CO/2899/2007

Neutral Citation Number: [2008] EWHC 2786 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 17th October 2008

B e f o r e:

MR GARNHAM QC
(Sitting as a Deputy High Court Judge)
- - - - - - - - - - - - -

Between:
THE QUEEN ON THE APPLICATION OF N

Claimant

v

COVENTRY CITY COUNCIL

Defendant

- - - - - - - - - - - - -
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(Official Shorthand Writers to the Court)
- - - - - - - - - - - - -
James Presland (instructed by Coventry Law Centre) appeared on behalf of the **Claimant**
Bryan McGuire (instructed by Coventry City Council) appeared on behalf of the **Defendant**
- - - - - - - - - - - - -
J U D G M E N T

1. THE DEPUTY HIGH COURT JUDGE:

Introduction

2. This case concerns the assessment by Coventry City Council ("Coventry") of the claimant's needs under section 47 of the National Health Services and Community Care Act 1990 ("the 1990 Act") and its decision to refuse him support under section 21 of the National Assistance Act 1948 ("the 1948 Act"). It turns, in particular, on the meaning of "care and attention" in section 21, as interpreted by the House of Lords recently, and the ambit of Article 3 ECHR in the context of community care legislation.

3. The claimant seeks orders requiring the Council, Coventry, to "undertake a lawful assessment of [his] needs" pursuant to the 1990 Act and the provision of accommodation and support pursuant to section 21 of the 1948 Act.

4. On 4th April 2007, Langstaff J granted interim relief in this case. He ordered the Council to provide suitable accommodation, food and necessary support pending the outcome of this judicial review. The Council complied with that order and to date have continued to make such provision. They propose, if this challenge were to fail, to discontinue those arrangements 21 days after the date of judgment. There is an anonymity order in force in this case and I propose to refer to the claimant as "N" or "Mr N", as appropriate.

The Factual History

5. The claimant, a South African national, came to the United Kingdom in 2002 on a 6 month visitor visa. He stayed on after the expiry of that period and subsequently claimed asylum. In February 2006 he was admitted as an emergency to Walsgrave Hospital, where he was diagnosed as suffering from tuberculosis, TB meningitis and syphilis. He was also HIV positive and demonstrated cognitive disturbance. He was transferred to Birmingham Heartlands Hospital, where he remained an in-patient until 10th December 2006. His treating physician wrote on 20th March 2007:

> "If the treatment stopped temporarily or otherwise his condition would deteriorate quickly and [he] may suffer from premature death as a result."

6. The claimant was discharged to accommodation in Coventry, paid for, at least initially, by his cousin. He sought assistance from Coventry through a body called "Birmingham Money Advice and Grants". In the period 8th January to 5th February 2007, he was assessed by the local authority pursuant to Section 47 of the 1990 Act and a report dated 5th February 2007 set out Coventry's conclusions. That assessment, like a later one to which I will return, was conducted for the purposes of both a section 47 assessment and an assessment of Coventry's obligations to the claimant under the Human Rights Act 1998. It is that assessment which was the principle focus of these proceedings when they were commenced.

7. Coventry determined that Mr N:

> "... is not destitute at present as he has accommodation, his cousin has

> been providing financial support however states that he is no longer able to do this... no care needs have been identified requiring assistance from community services, therefore support cannot be provided to relieve destitution. At present it would not breach [Mr N]'s human rights by not providing support." (Sic).

8. Having paid no rent since December 2006, the claimant was required by his landlord to leave his rented accommodation. He has subsequently returned to the property which he then occupied with his cousin without his landlord's consent. Since the interim relief ordered by Langstaff J, he has been accommodated at the expense of Coventry. He says he has no money for food, that his medication should be taken with food and that because he has none, he often vomits when he has taken his medication.

9. The claimant has since made significant recovery from the TB and the Syphilis, in respect of which he no longer receives medication. His HIV is apparently stable with antiretroviral drugs. In that regard, Dr Wade, his treating consultant HIV physician, reported on 18th April 2008 that, "Since his arrival in Coventry his condition hasn't improved and has been the same".

10. A second section 47 assessment was carried out in April 2008 resulting in a report dated 16th May 2008. This time Coventry concluded:

> "At present he has no eligible care needs that meet the 'destitute plus' criteria for support. This has been evidenced as follows:
>
> - Medical reports... confirm that his anti-viral medication is effective at present and his prognosis is dependant on his compliance with the medication regime.
>
> - [He] reports that he is able to complete most of his daily living tasks.
>
> - [He] continues to have other support available to him in the short term from his cousin [C] and in the long term he is free to return to South Africa to access the support available to him there.
>
> - Observations confirm his functional abilities in completing tasks
>
> - His immigration status has changed
>
> He appears now to be excluded from support under section 21... As he has no eligible care needs, there would be no breach of Convention rights by not providing support".
>
> (Quotation not checked).

11. Whilst strictly speaking this assessment postdates the decision under challenge, both counsel agreed that it would be wholly artificial for me to disregard it in considering the

legality of Coventry's assessment of the claimant's needs. Given the discretionary nature of relief in JR proceedings, that must be right.

12. The claimant continues to receive treatment as an outpatient at the Department of Genito-urinary Medicine at the Coventry and Warwickshire Hospital. He continues to report weakness on his right side and takes painkillers. He remains on antiretroviral treatment.

13. During the course of the May 2008 review, the following was recorded as to his immigration history.

> "... At the review meeting on 17/03/2008, [N] reported that he is not sure what his current immigration status is. A telephone call was made to... the Local Authority Home Office Inquiry Line on 09/05/2008 to ascertain his current status. It was reported that on 20/06/2007 an application was made for leave to remain on asylum grounds. On 10/07/07 the application was refused. On 19/07/2007 the refusal was appealed. On 29/08/07 the appeal was dismissed. It was confirmed that [N]'s claim is rights-exhausted and that at present he is illegally present in the UK".
>
> (Emphasis added). (Quotation not checked).

14. It has subsequently been confirmed that on 29th August 2007 the AIT rejected the claimant's appeal against refusal of asylum. Although, like this court, they have not seen the determination, it is understood by those acting for the claimant that the basis of the AIT's decision was that the claimant could properly be returned to South Africa, because his medical condition was not so serious as to reach the Article 3 threshold described by the House of Lords in **N v Secretary of State for the Home Department** [2005] UKHL 31, a case to which I return below.

15. A further check was made with the Home Office by Coventry on 3rd October 2008. The Home Office confirmed that the position remained as previously described and as set out in the review. Thus, it is asserted by Coventry that the Home Office have confirmed that the claimant has exhausted his rights of appeal under immigration law and that he is now "unlawfully present in the UK". There are no further immigration claims pending. Mr Presland, who appears for the claimant, accepts that that is right.

16. Mr Presland points out that removal directions have not yet been set by the Secretary of State and that it may be some time before the Home Office takes steps to remove the claimant. In the meantime, he will remain in the UK and, says Mr Presland, is in need of assistance.

17. At the beginning of the hearing of this case, Mr Presland made an application for an adjournment on the basis that Coventry ought to obtain an up-to-date and comprehensive cognitive assessment as part of their section 47 obligations. He suggested that that was always their intention and that various appointments had been missed by the claimant, substantially as a result of his cognitive difficulties. Mr McGuire, who appears for Coventry, opposed that application and I rejected it. It was

my view that this public law challenge stands or falls on the material available to Coventry when they made their assessments; if they had failed to obtain information which they ought to have considered, that might legitimately form part of the complaint that I was considering. I reconsidered this issue after the conclusion of the argument, as I was invited to do, but remain of the same view.

The Legislative Scheme

18. I have had cited to me, orally or in writing, a great many legislative provisions and Government circulars. In my judgment, the issues in this case fall to be considered against a background of five pieces of legislation relating to community care, and immigration and asylum law.

19. First, section 47 of the 1990 Act provides for the assessment of needs for community care services:

> "(1) Subject to subsections (5) and (6) below [which are not immediately relevant to the issues I am considering], where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority—
>
> (a) shall carry out an assessment of his needs for those services; and
>
> (b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services."

20. Second, section 21 of the 1948 Act, which deals with the circumstances in which local authorities can or must provide for those in need of care and attention:

> "(1) Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing—
>
> (a) residential accommodation for persons aged eighteen or over 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; and...
>
> (1A)A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely—
>
> (a) because he is destitute; or
>
> (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(1B)Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (1A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

21. Third, the Immigration and Asylum Act 1999 serves to define those who are not to be provided with residential accommodation under section 21(1A). Section 115 applies by subsection (3) to "a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed". By subsection (9):

> "'A person subject to immigration control' means a person who is not a national of an EEA State and who—
>
> (a) requires leave to enter or remain in the United Kingdom but does not have it..."

22. Fourth, subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act provide that for the purposes of section 21 of the 1948 Act a person is destitute if (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

23. Finally, the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") provides by section 54 and Schedule 3 for the identification of various categories of people unlawfully present in the UK who are made ineligible for a range of benefits, including services provided by local authorities to adults under the 1948 Act. Schedule 3 provides:

> "1(1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
>
> (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare)...
>
> (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision)."

24. The succeeding paragraphs of the schedule set out classes of person to whom it is unlawful to provide assistance under any of the legislation specified. That includes, pursuant to paragraph 7, a person who is (a) in the United Kingdom in breach of the immigration laws within the meaning of section 11, and (b) not an asylum seeker.

25. By paragraph 17, "asylum-seeker" means a person who is at least 18 years old, who has made a claim for asylum (within the meaning of section 18(3)), and whose claim has been recorded by the Secretary of State but not determined.

26. The prohibition of the provision of assistance effected by section 54 and Schedule 3 is ameliorated by paragraph 3, which provides, and this is critical in this case:

> "Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—
>
> (a) a person's Convention rights, or
>
> (b) a person's rights under the Community Treaties."

27. The Convention rights said to be in issue here are Article 2, the right to life; Article 3, the prohibition of torture and inhuman and degrading treatment and punishment; and Article 8, the right to respect for family and private life.

28. In my judgment, the effect of the latter four pieces of domestic legislation, in cases such as the present, is that the empowering provisions of section 21 are disapplied if the person concerned is not in need of care and attention (section 21(1)(a)) or if there is a need for care and attention but it arose because of destitution (section 21(1A)) or if he is in the UK unlawfully and failure to exercise section 21 powers would not lead to a breach of the Convention (Schedule 3, paragraph 3). In other words, to establish that there is a power to provide him with support or assistance, the claimant here has to show that he is in need of care and attention and that that need has not arisen solely from his destitution and that the exercise of the power is necessary to avoid a breach of the Convention.

29. I put this suggested summary to counsel during the course of argument. Both accepted it as accurate, but Mr McGuire suggested that mine is not the most logical order in which to list the three preconditions. He referred to the decision of Walker J in **R (N) v London Borough of Lambeth** [2006] EWHC 3427 (Admin), and in particular to paragraph 71 of the judgment in that case. Nothing turns on the point in the present case and I propose to address the issues in the order set out above, but I accept Mr McGuire's submission that the order may matter to local authorities in practice, in that if it is shown that paragraph 3 of Schedule 3 of the 2002 Act applies, and assistance is not needed to avoid a breach of the Convention, the local authority does not need to go on to consider the potential application of section 21.

The Competing Arguments

30. Mr Presland argues that the local authority could not conclude, without a proper cognitive assessment, that the claimant has no care needs. He says that the local authority's May 2008 assessment makes clear that the claimant relies on his cousin for considerable support with cleaning, shopping and laundry. If the claimant is homeless, his cousin will not be able to support him. Since the claimant occupied his home without the landlord's consent, his future accommodation is at best precarious and

Coventry cannot properly base their assessment on the assumption that his continued unlawful occupation would continue. His health is likely to deteriorate quickly and seriously. He says that it was perverse for Coventry to conclude that the claimant did not need care and attention at the time of each of the assessments.

31. Mr Presland says that the claimant's physical and psychological ill-health mean he is not "free" to go back to South Africa in any meaningful sense. He says that Coventry have taken no steps to enquire as to the support available to the claimant should he return, or be returned, to South Africa.

32. He argues that a distinction is to drawn between the operation of Article 3 in removal cases, where the Secretary of State proposes to remove a person to his home country under immigration powers, and domestic cases, where a local authority is considering the exercise of its section 21 powers. He also relies on Article 8 and says that return would breach the right to respect for the claimant's private life.

33. Mr Presland says that in **R (M) v Slough Borough Council** [2008] UKHL 52 ([2008] 1 WLR 1805) the House of Lords confirmed that the legislative scheme is such that it is a local authority rather than the Secretary of State for the Home Department which has responsibility for provision to those with care needs who are in the UK in breach of immigration control. Even where a claimant has no outstanding immigration applications, provided he has care needs and he is not in breach of removal directions, he is, says Mr Presland, the responsibility of the local authority rather than the Secretary of State.

34. The claimant here, he says, does have personal care needs going well beyond the provision of medication and health services, and those should be the responsibility of social services. Without a proper cognitive assessment, the local authority cannot properly conclude that the claimant has no care needs.

35. By contrast, Mr McGuire argues that the assessments were perfectly adequate. He says that because the claimant is unlawfully present in the United Kingdom, he is only eligible for a service under the provisions set out in paragraph 1 of Schedule 3 to the 2002 Act to the extent necessary to avoid a breach of human rights. The words "to the extent" and "necessary" are important words of limitation, he argues, and no such provision can be justified on that basis here. He argues that there is no scope for a contention in this case that provision is necessary to avoid a breach of either Article 3 or Article 8.

36. If Coventry is wrong on that first point, Mr McGuire argues, the claimant is not entitled to a service under section 21 of the National Assistance Act 1948 because he was not in need of care and attention. He makes two points. First, in the light of the decision of the House of Lords in **R (M) v Slough**, the hurdle to be surmounted by the claimant is higher than it appeared to the authority to be when it carried out its previous assessment and review.

37. Secondly, on the basis of the findings in the last review, the claimant does not have a need for care and attention within the meaning of that term as explained in **R (M) v**

Slough. The natural and ordinary meaning of "care and attention" was "looking after" and Coventry's short point is that the claimant can look after himself.

Analysis

38. I see no impropriety in the conduct of the two assessments themselves. It is, in my judgment, apparent from the two reports that the tests which the authors posed for themselves were properly addressed. Those conducting the assessments visited the claimant and discussed his circumstances with him in some detail. They observed him and noted the extent to which he was able to manage the activities of daily life. They considered the various medical reports, both for their own sake and for how they could be said to be reflected in what they observed of the claimant. In my view, there was no duty on them to commission additional medical evidence unless what they observed cried out for further investigation. In my judgment, it did not. An intelligent observer would be able to judge how the claimant's symptoms were affecting his ability to manage and cope with daily living. And Coventry's assessments were carried out at some time apart from each other.

39. I do not accept that Coventry were obliged to make enquiries as to the facilities which would be available to the claimant in South Africa and I reject Mr Presland's submission in that regard. The section 47 obligation was to carry out an assessment of such services as they, Coventry, might provide. It is not to carry out an assessment of services which might be available elsewhere unless that might affect his present needs.

40. The real question on this issue is, therefore, not whether the assessments were an adequate way of addressing the tests posed in the assessment reports, but whether the tests themselves were correct. It follows that if Mr Presland is right on his submissions on the law, these assessments cannot stand; but that if Mr McGuire is right, this challenge must fail.

41. I deal first with the question whether the claimant is in need of care and attention within the meaning of that expression in section 21. The House of Lords has laid down the proper approach to that question in **R (M) v Slough**. At paragraph 33, Baroness Hale held:

> "... the natural and ordinary meaning of the words 'care and attention' in this context is 'looking after'. Looking after means doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list. The provision of medical care is expressly excluded."

42. Lord Brown agreed with Baroness Hale and went onto hold at paragraph 40:

> "A person must need looking after beyond merely the provision of a home and the wherewithal to survive... The looking after required does not have

> to be for either nursing or personal care. It must, however, be of such a character as would be required even were the person wealthy. It is immaterial that this care and attention could be provided in the person's own home if he had one (as he would have if he were wealthy). All that is required is that the care and attention needed must not be available to him otherwise than by the provision of section 21 accommodation..."

43. In my judgment, the claimant does not satisfy that test. The claimant does not need to have done for him any essential tasks which he cannot, or should not be expected to do, for himself. The two assessment reports reveal that the claimant was able to manage the activities of daily living himself, despite his persisting symptoms. In fact he is reported in the May 2008 assessment to have acknowledged that "he is able to complete most of his daily living tasks" and no such task is identified as being beyond him. The fact that he has, in fact, had assistance with many of them from his cousin does not mean that he cannot do them or that he needs to have them done for him by someone else. Certainly it cannot be said that the conclusion by Coventry that he did not satisfy that test was not one reasonably open to them.

44. It follows, in my view, that in this regard Coventry posed the right question and this claim falls at the first hurdle.

45. If I had reached the contrary conclusion, it is unlikely that I would have found that any such need arose solely from the fact he is or would be destitute, or from the physical effects, or anticipated physical effects, of his being destitute (section 21(1A)). I acknowledge, however, that that is a difficult question to answer in the abstract — where I have not found that the claimant had such needs. In my view, such difficulties as the claimant suffers arise primarily from his illness rather than his poverty. As Lord Hoffman said in **R (Westminster City Council) v National Asylum Support Service** [2002] UKHL 38 ([2002] 1 WLR 2956), at paragraph 32, "only the able bodied destitute are excluded" by this provision. Accordingly, the claimant would not have fallen at the second hurdle.

46. The final question is whether a failure to provide services to the claimant would involve a breach of his Convention rights. That question arises because the claimant is no longer an asylum seeker within paragraph 17 of Schedule 3 to the 2002 Act (his claim for asylum having been determined and all avenues for appeal having been exhausted) and he remains in the UK unlawfully.

47. It is possible, as Mr Presland contends, to discern an apparent difference of approach in the House of Lords judgments dealing with the application of Article 3 in removal cases and that in domestic cases, where a local authority is considering the exercise of its section 21 powers. In **R (Limbuela) v Secretary of State for the Home Department** [2006] 1 AC 396 the House of Lords considered the issue of when withdrawal of support (in that case NASS support to destitute asylum seekers) contravened the asylum seekers' rights pursuant to Article 3. Lord Bingham said this at paragraph 9:

> "It is not in my opinion possible to formulate any simple test applicable in

> all cases. But if there were persuasive evidence that a late applicant was obliged to sleep in the street, save perhaps for a short and foreseeably finite period, or was seriously hungry, or unable to satisfy the most basic requirements of hygiene, the threshold would, in the ordinary way, be crossed."

48. By contrast in a removal case the test is now that articulated by Baroness Hale in **N v Secretary of State for the Home Department**:

> "69. In my view, therefore, the test, in this sort of case, is whether the applicant's illness has reached such a critical stage (ie he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity."

49. Against that background, Mr Presland suggests that it is the **Limbuela** approach that should be applied here. He says that the sort of treatment the individual claimants in the **Limbuela** case faced were less severe than might be faced by the claimant if all support were withdrawn from him in this country. In those circumstances, he argues, the failure to provide support would lead to a breach of the Convention.

50. At first blush, it might be thought surprising that there should be any difference of approach in the two situations of removal from the UK and removal of domestic support. After all, it is trite law that the standards of treatment required by Article 3 are absolute and consistent. But in my view the differences are more apparent than real and reflect, not a different standard in the application of Article 3, but the consequence of a proper consideration of the context in which each category of decision is made.

51. In my view, the cessation of local authority support would not be a breach, on the facts of this case, because it would be open to the claimant to return to his home country of South Africa. The defendants have made it clear (in paragraph 19 of their summary grounds and orally at this hearing) that they "would be prepared to assist the claimant in directing him to free air services to his country of origin and to accommodate him for a period of 14 days (now revised to 21 days — see above) whilst arrangements are made." There may be difficulties and uncertainties for the claimant in such a return, but there is no legal or practical obstruction. It is not suggested that the claimant is not fit to travel. It is not suggested that he is dying or that his illness has reached a critical stage. In my view, because he can return to South Africa, it can properly be said that the provision of services by Coventry is "not necessary" within paragraph 3 of Schedule 3 to the 2002 Act. If he chooses to stay in the United Kingdom, the degradation he may suffer is a consequence of that decision, not the cessation of Coventry's support.

52. Such a construction would be consistent with the evident purpose of the provisions of the 2002 Act, namely to encourage persons in the claimant's position to return home. Mr McGuire pointed to paragraph 24 of the judgment of the Court of Appeal in **R (Kimani) v Lambeth London Borough Council** [2003] EWCA Civ 1150 ([2004] 1 WLR 272), where it was observed:

> "The objective of Schedule 3 can readily be inferred from its content. It is to discourage from coming to, remaining in and consuming the resources of the United Kingdom certain classes of person who can reasonably be expected to look to other countries for their livelihood."

53. If I am wrong about the consistency of **Limbuela** and **N v Secretary of State for the Home Department**, once their different contexts are understood, and there really is a different standard to be applied in the two situations, then, in my judgment, the proper test in the present case is that in **N v Secretary of State for the Home Department**. Given the evident purpose of the statutory provisions, the court must look not at the position that would obtain if the claimant remained in the UK, but that which would apply if the claimant returns to South Africa. It is perfectly clear that in those circumstances the claimant would not begin to satisfy the sort of stringent test which Baroness Hale describes.

54. Article 2 adds nothing to the Article 3 argument on the facts of this case. If the case does not satisfy Article 3, it will not satisfy Article 2 in circumstances such as this.

55. Mr Presland says that because of his ill-health the claimant cannot be regarded as "free" to go back to South Africa. Without very careful planning and support, such a move, he argued, would be a disproportionate interference with his article rights. I am afraid I conclude that that argument is hopeless.

56. In **Anufrijeva v Southwark London Borough Council** [2003] EWCA Civ 1406 ([2004] QB 1124) the Court of Appeal held (at paragraph 43 of the judgment of the Court):

> "... Article 8 is capable of imposing on a State a positive obligation to provide support. We find it hard to conceive, however, of a situation in which the predicament of an individual will be such that Article 8 requires him to be provided with welfare support, where his predicament is not sufficiently severe to engage Article 3."

57. In my judgment, this is no such rare case. The claimant has no well-developed family life in the UK, his private life connections with the UK are modest, he remains in the UK unlawfully and is physically capable of returning to South Africa, his home country. If I am right that Article 3 is not engaged, nor is Article 8.

58. It follows that this claim for judicial review must fail.

59. MR McGUIRE: In those circumstances, the only order I seek is that the claim be dismissed.

60. In terms of the transcript, there is just one short point. That was at the end of the summary of our respective contentions, but just before the paragraph beginning "I see no impropriety", my argument was characterised as saying "it is not destitute plus". I just ask that your Lordship considers changing that to "was not in need of care and attention".

61. THE DEPUTY HIGH COURT JUDGE: I am content with that correction and that correction will be made. Thank you for it. Any corrections from you?

62. MR PRESLAND: My Lord, one matter is that it appeared, when I heard your Lordship giving judgment, that it sounded as though the claimant was still in the accommodation he occupied unlawfully. My Lord, the position is, since Langstaff J's order, he has been in accommodation provided by the local authority, rather than continuing in that accommodation.

63. THE DEPUTY HIGH COURT JUDGE: You are quite right. That is a correction I ought to make, if you give me one moment. **(Pause)**. Shorthand writer, I think it will be about paragraph 7. The paragraph that starts "Having paid no rent". After the second sentence, which ends "landlord's consent" could you please insert "Since the interim relief ordered by Langstaff J, he has been accommodated at the expense of Coventry".

64. MR PRESLAND: A further minor point of detail, given the anonymity order, it is right to observe that the cousin's name is an unusual one, and given the location, it is likely that if the cousin's name is identified, then so will my client. If the cousin could perhaps be simply referred to as "C".

65. THE DEPUTY HIGH COURT JUDGE: Yes, I referred to him once by the name [C]. Only once. I wonder, shorthand writer, if that could be changed to C.

66. MR PRESLAND: My Lord, may I seek permission to appeal on the basis, primarily, that the distinction between the treatment of claimants in the position of my client, in **Limbuela** and **N** is one which has bearing on a significant number of other cases of individuals with community care needs or, arguably, with community care needs who remain in the UK in breach of immigration control. It is likely that other local authorities are going to find this of significant assistance as a decision and it is a matter which ought properly to be reviewed by the Court of Appeal to consider whether your Lordship's decision in relation to how the two matters should be interpreted, as questions of looking at the context in which they are being applied, is the correct approach.

67. In my submission, in the claimant's case it remains arguable it is not the correct approach, that my client does have, very likely, strongly arguable community care needs, which would arise if he is homeless in the United Kingdom, rather than being placed on an aeroplane by the Secretary of State.

68. THE DEPUTY HIGH COURT JUDGE: Mr McGuire.

69. MR McGUIRE: It is primarily a matter between the claimant and your Lordship, but what I would say is I accept the question is important and the approach is important. Your Lordship has reach your conclusion by two routes. One is simply to look at the words and say "necessary" and "in order to avoid a breach". That being so, there is no great question of law involved. The second route was to look at the question of

whether **N** or **Limbuela** is the correct approach. I say, having regard to the first question, the answer became straightforward.

70. THE DEPUTY HIGH COURT JUDGE: Thank you. No, Mr Presland, I am afraid you will have to ask the Court of Appeal. I am refusing permission on the grounds that there are not reasonable prospects of success.

71. MR PRESLAND: I do not know if any observations your Lordship may have would increase the speed with which the transcript could be prepared.

72. THE DEPUTY HIGH COURT JUDGE: Yes, given that you are plainly at least contemplating seeking to appeal this decision, can I direct that the transcript be provided as soon as possible, please.

73. MR PRESLAND: Can I ask for a detailed assessment?

74. THE DEPUTY HIGH COURT JUDGE: Yes, I grant that.

75. MR McGUIRE: I do not oppose that. I have no instructions and I cannot be certain it will not be pursued, but I simply take the precaution of asking for an order for costs, not to be enforced pending any assessment under section 11 of the Access to Justice Act.

76. THE DEPUTY HIGH COURT JUDGE: Probably entitled to that.

77. MR PRESLAND: I do not think there is anything I can say against it.

78. THE DEPUTY HIGH COURT JUDGE: Then there will be an order in those terms.

79. MR McGUIRE: I am grateful.

80. THE DEPUTY HIGH COURT JUDGE: Can I finally say to both of you, thank you very much for your assistance with a case that I did not find entirely straightforward, I have to confess.