



Neutral Citation Number: [2024] EWCA Civ 540

Case No: CA-2023-000195

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**UPPER TRIBUNAL JUDGE O’CONNOR (SITTING AS A JUDGE OF THE HIGH**  
**COURT)**  
**CO/1931/2022**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17/05/2024

Before :

**LORD JUSTICE BEAN**  
**LORD JUSTICE MALES**  
and  
**LORD JUSTICE DINGEMANS**

Between :

**THE KING (ON THE APPLICATION OF DWAINÉ  
CAMPBELL)**  
- and -  
**LONDON BOROUGH OF EALING**

**Claimant/  
Appellant**  
  
**Defendant/  
Respondent**

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**Galina Ward KC and Siân McGibbon** (instructed by **Hodge Jones and Allen**) for the  
**Appellant**  
**Joshua Swirsky** (instructed by **Ealing Legal and Democratic Services**) for the **Respondent**

Hearing date: 1 May 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 17 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Bean :**

1. This is an appeal from the judgment and order of Upper Tribunal Judge O'Connor ("the judge"), sitting as a deputy judge of the High Court (Administrative Court), dated 9 January 2023, by which he dismissed an application for judicial review of the London Borough of Ealing's decision of 28 February 2022 to withdraw its funding of Mr Campbell's temporary bed and breakfast accommodation at 117 Northcote Avenue, Southall ("the temporary accommodation").
2. The appeal concerns the interaction between a local authority's obligations under the Care Act 2014 and under the Housing Act 1996, and in particular, the effect of s 23 of the 2014 Act.

**Factual background:**

3. Dwaine Campbell ("the Claimant" or "the Appellant") was born on 5 April 1982. He has a diagnosis of retinitis pigmentosa, a progressive condition that causes loss of vision. He is partially sighted as a result. It is also recorded that the Claimant suffers from obsessive compulsive disorder and depression. He does not have employment and is in receipt of Employment and Support Allowance and Disability Living Allowance.
4. The Claimant was placed in temporary bed and breakfast accommodation in the Defendant's area by the London Borough of Hillingdon pursuant to its duties under Part VII of the 1996 Act. Hillingdon treated its housing duty as having been discharged on 3 February 2016. Since the Claimant was regarded as a disabled man at imminent risk of being homeless, Ealing's adult social services department took over the funding of his temporary accommodation from 4 February 2016. The Defendant states in its response to the Claimant's solicitors' letter before claim that it did so, "exercising its statutory power under s.19(3) Care Act 2014 to provide care and support in the form of accommodation pending a needs assessment".
5. Ealing's assessment, dated 17 February 2016, concluded that Mr Campbell had eligible domiciliary needs, which it proposed to meet by making direct payments for the provision of care. The Claimant did not complete the required financial assessment enabling direct payments to be made. He declined the receipt of a package of care from the Defendant because his needs were being met by his partner and family members.
6. On 18 July 2016, the Claimant was given notice that he must leave the bed and breakfast accommodation, and on 20 July 2016 the Defendant arranged for him to move to a guest house in the area. Around this time, he was supported by his allocated social worker to complete an application to register for the Defendant's social housing allocation list, with a view to enabling him to bid for council properties using Locata, a system operated by the Defendant at all material times to prioritise the allocation of housing pursuant to its duties under Part VI of the 1996 Act. Mr Campbell's social worker and a sensory and visual impairment worker concluded that the guest house accommodation was too small for the Claimant, and he was subsequently moved to temporary bed and breakfast accommodation on 5 October 2016.
7. Reviews of the Claimant's care and support needs were completed on 28 October 2016 and again on 4 August 2017. Both concluded that he had eligible needs. From 26 March 2019, the Claimant was placed in priority Band B, the second-highest priority banding

under the Defendant's social housing allocation scheme. He was offered continued assistance in using the Locata bidding process while he remained living in the temporary accommodation, funded by the Defendant's social services department.

8. Further assessments of Mr Campbell's needs were completed on 9 January and 26 November 2020. The conclusions and outcomes of these assessments were consistent with previous reviews undertaken by the Defendant. The November 2020 assessment records that he was living in "temporary accommodation" having been placed there by the local authority. The primary concerns raised by the Claimant during this assessment related to the unsuitability of the temporary accommodation. His care and support needs were again assessed as including, managing and maintaining nutrition, maintaining personal hygiene, being appropriately clothed, using his home safely and maintaining a habitable home environment. It was concluded that without support to meet these needs, the Claimant's wellbeing would be negatively impacted upon, because there would be a risk of loss of dignity and respect, deterioration in physical and mental health, malnutrition and living conditions that are not safe, clean and habitable. These needs were, however, being met by the Claimant's partner and family at that time and, for this reason, the Claimant again declined the provision of managed care or direct payments by the Defendant.
9. The Claimant was also referred to a Senior Occupational Therapist for a "housing needs assessment" in May 2021. The occupational therapist recommended "the provision of a one bedroom flat (first floor preferred by client) – bath or level access shower (client can presently access either) fairly close to bus stops/local shops (so client can maintain his mobility and degree of independence)".
10. Following pre-action correspondence, on or around 19 November 2021 the Claimant, who had by this time rejected the accommodation offered to him, brought a claim against the Defendant for breach of the Equality Act 2010. For present purposes, it is sufficient to identify that the claim alleges that the Defendant has treated the Claimant in a directly and indirectly discriminatory manner, as a result of which he has spent several years living in accommodation which is not suitable for his needs as a disabled person. The discrimination claim is currently stayed by consent.

*The Defendant's decision of 28 February 2022*

11. By a decision letter dated 28 February 2022, the Defendant informed the Claimant that its adult social services department would cease funding the temporary accommodation from 25 April 2022. The letter stated as follows:

"Why is the Council doing this?

My client department has been funding your accommodation at 117 Northcote Avenue Southall for more than 5 years on the understanding that you would, through Ealing Council's Housing Allocation System, bid for properties for which you were eligible.

You have recently issued court proceedings against my client department and their Housing colleagues.

You indicated in your claim that you are dissatisfied with the temporary accommodation, which my client department has been funding on your behalf for 5 years.

You have made it clear that you wish to live elsewhere, and it had been anticipated given your view about your current accommodation that you would be eager to take steps to bid for properties and pursue other measures available to you to resolve your permanent housing situation.

My client department has done its best to assist you to avail yourself of the resources available to you to resolve your housing issues.

My client department have referred you to agencies to assist you in this regard.

However, you have rejected these offers of assistance and agencies that were initially prepared to assist you have withdrawn their help.”

12. The letter then detailed the assistance provided to the Claimant by the Defendant’s adult social services team to help resolve his housing issues and the measures made available to and rejected by him. These included: making sufficient, regular bids for alternative appropriate accommodation through the Locata system; allowing Ealing’s housing team to automatically bid for properties through Locata on his behalf; accepting assistance to make a homelessness application to secure a transfer to alternative temporary accommodation (the letter recorded three occasions when this was declined); or otherwise independently seeking alternative private rental accommodation, the rent for which could be paid by Housing Benefit.

13. The letter continued:

“Notice of withdrawal of funding on 25th April 2022

My client department believes it is not unreasonable to bring its funding of your current accommodation to an end on reasonable notice.

The withdrawal of funding for your current accommodation by my client department is on the basis that it is not unreasonable to expect an adult who is unhappy with their current temporary accommodation and seeks alternative permanent accommodation to be proactive in using the resources available to him to secure permanent alternative accommodation for himself as soon as possible.

You appear to have been happy for my client department to fund your current accommodation for over 5 years; accommodation with which you are dissatisfied.

My client department does not feel that this situation can continue indefinitely.

Therefore, my client department reasonably expects that during the notice period i.e., between now and 25th April 2022 that you will vigorously pursue the above options, with the assistance of your legal advisors, for identifying alternative permanent accommodation for yourself.

Please accept this letter therefore, as notice that my client department Ealing Adult Social Care will be ending the funding of your bed and breakfast accommodation in 8 weeks' time i.e. [8 weeks from 28th February 2022] on 25th April 2022. My client department will be letting your landlord know of this decision.

For the avoidance of doubt, I would make clear that your current accommodation was not funded by my client department because of any duty to provide care and support to you under the Care Act 2014.”

14. The letter concluded with a request that the Claimant refrain from contacting the Defendant and its officers regarding his case directly, and instead to do so only through his legal representatives.
15. By letter dated 22 April 2022, the Claimant requested the Defendant review the decision. In its reply dated 25 April 2022, the Defendant provided a pre-action protocol response, refusing to withdraw the decision, but agreeing to a limited extension to the funding of the accommodation until 13 June 2022. Following further formal correspondence between the parties' legal representatives, the Claimant lodged a claim for judicial review of the Defendant's decision on 27 May 2022. Permission to seek judicial review was granted by order of Susie Alegre (sitting as a deputy judge of the High Court) on 12 July 2022.

#### *The relevant statutory framework*

##### *The Care Act 2014*

16. The Care Act 2014 provides a single statutory scheme for the provision of social care to adults. It replaces previous powers under the National Assistance Act 1948. The scheme is made up of the 2014 Act itself, regulations, and the Care and Support Statutory Guidance.
17. Part I of the Act establishes a framework of duties for local authorities in relation to adult social care. Section 1 imposes a general duty “in exercising a function” in relation to an individual under Part I of the Act, “to promote that individual's well-being”.
18. Section 1(2) defines someone's “well-being” in terms of its relation to any of the following: personal dignity (including treatment of the individual with respect); physical and mental health and emotional well-being; protection from abuse and neglect; control by the individual over day-to-day life (including over care and support,

or support, provided to the individual and the way in which it is provided); participation in work, education, training or recreation; social and economic well-being; domestic, family and personal relationships; suitability of living accommodation; and the individual's contribution to society.

19. Section 9 imposes the duty to undertake a “needs assessment” where it appears to a local authority that an adult may have needs for care and support. In such circumstances, the authority must assess whether the adult does have such needs and, if so, what they are.
20. If a local authority is satisfied on the basis of such a needs assessment that an adult has needs for care and support, it must determine, under section 13(1), whether any of the needs meet the eligibility criteria specified in the Care and Support (Eligibility Criteria) Regulations 2015.
21. Regulation 2 of the 2015 Regulations provides that an adult’s needs will meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness; as a result of which the adult is unable to achieve two or more specified outcomes; and as a consequence, there is, or is likely to be, a significant impact on the adult’s well-being. Those specified outcomes include: managing and maintaining nutrition; maintaining personal hygiene; being appropriately clothed; making use of the home safely; and maintaining a habitable home environment. Information on the care the individual is receiving must not influence the eligibility determination.
22. Section 18(1) of the 2014 Act provides that a local authority must meet the adult’s needs for care and support which meet the eligibility criteria if, amongst other things, they are ordinarily resident in the authority’s area or are present in its area but of no settled residence. However, under s 18(7), the local authority is not required to meet any needs which are being met by a carer.
23. Section 24 provides that where a local authority is required to, or decides to meet an adult’s needs, it must prepare a “care and support plan”. Under section 25 of the Act, this plan must specify the needs that the local authority is going to meet and how it is going to meet them. The plan must be proportionate to the needs to be met. The plan must be kept under review (s 27).
24. Section 19 confers on local authorities the power to meet an adult’s needs for care and support where there is no established duty to do so under s 18. Section 19(3) provides:

“(3) A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—

  - (a) carried out a needs assessment or a financial assessment, or
  - (b) made a determination under section 13(1).”
25. Section 8 of the 2014 Act gives examples of what may be provided to meet needs for care and support. These include: “accommodation in a care home or in premises of some other type” (s 8(1)(a)); care and support at home or in the community; counselling and other types of social work; goods and facilities; and information, advice and

advocacy (s 8(1)(b)-(e)). Examples of the ways in which a local authority may meet an adult's care and support needs are provided in s 8(2) and include providing a service by arranging for a person other than the local authority itself to provide a service, and making direct payments.

26. The 2014 Act therefore provides for a sequential approach to the provision of care and support for adults in need in the local authority's area. The local authority is required to carry out a needs assessment (s 9); assess whether any established needs are eligible needs under the 2015 Regulations (s 13); meet identified "eligible needs" unless these are being met by a carer (s 18); consider whether to exercise its discretion to meet identified needs which are not "eligible needs" (s 19) including where a need for care and support is urgent (s 19(3)); and draw up a care and support plan (ss 24-25), which is to be kept under review (s 27).
27. The critical provision in this case is s 23, headed "exception for provision of housing etc", which states that:
  - "(1) A local authority may not meet needs under sections 18 to 20 by doing anything which it or another local authority is required to do under—
    - (a) the Housing Act 1996, or
    - (b) any other enactment specified in regulations."

#### *The Housing Act 1996*

28. Part VI of the Housing Act 1996 deals with the allocation of housing accommodation by local housing authorities. Section 159 requires the authority to comply with the provisions of Part VI when allocating housing accommodation. Section 166A, added by the Localism Act 2011, requires the authority to have an allocation scheme for determining priorities in the grant of housing and to give reasonable preference to particular groups, including people who are homeless, and "people who need to move on medical or welfare grounds (including any grounds relating to a disability)" (s 166A(3)(d)). Applicants for housing are placed on the local housing authority's register and properties are allocated in accordance with the allocation scheme as properties become available.
29. Part VII of the 1996 Act imposes duties in respect of those who are homeless or threatened with homelessness. Under Part VII, when a person presents as homeless to a local authority it is under a duty to make inquiries (s 184) to determine whether that person is indeed: (a) homeless or threatened with homelessness (as defined by s 175); (b) eligible (i.e., not within a class of persons specified as ineligible under ss 185-187); (c) in priority need (s 189); and (d) not intentionally homeless (s 191). The definition of homelessness under s 175 includes people who do have accommodation, but where that accommodation is such that it would not be reasonable for them to continue to occupy it (s 175(3)).
30. Persons having a priority need are defined to include "a person who is vulnerable as a result of old age, mental illness or handicap or physical disability..." (s 189(1)(c)). An interim duty may be owed pending the outcome of these inquiries in cases of apparent

priority need (s 188). A local housing authority is required to provide suitable accommodation where it has determined following enquiries that the main housing duty is owed (s 193). There is a procedure of internal reviews under Part VII (s 202) and ultimately a right to appeal to the County Court on a point of law (s 204).

*The decision under appeal*

31. In his decision handed down on 10 January 2023 [2023] EWHC 10 (Admin) the judge summarised the Claimant’s case and grounds for judicial review at paragraph 2 of the judgment. It was argued that the Claimant needed care and support under the Care Act 2014, which required the provision of accommodation for its effective delivery (sometimes called “accommodation plus” needs). The Claimant contended that by withdrawing funding for the provision of accommodation, the Defendant erred in concluding that it did not owe a duty to provide, or fund the provision of, accommodation under the Care Act, or in failing to conduct a proper assessment addressing the issue of whether it owed a duty to provide such accommodation. The decision was also said to be irrational, to have taken account of irrelevant matters, to have failed to take account of relevant matters, and to have been taken for an improper purpose. Finally it was alleged that the decision was taken in breach of the Equality Act 2010 in that it amounted to victimisation contrary to s 27 of that Act.
32. The Defendant’s defence, summarised at paragraph 3 of the judgment, was that the Claimant was not entitled to the provision of accommodation under the Care Act 2014 because he was eligible for housing under either Part VI or Part VII of the Housing Act 1996. The Claimant had never been assessed to have a care and support need for accommodation, and his care and support needs were not accommodation related. The Equality Act claim was the subject of ongoing proceedings in the County Court. The decision to withdraw funding of the Claimant’s accommodation was not taken for an improper purpose, nor did it amount to victimisation.
33. The judge held as follows:
  - “50. It is clear that although the need for accommodation is not a need for care and support under the Care Act, local authorities have a power to provide accommodation under the Care Act in circumstances where accommodation is required to effectively deliver care and support. This follows from the decision in [*R (Aburas) v London Borough of Southwark* [2019] EWHC 2754 (Admin)] and also flows from the decision of the Court of Appeal in *R (SG) v London Borough of Haringey and the Secretary of State for the Home Department* [2017] EWCA Civ 322. This power is not however unfettered, and the difficulty the Claimant faces is in establishing that this power extends to scenarios in which section 23 of the Care Act bites.
  51. Both *Aburas* and *SG* were cases involving Claimants who were excluded from the provision of accommodation under the Housing Act by virtue of their immigration status...
  52. Insofar as the Court in *Aburas* sought to extend the ‘accommodation plus’ principle to cases which engage section



23 of the Care Act, this was plainly *obiter dicta* and, in my conclusion, I do not regard it as precedent on the interpretation of section 23, and I do not follow it.

53. There is only one decision before me on the application and interpretation of section 23 of the Care Act, and that is the decision in [*R (Idolo) v Bromley LBC* [2020] EWHC 860 (Admin); [2021] HLR 17]. I can see no reason to depart from, and agree entirely with, the conclusion therein (at [47]) that there is an intention in section 23 to give a measure of priority to the general scheme of the Housing Act over the specific scheme of the Care Act. Housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within Housing Act schemes, but must find their proper place within those schemes.

54. In the circumstances of the instant case, this leads me to conclude that if section 23 is of application, the Defendant has no power or duty under the Care Act to meet the Claimant's care and support needs with the provision, or funding, of accommodation under the Care Act.

...

57. The Defendant is, and was at the material time, required to provide the Claimant with housing under the Housing Act. The Claimant is a qualifying person under Part VI of the Housing Act, as supported by the fact that he has been put on the Defendant's housing register and is still on that register..... The Claimant has made a number of unsuccessful bids for accommodation. Since January 2022, the Defendant has also made four direct offers of accommodation to the Claimant outside of the usual bidding process. The Claimant rejected those offers on the basis that he considered the properties to be unsuitable. The fact the Defendant has not yet provided accommodation to the Claimant under Part VI of the Housing Act does not mean that it is not 'required' to do so.

58. It may also be the case that the Claimant became homeless within the terms of section 175(3) of the Housing Act, in the sense that the accommodation in which he was living was not accommodation which it was reasonable for him to continue to occupy. Ms McGibbon contends that this is speculative in that the Claimant has never been found to be statutorily homeless by the local authority so as to give rise to a duty. I observe that the Claimant has made three unsuccessful applications under Part VII of the Housing Act.....Each of the applications was closed by the Defendant, not because the Defendant concluded that the Claimant was not owed a duty under Part VII of the Housing Act, but rather because the Claimant indicated that he wanted a particular housing solution that was unavailable under the Part

VII process, and his preference was to continue to pursue suitable accommodation under the Part VI process.

59. Drawing this together, I reject the Claimant’s contention that the Defendant had an ongoing duty under Part I of the Care Act to provide him with, or to fund his, accommodation. The consequence of this finding is that the Claimant’s Ground 1 must fail.”

34. Having therefore found that the Defendant had neither a duty nor a power under the Care Act to provide the Claimant with accommodation, or to fund his accommodation, the judge further concluded that the decision to withdraw funding was not irrational.
35. The judge found, on the evidence, that the Defendant’s decision to withdraw funding of the Claimant’s accommodation had not been significantly influenced by the Claimant lodging the discrimination claim and therefore the Claimant had not been victimised within the meaning of s 27 of the Equality Act 2010.
36. The judge accepted the Defendant’s evidence that the decision had been made to encourage the Claimant to pursue the options available to him under the Housing Act to obtain alternative accommodation. He did not accept that the Claimant had established that this was an “improper purpose” for the reasons that the Defendant had no duty or power to maintain funding of the Claimant’s accommodation under the Care Act; and the resolution of the Claimant’s housing issue was properly to be addressed under the Housing Act.

*The grounds of appeal:*

37. The Claimant sought to advance three grounds of appeal. These were:

Ground 1: The judge erred in concluding that s 23 of the Care Act 2014 prevented the Defendant from funding the Claimant’s accommodation under Part I of that Act.

Ground 2: The judge erred in concluding that the Defendant’s decision of 28 February 2022 was not irrational or taken for an improper purpose.

Ground 3: The judge erred in concluding that the Claimant’s protected act in bringing a claim under the Equality Act 2010 did not “significantly influence” the Defendant’s decision of 28 February 2022.

*The permission to appeal decision:*

38. By order dated 24 May 2023, Males LJ granted permission to appeal on Grounds 1 and 2 only, refusing permission to appeal on Ground 3. His reasons were:

“1. Ground 1, concerned with the impact of section 23 of the Care Act 2014, raises a point which merits consideration by this court.

2. Ground 2 is closely related to, and follows from the court’s decision on ground 1.

3. As to ground 3, the judge was entitled on the evidence to conclude that the Council's decision was not made because of the applicant's Equality Act claim. That is a conclusion of fact with which this court will not interfere. An appeal on this ground would therefore have no real prospect of success.”

*The Claimant's 2023 tenancy agreement*

39. The Defendant's evidence is that from October 2020 Mr Campbell made numerous bids for accommodation through the Locata system and that he received and rejected several direct offers. Following a bid made on Locata in November 2022, he was offered a property by Notting Hill Genesis, a housing association, in December 2022. He viewed this accommodation in January 2023 and signed a tenancy agreement and received keys on or around 14 February 2023. He remained living in the temporary accommodation beyond this date, awaiting arrangements for the acquisition and delivery of furniture and white goods for the new property. He was given notice to vacate the temporary accommodation on 6 March 2023, which expired on 5 April 2023.
40. Further reviews of Mr Campbell's care and support needs were carried out by Ealing on 22 November 2022 and 2 February 2023. These indicated no material changes in his physical or mental health and corresponding support needs since the assessment carried out on 26 November 2020. While Mr Campbell's partner previously visited him on a daily basis to provide him with care, she no longer does so: his family are assisting as much as they can instead.
41. At some point in the summer of 2023 (counsel's instructions from their respective clients were not in accord as to the date) Mr Campbell took up the tenancy with Notting Hill Genesis. It was suggested by Ms Ward that the Claimant remains at least theoretically liable for any arrears of rent: Mr Swirsky did not accept this, but at any rate it is common ground that no enforcement action has been taken or threatened. Although it was at one stage stated in correspondence that from the point of view of Mr Campbell himself the appeal may be academic, we indicated at the outset that the wider importance of the issue as to the correct interpretation of s 23 of the Care Act 2014 justified the appeal being heard, and Mr Swirsky did not contend otherwise.

*The Appellant's submissions in this court*

42. Ealing's compliance with its obligation to operate an allocation scheme in accordance with Part VI of the Housing Act 1996 has not been challenged in these proceedings. The Claimant has for some years been on the register/waiting list for an allocation under the scheme, with a priority of 'Band B'. However, Ealing was not required under any provision of Part VI to ensure that he was provided with accommodation under the allocation scheme, within any particular time frame or at all. At the date of the judgment below the Claimant had not obtained accommodation via Part VI despite bidding over a period of several years; this is not an unusual position given the shortage of social housing and the length of waiting lists, particularly in London boroughs.
43. Ealing was similarly, Ms Ward argues, not 'required to' provide the Claimant with accommodation under Part VII of the 1996 Act. The only obligation owed to him under Part VII was the duty to accept an application for homeless assistance should he make

one. It does not follow automatically from the fact that the Claimant is eligible for assistance that he would be entitled to be provided with accommodation.

44. Ms Ward submits that the decision in *Aburas* is authority for the proposition that accommodation can be provided under the Care Act 2014 to meet needs which fall into the “accommodation-plus” category, and was relied on in support of this principle only. By contrast, *Idolo* addresses the different situation of an individual who already has accommodation but wishes to be prioritised for a move to specially adapted accommodation. It was held that s 23 prevents such prioritisation from being determined under the Care Act because a local authority is ‘required to’ operate a scheme for prioritisation under Part VI of the Housing Act. As the Claimant does not in these proceedings challenge his prioritisation for adapted accommodation, *Idolo* is not directly on point.
45. Ms Ward goes on to argue that the judge in the present case appears to have distinguished the decision in *Idolo* from that in *Aburas* on the basis that the claimant in *Idolo* was eligible for assistance under the Housing Act. This distinction, she says, is misplaced and leads to perverse consequences. The effect of the judgment below appears to be that a homeless person with ‘accommodation-plus’ needs who is not subject to immigration control (and so is eligible both to be added to the housing register under Part VI and to make an application for assistance under Part VII), is barred from the provision of accommodation under the Care Act by virtue of s 23. This is so even where that person has not in fact secured accommodation through the Part VI allocation scheme, and may not be entitled to be provided with accommodation under Part VII (for example because he is not in priority need, or is intentionally homeless). By contrast, a homeless person with the same ‘accommodation-plus’ needs who is subject to immigration control, and is thus ineligible for a Part VI allocation, and ineligible to make a Part VII application, can secure accommodation under the Care Act to ensure that his “accommodation-plus” needs are met. Insofar as that is the consequence of the decision in *Idolo*, that case was wrongly decided and this Court should say so.
46. Ms Ward submitted that if the Defendant’s contentions are right the result will be that many disabled claimants will be homeless and without a remedy. She submits that unless the local housing authority has accepted a duty to ensure that an individual is provided with accommodation (and has notified that decision in writing pursuant to s 184 of the Housing Act), s 23 of the Care Act has no application.
47. In a supplementary written submission lodged on the eve of the hearing and in oral argument Ms Ward and Ms McGibbon placed much reliance on *R v Bristol CC ex p. Penfold* (1998) 1 CCLR 315, a decision of Scott Baker J. Section 21(1)(a) of the National Assistance Act 1948 imposed a duty on local authorities to provide residential accommodation for adults “who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them”. Section 21(8), however, provided that:-

“Nothing in this section shall authorise or require a local authority to make any provision authorized or required to be made (whether by that or by any other authority) by or under any enactment not contained in this Part of this Act or required to be provided under the National Health Service Act 2006.”

48. In his judgment in *Penfold*, Scott Baker J accepted the argument that s 21(8) of the 1948 Act did not preclude the provision of ordinary residential accommodation, as opposed to a place in a care home or assisted living accommodation, when it is a function of the applicant's needs. This was cited and followed by Henriques J in *R v Islington LBC ex p Batantu* (2001) 33 HLR 76. Ms Ward and Ms McGibbon submitted that these decisions were still applicable, or at least persuasive, in cases under the 2014 Act.

*The Respondent's submissions*

49. Ealing accepts that Part VI of the 1996 Act does not have a mechanism for providing emergency accommodation. It is a means by which people can obtain permanent accommodation. Within Part VI there are in-built preferences to ensure people like the Appellant, who have a disability, are favoured in the bidding process.
50. Homelessness is dealt with by Part VII. This provides a mechanism by which homeless people can be accommodated if they meet the four statutory criteria. Interim (i.e., emergency) accommodation is provided under s 188. It was under a Part VII duty that Hillingdon placed Mr Campbell in the Respondent's area.
51. Mr Swirsky submitted that accommodation cannot be provided under the CA 2014 so as to interfere with either the scheme of prioritisation or the homelessness duty under Parts VI and VII of the 1996 Act. This would subvert the scheme of the 1996 Act and would mean that making a homelessness application when one was in priority need "as a result of old age, mental illness or handicap or physical disability" would be pointless.
52. Mr Swirsky relies on the decision in *R (Idolo) v Bromley LBC* [2020] EWHC 860 (Admin) to which I shall return later. He also prays in aid observations of Mr Fordham KC in *Aburas* where the judge said:-

"There is a distinct statutory scheme for the principled and orderly approach to local authority housing, including local authority duties owed to those who are homeless. That distinct scheme is to be found in the Housing Act 1996, and there are boundaries between the statutory schemes (see too the Care Act 2014 section 23). It would undermine the integrity of a coherent statutory framework if CA 2014 became a 'back-door' route to claims based on accommodation needs, circumventing the scheme of HA 96 and jumping the homelessness queue."

53. Mr Swirsky submits that the Appellant has never been assessed as having a care and support need for "accommodation plus". Mr Campbell has a need for accommodation just like anyone else, but neither at the relevant time nor now does he need any particular kind of accommodation. His care needs could be met in any accommodation he was provided with. (In any event, as set out above, he is now residing in general accommodation provided to him under the 1996 Act.) He is not entitled to the provision of accommodation under the Care Act because he is eligible for housing under either Part VI or Part VII of the Housing Act. It would be unlawful for Ealing to provide him with accommodation under the 2014 Act by reason of s 23.
54. Mr Swirsky argued that this analysis does not lead to an unworkable system in practice but rather to a clear demarcation of responsibilities. Ordinary housing is provided under

the Housing Act. Care is provided under the Care Act. Just as local authority housing departments are not designed to provide care services nor are adult social care departments designed to provide general housing.

55. If a person (A) has physical or mental health needs meaning that they need specialist accommodation which provides care and support (eg a place in a residential care home, as defined in the Care Standards Act 2000) then it is right that this provision can be made through a Care Act 2014 duty. However, where a person (B) who has eligible care needs but just needs ordinary accommodation this should be provided under the 1996 Act. Otherwise such a person would be queue-jumping. To provide ordinary accommodation to such a person would mean that social workers would effectively become housing officers.
56. A person in B's position would be entitled to accommodation under the 1996 Act, Part VII, as someone in priority need (s 189) and would be entitled to interim accommodation (s 188). There is no reason why B should be entitled to obtain ordinary accommodation by a different or quicker route than any other person needing accommodation.

### *Discussion*

57. In *Idolo* the claimant was the tenant of a two bedroom flat on the eighth floor of a block owned by a housing association. He lived there with his wife and daughter. He was assessed as being substantially bedbound and requiring two people with the aid of a hoist to lift him in and out of bed. He needed assistance to dress, prepare meals, wash and use the lavatory. He had become paralysed from the waist down and needed a wheelchair but because the corridors of the flat were too narrow for a wheelchair he was unable to leave his bedroom. He was assessed as needing a ground floor property with three bedrooms, wheelchair access and a level access shower room. By February 2019 he was put into the highest priority band in the local authority's housing allocation scheme. His application for judicial review contended that the defendant authority had failed to provide him with suitable accommodation under the Care Act 2014. Rowena Collins-Rice, then a Deputy High Court Judge, described the Claimant's predicament as "indisputably grim". Eventually the Claimant was re-housed but alleged that there had been unlawful delay in re-housing him. On his behalf Stephen Cragg QC argued that re-housing can and should be pursued by social services "from general Care Act principles" as a way to meet eligible needs. The judge said:-

"45. This argument, however, has to confront the provision made in s.23 of the Care Act. That expressly excludes from the ambit of the council's Care Act responses *anything which it is required to do under the Housing Act*. On the face of it, if the council was already required under the Housing Act to rehouse Mr Idolo it had neither the duty, nor any power, to meet his care and support needs in that way; and the only obvious way to determine what it was required to do under the Housing Act was to apply its housing priority scheme.

46. Counsel were unable to identify any judicial consideration of the effect of s.23. That is perhaps surprising, since the question is likely to arise in any case in which an existing council tenant's

housing needs fall to be reconsidered in the light of supervening illness or disability. The explanatory notes prepared for the legislative passage of this provision say that section 23 "*sets out the boundary in law between local authorities' care and support functions, and their housing functions*". The notes suggest that s.23 prevents local authorities from meeting needs for care and support by doing anything the Housing Act requires them to do – "*to generally provide housing*" – but that that "*does not prevent local authorities in their care and support role from providing more specific services (such as housing adaptations), or from working jointly with housing authorities*". This suggests that housing adaptations fall on the Care Act side of the line, while a move to, or for the purpose of, adapted housing falls on the Housing Act side. I was taken to some pre-Care Act authorities in an effort to shed light on this, one of which I consider below. But in my view the question cannot properly be answered as an isolated point of interpretation in this way, and without pulling back the focus to a broader perspective. It is necessary to consider the meaning and intention of this 'boundary in law' and what it is trying to achieve.

47. It is clear that there is an intention in s.23 to give a measure of priority to the general scheme of the Housing Act over the specific scheme of the Care Act. That should not come as a surprise. On the one hand, local authorities face the irresistible force of demand to meet properly assessed needs for adult social care, including needs for decent adapted or adaptable housing. On the other hand, they face the immovable object of limited housing resources, and the housing duties they owe to others in the community. The solution the law appears to provide is that (re)housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within Housing Act schemes, but must find their proper place within those schemes.

48. That is not a conclusion reached simply by extrapolation from s.23 of the Care Act. It is also suggested by s.166A of the Housing Act. Subsection (3) of that section *requires* housing schemes to be framed so as to secure that "reasonable preference" is given to certain categories of people including the homeless and "people who need to move on medical or welfare grounds (including any grounds relating to a disability)", whether or not, presumably, that need itself technically amounts to 'homelessness' under s.175(3). This is a clear housing duty. The council's housing prioritisation scheme has to discharge that housing duty. Section 23 ensures that the Care Act does not cut across that duty, or that scheme of priority."

58. I agree with all that the deputy judge said in this passage from *Idolo*, and the reasoning is not in my view confined to cases where the applicant is already in council accommodation.
59. Ms Ward's submissions would deprive s 23 of almost any meaning. It is common ground that it is very rare, if not unprecedented, for a local housing authority to be required to provide accommodation to anyone under Part VI of the Housing Act 1996. On the contrary, each authority is not merely permitted but required under s 166A(3) to devise a scheme giving reasonable preference to, among others, "people who need to move on medical or welfare grounds (including on any grounds related to a disability)." Mr *Idolo* was plainly in such a category but, despite the compelling facts of his case - far more so than those of Mr Campbell - he had no right to be allocated a satisfactory property immediately.
60. *Penfold* is not referred to in the judgment in *Idolo*. It is in any case a decision on a statute with somewhat different wording which has now been superseded by the Care Act 2014. The point which was critical in *Idolo* and which is central to the present case was peripheral in *Penfold* and in *Batantu*, which is no doubt why there is no analysis in either case explaining why s 21(8) of the 1948 Act was to be interpreted in that way.
61. Mr Swirsky was right to submit that to accede to the Appellant's arguments would risk turning social workers into housing officers. It would impose severe strains on adult social care budgets. Further, in non-unitary local authority areas outside London where a county council is responsible for adult social care and a district council allocates housing, it would create an anomaly whereby an individual needing accommodation together with care and support could seek it from the county council, whereas an individual (perhaps the same one) classified as needing to move because of illness or disability could apply under Part VI of the 1996 Act to be placed on the district council's housing allocation list with a high degree of priority.
62. The Appellant's arguments would not only disrupt any scheme of allocation priorities devised under s 166A of the 1996 Act, but could also give rise in other cases to gaming of the system. A private sector tenant with care and support needs who considered his accommodation unsatisfactory could withhold rent which he could have afforded to pay, be the subject of a claim for possession, be classified as intentionally homeless, then seek care and support of the "accommodation-plus" kind under the Care Act even though excluded from support under Part VII of the Housing Act. Moreover, any such entitlement might be for an indefinite period.
63. I consider that the decision in *Idolo* was clearly correct and that Judge O'Connor was right to follow it in the present case. Section 23 of the Care Act 2014 on its natural meaning lays down that, where a local authority is required to offer housing accommodation to someone in accordance with its allocation scheme under Part VI of the Housing Act 1996, it cannot be required to provide ordinary accommodation under the 2014 Act. Where the authority is required by Part VII of the 1996 Act to make provision for an applicant who is homeless and is not excluded from eligibility then similarly the same duty does not arise under the Care Act.
64. Ground 2 can be dealt with very briefly. If it is correct, for the reasons I have given, that s 23 of the Care Act meant that there was no duty under that Act to re-house Mr Campbell, it must follow that Ealing did not act improperly or irrationally in taking the



decision to cease funding his temporary accommodation. Indeed Ms Ward conceded that if the appeal on Ground 1 failed it was difficult to see how Ground 2 could succeed.

65. I would dismiss this appeal.

**Lord Justice Males:**

66. I agree that this appeal should be dismissed for the reasons given by Lord Justice Bean. I add this short judgment to illustrate the extreme nature of the Appellant's case.

67. The Appellant's case is that the exclusion in section 23 of the Care Act does not apply in any case where (a) a person requires accommodation in order for their care needs to be met and (b) the local authority is not required to provide such accommodation immediately under Part VII of the Housing Act 1996. This would mean that such a person goes to the front of the housing queue, jumping over people with higher priority under the local authority's allocation scheme, though not obtaining a secure tenancy of social housing. Ms Ward submitted also that in a case where such a person is intentionally homeless, or has refused an offer of accommodation so that the local authority's duty under Part VII of the Housing Act does not arise or is discharged, the local authority nevertheless remains under a duty to provide accommodation under the Care Act if accommodation is needed in order for the person's care needs to be met. Thus a person with care needs who is ineligible under the Housing Act, or who has a lower priority, would, as it seems to me, be in a better position than someone who is eligible or who has a higher priority but no care needs (e.g. a person occupying insanitary or overcrowded housing: see section 166A(3)(c) of the Act) and has been waiting longer.

68. These consequences of the Appellant's case have only to be stated for it to be seen that something about them must be wrong. Section 166A of the Housing Act requires the local authority to frame an allocation scheme which gives 'reasonable preference' to (among others) 'people who need to move on medical or welfare grounds (including any grounds relating to disability)'. But these will be in many cases the same people who have care needs for which accommodation is necessary. It would be surprising if people like Mr Idolo, who as a result of his disability had extreme care needs for which he needed to move, were entitled to no more than 'reasonable preference' under the Housing Act, but were nevertheless entitled (on the Appellant's case) to be provided with accommodation immediately under the Care Act. It would be even more surprising if Mr Campbell, or others in his position, with considerably less demanding care needs, were entitled to go to the front of the housing queue.

69. The fallacy in the Appellant's submissions lies in an understanding of what section 23 of the Care Act means when it refers to 'anything which [a local authority] is required to do under the Housing Act 1996'. This does not refer to a requirement to provide accommodation under Part VI of the Act for the straightforward reason that there is, as Lord Justice Bean explains, no such requirement. Instead there is a requirement, imposed by section 159 of the Act, 'to comply with the provisions of this Part [i.e. Part VI] in allocating housing accommodation'. The provisions with which the local authority must comply include the framing of an allocation scheme (section 166A(1)), giving 'reasonable preference' to certain categories of person (section 166A(3)) and allocating accommodation only in accordance with that scheme (section 166A(14)). Similarly in homelessness cases, the requirement on the local authority is to secure

accommodation in cases where the applicant is homeless and eligible for assistance in accordance with the provisions of Part VII of the Act.

70. Thus what a local authority is 'required to do under the Housing Act 1996' is to allocate accommodation only in accordance with its allocation scheme and to apply the provisions of Part VII of the Act to homeless persons.

**Lord Justice Dingemans:**

71. I agree with both judgments.