional health and welfare officers on all our large sites and the vessel which mean that these sites can be suitable even for the individuals who are considered vulnerable. All sites facilitate wrap-around support services delivered by the voluntary sector and work with Home Office safeguarding teams and local partners to promote the wellbeing of residents.

To mitigate against the risk of individuals abusing the system by making unsubstantiated claims of unsuitability, increase the numbers of individuals suitable for large sites, and reduce reliance on hotels, we recommend the following changes to the [Allocation Policy]:

a) where individuals have vulnerabilities or health needs, these are considered but additional weight is given where supporting verifiable expert or professional evidence is provided;

b) providing greater detail on steps individuals should take when they believe accommodation is unsuitable for them, minimising the ability to successfully claim that suitability is not being considered in practice;

c) clarifying the type and nature of evidence which will ordinarily be needed to support a claim that asylum accommodation may be unsuitable;…

Monitoring of individuals' welfare and safeguarding processes will continue on an ongoing basis and we will move individuals to alternative accommodation where there are welfare concerns. Operational colleagues have been closely involved in development of the [Allocation Policy] to ensure proposed changes can be implemented at pace. Policy, operational legal colleagues will have regular checkpoints to monitor implementation of the policy, and identify and resolve issues as they arise".

305. Ministers were provided with what was said to be a *"full"* equalities impact assessment and their attention drawn to the potential impact upon the protected characteristic of disability because of the nature of the proposed changes to the Allocation Policy. Under the heading *"Legal considerations"* ministers were advised that the changes in policy were being introduced –

"to make the process for allocating individuals more pragmatic. The previous policy set a clear line at which individuals would or would not be suitable for communal accommodation. In reality, however, there will be many cases in which allocation to a communal site is proportionate while an individual's needs are assessed over time".

Version 11 of the Allocations Policy – the equality impact assessment

306. In her evidence, Ms Stratton says that PSED requirements are kept under review as existing policies are updated. How frequently equality impact assessments **["EIAs"]** are conducted depends on the nature of the policy changes between versions of the Allocation Policy –

"If, for example, a policy change related specifically to victims of modern slavery, because this alone is not a protected characteristic, a new EQIA would not necessarily be conducted. By comparison, if we were to change a policy provision relating to accommodation for those with disabilities, we would seek to complete a new EQIA".

307. Ms Stratton produces an equality impact assessment dated 10 January 2024 **["the Policy EIA"]** which, she says, was conducted to assess the impact of the policy proposals later promulgated in version 11 of the Allocation Policy which *"went live"* on 12 February 2024. She says that the Policy EIA was shared with ministers and formed part of their decision-making on the policy.

308. In a section outlining the policy proposals to be assessed for their equality impacts, the Policy EIA states that the objective of asylum support under sections 95 and 98 of IAA 1999 is to ensure that individuals are not destitute and to meet their essential living needs. Under the heading *"Accommodation"* the Policy EIA identifies the following policy changes to be reviewed –

"The Public Sector Equality Duty is being reviewed following the introduction of large accommodation sites and the policy changes to be introduced for the accommodation of potential victims of modern slavery".

309. Under the heading *"Potential victims of modern slavery"* the Policy EIA continues –

"We have reviewed our Allocation of Asylum Accommodation policy guidance to consider whether the suitability criteria excluding potential victims of modern slavery from accommodation at [large accommodation sites including Wethersfield] and Napier barracks is appropriate. This is highly relevant given the intention of 'project maximise' which is to maximise usage of the accommodation estate and reduce hotel usage".

310. The Policy EIA then explains the proposed changes to the Allocation Policy in relation to the suitability of potential victims of modern slavery for accommodation at Wethersfield which were brought into effect under version 10 of the Allocation Policy on 9 October 2023 –

"The updated policy now has a revised suitability criteria which requires individuals who have been referred into the National Referral Mechanism to have a positive reasonable grounds decision before they can be considered unsuitable for accommodation at the large sites, including at Napier. A positive reasonable grounds decision is made where the decision maker decides that "there are reasonable grounds to believe, based on objective factors, that a person is victim of modern slavery". This replaces the previous criteria which meant that an individual would be moved prior to a positive reasonable grounds decision without any assessment by the Home Office of whether the accommodation was unsuitable for them, and prior to the Home Office having decided if there were reasonable grounds to believe that the individual is victim of modern slavery.

The policy will still require consideration of whether, prior to an individual's Reasonable Grounds (RG) decision, the accommodation is unsuitable for them based on any relevant factors they raise on site. Where medical or mental health issues are raised which render the accommodation unsuitable, the individual will be moved to suitable alternative accommodation. For example, the sleeping arrangements at such facilities will consist of room sharing and may, depending on the effect on sharing a room on their physical or mental health, make the accommodation unsuitable for some service users who are waiting for an RG decision. An on-site assessment is in place to consider these factors on a case-by-case basis and if considered unsuitable, the individual will be moved to alternative accommodation".

311. In considering the impact on disabled persons in the context of the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity, the Policy EIA states –

"Under the policy, large accommodation sites will not be used to accommodate those who have serious mobility problems or for those who have complex health needs including mental disabilities and within the meaning given by the Healthcare Needs and Pregnancy Dispersal policy at paragraph 4.16".

312. In summarising the foreseeable impacts of the proposed policy on people who share protected characteristics, the Policy EIA states –

"Individuals with mental impairments are not considered suitable for accommodation at large sites and will not be housed at these sites".

313. The Policy EIA concludes that, aside from the possible discriminatory effects of the Allocation Policy on the basis of sex, given that only single adult males are to be accommodated at large sites, there are no significant or negative impacts or disadvantages for protected groups arising from the use of large accommodation sites –

*"The suitability criteria which is in the Allocation of Accommodation policy will ensure that Service Users who are considered as **not** suitable for moving to large sites will not be moved to such facilities".* (Original emphasis)

314. Ms Stratton says that the Policy EIA *"concluded that version 11 of the [Allocation Policy] complied with the [defendant's] PSED"*; and that as the changes between versions 11 and 12 of the policy were *"not substantive"* a further equalities impact assessment was not required in relation to them.

315. In detailed grounds of defence, reference is also made to the site-specific equalities impact assessment completed on 26 January 2024 **["the January EIA"]**. The January EIA predates the coming into effect of version 11 of the Allocation Policy and does not seek to provide any assessment of the impact of the then proposed changes to the policy which were subsequently brought in on 12 February 2024 when version 11 was adopted. Thus, the January EIA states –

"The site is not to be used to accommodate those who have serious mobility problems or physical disability or for those who have complex health needs within the meaning given by the Healthcare Needs and Pregnancy Dispersal Policy at paragraph 4.16".

Discussion and conclusions

316. As pleaded in [103] of the consolidated claim, the claimants' contention under ground 3(c) is that the change of policy in version 11 of the Allocation Policy, that asylum seekers with special needs resulting from being disabled, serious mental health problems or otherwise being vulnerable may now be considered suitable for accommodation at Wethersfield, was one that required an assessment of its equalities implications. As I have said, in her evidence on behalf of the defendant, Ms Stratton expresses the same view. She relies upon the Policy EIA for that assessment, which she also says was considered by ministers in deciding to bring in that change to the Allocation Policy published under version 11 on 12 February 2024.

317. The claimants' case in the consolidated claim is straightforward. They say that the defendant has not discharged the PSED in respect of that change of policy. She has not made a lawful or rational assessment of the equalities impacts of that new policy.

318. In my judgment, the claimants' case is plainly well-founded. The Policy EIA, which is said to have been conducted to assess the impact of the proposed policy changes later given effect in version 11 of the Allocation Policy, simply did not make that assessment. I have set out above the relevant extracts from the Policy EIA. The focus of the assessment carried out in the Policy EIA was evidently on the policy change made by version 10 of the Allocation Policy, in relation to the change in approach to the suitability of potential victims of modern slavery to be accommodated at Wethersfield. Insofar as that assessment

considered the impact on disabled persons, it did so on the basis that under the Allocation Policy, large accommodation sites (including Wethersfield) would not be used to accommodate those who have complex health needs including mental disabilities; and that individuals with mental impairments were not considered suitable for such accommodation and *"will not be housed at these sites"*. The assessment stated that the suitability criteria in the Allocation Policy *"will ensure"* that asylum seekers who are considered as *"not suitable"* for such sites will not be moved to them.

319. The Policy EIA makes no attempt to assess the equalities implications of the change in policy which was then proposed, the effect of which was that asylum seekers who were disabled or had serious mental health issues may henceforth be judged to be suitable for accommodation at Wethersfield provided that their special needs were able to be met at the site. That is a most serious and inexplicable omission, particularly in the light of Ms Stratton's evidence that the Policy EIA was prepared and submitted for ministers' consideration precisely to enable the equalities impacts of that significant change in policy to be considered. It amounts to the clearest failure on the part of the defendant to fulfil the PSED. This is not a case in which the question is whether the Policy EIA properly fulfils the defendant's duty to have due regard to the statutory objectives in section 149 of EA 2010. In this case, the only conclusion I am able to reach on evidence is that the defendant did not attempt to assess the equalities impacts of the proposed policy change later promulgated under version 11. That remains the factual position, since there was no subsequent assessment of the policy change when it was carried forward into the current version 12 of the Allocation Policy.

320. When considered against the principles identified in *Bracking*, the position here is as follows -

(1) The defendant did not fulfil the PSED before and at the time when the proposed change later promulgated in version 11 of the Allocation Policy was being considered. The defendant did not assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of that change of policy into version 11 of the Allocation Policy.

(2) The Policy EIA does not disclose any, let alone any proper appreciation of the potential impact of the proposed change on equality objectives and the desirability of promoting them. There is no specific consideration of the proposed change by reference to the statutory criteria. Given those omissions, the court is in no position to be satisfied that ministers were aware of the equality implications of the proposed change, let alone appreciated them sufficiently to be able to evaluate the equalities impacts of the change in policy when deciding to proceed with it.

321. The failure to fulfil the PSED and assess the equalities impacts of the policy change given effect in version 11 of the Allocation Policy is of particular significance, given the principles established in *R(A)* upon which the lawfulness of that policy is amenable to judicial review. It is of particular importance the policy maker has a proper appreciation of those impacts if the substance of the policy is to be formulated with due regard to the three statutory equality objectives. To take an obvious example, the concerns raised by the claimants and many others as to the practical challenges of assessing whether the special needs of disabled or mentally impaired asylum seekers who have recently arrived in the UK can properly be met at Wethersfield plainly has potential equalities impacts. Ministers were advised that operational colleagues had been closely involved in the development of the Allocation

Policy to ensure proposed change of policy could be implemented at pace. The Policy EIA made no attempt to assess the measures which were then proposed to achieve that objective and how effective those measures might be in advancing the interests of asylum seekers with special needs arising from protected characteristics, who under the then current Allocation Policy, version 10, were not considered suitable to be accommodated at Wethersfield. In my view, the observations of the Court of Appeal in R (Bridges) v Chief Constable of South Wales Police [2020] EWCA Civ 1058; [2020] 1 WLR 5037 at [176] are of particular resonance here –

"We accept (as is common ground) that the PSED is a duty of process and not outcome. That does not, however, diminish its importance. Public law is often concerned with the process by which a decision is taken and not with the substance of that decision. This is for at least two reasons. First, good processes are more likely to lead to better informed, and therefore better, decisions. Secondly, whatever the outcome, good processes help to make public authorities accountable to the public".

322. Ground 3(c) as pleaded in the consolidated claim is made out. That being my conclusion, it is unnecessary to resolve the debate between the parties as to whether the claimants should be permitted to argue the further points on this ground raised in their skeleton argument.

Ground 4 – Breach of sections 20 and 29 of the Equality Act 2010

The issue

323. Under this heading, I address the systemic element of ground 4 of the consolidated claim. The claimants contend that in promulgating suitability criteria in version 12 of the Allocation Policy under which asylum seekers with disabilities may be accommodated at Wethersfield, the defendant has placed such persons at a substantial disadvantage in relation to the provision of asylum accommodation in comparison with persons who are not disabled, but has failed to take reasonable steps to avoid that disadvantage. It is submitted that the defendant is thereby in breach of the first requirement in section 20(3) of EA 2010 and of her duty under 29(7) of EA 2010.

Statutory framework

324. The relevant provisions are to be found in sections 6, 20, 21 and 29 and schedule 2 to EA 2010.

325. Disability is defined in the following terms by section 6 of EA 2010 –

"(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability".

326. Paragraph 2 of schedule 1 to EA 2010 explains the meaning of a *"long term effect"* –

"(1) The effect of an impairment is long-term if —

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected".

327. Section 20 of EA 2010 explains what is required of a person in circumstances in which a duty to make reasonable adjustments is imposed on that person. For the purposes of these claims, the essential ingredients of the duty to make reasonable adjustments are explained in subsections 20(1)-(3) –

"20(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

…"

328. Here, the applicable schedule is schedule 2 to EA 2010, paragraph 2 of which states –

"2(1) A must comply with the first, second and third requirements.

(2) For the purposes of this paragraph, the reference in section 20(3), (4) or (5) to a disabled person is to disabled persons generally

…

(4) In relation to each requirement, the relevant matter is the provision of the service, or the exercise of the function, by A.

(5) Being placed at a substantial disadvantage in relation to the exercise of a function means

(a) if a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit, or

(b) if a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to the detriment.

…

(8) If A exercises a public function, nothing in this paragraph requires A to take a step which A has no power to take".

329. Section 21 of EA 2010 explains what constitutes a breach of the duty to make reasonable adjustments -

"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person".

330. Section 29(7) of EA 2010 imposes a duty to make reasonable adjustments on –

"A duty to make reasonable adjustments applies to—

…

(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public".

331. The duty is anticipatory. At [32]-[33] in Finnegan v Chief Constable of Northumbria Police [2014] 1 WLR 445 **["*Finnegan*"]**, the court said –

"32. It is not in dispute before us that the duty to make reasonable adjustments is anticipatory. It is owed to disabled persons at large in advance of an individual disabled person coming within the purview of the public authority exercising the relevant function.

33. It follows that the Chief Constable was obliged to make reasonable adjustments to her PPP of conducting searches in spoken English so that it did not have a detrimental effect on deaf persons. It is clear that this duty could not be discharged by treating everyone as individuals and adopting communication styles to suit the circumstances of the particular case on an ad hoc basis. The anticipatory nature of the duty is inimical to the idea that reasonable adjustments may be made by deciding on an individual basis to conduct a search with or without a BSL interpreter in attendance or on standby according to exigencies of the particular situation".

Discussion and conclusions

332. The parties agree that there are three relevant and sequential stages in determining whether the defendant in exercising the public function of providing asylum accommodation is in breach of the anticipatory duty to make reasonable adjustments under section 20(3) of EA 2010 –

(1) What is the *"provision, criterion or practice"* **["PCP"]**?

(2) Does the PCP put the relevant class of disabled persons at a substantial disadvantage?

(3) Has the defendant failed to take such steps as are reasonable to have to take to avoid the disadvantage?

(1) What is the PCP?

333. The claimants argue that the PCP is the defendant's process for allocating accommodation to asylum seekers and/or the accommodation and facilities provided at Wethersfield. The defendant argues that formulation lacks the necessary degree of clarity and precision.

334. However, the defendant is content to adopt the claimant's alternative formulation of the PCP on the basis that the PCP is identified as *"the provision of accommodation at Wethersfield pursuant to sections 98 and 95 of IAA 1999"*.

335. It is necessary to draw the distinction between the relevant PCP and the adjustments, if any, made to avoid the relative disadvantages to which it is said to give rise. In *Finnegan* at [29] the Court of Appeal said –

> *"29. So what was the relevant PPP? It is important to distinguish between a PPP and the adjustments made to a PPP to alleviate the detrimental effects to which a disabled person may be subjected by it. The PPP represents the base position before adjustments are made to accommodate disabilities. It includes all practices and procedures which apply to everyone, but excludes the adjustments. The adjustments are the steps which a service provider or public authority takes in discharge of its statutory duty to change the PPP. By definition, therefore, the PPP does not include the adjustments. In the present context, a PPP will exclude the use of BSL interpreters in order to improve communication with deaf persons in the conduct of police searches of premises. It will also exclude the use of lip reading and sign language by trained police officers, because these measures too are adopted to alleviate the detriment that would otherwise be suffered by deaf persons".*

336. The defendant submits that the PCP in the present case cannot extend to include the suitability criteria promulgated in the Allocation Policy, since they form part of the adjustments made by the defendant with a view to fulfilling her duties under sections 20(3) and 29(7) of EA 2010. In my view, that submission is well-founded and justifies identifying the relevant PCP in the terms stated in paragraph 334 above.

(2) Does the PCP put the relevant class of disabled persons at a substantial disadvantage?

337. The parties agree that the relevant class of disabled persons is mentally disabled single adult male asylum seekers eligible for the provision of asylum accommodation under sections 98 or 95 of IAA 1999 and allocated to Wethersfield. It is common ground that at least some (the claimants say all) persons within that class would suffer a substantial disadvantage in being allocated to accommodation at Wethersfield in comparison to single male adult asylum seekers who are not mentally disabled. The defendant accepts that there will be at least some persons within the identified class of disabled persons who will have special needs arising from their individual circumstances which cannot be met at Wethersfield.

(3) Has the defendant failed to take such steps as are reasonable to have to take to avoid the disadvantage?

338. The claimants submit that the new policy introduced in version 11 of the Allocation Policy (and retained in version 12) inevitably places the defendant in breach of the anticipatory duty under sections 20(3) and 29(7) of EA 2010. By introducing suitability criteria which contemplate that mentally disabled asylum seekers within the identified class may be considered to be suitable for accommodation at Wethersfield, subject to an assessment whether their special needs can be met at the site, the defendant is said to have failed to take steps to avoid the disadvantage to the identified class of disabled persons. The objective of the duty is to avoid substantial disadvantage in anticipation of its occurrence. By adopting a case-by-case approach to whether persons within the identified class are suitable to be accommodated at Wethersfield, the defendant has in fact accepted that such disadvantage may result.

339. I am unable to accept these arguments. The duty under sections 20(3) and 29(7) of EA 2010 is to take such steps as it is reasonable to have to take to avoid substantial disadvantage to disabled persons within the identified class. The steps taken in anticipation by the defendant comprise the adoption of the suitability criteria and their application in accordance with the policy stated in version 11 (now version 12) of the Allocation Policy.

340. In my view, it is sufficient to discharge the defendant's anticipatory duty that she operates an allocation policy that –

(1) Disabled persons who have special needs which are unable to be met at Wethersfield are not suitable for accommodation at the site.

(2) Disabled persons who have special needs which are able to be met at Wethersfield may be suitable for accommodation at the site.

341. In both cases, the allocation policy operates on the basis of making reasonable adjustments to avoid the disadvantage which would otherwise result to persons within the identified class. In the first case, that adjustment is to accommodate the disabled person elsewhere in accommodation which is able to meet his special needs. In the second case, that adjustment is to put in place the facilities or arrangements at Wethersfield that enable his special needs to be met.

342. In the event that a disabled asylum seeker, whose special needs are in fact not able to be met at Wethersfield is nevertheless accommodated at the site, he may have a resulting claim that the defendant has breached her duty owed to him to make reasonable adjustments in order to avoid substantial disadvantage in providing him with asylum accommodation. It does not, however, follow that in relying on the operation of the suitability criteria in version 12 of the Allocation Policy, the defendant has failed in her anticipatory duty to make reasonable adjustments under sections 20(3) and 29(7) of EA 2010. Consistently with the approach stated by the court in *Finnegan*, the defendant has given a clear policy lead on the steps that she will take in practice in order to avoid substantial disadvantage to disabled asylum seekers which might result from their being accommodated at Wethersfield, where their special needs cannot be met at the site.

343. The systemic challenge under ground 4 therefore fails.

Ground 5 – Human trafficking

The issue

344. The claimants contend that the changed suitability criteria promulgated under version 10 of the Allocation Policy and carried forward in versions 11 and 12 of that policy are unlawful and in breach of article 4 of the ECHR, in treating victims of modern slavery as being unsuitable for accommodation at Wethersfield only in the event of a positive reasonable grounds decision in their favour under the NRM. It is submitted that in operating a policy that potential victims of modern slavery who have yet to receive a positive reasonable grounds decision may nevertheless be suitable for accommodation at the site, the defendant acts unlawfully and contrary to article 4 of the ECHR.

Legal framework

345. Article 4 of the ECHR prohibits slavery and forced labour. It provides that nobody shall be held in slavery or servitude or be required to perform forced or compulsory labour.

346. In R (TDT) (Vietnam)) v Secretary of State for the Home Department [2018] EWCA Civ 1395; [2018] 1 WLR 4922 **[*"TDT"*]** at [14], the Court of Appeal referred to the leading case of Rantsev v Cyprus and Russia (2010) 51 EHRR 1 **[*"Rantsev"*]** as having established the principle that article 4 imposes certain positive obligations on member states as regards trafficking. At [15], Underhill LJ quoted [286] of the court's judgment in *Rantsev* -

"286. As with articles two and three of the Convention, article 4 may, in certain circumstances, require a state to take operational measures to protect victims, or potential victims, of trafficking… In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited… In the case of an answer in the affirmative, there will be a violation of article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk…".

347. Having referred to a more recent formulation of the principle in another decision of the Strasbourg court, Underhill LJ said at [17]-[18] in *TDT* –

"17. As is most clearly stated in that passage, the duties which the Court has held to be imposed by article 4 as regards human trafficking can be classified under three headings:

(a) a general duty to implement measures to combat trafficking – "the systems duty";

(b) a duty to take steps to protect individual victims of trafficking – "the protection duty" (sometimes called "the operational duty");

(c) a duty to investigate situations of potential trafficking – "the investigation duty" (sometimes called "the procedural duty").

18. The present case is concerned with the protection duty. That duty is triggered, as we have seen from para. 286 of Rantsev, where it is "demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked". I will refer to this as "the credible suspicion threshold".

348. At [23], Underhill LJ summarised the NRM –

"23. The Anti-Trafficking Convention was ratified by the UK in December 2008, with a view to its implementation with effect from 1 April 2019. It was not at first sought to be implemented by legislation. However, the Secretary of State did establish by administrative measures a National Referral Mechanism ("NRM") for identifying and supporting victims of trafficking. This involves three key steps:

(1) If a potential victim of trafficking is identified by a "first responder" the case must be referred to the UK Human Trafficking Centre ("UKHTC"), which is a unit within the

National Crime Agency. First responders comprise a number of designated governmental and non-governmental organisations, including the Home Office…

(2) A designated "competent authority" - either the UKHTC itself or a unit within the Home Office - will, if possible within five days, determine whether there are reasonable grounds to believe that the person referred is a victim of trafficking. If such a determination is made they will be given a 45-day recovery and reflection (longer than required by the Convention), with associated support.

(3) After the expiry of 45 days, the competent authority will make a final decision as to whether there are, on the balance of probabilities, sufficient grounds to decide that he or she is a victim of trafficking - a so-called "conclusive grounds decision". There are various possible consequences of such a decision…".

349. At [27] in TDT, Underhill LJ referred to "Competent Authority Guidance" published by the Home Office which discussed the "reasonable grounds decision" taken at stage (2) of the NRM –

"Section 5 summarises the effect of a "positive reasonable grounds decision" as being that the authority "suspects but cannot prove this person is a potential victim of human trafficking on any UK referral".

350. In summarising the various sources of law and guidance, at [35]-[36] Underhill LJ said –

"35. I turn to the protection duty under article 4 of the ECHR, as articulated in Rantsev. … the "reasonable grounds" test to be applied by the Competent Authority is substantially equivalent to the "credible suspicion" threshold under article 4. But it does not follow that that threshold may not, on the facts of a particular case, have been crossed before the case comes before the Competent Authority – that is, at the earlier stage when a member of the Home Office front-line staff decides to refer. Indeed that will be so in most cases where a positive reasonable grounds decision is subsequently made: if the case crossed the credible suspicion threshold when considered by the Competent Authority it will also have done so at the point when it was referred. Accordingly the Secretary of State will have come under the protection duty under article 4 some time before the Competent Authority makes its decision. It should be noted that the designation of the Competent Authority under the UK system – whether it be the UKHTC or part of the Home Office – is a purely domestic construct: the Court in Rantsev and Chowdhury refers simply to "the State authorities", which would embrace front-line staff as much as the authorities further up the chain of referral.

36. At first sight the point made in the last paragraph might be thought to create a mismatch between the NRM process and the UK's obligations under article 4 which will give rise to difficulties in practice. But I do not think that that is so. The obligations in question are purely protective. As long as reasonable steps are taken to protect the individual pending the decision of the Competent Authority there is no need to take any of the other steps required by the Convention, such as the provision of a period of recovery and reflection, any sooner than the Guidance provides for".

351. The guidance to which Underhill LJ referred is statutory guidance, published in accordance with section 49 of the Modern Slavery Act 2015 which provides –

"49(1) the Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about –

…

(b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe are victims of slavery or trafficking or who are such victims:

…".

352. The guidance has since been reviewed. Chapter 8 of the current edition, version 3.10, headed *"Support for Adult Victims"* summarises guidance for staff who may support potential adult victims about the support available across England and Wales. Paragraph 8.2 states –

"The safety of the potential victim or victim must always come first as they may be at serious risk from their traffickers or exploiters. First Responders should take appropriate steps to make sure the potential victim is safe until a Reasonable Grounds decision is made, for example, by requesting Emergency Accommodation where appropriate, or contacting the police on 999 when the individual is in immediate risk of harm".

353. Paragraph 8.5 briefly summarises the range of support services –

"Support services may be delivered by a range of organisations, including central government and the support on offer through the Modern Slavery Victim Care Contract (MSVCC) managed by the Home Office, which supports adult victims in England and Wales in the community. Potential and confirmed victims may also access support outside of specialist modern slavery support provision, for example, they may receive accommodation through the asylum support system or from a local authority. Where a victim is in immigration detention or prison, support is provided by the immigration removal centre or HM prison. Support may also be provided by third parties not contracted by the state".

354. Annex F of the guidance provides more detail on the support available for adult victims of modern slavery. Under the heading *"Pre-reasonable grounds decision emergency accommodation"*, paragraphs 15.7 – 15.9 state –

"15.7 The MSVCC will only provide an individual with accommodation prior to a Reasonable Grounds decision where there is reason to believe other accommodation available to them may be unsafe due to a risk of re-exploitation from their exploiters, or unsuitable, or if they are likely to be destitute prior to the Reasonable Grounds decision.

15.8 In general, asylum accommodation, local authority housing and living with friends or family, temporary accommodation provided by the police, charities or hostels, and room sharing across all of these accommodation types are suitable for individuals prior to a Reasonable Grounds decision.

15.9 The MSVCC will not provide accommodation prior to a Reasonable Grounds decision if an individual's existing accommodation is suitable or can be made suitable through changes or a move, by the by the individual's existing accommodation provider".

355. Under the heading *"Determining eligibility for accommodation"*, paragraph 15.14 of Annex F states –

"15.14 A victim will enter Modern Slavery Victim Care Contract (MSVCC) accommodation if the Needs-based and Risk assessment process determines that it is necessary. This will usually be because there is a threat to their safety from their exploiter(s) or a direct risk of re- exploitation from their exploiter(s). There may be other reasons why MSVCC accommodation is identified as necessary, including, but not limited to:

- *The victim is destitute at the point of referral to the NRM or does not have accommodation upon entry into MSVCC support following a positive Reasonable Grounds decision.*

- *The victim needs a single occupancy room (excluding where occupants are part of the same family) or single sex accommodation owing to their modern slavery experience".*

356. Paragraph 15.32 of Annex F states –

"15.32 Individuals may be identified as potential victims as they progress through the asylum process, or whilst receiving S10 support, and therefore may already be in suitable secure and appropriate asylum or S10 accommodation if they enter the NRM and consent to receive MSVCC support. Usually, victims in asylum accommodation or S10 support will remain there unless MSVCC accommodation is identified as necessary through the Risk or Needs-Based assessment".

Evidence

357. In her witness statement, Catherine Stratton refers to a memorandum to ministers dated 18 August 2023 which sought their agreement to the then proposed change of policy later given effect on publication of version 10 of the Allocation Policy on 9 October 2023. Ministers were advised that –

"To align the allocation of asylum accommodation policy guidance with current Modern Slavery Statutory Guidance and policy, changes are needed to require individuals to have a positive RG decision before they are discounted from being accommodated at Wethersfield or other Pathfinder sites, or room sharing in the wider accommodation estate".

358. Ms Stratton says that under the current edition of the statutory guidance, asylum accommodation provided under IAA 1999 is considered generally capable of meeting the need to avoid the risks of re-exploitation and destitution whilst a potential victim of slavery or trafficking awaits a reasonable grounds decision by the Competent Authority. On that basis, the change in policy promulgated under version 10 of the Allocation Policy was considered to align with the principles of provision of accommodation under the MSVCC pending receipt of a reasonable grounds decision. Ms Stratton acknowledged that the time taken in practice for referrals into the NRM to reach a reasonable grounds decision were taken into account in the advice to ministers. She says that NRM referrals for those accommodated on large sites such as Wethersfield are now prioritised.

Discussion and conclusions

359. The systemic issue raised by this ground of challenge is a narrow one. On the basis of the analysis in [35] of *TDT*, the defendant may well have come under the protection duty in

respect of asylum seekers who have been identified as potential victims of human trafficking some time prior to a decision by the Competent Authority as to whether there are reasonable grounds to believe that they are a victim of trafficking. The question is whether the defendant's policy under version 10 and subsequent versions of the Allocation Policy that such potential victims of trafficking are nevertheless suitable in principle for asylum accommodation at Wethersfield is in breach of her protection duty and so in contravention of article 4 of the ECHR.

360. The protection duty requires the defendant to take reasonable steps to protect asylum seekers who are potential victims of slavery or trafficking: *TDT* at [36]. The duty is triggered where the defendant (or another state agent) becomes aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked: *Rantsev* at [286]. The principal objective of the duty, when it has arisen, is to take such steps as are reasonable to keep the potential victim safe from the risk of further exploitation, to protect him from the threat of exploitation and to avoid exposing him to the risk of further exploitation. As the statutory guidance indicates, the duty also extends to protecting the potential victim, whilst he awaits a reasonable grounds decision, from conditions of accommodation which are unsuitable for his needs owing to his experience of slavery or trafficking.

361. The statutory guidance issued under section 49 of the Modern Slavery Act 2015 does not require that an asylum seeker who has entered the NRM as potential victims of slavery or trafficking must be accommodated in MSVCC accommodation pending a reasonable grounds decision. The parties have not drawn attention to any statutory provision or authority for the proposition that the protection duty requires such a person to be supported by the provision of special accommodation designed to accommodate potential victims of modern slavery prior to such a decision being made.

362. To the contrary, the statutory guidance states that a range of accommodation types, including asylum accommodation provided pursuant to IAA 1999 may be suitable to support potential victims of slavery and trafficking prior to a reasonable grounds decision following their referral into the NRM. The claimants did not contend that the statutory guidance was in conflict with the defendant's protection duty under article 4 of the ECHR. Ms Stratton's evidence is that the change of policy adopted in version 10 of the Allocation Policy was intended to bring that policy into broad alignment with Annex F of the statutory guidance issued pursuant to section 49 of the Modern Slavery Act 2015. The change was commended to ministers on that basis.

363. In the light of this analysis, and applying the principle approach stated by the Supreme Court in R(A), I am unable to accept that the change of policy adopted by the defendant in version 10 of the Allocation Policy in relation to the suitability of asylum seekers who are potential victims of slavery or trafficking for accommodation is unlawful. There is no evidence to support the logic of the claimants' argument, that to accommodate potential victims of slavery or trafficking at Wethersfield prior to a reasonable grounds decision inevitably exposes such persons to a risk of further exploitation which being accommodated elsewhere under sections 95 and 96 of IAA 1999 would avoid. Nor does the change of policy necessarily result in such persons for whom accommodation at Wethersfield is unsuited to their needs by virtue of their experience of slavery or trafficking being accommodated there. The suitability criteria in version 12 of the Allocation Policy apply to such persons in cases where they have special needs as vulnerable persons or complex health needs, including

serious mental health issues. Version 12 of the Allocation Policy also guides caseworkers that –

"Individuals who have been referred into the NRM have an initial risk and needs assessment by the Salvation Army. If they raise any issues about their suitability to be accommodated at the site during this assessment, the Salvation Army can raise this with the Home Office Asylum Accommodation provider who should review and consider allocating alternative accommodation, if necessary".

364. For these reasons, I conclude that the defendant's policy introduced in version 10 of the Allocation Policy and retained since then, that asylum seekers who are potential victims of slavery or trafficking may be suitable to be accommodated at Wethersfield unless and until they receive a positive reasonable grounds decision following referral into the NRM, is not unlawful in either its terms or effect. It is consistent with the performance of the defendant's duty to take reasonable steps to protect such persons in accordance with the protection duty arising under article 4 of the ECHR. Unsurprisingly, the Allocation Policy does not purport to give a comprehensive account of the defendant's duty of protection under article 4. It reflects and is consistent with the statutory guidance on providing appropriate accommodation to support such persons promulgated pursuant to section 49 of the Modern Slavery Act 2015.

365. In written submissions in their skeleton argument (paragraphs 175 to 177), the claimants argued that the change of policy in version 10 of the Allocation Policy in relation to potential victims of slavery or trafficking was unlawful because it depended upon a series of steps being taken in the operation of the NRM prior to a decision on an asylum seeker's referral which were beyond his control. It was said that the system for identifying potential victims was defective and likely to lead to such persons being accommodated at Wethersfield even though they in fact merit a positive reasonable grounds decision in their favour.

366. The defendant objected to these submissions, on the basis that they were not founded upon the pleaded ground of challenge in the consolidated claim and she had not had a fair opportunity to respond in evidence to what was in substance a new ground of challenge.

367. In my view, there is force in the defendant's complaint. In any event, having considered the claimants' submissions in those paragraphs, they do not affect the essential issue which arises under this ground. This ground essentially founds on the proposition that in order to discharge her duty of protection under article 4 of the ECHR, as that duty has been explained in *Rantsev* and *TDT*, the defendant must revert to her policy in version 9 of the Allocation Policy. She must treat any asylum seeker who is a potential victim of slavery or trafficking as unsuitable to be accommodated at Wethersfield. For the reasons I have given, I do not consider that her duty of protection under article 4 of the ECHR impels the defendant to reinstate that former policy. In my judgment, her current policy following the change of approach introduced in version 10 of the Allocation Policy is in accordance with her duty of protection. She has not put herself in breach of article 4.

368. Ground 5 is rejected as a systemic ground of challenge.

Ground 6a – breach of PSED in relation to race

The Issue

369. The issue raised by this ground in the consolidated claim is whether the defendant has failed to fulfil the PSED under section 149 of EA 2010 in relation to the protected characteristic of race.

370. In the consolidated grounds, the claimants contend that in operating asylum accommodation at Wethersfield the defendant had failed and continued to fail to have due regard to the need to eliminate prohibited conduct, in particular discrimination, harassment and victimisation on the ground of race, contrary to section 149(1)(a) of EA 2010. This contention is advanced on two bases.

371. Firstly, it is said that the defendant's operation of the site failed to take a precautionary, proactive and informed approach to safeguarding Black African asylum seekers commensurate with the severity of the risks and the adverse impacts of racial harassment that such persons faced. The defendant had adopted only vague and ineffective mitigation measures in response. The defendant had failed to discharge the duty to monitor the occurrence of racist incidents for the purpose of fulfilling the PSED in relation to race.

372. Secondly, it is contended that the defendant had failed to carry out effective safeguarding in HAA's case. The defendant's operational response to HAA's experiences of racial harassment had been inadequate, trivialising those incidents as bullying and failing to acknowledge and to act upon the racist behaviour to which HAA and other Black African asylum seekers had been subjected at the site in late 2023.

373. The claimants further contend that, in advising Black African asylum seekers to remain in their rooms and to refrain from using common areas, the defendant had failed to have due regard to the statutory objectives in section 149(1)(b) and (c) of EA 2010.

Evidence

374. The claimants point to evidence of incidents of racially motivated violence and harassment at Wethersfield during October and November 2023.

375. HAA refers to an incident which took place on 26 November 2023, when two South Sudanese residents were attacked in the canteen by a large group of reportedly Kurdish residents. The attack appears to have resulted from a dispute about food. HAA says that one of the victims was his roommate at the time, who is reported to have suffered a serious injury requiring hospital treatment. The defendant moved the victims away from Wethersfield the same evening given the risk to their safety. It was said to have been a time of heightened tension at the site. HAA says that there previously had been racist incidents on 28 and 29 October 2023 involving attacks on Black African residents. He also refers to an incident in the site canteen on 26 November 2023, during which two Black African residents were attacked following a dispute in the queue for food. HAA does not say that these reported incidents directly involved him.

376. On 26 December 2023, HAA was playing football with two Eritrean residents when they were abused and jostled by a large group of reportedly Kurdish residents. There was a fight. Security staff had to intervene. One victim required hospital treatment. An incident report was prepared.

377. In pre-action correspondence on 21 December 2023 on behalf of HAA, Care4Calais had raised with the defendant reports that he and other Black African residents were afraid to use communal areas at the site or to join in common activities, for fear of being racially targeted or harassed. Following the incident on 26 December 2023, a welfare officer had reportedly advised HAA and Black African residents not to go to the common areas alone and to travel in groups. HAA's mental health had deteriorated to such an extent that he had skipped meals and been experiencing flashbacks to his traumatic experiences in Somalia. On 27 December 2023 he tried to commit suicide. The defendant's response to these events had declined to speculate on whether they were racially motivated or whether any specific racial group had been targeted by other residents at the site.

378. The claimants also rely on the ICIBI letters of 19 December 2023 and 9 February 2024, which reported a wider pattern of disorder at Wethersfield following an increase in the numbers of asylum seekers accommodated at the site and expressed clear concern about the lack of competence of staff to maintain good order. Racial violence and harassment was said to be a continuing problem, with the example being given of two Sudanese residents being targeted in an incident on 1 March 2024.

379. In his witness statement, Mr Butler provides the operational response to the Claimants' evidence that violent incidents, harassment and victimisation motivated by racial tensions and discrimination have taken place at Wethersfield. He says that he is aware that this issue has also been raised in the ICIBI correspondence and the MTC Report. He says that the defendant operates a zero tolerance approach to racially motivated bullying, harassment and abuse. This is made clear during the induction process when new residents arrive at Wethersfield. An inclusive atmosphere is encouraged. To help newly arrived asylum seekers to settle in, the policy is to try to accommodate them in the same rooms or adjacent to rooms occupied by persons who share languages in common. However, residents are encouraged to mix with each other and are able to move freely throughout the site. Welfare and security checks are carried out on newly arrived asylum seekers to ensure that they are settling in well. The policy is to enable residents who want to share with friends to do so.

380. Mr Butler then says -

> *"Since I took up my posting at Wethersfield, I have not discerned any serious issues of racial abuse or harassment, or racially motivated violence, on-site between residents. My view, both from first hand experience on-site and from reviewing incident reports is that incidents involving aggression and violence between residents are usually caused by disagreements and personal animosity between two (or sometimes three) individual residents, rather than tensions or aggressions between cultural or racial groups. Certainly, I have observed that residents with a common background, language or culture tend to gravitate towards each other and to form a friendship groups, but it is not been my perception that particular groups are in conflict with each other.*
>
> *We ensure that residents are able to raise complaints and report any instances of bullying, harassment, or abuse, perpetrated by other residents or staff, to staff on-site or to Migrant Help. Residents are signposted to contact details for Migrant Help to make complaints. If a resident wishes to make a complaint about a welfare officer, the complaint would be dealt with by a site manager at first instance".*

381. Mr Butler says that he is aware from Home Office and site incident reports that the incidents relied on by the claimants which occurred on 28 October, 25 November and 26 November 2023 appeared to involve a racial motive. Of the incident on 28 October 2023 he says –

"[It] involved Georgian attackers referring to their own nationality and the victim's ethnicity (Black African) just before the assault began. The incident report does not indicate that the victim was segregated as a result of the assault: he was returned to Wethersfield and told to come to the welfare or site manager's office if he felt afraid. The perpetrator was already known to staff on site and the Police because he was part of a small group that was behaving anti-socially. This was being actively managed by both CRH and the Police. The group's behaviour did improve after interactions with the Police, who had issued warning letters and had made one arrest. The perpetrator was not moved off-site as it was thought this might incentivize similar behaviour from others who want to be moved off-site".

382. Of the incident which occurred on 26 December 2023, Mr Butler says that no racist behaviour, such as the use of racist slurs, was reported. He nevertheless accepts that this incident may have been racially motivated. The police were called and the victims given an opportunity to provide further information. The contemporary notes record that HAA was taken to the site manager's office and given an opportunity to provide more information. HAA declined to do so and would not provide a statement to the police. No further police action was taken.

383. Following the incident on 27 December 2023, Mr Butler says that after HAA had come down from the window sill, the incident report records that the welfare officer who attended the incident asked HAA to provide the names of those who were bullying him and causing trouble. HAA is reported to have replied that he did not know the names and they hung around in groups. HAA is reported to have rejected the welfare officer's offer to write a report. He was referred to Migrant Help. HAA says he was told that he would never leave Wethersfield, an allegation that the defendant contradicts. Mr Butler says –

"It is not the case that HAA's allegations of bullying were not taken seriously, rather, nothing further could be progressed as no information was forthcoming from HAA".

384. Mr Butler says that during welfare checks on HAA in January 2024, he reported that he was not being bullied but that he felt intimidated by some of the other residents at the site.

385. Mr Butler's evidence responds to allegations that HAA and other Black African asylum seekers were afraid to leave their rooms and advised to avoid common areas –

"The Claimants say that residents are afraid to use common space or join activities, and are effectively confined to their own rooms for fear of their own safety. I recognise that on occasion after incidents such as the one described above, residents are afraid to leave their rooms. There are Security Officers in all communal spaces, to ensure those spaces are safe environments, if people do want to leave their rooms. The Claimants have also alleged that Black African residents were advised by welfare staff not to go to common areas, and to stay in groups after the incident described above on 26 December 2023. I'm not aware of any such advice having been given at any time. I've spoken to a CRH site manager, who also was not aware of any such advice having been given, and who told me that he did not believe it is the kind of thing that a welfare officer would say. Further, the Claimants say that after this incident advice given by contractors implicitly acknowledged that Black

African residents did not have safe and equal access to common areas, activities and services. I do not recognise this, and I have followed up with CRH who agree.

386. Speaking as SRO in May 2024, when he wrote his witness statement, Mr Butler's position in response to the claimants' contentions under ground 6a was that no further safeguarding steps needed to be taken in respect of violent incidents, specifically to prevent and manage racial violence and harassment on-site –

"If there were incidents of racial abuse or harassment that were observed by staff or reported to staff, I would expect that the staff member would file an incident report (including if the abuse or harassment was not accompanied by violence), and the incident would be noted on the CRH tracker and the Home Office tracker. Depending on the circumstances, the incident might also be reported to Police as a possible crime. My team will continue to monitor the Home Office incident tracker closely for any further incidents which may suggest a racial motive. Should concerns be raised about racial abuse and violence on-site, then I will reassess whether any additional steps need to be taken and will escalate this more widely within the Home Office if appropriate.

I accept that there could be a range of more subtle behaviours which could cause residents to feel bullied or harassed, which might not get picked up by our reporting system. Wethersfield is a non-detained site, and as such we are limited in what we can detect and how we can intervene. We have to strike a balance between ensuring the site is managed safely and not imposing a heavy security presence and respecting residents' privacy. However I have identified a number of areas for improvement".

387. He accepted that there was room for improvement and identified steps to be taken for that purpose -

"Our complaints process can be improved. In particular, how we communicate and draw attention to our complaints process needs to be clearer. I am also aware that some residents distrust CRH with handling complaints. As such, we have decided to set up a Migrant Help office on-site, which will be staffed by at least two or three people in office hours, who can independently handle complaints. This is already in place at Napier, and it appears to be working effectively there. I hope that this will encourage residents to complain whenever they experience issues with other residents and staff, and to fully engage with the investigation process thereafter. The induction process is the subject of ongoing improvements, as set out elsewhere in this statement. I have asked that appropriate training on diversity and inclusion, and bullying harassment and abuse is cascaded to all sub-contractors on site and I will check up to ensure that that has happened".

388. In his witness statement, Peter Dobson provided information on site specific EIA which have been conducted for the Wethersfield site. He produced a series of EIAs dated 3 March 2023, 18 October 2023, 8 December 2023 and 26 January 2024.

389. Mr Dobson says that site specific EIAs are designed to ensure that the Home Office can evidence that it is meeting the defendant's PSED obligations and requirements at an operational level in relation to Wethersfield. Site specific EIAs consider the application of relevant policies to the specific circumstances of each individual site. He says that each EIA is prepared in coordination with the project and design team for the individual site and the policy and legal teams responsible for asylum accommodation. This ensures that the EIA accurately reflects the development and system of operation of the individual site and the

application of current policy and legislation. The project teams who contribute to their site's EIA are primarily based on site. He says that all data provided in the EIA is accurate at the date the EIA is approved and that –

"Site specific [EIAs] are 'living documents' and periodically reviewed and, where appropriate, updated to reflect any substantial changes to the operation or nature of individual sites or application of policie(s) that relate to the site and/or its operation".

390. In his witness statement, Mr Dobson responds to the *"specific concerns"* raised by the claimants in relation to (amongst other matters) race. He says that Wethersfield accommodates asylum seekers from various countries and backgrounds based on their individual needs for accommodation to prevent destitution. Such accommodation is not provided on the basis of race or ethnicity, rather it is provided in accordance with the Allocation Policy. All those accommodated at Wethersfield are free to associate and mix with all other residents without restriction. They share equal access to facilities and amenities. He says that the site specific EIAs for Wethersfield have concluded that the operation of the site is not considered to be directly or indirectly discriminatory in relation to race or ethnicity. Likewise, the Wethersfield site does not segregate on the grounds of race. As such, no adjustments have been deemed necessary in relation to the protected characteristic of race. He continues –

"However, the site-specific [EIAs] for December 2023 and January 2024 acknowledge that there is a potential for tensions between ethnic groups, but that the mixing of these populations is monitored with steps taken to minimise tensions between them. I understand from operational colleagues that intake lists are reviewed by a Team Leader from the site provider's staff who tries to allocate rooms to ensure that individuals share rooms with people who speak the same language to support them settling in, where possible. Additionally individuals can ask to be reassigned to another room if they wish to share with friends, which I am told is normally actioned the same day".

391. Peter Dobson points to the Statement of Requirements, under which CRH is obliged as a minimum to manage anti-social and violent behaviour occurring at Wethersfield, and to take appropriate action to assure the safety and welfare of asylum seekers accommodated at the site. CRH are required to develop and implement an operations plan for the management of anti-social and violent behaviour by those accommodated at the site; to investigate and record all such incidents and to report their findings. He says that all staff working at Wethersfield are instructed that anti-social behaviour is not accepted or tolerated, and any instances will result in disciplinary action which may include their dismissal and or reporting to the police. There are no reported instances of such disciplinary action in this respect. Both Home Office and service providers staff are required to undertake training that encompasses bullying, harassment and discrimination, and diversity and inclusion. He says –

"The on-site project team contribute suitable narrative for updates to the site specific [EIAs]. If anything of significance arose concerning how bullying, harassment and diversity issues are managed on-site this would feed into this narrative. To date, this has not been a factor that has fed into site-specific [EIAs]."

392. The site-specific EIA produced on 3 March 2023, in anticipation of providing asylum accommodation at Wethersfield, gave specific consideration to the protected characteristic

of race in the context of the first of the statutory objectives, the elimination of unlawful discrimination, harassment, victimisation and any other conduct prohibited by EA 2010 –

"Race

The future operation of Wethersfield will accommodate single adult males from various countries and backgrounds are therefore not considered to be directly or indirectly discriminating in relation to race. Either from those living on site, or to other cohorts who are all accommodated in suitable accommodation.

However, regardless of nationality and race, all decisions on whether to accommodate an individual will be on an individual basis as set out in the [Allocation Policy] and the Asylum Accommodation and Support Contracts Statement of Requirements. Consideration of whether an asylum seeker is destitute is based on establishing facts and evidence. Those who are not deemed suitable will be provided with suitable accommodation within the existing estate.

The proposal is not considered to be directly or indirectly discriminating in relation to race".

393. A table of foreseeable impacts of the proposed use of Wethersfield as asylum accommodation on people sharing the protected characteristic of race identified a low potential for either positive or negative impact, on the basis that –

"Majority of the population (66%) is of 6 non-white ethnic groups, however there is a likelihood of adverse behaviour between them.

Action to address negative impact – Those who are not deemed suitable will be provided with suitable accommodation within the existing estate".

394. The following was identified as a way of avoiding or mitigating the negative impacts which had been identified (i.e. including that quoted above) –

"The Home Office will ensure that there is an on-going focus on the wellbeing of individual residents after they arrive at the site and any emerging risks identified - for example through the regular weekly meetings with residents to understand and act on their concerns and close liaison with local health professionals and voluntary sector groups".

395. The site-specific EIA produced on 18 October 2023 stated that Wethersfield was not considered to be directly or indirectly discriminatory in relation to race. Reference was made to the most common nationalities of asylum seekers then accommodated at the site, which included Iraq, Iran, Albania, Eritrea, Pakistan, Nigeria, China, Afghanistan, Syria, Sudan, El Salvador and Ethiopia. An identified potential for low negative impact on people who shared the protected characteristic of race was explained on the basis that there was *"a potential for tension"* between the non-white ethnic groups which made up the majority of the population accommodated at the site. There was no change in the identified avoidance or mitigation measures.

396. The site-specific EIA produced on 8 December 2023 was in essentially similar terms to its predecessors insofar as concerned the assessment of impact on those persons accommodated at Wethersfield who shared the protected characteristic of race. However, there was a

change in the action identified to address the potential negative impact on such persons of tensions which might arise between ethnic groups accommodated at the site –

"The mixing of these populations is monitored with steps taken to minimise tensions as appropriate".

397. The site-specific EIA produced on 26 January 2024 was also in essentially similar terms to its predecessors, insofar as concerned the assessment of impact on those persons accommodated at Wethersfield who shared the protected characteristic of race. Monitoring of the mixing of the larger ethnic groups accommodated at the site was again identified as action to address the potential negative impact on such persons of tensions which might arise between ethnic groups accommodated at the site.

Discussion and conclusions

398. I approach the claimants' contentions under this ground in accordance with the established principles which I have set out in paragraphs 301 and 302 above; and with the observations of the court in *Bridges* which I set out in paragraph 321 well in mind.

399. The context in which the initial site-specific EIA was undertaken in March 2023 was the proposal then under consideration to bring Wethersfield into use as asylum accommodation for single adult male asylum seekers. The claimants' particular focus is the legal adequacy of that assessment, and subsequent assessments, in the context of the defendant's duty to have due regard to the need to eliminate racial discrimination, harassment or victimisation of persons of Black African ethnicity who are accommodated at the site.

400. The reviews of the EIA in December 2023 and January 2024 acknowledged the potential for tension between ethnic groups. I see no reason to assume that in reaching and maintaining that judgment, the defendant failed to take account of the particular incidents of which the claimants complain, and which Mr Butler acknowledges to have been racially motivated. Mr Dobson's evidence is that the onsite project team responsible for contributing factual material for inclusion in a periodic review of the EIA would include significant matters concerning the management of harassment and diversity issues at the site.

401. As I have said, Mr Butler provides an operational response to the claimants' evidence that violent incidents, harassment and victimisation motivated by racial tensions and discrimination have taken place at Wethersfield. In summary –

(1) Wethersfield is operated on the basis of a zero-tolerance approach to bullying, harassment or abuse of any nature, including that which is racially motivated. This is made clear to asylum seekers at induction on arrival at the site and through their occupancy agreement.

(2) Speaking as SRO, having reviewed incident reports and based on his own experience at the site, Mr Butler's view is that incidents involving aggression and violence between residents are usually caused by disagreements and personal animosity between individuals, rather than tension or aggression between cultural or racial groups.

(3) Mr Butler acknowledges that based on incident reports, the incidents which occurred on 28 October, 25 November and 26 November 2023 appear to have involved a racial motive. The response to those incidents involved the police and active management of the perpetrators by CRH, following which their behaviour improved.

(4) HAA complains in his claim about one particular member of staff. However, no complaint was made at the time and the allegation is denied by that member of staff, whose account has been accepted.

(5) All Home Office and CRH staff received training on diversity and inclusion, and bullying harassment and abuse. Both CRH staff and subcontractors are a diverse workforce, which promotes cohesion onsite. Mr Butler is not aware of any incidents of staff behaving in a racist manner.

402. The PSED does not oblige the defendant to avoid any incidents of racially motivated violence or harassment occurring in the operation of the site. Here, the EIA acknowledged that there was a risk of tensions arising between different ethnic groups accommodated that the site. Where fulfilment of the PSED requires a public authority to carry out an assessment of the risk of prohibited activity or behaviour arising, the evaluation of the degree of that risk is quintessentially a matter for the informed judgement of that authority. Provided that the risk assessment is properly informed and reasonable, there is no basis for questioning whether the public authority has fulfilled their duty under section 149 of EA 2010.

403. In my view, the evidence establishes that the defendant has had due regard to the need to achieve the objectives stated in section 149(1) of EA 2010. There is a wide mix of different national and ethnic groups amongst the asylum seekers accommodated at Wethersfield. It is not suggested that accommodating persons of Black African ethnicity at the site in itself resulted in a breach of the PSED. When read in the light of Mr Butler's evidence to which I have referred above, it seems to me that the evaluation of the level of risk of racial harassment to asylum seekers sharing the protected characteristic of race as low but that there was a risk of tensions between ethnic groups, is reasonably founded on the evidence. As I have said, Mr Butler's evidence is that incidents involving aggression and violence between residents are usually caused by disagreements and personal animosity between individuals, rather than tension or aggression between cultural or racial groups. He was not cross examined on his evidence. Perceptions will differ, but I see no reason to doubt that Mr Butler's assessment of the position was reasonable, speaking as the SRO at Wethersfield.

404. In R (DXK) v Secretary of State for the Home Department [2024] 4 WLR 46 at [138]-[143], the judge (Paul Bowen KC sitting as deputy High Court judge) referred to case law which emphasised the importance of effective monitoring as an essential tool to the proper discharge of the PSED. It is also important to bear in mind the point made by the court at [181] in *Bridges* –

"We acknowledge that what is required by the PSED is dependent on the context and does not require the impossible. It requires the taking of reasonable steps to make inquiries about what may not yet be known to a public authority about the potential impact of a proposed decision or policy on people with the relevant characteristics, in particular for present purposes race and sex".

405. The site specific EIAs have identified the fact that the mixing of ethnic groups at Wethersfield is monitored with steps taken as appropriate to minimise tensions. The operational response to the particular incidents upon which the claimants rely is consistent with that. How such monitoring is undertaken is again a matter for the reasonable operational judgment of the defendant. Mr Butler's evidence is that incidents which are or may be racially motivated are recorded as such and appropriate action is taken to resolve them. The incident tracker is closely monitored for incidents which may suggest a racial

motive. He acknowledges that it may be necessary to reassess whether any additional steps need to be taken. He also acknowledges that there is room for improvement in complaints handling and in staff training. In the light of Mr Butler's evidence, I am unable to accept that the monitoring of actual or potential incidents of racial harassment and other prohibited conduct at Wethersfield bears out the claimants' contentions.

406. The allegation that the defendant has failed to have due regard to the statutory objectives under section 149(1)(b) and (c) of EA 2010 is essentially founded in the allegations that staff at Wethersfield advised Black African residents to self-isolate in their rooms and to avoid common areas following the incident on 26 December 2023. That such advice was in fact given is disputed by Mr Butler in his evidence. I am not prepared to infer a failure to fulfil the PSED on that basis.

407. I accept that, in principle, the defendant was obliged to fulfil the PSED in determining whether accommodation at Wethersfield remained adequate for HAA's needs under sections 95 and 96 of IAA 1999, following the incidents on 26 and 27 December 2023: see Pieretti v Enfield London Borough Council [2011] 2 All ER 642 at [25]-[26]. In the light of Mr Butler's evidence, I conclude that the defendant did so. Mr Butler says that although no racist behaviour was reported in relation to the incident on 26 December 2023, he nevertheless accepts that this incident may have been racially motivated. The police were called and the victims given an opportunity to provide further information. The contemporary notes record that HAA was taken to the site manager's office and given an opportunity to provide more information. HAA declined to do so and would not provide a statement to the police. No further police action was taken.

408. Following the incident on 27 December 2023, Mr Butler says that after HAA had come down from the window sill, the incident report records that the welfare officer who attended the incident asked HAA to provide the names of those who were bullying him and causing trouble. HAA is reported to have replied that he did not know the names and they hung around in groups. HAA is reported to have rejected the welfare officer's offer to write a report. He was referred to Migrant Help. Mr Butler's evidence that nothing further could be progressed as no information was forthcoming from HAA is, in my judgment, a reasonable response and consistent with the proper performance of the defendant's PSED.

409. About a month before the hearing of these claims, on 21 June 2024 a further site-specific EIA was produced by the defendant. The site-specific EIA published on 21 June 2024 updated the principal nationalities accommodated at Wethersfield to March 2024: 60% of asylum seekers accommodated at the site were from Afghanistan, Eritrea, Ethiopia, Iran, Iraq, Pakistan, Sudan or Syria. Otherwise, the assessment in relation to the protected characteristic of race was essentially unchanged from that made in the January 2024 site specific EIA.

410. In their skeleton argument, the claimants targeted the EIA produced on 21 June 2024 as the focus of their submissions under ground 6a of the consolidated claim. The claimants raised two specific contentions: firstly, that the defendant's assessment contained in that EIA that the potential for tensions between ethnic groups is "low" is unreasonable; and secondly, that the defendant has failed to consider the technical guidance on the PSED issued by the Equality and Human Rights Commission, in particular paragraphs 5.15 to 5.22, and as a result has failed to discharge her *Tameside* duty. Paragraph 5.15-5.17 of the technical guidance states the importance of ensuring a sound evidence base –

"5.15 In order to give proper consideration to the aims set out in the general duty, a relevant body will need to have sufficient evidence of the impact its policies and practises are having, or are likely to have, on people with different protective characteristics. Such information is referred to in this guidance as equality evidence.

5.16 The courts have made clear the need to collate relevant information in order to have evidence-based decision making and a body subject to the duty will need to be able to show that it has adequate evidence to enable it to have due regard.

5.17 Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general equality duty. Without it, a body subject to the duty would be unlikely to be able to have due regard to its aims".

411. The claimants did not seek permission to amend their statement of facts and grounds in the consolidated claim so as to advance those grounds of challenge to the defendant's proper fulfilment of the PSED on the basis of the EIA produced on 21 June 2024. The defendant objects to the claimant raising those new issues, on the basis that she has not had a fair opportunity to respond to them in her evidence and is accordingly prejudiced.

412. In my judgment, the defendant's objection is well-founded. She has not had the opportunity to respond in evidence to the issues raised be the claimants in targeting the EIA produced on 21 June 2024. Each of those two issues questions the reasonableness of the defendant's discharge of the PSED in relation to the protected characteristic of race, by relying on deficiencies in the process of gathering information required to prepare that EIA and in the risk assessment which it carried out. The court is not in a position fairly to adjudicate on either of those two issues in the absence of evidence which the defendant may have adduced to explain how the process of preparing that EIA was carried out and how risk was assessed in the light of the evidence. The evidence before the court does not enable me fairly to address the claimants' challenge targeted at the EIA produced on 21 June 2024 and I decline to attempt to do so.

413. For the reasons I have given, ground 6a fails.

The Individual Claims

TG's claim

Ground 2 – Breach of sections 95 and 96 of IAA 1999

414. TG is a 25-year-old Eritrean national. He is a Pentecostal Christian. As a child, he fled to Ethiopia with his mother due to fear of religious persecution. In 2022 he fled from Ethiopia as he feared that the escalating civil war might lead to his being deported back to Eritrea and conscription into the army. He also feared religious persecution. He travelled via Sudan to Libya, where he was handed over by smugglers to an armed group.

415. He says that in Libya, he was taken to a warehouse and a ransom was demanded from him for his freedom. Being unable to pay, he was beaten and kicked causing injuries including a suspected broken bone in his left hand and wrist. He was not given any medical help. He could not do manual labour because of his injuries but he was not permitted to leave. He was subject to further physical violence and abuse. He had to survive on leftovers, as a result of which he suffered stomach cramps and has had to receive treatment for intestinal worms. The armed men discharged their guns into the air as a threat to anyone who tried to leave

the warehouse. After some months he was taken to a different warehouse, where he was forced to work for approximately 8 months. Again, he was threatened, beaten and was malnourished. He was eventually able to secure his release and travelled under the control of smugglers to France.

416. On 19 August 2023, TG arrived in the UK via small boat. On arrival, he claimed asylum. Following initial processing, he was released on immigration bail on condition that he reside at the Atrium Hotel.

417. On 21 August 2023, TG attended his screening interview remotely. In answer to the question whether he had ever been exploited, he answered –

"No, but I was beaten badly by the traffickers on route through Libya. They demanded more money so I could continue my journey. I managed to get some more money for them and the beating stopped. I understand this is not exploitation".

418. On 24 August 2023 TG was transferred to Wethersfield. On 24 August 2023 he received his initial health screening which noted that he was the victim of modern slavery. No referral was made at that stage into the NRM. TG shared a room with two other men.

419. On 29 August 2023, TG completed his ASF1 form with the help of Migrant Help. His completed form recorded that he was a victim of trafficking, had been detained by traffickers, beaten and not allowed to leave. In answer to the specific question included in the ASF1 form for the purpose of eliciting information about whether he was a vulnerable person for the purposes of applying the suitability criteria in the Allocation Policy, he said –

"I am a victim of trafficking which included physical violence".

420. On 6 September 2023, TG was granted asylum support under section 95 of IAA 1999 and remained accommodated at Wethersfield.

421. On 26 September 2023, TG's solicitors sent a letter before claim to the defendant alleging (amongst other grounds), that his accommodation at Wethersfield was inadequate as he was not suitable for accommodation at the site on the application of the suitability criteria in the then current version 9 of the Allocation Policy. The defendant was asked urgently to relocate him but did not do so.

422. On 9 October 2023, the Salvation Army as First Responder referred TG into the NRM. On 16 October 2023, TG received notice of a positive reasonable grounds decision made on 9 October 2023 that he was a victim of human trafficking owing to his experiences in Libya. On the same day, his solicitors again wrote to the defendant seeking his relocation from Wethersfield on the further ground that he was not suitable for accommodation at the site under version 10 of the Allocation Policy, in the light of his positive reasonable grounds decision. He was not relocated from Wethersfield.

423. On 23 October 2023, TG's NRM support worker at Migrant Help wrote to the defendant requesting his urgent relocation from Wethersfield on the ground that his mental health was deteriorating, that flashbacks and nightmares had intensified since he had been at the site, which was triggering memories of his experiences of being trafficked in Libya, and that being required to share a room at the site was causing similar harm. On the same day, his solicitors also wrote again to the defendant seeking his urgent relocation from Wethersfield

to avoid any further decline in his mental health. They enclosed a medico-legal report from Dr Beeks, an independent volunteer General Practitioner from Medical Justice, also dated 23 October 2023. Dr Beeks had examined TG at the site on 8 October 2023. She diagnosed TG as suffering from Post Traumatic Stress Disorder (PTSD) and Depression which made him unsuitable to remain at Wethersfield. Her clinical opinion was that he was unlikely to make any meaningful recovery whilst he remained at the site. There was a high probability that his symptoms of mental ill-health would deteriorate further.

424. The defendant did not respond to these letters. On 30 October 2023, Migrant Help on TG's behalf made a further request to the defendant for TG's removal from Wethersfield on the grounds that he was a victim of trafficking and his mental ill-health was being triggered by his current accommodation.

425. On 18 November 2023, TG's solicitors lodged his claim for judicial review. On 20 November 2023, the defendant relocated TG from Wethersfield to alternative asylum accommodation.

426. The defendant now accepts that the information given by TG at his screening interview on 21 August 2023 should have led to his being referred then into the NRM as a potential victim of trafficking; and being found not to be suitable to be accommodated at Wethersfield. Those concessions are plainly correct. At that time, version 9 of the Allocation Policy was in operation. On the simple application of the suitability criteria then in effect, as at least a potential victim of trafficking, TG was not suitable for transfer to Wethersfield. The defendant does not suggest that she had any reason to depart from that suitability criteria in deciding whether to transfer TG to Wethersfield under section 98 of IAA 1999, or to continue to accommodate him there under sections 95 and 96 of IAA 1999. Nor does she contend that the position changed following the publication of version 10 of the Allocation Policy on 9 October 2023. Again, that is consistent with her having made a positive reasonable grounds decision in favour of TG on the same date.

427. In the light of the facts and of the defendant's concessions, TG succeeds on ground 2. In purporting to be satisfied that accommodation at Wethersfield appeared adequate for TG's needs under sections 95 and 96 of IAA 1999, the defendant acted unreasonably and unlawfully in failing both to have regard to credible evidence that he was the victim of human trafficking and properly to apply her Allocation Policy. In consequence, TG was unlawfully accommodated at Wethersfield throughout the period between his arrival at the site on 24 August 2023 and his removal elsewhere on 20 November 2023.

Ground 4 – breach of duty to make reasonable adjustments under section 29(7) of EA 2010

428. On the basis of Dr Beek's report of 23 October 2023, the defendant accepts that TG had a disability within the meaning of section 6 of EA 2010 from October 2023. She submits, however, that the evidence does not support the conclusion that TG suffered from a mental impairment sufficient to fall within the terms of section 6(2) of EA 2010 until he was examined by Dr Beeks on 8 October 2023.

429. I do not accept the defendant's submission. In my view, it is an implausible view of TG's situation, given that Dr Beek's report provides clear evidence of a deterioration in TG's mental health which had set in well before she saw him on 8 October 2023. Her description of his current situation attests to the fact that TG had already begun to develop symptoms of PTSD and depression long before that date. In my view, TG's presentation to Dr Beeks

as recorded in her unchallenged report is consistent with his claim that his mental health began to deteriorate following his arrival at the site in late August 2023. I find that TG was suffering from a disability which satisfied the definition in section 6 of EA 2010 throughout the period of his accommodation at Wethersfield. On the basis of Dr Beek's report, I also find that TG's PTSD and associated depression substantially affected his ability to carry out day-to-day activities, an impact that was likely to be prolonged over the period of his recovery following his removal from the site on 20 November 2023.

430. Had the defendant not overlooked the information which TG provided both at his screening interview on 21 August 2023 and in completing his ASF1 form on 29 August 2023 as to his traumatic experiences in Libya, she would have been in a position reasonably to anticipate that accommodating him at Wethersfield would present a substantial risk of damaging his mental health. She would have been in a position to take reasonable steps to avoid that risk eventuating as it in fact did. As the defendant concedes, had she not overlooked TG's history of being violently trafficked which he stated at his screening interview and in his ASF1 form, she would have considered him not to be suitable for accommodation at Wethersfield. In short, due to oversight, the defendant failed to make the reasonable adjustment in favour of TG for which she had provided in her Allocation Policy, in anticipation of fulfilling her duty under section 29(7) of EA 2010 in relation to an asylum seeker reporting TG's history of trafficking and exploitation. The defendant was in breach of her duty under section 29(7) of EA 2010 until she relocated TG from Wethersfield on 20 November 2023.

431. The defendant's argument that the deterioration in TG's mental health as reported by Dr Beeks was not the operative reason for his removal from the site does not affect that conclusion. The defendant is not in a position to speculate on how the on-site medical team might have sought to alleviate TG's symptoms; or whether his case might have been referred to a HOMA or HOPA expert for review. There is no evidence before the court which calls into question Dr Beeks' contemporaneous diagnosis of TG's symptoms following her examination of him. Nor is there any evidence upon which to call into question her prognosis of continuing deterioration in his mental health unless he was relocated from accommodation at the site. There is no substance in the defendant's argument that she might have made adjustments which reasonably enabled him to remain at the site, notwithstanding its harmful and disabling impact on his mental health which is evident from Dr Beek's contemporary report.

432. TG's claim succeeds on ground 4.

Ground 7 – article 8 of the ECHR

433. Each of the claimants in the consolidated claim contends that in placing and maintaining them at Wethersfield, the defendant acted in breach of Article 8 of the ECHR and section 6 of the Human Rights Act 1998.

434. Article 8 of the ECHR provides –

> *"Right to respect for private and family life*
>
> *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".*

435. Section 6(1) of the Human Rights Act 1998 provides –

"(1) it is unlawful for a public authority to act in a way which is incompatible with a Convention right".

436. The question in the present case is whether the defendant has acted in a way which is incompatible with TG's (and/or MN's and/or HAA's) rights under article 8 of the ECHR in determining that accommodation at Wethersfield was and remained adequate for their needs for the period during which each of them was accommodated there, under sections 95 and 96 of IAA 1999.

437. The nature of the obligations placed by article 8 on a public authority in the provision of accommodation and other support were considered by the Court of Appeal in Anufrijeva and others v Secretary of State for the Home Department [2003] EWCA Civ 1406; [2004] QB 1124. That case arises out of the alleged failure by the defendants to comply with a public law duty imposed by statute under which the claimants contended they were entitled to receive benefits or advantages. In each case the allegation was that there was a failure by the relevant defendant to take the positive action that was necessary to ensure that the respective claimant's rights under Article 8 were respected see [2]-[3] *per* Lord Woolf CJ.

438. In reply in the present case, the claimants submitted that their complaint was founded not on a failure to act but rather on the allegation the defendant had taken action which infringed article 8. It was submitted that the target of the consolidated claims was the defendant's actions in allocating the claimants to and accommodating them at Wethersfield. The breach was of a negative obligation, to abstain or refrain from acts that unlawfully interfere with the claimants' private life.

439. In my view, the claimants' submission risks introducing an unnecessary element of confusion as to the real issue. It is necessary correctly to identify the act or omission which is alleged to have been incompatible with the convention right which is invoked. In this case, that act or omission is the defendant's alleged failure to provide each claimant with asylum accommodation in the exercise of the powers conferred by sections 95 and 96 of IAA 1999 that is adequate to meet his needs. It is that alleged failure which is the object of each claimant's complaint under this ground.

440. At [43] in *Anufrijeva*, the court said that article 8 is capable of imposing on a state a positive obligation to provide support. The court found it *"hard to conceive"* of a situation in which the predicament of an individual will be such that article 8 requires him to be provided with welfare support, where his predicament is not sufficiently severe to engage article 3 of the ECHR. It is not said by the claimants in this case that their situation when accommodated at Wethersfield engaged article 3 of the ECHR.

441. At [45] in *Anufrijeva*, the court said –

"In so far as article 8 imposes positive obligations, these are not absolute. Before inaction can amount to a lack of respect for private and family life, there must be some ground for criticising the failure to act. There must be an element of culpability. At the very least there must be knowledge that the claimant's private and family life were at risk…. Where the domestic law of a state imposes positive obligations in relation to the provision of welfare support, breach of those positive obligations of domestic law may suffice to provide the element of culpability necessary to establish a breach of article 8, provided that the impact on private or family life is sufficiently serious and was foreseeable".

442. Here, the effect of sections 95, 96 and 98 of IAA 1999 and regulation 5 of the 2005 Regulations is to impose a positive obligation on the defendant to provide asylum support to these claimants, in the form of accommodation that appears to the defendant to be adequate to meet their needs. In making that judgment in each case, the defendant is required to comply with regulation 4 of the 2005 Regulations.

443. The claimants do not seek to argue that asylum accommodation provided in former barracks is necessarily in breach of article 8 of the ECHR. It is at least implicit in the claimants' case that there will be adult male asylum seekers for whom asylum accommodation provided at Wethersfield is and will remain adequate to meet their needs during the period of their being accommodated there. The logic of claimant's case is that the defendant did not interfere with the article 8 rights of asylum seekers accommodated at Wethersfield on the proper application of the suitability criteria in version 9 of the Allocation Policy.

444. Nor is it contended that the allocation of asylum accommodation on a *"no choice basis"* contravenes the article 8 rights of asylum seekers, provided that the accommodation allocated by the defendant to an individual reasonably appears to the defendant to be adequate for his needs. In this context, the observations of Flaux J and of the Court of Appeal in *JK (Burundi)* to which I refer at paragraphs 75 and 76 of this judgment are of relevance.

445. I have found that in judging that accommodation at Wethersfield appeared adequate for TG's needs under sections 95 and 96 of IAA 1999, the defendant acted unreasonably and unlawfully in failing both to have regard to credible evidence that he was the victim of human trafficking and properly to apply her Allocation Policy. In consequence, TG was unlawfully accommodated at Wethersfield throughout the period between his arrival at the site on 24 August 2023 and his removal elsewhere on 20 November 2023. I have also found that TG's mental health began to deteriorate following his arrival at the site in late August 2023; and that TG's PTSD and associated depression substantially affected his ability to carry out day-to-day activities, an impact that was likely to be prolonged over the period of his recovery following his removal from the site on 20 November 2023.

446. There is accordingly a clear element of culpability on the part of the defendant. The information provided by TG which should have alerted the defendant to the fact that he was unsuitable for accommodation at Wethersfield was overlooked. He was accommodated at the site in breach of the defendant's own policy designed to address his vulnerabilities. It was clearly foreseeable that, as a result, TG would suffer a deterioration in his mental health as a result of being accommodated at Wethersfield.

447. The next and, in my view, decisive question in TG's case is whether the resulting degree of interference with his mental health and overall well-being was of sufficient severity to approach the level required to found a breach of article 3 of the ECHR. He contends that by virtue of his traumatic experiences of trafficking and ill-treatment, he was particularly

susceptible to the harmful impacts of being required to share a room, to the military appearance of the site and his perception of the security arrangements. He was also affected by the sound of gunshots from nearby shooting activities.

448. Had TG remained at Wethersfield for a considerably longer period that was in fact the case, he might well have succeeded in arguing that these factors, taken together with the deterioration in his mental health diagnosed by Dr Beeks, approached a level of severity to constitute a breach of his right to respect for his personal and private life protected under article 8. As it is, however, TG was transferred away from Wethersfield on 20 November 2023, a few days short of three months after he was first accommodated at the site. Applying the approach stated in *Anufrijeva*, I am unable to conclude that his being required to live in unsuitable accommodation for his needs for that relatively short period was so serious and prolonged an interference with his rights, and of so severe a degree as to be comparable to inhuman or degrading treatment. For these reasons, I conclude that the consequences of the defendant's failure lawfully to discharge her duty under sections 95 and 96 of IAA 1999 were not of sufficient severity as to constitute action that was incompatible with TG's rights protected under article 8 of the ECHR.

MN's Claim

Ground 2 – Breach of sections 95 and 96 of IAA 1999

449. MN is a 31-year-old Afghan national. His account in his witness statements of his journey to the UK may be summarised as follows. He was in the police force in Afghanistan prior to the Taliban coming to power. He fled the country shortly thereafter in November 2021. He travelled to Iran, where he says he remained for around three and a half months, during which time he was detained by smugglers, beaten and held captive. He was forced to call his family and ask for a ransom to be paid for his release. In early 2022 he was marched across the border into Turkey. Initially he was found by the local police, beaten and returned to Iran. Shortly thereafter, he made his way back into Turkey and travelled to Istanbul where he found work in a restaurant. However, he says that his work there was forced labour. He was exploited and when he asked for his wages, the owner of the restaurant refused to pay him and threatened to report him to the police as an illegal migrant. He says that he left Turkey due to his exploitation and constant fear of being arrested and deported back to Afghanistan. He made his way to Croatia where he was arrested, beaten and for a short period detained in very difficult conditions. He then travelled across mainland Europe, arriving by small boat in the UK on 8 July 2023. On arrival he claimed asylum.

450. On 9 July 2023 MN received a screening interview by phone and Skype. MN says that he is a Dari speaker. The record of his screening interview in the completed questionnaire records that MN's screening interview was conducted in Dari. His questionnaire records that he had been a police officer in Afghanistan for three and a half years who left under threats from the Taliban. His journey to the UK is recorded as being via Iran, Turkey, Croatia and thence across Europe to France and the UK. He had targeted England as the country in which he wished to stay. He has a brother in the UK. In answer to the question *"Have you ever been detained, either in the UK or in any other country for any reason?"* he responded that he had been detained for one night in Croatia for illegal entry. He said that he had never been exploited. He said that he had no medical conditions and nothing to report about his physical or mental health.

451. In his witness statements, MN says that the screening interview was conducted via an interpreter who translated the questions put to him in Farsi. MN says that he can understand and speak some Farsi but is not fluent in that language. He says that there were two changes of interpreter during the course of the interview, with the third interpreter telling MN to keep his answers short so that they could understand each other better. He says that he remembers being asked when and why he left Afghanistan and about his journey from Afghanistan to the UK. He says that because of the advice of the third interpreter, he felt unable to go into detail about what had happened to him in Iran, Turkey and Croatia. He accepts that he was asked about his state of physical and mental health. He says that when he arrived in the UK he felt that his mental health was fine and so gave that response during his screening interview.

452. MN was initially accommodated at the Atrium Hotel before being transferred to Wethersfield on 12 July 2023. On 13 July 2023, MN received initial health screening at the surgery at the site which recorded his main spoken language as Farsi and that he was feeling calm. It was also recorded, without any further explanation or elaboration, that he was a victim of torture.

453. On 18 July 2023 MN completed his ASF1 with the assistance of Migrant Help. He says that there was a Dari interpreter. The completed form records his first language as Pashto. He said that he did not have any physical or mental health problems. In answer to the question whether he had any disability or had been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, MN's answer was no.

454. MN shared a room at Wethersfield with two other men of different nationalities. He says that when he first arrived at Wethersfield he was quite social. He made some friends and played football. However, from the beginning of November 2023, he says that he became more withdrawn and spent his days in his room simply waiting for each day to end. He says that he continued to go to the mosque to pray but began to experience negative thoughts. He had been told that he would not be required to stay at Wethersfield for longer than two to three months. He was aware that many men who had arrived at the site later than him had already been moved on. This gave him a sense of despair and he became increasingly ashamed and irritable. He went out on the shuttle bus once or twice a week as he found it made him feel better to see people leading normal lives. Nevertheless, he became very lonely.

455. On 5 December 2023, MN contacted Care4Calais about his very low mood. On the same day Care4Calais raised a safeguarding concern with the welfare team and Migrant Help that MN had expressed suicidal ideation – he had been asked the question *"Are you thinking of taking your own life?"* and responded *"Hello, yes, my health is not good. I am happy to kill myself".* MN also telephoned Migrant Help asking to be relocated from the site. MN was advised to seek medical evidence from his GP for consideration.

456. On the same day, MN was seen at the on-site health clinic. His medical notes record him as being unable to sleep, feeling sad and low, with reduced appetite but with no suicidal ideas. He was diagnosed with likely moderate depression and prescribed a course of anti-depressants and to be kept under review.

457. On 11 December 2023 Care4Calais wrote a letter before claim to the defendant. The letter reported MN's account of his ill treatment in Iran and exploitation while working in a restaurant in Istanbul. The letter raised the recently communicated safeguarding concern

regarding his reported depressive mental state and suicidal ideation. It was said that he had recently been prescribed anti-depressants but that these had not been effective. He was said to be in *"severe mental decline"* due to his being accommodated at the site. It was contended that on the basis of the suitability criteria in the Allocation Policy, he was unsuitable for accommodation at the site as he was the victim of physical abuse, at high risk of suicide and self-harm and a risk to others. Accommodation at Wethersfield was inadequate to meet his needs under sections 95 and 96 of IAA 1999.

458. On 12 December 2023, MN was advised by the on-site medical team to persevere with his anti-depressants and that he would be reviewed in a month to see whether they were proving effective. On 14 December 2023, he had a consultation with Dr Gosslau of Doctors of the World. The letter summarised his account of his traumatic experiences in the course of his journey from Afghanistan to the UK. Dr Gosslau reported that MN's mental health had deteriorated during his time at Wethersfield, he had lost weight, was sleeping badly and suffering from flashbacks and nightmares. Dr Gosslau assessed MN as suffering from severe mental distress but that he denied any formed suicidal plans. The recommendation was that MN should complete his course of anti-depressants and seek a review with a GP at the site shortly before he did so. Dr Gosslau's letter was sent to the on-site healthcare team.

459. On 18 December 2023, the defendant's solicitors responded to Care4Calais stating that a safeguarding referral had been made in respect of MN. The welfare team had carried out a welfare check, reporting that MN was using the shuttle bus service, eating in the canteen, socialising and engaging in site activities. His situation would be monitored and should the welfare team determine that his mental health had deteriorated to the extent that Wethersfield was no longer suitable, his transfer would be requested. MN received checks from welfare staff on four occasions during December 2023.

460. On 3 January 2024, the defendant's solicitors sent a full response stating that MN remained suitable for accommodation at Wethersfield on the basis of the suitability criteria (then under version 10 of the Allocation Policy). In that letter, the defendant acknowledged that during recent welfare checks MN had reported *"experiencing insomnia, feelings of sadness, depression, bouts of aggression and dental issues"* and that he was *"being provided with information about on-site medical services and is able to access the onsite medical clinic to seek support for mental health issues"*.

461. Also on 3 January 2024 MN was seen in the on-site clinic. The record of the appointment states that he reported as having had thoughts of suicide for several days, but that he had received a letter from the Home Office and was looking to the future. He declined a further course of anti-depressants, saying that he did not want more drugs but *"a solution to his problems"*.

462. On 8 January 2024, MN's solicitors wrote a further pre-action letter to the defendant enclosing and drawing attention to his medical notes and to the letter from Doctors of the World. His solicitors requested that MN now be transferred away from Wethersfield on the basis that in the light of his medical notes and his evaluation by Doctors of the World, he had special needs which rendered him unsuitable for continuing to be accommodated at the site.

463. On 10 January 2024, MN received an NRM referral.

464. On 19 January 2024 the defendant's solicitors responded saying that in the light of MN's medical notes which had now been received, the defendant had decided to refer his case to the HOMA for advice on the question of MN's alleged suicidal ideation. This was said to be reasonable given that *"it is not entirely clear on the evidence whether you client should be rendered unsuitable for Wethersfield with reference to [the Allocation Policy]"*. It was said that a full response would be made on or before 24 January 2024 if possible.

465. Records of MN's welfare checks after early January 2024 record that he was doing well. On 15 January 2024, however, he was again reported in his medical notes to be troubled by his mental health. He reported that he had been sleepwalking and had thoughts of suicide and self-harm, albeit with no active plans to carry that through for now. He was seeking medical help. He was looking forward to moving out. The diagnosis was depression. He was again prescribed anti-depressants. The notes mention the intention to review his case in two weeks and to refer him to the mental health team.

466. On 19 January 2024 his referral for mental health assessment was rejected on the basis that he should continue with his course of anti-depressants to allow his drug therapy to become established and his dosage increased as necessary.

467. On 22 January 2024, MN issued his claim for judicial review, including an urgent application for interim relief.

468. On 26 January 2024, the defendant wrote to MN rejecting his request for transfer away from Wethersfield to alternative asylum accommodation. In that letter, the defendant said MN's representations and supporting evidence had been referred to the HOMA (Dr Wilson, a consultant psychiatrist) who had advised –

> *"Given the correspondence from the on-site medical records and the appropriate care that is in place, I cannot see any evidence to indicate that the current accommodation is unsuitable. Anti-depressant medication such as SSRI anti-depressants including Citalopram take at least four to six weeks to come into effect. There is no evidence from any recent GP contact of increased suicidality or increased severe and enduring mental illness. Asylum seekers suffer from poor mental health and mood disturbance of the type described with possible PTSD symptoms, albeit not clear cut, and this would be a current common occurrence".*

469. The defendant gave the following reasons for her decision –

> *"Upon consideration of all the medical evidence available, we consider that you are suitable for accommodation at Wethersfield. You are not considered to have serious mental health issues where there is a high risk of suicide, serious self-harm or risk to others. You are therefore not considered to be a person with complex health needs and accordingly are not unsuitable in accordance with [version 10 of the Allocation Policy].*
>
> *We have also taken into account your claims to be mentally disabled due to suffering depression, serious mental distress and trauma symptoms, as well as a deterioration of mental health and suicidal ideation. We do not consider you to be disabled under the terms of [EA 2010] because you do not have a physical or mental impairment which has a 'substantial' and 'long term' adverse effect on your ability to carry out normal day-to-day activities. Furthermore, you have not provided evidence of an individual evaluation that would establish that you are vulnerable and/or have special needs for support under section*

95 of [IAA 1999]. Accordingly, you are not unsuitable in accordance with [the Allocation Policy] on this basis.

It is further noted that, following a safeguarding referral from Care4Calais on 5th December 2023, a welfare check was conducted, and the welfare team reported that you were using the transport to travel off site, eating meals in the canteen, engaging with activities onsite and socialising with friends. Regular welfare checks will continue to be arranged, and you have been signposted to relevant services.

We have also taken into account your claim to be a victim of exploitation and are aware that you are awaiting assessment by the Single Competent Authority. Until a Reasonable Grounds decision has been made on your claim to have been trafficked, you will be considered suitable for accommodation at Wethersfield".

470. On 30 January 2024, MN's solicitors provided the defendant with a letter of the same date from Dr Pethania, a clinical psychologist, who had consulted with MN and conducted a psychological assessment of him online on 26 January 2024. Based on that assessment, Dr Pethania diagnosed MN as suffering from Major Depressive Disorder with Anxious Distress –

"Based on my assessment, I believe MN presents with symptoms consistent with a diagnosis of Major Depressive Disorder (MDD) with Anxious Distress. In summary, he described persistent depressed mood, markedly diminished interest in almost all activities, poor sleep, isolation and being preoccupied with negative and anxious thoughts about his circumstances. In my clinical opinion, his symptoms are having a substantial adverse effect on his ability to carry out normal day-to-day activities. MN also reported feeling anxious and fearful about the fights that break out between other residents and has been isolating himself as a result. MN describes experiencing frequent suicidal ideation, he shares this is a recent symptom due to increased feelings of hopelessness about his circumstances and the length of time he has been living at his current accommodation.

MN reported traumatic and stressful experience during his journey to the UK including experiences of physical violence, poor treatment by the authorities and exploitation which he still feels affected by. He also reported constant anxiety about the safety and well-being of his family in Afghanistan. He reported his mental health has deteriorated whilst living at Wethersfield and attributes his stressful living circumstances to his current distress.

MN has been prescribed anti-depressant medication (Citalopram) but he reported it had not helped. I believe MN would benefit from a review of his mental health and treatment by a mental health team.

It is my opinion that MN is at high risk of further deterioration in his mental health and a reduction in social and occupational functioning if he remains at his current accommodation. Although MN denied active intent to end his life and denied reckless and self-destructive behaviour, it is concerning that his risk to his self has increased whilst he has been living at Wethersfield such that he has been experiencing frequent suicidal ideations. I believe a further deterioration in his mental health without access to appropriate mental health support may result in an increase to his risk of death or serious harm by suicide and risk of acting out impulsively in response to his distress causing him unintentional harm.

In my view, MN's clinical presentation is compatible with his account and his experiences and, in my view, it is unlikely he could be exaggerating or feigning his symptoms. His symptoms are similar to others meeting criteria for the same diagnoses and what might be expected clinically given his history and current life situation.

In my view, MN is likely to benefit from psychological treatment when he is in a safe and stable environment and any ongoing stressors have ended or reduced. In my opinion, long term, secure accommodation where MN is safe and has access to appropriate mental health and community support as well as immigration security would enable him to recover and move forward with his life".

471. On 31 January 2024, the Home Office referred Dr Pethania's letter to Dr Wilson, who advised that the evidence did not support the conclusion that MN was disabled against the definition in section 6 of EA 2010. He continued –

"However, as I previously commented the applicant was due for a further review approximately one month after commencing his anti-depressant medication, and it may be appropriate for the on-site medical team to carry this out".

472. On 31 January 2024 the defendant made a negative reasonable grounds decision on MN's referral into the NRM, but subsequently agreed on 22 February 2024 to reconsider it. On 29 February 2024, the defendant made a positive reasonable grounds decision.

473. On 12 February 2024 MN attended the onsite clinic for a repeat prescription of his anti-depressants. It appears that his dose had been reduced, as the note records *"Patient came for repeat prescription of citalopram - said it was working fine before when he was taking 20mg and since changing to 10mg he started to feel low again - appears relaxed…no active suicidal thoughts, well dressed, mood appeared relaxed and smiled couple of times during consultation".* He was again diagnosed with low mood and his anti-depressant dosage increased to 20mg, to be reviewed in one week, with an earlier review or dialling 111 if his mood worsened or he had suicidal thoughts or other concerns.

474. On 15 February 2024, MN's solicitors served a full report by Dr Pethania on the defendant. Dr Pethania had held a video linked consultation with MN on 13 February 2024. In her report, Dr Pethania again concluded that MN presented with symptoms consistent with a diagnosis of Major Depressive Disorder with Anxious Distress. She again expressed her professional opinion that MN was at high risk of further deterioration in his mental health and a reduction in social and occupational functioning if he remained at Wethersfield. The defendant again referred Dr Pethania's report to the HOMA for a further opinion.

475. On 22 February 2024, MN's skeleton argument was filed in support of the hearing of his application for interim relief listed for 27 February 2024.

476. On 23 February 2024, responding to an email for further advice in the light of Dr Pethania's second report, the HOMA (Dr Keen) informed the defendant that *"From the two psychology reports provided I think it possible that the applicant may meet the thresholds…I have therefore referred this case to Dr Wilson, the Home Office psychiatric adviser, for an expert opinion, which I will ask him to expedite".*

477. In paragraph 158 of her witness statement, Ms Mascurine says that the defendant decided not to await Dr Wilson's advice, but instead transferred MN out of Wethersfield on the same day. The defendant's decision was confirmed by letter dated 26 February 2024 –

"We have considered the psychological report provided by Dr Yasmin Pethania, which advises that you present with symptoms consistent with a diagnosis of Major Depressive Disorder (MDD) with Anxious Distress. Dr Pethania indicates that you have special needs which include the provision of safe and secure accommodation where you have private space i.e. where you have your own room to promote psychological safety and accommodation in a community setting. Dr Pethania further advises that, in her opinion, your medical health conditions cannot be adequately managed at Wethersfield since you require specialist mental health care and support services.

We have referred your evidence to the [HOMA]. Based on Dr Pethania's letter and psychological report, the [HOMA] provided preliminary advice stating that it was possible you may be considered as vulnerable under regulation 4(3) of the [2005 Regulations] and/or have complex health needs…".

478. On 23 February 2024 Dr Wilson did provide his opinion in the light of Dr Pethania's more recent report –

"I note the applicant has been prescribed antidepressant medication and he is being regularly reviewed and was considered for referral to the local mental health team. On some occasions the applicant has reported suicidal ideations without any planning or intent and on other occasions he has been reported not to have evidence of suicidal ideation. There is no previous history of suicidal behaviour or any severe self-harming behaviour. The applicant remains under regular review by the on-site medical team and has been variously considered for referral to a mental health support group and has been referred to the local mental health team, after initial decline of the referral. The applicant has reported sleep-walking which is not in itself clear evidence of any psychiatric disability… The applicant has been, at most, partially compliant with antidepressant medication and appears to be being somewhat impatient around its effects. It is well established that SSRI antidepressant medication takes at least 4-6 weeks to have any effect. The applicant is stated to have run out of tablets and been taking them at a irregular times.

In terms of establishing whether the applicant is at high risk, my general view would be that the applicant currently presents as someone with a first episode of depression with suicidal ideation only. All asylum seekers have a higher baseline suicide risk than the general population and the best determinants of higher suicidal risk are previous suicidal behaviour and an active intent and planning. In the applicant's case, this is not the case. However clearly the suicide and self-harm risk needs to be monitored closely and may respond to more intense and ongoing treatment. In my opinion the applicant is receiving appropriate care which would be similar to that in a primary care setting and referred to, for example, a primary care mental health team. There is not evidence of more severe PTSD and I would not consider him to have complex health needs or any particular special needs. My advice would be that the applicant is closely monitored by the on-site medical team and appropriate interventions are implemented as quickly as possible. Reviewing the on-site medical notes does not reveal significant concerns in my view, or any inappropriate or sub-optimal management.

My overall advice would be if there are any further symptoms regarding persistent suicidality and there is evidence within the next month the applicant's antidepressant medication or other treatments and interventions are not working, the applicant may be considered to have a persistent psychiatric condition not responding to treatment and would probably be closer to meeting either of the relevant criteria regarding risk or disability and may therefore be suitable for transfer, but in my opinion, it would be in the applicant's best interests to continue treatment as is currently prescribed and recommended and to ensure that access is maintained for this".

Conclusions

479. There is no force in MN's argument that the defendant acted unlawfully and in breach of the Allocation Policy in being satisfied that accommodation at Wethersfield was adequate for his needs when he was transferred to the site on 12 July 2023. That conclusion is not affected by the dispute over whether his screening interview was interpreted in Dari or Farsi. I am satisfied on the basis of MN's evidence that he had a sufficient grasp of the questions put to him to be in a position to say more than he did about his experiences on his journey from Afghanistan to the UK. In any event, it is not in issue that he completed his ASF1 with the help of Migrant Help and was in no difficulty in understanding the questions he was required to answer at that time. He did not claim to have any physical or mental health problems, nor did he claim to have been the victim of physical or psychological violence. The defendant was properly able to be satisfied that allocating him to Wethersfield would provide him with adequate accommodation to meet his needs, on the basis of the information available to her at that time. There was no evidence in late July 2023 that MN had any special needs which made him unsuitable to be accommodated at Wethersfield, applying version 9 of the Allocation Policy to his case.

480. The unexplained reference in his medical notes, following his initial health screening, to his being a victim of torture does not provide a sustainable basis for impugning the lawfulness of the defendant's determination that, at that time, accommodation at Wethersfield was adequate to meet his needs. MN made no such claim in completing his ASF1 with the assistance of Migrant Help and asserted no special needs arising from any such history. Indeed, MN's own evidence is that when he arrived in the UK he was in a positive frame of mind and felt physically and mentally well. He maintained that positive and healthy outlook during the three months which he had expected to be accommodated at Wethersfield, when he arrived at the site in mid-July 2023. He was clearly in a reasonably well-balanced frame of mind during the early period of his stay at Wethersfield. He was a former police officer. I am unable to accept that had he experienced ill-treatment during his journey which amounted to torture, he would have omitted to mention that fact when completing his ASF1 form.

481. It is entirely understandable that as the weeks went by beyond early November 2023, MN's mood and mental health should have deteriorated into depression and a sense of mounting despair at the lack of progress with his asylum application and his continuing accommodation at Wethersfield. He wanted to get on with building a new life in the UK and was increasingly frustrated at his situation in late 2023 and early 2024.

482. As I have said, he was moved to alternative asylum accommodation on 23 February 2024. The reasons which the defendant subsequently gave for her decision to move him show that she did so on a straightforward application of the suitability criteria in the Allocation Policy. She was no longer satisfied that accommodation at Wethersfield was adequate for his needs,

since he had produced an individual evaluation which evidenced special needs and a medical condition which could not be managed and supported adequately at the site. The individual evaluation upon which the defendant based that judgment was Dr Pethania's psychological report submitted on 15 February 2024.

483. In explaining her previous determination on 26 January 2024 that MN remained suitable for accommodation at Wethersfield, the defendant said he had not provided evidence of an individual evaluation that would establish that he was vulnerable and/or had special needs for support under section 95 of IAA 1999. In my view, that deficiency was at least arguably overcome by the submission to the defendant of Dr Pethania's letter of 30 January 2024. Dr Pethania is a clinical psychologist. Her letter stated that she had conducted a psychological assessment of MN during an interview with him on 26 January 2024. Based on that assessment, she had diagnosed MN as suffering from a mental disorder which, she advised, placed him at high risk of further deterioration in his mental health and a reduction in social and occupational functioning if he remained at his current accommodation. She provided a clear explanation for her diagnosis and opinion.

484. Faced with Dr Pethania's letter of 30 January 2024, the defendant was of course not obliged to accept it and reverse her recent determination that MN remained suitable to be accommodated at Wethersfield. However, in the light of both the explanation which the defendant had given for that determination in her letter of 26 January 2024, her statutory duty under regulation 4(2) of the 2005 Regulations and her stated suitability criteria in version 10 of the Allocation Policy, she was under a legal obligation to give due consideration to Dr Pethania's evaluation of MN's mental disorder. She was obliged to consider whether there was now a need for a change of accommodation to avoid the worsening of that disorder. Significant new information regarding MN's suitability to remain accommodated at Wethersfield had come to light since her decision on 26 January 2024.

485. The defendant referred Dr Pethania's letter to Dr Wilson, who on that occasion responded only briefly, repeating his earlier view expressed following his review of MN's medical notes on 26 January 2024. That response plainly did not in itself provide an adequate basis to dismiss Dr Pethania's diagnosis and professional assessment of MN's needs. Dr Pethania had interviewed MN and had the advantage of basing her diagnosis and assessment of his needs on that consultation. Dr Wilson's very brief comments in response did not provide a reasonable basis for the defendant to postpone reviewing her earlier decision on the basis of the individual evaluation of MN's situation which had now been provided. Indeed, the defendant did not indicate to MN's solicitors that she required further information from Dr Pethania or from her own advisers in order to review MN's suitability for accommodation at Wethersfield, now that she had the benefit of Dr Pethania's individual evaluation of his situation and special needs. In that respect, it is to be noted that although Dr Pethania's report submitted on 15 February 2024 provided further detail, her essential diagnosis of MN's mental disorder and his special needs remained substantially as reported in her letter of 30 January 2024.

486. There is this no convincing evidence that on receipt of Dr Pethania's letter of 30 January 2024, the defendant reviewed her earlier determination in the light of the individual evaluation of MN's situation; one that had been carried out by a clinical psychologist following an interview with him, which had been submitted on his behalf and which identified the need to relocate him from Wethersfield in order properly to manage his diagnosed mental disorder.

487. In my judgment, in failing to review her decision communicated to MN on 26 January 2024 following receipt of Dr Pethania's letter of 30 January 2024, the defendant failed to apply her Allocation Policy which made clear that she would review an asylum seeker's suitability to remain accommodated at Wethersfield, if provided with an individual evaluation of his situation which showed that he was vulnerable and/or had special health needs. Had she done so, it is reasonable to anticipate that the defendant may have decided that MN was now no longer suitable for accommodation at the site.

488. In the event, applying her Allocation Policy in the light of Dr Pethania's letter and subsequent report, on 23 February 2024 the defendant did decide that accommodation at Wethersfield was no longer adequate to meet MN's needs. She was able to move him to alternative accommodation on the same day. I conclude that, by virtue of regulation 4 of the 2005 Regulations, her stated approach to new information in her Allocation Policy and in the light of her reasons in her letter of 26 January 2024, the defendant had been obliged to review the adequacy of accommodation at Wethersfield to meet MN's needs following receipt of Dr Pethania's letter of 30 January 2024. The probable consequence of her failure to do so until 23 February 2024 is that MN was accommodated at Wethersfield in breach of the Allocation Policy for a period of up to 25 days. It is not the defendant's case that she made a considered decision to depart from the Allocation Policy in MN's case during that period.

489. For these reasons, MN's claim on ground 2 is made out.

Ground 4 – breach of duty to make reasonable adjustments under section 29(7) of EA 2010

490. The defendant does not dispute that from at least 5 December 2023 onwards, MN was suffering from a mental impairment within the meaning of section 6 of EA 2010. The defendant contends that MN's mental impairment during the period between early December 2023 and his removal from Wethersfield in late February 2024 did not substantially and adversely affect his ability to carry out day-to-day activities. I firmly disagree. The contemporary evidence attests to the fact that the impact of MN's progressively depressed state of mind was causing him to be withdrawn and demotivated. He spent long periods in his room. He no longer socialised as he had during his early months at the site. He did not participate as he had in activities at the site. He had become resentful and ill-disposed towards others. These behaviours are indicative of a greater than minor or trivial state of mental impairment. I see no reason to find his account to be feigned or exaggerated. It is supported by much of what is recorded in his contemporary medical notes. That his mood swung to a degree from day-to-day seems to me to be entirely unremarkable, given his circumstances.

491. I am, however, quite unable to accept that these substantial adverse effects were long term. I have read Professor Greenberg's psychiatric assessment of MN. Professor Greenberg interviewed him on 10 May 2024, two and a half months after he was transferred from Wethersfield into hotel accommodation where he had his own room. Professor Greenberg was able to carry out a detailed review of the relevant documents, including MN's medical notes, the letters from Dr Gosslau and Dr Pethania, Dr Pethania's report and the advice given by the HOMA. Professor Greenberg's opinion was that MN was suffering from a depressive disorder, of which his prolonged period of accommodation at Wethersfield had been the main precipitant. MN's depressive disorder had worsened at the site but was currently mild. His anti-depressant medication had proved to be effective over time. He was able to enjoy being out in a local park, he was sleeping and eating well, he was not fatigued

and was paying attention to his self-care. He had plans for his future. He reported some social isolation and anxiety about his asylum application. His mobile phone had recently broken. Nevertheless, Professor Greenberg's opinion was that MN was now able to go about his day-to-day activities.

492. In the light of Professor Greenberg's opinion, I find that in the weeks following MN's removal from Wethersfield, MN's depressive disorder subsided in its intensity to the extent that, by mid-May 2024, it had ceased substantially and adversely to affect his ability to carry out his day-to-day activities. Although suffering from a mental impairment which substantially adversely affected his ability to carry out his day-to-day activities during his final weeks at Wethersfield, MN's mental health improved and stabilised over the period following his transfer into hotel accommodation. There is insufficient evidence to support a finding that MN was suffering from a mental impairment which was likely substantially and adversely to affect his ability to carry out day-to-day activities in the longer term, for in excess of 12 months. In so finding, I have considered Dr Pethania's further report in response to Professor Greenberg's report. She had briefly interviewed MN on 3 June 2024. At paragraph 5.4 of her further report, Dr Pethania says that MN's current presentation *"appears to be consistent with Professor Greenberg's opinion…where he diagnosed him with mild depressive disorder"* and at paragraph 6.36 that being accommodated at Wethersfield was *"a main stressor for him"*. She concludes (at paragraph 6.42) that there had been *"an improvement in his mental health"* since he had been transferred away from Wethersfield.

493. I conclude that MN did not suffer from a disability within the meaning of section 6 of EA 2010. Accordingly, MN does not succeed in his claim that the defendant is in breach of her duty under section 29(7) of EA 2010.

Ground 7 – article 8 of the ECHR

494. I need not repeat my explanation of the approach which I have followed in considering this ground in TG's claim. Applying that approach to my findings in relation to MN, it is clear that there is neither the level of culpability nor the severity of interference with MN's personal and private life to justify the conclusion that the defendant has acted in contravention of his rights protected under article 8 of the ECHR. In particular, MN was lawfully accommodated at Wethersfield until no more than 25 days before he was transferred to alternative asylum accommodation on 23 February 2024.

HAA's Claim

Ground 2 – Breach of sections 95 and 96 of IAA 1999

495. HAA is a 31-year-old Somali national. His account in his witness statement of his journey to the UK may be summarised as follows. In Somalia, he saw his father and brother-in-law being decapitated by Al Shabab terrorists. He was severely beaten by members of Al Shabab for refusing to join them. He sustained permanent scarring to his head and over his left eye. He went into hiding. He found work near the Kenyan border as a porter, but was exploited and received no payment. When he asked for his money, he was beaten unconscious for two days. He was helped by local people and able to make his way into Kenya.

496. With the help of a smuggler HAA was able to travel to Turkey and thence to France. He often slept rough, surviving on one meal a day. He was locked up during his journey in

Turkey and later in France. He was able to free himself and spent a week sleeping on the street in Calais.

497. On 2 October 2024 HAA arrived by small boat in the UK. On arrival he claimed asylum. On the same day he received a remote screening interview at Manston. His completed questionnaire records that he is married with his wife and teenage daughter still living in Somalia. He said that he had left Somalia in April or May 2023. He had walked to Kenya and later flown on forged documents to Turkey and thereafter to France. His family had paid the agents. He had to do what the agents said. He said that he had suffered a lot in France. Asked why he could not return to his home country, he replied that he had left because of fear of Al Shabab, who had killed his father and his brother-in-law. He had been told that unless he worked for Al Shabab, he also would be killed. Asked whether he had ever been exploited or had any reason to believe he was going to be exploited, HAA said that he had not. He said that he did not have any physical or mental health issues.

498. On 4 October 2023 HAA was transferred to Wethersfield. He received initial health screening at the surgery at the site which recorded him as being in a good mental state, fit and healthy. He had no past medical problems. There is reference to PTSD, to being at risk of physical abuse and that his father and sister had been killed by terrorists, of which he had flashbacks.

499. On 1 November 2023 HAA completed his ASF1 with the assistance of Migrant Help. In response to questions about his individual circumstances, he replied that he had mental health problems. He explained that he became stressed very easily which caused him to feel anxious. In response to the question asking whether he had specific accommodation requirements, HAA responded –

"I am struggling in Wethersfield because there is no other Somali people here and I am feeling isolated and lonely".

500. In answer to the question whether he had any disability or had been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, HAA's answer was no.

501. On 14 November 2023, the defendant wrote to HAA informing him that she had decided to grant him asylum support. He remained accommodated at Wethersfield under sections 95 and 96 of IAA 1999.

502. In advancing his claim, HAA relies upon the incidents to which I have already referred in my consideration of ground 6a above. For ease of understanding, I shall repeat some of that content here.

503. HAA refers to an incident which took place on 26 November 2023, when two South Sudanese residents were attacked in the canteen by a large group of reportedly Kurdish residents. HAA says that one of the victims was his roommate at the time, who is reported to have suffered serious injury requiring hospital treatment. The defendant moved the victims away from Wethersfield the same evening given the risk to their safety. It was said to have been a time of heightened tension at the site. HAA says that there previously had been racist incidents on 28 and 29 October 2023 involving attacks on Black African residents. He also refers to an incident in the site canteen on 26 November 2023, during

which two Black African residents were attacked following a dispute in the queue for food. HAA does not say that these reported incidents directly involved him.

504. On 21 December 2023, Care4Calais sent a pre-action letter to the defendant on behalf of HAA. The letter alleged that since being accommodated at Wethersfield, HAA had suffered a deterioration in his mental health. He had experienced chronic headaches, insomnia and flashbacks to past traumatic experiences. He had sought treatment from the onsite medical team but been told that he could not be helped. The letter further alleged that HAA as a resident of African origin had been and continued to be targeted with violence and harassment by other residents. Reference was made to the incident involving HAA's roommate on 26 November 2023. It was contended that Wethersfield was not adequate to meet HAA's needs as asylum accommodation. An urgent transfer was requested to alternative accommodation.

505. A welfare check subsequently made on HAA on 23 December 2023 reported him to be dealing with migraine and other health concerns. He was also said to be facing sleep disorders and going through depression. The welfare officer commented that HAA *"needs constant support"*.

506. On 26 December 2023, HAA was playing football with two Eritrean residents when they were abused and jostled by a large group of reportedly Kurdish residents. There was a fight. An incident report was prepared. In paragraph 187 of his witness statement, Mr Butler says that no racist behaviour, such as the use of racist slurs, was reported. He nevertheless accepts that this incident may have been racially motivated. The police were called and the victims given an opportunity to provide further information. The contemporary notes record that HAA was taken to the site manager's office and given an opportunity to provide more information. HAA declined to do so and would not provide a statement to the police. No further police action was taken.

507. On 27 December 2023 HAA was found sitting on the edge of his windowsill, threatening to commit suicide by jumping out of the window. Security staff persuaded him to come down. Having done so, HAA told staff that he felt unable to remain at Wethersfield. He was being bullied at the site, being pushed around and insulted by other residents. Mr Butler says that the welfare officer who attended the incident asked HAA to provide the names of those who were bullying him and causing trouble. HAA is reported to have replied that he did not know the names and they hung around in groups. HAA is reported to have rejected the welfare officer's offer to write a report. He was referred to Migrant Help. HAA says he was told that he would never leave Wethersfield, an allegation that the defendant contradicts.

508. The defendant's account of events after the incident on 27 December 2023 is given in paragraphs 169 to 188 of the witness statement of Ms Mascurine. She says that it was agreed that HAA needed a welfare check and to be closely monitored.

509. On 28 December 2023 the defendant received safeguarding referrals for HAA both from Care4 Calais and Essex County Council's Adult Social Care Team. The email from Essex County Council raised serious concerns about HAA's recent experiences at Wethersfield.

510. Care4 Calais stated that HAA had been harassed and racially targeted and had expressed suicidal ideation to Migrant Help. They drew attention to the suitability criteria in the Allocation Policy (then version 10). On 5th January 2024, the Home Office Safeguarding Hub emailed the welfare team at Wethersfield requesting a welfare check to be completed

and an appointment to be made for HAA with the onsite medical team. As HAA was claiming to be the victim of torture, the Home Office Safeguarding Hub raised the question whether he remained suitable for accommodation at Wethersfield. HAA was subject to a welfare check on 5th January 2024. Ms Mascurine says that the welfare team reported that –

"HAA was deeply concerned about his mental health as he perceives that residing at Wethersfield is adversely affecting his mind, leading to anxiety and depression. HAA further stated that he was experiencing persistent headaches and sleeping difficulties".

511. Due to an oversight, Essex County Council's safeguarding referral was not flagged and considered by the defendant until 8 January 2024. On the same day, Care4Calais made a further safeguarding referral in respect of HAA. Also on 8 January 2024, the CRH Safeguarding Manager shared Essex County Council's outstanding referral and stated –

"[HAA] claims to be a Victim of Torture, and as such should not fall within the selection criteria for the site. Can we please look to have him moved off Wethersfield as soon as possible?"

512. On 9 January 2024, HOAT's response to that request was to note that the Home Office was looking to obtain further evidence to support HAA's claim to be a victim of torture. The Home Office Safeguarding Hub also requested that a further welfare check be carried out. The welfare officer did so on that day. She reported –

"I had a face to face meeting with [HAA] this morning. Since [HAA] arrived, he has been a pleasure to help, always smiling and helpful, today I saw a difference in him, low mood and eyes looked sad. He spoke about his journey to the UK, and he suffered a lot along the way. He finds the camp intimidating and feels alone. Usually a calm person but he is feeling his emotions building up inside and something small turns into a big deal. He is worried about his daughter who is 14 and his elderly mother who he left in his country, he feels like he has a lot of responsibilities on his shoulders. He is eating regularly but has missed a few meals when his mood is low and also not leaving the camp as much. He has requested an NRM appointment, which I will try to arrange. I have booked him today to speak to the mental health team on site. I have also told him I am always here to talk. I am concerned for [HAA's] mental state".

513. Also on 9 January 2024, the social worker from Essex County Council emailed both CRH and the Home Office to say that she also had spoken to HAA –

"He is feeling better having shared his thoughts and feelings although I agree he is seemingly very low in mood, isolated, and feeling overwhelmed. May I ask is there a view that he should be moved based on information gathered on the suitability criteria? Please can an update be shared after the mental health meeting?"

514. The HOAT referred HAA's case to the Large Sites Team for advice in the light of the email from CRH's Safeguarding Manager. On 10 January 2024, the Home Office Safeguarding Hub referred HAA's case to the Large Sites Team raising significant concerns about his mental health and suitability to remain at the site. There had been *"multiple referrals"* about his mental health and suicidal ideation. He also claimed to be the victim of torture. The officer referred to the suitability criteria in version 10 of the Allocation Policy in respect of

"serious mental health issues" and requested a review of his suitability to remain accommodated at Wethersfield.

515. Ms Mascurine says that on 10 January 2024, a welfare officer had an in-depth conversation with HAA, during the course of which he was asked if he was going to harm himself and he said that he was not. The welfare officer's impression was that HAA's concerns were primarily linked to the family he had left behind in Somalia, including a young daughter. For this reason, HAA was offered an appointment to see the onsite mental health team which he took up on the same day. On 11 January 2024, HAA apparently went out to see friends offsite. On the same day, Essex County Council emailed to say that their safeguarding concern could be closed, as HAA had said that he would await support for his mental health issues, seek guidance from Migrant Help and from the welfare officers.

516. On 15 January 2024, HAA's solicitors wrote to the defendant seeking an urgent response to the outstanding pre-action letter of 21 December 2023. They enclosed HAA's medical notes. They sought confirmation that HAA would be transferred from Wethersfield by the end of the day on 16 January 2024, failing which urgent judicial review proceedings would be begun.

517. Also on 15 January 2024, the defendant wrote to HAA refusing his request for transfer to alternative asylum accommodation, on the basis that he remained suitable to be accommodated at Wethersfield. The stated reasons for that decision included –

"You have claimed that your mental health has deteriorated since arriving at Wethersfield.

We have taken into account your issues with your mental health. You have not provided any medical evidence in support of these claims and so we are unable to make a referral to our Home Office Medical Advisor. You advised on your ASF1 that you get stressed very easily and it causes you to feel anxious, however there was no medical evidence available with your ASF1, and so we have had to rely on information provided in your PAP letter.

A welfare check was conducted on 10/1/2024, and you advised that you did not have thoughts of harming yourself, an appointment was also made for you to see the Mental Health team onsite.

You have further reported that you have been harassed and targeted with violence while at Wethersfield. The onsite welfare team have advised that there is no bullying taking place however you have reported feeling intimidated by some of the other customers, should you experience physical violence this should be reported to the welfare team.

You have also raised concern in relation to your past experience of serious physical violence. While we have taken these claims into account, you have not provided an individual evaluation as required by the [Allocation Policy]. As we have not received an individual evaluation of your needs, we would continue to consider that you remain suitable to be accommodated at Wethersfield".

518. Ms Mascurine says that this decision was issued before the defendant had received HAA's solicitors' letter of the same date providing his medical notes. On 16 January 2024, those medical notes were referred to the HOPA for advice.

519. An appointment for HAA's possible referral into the NRM was arranged for 18 January 2024. Welfare staff reported that he appeared happy at that news. The appointment in fact

took place on 20 January 2024. On 20 February 2024 he was referred. He received a positive reasonable grounds decision on 22 February 2024.

520. On 19 January 2024, HAA's claim for judicial review and application for interim relief were issued. The defendant was served on 22 January 2024. A welfare check on HAA on 23 January 2024 reported that his condition appeared much better.

521. On 24 January 2024, the defendant received advice from Dr Wilson –

"The applicant has not been formally diagnosed with any psychiatric condition and currently is not receiving any specialised treatments, either pharmacological or psychological. The applicant appears to be experiencing adjustment difficulties and isolation in the current setting. The applicant has also been referred for neurological investigations due to his chronic headaches.

The most recent examination did not find evidence of suicidal ideation; however, the applicant presents with certain vulnerabilities, and he is potentially at risk for further suicidal behaviour or threatened to suicide including secondary gain to obtain alternative accommodation. I would therefore advise a low threshold for moving the applicant to alternative accommodation. If possible, I would advise regular mental state examination and risk assessments to see whether the recent crisis is settled or whether his symptoms are persistent".

522. On 26 January 2024, following further consideration of the representations made on HAA's behalf and Dr Wilson's advice, the defendant decided to transfer HAA out of Wethersfield to alternative asylum accommodation. On the same day, HAA was transferred to single room occupancy accommodation elsewhere.

Conclusions

523. The defendant submitted that in all the circumstances, it was reasonable for her to be satisfied that accommodation at Wethersfield remained adequate for HAA's needs throughout the period between his arrival at the site on 4 October 2023 and his removal to alternative asylum accommodation on 26 January 2024. Although during late December and early January 2024 there had been repeated concerns and referrals in respect of HAA's suitability to remain at the site, the medical records showed that the picture was not entirely consistent. It was submitted that the defendant acted reasonably in seeking medical advice from the HOPA and, on receipt of that advice, in deciding to transfer HAA, notwithstanding that the advice did not recommend his immediate removal from Wethersfield.

524. I am unable to accept HAA's argument that the defendant acted unlawfully in finding that accommodation at Wethersfield was adequate for his needs when he was transferred to the site on 4 October 2023. The defendant was reasonably able to be satisfied that allocating him to Wethersfield would provide him with such accommodation, on the basis of the information available to her at that time.

525. The more difficult question is whether the defendant acted unlawfully in failing to relocate HAA to alternative asylum accommodation sooner than she in fact did on 26 January 2024.

526. Although the defendant acted reasonably in accommodating HAA at Wethersfield in October 2023, it is the case that the past traumatic experiences which he reported both during his screening interview (as recorded in his completed questionnaire) and in his

completed ASF1 form were sufficient to put the defendant on notice that this was a potentially vulnerable individual whose accommodation in room sharing at a large occupancy site such as Wethersfield may become unsuitable over time. Not only did he clearly report the trauma of seeing members of his immediate family being murdered, but also he had himself fled Somalia under threat of being killed himself by the same terrorist organisation. Moreover, on 1 November 2023 he stated in his ASF1 form that he was struggling at Wethersfield and feeling lonely and isolated for want of any compatriots at the site. He made that report having now lived at Wethersfield for the better part of one month, a clear signal that all was not necessarily well with him.

527. The defendant has emphasised the importance that she places on information gathered from the screening interview and the ASF1 process both in making initial decisions on allocating asylum accommodation and in monitoring asylum seekers' suitability to remain at their current accommodation. The defendant ought reasonably to have had those indicators to which I have referred well in mind when matters escalated in late December 2023 and early January 2024.

528. HAA's behaviour during the period following the welfare check on 23 December 2023 was quite rightly a cause for very considerable concern amongst welfare staff, safeguarding officers and Essex County Council Social Services. It is not suggested that his threatened suicide on 27 December 2023 was anything other than genuine. The contemporary reports of his mental state and behaviour which followed up on that incident led to multiple safeguarding referrals and requests that the defendant urgently review his suitability to remain at the site. The correspondence and records drawn to the defendant's attention during that period or otherwise available to her prior to 15 January 2024 ought reasonably to have raised serious concern as to whether accommodation at Wethersfield remained adequate to meet HAA's individual needs, even to the low legal standard which applies under sections 95 and 96 of IAA 1999. As I have pointed out, the defendant's evidence in response to the systemic challenges places considerable weight on the role of welfare officers at the site in providing her with the information she needs to be able to monitor asylum seeker's suitability to remain at the site in accordance with the Allocation Policy. Emphasis is also placed on the role of safeguarding officers for that purpose.

529. In HAA's case, on 9 January 2024 a welfare officer who had known him since he arrived at Wethersfield in early October 2023 reported a significant deterioration in his mental state which caused her clear concern. That report followed a face-to-face meeting which had been requested by the Home Office Safeguarding Hub following the site's safeguarding manager's recommendation on 8 January 2024 that HAA be relocated from Wethersfield as soon as possible.

530. These matters were central to the assessment of HAA's suitability to remain at Wethersfield when the defendant came to consider that question on 15 January 2024. The only indication to them in the defendant's letter of 15 January 2024 refusing HAA's request for transfer was that *"we have taken into account your issues with your mental health"* and that *"we have had to rely on information provided in your PAP letter"*. Reference was made to a welfare check conducted on 10 January 2024. There was neither reference to nor consideration of the serious concerns raised prior to that date in multiple referrals. The inference is that the report of the welfare check on 10 January 2024 had sufficiently overcome the safeguarding and welfare concerns raised during the period following the incident on 27 December 2023. The letter made no reference to that incident and to HAA's threatened suicide attempt.

531. The questions whether asylum accommodation at Wethersfield remained adequate for HAA's needs, and whether he remained suitable to be accommodated there applying the Allocation Policy, were of course for the defendant to determine, acting reasonably. They are emphatically not questions for this court. However, it is the proper function of this court to examine whether in purporting to answer those questions, the defendant took proper account of all matters which were material to her determination. I have reached the conclusion that on 15 January 2024, the defendant has been shown not to have taken properly into consideration powerful evidence to which she herself, as a matter of policy, attaches primary significance. Had she done so, she might well have reached the conclusion that, applying her Allocation Policy, HAA's mental health was under serious strain due to the worsening of his feelings of isolation and anxiety in recent weeks and justified his removal to alternative asylum accommodation. It is striking that Dr Wilson saw HAA's evident vulnerabilities as justification enough to advise a low threshold for moving him, irrespective of any formal diagnosis. The adjustment difficulties and isolation in HAA's current setting to which Dr Wilson referred should have been just as evident to the defendant when she made her determination on 15 January 2024. There was a body of evidence available to her far in excess of what had been said in the pre-action letter of 21 December 2024.

532. For these reasons, I conclude that HAA's claim on ground 2 is made out. In my judgment, HAA has established that the defendant's decision of 15 January 2024 that asylum accommodation at Wethersfield was adequate to meet his needs was unlawful.

Ground 4 – breach of duty to make reasonable adjustments under section 29(7) of EA 2010

533. The defendant does not dispute that HAA was suffering from a mental impairment whilst he was accommodated at Wethersfield. Both Professor Katona and Professor Greenberg are of the opinion that HAA was suffering from a significant mental illness before he was accommodated at the site. Their diagnosis differs in that Professor Katona diagnoses PTSD contributed to by the death of HAA's father, the danger to HAA's own life and the assault he suffered at the Kenyan border; whereas Professor Greenberg diagnoses a prolonged grief disorder driven primarily by the fact of HAA's father's death. I note that Professor Greenberg examined HAA on 28 June 2024. Professor Katona examined HAA on 21 May 2024 and 12 June 2024.

534. Neither expert is of the view that HAA's mental impairment was caused by his being accommodated at Wethersfield. Conversely, they are agreed that HAA's mental health conditions were exacerbated by his being accommodated at the site. They agree that HAA has shown some improvement in his mental condition since being accommodated away from Wethersfield. Both agreed that HAA's mental condition was contributed to by his feeling that the head injury which he had suffered when beaten up had left him with a blood clot in his head.

535. As to prognosis, Professor Greenberg is of the opinion that HAA continues to suffer from a prolonged grief disorder but that the severity of his condition had reduced over recent months reflecting the reduction in stress he had experienced since leaving Wethersfield. In his view, HAA's long term prognosis had not been affected by his experiences at Wethersfield. Professor Katona was of the opinion that HAA continued to suffer from PTSD with complex features but agreed that the severity of his condition had reduced over recent months reflecting the reduction in stress he had experienced since leaving Wethersfield. He noted that multiple traumas have a cumulative effect. He considered that Wethersfield

contributed significantly but to a relatively small extent to HAA's cumulative trauma and therefore to his prognosis.

536. As to HAA's degree of mental impairment, Professor Greenberg considered that HAA's present level of functional impairment would not be categorised as substantial. Whereas Professor Katona considered that HAA continued to have substantial impairment. He acknowledged that recent evidence of HAA's participation in football and swimming, regular Mosque attendance and English lessons suggested a degree of recent improvement and reduction in the level of HAA's disability. There was disagreement between the experts as to the likely number of treatment sessions which HAA would require.

537. Having read both Professor Katona's and Professor Greenberg's psychiatric reports, I found both to be conscientiously and cogently argued responses to the questions put to them for consideration. Both experts have very considerable experience. Both had the benefit of interviewing HAA shortly before they prepared their reports and some months after HAA had been transferred from Wethersfield to alternative asylum accommodation. They had both sought to identify matters on which they were in agreement and to explain why they differed on other matters. Neither party applied to cross examine the other's expert.

538. In these circumstances, I am unable to reach clear conclusions on the points of difference identified by Professor Katona and Professor Greenberg in their joint statement. I must therefore draw my conclusions on HAA's claim under ground 4 against that background. In the light of the parties' submissions, the critical point of difference between them appears to be whether HAA has established on the evidence before the court that he suffered from a mental impairment which had a substantial and long-term effect on his ability to carry out normal day-to-day activities.

539. On that point, I find Professor Greenberg's report to be of particular assistance. At paragraphs 24.9 and 24.10 he reports –

"Given that HAA is currently able to look after his day-to-day needs, play football twice a week if not more often, walk and swim locally, often with a friend, attend the Mosque regularly and English classes once a week (he spoke English to a good level when I met him), then in my view there is not a long term and <u>substantial</u> effect of his mental health problems on his ability to carry out day-to-day activities. I note that he is not allowed to work currently, but he had told me that he was keen to work. In my view, if HAA were allowed to work, then he would be more than capable of working as a cleaner, in a hotel, as a cleaner or on a building site…I also note that whilst he reported finding it difficult to concentrate on what other people were saying at times, this was not evident until at least an hour into the interview with me. In my experience, it is not unusual for people to find it hard to concentrate for long periods of time and this does not necessarily indicate the presence of a mental health disorder such as PTSD or depression (it may indicate in a condition such as ADHD which I did not assess for, if present this condition would have been evident from his childhood).

Thus, whilst I acknowledge that it would be a matter for the Court to determine whether HAA is disabled within the meaning of the [EA 2010], if I were asked my opinion on this matter, I would express the view that he is not. I accept that he continues to report some symptoms which are consistent with a diagnosis of a persistent grief disorder, including poor sleep, nightmares, recurring thoughts of his father's death, feeling less social than he used to be and finding it hard to concentrate for prolonged periods, such symptoms do not,

in my view, lead him to experience a substantial impairment on his ability to carry out day-to-day activities".

540. Professor Greenberg's assessment was based on a remote interview with HAA on 28 June 2024, which he records in detail in sections 1 to 10 of his report. Professor Greenberg provides a cogent analysis of HAA's then current mental state in section 11 of his report. In the light of Professor Greenberg's expert evidence, I am unable to find that HAA had established that his continuing mental impairment was one which had a substantial and long-term effect on his ability to carry out normal day-to-day activities. I accept that his mental health deteriorated during the period of his accommodation at Wethersfield, particularly during the final month of his time at the site. However, the expert evidence reveals a substantial degree of common ground that HAA's mental impairment has ameliorated since he was transferred to alternative asylum accommodation in late January 2024.

541. I conclude that HAA did not suffer from a disability within the meaning of section 6 of EA 2010. Accordingly, HAA does not succeed in his claim that the defendant was in breach of her duty under section 29(7) of EA 2010.

Ground 6b – race discrimination, harassment and victimisation

The issue

542. HAA contends that the defendant and/or agents subjected him and others to direct race discrimination and victimisation contrary to sections 13, 27 and 29(6) of EA 2010.

543. The specific allegation is that the defendant subjected Black African residents, including HAA, to a *"deliberate policy of racial segregation onsite"*. The factual basis for this alleged deliberate policy of racial segregation is the alleged advice given by staff to Black African residents following the incident on 26 December 2023, which Mr Butler accepts may have been racially motivated. I have set out what staff are alleged to have advised in my analysis of the evidence under ground 6a above. HAA says that staff advised the victims of the assault on 26 December 2023 not to travel around the site alone, not to use common areas and to stay together.

544. As I have pointed out, in his witness statement (at paragraph 190) Mr Butler gives evidence in response. I should again set out what he says –

"The Claimants say that residents are afraid to use common space or join activities, and are effectively confined to their own rooms for fear of their own safety. I recognise that on occasion after incidents such as the one described above, residents are afraid to leave their rooms. There are Security Officers in all communal spaces, to ensure those spaces are safe environments, if people do want to leave their rooms. The Claimants have also alleged that Black African residents were advised by welfare staff not to go to common areas, and to stay in groups after the incident described above on 26 December 2023. I am not aware of any such advice having been given at any time. I have spoken to a CRH site manager, who also was not aware of any such advice having been given, and who told me that he did not believe it is the kind of thing that a welfare officer would say. Further, the Claimants say that after this incident advice given by contractors implicitly acknowledged that Black African residents did not have safe and equal access to common areas, activities and services. I do not recognise this, and I have followed up with CRH who agree".

545. In the light of Mr Butler's response, I reject the contention that there is any or any sufficient evidence to support the existence or operation of a deliberate policy of racial segregation at Wethersfield. HAA contends that Mr Butler's response does not amount to a positive denial. I disagree. In my view, Mr Butler's evidence is clear. Neither he nor CRH as site operator recognise the alleged advice or policy upon which this ground of challenge is founded.

546. Nor am I able to accept that there is evidence that the defendant or those operating asylum accommodation at Wethersfield on her behalf subjected HAA or Black African residents to victimisation under section 27(1) of EA 2010. The basis for this allegation is that staff at the site either consciously or unconsciously ignored or trivialised as mere bullying the racial motivation for the incidents recorded on 26 December 2023 and reported to them on other dates by HAA and other Black African residents. I am asked to infer that the defendant treated HAA and other Black African residents with *"hostility"* as victims of racial harassment and saw their complaints as inconvenient.

547. This allegation is again not sustainable, in the light of Mr Butler's response in his witness statement to which I have referred in paragraphs 382-384 and 506-507 above.

548. Finally, and for essentially similar reasons, I reject HAA's contention that the evidence supports the conclusion that the defendant is guilty of indirect discrimination against Black African asylum seekers accommodated at Wethersfield under section 19 of EA 2010.

Ground 7 – article 8 of the ECHR

549. Again, I need not repeat my explanation of the approach which I have followed in considering this ground in relation to TG's claim above. Applying that approach to my findings in relation to HAA, it is clear that there is neither the level of culpability nor the severity of interference with HAA's personal and private life to justify the conclusion that the defendant has acted in contravention of his rights protected under article 8 of the ECHR. As was the case with MN, HAA was lawfully accommodated at Wethersfield until shortly before he was transferred to alternative asylum accommodation on 26 January 2024.

MJ's Claim

Ground 1(A) - Breach of sections 95 and 96 of IAA 1999

550. MJ seeks a declaration that in accommodating him at Wethersfield the defendant failed to discharge her statutory duty pursuant to regulation 5 of the 2005 Regulations and sections 95 and 96 of IAA 1999 to provide him with asylum support by way of accommodation which was adequate for his needs, as Wethersfield was not suitable for him in his personal circumstances.

551. MJ is a 26-year-old Afghan national. When he was eight years old, his father was killed by the Taliban because of his family's support for the Afghan Army. The Taliban also killed one of his brothers. MJ later fled Afghanistan for fear of the Taliban and arrived in the UK on 17 September 2023. He claimed asylum on arrival. On 18 September 2023 he received his screening interview at Manston.

552. MJ's questionnaire records that he made his way from Afghanistan to the UK travelling overland by car, by bus and on foot. His travel was organised by his maternal uncle, who had provided him with money to support himself. During his journey he had stayed in different places, on the street and in "jungles". He had previously been to Germany. He

wished to remain in the UK for his safety. His stated reasons for being unable to return to Afghanistan were that his brother had been killed there and he himself would have been killed, had he remained there. He feared that he would be killed if he returned. He said that he had never been exploited nor had any reason to believe that he would be exploited. He said that he had no medical conditions and nothing to say about his physical or mental health.

553. On 21 September 2023 MJ was transferred to Wethersfield. On 27 September 2023, he completed his ASF1 form with the assistance of Migrant Help. He said that he had no physical or mental health problems. In answer to the question whether he had any disability or had been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, his answer was no. The defendant wrote to him granting him support under sections 95 and 96 of IAA 1999. He remained accommodated at Wethersfield.

554. On 1 November 2023, Care4Calais sent a pre-action letter to the defendant challenging the decision to accommodate MJ at Wethersfield. The letter stated that MJ had suffered a deterioration in his mental health since being accommodated at the site. He had reported depression and anxiety. It was said that MJ had been verbally abused by staff at Wethersfield. A particular incident was referred to on 2 October 2023 in which a security guard had told MJ to go back to his own country. MJ had not felt able to seek assistance for his deteriorating mental health as he had come to distrust staff at the site. It was claimed that MJ was now suffering from "serious mental health issues" which were being exacerbated by staff mistreatment and detention like conditions. Wethersfield was not adequate accommodation for his needs. Moreover, the defendant had failed to assess his suitability for accommodation at the site in the light of his deteriorating mental health. The defendant was asked urgently to transfer MJ to alternative asylum accommodation.

555. On 8 November 2023, the defendant's solicitors responded stating that the defendant had inquired but found no record of the alleged incident on 2 October 2023. The defendant would continue to investigate MJ's allegations of ill treatment, and requested specific information from MJ to assist her in doing so. It was reported that MJ's well-being was being monitored at the site. He was invited to engage with medical staff.

556. On 22 November 2023 the defendant's solicitors sent a full response to MJ's pre-action letter. The allegation that accommodation at Wethersfield was detention like was denied. The defendant said that the decision to accommodate MJ at the site had been lawful on the basis of the information reasonably available to the defendant, but that the defendant would revert with a further decision on suitability as soon as possible. Meanwhile, MJ's mental health would continue to be monitored at regular welfare checks and he would be signposted to the relevant onsite medical services.

557. On 23 November 2023, Care4Calais referred MJ to the Home Office Safeguarding Hub requesting an assessment of his mental health needs and reporting that he was mentally distressed, severely depressed and has expressed escalating thoughts of self-harm and suicide.

558. His medical records at the onsite clinic show that he presented on 23 November 2023 as struggling to sleep and feeling depressed, saying that the site was like a prison. On 28 November 2023 he is recorded as feeling stressed due to seeing fighting at the site and sometimes having suicidal thoughts, though with no active plans to carry it out. On 29 November 2023 MJ was refused a referral to specialist mental health services and

recommended to seek treatment for depression from the GP. On 7 December 2023 he was examined at the onsite clinic. The record shows no suicidal ideation but low mood and frequent memories of his brother who had been killed in Afghanistan. He was diagnosed with a depressive disorder and prescribed a course of anti-depressants. On 15 December 2023 his solicitors applied for access to his medical records.

559. On 13 December 2023, a welfare check was carried out on MJ at the request of the Home Office Safeguarding Hub. No concerns were reported. He was going into town and attending meals. He had a mental health appointment that afternoon. On the same date, MJ had a telephone appointment with Dr Gosslau of Doctors of the World. She wrote to the onsite medical team at Wethersfield advising that MJ should be seen urgently at a face-to-face consultation with a GP. He was considered to be suffering from severe mental distress but with no suicidal plans. He had been taking anti-depressants for a fortnight but had yet to feel better. He needed a review of his treatment, a repeat prescription and psychological support. The defendant says that Dr Gosslau's letter was not disclosed to the Home Office until 4 January 2024.

560. On 21 December 2023, the defendant wrote to MJ informing him that his request for transfer to alternative accommodation had been refused on the basis that Wethersfield remained adequate to meet his needs and that he was considered to be suitable to be accommodated at the site –

"You have claimed that you have suffered a significant deterioration in your mental health and your health needs have not been addressed. You report that you have suffered from anxiety and depression since being accommodated at Wethersfield.

We have taken into account your issues with your mental health. You have not provided any medical evidence in support of these claims and so we are unable to make a referral to the Home Office Medical Advisor. There was no additional evidence available on your ASF1 in relation to specific mental or physical health concerns, and so we have had to rely on information provided in your PAP letter.

We have also taken into account your claim to have experienced poor treatment by staff at Wethersfield, citing a specific incident that took place on [2 October 2023]. This was raised with the welfare team on site and they advised that they were not aware of this incident and there is no record of police attending the site on this date. If specific information can be provided in regard to this, our team would be able to look into this further.

Wethersfield is a non-detained site. You are free to leave Wethersfield as you wish. Please note that Wethersfield has an onsite medical centre that is comparable to the local population. Residents can book appointments to see health care professionals onsite".

561. On 4 January 2024 MJ's solicitors wrote a further pre-action letter to the defendant. Enclosed with that letter were MJ's medical records, Dr Gosslau's letter of 13 December 2023 and the psychiatric report of Dr Galappathie dated 3 January 2024. MJ's solicitors said that there was now independent expert evidence which verified MJ's diagnosis of mental illness. They sought an assurance that the defendant would transfer MJ to adequate alternative accommodation by 10 January 2024. It was contended that the defendant's decision of 21 December 2023 had failed properly to apply the suitability criteria in the Allocation Policy to MJ's needs. Accommodation at Wethersfield was inadequate for MJ's

needs as he was a vulnerable individual with rapidly deteriorating mental health as a result of being accommodated at the site and without access to effective medical treatment.

562. A further pre-action letter followed on 5 January 2024 which referred to MJ's account of an incident on 4 January 2024 in which he allegedly intervened in defence of a friend at the site who was being assaulted by a security guard in the canteen. MJ said that he also had been assaulted. He had been arrested and charged with affray and common assault; and released on conditional bail. MJ subsequently told Professor Greenberg on 3 May 2024 that he had later pleaded guilty and been sentenced to community service and a fine.

563. In his report, Dr Galappathie said that he had examined MJ via video link on 18 December 2023. The examination lasted about one and a half hours. He diagnosed MJ as suffering from single episode depressive disorder, without psychotic symptoms, generalised anxiety disorder with severe symptoms of anxiety and PTSD with severe symptoms. He found the diagnosis of depression to be corroborated by MJ's medical records at the site. He gave his opinion that were MJ to remain at Wethersfield, where the treatment he required was not available to him, his mental health was likely gradually to worsen. He said –

"In my opinion, MJ requires an initial period of six months stabilisation therapy followed by at least two years of individual hour-long psychological therapy sessions in order to meaningfully recover from his current mental health problems. The total period of treatment being around 2.5 years. He requires specialist trauma focused cognitive behavioural therapy and eye movement desensitisation therapy in order to meaningfully recover. In my opinion he would require a grant of leave to remain for at least five years in order to feel safe, secure and to be able to engage and benefit from the treatment that he requires.

In my opinion his mental health is not being adequately managed at Wethersfield base. He has been commenced on treatment with antidepressant medication in the form of Citalopram 20mg per day but has not been able to attend his follow-up appointment which was due to take place two weeks following his initial appointment when his antidepressant medication was started. He has not been able to take part in psychological therapy. In addition, he remains in a restrictive environment which he feels is like a prison where there are security guards and where he reports frequent fights take place. In my opinion the environment where he is placed at Wethersfield does not appear appropriate or suitable for him to engage and benefit from the treatment that he requires".

564. On receiving Dr Galappathie's psychiatric report on MJ, the defendant sought advice from Dr Wilson who having reviewed the documentary record, including MJ's medical notes, Dr Gosslau's letter and Dr Galappathie's report, responded on 19 January 2024 with the following advice –

"In general, the asylum seeker population has a higher baseline risk of suicide than the general population, and therefore it cannot be reasonably determined that all asylum seekers are simply low risk, even those without any pre-existing mental health needs. That said, the best determinant of increased suicide risk is previous suicidal behaviour, particularly in the last year; some studies indicate an elevated risk of as much as 100 times if this behaviour has occurred in the past year. In the applicant's case there is no previous history of suicidal behaviour, particularly in the past year. He has only recently commenced antidepressant medication at a low dosage and therefore it would be reasonable to await further review by his GP to assess response to treatment. At present, I would not consider the applicant to be in a high-risk category or to have serious mental health issues given that

he is able to otherwise engage in various activities. The applicant clearly finds the current environment stressful, but as laid out in the Home Office response, the applicant is not in an incarcerated setting and there are no curfews in place. He has also been encouraged to engage in normal physical activities and his situation is described as situational which would not typically be most suitable in terms of response to psychotherapy.

At present, I would not consider the current accommodation unsuitable and would advise that suicide risk assessment prospectively as instructed by the applicant's legal advisors is not likely to be meaningfully accurate, although it should be acknowledged that the applicant, like many other displaced asylum seekers, has a higher baseline suicide risk than the general population.

If there are changes in the applicant's mental state, functioning or risk, I would advise that these are addressed promptly by the on-site medical team and GP and the applicant is re-referred to local mental health services".

565. On 24 January 2024, the defendant wrote to MJ informing him that his further request for transfer to alternative accommodation had been refused, again on the basis that Wethersfield remained adequate to meet his needs and that he was considered to be suitable to be accommodated at the site. The letter referred to MJ's disclosed medical records, Dr Gosslau's letter and to Dr Galappathie's report, and enclosed Dr Wilson's advice –

"The onsite medical records indicate that, on 7 December 2023, you were diagnosed with depressive disorder and were prescribed anti-depressant medication, Citalopram (20mg).

The letter from Doctors of the World states that you are suffering from 'severe mental distress' and need psychological support. The letter further states that you have 'no suicidal plans'.

Dr Galappathie's report indicates that you were assessed on 18 December 2023 and have been diagnosed with 'Single episode depressive disorder, moderate, without psychotic symptoms', 'Generalised anxiety disorder', and *'Post Traumatic Stress Disorder'. The report states at paragraph 127:*

"In my opinion, whilst he has not previously self-harmed and reports no current plans to harm himself, MJ still presents with a potential risk of self-harm and suicide'.

Your request and supporting evidence were referred to the [HOMA] for consideration. The [HOMA] provided the enclosed advice on 19 January 2024.

Consideration has been given to your claim that your mental health condition means that you are unsuitable for accommodation at Wethersfield. Upon consideration of all the information available, including your evidence and advice from the [HOMA], it is not considered that you are suffering from serious mental health issues where there is a high risk of suicide, serious self-harm or risk to others. You are not therefore considered to be a person with complex health needs, and accordingly are not unsuitable in accordance with [version 10 of the Allocation Policy]".

566. MJ issued his claim for judicial review which was served on the defendant on 25 January 2024. On the same day, Ms Mascurine reports, a welfare check conducted on MJ when at lunch in the canteen recorded him as being in better spirits and going out to see friends in Chelmsford. A further welfare check on 31 January 2024 recorded MJ as seeming to be fine

although maintaining his request for transfer away from the site. Welfare checks reported in similar terms on 4 February and 19 February 2024.

567. On 26 January 2024, MJ's solicitors filed an urgent application for interim relief. In his witness statement of the same date, MJ said that he was taking painkillers for his headaches and had been prescribed anti-depressants for his depression, but had run out. He did not want to go back to the medical clinic, so he had borrowed tablets from friends. It was not a steady supply and he felt worse. He said that the medication hadn't helped and he needed *"to be moved from this prison before I die"*.

568. In a further witness statement dated 27 February 2024, MJ referred to an incident which occurred in the early hours of 21 February 2024. He had been prescribed a stronger anti-depressant but had not yet collected the medication. He said that he had attended a telephone appointment with a therapist in the morning of 20 February 2024 but had found it unhelpful. He referred to a telephone consultation with his solicitor on 22 February 2024 during which he gave the following account –

"I told her about my suicide attempt on Tuesday 20 February 2024. I informed her it was around 12:00 midnight when I went to sleep, and I was thinking of how depressed I am and that I am going to was going to attempt suicide. I then don't remember anything except waking up in an ambulance. The paramedics told me that I had jumped from a high window in an attempt to commit suicide. I was taken to Broomfield Hospital in Chelmsford. I was discharged from hospital after speaking with a nurse and sent back to Wethersfield Air Base on 21st February 2024".

569. On 1 March 2024, Mr Butler made a witness statement in response to MJ's application for interim relief, in which he stated his understanding of events on 21 February 2024. He said that at 2:20am on 21 February 2024 the site manager received a call from security staff stating they had been informed that MJ had jumped out of the first-floor window of his accommodation block. On attending the scene, welfare staff and the site manager found MJ lying on the grass outside his block. The site manager described MJ as fully responsive and not complaining of any pain. His roommates were supporting him, but neither they nor any site staff had seen him jump.

570. An ambulance was called as the welfare team were concerned that MJ may have been injured. An ambulance arrived at 3:00am and MJ was taken to hospital in Chelmsford for assessment. MJ was accompanied by a fellow resident. MJ returned to Wethersfield at 1:45pm on 21 February 2024, having been discharged from hospital. MJ was asked to visit the medical centre where he discussed the incident with the onsite medical team who confirmed that the hospital wished him to return there for a further review. He refused to do so. Welfare staff referred him back to accident and emergency that afternoon, as he stated he was feeling suicidal. At 3:59pm, MJ was logged as having left Wethersfield to travel to Chelmsford using on site transport. Due to the active suicidal status placed upon MJ and out of concern for his welfare, Mr Butler instructed the welfare staff to contact the police. He was later informed that MJ had returned to Wethersfield and again been recommended to return to A&E as directed by the medical team. He again declined to do so and said he wished to return to his room. He was described by welfare staff as being quite calm. Welfare staff were instructed to check up on MJ overnight. The site manager completed an incident report.

571. Mr Butler says that it would not normally be possible to jump from the upper window of MJ's accommodation block due to the locking mechanism. However, it is possible that a lock had been broken to allow the window to be opened further. In his psychiatric report on MJ of 15 May 2024, Professor Greenberg says that he had examined the medical notes of MJ's attendance at hospital following the incident on 21 February 2024 and noted that he had received a full CT scan. There was nothing to indicate that MJ had suffered any acute injury from the alleged fall from an upper window.

572. Ms Mascurine says in her witness statement that following the incident in the early hours of 21 February 2024, MJ was subject to two welfare checks later that day. At the first welfare check, MJ said that he had been taken to A&E overnight. He looked tired and was upset. He was not eating. He said that he wished to move to alternative accommodation. He stated that any medication he was taking for his mental health was not working because of his continued accommodation at Wethersfield. He was informed of a mental health appointment scheduled for 22nd February 2024. When welfare offices attempted to carry out a second welfare check, MJ was found to be asleep in his room.

573. Two follow up welfare checks were carried out on 22 February 2024. When welfare officers arrived to conduct the first check MJ was again found sleeping in his room. At the second welfare check MJ seemed weak because he was not eating. He again stated that he was waiting for his relocation from Wethersfield on the basis of his mental health. He repeated his view that his medication was currently not helping him but would improve when he moved to alternative accommodation. He said that he had been told that this was so during his time at A&E on 21 February 2024. MJ had mental health appointments on 20 February and 22 February 2024.

574. On 27 February 2024, the welfare team carried out a further follow up check, during which MJ stated that he felt a little depressed. Welfare staff offered to arrange a doctor's appointment for him which he refused. He said that he would like to attend a welfare appointment the following day which staff agreed to arrange. He said that he had been eating and felt better generally. He was recorded as eating dinner on the 26 February 2024 and breakfast on 27 February 2024.

575. An incident report completed by the site manager records that, on 29 February 2024, an ambulance arrived at Wethersfield following receipt of a call from or on behalf of MJ requesting medical assistance. Welfare staff searched for him in his room, accommodation blocks and other areas of the site but could not locate him. He did not respond to telephone calls. Welfare staff spoke to one of his friends but he had no information as to MJ's whereabouts. The ambulance left the site and closed the request. Welfare staff continued to search the site for MJ in case he required medical assistance. In his fourth witness statement, MJ appears to suggest that he heard his name being called but did not respond as he saw no point, since he didn't think he would be able to move away from Wethersfield.

576. On 1 March 2024, McGowan J ordered MJ's transfer to adequate alternative accommodation within 2 working days, stating that the balance of convenience favoured the grant of interim relief. On 6 March 2024, MJ was transferred to alternative asylum accommodation.

577. On 3 May 2024 Professor Greenberg interviewed MJ by video link. MJ was living in hotel accommodation in Ealing, having been accommodated there under sections 95 and 96 of IAA 1999 since 5 March 2024, following his transfer from Wethersfield. In his psychiatric

report of 15 May 2024, Professor Greenberg was critical of Dr Galappathie's earlier report for failing properly to consider the range of possible diagnoses in MJ's case –

"I understand that Dr Galappathie had interviewed MJ in December 2023 and his presentation at that time appears to have been starkly different to how he presented to me in May 2024. When I saw him, he had been living in hotel accommodation, away from Wethersfield, for around two months. When I met with him, he reported feeling happy and he confirmed that he did not consider that he had any current mental health difficulties. Whilst of course Dr Galappathie could not have been completely sure that MJ's mental health problems would substantially improve when he was moved away from Wethersfield, I am surprised that this possibility was not explored in Dr Galappathie's report. In my view, as I will discuss below, it is now clear that MJ's previous mental health condition would have been correctly categorised as an adjustment disorder.

I note that Dr Galappathie had not identified that MJ had been in Germany for around a year prior to coming to the UK; when I spoke with MJ about this, he told me that he had come to the UK as he was not granted asylum in Germany and he was afraid that he would be deported from there. He did not describe having any substantial mental health difficulties in Germany".

578. Professor Greenberg stated his opinion that the psychological symptoms that MJ reported during his time at Wethersfield were best categorised as an adjustment disorder, a condition described as *"a maladaptive reaction to an identifiable psychosocial stressor or multiple stressors... that usually emerges within a month of the stressor. The disorder is characterised by preoccupation with the stressor or its consequences, including excessive worry, recurrent and distressing thoughts about the stressor, or constant rumination about its implications, as well as by failure to adapt to the stressor that causes significant impairment in personal, family, social, educational, occupational, or other important areas of functioning"*.

579. Professor Greenberg said that the clear onset of significant symptoms in response to being at Wethersfield, the fact that MJ's symptoms were better when he was away from the site in local towns, and that they rapidly resolved once he was moved away from Wethersfield, all supported the diagnosis of an adjustment disorder.

580. Professor Greenberg offered his opinion in response to the question whether MJ had suffered from a mental health disorder whilst at Wethersfield which amounted to a serious mental health issue where there was a high risk of suicide, serious self-harm or risk to others; and whether MJ's mental health disorder gave rise to special needs or complex needs which could not be met at Wethersfield. The question was plainly intended to obtain Professor Greenberg's opinion as to whether, on the basis of his psychiatric assessment of MJ in May 2024, he considered that MJ had been or become unsuitable for accommodation at Wethersfield on the application of the suitability criteria in the Allocation Policy. Professor Greenberg's response was as follows –

"In my view, his adjustment disorder did not amount to a serious mental health issue in accordance with the definition within the question above. Adjustment disorders vary from mild disorders which have relatively little impact on emotions, cognitions, somatic symptoms [e.g. headaches, pains, stomach complaints etc.] and behaviours to severe disorders which can be associated with extreme behaviours including behaviours leading to death [either of self suicide or others via homicide]. It would thus be wrong to classify a

particular diagnosis as a serious mental health issue or not; in order to make this assessment, in my view it is necessary to consider the impact of the condition and emotions, cognitions, somatic symptoms… and behaviours.

As I stated above, it is evident that MJ's symptoms were not persistently severe and in my view, there is considerable evidence that they varied in intensity. For instance, on 28th November 2023, MJ reported struggling to sleep and some thoughts of suicide, but no plans. On 7th December 2023, he reported being anxious, low mood and poor sleep, but he did not have any suicidal thoughts. On 5th and 10th January 2024, he did not report any concerns to welfare staff, but he reported challenges with anxiety and depression to them on 15th January 2024 although he was noted to have a positive attitude and he seemed to be improving at that time. Welfare checks on 1st and 4th February 2024 noted that he was good and he was still well when welfare staff spoke to him on 19th February 2024. Even though a welfare check on 27th February 2024 found him be 'a little depressed', he did not want to speak with the doctor, but did want to attend a welfare appointment the next day. He told welfare staff he had been eating, having previously reported poor appetite and indeed he was seen to be eating on 26th and 27th February 2024. I also note that he had told me that he had regularly gone on the transport to local towns and enjoyed these periods away from Wethersfield very much.

In my view, whatever view the Court takes in respect of the alleged attempted suicide on 21st February 2024, his condition was not serious [i.e. persistent, significantly impairing and posing serious self harm risk or risk to others] and it did not require complex treatment approaches. In my view, it is unlikely that any more intense treatment provided for him whilst he was at Wethersfield would have made much difference as it was clear that the main stressor he was concerned about was being at Wethersfield".

581. On 18 June 2024 Dr Galappathie provided a further psychiatric report on MJ, having interviewed him again on 25 May 2024 by video link to the hotel accommodation where he was now living. He gave his opinion that MJ was now no longer suffering from any mental disorder. He stated that he was in agreement with Professor Greenberg that MJ had not been suffering from depression, generalised anxiety disorder or PTSD when at Wethersfield and that he most likely had an adjustment disorder whilst at the site. He said that MJ had been *"stable in his mental state"* prior to his placement at Wethersfield. He agreed that MJ had not had flashbacks whilst at Wethersfield. MJ's mental state had rapidly improved and his symptoms had resolved following his removal from Wethersfield. Dr Galappathie described MJ as clearly being *"a resilient individual"*.

582. Dr Galappathie offered the following opinion in response to the question whether MJ's mental health was being adequately managed whilst he was at Wethersfield –

"In my opinion his condition was not adequately managed at Wethersfield. In my opinion, he should have been considered for more urgent transfer out of Wethersfield before his mental state deteriorated to the extent that occurred whilst at Wethersfield, such that he attempted to commit suicide by jumping from a height. In my opinion, it is likely that his worsening adjustment disorder, leading to frustration and increased suicidal thoughts leading to the attempted suicide occurring. It should be noted that research has identified that adjustment disorder is significantly associated with self-harm and suicide in a similar way that depression is associated with self-harm and suicide and that research studies have identified that self-harm and suicide rates are increased in adjustment disorder. In my opinion, he would have benefited from having earlier treatment with antidepressant

medication as well as the provision of psychological therapy although this is unlikely to have been effective whilst he was placed at Wethersfield. In my opinion, whilst placed in what he described as a restrictive, overcrowded and distressing environment, where he felt unable to leave and where there were frequent fights would have been distressing, re-traumatising and prevented any therapy from being effective.

…

In my opinion the medication provided for him namely Citalopram 20mg was suitable treatment for him, given the depressive symptoms that he described at the time. However, the medication would be unlikely to have been effective given that it would not have changed the situation and environmental factors that were adversely affecting him whilst at Wethersfield".

583. In their statement of agreement and disagreement which Dr Galappathie and Professor Greenberg signed on 10 July 2024 and 11 July 2024 respectively, they record their agreement that the correct diagnosis of the mental impairment from which MJ suffered whilst at Wethersfield was an adjustment disorder, which had been precipitated by his placement at Wethersfield due to the situational factors he experienced there. They agreed that MJ's adjustment disorder had now fully resolved and that he was no longer suffering from any identifiable mental health condition. His removal from Wethersfield was effectively his *"treatment"* as it relocated him from the situational factors at Wethersfield that caused his adjustment disorder.

Conclusions

584. It cannot be said that the defendant acted unreasonably in deciding that accommodation at Wethersfield was adequate to meet MJ's needs when he was placed there in late September 2023. There was no good reason for the defendant to be other than satisfied, on the basis of the available information, that the asylum accommodation at Wethersfield was suitable to meet MJ's needs. That view now derives support from Dr Galappathie's opinion in his second report that MJ had been stable in his mental state prior to his placement at Wethersfield.

585. However, the gravamen of MJ's complaint, as persuasively advanced by Mr Goodman KC and Ms Butler, was that the subsequent, evident deterioration in MJ's mental health whilst he was accommodated at Wethersfield ought properly to have caused the defendant to determine that the site was not adequate to meet MJ's needs. They submitted that the defendant, acting reasonably in the discharge of the duty imposed by sections 95 and 96 of IAA 1999 and regulation 5 of the 2005 Regulations, ought to have transferred him to adequate alternative asylum accommodation upon being presented with the evidence of the clear decline in his mental state. It was submitted that accommodation which caused an asylum seeker placed there to suffer an evident and significant deterioration in his previously stable mental health could not reasonably have appeared adequate for that person's needs. It was further submitted that the defendant had failed to address that question properly on the basis of MJ's deteriorating mental health; instead only focusing on whether he fell within the suitability criteria stated in the Allocation Policy. However, the correct question to address was whether the accommodation was adequate to meet MJ's evident needs, whether or not he fell within the scope of the defendant's suitability criteria.

586. There is force in these submissions. There is now agreement between the psychiatric experts that being accommodated at Wethersfield precipitated a deterioration in MJ's mental health to the extent that he developed a diagnosable mental impairment in the form of an adjustment disorder. His behaviour and symptoms recorded in the contemporary site medical and welfare records appear to be consistent with the onset of that form of mental impairment, as described by Professor Greenberg. That MJ's mental health had become unstable became increasingly evident from December 2023 onwards. Although Dr Galappathie subsequently disclaimed the diagnosis of MJ's mental disorder presented in his report of 3 January 2024, his report was at least consistent with MJ's medical records disclosed to the defendant on 4 January 2024, which evidenced him complaining of stress, suicidal thoughts albeit without active plans, struggling to sleep and feeling depressed. He had been diagnosed by the site GP as suffering from a depressive disorder and been prescribed a course of antidepressants.

587. This evidence provided information upon the basis of which it might well have appeared to the defendant in January 2024 that accommodation at Wethersfield was no longer adequate to meet MJ's needs. Nevertheless, I emphasise again that the question whether that was the position is not for the court to determine. It was for the defendant to determine, on the basis of her judgment of MJ's situation in the light of the information then before her.

588. As I have concluded above, there is no longer any legally applicable objective minimum standard to be applied by this court in judging whether accommodation provided to an asylum seeker under sections 95 and 96 of IAA 1999 was adequate to meet his needs. Nevertheless, accommodation which is seen to be causing or contributing to a deterioration in an asylum seeker's mental health raises a real question as to its adequacy. In *JK (Burundi)* the Court of Appeal said that the standard of subsistence support connoted making provision for an asylum seeker's essential living needs, at a level to ensure a dignified standard of living which is adequate for his health.

589. I was initially inclined to the view that on the information before the defendant on 24 January 2024, the defendant was not in a position reasonably to be satisfied that accommodation at Wethersfield remained adequate for MJ's mental health. However, for the following reasons I have ultimately concluded that it was a reasonable response, in the light of the information and then advice before the defendant, to determine on 24 January 2024 that accommodation at Wethersfield remained adequate for MJ's needs, for the reasons given in the letter of that date.

590. In order to make that judgment, the defendant sought advice from the HOMA, Dr Wilson. As I have already indicated, it is both lawful and reasonable for the defendant in an appropriate case to seek expert advice from a psychiatrist retained by the Home Office, if the defendant considered that she might reasonably be assisted by such advice. Given the mental impairment as diagnosed by Dr Galappathie, it was plainly reasonable in January 2024 for the defendant to refer MJ's case to Dr Wilson for advice in advance of reaching a conclusion on his request to be transferred away from Wethersfield.

591. Dr Wilson's advice of 19 January 2024 was balanced, considered and cogent. He acknowledged that being accommodated at Wethersfield was causing stress to MJ and that his symptoms were situational in nature. It was not Dr Wilson's role to attempt a diagnosis – he had not examined MJ himself – but his assessment of MJ's symptoms is consistent with the diagnosis of an adjustment disorder made by Professor Greenberg and subsequently accepted by Dr Galappathie. Of particular significance, however, was Dr Wilson's advice

that MJ had only recently begun taking antidepressants and it would be reasonable to await a review of his response to that treatment. Dr Wilson's advice on the significance of a lack of any history of suicidal behaviour was also significant.

592. The defendant's statutory duty in determining whether accommodation at the site remained adequate for MJ's needs, was to have regard to any special needs arising from a disability which had been confirmed by an individual evaluation. In my judgment, there is no justification for concluding that in deciding on 24 January 2024 that accommodation at Wethersfield remained adequate for MJ's needs, the defendant failed to have proper regard to the evidence provided by Dr Galappathie's report or to the information contained in MJ's medical notes and welfare reports. Notwithstanding that MJ's mental health had indisputably deteriorated, it was reasonable for the defendant to be satisfied, in the light of Dr Wilson's advice, that Wethersfield remained adequate for his mental health needs at that time, provided that the management of his symptoms through his medication proved to be reasonably effective. That the reasoning in the defendant's letter was rooted in the suitability criteria stated in the Allocation Policy does not indicate that MJ's needs were not given proper and individual consideration: the reasoning reflected the fact that the case for MJ's removal from the site had been advanced on the basis of the suitability criteria in his pre-action letter of 4 January 2024.

593. The evidence does not suggest any significant change in MJ's circumstances during the period after 24 January 2024 and until he was transferred away from Wethersfield in accordance with the order of the court on 5 March 2024. In saying that, I have not lost sight of the incident which occurred on 21 February 2024. The evidence as to precisely how MJ came to be found on the grass outside his accommodation block is unsatisfactory. He himself had no recollection of how he came to be there. I am unable to reach any finding as to whether he did in fact jump from an upper window in an attempted suicide or other act of self-harm. What is clear from the evidence, however, is that there was an immediate and sustained safeguarding response in the period following the incident. MJ's state of mental health appears to have fluctuated, perhaps in part because he appears not to have been entirely regular in taking his medication. Nevertheless, the evidence does not support the argument that MJ's mental health deteriorated significantly after 24 January 2024 to the degree that the defendant's decision of that date was no longer reasonably sustainable.

594. I do not consider that MJ's case under this ground is substantially assisted by his other complaints about accommodation at Wethersfield. I have rejected the argument that the perimeter fencing and site security arrangements created a prison-like environment. It is notable that there is a good deal of evidence of MJ having taken the opportunity to leave the site quite regularly using the shuttle buses. Indeed he told Professor Greenberg that he had enjoyed his outings. I am unable to attach any significant weight to the alleged incident on 2 October 2023, given the uncertainty over what may have happened. The room sharing arrangements were, in my view, consistent with a subsistence level of adequacy for single adult male asylum seekers' accommodation provided under sections 95 and 96 of IAA 1999. I have accepted that the onsite security arrangements and management response to fighting in the canteen and other outbreaks of violence were a reasonable response to the operational requirements for the site.

595. For these reasons, I conclude that MJ's claim on ground 1(A) is not made out.

Overall conclusions

596. The claimants succeed on ground 3(c) of the consolidated claim. Otherwise, the systemic grounds are rejected. TG, MN and HAA each succeed on ground 2 of their individual claims. TG also succeeds on ground 4 of his individual claim. Otherwise, the individual grounds of the consolidated claim are rejected. MJ's claim fails on all grounds.

597. I now invite the parties' submissions on the appropriate terms of the order that I should make for the purpose of giving effect to this judgment.