Neutral Citation Number: [2023] EWHC 660 (Admin)

Case Nos: CO/3495/2022
CO/3481/2022
CO/3497/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/03/2023

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

THE KING **on the Application of** **HZ** **MK** **FM**	**Claimant**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
SOUTHWARK LONDON BOROUGH COUNCIL	**Interested Party**

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- -

Martin Westgate KC, Adam Straw KC, Raza Halim, Tessa Buchanan, Ollie Persey and **Alex Schymyck** (instructed by **Public Law Project, Shelter and Deighton Pierce Glynn**) for the **Claimants**
Cathryn McGahey KC, William Irwin and **Anisa Kassamali** (instructed by **Government Legal Department**) for the **Defendant**
The Interested Party did not appear and was not represented

Hearing date: 17 January 2023
Draft judgment circulated to the parties: 1 March 2023

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on Friday 24 March 2023.

Mr Justice Henshaw:

(A) INTRODUCTION

1. The Claimants are Afghan nationals who were relocated to the UK, following the fall of Afghanistan to the Taliban in the summer of 2021, pursuant to two resettlement schemes. They were granted indefinite leave to remain in the UK, and have also been provided with various kinds of support pursuant to a cross-government initiative known as "*Operation Warm Welcome*".

2. One aspect of the support to persons in the position of the Claimants has been the provision of temporary or "bridging" accommodation until they find or are offered settled accommodation: either pursuant to the resettlement schemes, or by themselves finding social housing or private rented accommodation.

3. The provision of settled accommodation pursuant to the resettlement schemes has not happened quickly, and the Claimants (and many others) have remained in bridging accommodation. For about a year they were accommodated at a hotel in Southwark ("***the Southwark Hotel***"). However, in summer 2022 that hotel served notice to terminate its contract with the government, pursuant to which (counsel informed me) about 90-100 people including the Claimants were in bridging accommodation. The Defendant therefore offered the Claimants new bridging accommodation in two hotels in Manchester, one in the city centre and one outside it. In the interests of seeking to

protect anonymity, I shall refer to these as at "*the first Manchester Hotel*" and "*the second Manchester Hotel*".

4. The claim forms and Statements and Facts and Grounds for Claimants HZ and MK indicate that they challenge the Defendant's decision to offer them accommodation at the second Manchester Hotel. However, following circulation of the draft judgment on 1 March 2023, it emerged during the editorial corrections process that, though initially told they would be offered accommodation there, HZ and MK were ultimately accommodated at a different hotel, which I shall refer to as *"the third Manchester Hotel"*. It is not suggested that this alters the outcome, but it has necessitated some revision of the factual parts of this judgment.

5. By this claim for judicial review, the Claimants challenge the Defendant's decision to offer the new bridging accommodation in Manchester, and seek orders requiring her to provide them and their families with bridging accommodation in, or within a reasonable travelling distance of, the London Borough of Southwark.

6. The Grounds of challenge are:

   i) failure to make a proper enquiry into and appraisal of the considerations relevant to the decisions, including in relation to those concerning education and employment; and

   ii) failure to follow the Defendant's policy.

7. In support of these Grounds, the Claimants submit, in outline, that:

   i) The Defendant could not lawfully decide to move the Claimants and their families to Manchester without proper consideration of whether such a move was appropriate given their individual circumstances, and specifically without consideration of the impact on employment and education.

   ii) Such consideration was not precluded or made irrelevant by the Defendant's policy decision to close bridging hotels in London.

   iii) The evidence does not show that the Defendant carried out such a consideration.

   iv) The Defendant failed to take proper steps to apprise herself of the information necessary to enable her properly to evaluate the Claimants' circumstances.

   v) The Defendant acted in breach of her duty under section 55 of the Borders Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children when discharging any function in relation to immigration.

   vi) The decision to offer replacement bridging accommodation only in Manchester was irrational and/or in breach of the Defendant's policy commitments.

8. It must be borne in mind that the question for the court concerns the legality, not the merits, of the decisions in question.

9. For the reasons set out below, I have concluded that the Defendant's decisions were lawful and that these claims must be dismissed.

(B) FACTS

(1) The Claimants

10. Claimant HZ is a former member of the Afghan National army, who worked alongside British advisers in Afghanistan for 17 years as a member of a special forces unit. He and his partner have six children: one infant, two of primary school age and three of secondary school age. While living in Southwark, his three eldest children attended a school in Southwark which I shall refer to as "*the Southwark School*".

11. HZ and his family are currently living at the third Manchester Hotel. His primary school-age children have been enrolled in a primary school in Manchester since early November 2022. Their school is a 30-minute walk from the hotel. The three oldest children are not enrolled in school. Instead, they receive a limited amount of remote tuition for 1-2 hours on two days per week, which is provided by the Southwark School on a discretionary basis and may end at any time. Neither HZ nor his partner are in employment.

12. Claimant FM was born in Afghanistan. She worked in Kabul in a senior role for a non-governmental organisation. After she and her family were evacuated to the UK in 2021, she was offered a position in the corresponding role by the UK branch of the same organisation in December 2021, albeit she was not able to start work until August 2022 due to a delay in receiving her British Residence Permit. She and her partner have a 3-year old daughter, and she is also sole carer for her 17-year old cousin. While living in London, the daughter was enrolled in a nursery and the cousin completed an English as a Second or Other Language ("***ESOL***") course at an institution in Southwark.

13. FM and her family are currently living at the first Manchester Hotel. FM is waiting for a nursery place for her 3 year old daughter. Her 17 year old cousin remains out of education, and as at the date of skeleton arguments had not yet been offered a place on an ESOL course in Manchester. FM's employer has allowed her to work remotely from her hotel room in Manchester on a temporary basis pending this judicial review claim, but, on her evidence, has maintained that in order to continue her employment she must return to London as her role requires her to be physically present at their offices.

14. Claimant MK was a member of the Special Forces in Afghanistan, working alongside the British Army on drug enforcement and terrorism, as a senior team member. He and his partner have seven children, six of whom are of school age. While living in Southwark, MK's three eldest children were enrolled at the Southwark School, with two of his children preparing to sit GCSE exams this year and next year. The next three children attended a local primary school and the youngest attended a local nursery. MK was enrolled through the Job Centre in SIA training in order to obtain a qualification allowing him to work in the security industry.

15. MK and his family are currently living at the third Manchester Hotel. After approximately six weeks out of education, all MK's children are now in school and

MK is attending a college to learn English. One of MK's children has been required to return to Year 10 when she had been expected to continue onto Year 11. Neither MK nor his partner are in employment.

(2) The resettlement schemes

16. In summer 2021 the Taliban took Kabul and returned to power in Afghanistan. Those events happened quickly and required an urgent response. On 13 August 2021, the UK announced Operation Pitting. Its purpose was to evacuate UK nationals from Afghanistan, together with any Afghan nationals who were eligible for relocation to the UK. Approximately 15,000 Afghans were evacuated to the UK during the operation.

17. Two categories of Afghan nationals qualified for relocation.

18. The first category was Afghan civilians who had contracted to work with the UK government, and the families of those contractors. Those civilians are potential beneficiaries of one of two schemes.

19. One such scheme is the *ex-gratia* scheme catering for those who worked directly for the UK Government on 1 May 2006 and had served for more than 12 months when they were made redundant or resigned. It was due to run until November 2022.

20. The other scheme is the Afghan Relocations and Assistance policy ("***ARAP***") scheme, launched in April 2021. It is open to any current or former staff employed directly by the UK Government in Afghanistan since 2001 who are assessed to be at serious risk of threat to life. Eligibility for ARAP is regardless of employment status, rank or role, or length of time served. The scheme remains open and there is no limit or quota on the number of people eligible.

21. The second category was vulnerable Afghan nationals who did not work directly for the UK government. They can benefit from the Afghan Citizens' Resettlement Scheme ("***ACRS***"), which was announced on 18th August 2021 though not formally opened until 6 January 2022. The ACRS scheme is designed to support those who have assisted UK efforts in Afghanistan and stood up for UK values, as well as vulnerable people such as women and girls at risk.

(3) Immigration position

22. Those who qualify for relocation to the UK through either scheme are, on arrival, eligible to be granted indefinite leave to remain ("***ILR***") in the UK. ILR is a form of settled status. Those with ILR have the right to live, work, and study in the UK for as long as they want. They are also able to access public funds and so can access social security benefits, social housing, and other publicly funded services. A person granted ILR may in due course apply for UK citizenship.

(4) Operation Warm Welcome

23. The UK government recognised that most of those arriving from Afghanistan would need support, including housing, for at least the initial period after they first arrived. In response to the acceleration of arrivals from Afghanistan in the summer of 2021,

the UK Government launched "*Operation Warm Welcome*", a cross-government initiative to support those who were arriving in the UK.

24. Operation Warm Welcome was announced on 1 September 2021 as a *"significant cross-government effort …[to] ensure Afghans arriving in the UK receive the vital support they need to rebuild their lives, find work, pursue education, and integrate into their local communities*". The opening paragraphs including the following description:

> "As part of the New Plan for Immigration, the government announced that those coming to the UK through resettlement routes would receive immediate indefinite leave to remain, and today (September 1) the Home Secretary has announced that this will apply to Afghans who worked closely with the British military and UK government in Afghanistan, and risked their lives in doing so, meaning they can now stay in the UK without any time restrictions.
>
> People already relocated to the UK under the Afghanistan Relocations and Assistance Policy (ARAP) will be able to apply free of charge to convert their temporary leave into indefinite leave. This will give Afghans the certainty and stability to rebuild their lives with unrestricted rights to work and the option to apply for British citizenship in the future.
>
> To give children and young adults the best start in life the government is making at least £12 million available to prioritise additional school places so children can be enrolled as soon as possible, and to provide school transport, specialist teachers and English language support to assist with learning.
>
> Further funding will be provided for up to 300 undergraduate and postgraduate scholarships for Afghans at UK universities and adults will also be able to access English language courses free of charge. While many will speak English through their work with the UK government and British forces, and as translators, language classes will ensure all their family members can fully integrate into their local communities.
>
> Families who need support navigating the system will also have access to liaison officers who can work with local authorities to help them get set up with a GP, National Insurance number, school place, accommodation and more tailored support, as required."

25. The announcement quoted the then Prime Minister as saying that "*We owe an immense debt to those who worked with the armed forces in Afghanistan and I am determined that we give them and their families the support they need to rebuild their lives here in the UK*" and stated that the support for Afghan arrivals followed "*the largest and most complex evacuation in living memory*". The support elements listed included additional NHS funding; Covid vaccination; £5 million of funding for

councils in England, Wales and Scotland to support Afghans coming to the UK via the ARAP scheme and provide a top-up to help meet the costs of renting properties; working with more than 100 councils across the UK to meet the demand for housing, with over 2,000 places already confirmed; and £200 million having been committed to meet the cost of the first year of the ACRS, which aimed to welcome up to 20,000 Afghans.

26. The then Home Secretary Priti Patel was quoted as saying that *"[a]s part of the New Plan for Immigration, I committed to providing refugees who make their home here the ability to rebuild their lives in the UK with essential support to integrate into the community, learn English, and become self-sufficient. By providing immediate indefinite leave to remain we are ensuring that those who have fled their homes have every opportunity to look to the future with stability and security and make a success of their new life in the UK*". The Afghan Resettlement Minister Victoria Atkins was quoted as stating that *"[t]he stability of indefinite leave, the security of access to healthcare and the opportunity of education are the foundation upon which those resettled to the UK can build*".

27. Further information about Operation Warm Welcome was set out in a Factsheet published on 1 October 2021. Among other things, the Factsheet said that Operation Warm Welcome was ensuring that its beneficiaries *"are supported upon arrival in the UK and through the process of resettlement"*; that, in addition to those resettled through the ARAP, the government had committed to welcome up to 20,000 people from Afghanistan over the coming years; and that it was "*committed to ensuring that every Afghan citizen who resettles here has the support they need to rebuild their lives, find work, pursue education, and integrate into their local communities*". The Factsheet also included the following passages:

> "**What happens when they arrive in the UK?**
>
> There is a significant cross-government effort underway to ensure Afghans arriving in the UK receive the vital support they need to rebuild their lives, find work, pursue education, and integrate into their local communities.
>
> We are working at pace to provide permanent homes for everyone and in the interim we have ensured that temporary accommodation, financial and medical support is provided.
>
> Over 300 local authorities have pledged to support families as part of our resettlement plans.
>
> The Ministry of Defence continues to support the accommodation effort and is making more properties available to Local Authorities to further increase capacity.
>
> Families are moved into temporary 'bridging' hotels before permanent accommodation is then allocated at the earliest opportunity.
>
> **Why are we using bridging hotels?**

The success of Operation PITTING was unprecedented, and we are working hard to find homes for everyone who was successfully evacuated.

Across Government we are working at pace with local authorities to secure permanent housing and ensure families have the support they need, while also making sure that local services are not put under undue strain.

We do not want to see families remain in hotel accommodation for prolonged periods, and there is a huge effort underway to get families into permanent homes so they can settle and rebuild their lives.

Hotels provide interim accommodation and enable us to provide full support whilst we best match individuals and families to a community for their needs.

Will you be providing those resettled with wider support to start new lives in the UK?

We are providing wrap-around support to enable families to build successful lives in the UK. Examples of how we will do that include:

Free English language courses which will be provided in recognition that many of the dependents of former staff and Afghan translators may need this.

The creation of a central portal where people, organisations and businesses can register their offer of support, be it volunteering, a job opportunity, professional skills to help with integration and deal with trauma, or donations of items like clothes and toys.

DWP are running surgeries across the country, run by experienced work coaches with translators, to help those arriving with any questions they may have about employment or benefits. The Government has ensured all of these groups are eligible for benefits from the first day they arrive, and will also have the right to work as soon as they are ready to do so, aided by the employment support offered by work coaches.

The Department for Education (DfE) are making £12 million available to prioritise additional school places and ensure children can be enrolled as soon as possible, as well as to provide specialist language support and facilitate free transport to school. This funding will shortly be accessible in Devolved Administrations, and we will provide more detail on this in due course.

DfE have issued a letter to all local authorities confirming that they expect them to provide school places wherever possible and providing guidelines around the nature of any temporary provision.

DfE have also recently announced children and young people from Afghanistan will benefit from 6,000 laptops and tablets to support their education and help them adjust to life in this country – backed by an overall £126 million investment to support disadvantaged children with their learning.

What care is being offered to families whilst they are in bridging hotels?

We are providing wraparound support for families.

All guests within the bridging hotels are encouraged and supported to register with a GP as they are able to access the same healthcare support as all UK residents.

Everyone is being offered the COVID-19 vaccine.

Hotels will work with emergency services if required to respond appropriately and sensitively to critical incidents.

Cash cards have been issued at all our bridging hotels for expenses and we ensured emergency cash was available to those who needed it in the interim.

DWP are visiting the hotels to support the families and manage the process of accessing employment or benefits.

Families are free to come and go from their bridging hotels as they wish.

A call centre helpline has been established for all Afghan residents within the bridging hotels. ….

…

What funding is available to councils who offer permanent homes?

Councils who support people through the Afghan Citizens Resettlement Scheme (ACRS) or Afghan Relocations and Assistance Policy (ARAP) scheme will receive £20,520 per person, over three years, for resettlement and integration costs.

Local councils and health partners who resettle families will receive up to £4,500 per child for education, £850 to cover English language provision for adults requiring this support and £2,600 to cover healthcare.

> A further £20 million of flexible funding will be made available to support local authorities with higher cost bases with any additional costs in the provision of services.
>
> The Afghan LES (Locally Employed Staff) Housing Costs Fund provides a top up to help councils meet the costs of renting properties for those that need it, including larger homes for families.
>
> We have also made funding available, at £28 per person, per day, for local authorities to provide support in the bridging hotels.
>
> …
>
> **How do you decide where people will be resettled?**
>
> We work closely with Local Authorities to understand where suitable housing is available across the country.
>
> We gather as much information as we can about each person or family's individual needs and circumstances to help us to then match them to the most appropriate area and housing."

28. A letter was sent to beneficiaries by the Home Office and the Department for Levelling Up, Housing and Communities dated 10 January 2022, which included the following passage:

> "When we match you to long-term accommodation, we consider the following factors:
>
> • The number of people in your family (which tells us how many bedrooms are needed in the property)
>
> • Any medical, physical or mental requirements or vulnerabilities
>
> • Availability of accommodation and services across the UK
>
> • Any other reasons to be in (or near) a specific place, such as a confirmed job offer, medical treatment, or a place at university
>
> Please let your Home Office Liaison Officer know if there are any circumstances, such as those listed above, which should be considered when we match you to a property.
>
> Please do not contact councils directly about housing. We are already working closely with councils to find you suitable housing and councils will not be able to offer you alternative housing that is better or available sooner."

29. The "*Customer Charter*" issued by the Home Office in March 2022 included various commitments by the Home Office, including to minimise disruption to beneficiaries and their families by limiting accommodation moves, while indicating that the Home Office expected a beneficiary to "*move accommodation or vacate the hotel when asked to do so*". The Claimants do not all recall receiving it but they accept that in principle they could be expected to move between bridging accommodation addresses.

30. The Home Office wrote on 9 May 2022 to local authorities about changes to the arrangements for finding settled accommodation for beneficiaries of the schemes, including what was described as an enhanced matching process. It said a process had been put in place for a face to face meeting with the family before accommodation matching starts, *"to make sure that we are capturing all the information available about a family's circumstances which is relevant to identifying an appropriate accommodation for that family"*.

31. The letter to local authorities indicated that letters (translated into Pashto and Dari) had been sent that day to families/individuals in bridging accommodation to set out the changes being made. The English text of those letters was annexed, and said that before matching individuals and families to accommodation the Home Office would, based on the information beneficiaries provided to it, take into consideration education needs, health needs, faith needs, employment, close family links and caring responsibilities.

32. The information in the letter to beneficiaries was expanded upon in an annexed "*Q&A on the accommodation offer process*". The Q&A said, among other things, that the Home Office would offer accommodation which had been put forward for the scheme by a local council or Community Sponsorship group; that this was most likely to be accommodation from the private rental sector although it may very occasionally be from social housing stock; and that the accommodation would be affordable for the household, considering the financial resource available to them, including any government support for which they were eligible. For households including children, accommodation would be sought within a reasonable distance of age-appropriate education facilities. As regards employment, the Q&A said:

> "When we match accommodation, the Home Office will take into consideration the location of any paid employment that has already begun, or where there is a signed contract of paid employment in place. Where one of the adults is in employment which requires them to attend a specific location to perform that role, and where the role cannot move to another location the Home Office will consider the impact of the proposed move and journey time on that employment and seek to provide accommodation which is within a reasonable travel distance of it. Households will be expected to meet the costs of any necessary travel to and from employment from their own funds. …"

33. The Q&A went on to indicate that the Defendant could make two offers of permanent accommodation matched according to the criteria set out. It explained that there might, in exceptional circumstances, be good reasons for refusal of an appropriate

accommodation offer. These would be assessed on a case-by-case basis but could (non-exhaustively) include where the accommodation did not fulfil the criteria of an appropriate accommodation offer as set out above – for example due to needs around education, health, faith, employment, close family or caring responsibilities. Various specific examples were given including *"[w]here a member of the household has the offer of a paid employment as defined in the definition of an acceptable offer.*"

34. The Defendant in June 2022 issued a document entitled "*Find Your Own accommodation pathway: How to guide*". This aimed to set out a process, involving beneficiaries, local authorities and Home Office Hotel Liaison Officers, for beneficiaries to be helped in finding settled accommodation. Among other things, it indicated that post-move settlement would be provided by the local authority (including ensuring that any children had been successful in gaining school placements), and that the local authority would have access to *"integration tariff funding"*, including access to the Housing Costs Fund to provide top-up payments to aid with securing properties above Local Housing Allowance rates (where appropriate) to support families reliant on Universal Credit limited by the benefit cap – details of which were to be found in the Home Office Funding Instruction document.

35. The Defendant's "*Funding Instruction for local authorities in the support of the Afghan Citizens Resettlement Scheme and Afghan Relocation and Assistance Policy*", version 1.1, was issued on 19 August 2022. A passage in the document describes the ACRS as demonstrating the UK's support for the UNHCR's global effort to relieve the humanitarian crisis through the provision of resettlement opportunities for vulnerable people into communities in the UK (§ 3.3).

36. Schedule 1 to the Funding Instruction deals with resettlement support, and states that the local authority will arrange accommodation for the beneficiaries it is supporting, or support them in finding their own accommodation in the private rented sector, that meets local authority standards, will be available on their arrival/relocation, and is affordable and sustainable. In the case of private sector accommodation, the local authority should provide full integration support for 36 months, and can use the Home Office funding flexibility to provide *inter alia* deposits, landlord incentives, letting fees and necessary furnishings.

37. The Defendant agrees to provide funding, as a contribution to the local authority's expenditure in meeting these outcomes, in Year 1 of £10,500 per family member (including children), plus £4,500 for the education of each child aged 5-18 and £2,250 for each child aged 3-4. In Year 2 the Defendant agrees to provide a flat payment of £6,000 per beneficiary, and in year 3 £4,020. This tariff amount can be used to meet any shortfall between rent and the benefits to which the beneficiaries could be entitled (i.e. the housing element of Universal Credit). Additional payments are available in some cases for larger families (Annex G).

38. There is a separate "*Funding Instruction for local authorities in the support of the United Kingdom's Afghan Schemes*" relating to the provision of local authority "wraparound support" for beneficiaries in bridging accommodation. This was issued on 28 July 2022 (version 1.0).

39. A template letter dated "*x July 2022*" indicated or confirmed to beneficiaries that they could find their own accommodation and remain eligible for support.

(5) Bridging accommodation: generally and in Manchester

40. As the documents summarised above indicate, until permanent accommodation is secured beneficiaries are offered bridging accommodation. As a matter of practice, the Defendant has used hotels to provide this. As of 12th August 2022, 9,667 people under the schemes were still living in hotels. 7,385 had been moved to a home or had been matched and were waiting to move.

41. At the time of the decisions under challenge the Defendant had not expressly adopted a specific policy or criteria governing moves between bridging accommodation. Since then, the Defendant has on 12 December 2022 published Guidance on "*Bridging accommodation closures*". The parties highlighted these passages from that guidance:

> "Many factors influence the closure of bridging, including (this is not an exhaustive list):
>
> 1. Bridging accommodation provider issues notice to terminate contract with the Home Office – this is when a current bridging accommodation provider issues a notice that they no longer wish to continue operating as a bridging accommodation provider.
>
> …"

> "Moving guests to another bridging provider is not a decision that we take lightly. We aim to minimise disruption to guests, and to address their needs, and we explore the following options (this is not an exhaustive list):
>
> - **Settled Accommodation** – The Matching Team will prioritise all guests affected by hotel closure for matching into suitable settled accommodation. If there is suitable accommodation, an offer will be made in accordance with the enhanced matching process (EMP).
>
> - **Find Your Own Accommodation (FYOA) in the private rented sector** – Local Authorities are encouraged to support families to find their own accommodation in the private rental sector under the FYOA Pathway. Wraparound funding requires the Local Authority where the bridging accommodation is located to support guests with moving on ('move-on'), by providing support, guidance and conducting affordability assessments. The Local Authority Engagement Team will support this process, with the intention that guests

move to properties where the Local Authority will provide integration support.

- **Bridging Estate** – if settled accommodation cannot be found through local authorities or FYOA then we will accommodate guests in other parts of the bridging estate, i.e., other bridging hotels, serviced apartments, or other temporary accommodation. We will consider guests' needs and preferences; however, the capacity and availability of the bridging estate is limited and while every effort is made to re-accommodate guests in line with their preferences this cannot always be achieved.

- **Bridging Accommodation Procurement** – if the existing bridging estate cannot meet the capacity requirements for guests that need to be re-accommodated then we may attempt to procure further temporary accommodation solutions.

We encourage guests to communicate regularly with HOLOs [Home Office Liaison Officers] and local authority colleagues throughout the closure process. Ongoing communication allows guests every opportunity to provide all relevant information and raise any concerns with us to consider during the process. While every effort is made to meet guests' preferences it is not always possible to meet every expectation. Our priorities when we close bridging accommodation include:

- **Safeguarding**:

We will always consider the best interests of children when moving families. This includes ensuring that sufficient wrap-around support can be provided in the new location. School places and the point in the school term at which the move will take place are also considered and every effort made to minimise the disruption to children.

- **Medical**:

…

- **Disability**:

…

- **Employment**:

We will assess whether a person's employment can be relocated to a different region. Where employment is not transferable or similar/other employment is not suitable then we may work to re-accommodate guests within a reasonable travel distance of their workplace.

> - **Education**:
>
> We will consider any concerns raised because of children/adults being in education.
>
> - **Familial caring responsibilities:**
>
> …
>
> Whilst the Home Office makes every effort to consider and accommodate guests' preferences, it is not always possible to meet all accommodation expectations due to the current capacity and housing stock across the regions and bridging estate availability."

42. The development of the Defendant's strategy and practice in relation to bridging accommodation is summarised in the witness statements of Ms Ashraf, who is the Defendant's Assistant Director for Afghan Bridging Hotels in the ACRS and a member of the Home Office's Resettlement, Relocation and Reunion Services Asylum and Protection team.

43. Ms Ashraf explains that, at the beginning of the process, the Defendant in September 2021 was faced with a need urgently to accommodate around 15,000 Afghan nationals who were arriving in the UK following rapid evacuations from Afghanistan. An iterative document entitled "*Hotel Booking and mobilisation process*" set out a number of factors that were considered before recommending a hotel to the Defendant. Among numerous other matters, these included the ability to accommodate 100 sleepers or more; social space including play areas and prayer areas; private rooms for use by local authorities, GP services etc; and Wi-Fi connectivity. The Defendant also checked each hotel for a series of matters including its location and any additional measures the Defendant may need to put in place for families e.g. to provide transport to and from the local town centre.

44. In addition, the Defendant's Local Authority Engagement Team liaised with relevant Strategic Migration Partners ("***SMPs***"), which are partnerships led by local authorities, independent of the Home Office albeit funded by it, whose role includes coordination and support of the delivery of national programmes in asylum and refugee schemes. SMPs consulted with relevant local authorities on the use of specific hotels before they were commissioned. During that consultation, the local authorities would raise any issues or concerns about the impact of commissioning particular hotels on the provision of public services, including education and health. At this early stage, the Defendant took into account the availability of health and education services only if those matters were raised by the local authority. Where issues were raised, difficult decisions had to be made about whether to 'stand up' hotels (i.e. bring them into use as bridging accommodation) in any event due to the need to accommodate the significant numbers of Afghan nationals who were being evacuated at pace.

45. There were initially four bridging hotels in Manchester, until 31 January 2022 when one was closed because of pressures on the local authority, Manchester City Council ("***MCC***"). MCC continued to support the other three hotels. Ms Ashraf recollects

that when the use of the four hotels was first discussed with MCC in autumn 2021, MCC raised concerns around the use of hotels for bridging accommodation more generally, as well as around security, though she understands that no security issues were raised in 2022. Ms Ashraf states that she is informed by the Home Office Hotel Local Authority Engagement Team that health and education teams were involved in discussions about the Manchester Hotels from the outset, the primary aim being to put provision in place early for delivery of healthcare and education to residents, even if that meant using space in the hotels to deliver those services. The highest priorities at that point were vaccinations for COVID-19 and TB screening, though education needs assessments and childcare were also topics of discussion.

46. Ms Ashraf explains that the evacuation of Afghan nationals slowed down during autumn 2021, although there is still a continued flow of up to 500 people arriving in the UK every month.

47. Ms Ashraf led on a review of 83 hotels across the UK starting in October 2021, in order to help determine which contracts should be extended and develop an exit strategy from the hotels. The hotels were RAG (red, amber, green) rated against a number of categories, which included: security and safeguarding considerations; the number of asylum dispersal hotels within the local authority area; local authority engagement and capacity to support Afghan nationals (including, for instance, in relation to the provision of services such as registration with a GP); amenities in the local area and within the hotel; support provided by the hotel team (and whether, or for what period, this was sustainable); the Department for Education's overview of school places within the local authority area; and the cost of the hotel

48. In October 2021, based on feedback from the local authorities, other stakeholders and Home Office Liaison Officers ("***HOLOs***") (including residents' feedback to those HOLOs), the team gave all the Manchester Hotels an overall amber rating, including an amber rating for education. The Department for Education's estimate in in October 2021 was that there were 10-20% spare primary school places in 2021/2022 and less than 10% spare secondary school places in 2021/2022 in Manchester. The Southwark Hotel similarly received an amber rating overall, as well as in relation to education. The Department for Education also reached the same estimate for spare school places that could be provided by Southwark London Borough Council as for Manchester.

49. Ms Ashraf personally visited the Manchester Hotels in November 2021 and was able to use her own knowledge and observations to develop the RAG ratings for those hotels. On a further RAG review in February 2022, the first Manchester Hotel received a green rating. The second and third Manchester Hotels received amber ratings, and the rating for the second Manchester Hotel was changed to green in July 2022.

50. Ms Ashraf refers to the Home Office Hotel Local Authority Engagement Team, who handle day to day interactions with local authorities and whose role includes monitoring the running of the hotels and ensuing that support is provided. Ms Ashraf also summarises the experience of Afghan residents at the first and second Manchester hotels, based on information received from MCC staff, and some of the information she provides is also relevant to the third Manchester Hotel. The first Manchester Hotel is located close to major shops and leisure facilities. The second

Manchester Hotel is located close to a transport centre from which it takes approximately 15 minutes to travel to Manchester City Centre by train. Buses and trams also go to Manchester City Centre. Residents can access surrounding areas by way of public transport. The transport centre has a short tram route which goes to a nearby residential district, which includes a large park that has a children's play area and other facilities. There is also a shopping centre which has a variety of well-known shops, including a superstore, as well as a leisure centre and a public library. A market can also be reached by bus. The market has many cultural shops, as well as supermarkets.

51. The second Manchester Hotel is a short walk from the third Manchester Hotel, and Ms Ashraf describes a number of steps that have been taken at the third Manchester Hotel aimed at providing a pleasant environment for children and families. The second Manchester Hotel is also walking distance from another park, with various facilities including sport pitches. There is a football team of Afghan nationals who play and compete regularly.

52. As to formal support, Ms Ashraf states that within days of arrival at a hotel, residents meet with MCC Support Staff where they are informed of what is on offer. Early Help Assessments and Move On plans are started at this point. Staff from the Department for Work and Pensions meet with residents to ensure that the correct benefits are in place and that their journals are up to date. Residents are registered with a GP (Go-to-Doc) within two working days. There are onsite GP services at the second and third Manchester Hotels, and the first Manchester Hotel has a GP receptionist who makes appointments for a nearby GP. There are regular midwife/health visitor visits to the hotels. This support is ongoing. Staff from the Department for Work and Pensions are based in each of the hotels for one or two days each week, and the MCC Support Staff can contact the allocated staff members at any time.

53. MCC organises various activities for hotel residents, including ESOL classes. The second Manchester Hotel holds two women's ESOL classes per week and men attend classes at the local college in the city centre and a nearby residential district. The first Manchester Hotel holds seven ESOL classes a week. There are also organised groups for various games and football, sewing, driving theory, ad hoc sessions for children, and a programme for women on women's rights.

54. MCC is starting a rolling programme for women on topics such as women's rights, women's health, family planning, finance and budgeting. Working with charities, MCC arranged Afghan New Year celebrations for each hotel in a variety of venues, supported by schools and charities, and other events/trips. The second Manchester Hotel has a safe space for young children to play in.

55. As to education, Ms Ashraf says she is informed by MCC staff that it has taken, on average, eight weeks between a child arriving in one of the Manchester hotels and their starting school. The period can vary depending on factors such as the time of the month when families arrive in Manchester, the age and year group of the child, and the exact availability of school spaces at that particular time. It can be less than eight weeks but can also take longer. Children can be offered a school place at any location in Manchester, although Ms Ashraf's understanding is that schools within a three-mile

radius are considered first. If the schools are further away than three miles from the relevant hotel, a free bus pass is applied for on the relevant child's behalf.

(6) Bridging accommodation: exit strategy

56. Ms Ashraf explains that when considering where to accommodate asylum seekers or others, such as Afghan nationals who have resettled in the UK under the Afghan resettlement schemes, the Home Office often takes into account migration pressures: the impact of increased population on services such as health, education and housing. There is already a greater density of population occupying property under asylum support arrangements in London than in many other parts of England, including Manchester and Greater Manchester. Some of the resulting pressures were highlighted at a meeting in December 2021 with the London Strategic Migration board (including the particular pressures resulting from taking in unaccompanied asylum-seeking children), and they have persisted. It has been clear since at least December 2021 that migration pressures have been particularly acute in London boroughs. Placing excessive pressure on those boroughs risks undermining their ability to deliver their services. This factor has influenced the Defendant's thinking about the location of accommodation for asylum seekers and others, including Afghan nationals arriving under the ARAP/ACRS schemes.

57. An operational decision was initially taken by the Defendant's Director of Resettlement, Relocation and Reunion Services (formerly 'Resettlement, Asylum Support and Integration' ("***RASI***")), in July 2021 to not procure hotels in London, Manchester and Birmingham. That was because there were continued pressures on local authorities in these areas due to the unprecedented number of small boat arrivals, and the need to accommodate a greater number of asylum seekers in these areas under asylum support arrangements. The resulting challenges include pressure on local education and health services which the local authority has a legal duty to provide.

58. However, Ms Ashraf explains, due to the number of people being evacuated from Afghanistan on military flights it was proving very difficult to find suitable bridging accommodation in other areas across the UK. The Defendant wished to use hotels with a minimum of 100 sleeper capacity and which were within or near to major conurbations wherever possible, so that appropriate support and services could be more readily provided. This made it necessary, in August 2021, to decide to procure more hotel accommodation in London, Manchester and Birmingham after all. This was an urgent operational decision taken in order to meet an unexpected and unprecedented need and to ensure that appropriate accommodation was available at very short notice. In September 2021 the Defendant procured fourteen hotels across London with a total capacity of about 3,400, and six in Greater Manchester with a total capacity of about 1,290.

59. In November 2021, when the immediate crisis was abating, the Defendant considered how to develop an exit strategy out of all hotels, having regard to concerns about the cost/value for money of hotel accommodation and migration pressures. There was also a move to consolidate accommodation in fewer hotels, which was also driven by migration pressures. As of 30 September 2021 the asylum support population was about 68,700, including 16,000 being accommodated in hotels, of whom 9,500 were in hotels in London and the South. In December 2021, the Defendant completed a review of all hotels to ensure that the taxpayer was getting best possible value for

money in the context of increasing demand for accommodation. A number of the London bridging hotels were in the top ten most expensive Afghan bridging hotels. Steps were taken to renegotiate prices, fill hotels to capacity, to seek discounts where possible, and to close hotels.

60. Ms Ashraf states her understanding that the issue of migration pressures has continued to be raised in meetings between representatives of the GLA and Home Office officials (amongst others) through 2022; and, in particular, that the GLA has continued to request that the migrant population being supported within London be managed down, with housing shortages in London being particularly highlighted.

61. One factor of relevance has been the ability of the Afghan resettlement scheme beneficiaries to settle long term in London. The private rental market in London is generally extremely expensive, and so, Ms Ashraf states, even with the support made available to Afghan nationals arriving under the ARAP/ACRS schemes the Defendant was concerned that in many cases it would be unrealistic to expect those Afghan nationals to be able to afford to settle in London in the long term. The strategy of exiting from London was accordingly, she says, in part influenced by the Defendant's desire to avoid Afghan nationals being located in areas which they would not, in the long term, be able to afford.

62. On 12 July 2022 a submission went to Ministers and the Home Secretary setting out a proposed exit plan from hotels. The submission included consideration of the following points (quoting from Ms Ashraf's summary):

> "a. RAG rated – that the Home Office had planned to close a number of hotels by the end of August 2022 that were RAG rated Red (due to concerns, location and pressures).
>
> b. Exit Strategy out of London hotels:
>
> i. Ease the pressure on London Boroughs;
>
> ii. Manage expectations of those wishing to remain in settled accommodation in London as we only have a smaller number of property offers from London Boroughs; and
>
> iii. Reduce costs.
>
> c. This would be achieved by:
>
> i. Moving people into other bridging accommodation within the estate outside of London;
>
> ii. Encouraging property matching or the identification accommodation in the private rental sector;
>
> iii. Implementing alternative accommodation options. In the short term this may mean we stand up additional bridging hotels outside of London and other main cities;
>
> iv. Alternative accommodation for larger families; and

v. Matching pre-arrival."

63. I mention in this context the Claimants' point that factor (b)(ii), referring to the limited number of property offers from London boroughs, does not explicitly refer to the possibility of beneficiaries of the resettlement schemes moving into private rented property in London; whereas factor (c)(ii) could presumably include taking up private rented accommodation in London. I do not, however, believe that point undermines Ms Ashraf's evidence about the concern that in many cases beneficiaries of the resettlement schemes would be unable to afford private rented accommodation in London. That factor may indeed be why factor (b)(ii) is expressed as focussing on local authority housing, in the context of a situation where the high cost of private rental property in London is likely to be well understood by those involved on the Defendant's behalf.

64. Ms Ashraf states that the Minister and Home Secretary agreed with the proposals, including the strategy to close all London bridging hotels and to manage long term expectations of residing in London. She states that the Defendant's current intention is to close most hotels in London by March 2023, if possible, and all others by July 2023.

65. Summarising, Ms Ashraf says the Defendant understood from the start that bridging accommodation in London is not ideal from the perspective of allocation of financial resources and pressures on London boroughs. The decision to commission hotels in London was an emergency operational decision responding to a rapidly unfolding situation on the ground in Afghanistan, and in the context of unprecedented pressures of other kinds including arrivals from small boats and Ukraine. From December 2021 there has been an effort underway to rationalise and simplify the bridging estate, to achieve best value for the taxpayer and to reduce migration pressures in London in particular. London boroughs have been consistently requesting that the migration pressures on them be relieved. An additional factor which the Defendant has been considering is the low number of available long-term properties in London and the very expensive private rented sector, meaning that the chances of Afghans being able to settle in London in the long term are low. In July 2022, the Defendant took a decision to move bridging accommodation out of London. It is pursuant to that policy decision that the London bridging estate (including the Southwark Hotel) is gradually being closed.

(7) Closure of the hotel in Southwark and subsequent events

66. On 1 July 2022 the Southwark Hotel served notice on the Defendant to terminate the contract to provide bridging accommodation, as it wished to resume normal operations. The Defendant was at this stage in the middle of the process summarised in section (5) above of formulating her strategy for exiting from hotel bridging accommodation in London. Further, Ms Ashraf states, in her 3rd witness statement (dated 28 September 2022):

> "Hotel capacity within the existing hotel estate is limited and I can confirm that we do not have any other bridging hotels in Southwark. Although there are other hotels within London there is no capacity to move families across. When considering availability of alternative bridging hotels in close proximity we

> have to take account of the size of the family and the formation of rooms available (i.e. doubles, family rooms etc). The hotels families have been allocated to are the only hotels within our bridging estate where there is capacity for these families."

67. The Defendant had committed to provide bridging accommodation pending offers of longer term accommodation, and identified alternative bridging accommodation at the Manchester Hotels.

68. The Claimants, and other beneficiaries in the Southwark Hotel, were invited to a "Town Hall" meeting at the hotel on 1 August 2022, and told about the termination of the accommodation at the Southwark Hotel. They were informed that they would be offered alternative bridging accommodation, pending offers of settled accommodation, and also advised to consider private rented accommodation. Those present were invited to approach the HOLOs present at and after the meeting with any concerns about the closure of the hotel. The Defendant's pre-action protocol response states that general concerns were expressed on this occasion about leaving the Southwark Hotel. The plan at this stage was to move the Claimants to Manchester on 7 September 2022.

69. It appears that the Claimants were not told exactly where they would be offered alternative bridging accommodation until shortly after the 1 August 2022 meeting. HZ states in his witness statement that he remembered being told at the meeting that the families would be sent to different temporary hotel accommodation but not where it would be. After the meeting, he says, Home Office officials visited the hotel and told him that the Defendant planned to move his family to the second Manchester Hotel (though, as I note earlier, he was ultimately accommodated at the third Manchester Hotel). FM states that those present at the 1 August 2022 meeting were told that they would need to leave by 7 September 2022 in order to be transferred to alternative hotel accommodation elsewhere in the country. She says she told a representative of the Defendant that she did not want to move, but was told there was no option. On 2 August 2022 a Home Office representative told her that she would be moved to the first Manchester Hotel.

70. Ms Ashraf states that there was correspondence during this period between the Home Office Hotel Local Authority Engagement Team and MCC. In particular, a member of the Engagement Team spoke to staff at MCC on 10 August 2022 about the educational provision available for children of school age who formed part of the group currently accommodated at the Southwark Hotel. The Engagement Team member confirmed by email on 11 August 2022 his understanding that MCC supported the arrival of the families in principle, subject to safeguarding issues, but wanted to check whether MCC would accept the proposed hotel residents in principle "*given the numbers of school aged children on the booking*". MCC responded in the affirmative, but asked for any safeguarding issues to be shared with them first. They said "*we will agree to these families in principle as we said yesterday but can we have safeguarding issues forwarded to us first*". This was done, with health data being shared about one of the Claimants. Further information was shared with MCC on 3 October 2022 (the delay having arisen because the Claimants were initially unwilling to share data).

71. Pre-action protocol letters were written in each case between 19 and 31 August 2022, opposing the moves and setting out reasons why the Claimants' individual circumstances meant that they ought to remain in or within reasonable travelling distance of London. The letters alleged:

    i) procedural impropriety, saying the Claimants were not put on notice that the Defendant was planning to terminate their temporary accommodation; that the Claimants were given no chance to make representations about their needs before the decision was taken; that no reasons were given for the decision; and that the Defendant made no effort to assess their needs before taking the decision;

    ii) breach of the Defendant's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the interests of the Claimants' children;

    iii) breach of Article 8 of the ECHR;

    iv) breach of the Public Sector Equality Duty; and

    v) breach of the duty to make reasonable adjustments in light of disabilities.

72. The pre-action letters in the cases of HZ and MK included the following supporting material:

    i) A letter from the principal of the Southwark School, which explained the work that had been done to support the children, including several bespoke measures to accommodate their particular needs. The letter expressed the concern that a move to another wholly inadequate housing situation would "*destroy[...] the progress made to date*". It explained that many were in the middle of their GCSE course and that "*[c]hanging schools mid-course is not recommended for any young people at all, but changing for a temporary period, only to change again when permanent housing is found will be catastrophic for the outcomes of these young people*". Under the heading "*Concerns regarding the availability of full time mainstream educational provision following a move*", the letter said:

> "All children under 16 in this country are entitled to free schooling, regardless of their immigration status. Local Authorities have jurisdiction for the methods used to meet this obligation but it is highly unlikely in a post pandemic climate of 'urban flight' that a school outside the capital will have places for a collection of children across four year groups, on a temporary basis, and in the subject choices those young people have made. It is a common choice therefore, for Las to provide alternative education to school for recent arrivals to the borough in KS4, for example, often in the form of limited home tuition. That would be highly inappropriate for these young people, who are currently in receipt of educational provision which goes well beyond full time schooling.

> Clearly, should these families receive allocation of permanent housing, they would be far more likely to secure school places as permanent residents and would likely be easier for schools to manage in terms of numbers applying but we have evidence of some of our Afghan cohort being permanently rehoused and waiting over three months for a school place in their new locations. This kind of delay is a common reality, and for this to happen in the temporary location and then again at the permanent location cheats our young people of significant in-school, mainstream education. I've outlined above all the ways in which this is critical for this group, and this unnecessary move would therefore be hugely detrimental to the children. Please be clear that every single one of these young people is mainstream ready and should be educated full time, in a school environment, according to their entitlement. I would be reluctant to see any of these vulnerable children removed from that provision unless and until the equivalent is in place for them in a new setting."

ii) An expert report on the impact on children of asylum-seekers of living for extended periods in temporary asylum accommodation in hotels and/or hostels.

73. The pre-action letter in the case of FM also explained that FM had recently (since receiving her BRP in August 2022) started the employment I refer to earlier; that the job was particularly suited to her skills and experience; and it would be extremely hard for her to find a similar job elsewhere. FM was 15 weeks pregnant at this time.

74. The time for responding to the PAP letter, and the move dates, were extended by agreement.

75. On 15 September 2022 the Defendant provided a decision letter and a response to the pre-action protocol letter in each of the cases. In the pre-action responses, the Defendant denied that she had failed to provide an opportunity to make representations, indicating that at the Town Hall meeting on 1 August she invited all those present to approach HOLOs with any concerns. The Defendant said she had considered any concerns raised, along with other factors, before making a decision on where to offer the Claimants alternative bridging accommodation. The Defendant acknowledged that she did not provide a written decision containing those reasons at the time, but enclosed decision letters outlining those reasons and taking into account the further representations made in the Claimants' pre-action letters.

76. The decision letters included the following passages, taking that for HZ as an example:

> "3. In a letter dated 29 July 2022 and subsequent Town Hall on 1st August 2022, you were made aware that the Home Office is required to move residents out of the [Southwark Hotel] by the 30th September 2022. This is due to the hotel terminating the contract with the Home Office. During the Town Hall, with the use of a Dari and Pashto interpreter, we advised families of the

need to find alternative accommodation before this date through different routes. We explained the process of matching to properties where suitable properties were found and support to find your own home through the private rented sector. Where settled accommodation was not available, you were advised that you would be offered alternative bridging accommodation. You were advised to work with the Local Authority ("LA") and Home Office Liaison Officer ("HOLO") if you identified a property. This was also highlighted in the joint letter you received from the Home Office and the Department for Levelling Up, Housing and Communities in July 2022. This was reiterated during the Town Hall.

4. During the Town Hall on 1st August 2022, you were informed that consideration would be given to any information already provided to the HOLO. You were invited to raise any concerns you may have about the hotel closure. Furthermore, it was explained that data sharing between different departments, such as health and education, does happen to ensure disruption is minimised.

The decision

5. When offering alternative bridging accommodation, we have considered the availability of hotel places within the bridging estate, including London and the South-East. In making the decision as to where your family would be offered alternative bridging accommodation, consideration was given to your preferences in regard to location and connections.

6. We advised you on 1st August 2022 that you would be moved to [the second Manchester Hotel] on 7 September 2022. Whilst the Home Office's contract with the hotel terminates on 30 September 2022, we scheduled the move to new bridging accommodation in early September to minimise the disruption to any child's education.

7. On 19th August 2022, you informed us of your concerns about the proposed move to the [second Manchester Hotel], specifically that you did not want to move as you are on quite a few medicines because of severe depression and anxiety. You also highlighted the schools concern with regards to your children leaving the school that they are currently attending. As well as the support you are receiving from Southwark Day Centre for Refugees with regards to your […] family in Afghanistan. The Local Authority will ask for information regarding any medical conditions or health concerns that your client or their family may have, so that this information can be passed to the Local Authority where your new hotel is located. It is important that you engage with the Local Authority when this information is requested. There is no reason to believe that

there will be any significant disruption to your healthcare. I am satisfied that your health needs will be met in the receiving area.

8. Unfortunately, we are unable to accommodate your request to stay in Southwark as the hotel contract is coming to an end on 30 September 2022. There are no settled accommodation options in Southwark or London appropriate for your family.

Further representations

9. We have considered the contents of your Pre-action Protocol letter dated 19 August 2022 and enclosures, specifically:

• Letter from [the Southwark School], August 2022

• 'Fit Note' From GP dated 20 January 2022

• Expert report on the impact on children of asylum seekers of living for extended periods in temporary asylum accommodation in hotels and/or hostels by Dr Julia Nelkia and others, June 2022.

• Any transfer of specialist medical support would likely cause further significant delay in accessing.

10. Consideration has again been given to your request to remain at [the Southwark Hotel]. However, as the contract is coming to an end on 30 September 2022, we are unable to extend your stay here.

11. You state that you suffer from depression. You state that you have been diagnosed with PTSD in January 2022 and that you have been signed off as not capable of work since then. Your letter states that you are on medication to help you sleep as well as having been referred for specialist support for your mental health and are under the care of the Southwark Community Mental Health Team.

12. You have also suffered a traumatic bereavement due to the death of [a family member] in Afghanistan at the hands of the Taliban in autumn 2021. Your letter outlines that your children have been deeply affected by the death of [the family member] and their concern for your remaining family members in Afghanistan, and that you have struggled with the emotional and practical burden of assisting with efforts to bring [the family member's family] to UK, which has caused you to rely on significant support from local voluntary organisations.

13. In making these difficult decisions, we have considered your circumstances of being diagnosed with PTSD in January 2022, including healthcare needs. Whilst it's acknowledged

that this move will interrupt the healthcare you are currently receiving and will be inconvenient for you, care will be taken to ensure that health needs will be met in the new area. The HOLO's and outgoing LA will assist your family with registering with a GP in Manchester.

14. Regarding concerns about your children's education, the outgoing LA will ask for information regarding any education needs your children may have so that this information can be passed to the LA where your new hotel is located. We would encourage you to engage with the LA when this information is requested. This may result in a disruption to education in some circumstances, but the information has been shared and any disruption would not be disproportionate.

15. You state that you are also receiving significant support from Lucy Parker of Southwark Day Centre for Refugees to communicate with the Home Office and the Foreign and Commonwealth Department concerning the relocation of [family members] who remain at risk in Afghanistan. There is no reason to believe that support of this nature cannot continue either remotely or in the receiving area.

16. We understand that you are concerned that the alternative bridging accommodation is not suitable as it is located in a hotel … and far away from support networks, healthcare and education providers, and there is a risk to your family's health and wellbeing. There is no reason to believe that there will be any significant disruption to your client's healthcare. I am satisfied that your health and wellbeing needs will be met in the receiving area

17. Additionally, there will be local support groups and organisations available to you and your family in Manchester as well as an established Afghan community.

Section 55 of the Borders, Citizenship and Immigration Act 2009

18. Consideration has also been given to section 55 of the Borders, Citizenship and Immigration Act 2009, which requires [us] to have regard to the need to safeguard and promote the welfare of children.

19. Our aim is always to carry out any actions with the minimum possible interference with a family's private life, and in particular to enable a family to maintain continuity of care and development of the children in ways that are compatible with the immigration laws.

> 20. In the circumstances of your case, it has been concluded that offering your family alternative bridging accommodation at [the second Manchester Hotel], where there is capacity for your family to reside together and LA support, is in the best interests of your children. Other families who have come to the UK under the resettlement scheme will also reside at [the second Manchester Hotel]. This includes families who are currently accommodated with you at [the Southwark Hotel]. Your children will benefit from being with a large cohort of children in similar circumstances.
>
> 21. The comments made by [the Southwark School] are noted, the move may require a period of adjustment, every care has been taken to ensure your children will have a safe, clean place to reside in an area with LA support and where they will have a place at a school. Where appropriate, information may be shared with the new LA to ensure continuity of educational or healthcare needs of your children."

77. The decision letter in relation to MK also included the following passages addressing his further representations:

> "10. [This paragraph addressed certain security concerns raised by MK]"
>
> 11. You stated that you have been referred for possible cancer and your GP has advised that you will get an initial appointment in the next two weeks and then further investigations thereafter. Your letter states that due to the nature of the possible underlying condition, you need to complete this review and investigations as soon as possible and your GP recommends that you are not moved out of area until this is concluded. Furthermore, the local Health Services in Southwark will share any relevant information with the receiving health services to ensure any disruption is minimal during this transfer. In the event that further investigations are needed, a referral can be made to the relevant health care provider in Manchester. I am satisfied that your health needs will be met in the receiving area.
>
> 12. In making these difficult decisions, we have considered your circumstances, including healthcare needs. Whilst it's acknowledged that this move will interrupt the healthcare you are currently receiving and will be inconvenient for you, care will be taken to ensure that health needs will be met in the new area. The outgoing LA will ask for information regarding any medical condition of health concerns you or your family may have so that this information can be passed to the LA where your new hotel is located. It is important that you engage with the LA when this information is requested.

> 13. Your letter states that the Job Centre has enrolled you in SIA training to obtain a qualification to enable you to work in the security industry. You are concerned that you will lose this opportunity upon moving to Manchester. I recommend you inform your work coach of your move and discuss what options are available to enable you to pursue this option. DWP work coaches will share relevant information to their counterparts in Manchester.
>
> 14. Regarding concerns about your children's education, the outgoing LA will ask for information regarding any education needs your children may have so that this information can be passed to the LA where your new hotel is located. It is important that you engage with the LA when this information is requested. This may result in a disruption to education in some circumstances, but the information has been shared and any disruption would not be disproportionate.
>
> 15. You claimed that you and your family also faced problems with the language, as you do not speak English and were unable to communicate with the hotel staff and the Home Office, and had started receiving support from Assure Aid, Southwark Day Care Centre and the Afghanistan Central Asia Association. You have estimated your contact with Southwark Day Care Centre and Assure Aid to be around twice a day, and weekly or every other week with the Afghanistan Central Asia Association. Your letter further states that these organisations help you and your wife with educational courses by offering English lessons and that you are being supported to take driving lessons. The Southwark Day Centre is assisting you and your wife with your children under three by offering some day care and educational services. Part of the support Local Authorities at all hotels provide is the provision of ESOL or equivalent to those who need the support. I am therefore satisfied that any interference with support will be minimal as you will be able to access similar support provisions in Manchester.
>
> 16. Additionally, there will be local support groups and organisations available to you and your family in Manchester as well as an established Afghan community."

78. The decision letter for FM included the following passages relating to her further representations:

> "11. In making these difficult decisions, we have considered your circumstances, including healthcare needs. [These sentences referred to details about the health of FM and her family]. Whilst it is acknowledged that this move will interrupt the healthcare and midwifery care that you are currently receiving and will be inconvenient for you, care will be taken to ensure that your family's health needs will be met in the new

area. The LA will ask for information regarding any medical condition or health concerns you or your family may have so that this information can be passed to the LA where your new hotel is located. We encourage you to engage with the LA when this information is requested. There is no reason to believe that there will be any significant disruption to your and your family's healthcare and midwifery care. I am satisfied that your health needs will be met in the receiving area.

12. You have informed us that you are [job title] at []. You claim that it would be difficult to find a similar job elsewhere. The Home Office considers that you have the relevant skills and fortitude to be able to find a similar job in Manchester given your expertise and specialism, having worked for NGOs and in international development for all of your career. Any support for finding employment will be available at the receiving hotel. Work Coaches who support people into employment are based nationally and therefore will continue to support you in the new area, this support will be provided to the whole family should they wish to take up employment or training. You will also be able to obtain advice on Universal Credit should this be required. Similar jobs are available nationwide.

13. You have also informed the Home Office that you want to remain in London because your children are currently in education in the area. Your child, [name], is currently learning English at Southwark College. He struggles with language, and it has taken him a lot of time to settle and feel comfortable. Your children will be placed in alternative schools and colleges in Manchester and will have access to an education. The LA will ask for information regarding any education needs your children may have so that this information can be passed to the LA where your new hotel is located. We would encourage you to engage with the LA when this information is requested. This may result in a disruption to education in some circumstances, but the information has been shared and any disruption would not be disproportionate.

14. Additionally, there will be local support groups and organisations available to you and your family in Manchester, as well as an established Afghan community."

79. The Defendant also draws attention to the following further points made in her pre-action responses (again taking that for HZ as an example):

"**Background**

…

4. Anyone relocated under the ARAP or ACRS schemes is entitled to fee free indefinite leave to remain ("ILR") in the UK. In common with other foreign nationals who are granted ILR status, Afghan nationals granted ILR under either scheme are entitled to work and study in the UK and to access public funds.

5. Operational arrangements were made in order to support your clients and the rest of the cohort of evacuees from Afghanistan. Those operational arrangements were given the name "Operation Warm Welcome". As part of Operation Warm Welcome, your clients were provided with temporary accommodation, known as bridging accommodation. The bridging accommodation was provided in hotels in order to ensure that your clients and others in their position were not left homeless when they arrived in the UK. Bridging accommodation was where arrivals to the UK are housed whilst waiting to be moved into settled accommodation. It was always made clear to your clients and to others in a similar position that the bridging accommodation was a temporary measure. The provision of bridging accommodation to your clients was under the SSHD's common law powers. The SSHD was not and is not under any duty – statutory or otherwise – to provide such accommodation.

6. The SSHD's intention was and remains that arrivals under the ARAP or ACRS schemes would be offered settled accommodation to which they could relocate from the bridging accommodation. To that end, His Majesty's Government set up the Afghanistan housing portal through which property owners, organisations or companies can offer entire homes for people arriving from Afghanistan.

7. On 16 September 2021, the Allocation and Housing and Homelessness (Eligibility) (England) and Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2021/1045 came into force, ensuring that persons granted leave under ARAP, and certain persons who left Afghanistan in connection with the collapse of the Afghan government in August 2021, are eligible for housing assistance from local authorities.

…

Ground 1 – procedural fairness

…

24. Save for a general objection to leaving [the Southwark Hotel], your clients did not raise any objection to the proposed offer of accommodation in Manchester before your PAP letter.

> No objection was raised with the SSHD's liaison officers present in [the Southwark Hotel]. Having received notice in the PAP that your clients objected to the move, the SSHD in her decision dated 15 September 2022 set out more fully the reasons why an offer was being made to your clients in Manchester; and took into account the reasons, which you advanced on behalf of your clients, why they objected to that move. In those circumstances, it is not arguable that there has been any procedural unfairness in your clients' case.
>
> 25. The SSHD does not require that your client moves to the alternative bridging accommodation (indeed since your clients have ILR the SSHD does not have the power to require them to live in a particular place). The SSHD is not taking a decision that your client must move from LB Southwark. However, there is a need to vacate the hotel by 30 September as the SSHD will no longer have a contract with the hotel. The SSHD has offered accommodation at an alternative appropriate hotel. Your clients are free to make alternative arrangements for their own accommodation, which some residents in the hotel have done. The nature of the decision is material to determining what a fair procedure is to precede that decision.
>
> …
>
> **Ground 2 – section 55 BCIA 2009**
>
> 27. As set out above, it is not admitted that s.55 is engaged in decisions to offer accommodation in a particular place. However, in any event in your case, in the decision containing her detailed reasons for offering you accommodation in Manchester, the SSHD has given her reasons why she does not consider that making an offer of accommodation in Manchester breaches s.55 BCIA. Whilst moving your children's school might require a period of readjustment, in light of the availability of appropriate accommodation and educational provision for your children, the SSHD does not consider that s.55 BCIA gives rise to a reason not to offer your clients alternative accommodation in Manchester."

(8) Procedural history of the claims

80. The claims were issued on 22 September 2022. On 26 September Sir Ross Cranston dismissed the Claimants' applications for interim relief and on 4 October 2022 he refused permission to apply for judicial review**.**

81. The Claimants renewed their applications for permission on 11 October 2022. At the time that permission was refused, the Defendant had not provided her Summary Grounds of Defence and on 24 October 2022 Lane J gave directions for this.

82. The Defendant filed her Summary Grounds of Defence, together with the second statement of Ms Ashraf on 4 November 2022.

83. The permission application was renewed orally at a hearing on 29 November 2022, at which Fordham J granted permission with expedition. Fordham J observed that these were *"important cases which raise issues of importance"* (at §1 of the permission decision). He noted, among other things, that:

    i) it was arguably necessary to consider section 55 of the 2009 Act alongside section 11 of the Children Act 2004 and ask whether there is a gap between accommodation under these schemes as overseen by the Secretary of State and the situation that would exist if local authorities had the responsibility; and

    ii) consideration arguably needed to be given to whether giving momentum to the 'policy decision' to move bridging accommodation out of London was compatible with public law duties of enquiry and evaluation, i.e. the extent to which it could drive individual decisions and the decision-making process.

84. The Defendant filed the third statement of Ms Ashraf on 22 December 2022. On the same date, she confirmed that she relied on her Summary Grounds of Defence as her Detailed Grounds of Defence.

(C) PRINCIPLES

(1) General administrative law principles

85. General administrative law principles required the Defendant:

    i) to take reasonable steps to acquaint herself with the information she reasonably considered necessary for her decision;

    ii) to have regard to relevant considerations and not to place any significant reliance on irrelevant considerations;

    iii) not to make a decision with some other demonstrable flaw in its reasoning, such as a serious logical or methodological error; and

    iv) to make a decision that was not so unreasonable that no reasonable decision-maker could have come to it: in other words, a decision within the range of reasonable decisions open to her.

    (See, e.g., *Associated Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014 and *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649.)

86. As to (i) above, the *Tameside* duty, the Court of Appeal in *R (Balajigari) v Home Secretary* [2019] EWCA Civ 673 at §70 said:

> "The general principles on the Tameside duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, paras 99-100. In that passage, having referred to the speech of Lord Diplock in

> *Tameside*, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since Tameside itself as follows.
>
> 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 State's 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."

87. It is common ground that the enquiry required is context-specific. The Claimants highlight the statement in *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 (Admin) at § 121 that where the individuals affected by a decision are "*vulnerable and have suffered traumatic experiences*" that "*mandates a careful inquiry*".

88. As to the duty to have regard to relevant considerations and only to relevant considerations (§ 85.(ii) above), there can be (a) considerations which the governing statute expressly or impliedly identifies as being required to be taken into account, (b) considerations which the statute (expressly or impliedly) requires not to be taken into account and (c) considerations to which the decision maker may have regard if in his judgment and discretion he thinks it right to do so. Failure to have regard to a consideration in the third category will be unlawful only if the consideration was so

obviously material that no reasonable decision-maker would fail to have regard to it. Similarly, it will normally be unlawful for a decision-maker to have regard to a consideration in the third category, but to give it no weight, only if no reasonable decision-maker would have done so. (See, in relation to these propositions, *R (Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52 §§ 116-121 and the cases cited there).

89. I consider the impact of policy in section (C)(3) below, but note here that the Claimants cited *R (Limbu) v Secretary of State for the Home Department* [2008] EWHC 2261 (Admin) as an example of a case where a set of criteria for a discretion were held to be contrary to the above principles in the context of the reason why the policy had been brought into existence. Blake J said:

> "56. I recognise at once that a successful challenge to a discretionary scheme supplementing an Immigration Rule, will be a rare creature, given that there is no statutory steer as to the requirements of such a policy and given that the principle of equal treatment with others covered by a policy has not been infringed. It is not sufficient to condemn such a policy as irrational that the court considers it has excluded a circumstance that the court considers rational if a reasonable Minister properly directing himself has concluded that it is not. However, where the Minister has explained why the policy has been brought into being and what it is intended to achieve, the court's scrutiny may extend to consider whether its terms as understood and applied by officials have illogically and irrationally frustrated its purpose.
>
> …
>
> 69. In my judgment, for all these reasons I conclude that there is substance in the claimants' second ground for attack on the operative policy. Transparency and clarity are significant requirements of instructions to immigration and entry clearance officers that are published to the world at large, generate expectations of fair treatment and bind appellate bodies in the performance of their statutory functions. The policy under challenge in this case either irrationally excluded material and potentially decisive considerations that the context and the stated purpose of the policy indicate should have been included; alternatively, it was so ambiguous as to the expression of its scope as to mislead applicants, entry clearance officers and immigration judges alike as to what was a sufficient reason to substantiate a discretionary claim to settlement here." (my emphasis)

Viewed as a decision relating (in part) to relevant considerations, and applying the analysis referred to in § 88. above, I would regard *Limbu* as an example of a case where no reasonable decision-maker would have failed to have regard to the particular considerations, contained in the policy's context and stated purpose, to which Blake J referred.

(2) Section 55 of the Borders, Citizenship and Immigration Act 2009

90. Section 55 of the Borders, Citizenship and Immigration Act 2009 provides:

> "55 Duty regarding the welfare of children
>
> (1) The Secretary of State must make arrangements for ensuring that—
>
> (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
>
> (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
>
> (2) The functions referred to in subsection (1) are—
>
> (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
>
> (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
>
> (c) any general customs function of the Secretary of State;
>
> (d) any customs function conferred on a designated customs official.
>
> …"

91. The section 55 duty, where it applies:

i) requires consideration of a child's specific circumstances, not merely consideration of "children" generally: *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; [2013] 1 WLR 3690 at §10; the decision-maker should identify the principal needs of the children (broadly construed), both individually and collectively: *Nzolameso v Westminster CC* [2015] UKSC 22 §§ 23 and 27;

ii) relates not merely to safeguarding the affected children but also to actively promoting their welfare: *Nzolameso v Westminster* § 27; *YR v Lambeth London Borough Council* [2022] EWHC 2381 §§46 and 82; and

iii) imposes an enhanced duty to be properly informed and carefully to consider all relevant information. What precisely is required in each case is fact-sensitive and a matter of substance rather than form. In *JO v Secretary of State for the Home Department* [2014] UKUT 00517 (IAC), McCloskey J explained:

> "10 ... in order to discharge the twofold, inter-related duties imposed by section 55 (i) to have regard to the need to safeguard and promote the welfare of any children involved in the factual matrix in question and (ii) to have regard to the Secretary of State's guidance, the decision maker must be properly informed. I consider this construction of section 55 to be dictated by its content, its evident underlying purpose, the aforementioned decisions of the Supreme Court and the well established public law duty to have regard to all material considerations
>
> ...
>
> Linked to this is another hallowed principle of public law, namely the duty of the public authority concerned to promote the policy and objects of the Act in giving effect to the relevant power or duty: *Padfield – v – Minister of Agriculture, Fisheries and Food* [1968] AC 997 , at 1030b/d per Lord Reid. This overlay of public law duties, when applied to section 55, should serve to ensure fulfilment of the underlying legislative purpose in every case. These principles also give sustenance to the proposition that the duties enshrined in section 55 cannot be properly performed by decision makers in an uninformed vacuum. Rather, the decision maker must be properly equipped by possession of a sufficiency of relevant information.
>
> 11. I consider that, properly analysed, there are two guiding principles, each rooted in duty. The first is that the decision maker must be properly informed. The second is that, thus equipped, the decision maker must conduct a careful examination of all relevant information and factors. These principles have a simple logical attraction, since it is difficult to conceive how a decision maker could properly have regard to the need to safeguard and promote the welfare of the child or children concerned otherwise. Furthermore, they reflect long recognised standards of public law. Being adequately informed and conducting a scrupulous analysis are elementary prerequisites to the inter-related tasks of identifying the child's best interests and then balancing them with other material considerations. This balancing exercise is the central feature of cases of the present type. It cannot realistically or sensibly be undertaken unless and until the scales are properly prepared".

92. The Claimants submit that section 55 is engaged here, for the following reasons:

i) Section 55(2)(a) does not limit the duty to the Secretary of State's immigration functions but refers, more widely, to *"any function... in relation to"* immigration, asylum or nationality: contrasting with the references to a "customs function" in subsections (2)(c) and (d). Further, in relation to another part of the Act (Part 1), section 38 defines "*function*" as "*any power or*

duty (including a power or duty that is ancillary to another power or duty)". Given the Home Office's finite range of functions, it is hard to see to which function the provision of bridging accommodation relates if not to immigration.

ii) The Afghan resettlement schemes seek to ensure that eligible people successfully rebuild their lives and integrate in the UK, in recognition of the assistance the person provided to the UK, by providing an integrated package including indefinite leave to remain, initial accommodation, and other support. Housing provides the necessary support to resettlement, which is an exercise of the Defendant's immigration functions. This is illustrated by the policy announcement by the then Home Secretary on 1 September 2021 that:

> "As part of the New Plan for Immigration, I committed to providing refugees who make their home here the ability to rebuild their lives in the UK with essential support to integrate into the community, learn English, and become self-sufficient. By providing immediate indefinite leave to remain we are ensuring that those who have fled their homes have every opportunity to look to the future with stability and security and make a success of their new life in the UK."

and passages in the "*Afghanistan resettlement and immigration policy statement*" explaining that "*[6]... we are determined to ensure they have the best possible start to life in the UK... we will be offering indefinite leave to remain...*" and "*[9] On 31 August, the Government announced 'Operation Warm Welcome' to ensure that all those relocated to the UK can access the vital healthcare, housing, education and support they need to fully integrate into our society*" (see also §§11, 32 and 36). The government's '*Factsheet'* on Operation Warm Welcome was to similar effect. ILR, together with support including accommodation, were co-dependent elements of a resettlement scheme designed to ensure integration, and the grant of ILR would be of much less value without the other support offered. Moreover, Operation Warm Welcome is linked to the provision of safe routes for immigration, and the support offered (including bridging accommodation) is an incentive to use this particular immigration route (see, e.g., § 21 of the Defendant's post-decision policy statement, which indicates that the ACRS is in line with the New Plan for Immigration commitment to expand legal and safe routes to the UK for those in need of protection, whilst toughening the stance against illegal entry to the criminals who endanger life by enabling it).

iii) In cases like those of the Claimants, bridging accommodation is available only for those who have been granted leave to enter and remain in the UK pursuant to a relevant resettlement scheme; and the funding provided by the Defendant to local authorities for housing can cease if *inter alia* the person applies for some other immigration status (Funding Instruction for local authorities §§ 1.4, 1.22, 3.1, and 6.8.5).

iv) It was common ground in *R (O) v Secretary of State for the Home Department* [2019] EWHC 2734 (Admin) that section 55(2)(a) extends to the provision of asylum support accommodation (see § 71): illustrating that provision of

housing can be an immigration-related function. It can make no difference that the Defendant in the latter context is discharging a statutory duty, as section 55(2)(a) is not limited to statutory functions in its application to the Secretary of State (in contrast to section 55(2)(b): see *R (M) v Gateshead Council* [2006] QB 651 §19). As in the asylum support situation, qualification for bridging accommodation is contingent upon a person having a specific immigration status. Moreover, asylum support does not end at the moment that a person receives a positive decision in respect of their immigration status, but continues until the end of the relevant notice period (regulation 22 of the Asylum Support Regulations 2000), so it is not possible to draw a clear boundary between support provided before and after any relevant immigration decision.

v) As explained in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2021] 1 WLR 3049 §70, section 55 was "*enacted to give effect in domestic law, as regards immigration and nationality, to the UK's international obligations under Article 3 [of the UN Convention on the Rights of the Child]*", following the 2008 withdrawal of the UK's reservation to the UNCRC in relation to immigration and nationality functions. *"Where a statute is passed in order to give effect to the United Kingdom's international obligations under a treaty, the statute should if possible be given a meaning that conforms to that of the treaty. For that purpose the provisions of the treaty may be referred to as an aid to interpretation"* (*Bennion on Statutory Interpretation* § 24.16). Article 3 UNCRC requires that in:

> "all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Section 55(2)(a) can, in the present context, be given a meaning which conforms with Article 3, by interpreting it as extending to the decisions under challenge, which clearly involve actions concerning children.

vi) Decisions regarding bridging accommodation are taken both by the Defendant and by local authorities. The local authorities' decisions are subject to their general duty under section 11 of the Children Act 2004 to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. It would be surprising and arbitrary if the Defendant were not required to do the same when taking complementary accommodation decisions.

93. I am not persuaded by those submissions. The ordinary meaning of a "*function in relation to immigration*" is one which concerns entry to, abode in and removal from the United Kingdom, generally involving the exercise of the Secretary of State's powers under immigration legislation, and including powers exercised for the purpose of facilitating the Secretary of State's control over entry to, abode in and removal from the United Kingdom (such as powers to detain pending administrative removal or deportation). I doubt that any significance should be attached to the difference between the phraseology in subsections (2)(a) ("*any function ... in relation to*

immigration ...") and (2)(c)/(d) ("*any general customs function ..." and "any customs function conferred ...*"). Those differences probably flow simply from the need in subsections (2)(c) and (d) to subdivide different categories of customs function (whilst expressing each concept in plain language). In any event, the differences do not in my view suggest that any particularly expansive meaning should be given to the phrase "*in relation to immigration*" in subsection (a).

94. It is true that the grant of ILR to the beneficiaries of the Afghan resettlement schemes forms part of a 'package' which also includes provision of housing and other support, and (arguably) that each element would have less value to the beneficiaries without the other elements. It is also true that bridging accommodation is available to persons in the position of the Claimants only if they have been granted, and retain, leave to enter and remain pursuant to a relevant resettlement scheme. However, it does not follow that the provision of housing and other support forming part of the 'package' is to be regarded as a function in relation to immigration. Rather, the immigration element may be regarded as part of a larger whole that goes well beyond anything that can, in any meaningful sense, be regarded as "*relating to immigration*".

95. I consider the position in relation to asylum support, conceded in *R(O)* to fall within section 55(2)(a), to be distinguishable. As the Defendant points out, asylum support is intricately related to a pending asylum application. The duty under section 95 of the Immigration and Asylum Act 1999 is to provide support, including accommodation, to asylum seekers or dependants of asylum seekers who appear to the Secretary of State to be destitute or to be likely to become destitute. To qualify, the individual must require but lack leave to enter/remain in the UK, and must have an outstanding application for asylum. Thus the section 95 power to provide accommodation is directly parasitic upon the ongoing asylum decision-making process, even if it does continue for a period thereafter. Those who qualify for accommodation are subject to the exercise of other powers by the Secretary of State, for example the imposition of immigration bail conditions, which typically will include a residence condition. Hence the Secretary of State has the power to direct individuals to reside in the accommodation provided.

96. By contrast, the Claimants have been granted ILR and so have an unrestricted right to leave and enter the UK as well as to enjoy the benefits of settled status in the UK, including access to public funds. The Secretary of State has no outstanding role regarding their immigration status under the resettlement schemes. The Secretary of State has no power to impose bail conditions upon them, and no power to direct that any Claimant resides at a particular address. These distinctions, individually and cumulatively, mean that section 95 support relates to asylum (and immigration) in a significant way that does not apply to the support (over and above the grant of ILR) provided to individuals under the Afghan resettlement schemes.

97. As regards the Article 3 UNCRC point, it is necessary to consider three key authorities. First, in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, Baroness Hale (with whom the other members of the court agreed) said:

> " … [Article 3 UNCRC] is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act

> 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children. The immigration authorities were at first excused from this duty, because the United Kingdom had entered a general reservation to the UNCRC concerning immigration matters. But that reservation was lifted in 2008 and, as a result, section 55 of the Borders, Citizenship and Immigration Act 2009 now provides that, in relation among other things to immigration, asylum or nationality, the Secretary of State must make arrangements for ensuring that those functions "are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom". (my emphasis) (§ 23)

98. In *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2021] 1 WLR 3049, Richards LJ said:

> "69. The meaning and effect of section 55 has been considered by the Supreme Court in a number of cases, including *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166 , *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, [2013] 1 WLR 3690 and *R (MM (Lebanon)) v Secretary of State for Home Affairs* [2017] UKSC 10, [2017] 1 WLR 771 .
>
> 70. There was no dispute before us as to the propositions established by those authorities which for present purposes may be summarised as follows:
>
> i) Section 55 was enacted to give effect in domestic law, as regards immigration and nationality, to the UK's international obligations under article 3 of the 1989 United Nations Convention on the Rights of the Child (UNCRC). The UK is a party to the UNCRC and in 2008 withdrew its reservation in respect of nationality and immigration matters. Article 3 provides that: *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"*. Although section 55 uses different language, it is conventional and convenient to refer to a duty under section 55 as being to have regard, as a primary consideration, to the best interests of the child.
>
> …"

99. In the subsequent case *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 (to which the Defendant draws attention), the Supreme Court among other things considered whether Article 3 should be considered when assessing whether there was justification for differential treatment when applying Article 14, read with Article 8, of the Human Rights Convention. The court noted

that there was no basis in the case law of the ECtHR, as taken into account under the Human Rights Act, for any departure from the rule that our domestic courts cannot determine whether this country has violated its obligations under unincorporated international treaties (§ 84). It concluded that the ECtHR's decision in *X v Austria* (2013) 57 EHRR 14 does not suggest that domestic courts should approach the question of justification by applying the provisions of the UNCRC, or by deciding whether, in adopting the measure in question, the national authorities complied with their obligations under the UNCRC (§ 86). I am inclined to regard this case as being of, at most, tangential relevance to the issue before me.

100. The Defendant makes the point that the Supreme Court in *ZH* did not go quite so far as to say that section 55 was enacted to give effect to the UK's international obligations, as regards immigration and nationality, even though that was common ground before the Court of Appeal in *R (Project for the Registration of Children as British Citizens)* that it was. I am not sure that the fact that section 55 is expressed in different terms from Article 3 means that section 55 is not to be regarded as having been enacted in order to give effect to Article 3 in a relevant sense: though it is true that, as the Supreme Court said in *Nzolameso v Westminster City Council* at § 28, section 11 of the Children Act 2004 (which is in relevantly similar terms to section 55) does not reproduce the wording of Article 3 as it does not in terms require that the children's welfare should be the paramount or even a primary consideration.

101. However, I do in any event agree with the Defendant's submission that section 55 clearly was not intended to give effect to Article 3 as a whole. Article 3 refers to "*all actions concerning children*" whereas section 55 is confined to actions by specified persons in specified contexts, including the functions of the Secretary of State in relation to immigration, asylum and nationality. Section 55 cannot be said to have been intended to give effect to Article 3 outside those specified contexts. In those circumstances it would not, in my view, be legitimate to seek to broaden the scope of section 55 by an interpretation based on the inevitably much broader scope of Article 3.

102. As the Claimants point out, a broad range of public bodies are required to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children, under section 11 of the Children Act 2004. Those bodies include local authorities discharging housing and other functions in relation to children who are living in the UK by reason of the Afghan resettlement schemes. Section 11 applies to the Secretary of State, however, only in relation to certain non-relevant functions (relating to offender management). If section 55 of the 2009 Act does not apply to the subject-matter of the present claim, then the Secretary of State will be in a different position from local authorities. That may well be the case, but it is not in my view a situation which the court can properly address by adopting a strained interpretation of section 55, nor (for the reasons given above) by purporting to construe section 55 in the light of Article 3.

103. I am therefore not persuaded that the section 55 duty applied to the Defendant in the present context. In case I am wrong in that view, I go on in section (D) below to consider the position on the alternative footing that section 55 did apply.

(3) Adherence to policy

104. In general a public body must, in the absence of good reason, follow its policy as to how it will act in relation to the public: see, e.g., *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, [2012] 1 AC 245 at §§26, 202 & 313; *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546; and *Lee Hirons v Secretary of State for Justice* [2016] UKSC 46, [2017] AC 52, §17. Lord Wilson explained in *Mandalia* that:

> "… the applicant's right to the determination of his application in accordance with policy is now generally taken to flow from a principle, no doubt related to the doctrine of legitimate expectation but free-standing, which was best articulated by Laws LJ in *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 , as follows:
>
> > "68 … Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? It is not far to seek. It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public."" (§ 29)
>
> citing also Lord Dyson's statement in *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, [2012] 1 AC 245 that "*a decision-maker must follow his published policy … unless there are good reasons for not doing so*." (§ 31).

105. In *R (All the Citizens) v SS Digital, Culture, Media and Sport & Anor* [2022] EWHC 960 (Admin) at §§100-101, the Divisional Court explained that not all policies had the consequences described in Mandalia and they expressed the view (*obiter*) that the cases had so far concerned individual rights (§101). However, the court went on to state that a breach of the law may, as the law develops, be found to occur where a policy which "*has been promulgated to govern the exercise of a discretionary power which may confer a benefit of significant value to an individual*" is breached (§101).

106. The Supreme Court in *R (Friends of the Earth) v Secretary of State for Transport* at §§ 101ff had to consider whether, in accordance with section 5(7) and (8), a National Policy Statement had explained how the policy set out in it *"takes account of Government policy relating to the mitigation of, and adaption to, climate change"*. In that context, the Supreme Court said:

> "105. The principal question for determination is the meaning of "Government policy" in section 5(8) of the PA 2008 . We adopt a purposive approach to this statutory provision which expands upon the obligation in section 5(7) that an NPS give reasons for the policy set out in it and interpret the statutory

words in their context. The purpose of the provision is to make sure that there is a degree of coherence between the policy set out in the NPS and established Government policies relating to the mitigation of and adaptation to climate change. The section speaks of "Government policy", which points toward a policy which has been cleared by the relevant departments on a government-wide basis. In our view the phrase is looking to carefully formulated written statements of policy such as one might find in an NPS, or in statements of national planning policy (such as the National Planning Policy Framework), or in government papers such as the Aviation Policy Framework. For the subsection to operate sensibly the phrase needs to be given a relatively narrow meaning so that the relevant policies can readily be identified. Otherwise, civil servants would have to trawl through Hansard and press statements to see if anything had been said by a minister which might be characterised as "policy". Parliament cannot have intended to create a bear trap for ministers by requiring them to take into account any ministerial statement which could as a matter of ordinary language be described as a statement of policy relating to the relevant field.

106. In our view, the epitome of "Government policy" is a formal written statement of established policy. In so far as the phrase might in some exceptional circumstances extend beyond such written statements, it is appropriate that there be clear limits on what statements count as "Government policy", in order to render them readily identifiable as such. In our view the criteria for a "policy" to which the doctrine of legitimate expectations could be applied would be the absolute minimum required to be satisfied for a statement to constitute "policy" for the purposes of section 5(8) . Those criteria are that a statement qualifies as policy only if it is clear, unambiguous and devoid of relevant qualification: see for example Inland Revenue Comrs v MFK Underwriting Agents Ltd [1990] 1 WLR 1545 , 1569 per Bingham LJ; R (Gaines-Cooper) v Comrs for Her Majesty's Revenue and Customs [2011] UKSC 47; [2011] 1 WLR 2625 , paras 28 and 29 per Lord Wilson of Culworth, delivering the judgment with which the majority of the court agreed, and para 70 per Lord Mance. The statements of Andrea Leadsom MP and Amber Rudd MP (para 72 above) on which the Court of Appeal focused and on which Plan B Earth particularly relied do not satisfy those criteria. Their statements were not clear and were not devoid of relevant qualification in this context. They did not refer to the temperature targets at all and they both left open the question of how the Paris Agreement goal of net zero emissions would be enshrined in UK law. Andrea Leadsom went out of her way to emphasise that "there is an important set of questions to be answered before we do." The statements made by these ministers were

> wholly consistent with and plainly reflected the fact that there was then an inchoate or developing policy being worked on within Government. This does not fall within the statutory phrase.
>
> 107. We therefore respectfully disagree with the Court of Appeal in so far as they held (para 224) that the words "Government policy" were ordinary words which should be applied in their ordinary sense to the facts of a given situation. We also disagree with the court's conclusion (para 228) that the statements by Andrea Leadsom MP and Amber Rudd MP constituted statements of "Government policy" for the purposes of section 5(8)."

107. I do not, however, consider that those conclusions were intended to, or do, affect the question of the type of policy to which the ordinary principles addressed in §§ 104. and 105. above apply. There may be a general public law duty to adhere, absent good reason, to "*a promise or ... practice which represents how it proposes to act in a given area*" even if it is not a formal written statement, clear, unambiguous and devoid of relevant qualification. Conversely, as the Claimants accept, the certainty with which a policy is expressed may be relevant to the questions of whether the Defendant has in fact departed from it and, if so, whether or not there was good reason to do so.

108. I consider in section (D)(2) below what, if any, relevant policy exists in the present case.

(D) APPLICATION

(1) Proper enquiry and appraisal

109. The Claimants' main submissions on this part of the case may be summarised as follows.

i) The Defendant made a policy decision in July 2022 to move bridging accommodation out of London, and told the Claimants on 1 August 2022 that they would be offered bridging accommodation in Manchester. The Defendant treated that as a 'given' when addressing the Claimants' representations. She did not balance the Claimants' reasons for remaining in London as part of an exercise in evaluating whether or not to remain accommodation: rather, they were treated as objections to be rebutted rather than factors to be considered. Nor did the Defendant tell the Claimants about the policy decision or that, as a result, replacement bridging accommodation would now only exceptionally be provided in London.

ii) The factors said by the Defendant to have been considered in July 2022 when making its policy decision lacked cogency. Little or no evidence (such as minutes or direct evidence) has been put forward about the alleged concerns of London boroughs about migration pressures. Any concerns about affordability of settled accommodation in London are contradicted by the evidence the Claimants have filed (in particular, in the witness statement of Lucy Parker of

the Southwark Day Centre for Asylum Seekers, dated 22 September 2022) to the effect that many beneficiaries of the scheme have worked in professional jobs, some of whom have found work in London since coming to the UK; and would, with sufficient support, be able to have successful careers "here" and be in a position to pay rent. The Defendant did not assess the problem of accommodation costs properly: had she operated an effective system for scheme beneficiaries to find their own accommodation, then it would not have been necessary to provide bridging accommodation for such long periods.

iii) The Defendant has not claimed that bridging accommodation cannot be made available in London. If and to the extent that that were the case, it resulted from the Defendant's own decision not to procure more bridging accommodation in London because of her exit strategy from London. The general policy could not lawfully preclude any bridging accommodation being provided in London for the Claimants, and indeed on the face of the Defendants' evidence it envisaged that some bridging accommodation would continue to exist in London for a significant time.

iv) The Defendant made insufficient enquiries about the impact of a move on the Claimants' children's welfare. A higher level of enquiry was needed for a move from one unit of bridging accommodation to another, as compared to when finding initial bridging accommodation, because a move disrupted existing arrangements. The Defendant made high level enquiries only, and did not inform herself about the nature of the educational provision that would be available in Manchester or how long it would be likely to take for the children to be enrolled in local schools. The Defendant could and should have made enquiries such as those which the Claimants' solicitor made about how over-subscribed the local schools were and how long it would take to get a place. No attempt was made to assess how long the Claimants were likely to remain in Manchester or the impact on the children's welfare and educational development in having to remain in further temporary accommodation where they would be liable to further temporary moves and would have to move again when permanent accommodation was secured.

v) In reaching her decisions, the Defendant failed to have proper regard to the impact on the children's education, the difficulties the children would be likely to experience in accessing education and the harm they would experience having to leave their existing provision. She failed to take account of the fact that several of them are sitting public examinations this year: a factor deserving particular consideration (cf the statutory guidance on permanent exclusion "*Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*", September 2022, §§ 79 and 91). No real consideration was given to the contents of the letter from the Southwark School, which indicated that there would be serious difficulties in replicating elsewhere the provision the school was providing. The Defendant failed to balance the harm caused against the feasibility of avoiding the move by securing other temporary accommodation within travelling distance of their current schools or securing permanent accommodation, or against the supposed advantages of moving the Claimants to Manchester. There is no evidence that the Defendant considered other more

cost-effective solutions, such as assisting the Claimants to obtain accommodation in the private rented sector; and they were not given enough time or support to find such accommodation themselves. The reasons set out in the decision letters were largely generic in their reasoning, failing to consider the children's individual circumstances, in breach of both section 55 and the Defendant's general public law duties.

vi) The Defendant made insufficient enquiries about the impact of a move on FM's employment position, and failed to have proper regard to it when making her decision. Again, the reasons set out in the decision letter sent to FM were largely generic. To the extent they were not generic, there was no rational basis for them. The decision letter assumed that FM would have to give up her job, and asserted that "*you have the relevant skills and fortitude to be able to find a similar job in Manchester given your expertise and specialism*". There was no rational foundation for this statement, and the Defendant has not claimed that she had any information on which to base it.

110. I begin with the impact of the policy decision (§ 109.(i) above). The proposed exit strategy, as summarised by Ms Ashraf (§ 62. above), did not indicate that the strategy would mean that any scheme beneficiaries needing new bridging accommodation would be offered accommodation out of London without exception. The decision letters recorded that at the 1 August 2022 "*Town Hall*" meeting, those present were invited to raise with HOLOs any concerns they had about the closure of the hotel, which was at least consistent with the possibility that individual circumstances might justify finding new bridging accommodation in London. Both the Defendant's pre-action protocol letters and her decision letters stated that she had considered the concerns raised, along with other factors, before making a decision on where to offer the Claimants alternative bridging accommodation; and the decision letters explicitly considered the further representations that the Claimants had made in their own pre-action letters. Counsel for the Defendant told me, on instructions, that the Defendant had in fact arranged for some of those affected by closure of the London hotels to stay in the London area where particular circumstances required this, for example a family with a child undergoing treatment for a serious medical condition, and another family consisting of minors together with a young carer.

111. In these circumstances, and on a fair reading of the decision letters, I consider that the Defendant did balance the Claimants' reasons for remaining in London against the considerations that favoured offering replacement bridging accommodation away from London, and there is no reason to believe that was other than a genuine exercise. It is true that the Defendant did not tell the Claimants in terms about its July 2022 strategic decision. However, it must have been clear to the Claimants from the 1 August 2022 meeting, or the conversations shortly afterwards referred to earlier, that the Defendant was proposing to provide replacement bridging accommodation in Manchester, rather than in London, unless she could be persuaded otherwise in particular cases.

112. As to the cogency of the factors underlying the strategic decision (§ 109.(ii) above), the Claimants do not directly challenge the decision itself, but submit that the underlying factors said to have been relied on should not have influenced the Defendant's decisions about where to offer them bridging accommodation. However, Ms Ashraf's evidence is clear in stating that the Defendant has, over time, heard

concerns expressed about migration pressures from the London Strategic Migration board and the GLA; and her summary of the 12 July 2022 submission to Ministers refers to pressure on London boroughs as being an important consideration. The submission also referred to the costs of hotel bridging accommodation; and the significance of that factor in the present context is not, in my view, diminished by the Claimants' point that costs might have been lower if the process of finding permanent accommodation for scheme beneficiaries – a matter which is not challenged in this judicial review claim – had been more effective. As to the affordability of permanent accommodation, the fact that some scheme beneficiaries might, at some stage in the future, be able to afford settled accommodation in London does not detract from the general point that – looking at the interests of the cohort as a whole – settled accommodation in the Manchester area was regarded as more likely to be affordable than accommodation in London. In my view, these were all considerations that the Defendant could properly take into account as part of her strategic decision and when deciding where to offer alternative bridging accommodation to the Claimants.

113. As to the matters referred to in § 109.(iii) above, Ms Ashraf said in her first witness statement that there was no other existing bridging accommodation in London that would be suitable for the Claimants' families. However, she did not say that it would be impossible to provide such accommodation in London; and it is not the Defendant's case that it would be, or that the Defendant's general policy would preclude it (see § 110. above). Nor did the decision letters state that it would be impossible to provide bridging accommodation in London, though they did make the point that there were no settled accommodation options in Southwark or London appropriate for the Claimants.

114. When considering what enquiries were necessary about education (§§ 109.(iv) above), it is appropriate to begin by identifying what considerations the Defendant was bound to treat as relevant in that context. The Defendant did not provide bridging accommodation pursuant to any statutory power. The relevant question is, therefore, whether there are any considerations that any reasonable decision-maker would be bound to regard as relevant. I do not accept that the Defendant's published statements about the selection of settled (permanent) accommodation can simply be transposed onto bridging accommodation and treated as identifying factors that must be taken into account in order for any bridging accommodation decision to be lawful. However, they shed some light on the objectives of the resettlement scheme as a whole, including the objective of enabling scheme beneficiaries *inter alia* to receive an education. Moreover, it is obvious that a move from one area to another would be very likely to affect children's education. In all the circumstances, any rational decision-maker would in my view regard impact on education as a relevant consideration.

115. In addition, if I am wrong in my earlier conclusion that section 55 of the 2009 Act is not engaged, that section required the Defendant to have regard to the need to safeguard and promote the welfare of the affected children.

116. The enquiries which the Defendant made about educational provision in Manchester can be summarised as set out below. The context was that, as noted in the Factsheet quoted earlier, the Department for Education had made £12 million available to prioritise additional school places and ensure children could be enrolled as soon as possible, and to provide specialist language support and facilitate free transport to

school; and had written to all local authorities, making clear that they were expected to provide school places wherever possible and providing guidelines around the nature of any temporary provision.

i) At the outset, when faced with the urgent need temporarily to accommodate the arriving scheme beneficiaries, the Defendant took into account the availability of health and education services if those matters were raised by the local authority (§ 44. above).

ii) When the Manchester bridging hotels were stood up, health and education teams were involved in discussions about the Manchester Hotels from the outset, the primary aim being to put provision in place early for delivery of healthcare and education to residents, even if that meant using space in the hotels to deliver those services. Education was a topic of discussion even though Covid and TB screening were the highest priority at that point (§ 45. above).

iii) The Department for Education's overview or estimate of available school places in the local authority area was one of the factors taken into account in rating hotels during the review process initiated in October 2021. Their estimate was the same for Southwark and for Manchester, and the Defendant gave an amber rating for education to both the Southwark Hotel and the Manchester Hotels at that stage (§§ 47.-48. above).

iv) A member of the Engagement Team spoke to MCC staff on 10 August 2022 about the educational provision available for children of school age who formed part of the group currently accommodated at the Southwark Hotel. The Engagement Team member confirmed by email on 11 August 2022 his understanding that MCC supported the arrival of the families in principle, subject to safeguarding issues, but wanted to check whether MCC would accept the proposed hotel residents in principle given the numbers of school aged children on the booking. MCC responded in the affirmative, subject to prior sharing of any safeguarding issues (§ 70. above).

117. The general public law question (i.e. before considering section 55) is whether no reasonable authority could have been satisfied, on the basis of those enquiries, that it possessed the information necessary for its decision about where to offer the Claimants substitute bridging accommodation.

118. In administering bridging accommodation under the resettlement scheme as a whole, the Defendant had to make provision for large numbers of individuals. Counsel told me that, as at August 2022, there were still about 9,600 people in bridging accommodation out of the approximately 15,000 scheme beneficiaries. The closure of the Southwark Hotel alone meant that new bridging accommodation had to be found for a significant number of people: the move required two coaches, five 16-seat taxis and five transit vans. (Counsel for the Defendant told me on instructions that around 90-100 people were moved.) The Defendant had to, or was at least entitled to, consider a broad range of considerations, including the migration pressure and cost factors referred to earlier, the prospects of scheme beneficiaries finding affordable permanent accommodation in due course in different areas, and the availability of education, work, health and other services. Education was thus one of a range of

factors, albeit an important one. The scheme beneficiaries in bridging accommodation at the Southwark Hotel will have been in various different positions as regards education, health, employment and other matters. For example, as regards education, the Southwark School in October 2021 took in 22 secondary age students who were scheme beneficiaries, some in bridging accommodation at the Southwark Hotel and some in another hotel (which is still used for bridging accommodation). It is therefore likely that only a minority of the families in bridging accommodation at the Southwark Hotel included children attending the Southwark School. It is also relevant to recall that none of the scheme beneficiaries was obliged or required to move to one of the Manchester Hotels, though it is fair to add that practical constraints may have given them little real option at least in the short term.

119. In these circumstances, judgments had to be made about how detailed a level of enquiry should be made into the impact of a move on education and each of the other potentially relevant factors. It is true that more enquiries could have been made than the Defendant in fact made, but that is not the test. The Claimants submitted that the Defendant could properly refrain from making any particular enquiry (for example, asking individual schools near the relevant Manchester Hotel when in-school places would become available for children of different ages) only if she could rationally decide to offer replacement bridging accommodation there whatever answer that enquiry could have produced (for example, that it would take x months to provide a place for a child of a given age). I do not believe that is the right way to approach the matter. The Defendant was entitled to form a view about the appropriate level of enquiry in all the circumstances. She was entitled to have regard to the combination of MCC's statutory duties to provide education to children within its area, and MCC's specific confirmations to the Defendant that it would be able to accept the relocated scheme beneficiaries bearing in mind the number of school age children involved. In my judgment, a reasonable decision-maker could have settled on the nature and level of enquiries that the Defendant in fact undertook.

120. Moreover, by the time the Defendant took the decisions reflected in the decision letters, she had received, and was able to take into account, the more detailed information which the Claimants provided in their pre-action letters and their enclosures.

121. I would reach the same view even if, contrary to my earlier conclusion, section 55 of the 2009 Act was engaged. The enquiries the Defendant made included specifically checking whether MCC could provide for the education of the number of school-age children who had to be moved out of the Southwark Hotel. The examples mentioned in argument (§ 110. above) suggest that special provision could and would be made if particular circumstances made it necessary for children to remain in London. I do not accept that the Defendant was under a duty, even if section 55 applied, to make enquiries on a school by school basis, any more than she was required to approach individual GP surgeries, dental clinics and so on. Moreover, by the time of the decision letters, the Defendant had received from the Claimants further details about their children's individual educational circumstances.

122. As to the consideration that the Defendant actually gave to the impact of the proposed move on the Claimants' children's education (§§ 109.(v) above), the decision letters recognised that there would be some disruption to children's education (albeit the Defendant sought to minimise it by timing the proposed move for early September),

and made clear that the letter from the Southwark School had been considered (albeit that letter did not, in my view, provide any specific information which the Defendant was bound to conclude undermined the confirmations she had received from MCC about the availability of education for the children in the cohort). However, the Defendant concluded that any disruption would not be disproportionate. Although the reasoning is concisely expressed, on a fair reading of the decision letters as a whole they show in my view that the Defendant did have regard to educational impact as part of her assessment of whether or not it was appropriate to offer the Claimants replacement bridging accommodation at the Manchester Hotels.

123. Further, even if section 55 applied, I consider that the Defendant had regard to the need to safeguard and promote the Claimants' children's welfare. Education was one aspect of that, and I have already dealt with the level of enquiries the Defendant made in that respect. The promotion of the children's welfare also included taking care to ensure they had a safe, clean place to reside, in an area with local authority support (HK decision letter § 21), placing them with a large cohort of children in similar circumstances (§ 20), and placing them in an area with a generally greater prospect of finding affordable settled accommodation in due course.

124. Turning to the enquiries made about, and consideration given to, FM's employment situation (§§ 109.(vi) above), I did not understand the Defendant to dispute that she needed to have some regard to the effect of the proposed move on employment. As to the necessary levels of enquiry, the general considerations referred to in §§ 117.-120. above apply again. A reasonable decision-maker could in my view conclude that, provided the new bridging accommodation was not in a part of the country known to have poor employment prospects in general, it was not necessary to make enquiries on an individual by individual basis unless particular concerns were raised. FM did raise concerns, which were addressed by the passage in the decision letter stating:

> "You have informed us that you are [job title] at []. You claim that it would be difficult to find a similar job elsewhere. The Home Office considers that you have the relevant skills and fortitude to be able to find a similar job in Manchester given your expertise and specialism, having worked for NGOs and in international development for all of your career. Any support for finding employment will be available at the receiving hotel. Work Coaches who support people into employment are based nationally and therefore will continue to support you in the new area, this support will be provided to the whole family should they wish to take up employment or training. You will also be able to obtain advice on Universal Credit should this be required. Similar jobs are available nationwide."

125. FM submits that the Defendant had no information to support, or rational basis for, the statement in the third sentence quoted above. However, the pre-action letter sent on FM's behalf, dated 31 August 2022, had explained that FM had had good jobs in Kabul working full time for NGOs and not-for-profit organisations (the nature of which it outlined). The decision letter makes the point that, given that very significance previous experience, FM had the relevant skills and fortitude to be able to find a similar job in Manchester. That appears to me to be a rational conclusion from the information stated, and I do not consider that it could fairly be said to be one

founded on no evidence or one which no reasonable decision-maker could have reached.

126. As to the statement that similar jobs to FM's present one are available nationwide, FM in her pre-action letter made the general point that it would be extremely hard to find "*a similar job*" elsewhere but provided no further details. The last sentence quoted above from the decision letter made the general point that jobs in the NGO/international development sector are available nationwide, and FM's subsequent witness statement takes issue with this only by repeating her statement that it would be extremely hard to find a similar job elsewhere. I do not consider that it was incumbent on the Defendant, in her decision letter, to provide examples or further details of the types of jobs in this sector which she considered to be available nationwide; and on the material before me I do consider that I could properly conclude that the Defendant's statement (which does not appear inherently or obviously unlikely) had no evidential or rational basis.

127. I therefore consider that the Defendant did properly consider FM's individual circumstances and took them into account in reaching her decision to offer replacement bridging accommodation in Manchester.

(2) Policy

128. The Claimants submit that although the various documents published by the Defendant about the schemes did not expressly describe standards for bridging accommodation, it would be unreasonable and irrational for the policies to contemplate, or for the Defendant to contend, that no such standards apply, and as a matter of interpretation it is to be implied that bridging accommodation must also be suitable. The Claimants also rely on the Defendant's commitment to "*ensuring that every Afghan citizen who resettles here has the support they need to rebuild their lives, find work, pursue education…*" (Operation Warm Welcome announcement on 1 September 2021 and Factsheet published on 1 October 2021).

129. In relation to employment, the Claimants further refer to the statement in the "*Q&A on the accommodation offer process*" attached to the Defendant's letter of 9 May 2022 that:

> "When we match accommodation, the Home Office will take into consideration the location of any paid employment that has already begun, or where there is a signed contract of paid employment in place. Where one of the adults is in employment which requires them to attend a specific location to perform that role, and where the role cannot move to another location the Home Office will consider the impact of the proposed move and journey time on that employment and seek to provide accommodation which is within a reasonable travel distance of it."

as well as the statement that a good ground for refusing an offer of settled accommodation would be "*[w]here a member of the household has the offer of a paid employment as defined in the definition of an acceptable offer.*"

130. The Claimants submit that the general commitments referred to in § 128. above apply to both bridging accommodation and permanent accommodation, and that they represent policy commitments from which the Defendant could not lawfully depart other than for good reason. Further, considerations relating to migration pressures and accommodation costs cannot amount to good reasons, as they were present when the policy was adopted in the first place.

131. The Claimants accept that the more specific statements referred to in § 129. above are, in their terms, addressed to permanent accommodation. However, they say that as regards access to employment (and equally, education), there is no rational basis to distinguish temporary and permanent offers and the same standards apply: indeed, where accommodation is to be provided only on a temporary basis that is a compelling reason for higher standards to be applied. If it is not reasonable to expect a person to give up education or employment for the sake of a permanent move, it is even less reasonable to expect them to do so for the sake of a temporary move. Thus the Defendant could not rationally decide to offer replacement bridging accommodation in Manchester to a scheme beneficiary such as FM who would have to give up an existing job in London in order to move there.

132. Beginning with the more general statements referred to in §§ 128. and 130. above, they cannot in my view be regarded as forming part of any policy relating to the provision of bridging accommodation. Statements to the effect that there is a "*significant cross-government effort ... to ensure*", or that the Prime Minister is "*determined*", or that the government is "*committed to ensuring*", (in each case) that scheme beneficiaries receive "*the support they need*" in specified respects are in my view at too high a level of generality to amount a policy, i.e. a promise or practice having the particular public law consequences set out in the *Lumba* line of cases. None of those statements (or the documents containing them) said that it set out or formed part of the Defendant's 'policy' with regard to the scheme. None of them amounted to a promise to take any specific steps or measures with regard to the provision of accommodation, still less the provision of bridging accommodation. None of them said anything about how bridging accommodation would be allocated or what, if any, factors would be taken into account when deciding where to offer alternative bridging accommodation if and when a bridging hotel ceased to be available. The only published document, at the time of the decisions, that did refer to moves between bridging accommodation was the March 2022 'Customer Charter' referred to in § 29. above, which indicated that the Home Office expected a beneficiary to "*move accommodation or vacate the hotel when asked to do so*".

133. As to the more specific statements, referred to in §§ 129. and 131. above, which in terms relate to permanent accommodation only, I do not accept the Claimants' contention that no reasonable decision maker could do other than apply the same approach to moves from one temporary bridging accommodation to another. It is true that moves between bridging accommodation can be disruptive, and that is why their impact on education and employment are relevant considerations as discussed earlier. It does not follow, though, that the Defendant was bound to apply the stated policy for settled accommodation to bridging accommodation too. The circumstances are different. When matching an individual or family to permanent accommodation, the Defendant can take the time required to find accommodation that meets the various criteria set out in the Q&A. By contrast, if a bridging hotel closes, then the Defendant

is likely to have to find, within a relatively short period of time, new bridging accommodation able to accommodate significant numbers of people and to provide the facilities the Defendant has treated as necessary or highly desirable, such as communal facilities for ESOL classes and other activities, play areas, leisure facilities, accommodation for the Defendant's staff; and, moreover, to find such accommodation in the area of one or more local authorities that are in a position to provide the educational, health and other services necessary for those people. I do not accept the Claimants' submission that considerations such as those are merely factors that could amount to a good reason to depart from the policy. In my view, they illustrate basic differences between the processes of finding (a) settled accommodation and (b) replacement bridging accommodation, which undermine the suggestion that the court can, by an application of rationality principles, in effect transpose the stated policy for settled accommodation into the realm of decisions about replacement bridging accommodation.

134. I therefore do not accept the Claimants' arguments based on departure from policy.

(E) CONCLUSIONS

135. For all these reasons, I have concluded that the claims do not succeed.

136. I am grateful to both parties' counsel for their very cogent and thoughtful written and oral submissions.