



Neutral Citation Number: [2021] EWHC 3368 (Admin)

Case No: CO/476/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2021

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN

Claimants

on the application of

(1) BG

(by his mother and litigation friend SQ)

(2) KG

(by his mother and litigation friend SQ)

- and -

SUFFOLK COUNTY COUNCIL

Defendant

Catherine Rowlands (instructed by **Bindmans LLP**) for the **Claimants**
Lee Parkhill (instructed by **Legal Services**) for the **Defendant**

Hearing date: 9 November 2021

Approved Judgment

Mrs Justice Lang :

1. The Claimants seek judicial review of the Defendant’s decisions, made pursuant to the Care Act 2014 (“CA 2014”) and the Care and Support (Eligibility Criteria) Regulations 2015 (“the 2015 Regulations”), to withdraw funding for holidays (notified on 3 March 2020); and to cease the direct payments which were being used for the Claimants’ outings and recreational activities (notified on 12 November 2020).
2. The Claimants are two brothers, who are disabled adults, acting by their mother and litigation friend, SQ. The Defendant (“the Council”) is the local authority with responsibility for the social care needs of the Claimants, and the needs of their main carer, SQ, under the CA 2014.
3. On 22 March 2021, Mostyn J. granted the Claimants permission to apply for judicial review on grounds 1 to 5, and 7, but refused permission on Ground 6 (failure to give adequate reasons).
4. In its Summary Grounds of Resistance, the Council submitted that the claim, which was filed on 11 February 2021, was out of time, as the decisions under challenge were made on 3 March 2020. Mostyn J. rejected that submission for the following reasons:

“It is clear to me that the March 2020 decision was reissued, but in materially altered terms in November 2020, and that the latter decision should count as a new decision. Therefore the claim is not out of time. If I am wrong about that, time should be extended given the ongoing nature of the discussions and the clearly arguable points of law which these seriously impaired claimants should be entitled as a matter of justice to place before the court.”
5. In my view, a further reason for extending time is that the dispute over funding is ongoing, and so it would be open to the Claimants to file a fresh claim in respect of the same issues if this claim was time-barred.

Facts

6. BG was born on 10 April 1985 and is now 36. He has a diagnosis of autism and he has a learning disability. He displays considerable anxiety. He requires support with eating, washing and toileting. He has epilepsy and has seizures during both the day and night. He is incontinent during the night. He is prescribed extensive medication. BG is in receipt of benefits (Personal Independence Payments and Employment and Support Allowance).
7. KG was born on 10 October 1983 and is now 38. He also has a diagnosis of autism and he has a learning disability. He has epilepsy and a heart condition. KG displays significant anxieties and preoccupations. He has significant sensory needs, and he also has fibromyalgia which means he can be in pain and require a wheelchair when his mobility is poor. He needs support with all aspects of daily living. He is incontinent at night. He is prescribed extensive medication. KG is in receipt of benefits (Personal Independence Payments and Employment and Support Allowance).

8. SQ is the main carer for both Claimants. SQ's "Task Log" for September 2021 demonstrates that she is caring for the Claimants 24 hours a day, and is up every night attending to their needs. The Claimants' stepfather, and their sister and brother-in-law sometimes provide additional support, but they have other responsibilities and demands on their time.
9. In the past, the Claimants attended a day centre, called The Bridge Project, where they experienced abuse. Now they find it almost impossible to trust anyone outside the family, and so they cannot attend day centres and will not tolerate external carers in the home.
10. From 2011 onwards, KG and BG each received a care package that involved direct payments. The Council included access to the community by way of family outings and activities, and family holidays, in the assessment of their needs, and approved the use of their direct payments to meet these needs. From 2013, they also received a respite budget specifically for that purpose. As Mr Parkhill did not accept that the Council had approved the use of direct payments for these purposes, it is necessary to set out the evidence which has led me to these conclusions. I shall also draw upon the evidence of past assessments in considering the Council's submission that it had no duty to support the Claimants to participate in family outings, activities and holidays, because these were not assessed as part of the Claimants' eligible needs.

2014

11. KG's *ACS¹ Support Plan*, dated 23 October 2014, stated that he had "a direct payment in place allowing him with support to access the community activities and to go on trip, London yesterday as mum is able to save the direct payment for such outings". Following SQ's request for a respite budget so that she could take KG on a supported holiday and planned trips away, it was agreed that a one-off yearly payment of £3,000 would be requested. In addition, the current arrangements were to continue, namely, a direct payment of £150 per week plus the cost of attending The Bridge Project.
12. BG's *ACS Support Plan*, dated 27 October 2014, made similar provision, namely, a direct payment of £150 per week plus the cost of attending The Bridge Project. It stated: "[BG] also has a direct payment in place allowing him to access the community with support. This payment is managed by his mother/main carer who will sometimes save from this payment allowing [BG] to travel which he enjoys". It was agreed that a "one-off respite budget" in the sum of £3,000 would be applied for, offering holiday possibilities.

2015

13. By 2015, the placements at The Bridge Project had broken down and KG and BG were no longer attending.

¹ ACS is an abbreviation of 'Adult and Community Services'.

14. KG's *ACS Care and Support Plan Review*, dated 10 November 2015, recommended an increase in direct payments to £190 per week, with a respite budget of £3,000 per annum. Under the heading "Who and what is important to the person", it stated:

"[KG's] Autism and anxieties affect him in a way that means he will only agree to support from his Mother when accessing the community. Both KG and his brother are supported throughout the week to experience activities such as walks in quiet environments to lakes, parks, London ... and bird reserves etc. They like to travel on trains to do this. [SQ] enjoys photography, she will take photographs of places they visit and [KG] enjoys editing them when back home."

15. Under the heading "Meeting the Customer's Needs" it was recorded that "[KG's] anxiety means he is unable to face community involvement without his Mother's support" and that he had no other carers. It then went on to say:

"What will the customer need to buy with their personal budget to meet their needs and outcomes and to reduce/manage risk (that are not being met in another way)?

1. Continue experiencing community activities and develop confidence with a goal to attending services independently.
2. Opportunity to have respite time away with family."

In order to achieve these outcomes and meet these needs, the recommendation was for an increase in weekly direct payments for item 1, and a one-off direct payment for item 2.

16. BG's *ACS Care and Support Plan Review*, dated 16 November 2015, recommended an increase in direct payments to £200 per week, with a respite budget of £3,000 per annum. Under the heading "what is important to the customer", the Plan recorded that, following the breakdown in the placement, BG had lost his trust in other people and fully relied on his mother to support him to access the community. It went on to say that BG loved being out in nature, and the family regularly visit Minsmere Nature Reserve, the beach, Lackford Lakes, Zoos etc. BG liked to take photographs. He had been on holiday to Iceland and enjoyed it very much, and he was planning to visit Monterey Bay next year and had already done a lot of research into the local wildlife.
17. Under the heading "What does the person want to achieve and what are their personal outcomes?" the Plan identified "Access the community" and stated that, following the breakdown of his placement, "[it] is important for [BG] that he continues to access the community so that he can make new experiences and can re-build his confidence and trust." The Plan also identified "Gain greater independence as a goal" and stated "[t]he long term plan is for mother to introduce [BG] ... to activities with support where he may eventually feel comfortable enough to attend independently ..."
18. Under the heading "Meeting the Customer's Needs", the Plan repeated the assessment of needs and outcomes, and the recommended provision to achieve them, which is set out at paragraph 15 above, in respect of KG.

2017

19. Norfolk and Suffolk NHS Foundation Trust drew up a *Care Plan* for KG, dated 10 March 2017. Among other matters it stated:

“Summary of assessment/formulation

.... [KG] has had the opportunity for outside activities due to the direct payments he receives. The money was used to fund trips to various nature spots where [KG] enjoyed taking photos and exploring the areas, these places have been beneficial in helping him calm. This has been the subject of a problem with ACS and is the contributory factor in the current distress.....”

“Management Plan

....

[KG] has direct payments money and respite money to give him opportunities to go to places that help keep him calm. The respite money is used to allow the family to have a break. Health recommend that this should continue”

20. The identified goals in the *Care Plan* included the following assessment:

“[KG] needs to have the opportunities to access places that are familiar, to have the finances available to allow this to happen for ACS and Direct payments to be aware that these cannot, at this time, be places in the immediate locality but further afield and that transport costs (train fares and some petrol allowance) will be needed to supplement additional benefits (health advice is for this to be a set amount for each month that is reviewed in line with progress on mental wellbeing and reducing of extreme anxiety in relation to trauma). Immediate decision and review 6 monthly.”

21. Norfolk and Suffolk NHS Foundation Trust also drew up a *Care Plan* for BG, dated 21 March 2017, with input from Dr Elkin, consultant psychiatrist, and BG’s Care Co-ordinator, Nurse Emer O’Mahoney. Among other matters it stated:

“Summary of assessed risks

[BG] suffers with extreme anxiety ... His mental health has deteriorated over the last two years.

[BG] struggles in the areas of Sudbury. He is constantly fearful of bumping into someone from The Bridge Project and feels overwhelmed when in the immediate area near his home. [SQ] spends time accessing places of interest to [BG] and his brother ... They will visit places away from home which is where [BG] feels safer and calmer at the moment. These day trips result in

“good days” and will have a positive impact on [BG’s] mental health and his seizure activity.

.....”

22. The benefit of these outings for BG’s mental health was confirmed in the goals in the *Care Plan*, which also noted that BG and his brother were able to develop their social skills by interacting with other visitors on these outings. The *Care Plan* identified the need for ACS funding, advising that “Extra funding would be essential to helping maintain [BG’s] mental health and wellbeing”.
23. KG’s *ACS and Support Plan Review*, dated 24 July 2017, referred to community access and holidays as follows:

“Who and what is important to the person?”

..... [KG] has a direct payment in place allowing him with support to access community activities and to go on trips. [KG] is supported by his mum for all community access as his anxieties around new or unknown individuals restricts acceptance of support from others.....”

“What does the person want to achieve and what are their personal outcomes?”

[KG] no longer wishes to attend the Bridge Project as his anxieties with attending have been raised due to issue he has with support from some staff members.

It is important that his access into the community is maintained and new experiences are supported at a pace that [KG] is able to cope with.

The long term plan is for Mum to introduce [KG] to activities with support where he may eventually feel comfortable enough to attend independently or with an external support worker. This will have to be at a gradual pace and on [KG’s] terms.

[KG] would like opportunity to spend some time away with his mother, father and brother. When his brother [BG] said about going to Florida, [KG] said he would like to go to Cape Canaveral.”

“How does the person’s health needs impact on what care and support is required?”

....

Social activities.

[KG’s] autism and anxieties affect him in a way that means he will only agree to support from his Mother when accessing the

community and this has to be out of Sudbury as he associates Sudbury with the Bridge Project.

Both [KG] and his brother are supported throughout the week to experience activities such as walks in quiet environments such as Aldeburgh, parks and bird reserves (Minsmere), Zoo etc. They have been to London and Cambridge.

[KG's] Mum enjoys photography, she will take photographs of places they visit and [KG] enjoys editing them when back home.

.....”

“Meeting the Customer’s Needs

What are the person’s outcomes, needs and issues about keeping safe?

1. Social activities/community participation.
2. Social activities/community participation.
3. Social activities/community participation/Mental health.

.....”

“What will be put in place to achieve the need or reduce/manage any risks?

1. To enable [KG] to visit locations of his choice and allow him to be stimulated and to begin to start integrating back into society. Membership to the National Trust, RSPB, Photo shop, Zoo, Aquarium and associated hobby purchases e.g. computer.
2. To fund public transport on occasions to allow [KG] to experience travelling with others. Travel money due to the need for travelling out of the local area.
3. To enable [KG] to have short breaks with his mother but away from the home environment.

.....”

“Who will provide this? How and when will it be provided?

1. [SQ]. DP to pay £250 every 4 weeks. To be reviewed whilst support worker introduced.
2. [SQ]. DP to pay £300 every 4 weeks plus £20 to purchase disabled rail card.

3. [SQ]. Respite budget to pay for [KG] only.

.....”

24. BG’s *ACS and Support Plan Review*, dated 24 July 2017, referred to community access and holidays as follows:

“Who and what is important to the person?”

..... It is important that [BG] is given the opportunity to develop his social skills and integrate and be confident to be included within society within his local area and further afield. ...

“What does the person want to achieve and what are their personal outcomes?”

[BG] no longer attends the Bridge Project It is important for [BG] that he continues to access the community so he can make new experiences and can re-build his confidence and trust.”

“How does the person’s health needs impact on what care and support is required?”

.....

Activities.

[BG] goes out regularly with his mother and brother They go to Snape, Minsmere, Aldeburgh, zoo, Woodbridge, London, Cambridge. They are National Trust members..... [BG] went to on a family holiday to Monterey Bay last year. This year he would like to go to Florida. [BG] enjoys wildlife. [BG] likes photography and uses the photos to create drawings. Days out are important to [BG] and contribute to a positive reduction in anxiety. The days out need to be away from the local area at present as [BG] does not feel safe locally in case they see people they recognise from the Bridge project. [BG] likes to have meals out. This is a positive experience as it allows him to socialise with others, build confidence when ordering food and increase money skills when purchasing items...

.....”

“Meeting the Customer’s Needs

What are the person’s outcomes, needs and issues about keeping safe?

1. Social activities/community participation.
2. Social activities/community participation.

3. Social activities/community participation.

.....”

“What will be put in place to achieve the need or reduce/manage any risks?

1. To enable [BG] to visit locations of his choice and allow him to be stimulated and to begin to start integrating back into society. Membership to the National Trust, RSPB, Photo shop, Zoo, Aquarium and associated hobby purchases e.g. camera, ego, walking etc.
2. To fund public transport on occasions to allow [BG] to experience travelling with others. Travel money due to the need for travelling out of the local area.
3. To enable [BG] to have short breaks with his mother but away from the home environment.

.....”

“Who will provide this? How and when will it be provided?

1. [SQ]. DP to pay £250 every 4 weeks. To be reviewed whilst support worker introduced.
2. [SQ]. DP to pay £300 every 4 weeks plus £20 to purchase disabled rail card.
3. [SQ]. Respite budget to pay for [BG] only.

..... ”

25. On 27 October 2017, SQ made a formal complaint about reductions in the amount of the direct payments and various aspects of the review process. On investigation, the complaint was upheld in part.

2018

26. In 2017 or 2018, BG and KG made a list of the activities which they valued, and that list is referenced in subsequent Care and Support Plans, as “the A4 list”, as it was written on an A4 piece of paper.
27. There was a meeting on 6 March 2018 with the Council’s social worker, Clare Collinson, which was attended by the Claimants’ Advocate, Kate Chapman, and Nurse Emer O’Mahoney. Clare Collinson confirmed then that she would include the A4 list of activities in their Care and Support Plans, and the respite payments would continue. This meeting is described in Kate Chapman’s witness statement.

28. On 19 April 2018, Ms Nicola Roper, the Operations and Partnerships Manager (Mental Health and Learning Disabilities), wrote to SQ and the Claimants stating that direct payments should not be used to fund food purchased during meals out, nor to be saved up and spent on holidays. Direct payments should only be spent on care and support needs which have been identified in the Care and Support Plan. SQ did not accept this, and considered it was contrary to the advice she had received from social workers and their assessments of the Claimants' needs.
29. KG's *ACS Care and Support Plan*, dated 18 July 2018, stated that family and health staff had reported that KG had become increasingly withdrawn and depressed in the last year.
30. The Plan referred to community access and holidays as follows:

“Who and what is important to the person

....

“[KG] had written down with his brother all of the things that are important to him. These include being able to go and visit historical places of interest such as castles and also bird sanctuaries and national trust places. [KG] said that it is important for him that he is able to go on family holidays. This has been included on a separate A4 piece of paper. This is a list of all of the activities that [KG] enjoys doing and feels that are important for him to be able to carry on.

[KG] said that recently he has been taking packed lunches out with him when they go out. He said that he finds it sad that he does not go out for meals anymore. He said that he really enjoyed meeting different people this way. He really used to like going out for lunch at Minsmere nature reserve and Sizewell. [KG] and his mother said that he used to enjoy the interaction from the staff that he used to get from this activity. However, [KG] is still able to get interaction from staff at the different places if he takes a packed lunch. He could purchase a drink from the café that would ensure he had the same amount of interaction with the staff team.

Jennie [the Community Nurse] said that eating out in a familiar place increases [KG's] confidence and helps to build social skills and prevent isolation.

.....”

“What does the person want to achieve and what are their personal outcomes?

.... At present [KG] accesses his local and wider community with his mother and brother KG enjoys going out to wildlife places, such as National Trust and RSPB reserves and Suffolk

Wildlife Trust and Lackford Lakes.... I have attached a copy of the activities that KG enjoys doing. This was written on an A4 piece of paper. This is to form the basis of the support plan. As this was written by KG and BG themselves.

[KG] enjoys holidays away from the home environment.

....”

“Meeting the Customer’s Needs

What are the person’s outcomes, needs and issues about keeping safe?

.....

6. For [KG] to have membership to the National Trust, RSPB, Photoshop and Zoo passes. Also entrance fees to castles and attractions that are not covered by these memberships.

....

9. To ensure that [KG] has respite away from home.

10. To support [KG] to access nature reserves etc.

.....”

“What will be put in place to achieve the need or reduce/manage any risks?

.....

6. To support [KG] to have meaningful day time activities within the community.

.....

9. To ensure that [KG] has a break away from his family home.

10. To ensure that some mileage allowance is paid to [SQ] through the direct payment.

.....”

“Who will provide this? How and when will it be provided?

.....

6. [SQ].

.....

9. [SQ]. In lieu of Respite.

10. Through the direct payment.

.....”

31. A direct payment of £148.09 per week was assessed as the cost of supporting the community access and activities in the A4 sheet prepared by KG, supplemented by his benefits. In addition, £3,000 per annum was to be paid for supported holidays and day trips out.
32. BG’s *ACS Care and Support Plan*, dated 18 July 2018, noted that due to a decline in his mental health BG had been referred to the IDT² and had been allocated a community nurse.
33. The Plan referred to community access and holidays as follows:

“Who and what is important to the person

....

[BG] enjoys going to Minsmere nature reserve and Southwold Pier. [BG] and his brother have written an A4 sheet of paper with activities they enjoy. This is included as part of this support plan. This includes things like visiting the Tower of London, nature reserves and RSPB places.

[BG] said that he likes to have meals out in cafes when he visits places of interest.

....”

“What does the person want to achieve and what are their personal outcomes?

.....

It is important for [BG] that he continues to access the community so he can make new experiences and can re-build his confidence and trust. At present he accesses the community with the support of his mother.

.....”

“Meeting the Customer’s Needs

What are the person’s outcomes, needs and issues about keeping safe?

² IDT is an abbreviation for the ‘Integrated Delivery Team’ which coordinates community mental health services for the area.

.....

8. For [BG] to be supported to have respite away from the family home.

9. To support [BG] to access membership to National Trust, RSPB, Photo shop. Also entrance fees to castles and attractions that are not covered by these memberships ... To pursue personal interests.

10. To be supported to access transport.

.....”

“What will be put in place to achieve the need or reduce/manage any risks?

.....

8. For [BG] to be supported to have time away from his family home.

9. For [BG] to be supported to engage [in] meaningful daytime activities.

10. To ensure that some mileage allowance is paid to [SQ] through the direct payment.

.....

“Who will provide this? How and when will it be provided?

.....

8. To be paid by a direct payment.

9. To be paid for by a direct payment.

10. To be paid for by the direct payment/benefits.

.....”

34. A direct payment of £137.89 per week was assessed as the cost of supporting the community access and activities in the A4 sheet prepared by BG, supplemented by his benefits. In addition, £3,000 per annum for supported holidays and trips out.

2019

35. In an email to the Council dated 5 July 2019, Kate Chapman, explained the importance of respite for KG and BG. It gives them a break from the stress of being at home, where they feel that there are “stressful letters and visits”. It allows them to pursue their interests in wildlife. They plan in advance and look back over photographs after they

return. If this were taken away, they would have nothing left, nothing to look forward to.

36. In a letter to the Council dated 19 July 2019, Community Nurse Thomas commented that anxiety over the care planning process had led to a deterioration in KG's mental health. She confirmed that both Claimants were dependent on their family for support and could not trust outsiders. She set out the past difficulties which they had experienced with previous placements and carers. She explained that conventional respite care, with carers coming into the home, or the Claimants spending time away from home in respite settings, was not an option for them because of their conditions. She advised:

“As neither [BG] or [KG] can have a break at this time without [SQ] they need to go away, on what to others is perceived as a holiday, for [SQ] it is a change of ordinary life, a chance for some of the chores and tasks she does at home to be taken away or shared with her husband. Meals are out so no cooking, no washing up and having to plan the different meals that are needed.”

“The need to be away from the local area is considerable due to the issues with others comments and behaviours towards them all.”

....

“All the breaks away have had a long-term positive effect and meant [SQ] has been able to continue again with her caring role.”

....

“The respite ‘holiday’ has therefore a therapeutic value in terms of allowing all to feel less distress, to use it as a positive reinforcement to help with the need to change the negativity that has been present throughout their life as positive.”

37. On 18 October 2019, a draft *Support Plan* was prepared for BG. It recommended a reduced direct payment of £108 per week, but no one-off respite payment of £3,000. Instead, it stated that respite was “to be discussed”.
38. Under the heading “Useful information for those providing care”, it stated:

“Who and what is important

..... [BG] enjoys nature activities such as walking, wildlife and picture taking outside of the Sudbury area. [BG] has written down with his brother all of the things that are important to him. These include being able to go and visit historical places of interest such as castles and also bird sanctuaries and National Trust places. This has been included on a separate A4 piece of paper and is a list of all of the activities that [BG] enjoys doing.

BG said that it is important for him that he is able to go on family holidays.

.... In order to feel less anxious [BG] states on his NSFT care plan that he would like “to do things that I like”.[BG] likes to go to quiet places that he feels relaxed in and this helps him to feel safe.”

39. Under the headings “What am I most worried about if nothing changes?” and “What will it look like when the situation is good enough?”, the Plan considered the outcomes of (1) development of relationships and (2) making use of facilities and services (as described in regulation 2(2)(g) and (i) of the 2015 Regulations). The Plan stated:

“Being Met

Developing or Maintaining Family or other Personal Relationships – Eligible Need

Due to [BG’s] mental health (anxiety) this is challenging. [BG] states that he has lost his socialisation as he can no longer access the cafes in which he made these relationships.”

“In progress

[BG]’s wish is to return going to cafes where he is relaxed and enjoys meeting people. To be able to access the community with full support to build and maintain relationships.”

“Being Met

Making use of necessary facilities or services in the local community including public transport and recreational facilities or services – Eligible Need

Due to [BG’s] negative experience at The Bridge Project and his anxiety, he needs someone with him when he accesses the community. Without mum’s support [BG] could not access anything outside the home, including medical appointments.”

“Achieved

To access the community it is important that [BG] is in the company of people he feels safe with. [BG] enjoys visiting places such as wildlife places and cafes.

Direct payment – TO BE DISCUSSED”

40. On 18 October 2019, the Council completed Care Act Eligibility Assessments for KG and BG, applying the criteria in regulation 2 of the 2015 Regulations. SQ stated in the litigation that these were not sent to the Claimants or her until 27 November 2020. The Council was unable to confirm the date on which the Eligibility Assessments were sent. It produced an email dated 2 January 2020 attaching draft Care and Support Plans, and

informing the Advocate Kate Chapman, of the indicative personal budgets which had been assessed for the Claimants in October 2019.

41. KG's *Care Act Eligibility Assessment* considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations, as follows:

“Developing or Maintaining Family or other Personal Relationships

Is the adult lonely or isolated? Do their needs prevent them from maintaining or developing relationships with family and friends?
Is unable to achieve it without assistance.

.....

What are you able to achieve in this area? [KG] is able to have his relationships when he has built up his confidence and has become familiar with the person/place. [KG] loves being with his brother ...

What are the worries and concerns? [KG] is able to have his relationships when he has built up his confidence and have become familiar with the person/place. Due to anxiety building relationships can be challenging.

What would you like to achieve to maintain your wellbeing? To be able to access the community with full support to build and maintain relationships – to resume going to cafes where I am relaxed and can enjoy meeting people.”

42. The text underlined above was assessed as an “Eligible Need”.
43. The assessment of the outcome described in regulation 2(2)(i) of the 2015 Regulations was as follows:

“Making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? Is unable to achieve it without assistance.

.....

What you able to achieve in this area? Due to [KG's] negative experience at The Bridge Project and anxiety he needs someone with him the whole time when out in the community.

What are the worries and concerns? Due to [KG's] experience at The Bridge Project and negative reputation in the local community this causes anxiety – he needs someone with him the

whole time when out in the community. Without mum's support [KG] could not access anything outside the home including medical appointments.

What would you like to achieve to maintain your wellbeing? To continue receiving full support from mum to be able to go out including cafes.”

44. The text underlined above was assessed as an “Eligible Need”.
45. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of KG’s needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on KG’s wellbeing in respect of all the aspects of wellbeing set out in section 1(2) CA 2014.
46. The impact was described in the following terms: “if [KG] did not receive full support from his mother there would be a significant impact on wellbeing”.
47. BG’s *Care Act Eligibility Assessment* considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations, as follows:

“Developing or Maintaining Family or other Personal Relationships

Is the adult lonely or isolated? Do their needs prevent them from maintaining or developing relationships with family and friends?
Is unable to achieve it without assistance.

.....

What are you able to achieve in this area? [BG] can build a social relationship when he has built up his confidence and is relaxed and have become familiar with the place and person. [BG] loves being with his brother ...

What are the worries and concerns? Due to [BG’s] mental health (anxiety) this is challenging. [BG] states that he has lost his socialisation as he can no longer access the cafes in which he made these relationships.

What would you like to achieve to maintain your wellbeing? [BG] would like to return going to cafes where he is relaxed and enjoys meeting people. To be able to access the community with full support to build and maintain relationships.”

48. The text underlined above was assessed as an “Eligible Need”.
49. The assessment of the outcome described in regulation 2(2)(i) of the 2015 Regulations was as follows:

“Making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? Is unable to achieve it without assistance.

.....

What you able to achieve in this area? Due to [BG’s] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community.

What are the worries and concerns? Due to [BG’s] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community. Without mum’s support [BG] could not access anything outside the home including medical appointments.

What would you like to achieve to maintain your wellbeing? To continue receiving full support from mum to be able to go out including cafes.”

50. The text underlined above was assessed as an “Eligible Need”.
51. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of BG’s needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on BG’s wellbeing in respect of all the aspects of wellbeing set out in section 1(2) CA 2014.
52. The impact was described in the following terms: “if [BG] did not receive full support from his mother, then there would be a significant impact on his wellbeing”.

2020

53. On 3 March 2020, Ms Sara Eden, Team Manager West Learning Disability and Autism Team, wrote to both Claimants, stating that the Council would no longer fund their family holidays. The letter said:

“In my letter rather than referring to respite, I have used the phrase “replacement care” as this is the term used by [the Council] to describe non-residential care services (or a personal budget given to purchase non-residential care) intended to allow a carer to take time to attend to their own needs away from their caring role.

Whilst I appreciate that historically, there has been a one off payment of £6,000 - £3,000 for [BG] and £3,000 for [KG] which has covered the cost of your family holiday to Florida, as referenced in the letter you received from Nicola Roper dated

19th April 2018, Suffolk County Council is no longer including holiday travel & accommodation cost in personal budgets. This is because, as part of a wider review of how direct payments are used throughout the county, it has been identified that paying customers’ holiday costs (rather than meeting the cost of support that they need to achieve a holiday) is not a Care Act eligible need. The council can only use the Adult and Community Services (ACS) budget to meet the council’s statutory functions.

It is my view that whilst [KG] and [BG] may have eligible support needs under the Care Act when on holiday, for example support to make sure [BG]/[KG] wear outfits appropriate to the weather, it would appear that you are meeting these needs as the main carer of [BG] and [KG]; therefore there are no identified eligible, unmet needs under the Care Act that the Local Authority have a duty to meet through the provision of care and support. If that is not the case, do please let me know and I will arrange an assessment conversation with you to look into this further.

If you wanted to look into short breaks for [BG] and [KG] where you, as main carer, will not be meeting their eligible needs for care and support, for example engaging a care agency to support them instead, Suffolk County Council would be responsible for funding such support.

.....

I have summarised the responsibility for funding around short breaks as follows.

Please note that such costs must be approved by Suffolk County Council as part of [BG]/[KG]’s care and support plan in order to proceed further.

What Suffolk County Council are responsible for funding	What Suffolk County Council are not responsible for funding
<p>Support costs for when [BG] and [KG] participate in activities in the community, for example to meet the cost of a carer supporting [BG] or [KG] to</p> <ul style="list-style-type: none"> • Visit the local library or shops • Visit a leisure activity or attraction • Participate in a hobby or interest 	<p>“Universal costs” i.e those that are incurred by everyone regardless of whether they have a disability or long term health need, and are not linked to Care Act eligible needs such as:</p> <ul style="list-style-type: none"> • The cost of food • The cost of accessing an activity, e.g., entrance

<p>Admission cost of carer to accompany [BG] or [KG] to an activity with paid for entry where there is no carer free entry concession available and carer support is necessary to allow them to access the activity</p>	<p>ticket or admission cost of an attraction</p> <ul style="list-style-type: none"> • The cost of participating in a hobby or interest (e.g. craft supplies or specialist equipment)
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54. The process of finalising the revised support plans continued. Social workers met with the Claimants in August 2020. Revised plans were sent to SQ in September 2020. A meeting took place between the social workers and the Claimants in October 2020. The Council undertook capacity assessments and concluded that both BG and KG had capacity to decide how their support needs should be met.
55. On 12 November 2020, Ms Eden wrote to the Claimants, explaining that their direct payments would be withdrawn. The letters stated:

“I am writing this letter to confirm the outcome of the support planning process.

You have met with Kelly and Leanne twice - first time was on Thursday 20th August 2020 and the second time was on Thursday 29th October 2020.

You and your advocate, Kate Chapman, spoke with Kelly and Leanne about the things that you need help with, and Kelly and Leanne were able to confirm that you still have needs that mean you are entitled to support from the Council, if you want it.

In their second visit, Kelly and Leanne spoke with you to make sure you are able to decide how you want your support needs to be met and to understand what choices are available to you.

You told Kelly and Leanne that you wanted your family, mainly your mum [SQ], to support you day to day. When asked if you would like to explore other things, like activities in the community or being supported by someone outside the family, you said no.

As you want your mum to support you, Kelly and Leanne have not been able to find any way in which providing funding for care and support would help meet the care needs that you have.

This means that Suffolk County Council will be ending the Direct Payment. The Direct Payments Team have already paid up to 29th November 2020 no further payments will be made after this date.

.....”

56. KG's *Care and Support Plan*, dated 27 November 2020, began with a "Summary of current situation" which included the following paragraphs:

"Hobbies and interests

[KG] has written down with his brother on a A4 piece of paper a list of all the things/activities that he enjoys doing: Computers, going to the beach, Lego, railway, mechono, going out to meals, going out to reserves, Nintendo, holidays, keeping Parrots, going to the Zoo, going to the cinema, wildlife trips, scrap booking, automotor, sailing, photography, bird watching (everywhere), boat trips, going to a castle, going on a train, going to Norwich, going to Cambridge, bird watching Norfolk, making light sabers, going to London, going to Xmas fairs, Tower of London, Westminster Abbey, visiting staff in Sizewell and Minsmere café, Havergate island, art galleries, Orford Castle, Bempton weekend, Norfolk weekend, Florida holiday, space stuff, Norfolk wildlife trust, Norfolk owl trust, Scalthrope Moor, Pensthorpe, Lackfield Lakes, rain marshes, whale watching, art stuff, Minsmere House, Rainham marshes, some random things, aquariums, short breaks, train journeys."

"Mental Health Services

[KG] has been discharged from the Neurodevelopmental Team back into the care of his GP and was notified of this by letter from NSFT Interim Manager, Sue Medley dated 18/9/20 "*I can see that you have been open to the team for some time. I spoke with your mum to try and understand what treatment you may need. Your mum explained that you find talking to people outside your family very difficult. As Kate Chapman is your advocate, I also asked her if she could speak to you about your current mental health needs. However, she has emailed me and told me that you didn't feel able to talk to her and she is unsure when she may be able to talk to you again. Due to this I have consulted with the team and senior clinicians and we are in agreement that whilst we are not able to understand from you directly what treatment you require from the team we have no other option other than to discharge you from our care and back into the care of your GP. Of course, if you require treatment from Mental health services in the future, then you can request that your GP refers you back.*"

57. Under the headings "What am I most worried about if nothing changes?" and "What will it look like when the situation is good enough?", the Plan considered the outcomes of (1) development of relationships and (2) making use of facilities and services (as described in regulation 2(2)(g) and (i) of the 2015 Regulations). The Plan stated:

"Being Met

Developing or Maintaining Family or other Personal Relationships – Eligible Need

[KG] is able to have his relationships when he has built up his confidence and have (sic) become familiar with the person/place. Due to anxiety building relationships can be challenging.”

“Unachieved

To be able to access the community with full support to build and maintain relationships – to resume going to cafes where I am relaxed and can enjoy meeting people.”

“Being Met

Making use of necessary facilities or services in the local community including public transport and recreational facilities or services – Eligible Need

Due to [KG’s] experience at The Bridge Project and negative reputation in the local community this causes anxiety – he needs someone with him the whole time when out in the community. Without mum’s support [KG] could not access anything outside the home, including medical appointments.”

“Unachieved

To continue receiving full support from mum to be able to go out including cafes.”

58. BG’s *Care and Support Plan*, dated 27 November 2020, began with a “Summary of current situation” which included the exact same paragraphs as in KG’s Plan, which I have set out at paragraph 56 above.
59. In the “Support and Safety Plan”, under the headings “What am I most worried about if nothing changes?” and “What will it look like when the situation is good enough?”, the Plan considered the outcomes of (1) development of relationships and (2) making use of facilities and services (as described in regulation 2(2)(g) and (i) of the 2015 Regulations). The eligible needs were identified in bold text.
60. The Plan stated:

“Being Met

Developing or Maintaining Family or other Personal Relationships – Eligible Need

Due to [BG’s] mental health (anxiety) this is challenging. [BG] states that he has lost his socialisation as he can no longer access the cafes in which he made these relationships.”

“In progress

[BG]’s wish is to return going to cafes where he is relaxed and enjoys meeting people. To be able to access the community with full support to build and maintain relationships.”

“Being Met

Making use of necessary facilities or services in the local community including public transport and recreational facilities or services – Eligible Need

Due to [BG’s] negative experience at The Bridge Project and his anxiety, he needs someone with him when he accesses the community. Without mum’s support [BG] could not access anything outside the home, including medical appointments.”

“Unachieved

[BG] To continue receiving full support from mum to be able to go out including cafes.”

2021

61. After this claim was issued, KG’s draft *Care and Support Plan*, dated 22 September 2021, was prepared, but not completed. It materially provided as follows:

“Summary of current situation

.....

What things do you like to do?

[KG] has previously written down, with his brother on a A4 piece of paper, a list of all the things/activities that he enjoys doing [*the list was then summarised, as in the 2020 Care and Support Plan*]. During our most recent review, [KG] shared that some of his favourite activities to do include visiting bird sanctuaries to bird watch and walk around nature reserves. [KG] added that one of his favourite places to do this in RSPB Minsmere.....he also enjoys visiting Woodbridge, Thorpness & Aldeburgh In explaining why this was one of [KG]’s favourite activities/places, he shared that he enjoys going on walks, and looking at the birds as he finds this “peaceful and quiet”. [KG] went on to add that he and his family no longer visit these places as they cannot afford the entry and travel costs....

.....

Do you like to meet people in cafes or other places you have been to before (for example, wildlife reserves)?

[KG] stated “I enjoyed doing it. I liked socialising ... some of the staff there were nice because they know your order”. [KG] went on to add “I went into M & S and was having heart problems and this man and lady helped me from the café, they were more helpful than the hospital”. [KG] added that he didn’t like that they weren’t able to go to these places as much as he used to. When asked why, [KG] explained that “we can’t afford it anymore”.

.....

How do you want things to be different?

..... I would like to do the things that we were doing before; holidays going bird watching Going to the places we were talking about”....[in the past the family didn’t use to spend much time at home, whereas more recently “we just sit in a lot of the time”

.....”

62. The Support and Safety Plan for his eligible needs was very similar to the 2020 Plan, save that the steps to take were “to be discussed”.
63. KG’s draft *Care Act Eligibility Assessment* dated 12 October 2021 considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations, as follows:

“Developing or Maintaining Family or other Personal Relationships

Is the adult lonely or isolated? Do their needs prevent them from maintaining or developing relationships with family and friends? Is unable to achieve it without assistance.”

[He scored at the top of the scale, meaning that he always needs support with maintaining or developing relationships.]

“What are you able to achieve in this area? [KG] is able to maintain his relationships when he has built up his confidence and have become familiar with the person/place. [KG] loves being with his brother ...

What are the worries and concerns? [KG] finds building new relationships challenging as a result of his anxiety. [KG] has difficulty learning to trust new people.

What would you like to achieve to maintain your wellbeing? KG would like to continue to try and build new relationships outside of the family home.”

64. The text underlined above was assessed as an “Eligible Need”.

65. The assessment of the outcome described in regulation 2(2)(i) of the 2015 Regulations was as follows

“Making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? Is unable to achieve it without assistance.”

[He scored at the top of the scale, meaning that he wants to be part of his community and regularly needs a lot of support to do this (e.g. daily or several times each day).]

“What you able to achieve in this area? When in a familiar café or similar setting, [KG] feels he is able to speak with staff and order his food/drink.

What are the worries and concerns? Due to [KG’s] experience at The Bridge Project and negative reputation in the local community this causes anxiety – he needs someone with him the whole time when out in the community. Without mum’s support [KG] could not access anything outside the home including medical appointments.

What would you like to achieve to maintain your wellbeing? [KG] would like support from Mum to make use of necessary facilities or services in the local community including recreational facilities or services.”

66. The text underlined above was assessed as an “Eligible Need”.
67. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of KG’s needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on KG’s wellbeing in respect of all the aspects of wellbeing set out in section 1(2) CA 2014.
68. The impact was described in the following terms: “if [KG] did not receive full support from his mother there would be a significant impact on wellbeing”.
69. After the claim was issued, BG’s draft *Care and Support Plan*, dated 22 September 2021, was prepared, but not completed. It materially provided as follows:

“Summary of current situation

.....

Hobbies and interests

[BG] has previously written down, with his brother on a A4 piece of paper, a list of all the things/activities that he enjoys doing

[the list was then summarised, as in the 2020 Care and Support Plan].

.....

What things do you like to do?

[BG] said he likes to go out to cafes and that with his mum and [KG] and socialising in them.”

70. The Support and Safety Plan for his eligible needs was very similar to the 2020 Plan, save that the steps to be take were “to be discussed”.
71. BG’s draft *Care Act Eligibility Assessment*, dated 11 October 2021, considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations, as follows:

“Developing or Maintaining Family or other Personal Relationships

Is the adult lonely or isolated? Do their needs prevent them from maintaining or developing relationships with family and friends? Is unable to achieve it without assistance.”

[He scored second from the top on the scale, meaning that he often needs support to help him maintain or develop relationships.]

“What are you able to achieve in this area? [BG] can build a social relationship when he has built up his confidence and is relaxed and have become familiar with the place and person. [BG] loves being with his brother ..., mum and Dad. [BG] would like to spend time with his family.

What are the worries and concerns? [BG] is anxious about going to new groups and making friends. [BG] had a bad experience at a previous day service and this causes him anxiety when meeting people outside his family.

What would you like to achieve to maintain your wellbeing? For [BG] to continue to have [a] positive relationships both inside and outside of his home.

72. The text underlined above was assessed as an “Eligible Need”.
73. The assessment of the outcome described in regulation 2(2)(i) of the 2015 Regulations was as follows

“Making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? Is unable to achieve it without assistance.”

[He scored second from the top on the scale, meaning that he frequently needs support to be part of his local community (e.g. several times each week)]

“What you able to achieve in this area? Due to [BG’s] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community.

What are the worries and concerns? Due to [BG’s] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community. Without mum’s support [BG] could not access anything outside the home including medical appointments. [BG] doesn’t like to go through Sudbury town centre due to past experiences.

What would you like to achieve to maintain your wellbeing? For [BG] to access the community with support from his mum.”

74. The text underlined above was assessed as an “Eligible Need”.
75. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of BG’s needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on BG’s wellbeing in respect of all the aspects of wellbeing set out in section 1(2) CA 2014.
76. Under the heading “Impact on wellbeing and Desired Outcomes”, the author of the report addressed the following issues: incontinence, seizures, choking, medication, harassment in the community, hypermobility, personal hygiene and mental health.

Carers’ assessment and support

77. The Council undertook carers’ assessments of SQ and her husband, AQ, in September 2020. The *Carers Support Plans* for SQ and AQ identified unmet eligible needs, in various respects. SQ and AQ informed the Council that they wished to use any payment made for the purpose of financing a break away from home, with the Claimants. On 9 September 2021, Ms Eden notified them that she had approved a budget of £750 per person per annum.

Legal Framework

CA 2014

78. Section 1(1) CA 2014 creates a general duty to promote well-being which applies wherever a local authority is exercising a function under Part 1 of the CA 2014. It provides as follows:

“1 Promoting individual well-being

(1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual’s well-being.

(2) “*Well-being*”, in relation to an individual, means that individual’s well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) 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);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual’s contribution to society.

(3) In exercising a function under this Part in the case of an individual, a local authority must have regard to the following matters in particular—

- (a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being;
- (b) the individual’s views, wishes, feelings and beliefs;
- (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist;
- (d) the need to ensure that decisions about the individual are made having regard to all the individual’s circumstances (and are not based only on the individual's age or appearance or any condition of the individual’s or aspect of the individual’s behaviour which might lead others to make unjustified assumptions about the individual's well-being);

(e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;

(f) the importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual;

(g) the need to protect people from abuse and neglect;

(h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

...”

79. In *R(JF) v Merton LBC* [2017] EWHC 1519 (Admin) the High Court held that a local authority had a statutory duty to have regard to the matters listed in subsection (2), in addition to those in section 1(3) for which an explicit duty to “have regard” exists.
80. The term “well-being” is not defined. The Care and Support Statutory Guidance (“the Statutory Guidance”), issued under section 78 CA 2014, provides:

“Promoting wellbeing

....

1.1 The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life. Throughout this guidance document, the different chapters set out how a local authority should go about performing its care and support responsibilities. Underpinning all of these individual ‘care and support functions’ Is the need to ensure that doing so focuses on the needs and goals of the person concerned.

1.2 Local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person. This may sometimes be referred to as ‘the wellbeing principle’, because it is a guiding principle that puts wellbeing at the heart of care and support.

Definition of wellbeing

1.5 ‘Wellbeing’ is a broad concept, and it is described as relating to the following areas in particular:

[sets out the list in subsection (2)]

1.6 The individual aspects of wellbeing or outcomes above are those which are set out in the Care Act, and are most relevant to

people with care and support needs and carers. There is no hierarchy, and all should be considered of equal importance when considering ‘wellbeing’ in the round.

Promoting wellbeing

1.7 Promoting wellbeing involves actively seeking improvements in the aspects of wellbeing set out above when carrying out a care and support function in relation to an individual at any stage of the process Wellbeing covers an intentionally broad range of the aspects of a person’s life and will encompass a wide variety of specific considerations depending on the individual.

1.8 A local authority can promote a person’s wellbeing in many ways. How this happens will depend on the circumstances, including the person’s needs, goals and wishes, and how these impact on their wellbeing. There is no set approach – a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the wellbeing of the individual.

1.9 The Act therefore signifies a shift from existing duties on local authorities to provide particular services, to the concept of ‘meeting needs’ (set out in sections 8 and 18-20 of the Act. This is the core legal entitlement for adults to care and support...

1.10 The concept of meeting needs recognises that everyone’s needs are different and personal to them. Local authorities must consider how to meet each person’s specific needs rather than simply considering what service they will fit into. The concept of meeting needs also recognises that modern care and support can be provided in any number of ways, with new models emerging all the time...

1.11 Whenever a local authority carries out any care and support functions relating to an individual, it must act to promote wellbeing – and it should consider all of the aspects above in looking at how to meet a person’s needs and support them to achieve their desired outcomes. However, in individual cases, it is likely that some aspects of wellbeing will be more relevant to the person than others. For example, for some people the ability to engage in work or education will be a more important outcome than for others, and in those cases ‘promoting their wellbeing’ effectively may mean taking particular consideration of this aspect. Local authorities should adopt a flexible approach that allows for a focus on which aspects of wellbeing matter most to the individual concerned.”

81. Section 9 CA 2014 describes the local authority’s duty to assess, in the following terms:

“9 Assessment of an adult’s needs for care and support

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a “*needs assessment*”.

(3) The duty to carry out a needs assessment applies regardless of the authority's view of—

- (a) the level of the adult's needs for care and support, or
- (b) the level of the adult's financial resources.

(4) A needs assessment must include an assessment of—

- (a) the impact of the adult's needs for care and support on the matters specified in section 1(2),
- (b) the outcomes that the adult wishes to achieve in day-to-day life, and
- (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.

...”

82. The Statutory Guidance provides:

“The purpose of an assessment

6.9 The purpose of an assessment is to identify the person’s needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day-to-day life...

6.10 An assessment must seek to establish the total extent of needs before the local authority considers the person’s eligibility for care and support and what types of care and support can help to meet those needs. This must include looking at the impact of the adult’s needs on their wellbeing and whether meeting these needs will help the adult achieve their desired outcomes...

.....

6.15 During the assessment, local authorities must consider all of the adult's care and support needs, regardless of any support being provided by a carer. Where the adult has a carer, information on the care that they are providing can be captured during assessment, but it must not influence the eligibility determination....”

83. Once an assessment has established that an individual has needs for care and support, the local authority must determine whether any of the needs meet the relevant eligibility criteria. Section 13 CA 2014 provides:

“13 The eligibility criteria

(1) Where a local authority is satisfied on the basis of a needs or carer's assessment that an adult has needs for care and support or that a carer has needs for support, it must determine whether any of the needs meet the eligibility criteria (see subsection (7)).

(2) Having made a determination under subsection (1), the local authority must give the adult concerned a written record of the determination and the reasons for it.

(3) Where at least some of an adult's needs for care and support meet the eligibility criteria, the local authority must—

- (a) consider what could be done to meet those needs that do,
- (b) ascertain whether the adult wants to have those needs met by the local authority in accordance with this Part, and
- (c) establish whether the adult is ordinarily resident in the local authority's area.

(4) Where at least some of a carer's needs for support meet the eligibility criteria, the local authority must—

- (a) consider what could be done to meet those needs that do, and
- (b) establish whether the adult needing care is ordinarily resident in the local authority's area.

...

(6) Regulations may make provision about the making of the determination under subsection (1).

(7) Needs meet the eligibility criteria if—

- (a) they are of a description specified in regulations, or

(b) they form part of a combination of needs of a description so specified.

(8) The regulations may, in particular, describe needs by reference to—

(a) the effect that the needs have on the adult concerned;

(b) the adult's circumstances.”

84. Section 18 CA 2014 imposes a duty on a local authority to meet needs which meet the eligibility criteria, subject to conditions, such as residence and finance. Subsection (7) provides that the duty does not apply in respect of needs which are being met by a carer. When deciding how to meet needs, the local authority is entitled to provide services that take into account care and support being provided by a carer, so long as that carer is both willing and able to continue (see paragraph 6.15 of the Statutory Guidance). There should also be back-up plans to respond to any breakdown in the caring relationship.

“18 Duty to meet needs for care and support

(1) A local authority, having made a determination under section 13(1), must meet the adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and

(b) the adult's accrued costs do not exceed the cap on care costs, and

(c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.

...

(7) The duties under subsections (1) and (5) do not apply to such of the adult's needs as are being met by a carer.”

85. Section 8 CA 2014 illustrates how needs may be met; it does not purport to set out an exhaustive list. It states:

“8 How to meet needs

(1) The following are examples of what may be provided to meet needs under sections 18 to 20—

(a) accommodation in a care home or in premises of some other type;

(b) care and support at home or in the community;

- (c) counselling and other types of social work;
- (d) goods and facilities;
- (e) information, advice and advocacy.

(2) The following are examples of the ways in which a local authority may meet needs under sections 18 to 20—

- (a) by arranging for a person other than it to provide a service;
- (b) by itself providing a service;
- (c) by making direct payments.

...”

86. Section 19 CA 2014 confers a power on a local authority to meet an individual’s needs for care and support in circumstances where the duty under section 18 CA 2014 does not arise.

“19 Power to meet needs for care and support

(1) A local authority, having carried out a needs assessment and (if required to do so) a financial assessment, may meet an adult's needs for care and support if—

- (a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and
- (b) the authority is satisfied that it is not required to meet the adult's needs under section 18.

(2) A local authority, having made a determination under section 13(1), may meet an adult's needs for care and support which meet the eligibility criteria if—

- (a) the adult is ordinarily resident in the area of another local authority,
- (b) there is no charge under section 14 for meeting the needs or, in so far as there is such a charge, condition 1, 2 or 3 in section 18 is met, and
- (c) the authority has notified the other local authority of its intention to meet the needs.

(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).

(4) A local authority may meet an adult's needs under subsection (3) where, for example, the adult is terminally ill (within the meaning given in section 82(4) of the Welfare Reform Act 2012).

...”

87. Section 20 CA 2014 imposes a duty to meet a carer’s need for support, and where appropriate, a power to do so where no duty arises.
88. By section 24(1) CA 2014, where a local authority is under a duty to meet needs under sections 18 or 20 CA 2014, or decides to do so under section 19 CA 2014, it must prepare a care and support plan, or a support plan in the case of a carer. If the local authority decides not to meet a need, it must give adequate written reasons and also advice and information for the future (subsection (2)).
89. Section 25 CA 2014 makes provision for a care and support plan, or a support plan, as follows:

“25 Care and support plan, support plan

(1) A care and support plan or, in the case of a carer, a support plan is a document prepared by a local authority which—

(a) specifies the needs identified by the needs assessment or carer's assessment,

(b) specifies whether, and if so to what extent, the needs meet the eligibility criteria,

(c) specifies the needs that the local authority is going to meet and how it is going to meet them,

(d) specifies to which of the matters referred to in section 9(4) the provision of care and support could be relevant or to which of the matters referred to in section 10(5) and (6) the provision of support could be relevant,

(e) includes the personal budget for the adult concerned (see section 26), and

(f) includes advice and information about—

(i) what can be done to meet or reduce the needs in question;

(ii) what can be done to prevent or delay the development of needs for care and support or of needs for support in the future.

(2) Where some or all of the needs are to be met by making direct payments, the plan must also specify—

- (a) the needs which are to be so met, and
- (b) the amount and frequency of the direct payments.

(3) In preparing a care and support plan, the local authority must involve—

- (a) the adult for whom it is being prepared,
- (b) any carer that the adult has, and
- (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.

(4) In preparing a support plan, the local authority must involve—

- (a) the carer for whom it is being prepared,
- (b) the adult needing care, if the carer asks the authority to do so, and
- (c) any other person whom the carer asks the authority to involve.

(5) In performing the duty under subsection (3)(a) or (4)(a), the local authority must take all reasonable steps to reach agreement with the adult or carer for whom the plan is being prepared about how the authority should meet the needs in question.

(6) In seeking to ensure that the plan is proportionate to the needs to be met, the local authority must have regard in particular—

- (a) in the case of a care and support plan, to the matters referred to in section 9(4);
- (b) in the case of a support plan, to the matters referred to in section 10(5) and (6).

...”

90. Generally, an individual can ask to have their needs met by a direct payment, that is to say, a sum of money which the individual uses to commission care and/or support: see section 31 CA 2014.

The 2015 Regulations

91. Regulation 2(1) of the 2015 Regulations provides:

“(1) An adult’s needs meet the eligibility criteria if:

- (a) the adult's needs arise from or are related to a physical or mental impairment or illness;
- (b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and
- (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.”

92. The outcomes specified in regulation 2(2) are:

- “(a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed;
- (e) being able to make use of the adult's home safely;
- (f) maintaining a habitable home environment;
- (g) developing and maintaining family or other personal relationships;
- (h) accessing and engaging in work, training, education or volunteering;
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
- (j) carrying out any caring responsibilities the adult has for a child.”

93. I accept Ms Rowlands’ submission that, on a proper interpretation, sub-paragraph 2(2)(i) comprises the following outcomes:

- i) Making use of necessary facilities/services in the local area;
- ii) Making use of recreational facilities;

- iii) Making use of recreational services.

Recreational facilities and services ((ii) and (iii) above) are not confined to the local area, and may include a trip away from home to access recreational facilities and services in another location.

94. Sub-paragraph (3) explains that an adult is to be regarded as being unable to achieve an outcome if the adult:

“(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or

(d) is able to achieve it without assistance but takes significantly longer than would normally be expected.”

Grounds of challenge

95. Ms Rowlands submitted that the care plan was flawed and that the Council should be ordered to prepare a fresh care and support plan, which included support for recreational activities and holidays. She contended that the Council erred in law by:

- i) **Ground 1:** concluding that it could not, as a matter of law, continue to provide financial support for recreational activities and holidays, under section 18 CA 2014;
- ii) **Ground 2:** fettering its discretion by not considering whether it should continue to provide financial support for recreational activities and holidays, under section 19 CA 2014;
- iii) **Ground 3:** failing to make inquiries of the Claimants’ medical practitioners as to the effect of withdrawing support for recreational activities and holidays;
- iv) **Ground 4:** acting irrationally in abruptly withdrawing support for recreational activities and holidays;
- v) **Ground 5:** failing to exercise or consider exercising its discretionary powers under section 19 CA 2014 to continue to provide support for recreational activities and holidays;
- vi) **Ground 7:** failing to give reasons for the refusal to fund leisure and respite for the Claimants’ carers.

Ground 1: the Council's powers

Submissions

96. The Claimants submitted that the Council erred in law in concluding that it had no power under the CA 2014 to contribute to fund outings or holidays for the Claimants and their carers, as they met the eligibility criteria in the 2015 Regulations, and the duty under section 18 CA 2014 was engaged, on a proper interpretation of the CA 2014.
97. The Council's reasons were set out in its solicitor's pre-action protocol response dated 27 May 2020. It stated that its duty under section 18 CA 2014 was to meet the Claimants' care and support needs which met the eligibility criteria in the 2015 Regulations. It relied on the decision in *R (GS) v London Borough of Camden* [2016] EWHC 1762 (Admin) where the Court held that a need for accommodation did not impose a duty to provide accommodation.
98. The Council accepted that outcome 2(2)(i) in the 2015 Regulations - "making use of necessary facilities or services in the local community including public transport and recreational facilities or services" - could give rise to a duty to provide a carer to support an individual to access recreational facilities. However, by analogy with *GS*, the Council's duty did not extend to providing funding to enable an individual to access those facilities or services e.g. the cost of transport or entrance fees.
99. On behalf of the Council, Ms Eden, Team Manager, explained in her letter of 3 March 2020 that the Council was "no longer including holiday travel and accommodation costs in personal budgets ... because, as part of a wider review of how direct payments are used throughout the county, it has been identified that paying customers' holiday costs (rather than meeting the cost of support that they need to achieve a holiday) is not a Care Act eligible need."
100. Ms Eden went on to explain that, although the Council would pay the costs of a carer to support the Claimants to visit the local library, shops, leisure activities or attractions or to participate in a hobby or interest, it would no longer meet any "universal costs" i.e. costs which are incurred by everyone, whether or not they have a disability, such as admission costs to an attraction, or the cost of participating in a hobby or interest (e.g. craft supplies or specialist equipment).
101. Mr Parkhill further submitted that, even if the Council had power to provide the support which the Claimants sought, their Care Act Eligibility Assessments, dated 18 October 2019, did not identify recreational activities or holidays as part of their needs.

Conclusion

102. I am unable to find any statutory basis for the restrictive interpretation of needs adopted by the Council.
103. Section 1(1) CA 2014 imposes a general duty on the Council to promote the Claimants' well-being in the exercise of its functions under Part 1 of the CA 2014. The duty is described in broad terms in section 1(2) CA 2014, and explained in the Statutory Guidance at paragraphs 1.1 to 1.11 (paragraph 80 above).

104. A needs assessment must assess an adult's needs by reference to the matters in section 1(2) CA 2014 (see section 9(4) CA 2014).
105. The Care Act Eligibility Assessments carried out in 2019 and 2021 found that, as a consequence of the Claimants' needs, and their inability to achieve two or more outcomes listed in regulation 2(2) of the 2015 Regulations, there was or was likely to be a significant impact on their well-being in respect of all the aspects of well-being set out in section 1(2) CA 2014.
106. The aspects of well-being which are of particular relevance to the issues in this case are:
 - “(b) physical and mental health and emotional well-being”;
 - “(f) participation in ... recreation”;
 - “(g) domestic, family and personal relationships”.
107. Prior to the current dispute, the Care and Support Plans drawn up by the Council's social workers repeatedly referred to the Claimants' wish to access recreational activities in the community, on day trips and on holidays, and the social workers assessed the resulting benefits to their well-being from such activities (see, e.g. paragraphs 14, 15, 16, 17, 18, 23, 24, 30, 31, 33, 34, 35, 36 38, 39 above).
108. The Norfolk and Suffolk NHS Foundation Trust also drew up Care Plans for the Claimants which identified the positive benefits of recreational activities in the community, on day trips and on holidays, on their mental health and well-being. The Trust recommended that financial support for such activities should continue.
109. The term “Care and Support” is central to the CA 2014. The long title is “An Act to make provision to reform the law relating to care and support for adults and the law relating to support for carers ...”. The title of Part 1 of the CA 2014 is “Care and Support”. Provision is made in section 9 and 10 CA 2014 for a local authority to assess an adult's needs for care and support, and to assess a carer's needs for support. Sections 18, 19 and 20 CA 2014 confer powers and impose duties to meet needs for care and support.
110. The term “care and support” is not defined in the Act. In *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349, Lord Nicholls said, at 397, that in identifying the meaning of the words used in a statute, “an appropriate starting point is that language is to be taken to bear its ordinary meaning in the general context of the statute”.
111. In the context of the CA 2014, the natural and ordinary meaning of the word “care” is the provision of personal services to someone in need. The words “care” and “support” are not synonymous, and the word “support” must have been added by Parliament to denote something in addition to, “care”. In the context of the CA 2014, the natural and ordinary meaning of the word “support” is the provision of assistance to someone in need, in particular, financial assistance.

112. This analysis is supported by the use of the term “support” on its own, in the context of the assessment of carers’ needs in section 10 CA 2014, and the duty and power to make provision for carers’ needs in section 20 CA 2014. Ordinarily, a carer does not need “care” but he or she may well need “support”.
113. The illustrations of “support” for carers in the Statutory Guidance indicate that the term is intended to have a broad meaning:
- “11.41 Local authorities must have regard to the wellbeing principle of the Act, as it may be the case that the carer needs a break from caring responsibilities to look after their own physical/mental health and emotional wellbeing, social and economic wellbeing and to spend time with other members of the family and personal relationships. Whether or not there is a need for replacement care, carers may need support to help them to look after their own wellbeing. This may be, for example, a course of relaxation classes, training on stress management, gym or leisure centre membership, adult learning, development of new work skills or refreshing existing skills (so they might be able to stay in paid employment alongside caring or take up return to paid work), pursuit of hobbies such as the purchase of a garden shed, or purchase of a laptop so they can stay in touch with family and friends.”
114. Consistently with this Statutory Guidance, the Council has accepted that it has power to address the needs of the Claimants’ carers (their parents) by providing them with “support” in the form of an annual payment towards the cost of a family holiday.
115. In principle, the same broad meaning of “support” for carers in the Statutory Guidance should equally apply to an adult in need.
116. Section 8 CA 2014 describes a wide range of ways in which needs may be met, which is contrary to the Council’s restrictive interpretation that it can only provide the Claimants with personal care assistance. In sub-section (1), it gives non-exhaustive “examples of what may be provided to meet needs under sections 18 – 20”. Those relevant here are support in the community (sub-paragraph (b)) and goods and facilities (sub-paragraph (d)). Section 8(2) gives examples of the way in which a local authority may meet needs under sections 18 to 20, by arranging for a person other than it to provide a service, to provide a service itself, or by making direct payments.
117. The Statutory Guidance confirms the breadth of the concept of “meeting needs” under the CA 2014 as follows:

“What does it mean to ‘meet needs’?”

10.10 ‘Meeting needs’ is an important concept under the Act and moves away from the previous terminology of ‘providing services’. This enables a greater variety of approaches in how needs can be met, developed through care and support planning as described in this chapter. The concept of ‘meeting needs’ is intended to be broader than a duty to provide or arrange a

particular service. Because a person's needs are specific to them, there are many ways in which their needs can be met. The intention behind the legislation is to encourage this diversity, rather than point to a service or solution that may be neither what is best nor what the person wants. The purpose of the care and support planning process is to agree how a person's needs should be met, and therefore how the local authority will discharge its duty, or its power, to do so.

10.11 There are a number of broad options for how needs could be met, and the use of one or more of these will depend on the circumstances. Section 8(2) of the Act gives some examples of ways of meeting needs, and would cover:

the local authority directly providing some type of support, for example by providing a reablement or short-term respite service

making a direct payment, which allows the person to purchase their own care and support

some combination of the above, for example the local authority arranging a homecare service whilst also providing a direct payment to meet other needs

10.12 Where the local authority provides or arranges for care and support, the type of support may itself take many forms. These may include more traditional 'service' options, such as care homes or homecare, but may also include other types of support such as assistive technology in the home or equipment/adaptations, and approaches to meeting needs should be inclusive of less intensive or service-focused options.

10.13 Needs may be met through types of care and support which are available universally, including those which are not directly provided by the local authority. For example, in some cases needs could be met by a service which is also made available as part of a local authority's plans for preventing or reducing needs for care and support (under Section 2 of the Act). Needs could also be met, for example, by putting a person in contact with a local community group or voluntary sector organisation.

10.14 The examples of how needs can be met listed in the Act are not exhaustive, but cover the most common means of meeting needs..."

118. The authoritative textbook 'Community Care and the Law' by Clements (7th ed.) expressly considers the provision of holidays and other services as follows (footnote have been omitted):

“Introduction

8.1 A primary purpose of a pre-Care Act (CA) 2014 community care/carers' assessment was to identify whether the person had a need for 'services'. The community care statutes contained exhaustive lists of services that could be provided, and the Carers and Disabled Children Act 2000 contained a generalised statement as to what a carer's 'service' might be.

8.2 The CA 2014 repealed these provisions (insofar as they applied to adults) and in keeping with its 'outcomes' rhetoric, endeavoured to avoid referring to the word 'service' when describing what may be provided to meet a person's needs. As the statutory guidance to the CA 2014 explains, the Act's new approach 'signifies a shift from existing duties on local authorities to provide particular services, to the concept of "meeting needs"' (para 1.9). One reason it gives for this approach is that 'everyone's needs are different and personal to them' (para 1.10). Although this is clearly true and important to acknowledge, it is also the case that all local authorities adopt generic responses to these needs – responses that in this chapter are referred to as 'services'.

8.3 This chapter considers" such 'services': services that are provided as a result of an assessment. These include general support such as social work, information and advocacy; care and support provided in people's own homes or in the community; and support that includes accommodation (for example in a care home or supported housing).

...

8.6 In place of the exhaustive lists of services provided in the community care statutes, CA 2014 s8(1) provides an illustrative list of what may be 'provided' to an eligible adult in need or carer - namely:

- (a) accommodation in a care home or in premises of some other type;
- (b) care and support at home or in the community;
- (c) counselling, advocacy and other types of social work;
- (d) goods and facilities;
- (e) information and advice.

8.7 The List is much briefer than that provided under the pre-CA 2014 legal regime and differs from that first propose by the Law Commission.

8.8 The absence of such things as 'adaptations', 'equipment', 'travel'; and 'holidays' (which were specifically cited in Chronically Sick and Disabled Persons Act (CSDPA) 1970 s2) was considered problematical by the joint committee that scrutinised the draft Care and Support Bill and in response

to a question it asked the Department of Health (DH - now the Department of Health and Social Care (DHSC)), received confirmation that the DH considered that these services did fall within the ambit of the list. The committee expressed the hope that the subsequent guidance would ‘make clear that the list is not intended to limit the ways in which a local authority might meet any eligible needs or agreed outcomes, removing any possible ambiguity on that point’ (para 170). Whether the statutory guidance satisfies this entreaty is a moot point, but para 10.12 states:

where the local authority provides or arranges for care and support, the type of support may itself take many forms. These may include more traditional ‘service’ options, such as care homes or homecare, but may also include other types of support such as assistive technology in the home or equipment/adaptations, and approaches to meeting needs should be inclusive of less intensive or service-focused options.

...”

“Holidays

8.88 As noted above (para 8.8) the CA 2014 duties include, in appropriate cases, the provision of a holiday for an adult in need and/or a carer. It would also appear that this could extend to the purchase of a caravan for such a purpose.

8.89 the NAA 1948 and the CSDPA 1970 specified holidays as a support service to be provided for disabled people. This focus owes much to the aspirations of the NAA 1948 and its aim of abolishing, not only the workhouse, but also the joyless oppressive Poor Law culture. It has also been suggested that the reference to ‘packages’ of care that first appeared in 1990 community care reforms derived from the development of the development of the ‘package holidays’ that were then becoming popular.

8.90 Until comparatively recently, many local authorities owned holiday accommodation for people in need of social care support, and the provision of a holiday was not seen as an exotic arrangement. Despite the focus in the CA 2014 on well-being (including recreation), many local authorities would balk at the idea of including an annual holiday in the care and support plan for an adult in need or a carer - in much the same way that a Poor Law commissioner would have reacted to such a suggestion.

8.91 It is, however, arguable that assessments under the CA 2014 should identify a need for an annual holiday - it is something recognised as a ‘need’ by a large majority of the

population. Such a need may be all the more important for disabled people to give them a break from the routine and exhaustion of living and caring for themselves. In *R (B) v Cornwall CC* the court accepted that holiday expenses could be included as disability-expenditure for charging purposes and it would seem a reasonable presumption that, in appropriate cases, a care plan will have a holiday component. This was indeed the case for care home residents - when national minimum standards were first produced for such services, standard 14, para 14.4 of which stated:

Service users in long-term placements have as part of the basic contract price the option of a minimum seven-day annual holiday outside the home, which they help choose and plan.

8.92 In *R v Ealing LBC ex p Leaman* the council refused to consider a request made by the applicant for financial assistance in taking a privately arranged holiday - on the ground that it would only grant such assistance which it itself had arranged or sponsored. In quashing the council's decision Mann J held that this was, in effect, a classic fettering of its discretion (in the case under the CSDPA 1970).

8.93 Holidays can amount to a form of respite care for carers – where they have a need for a break and it is not possible or desirable for the disabled person not to be accompanied. In some cases, the authority will have to fund the full cost of the holiday under the CA 2014 (and not merely the additional costs attributable to the adult in need's impairment), where, for instance, the carer's attendance is necessary (ie as an escort) as was the case in *R v North Yorkshire CC ex p Hargreaves (No 2)*.”

119. The case of *R v North Yorkshire CC ex p. Hargreaves (No. 2)* (1997-98) 1 CCLR 331, referred to by Clements, has similarities with this claim, as North Yorkshire CC accepted that the disabled claimant had an assessed need for a holiday, but would only meet the costs of her carer, not the costs of her holiday, on the basis that section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (“the 1970 Act”), read with section 29 of the National Assistance Act 1948, did not intend to relieve poverty, but only to relieve persons of the added financial burden imposed by their disability.
120. Latham J. rejected the Council's case holding:

“The Respondent's principal argument, namely that the legislation was not intended to provide relief from poverty, but relief from the extra expense of disability, begs the question. If the Council have determined, as in this case, that the need for the holiday is a result of the disability, then the cost of the holiday to the disabled person must be capable of being an additional cost which is the result of the disability, although the question

may well arise as to whether in the particular case it is necessary, in order to facilitate the holiday to assist with that cost.”

121. Although the CA 2014 does not specifically refer to the provision of holidays, unlike the 1970 Act, I am satisfied on the basis of the analysis by Clements that the CA 2014 does not have the effect of reducing the range of provision available to adults in need, and that holidays and other recreational activities in the community can potentially come within the broad scope of the provision for meeting needs in section 8 CA 2014, as explained in the Statutory Guidance at paragraphs 10.10 to 10.12.
122. Despite the different statutory provisions, I also consider that Latham J.’s reasoning in *North Yorkshire CC* is a complete answer to the argument relied upon by the Council that it could not support the costs of the holiday (see paragraphs 97 – 99 above). Put simply, if the Claimants’ assessed needs arising from their disabilities includes a need for a holiday or other recreational activities, then the cost of the holiday to the disabled person is a need which can be met under CA 2014.
123. The Council relied on the authority of *GS* in which Peter Marquand, sitting as a Deputy High Court Judge, said, at [28(iii)]:

“In my view the "outcomes specified" in paragraph (2) are not consistent with accommodation as a need. Regulation 2(2)(e) is: "being able to make use of the adult's home safely" and 2(2)(f): "maintaining a habitable home environment." These outcomes do not support a need for accommodation as a "need" – they envisage accommodation that exists, in other words the question is: is the individual able to maintain a habitable home environment not, does a home have to be provided so that they can maintain a habitable home environment. Mr Parkhill’s point was that if that interpretation was not correct then 2(2)(h): "accessing and engaging in work, training, education or volunteering" would otherwise oblige a local authority to provide work. I agree that the criteria do not go that far.”

124. However, Michael Fordham QC, sitting as a Deputy High Court Judge, in *R (Aburas) v LB Southwark* [2019] EWHC 2754 (Admin), correctly recognised (which *GS* does not) that there are circumstances in which meeting an adult’s needs under the CA 2014 will require provision of accommodation under the CA 2014. Mr Fordham QC said, at [6]:

“6. Secondly, what is the relationship between CA14 and duties to provide accommodation? The answer is that the need for accommodation is not itself a 'looked-after need', but the provision of accommodation may be called for under CA14 so as to secure effective care and support for a 'looked-after need'. In other words, accommodation may be assessed to be the necessary and appropriate conduit for the practical and effective delivery of care and support for the relevant 'looked-after needs'. It is important to look at accommodation needs through that prism, for the purpose of the CA14 statutory functions. To elaborate on this:

i) Parliament made clear (CA14 section 8(1)) that ‘looked-after needs’ may come to be met by the provision by the local authority of accommodation in a care home, or accommodation of some other type. Parliament also recognised (CA14 section 2) that ‘looked-after needs’ could, in principle, arise out of destitution or the effects of destitution. It is well-established that the need for accommodation is not a “need for care and support” for the purposes of CA14 : see *R (GS) v Camden London Borough Council* [2016] EWHC 1762 (Admin) [2017] PTSR 140 at §29; *R (AR) v London Borough of Hammersmith and Fulham* [2018] EWHC 3453 (Admin) at §18. Nor is the need for subsistence: see *AR* at §19.

ii) Counsel were agreed as to when it is, in essence, that accommodation comes to be appropriately provided pursuant to CA14. They agreed that this is so where the person has a ‘looked-after need’ of care and support whose effective delivery requires accommodation. Ms Mallick described that situation, where accommodation is required to deliver effective care and support for a ‘looked- after need’, as ‘accommodation-plus’. In that language the ‘plus’ constitutes specific action addressing the ‘looked-after need’ for care and support, and the ‘accommodation’ is required for its effective delivery. That language is not in my judgment inapt, provided that it is remembered that the ‘plus’ is what matters in leading to the ‘accommodation’. The ‘plus’ is not an incidental extra; it is a necessary prism.

iii) This analysis was accepted and this is how the case was argued before me. It follows that what CA14 is not concerned to do is to deal, in any other or more general way, with accommodation or with accommodation needs. To take a practical example from the cases cited to me, I mention *R (Bernard) v Enfield London Borough Council* [2002] EWHC 2282 (Admin) [2003] HLR 27, decided on equivalent predecessor legislation. In that case the care needs were those of Mrs Bernard, a person with severe disabilities. Addressing those needs gave rise to a statutory duty (under the equivalent legislation) to provide suitably-adapted accommodation (see §10), whose denial was a breach of Mrs Bernard's Convention rights (at §33).

iv) Maintaining a disciplined focus on ‘looked-after needs’ makes sense. 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 (HA96), and there are boundaries between the statutory schemes (see too CA14 section 23). It would

undermine the integrity of a coherent statutory framework if CA14 became a ‘back-door’ route to claims based on accommodation needs, circumventing the scheme of HA96 and jumping the homelessness queue. As Lady Hale said of the predecessor legislation in the *M (Slough)* case at §33, the local authority function of addressing ‘looked-after needs’ for care and support:

“... is not a general power to provide housing. That is dealt with by other legislation entirely, with its own criteria for eligibility ... [Otherwise,] every homeless person who did not qualify for housing under the Housing Act 1996 would be able to turn to the local social services authority instead. That was definitely not what Parliament intended ...”

125. It is significant that, as Mr Fordham QC indicated, section 23(1) CA 2014 specifically prohibits a local authority from meeting needs under sections 18 to 20 CA 2014, by doing anything which it or another local authority is required to do under the Housing Act 1996. Therefore, it is not possible to draw an exact analogy between the power of the Council to provide accommodation and the type of provision sought by the Claimants in this case, which is not subject to a comparable statutory restriction.
126. For all the reasons set out above, I conclude that the Council did err in law in concluding that it had no power, as a matter of law, to provide financial support for recreational activities and holidays, under section 18 CA 2014.
127. Mr Parkhill submitted, in the alternative, that the Eligibility Assessments for the Claimants did not refer to a need to access recreational activities in the community, on day trips and on holidays.
128. As I set out at paragraphs 106 and 107 above, prior to the current dispute, the Care and Support Plans drawn up by the Council’s social workers, and the Care Plans drawn up by the NHS, did clearly identify the Claimants’ need to access recreational activities in the community, on day trips and on holidays, and the benefits to their well-being to be gained from such activities.
129. An example of the way in which recreational activities were assessed can be found in KG’s *ACS Care and Support Plan*, dated 18 July 2018, which referred to community access and holidays as follows:

“Who and what is important to the person

....

[KG] had written down with his brother all of the things that are important to him. These include being able to go and visit historical places of interest such as castles and also bird sanctuaries and national trust places. [KG] said that it is important for him that he is able to go on family holidays. This has been included on a separate A4 piece of paper. This is a list

of all of the activities that [KG] enjoys doing and feels that are important for him to be able to carry on.

[KG] said that recently he has been taking packed lunches out with him when they go out. He said that he finds it sad that he does not go out for meals anymore. He said that he really enjoyed meeting different people this way. He really used to like going out for lunch at Minsmere nature reserve and Sizewell. [KG] and his mother said that he used to enjoy the interaction from the staff that he used to get from this activity. However, [KG] is still able to get interaction from staff at the different places if he takes a packed lunch. He could purchase a drink from the café that would ensure he had the same amount of interaction with the staff team.

Jennie [the Community Nurse] said that eating out in a familiar place increases [KG's] confidence and helps to build social skills and prevent isolation.

.....”

“What does the person want to achieve and what are their personal outcomes?”

.... At present [KG] accesses his local and wider community with his mother and brother KG enjoys going out to wildlife places, such as National Trust and RSPB reserves and Suffolk Wildlife Trust and Lackford Lakes.... I have attached a copy of the activities that KG enjoys doing. This was written on an A4 piece of paper. This is to form the basis of the support plan. As this was written by KG and BG themselves.

[KG] enjoys holidays away from the home environment.

....”

“Meeting the Customer’s Needs

What are the person’s outcomes, needs and issues about keeping safe?

.....

6. For [KG] to have membership to the National Trust, RSPB, Photoshop and Zoo passes. Also entrance fees to castles and attractions that are not covered by these memberships.

....

9. To ensure that [KG] has respite away from home.

10. To support [KG] to access nature reserves etc.

.....”

“What will be put in place to achieve the need or reduce/manage any risks?

.....

6. To support [KG] to have meaningful day time activities within the community.

.....

9. To ensure that [KG] has a break away from his family home.

10. To ensure that some mileage allowance is paid to [SQ] through the direct payment.

.....”

“Who will provide this? How and when will it be provided?

6. [SQ].

9. [SQ]. In lieu of Respite.

10. Through the direct payment.

.....”

130. A direct payment of £148.09 per week was assessed as the cost of supporting the community access and activities in the A4 sheet prepared by KG, supplemented by his benefits. In addition, £3,000 per annum was to be paid for supported holidays and day trips out.
131. There is no plausible evidence that there has been a diminution of these needs, nor any reduction in the benefits to their well-being from such activities. Indeed, Nurse Thomas, in her letter of 19 July 2019 to the Council, attributed a downturn in KG’s mental health to the threatened removal of funding for such activities.
132. The evidence indicates that, from at least 2018 onwards, managers in the Council began to adopt a restrictive approach to the provision of services, leading eventually to the decision letters of 3 March and 12 November 2020. For example, Ms Roper sent a letter dated 19 April 2018 to the Claimants and SQ stating, among other matters:

“Throughout Clare’s assessment, she has been clear that both [BG] and [KG] have care and support needs that we are obliged to meet under the Care Act 2014. We understand the importance of supported socialisation, relaxation and mental stimulation for both [BG] and [KG]. In this respect, we agreed that trips out, membership of clubs, or facilitated activities would be entirely appropriate means of meeting those needs.

Similarly, we are able to fund travel costs when accessing these activities. However the council cannot fund the cost of food consumed when [BG] or [KG] are eating out in a restaurant the direct payment's use is limited to funding the support that [BG] and [KG] need to participate in activities in the community, for example the costs associated with supporting [BG] or [KG] to visit the attraction and use the facilities there.

.... The use of their allocated personal budget to meet the costs of travel and holiday accommodation (i.e the general costs of a holiday) does not fall within the matters which the Council ought to fund: funding to support the taking of holidays should be used to meet the costs associated with supporting [BG] or [KG] to participate in the holiday, for example to escort them during travel, meet their needs with regard to personal care during the holiday and to support them so that they can participate in the holiday activities..."

133. At that time, SQ was receiving different advice from individual social workers and other professionals involved in the Claimants' care; hence the *ACS Care and Support Plan*, dated 18 July 2018, which made provision for "a break away from the family home" with a budget of £3,000 did not reflect Nicola Roper's views on holidays as expressed in the letter.
134. However, Ms Eden explained in her letter of 3 March 2020 to the Claimants, that the Council had decided that it was not responsible for funding the Claimants' costs of accessing an activity (e.g. entrance or travel costs), only those of a carer. This was more restrictive than the position set out by Ms Roper. In respect of holidays, Ms Eden largely confirmed the position as set out in Ms Roper's letter, namely, that the Council was no longer including holiday travel and accommodation costs in personal budgets because this was not an eligible need under the Care Act 2014.
135. In my view, the Claimants' Care Act Eligibility Assessments were deliberately drafted so as to reflect the Council's restrictive stance on eligible needs, with the focus on any need for care, and the exclusion of financial support for goods and facilities, in this case, the cost of accessing recreational facilities. For example, KG's *Eligibility Assessment*, dated 18 October 2019, considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations, as follows:

“Developing or Maintaining Family or other Personal Relationships

Is the adult lonely or isolated? Do their needs prevent them from maintaining or developing relationships with family and friends?

Is unable to achieve it without assistance.

.....

What are you able to achieve in this area?

[KG] is able to have his relationships when he has built up his confidence and has become familiar with the person/place. [KG] loves being with his brother ...

What are the worries and concerns?

[KG] is able to have his relationships when he has built up his confidence and have become familiar with the person/place. Due to anxiety building relationships can be challenging.

What would you like to achieve to maintain your wellbeing?

To be able to access the community with full support to build and maintain relationships – to resume going to cafes where I am relaxed and can enjoy meeting people.”

136. The text underlined above was identified as the eligible need, to be met by being able to access the community with full support.
137. The assessment of the outcome described in regulation 2(2)(i) of the 2015 Regulations was as follows:

“Making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities?

Is unable to achieve it without assistance.

.....

What you able to achieve in this area?

Due to [KG’s] negative experience at The Bridge Project and anxiety he needs someone with him the whole time when out in the community.

What are the worries and concerns?

Due to [KG’s] experience at The Bridge Project and negative reputation in the local community this causes anxiety – he needs someone with him the whole time when out in the community. Without mum’s support [KG] could not access anything outside the home including medical appointments.

What would you like to achieve to maintain your wellbeing?

To continue receiving full support from mum to be able to go out including cafes.”

138. The text underlined above was identified as the “eligible need” which was to be met by continued full support from SQ.
139. Other than the brief reference to visiting cafes, there is no mention of the long list of recreational activities in the community enjoyed by KG and which he wished to continue to access, nor the benefits to his well-being from participating in such activities. There is no mention of holidays. Nor is there any mention of support in the form of membership and entrance fees for regular destinations such as RSPB reserves, and travel costs. In my view, these matters were wrongly excluded from consideration.
140. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of KG’s needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on KG’s wellbeing in respect of all the aspects of wellbeing set out in section 1(2) CA 2014.
141. The impact was described solely in the following terms: “if [KG] did not receive full support from his mother there would be a significant impact on wellbeing”. There was no mention of the impact of a lack of financial support to enable him to achieve the outcomes of making use of recreational facilities and developing or maintaining relationships. In my view, these matters were wrongly excluded from consideration.
142. By tailoring the assessment in this way, to accord with the Council’s restrictive reading of the scope of the Care Act 2014, the only need identified was care and support from SQ. As SQ remained willing and able to provide care to the Claimants, by section 18(7) CA 2014, the Council had no duty to meet the Claimants’ needs. Consequently, Ms Eden wrote to the Claimants on 12 November 2020 terminating all direct payments.
143. In my judgment, the Council’s erroneous interpretation of its powers under the CA 2014 tainted the Eligibility Assessments by leading to a misguided exclusion of aspects of the Claimants’ needs. The Council then failed to consider whether financial support should be offered to meet those needs. Therefore the Council cannot rely upon the Eligibility Assessments to avoid liability under Ground 1.
144. For the reasons set out above, Ground 1 succeeds.

Ground 2: fettering discretion

145. The Claimants submitted that the Council, in its letter of 3 March 2020, unlawfully fettered its discretion by stating that it would no longer meet holiday needs. As the letter was based upon a restrictive interpretation of the CA 2014 which I have found to be unlawful, under Ground 1, it must follow that the Ground 2 is made out.

Ground 3: lack of inquiries

146. Ground 3 is directed at the Council’s *Care and Support Plan* dated 26 November 2020. The Claimants submitted that the social workers carrying out the assessments failed to make adequate inquiries of the Claimants’ medical practitioners as to the effect on them of withdrawing support for recreational activities in the community, on day trips and on holidays. The Council also ignored the advice from Nurse Thomas, in her letter of 19 July 2019, which stated that anxiety over the care planning process had led to a

deterioration in KG's mental health; that the Claimants could not tolerate an external carer coming into the home; and they could not cope with spending time away from home without their parents. Finally, the social workers erred in placing reliance upon the Neurodevelopmental Team's reasons for discharge without investigating further: see paragraph 56 above.

147. Ms Eden responded to some of these criticisms in her witness statement at paragraphs 14 and 15:

“14. I need to address the assertion made on behalf of the claimants that decisions were made by Suffolk County Council without any regard to the impact on their mental health, and with no information from or input from the NSFT Learning Disability Mental Health Team. This is not the case.

15. Suffolk County Council liaised with NSFT throughout the assessment process. In doing so it was established that both claimants were discharged by NSFT prior to the decision by Suffolk County Council to cease direct payments, the Trust having determined at that time that neither had needs that warranted a service at that time. I have been informed that KG's GP referred KG back to Norfolk and Suffolk Foundation Trust on 17th February 2021 following a deterioration in his mental health and that this referral was passed to the West Learning Disability Community Team. I understand that Gillian Cox, Community Learning Disability Nurse, is currently completing an extended assessment of KG's mental health needs. At the time of writing this statement I do not have any information regarding the support that KGI *sic* is likely receive from the mental health team but I anticipate that NSFT will share information that they consider pertinent to meeting his social care needs. As I understand it, there is no extant referral to mental health services in respect of BG, whose mental health needs are met in primary care (by his GP.)”

148. In my judgment, the Council was not responsible for the inappropriate conduct of the Neurodevelopmental Team in discharging the Claimants without making further inquiries. In fact, it transpired that the Team had misunderstood the communication from the Claimants' Advocate.
149. In the light of Ms Eden's evidence, I am not satisfied that the social workers failed to liaise with the NHS Trust, or acquaint themselves properly with the Claimants' mental health needs.
150. For these reasons, Ground 3 does not succeed.

Ground 4: irrationality

151. The Claimants submitted that no reasonable local authority would have abruptly stopped the provision of support to meet the Claimants' assessed need for recreational

facilities and services, without any alternative provision of support to meet the need. The Council accepts that the Claimants cannot tolerate support from external carers. In those circumstances, it is irrational not to support the existing care framework provided by SQ and her husband, particularly in the light of the evidence of Nurse Thomas, which has not been addressed by the Council.

152. In response, Mr Parkhill reiterated the Council's interpretation of the scope of the CA 2014, which I have rejected under Ground 1. He also pointed out that SQ has not applied to the Council for payment for the care which she provides, under the "necessity" exception in the Care and Support (Direct Payments) Regulations 2014. Although discussions have been taking place between the parties on this issue, it post-dates the issue of the claim and the Court has not been asked to consider it.
153. In my judgment, the reason for the Council's decision was its restrictive interpretation of the CA 2014, which led it to exclude many of the considerations raised by the Claimants under Ground 4. In those circumstances, it is not appropriate to make any determination on the allegation of irrationality, which is a different type of legal error.
154. For these reasons, Ground 4 does not succeed.

Ground 5: section 19 CA 2014

155. The Claimants submitted, in the alternative, that even if the eligibility criteria were not met, the Council had a discretionary power under section 19 CA 2014 to fund recreational activities in the community, on day trips and on holidays which it failed to consider in this case.
156. In *R (Aburas) v Southwark LBC*, Michael Fordham QC, sitting as a Deputy High Court Judge, held, at [7]:

"7. Thirdly, what are "eligible needs" and "non-eligible needs", to which the Assessment referred? The answer is that "eligible needs" are statutorily-prescribed and trigger a CA14 statutory duty, while "non-eligible needs" are a residual category which trigger a CA14 statutory power. The difference between these two categories of need engages an important structural point about CA14, highly relevant in securing Convention rights so far as 'looked-after needs' are concerned. Parliament made dual provision as to the care and support needs of a person who is "ordinarily resident in the authority's area or present in its area but of no settled residence". In such a case Parliament has imposed a statutory duty under CA14 section 18(1) and it has conferred a statutory power under CA14 section 19(2). The statutory duty (s.18(1)) is a duty to meet an adult's eligible care and support needs ("needs for care and support which meet the eligibility criteria"); the statutory power (s.19(1)) is a power to meet non-eligible care and support needs ("needs for care and support") being those not covered by the statutory duty but appropriately met by the local authority. It is 'eligible' care and support needs, triggering the section 18 duty, which are the

subject of particular prescribed criteria. ‘Non-eligible’ care and support needs are the subject of a broad power, which brings flexibility and discretion.”

157. In response, Mr Parkhill submitted that section 19 CA 2014 did not confer a power to fund recreational activities in the community, on day trips and on holiday, as these were not “needs”, and did not come within the meaning of “care and support”, in the CA 2014. Furthermore, no such needs were assessed in the Claimants’ case.
158. In my judgment, none of Mr Parkhill’s submissions survive my conclusions on Ground 1. Therefore, in principle, I consider that the Council ought to have considered whether or not to exercise its powers under section 19 CA 2014 before reaching its decision to cease all direct payments to the Claimants.
159. For these reasons, Ground 5 succeeds.

Ground 7: carers’ support

160. The Council’s *Carers Support Plans* for SQ and AQ identified unmet eligible needs, in various respects. SQ and AQ informed the Council that they wished to use any payment made for the purpose of financing a break away from home, with the Claimants. On 9 September 2021 (after this claim was issued), the Council gave them a budget of £750 per person per annum for this purpose. In these circumstances, Ground 7 was not pursued at the hearing. Accordingly, Ground 7 is dismissed.

Final conclusion

161. The claim for judicial review is allowed on Grounds 1, 2 and 5. Grounds 3, 4 and 7 are dismissed.