Neutral Citation Number: [2024] EWHC 1826 (Admin)

Case No: AC-2024-LON-000119

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2024

Before :

DEXTER DIAS KC
sitting as a Deputy High Court Judge

- -

Between :

RMO	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Steven Galliver-Andrew (instructed by **Duncan Lewis**) for the **Claimant**
Mark Smith (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 24 April 2024
(Judgment circulated 18 June 2024)

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEXTER DIAS KC

Dexter Dias KC :

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.

2. To assist the parties and the public follow the court's line of reasoning, the text is divided into eight sections, as set out in the table below.

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§I. INTRODUCTION

3. This an application for judicial review.

4. The claimant is an asylum seeker from Iraq with an outstanding asylum appeal. He challenges a decision of the Secretary of State of the Home Department, the defendant in the case, made on 20 December 2023. The defendant refused the claimant's request that he remain in accommodation in Norwich, where the claimant has resided since shortly after his arrival in the United Kingdom in a "small boat" in October 2022 ("**the impugned decision**").

5. The claimant is represented by Mr Galliver-Andrew of counsel; the defendant by Mr Smith of counsel. The court is grateful to them both for their helpful written and oral submissions.

6. The claimant's case is that the defendant failed to take material matters about the claimant's specific and exceptional circumstances into account in refusing his request. Therefore, the defendant did not lawfully consider or apply his own published policy, the "Allocation of asylum accommodation policy" ("the Policy"). This policy guidance is designed to advise the caseworkers who on a day-to-day basis do the practical work of making accommodation allocation decisions on behalf of the defendant on how

> "to consider requests from asylum seekers who are receiving asylum support and express particular needs or preferences in relation to where they are to be accommodated. This could, for example, include a request for accommodation in a particular area."

7. The claimant's "request" was to remain being accommodated in Norwich, where he had started studying for a Master's degree at the University of East Anglia ("UEA"). The claimant further submits that to relocate him to Walsall or Nottingham, as the defendant has proposed, would be a disproportionate interference with his Article 8 right to private and family life under the European Convention on Human Rights ("ECHR"). The defendant's response is that the claimant's request was properly considered within the terms of the Policy and the decision was one reasonably open to the defendant and proportionate in all the circumstances. The defendant has the duty to administer a complex system of accommodation allocation for thousands of asylum seekers. This is a question of intense public interest. The figures supplied to the court for this hearing indicated that as of December 2023, there were 111,000 asylum seekers receiving support, the vast majority of whom received accommodation support, with around 45,000 in "contingency" hotels. The number of asylum seekers receiving support in December 2022 was 64,000 (all figures rounded) and so there had been a significant increase on the support demands being made to the Secretary of State. Given the figures involved, and remembering that these are not statistics, but people, often with vulnerabilities, one cannot overestimate the importance of decisions such as that made in this case.

§II. FACTS

8. The claimant, now aged 31, is an Iraqi national who entered this country in a small boat on 3 October 2022. The next day, he applied for asylum. As the basis of the asylum claim is relevant to the application before the court, it is set out briefly.

9. The claimant was a lecturer at an educational institute in Iraq, where he taught Kurdology, a multidisciplinary academic subject exploring Kurdish history and culture. In 2021, the claimant translated a book about Kurdish history into English that a number of people took exception to, resulting in threats. A bullet was sent to him in the post; he was hit by a car. When he was struck again, he left Iraq and travelled to the United Kingdom.

10. After his arrival here, he sought support under section 95 of the Immigration and Asylum Act 1999 ("the Act"). The support he applied for included accommodation and he was granted initial accommodation in Norwich under section 98 of the Act. His section 95 application was granted on 3 May 2023 and he remained in the hotel in Norwich.

11. On 15 September 2023, the claimant secured a highly competitive scholarship granted by the University of Sanctuary scheme operated by UEA. He was accepted onto a full-time Master's degree course in Modern History.

12. The course began on 25 September 2023 and is a 12-month programme which requires regular physical presence on the Norwich campus. As part of the enrolment process, the university was obliged to check the claimant's entitlement to study in the United Kingdom. The Home Office confirmed that he was allowed to study. He began the Master's course which had as its particular focus "Nationalism and Identity in the 20th Century".

13. On 15 December 2023, the defendant sent the claimant a "notice to quit" the Norwich accommodation, informing him that he would be moved to Walsall on 19 December. By return, the claimant sent the defendant's escalation team an urgent letter before action. It set out:

    (1) A letter from Dr Sophie North, Academic Lead for the University of Sanctuary initiative at UEA. She outlined how a move to Walsall would have "huge ramifications on his ability to continue." (Further details later.)

    (2) A letter from Dr Nadine Willems confirming that the claimant is an "assiduous student" who is "thoroughly engaging with his studies." The move "radically jeopardize his ability to pursue his studies." He is required to be on campus several days a week. He would not be able to achieve this from Birmingham [Walsall].

    (3) A letter from Richard Evans, the Volunteer Manager at New Routes Integration, who described the claimant as "valuable member of volunteer staff" who is an "enthusiastic and hardworking colleague." The claimant is said to possess a natural ability to engage with learners of mixed ability from a wide variety of cultures and backgrounds.

14. On 20 December 2023, the defendant replied to the claimant's letter before action stating that his request to remain in accommodation in Norwich had been refused as it was considered that there were no compelling circumstances that made it appropriate to agree to his request. This is the impugned decision.

15. On 9 January 2024, the defendant served a further notice to quit, informing the claimant he would now be relocated to Nottingham. On the same day, the claimant wrote to the defendant with a request that he "continue to live in Norwich to complete his MA in Modern History in September 2024."

16. On 12 January 2024, the claimant made an application for judicial review and interim relief preventing his removal from Norwich. Lang J granted interim relief on this date.

17. On 26 February 2024, permission was granted by Poole J and the interim order of Lang J extended.

§III. IMPUGNED DECISION

18. The impugned decision is documented in a letter to the claimant dated 20 December 2023. The parties agree that the entirety of the decision is captured in this letter.

There is nothing else. It therefore bears setting out in full:

> "Dear [RMO],
>
> You have made an application for asylum support under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). Your application was granted for accommodation and subsistence support while your asylum application is pending, or any subsequent appeal is outstanding.
>
> The Secretary of State has carefully considered the circumstances of your application and has noted that you have requested to be allocated accommodation in Norwich on educational grounds.
>
> Accommodation is allocated on a no choice basis; however, the person's individual circumstances are considered. The Secretary of State is also required by section 97 of the 1999 Act to have regard to providing accommodation in areas where there is a ready supply of accommodation. Your individual circumstances have been carefully considered. However, your request to be allocated accommodation in Norwich has been refused as we do not consider there are compelling circumstances that make it appropriate to agree to your request. This decision is in line with the Home Office Allocation of Accommodation policy, as location requests on educational grounds are typically only granted for children in their final school or college year leading up to their GCSE, Scottish Highers, AS or A-level exams (or their equivalents), provided they have been enrolled at that school for a significant part of the previous school year.
>
> Please be advised that you should inform us immediately if there are any changes to your circumstance.
>
> Yours sincerely,
>
> J Madden
>
> Asylum Support Assessment Team | Customer Services"

§IV. GROUNDS

19. Although in the Statement of Facts and Grounds the claimant pleaded one ground, this contained two elements: a failure to consider relevant policy considerations and an Article 8 challenge. During the course of argument before the court, counsel helpfully submitted on the two issues separately. Therefore, the grounds the court will consider, reformulated as argued, are:

Ground 1: The defendant's refusal of accommodation in Norwich rigidly applies the defendant's policy and fails to take account of relevant considerations, and in particular the claimant's personal circumstances.

Ground 2: The defendant's refusal of accommodation in Norwich is a disproportionate interference with the claimant's Article 8 rights.

§V. LEGAL FRAMEWORK

20. There is no material dispute between the parties about the law, and it is uncontroversial. The Immigration and Asylum Act 1999 confers on the Secretary of State a discretion to provide support to asylum-seekers in certain defined circumstances as set out by section 95:

> "95 Persons for whom support may be provided.
>
> (1) The Secretary of State may provide, or arrange for the provision of, support for—
>
> (a) asylum-seekers, or
>
> (b) dependants of asylum-seekers,
>
> who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.
>
> …
>
> (3) For the purposes of this section, a person is destitute if—
>
> (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
>
> (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs."

21. The accommodation must be "adequate" to the person's "needs" (section 96(1)(a)), which entails an evaluation judgment by the Secretary of State.

> "96 Ways in which support may be provided.
>
> (1) Support may be provided under section 95—
>
> (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person…;
>
> (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his

dependants (if any)"

22. The defendant must have regard to the fact that the accommodation is necessarily "temporary" pending the determination of the asylum claim (section 97(1)(a)). While the accommodation may be delivered through third-party contractors, the Secretary of State cannot divest himself of the duty to ensure the accommodation is adequate to the individual needs of the applicant (here the claimant). The case of *SA v Secretary of State for the Home Department* [2023] EWHC 1787 (Admin) ("*SA*") was cited to me and contained in the bundle of authorities. In *SA*, Fordham J at para 9 helpfully provides a structured approach to the adequacy of accommodation. His formulation includes:

> "(2) Adequacy must be tested by reference to – and so measured against – the individual circumstances and needs of each relevant individual, including each dependent, having regard to the age of any child.
>
> …
>
> (4) The evaluative judgment of adequacy of accommodation, carried out for the Home Secretary, must satisfy basic standards of reasonableness (and any other relevant public law grounds) …"

23. It is not disputed that the defendant is entitled to devise a policy to guide him in the exercise an existing discretion, such as that under section 95. It was put this way by Lord Kerr in *R (Gujra) v CPS* [2012] UKSC 52:

> "76. ... A person or agency who is exercising discretion as to how to use a statutory power may devise a policy to guide him in its use. He may formulate a policy or make a limiting rule as to the future exercise of his discretion, if he thinks that good administration requires it, provided that he listens to any Applicant who has something new to say*: British Oxygen Co Ltd v Board of Trade* [1971] AC 610, 624G-625E."

24. As to approach, Lord Reid explained in *British Oxygen Co v Board of Trade* [1971] AC 610 that the decision-maker must not "shut his ears" to the application:

> "What the authority must not do is to refuse to listen at all. But a Ministry or large authority may have had to deal already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that, provided the authority is always willing to listen to anyone with something new to say."

25. Here the Secretary of State has formulated his allocation policy (AB259-77) and revised it as the landscape and operational demands have changed. By the time of the impugned decision, the policy was in its eleventh version. On location of accommodation, the policy states at p.5 (of 19):

> "**Location**
>
> **Legislation and policy intention**
>
> Section 97 of the Immigration and Asylum Act 1999 provides that, in exercising the power to provide accommodation, you must have regard to the desirability, in general, of providing accommodation in areas in which there is a ready supply. The overriding principle when allocating accommodation is that it is offered on a 'no choice basis', and as a general rule is provided outside London and the South East and only in areas of the UK where the Home Office has a supply of accommodation available.
>
> In considering requests to be allocated accommodation in London, the South East, or another specific location, you must consider whether there are exceptional circumstances that make it appropriate to agree to the request. Exceptional circumstances should be considered on a case-by-case basis but may include, for example, serious risks around health and safety or security. The strength of the exceptional circumstances might make it appropriate to agree to the request to provide accommodation in a particular location, despite the 'no choice' general rule."

26. At p.6, the policy states that:

> "…Regulation 13 of the Asylum Support Regulations 2000 requires the Home Office to have no regard to an asylum seeker's "personal preference as to the nature of the accommodation to be provided". However, whilst we are not obliged to have regard to an individual's preferences on the location and nature of accommodation, the Home Secretary is obliged to consider the individual circumstances of each applicant, including their needs and family ties (*R (Hetoja) v Home Secretary* [2002] EWHC 2146 (Admin))."

27. The policy provides guidance on "typical" request scenarios that might be encountered (pp.8-9):

> "**Typical request scenarios**
>
> This section deals with the typical requests that you may need to consider. Any request for accommodation in a particular location should be considered on a case by case basis and is expected to only be granted in exceptional circumstances."

28. One of those "typical" areas involves accommodation requests related to education (ibid.):

> "**Education**

> Requests for accommodation in a particular location because the individual's children are attending school in the area should normally be refused, as arrangements can be made to transfer the children to a school in another area. However, accommodation may temporarily be arranged in the area requested if the child has started their final school or college year leading up to their GCSE, Scottish Highers, AS or A-level exams (or their equivalents), provided they have been enrolled at that school for a significant part of the previous school year."

§VI. GROUND 1: POLICY

29. To start, the parties agree that the decision letter at B256 and set out at §III. above is the entirety of the decision under challenge.

30. The proper approach to its analysis is to read it fully and carefully as a whole, not to examine in an artificially microscopic way, or "nit-pick" (cf. *Alibkhiet* v *Brent LBC* [2018] EWCA Civ 2742 at para 65, per Lewison LJ on not "nit-picking" review decisions). The focus, therefore, is on the substance of the decision, fairly viewed and interpreted. I examine the defendant's decision in the round, extracting the obvious and clear sense of it. In this case, the substance of the decision is easily determined.

31. The decision states that the circumstances of the claimant have been "carefully considered". Certainly, there is no obligation for the entirety or preponderance of the relevant circumstances to be slavishly set down. But the chief features of the relevant circumstances of the claimant should be. It is said that the claimant's request is "to be allocated accommodation in Norwich on educational grounds". That is manifestly the request and a simple restatement of it. But what are the claimant's circumstances relevant to that request and why the request has been made? What is striking in this decision letter is that there is not a single relevant circumstance cited.

32. It is said that the request has been refused "as we do not consider there are compelling circumstances". It is not explained why that conclusion is reached save for one feature. Mention is made of the Secretary of State's policy (guidance) whereby requests on educational grounds are "typically" only granted for children at certain key points in the education. This is a reference to guidance for decision-makers about one of the "typical" types of requests they may receive for accommodation in identified areas due to children attending a school in those areas. This guidance is clearly directed at dealing with children in "education".

33. The decision offers no analysis of the obvious differences between such a schoolchild and a person taking a university postgraduate degree course. The rationale for "normally" refusing the request based on the child's education is made explicit in the policy. It is because "arrangements can be made to transfer the children to a school in another area". This makes good sense because of the national curriculum. A child, while no doubt benefitting from additional transitional and pastoral support, may move from one area to another and take up studying the national curriculum. A postgraduate degree course is very different. This is particularly so in a non-vocational field. Courses tend to be highly specific and vary greatly from institution

to institution. Here the Master's course at UEA focuses on Nationalism and Identity in the Twentieth Century. Teaching at postgraduate level is often strongly related to the specific research interests of the academic staff. Here the modules that the claimant has been studying include a focus on Japanese Modernity. This is very different from a broadly disseminated and followed national curriculum leading to national examinations.

34. The court finds force in the claimant's submission that the decision letter exhibits an impermissible rigidity of thought and approach by the defendant and that the defendant did not keep an open mind. That openness required him to consider whether the claimant's specific circumstances and needs permitted temporary arrangements to be made until the end of his course. The defendant's lack of engagement with this issue is all the more puzzling because in the defendant's policy it states in terms at pp.7-8:

> "**Reviewing decisions to agree requests for accommodation in a particular location**
>
> Where a request for accommodation in a particular location is agreed, the reasons should be recorded carefully. Where it appears that the individual has only a temporary need to be accommodated in a particular location, you should normally set a review date for the purposes of considering whether the circumstances that made it appropriate to agree to the request still apply at that time of the review."

35. Implicit in this paragraph from the Policy is the obvious proposition that a temporary accommodation need is something that can be specifically considered. This option to make temporary arrangements to meet temporary needs can be read alongside section 96(2) of the Act:

> "If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported."

36. There is no evidence that the temporary option was actively considered by the defendant, and if considered why rejected. There is no evidence about why the claimant's personal circumstances, in the midst of an important course of postgraduate study that he had won access to amid stiff competition (as Dr North explains, only a "small percentage of applicants are successful"), did not fall within the "exceptional" category under the statute. It is not explained why this would not entitle him to support in "other ways", such as temporary accommodation until the course's conclusion in Norwich since, as Dr Willems points out, the course requires the claimant to be on campus in Norwich "several days a week".

37. This feeds into the broader question of the quality of analysis contained within the decision. The decision states generally that a person's "individual circumstances are considered" and specifically that the claimant's circumstances have been "carefully considered". Yet these claims are simply asserted. In oral argument, it was submitted

on behalf of the defendant that "there is nothing on the face of the decision that individual circumstances were not considered." Aside from pointing out that the claimant wished to be accommodated in Norwich "for educational reasons", that was effectively the extent of the defendant's submissions on Ground 1. It is perhaps the paucity of material within the decision that obliged counsel to confine himself in this way. This makes the claimant's point in a different way: there is simply no meaningful analysis in the decision letter to explain how the decision was reached, including no analysis of the claimant's personal circumstances, the supporting evidence supplied to the defendant on his behalf, what was considered relevant and irrelevant, and if the relevant circumstances were discounted, why they were discounted and the significance and weight attached to relevant factors. In other words, the substance of the analysis and thus the substance of the decision. It is not sufficient for the defendant to dismiss Ground 1 as a "merits challenge".

38. To the extent that there was a justification offered by the defendant in the decision letter, the defendant relied upon a misplaced and ultimately rigid application of the section of the Policy that primarily addresses the education of schoolchildren. There was no analysis of how the principles that underlie that paragraph may or may not be applicable to the claimant's situation, nor any analysis of the option of providing the requested accommodation on a temporary basis. No thought has been given to the distinctions between moving schools teaching to the national curriculum and moving between university Master's courses mid-academic year, even if that were possible, which from the outside – and I emphasise no specific evidence has provided about it – appears highly unlikely. Thus, I accept the claimant's submission that "one aspect of the guidance was taken and applied rigidly." This is the curious because by the time of the impugned decision, the defendant had been provided with the letter of Dr North, Academic Lead of the university initiative, dated 15 December 2023. Dr North spelled out the significant impact a move away from Norwich will have on the claimant, with:

> "huge ramifications on his ability to continue studying at the university and furthermore, it will impact the support he receives which is of immense value to his wellbeing. As the academic lead for the university of sanctuary initiative at UEA, I request that any decision into [the claimant]'s location takes into account his exceptional achievement to secure the scholarship he had received and his ability to continue studying."

39. I can find no evidence that the defendant engaged with this material, or the information from his tutors about his intense engagement with the postgraduate degree, the nature of his valuable voluntary work in the community, his university transcript and impending academic deadlines, all of which would be jeopardised by a move. It was necessary to genuinely engage with this evidence and explain why did it not justify the provision of temporary accommodation until the conclusion of the course.

40. The defendant is correct that the impugned decision refers to the "no choice" principle of accommodation allocation. However, what is glaringly absent is how the personal circumstances of the claimant and the evidence he provided the defendant measure against what the defendant in his skeleton calls the "rationale" of the Policy (§10(b)).

The Asylum Support Regulations 2000 make this plain. Regulation 13(2) states that the disregard of personal preferences

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

41. Analysis is plainly required of why the material the claimant supplied to the defendant did not amount to an accommodation need rather than a mere preference for Norwich. Ultimately, the defendant's decision letter amounts to the statement of an outcome or decision and not the reasoning behind it. In public law, a person engaging with a public authority and particularly someone who has been adversely affected by one of its decisions, is entitled to have the essential reasons for the decision explained to them. I can detect no evidence that any of this has happened or happened in any sufficiently meaningful or adequate way.

42. There is a discernible public law trend towards requiring a public body to give reasons for its decision (*Oakley v South Cambridgeshire DC* [2017] 1 WLR 3765 at para 29, per Elias LJ). This is an aspect of fairness. By giving reasons, it becomes possible to examine the reasoning of the decision-maker and assess its rationality and lawfulness. In this case, the defendant provides scant material to go on. The absence of reasons here points very strongly to an absence of proper or adequate engagement with the relevant and important issues clearly raised by the claimant's request. The decision has serious potential consequences for the claimant's life and future prospects. A Master's degree is no small thing. I cannot accept the thrust of the defendant's submissions on this point, which sought to diminish its significance. In oral argument, the submission was that what is of benefit to the claimant is the learning he gleans from the study; in writing, it was submitted that "It is not clear that [the Master's degree] would enhance his future employment prospects" (§21(d)(ii)). This entirely misses the point that a postgraduate degree from a highly regarded British university potentially enhances a professional CV, and particularly for someone like the claimant who has worked in academia in his native Iraq. The course is especially relevant to the claimant's established academic career in modern and social history. Despite the significance of the qualification to the claimant, and the alignment with his career focus, and the fact that relocating to Walsall or Nottingham would mean that commuting would be impossible thereby imperilling his study, there remains an "insufficiency" of reasoning about why the decision has been reached adverse to the claimant (compare, for example, with *R (CPRE Kent) v Dover DC* [2018] 1 WLR 108 at para 42, per Lord Carnwath). There need not be a reference to every material consideration. However, the chief features considered by the decision-maker should be identified and explained. The level of reasoning is acutely case-specific. It is noted in *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953 at para 36, per Lord Brown that:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved…"

43. While *South Bucks* does not provide an invariant level of particularity that would be sufficient, the thrust of the decision is clear about what is required. I find that there is a lack of adequate reasoning evident in the decision letter. This results in a clear inference that the relevant circumstances of the claimant, which remain unidentified by the defendant, were not properly engaged with, weighed against other relevant factors, and either accepted or rejected in a careful and rational way. There is also a strong sense that the defendant has erred in the approach to his policy. Therefore, the decision letter points powerfully to a rigid and inflexible approach to the policy, promoting guidance into sharper categorical cases. This indicates a disinclination to keep an open mind about the claimant's specific circumstances and listen to what the claimant had to say, as Lord Reid put it. It provides no assurance that the defendant actively considered what was an obvious and clear option available to him under his own policy: to grant accommodation in Norwich on a temporary basis until the conclusion of the Master's course. This is not to say that such temporary grant should have been made – that is a merits decision for the defendant. But it should have been considered, stated that it was considered, and if rejected, cogent reasons provided for why, referring to the defendant's circumstances. There is no evidence whatsoever that this option was meaningfully entertained by the defendant. As said by the House of Lords in *South Bucks* (ibid.):

> "The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds."

44. The decision letter does leave the court with a "substantial doubt" whether the policy has been properly considered and applied by the defendant. This is not so much an example of the defendant departing from his policy without good reason as not having properly considered the clear terms of his policy and not having assessed the individual circumstances of the defendant in relation to it. This is unreasonable in recognised public law terms. I have heard nothing to persuade me that the decision was compatible with the substance of the Policy.

45. Putting these defects together, the inevitable conclusion is that the claimant has made out Ground 1. I judge that defendant's failure here is sufficient for the claim to succeed. The court exercises its discretion and grants the claimant the relief he seeks and quashes the impugned decision as the decision is so defective that it cannot stand.

46. I note that in his skeleton, the defendant raises a potential section 31(2A) Senior Courts Act 1981 argument. This provides insofar as it is material:

> "the High Court must refuse to grant relief on an application for judicial review (…) if it appears to the Court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

47. This point was not developed in oral argument by the defendant. In his skeleton, it is accurately recognised that the threshold for reaching such a conclusion is high. The defendant comes nowhere close to that high benchmark, and quite sensibly no further

argument was directed towards that point. Should it be persevered with (it appeared not), the court rejects it as misconceived.

48. Therefore, the claim succeeds on Ground 1 and the defendant's decision quashed. The court in its discretion also makes a mandatory order that the defendant must remake his decision. As part of that, he must properly engage with arguments advanced by the claimant. Since the defendant must now make the decision again, it is not strictly necessary to consider Ground 2. However, there are aspects of the ground that are nevertheless worth touching upon.

§VII. GROUND 2: ARTICLE 8

49. There is a measure of agreement between the parties about Article 8. First, that there is no positive duty under Article 8 to provide the claimant with accommodation (*Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406). Second, that Article 8 is capable of being engaged in a case such as this.

50. The dispute is two-fold. First, whether Article 8 in fact is engaged; second, whether, even if it is, which the defendant disputes, there has been a disproportionate interference with this important Convention right.

51. During the course of oral argument, counsel for the defendant accepted that Article 8 is "capable of being engaged on the facts". It plainly is. As Underhill LJ states in *Ahsan v The Secretary of State for the Home Department* [2017] EWCA Civ 2009 at para 86:

> "[…] a student's involvement with their course and their college can itself be an important aspect of their private life; and, so read, I regard it as unexceptionable. Whether those and other factors are sufficient to engage article 8 in any particular case will depend on the particular facts, and I would not venture on any generalisations beyond making the trite point that the longer a student has been here the more likely he or she is to have generated relationships of the necessary quality and depth."

52. Comparable questions in a different context were considered by Blake J in *CDS (PBS: "available": Article 8) Brazil* [2010] UKUT 00305 (IAC), a case in the Upper Tribunal:

> "2. But a person who is admitted to follow a course that has not yet ended may build up a private life that deserves respect.
>
> …
>
> 19. Nevertheless people who have been admitted on a course of study at a recognised UK institution for higher education, are likely to build up a relevant connection with the course, the institution, an educational sequence for the ultimate professional qualification sought, as well as social ties during

> the period of study. Cumulatively this may amount to private life that deserves respect because the person has been admitted for this purpose, the purpose remains unfilled."

53. One must exercise a degree of caution as the claimant was not admitted to the United Kingdom to undertake a "course of study" but has started one while awaiting the determination of his asylum claim. However, Blake J refers to the process whereby during study the kinds of ties and institutional and personal connections may develop that may begin to found an Article 8 claim. Due to the numerous interlocking factors identified by the claimant both in written and oral argument, the claimant's Article 8 rights are plainly capable of being engaged. I detect no evidence whatsoever in the impugned decision of any consideration of the important question of whether the claimant's Article 8 is engaged, or if not, why not; and if so, what is the proportionality analysis.

54. The policy makes clear that the decision must be in accordance with human rights obligations and legislation:

> "If it is decided not to agree to a particular request, reasons should be given, and the decision must be compatible with the Home Office's obligations under Human Rights legislation …"

55. Arguments were offered orally and in writing by both parties about both sides of the "balance sheet" (*Re B-S (Children) (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563; endorsed in an immigration context in *Ali v Secretary of State for the Home Department* [2016] UKSC 60). Points are made on both sides about the length, depth and quality of the claimant's ties, exceptionality or its lack, and the balance to be struck between those factors and the public interest. However, the claimant has already succeeded in the claim. Given that the defendant's decision must be remade, it is unnecessary for the court to undertake the proportionality analysis at this point.

56. However, the court directs that the defendant must in remaking his decision meaningfully engage with the Article 8 question and not ignore it, something he failed to do in the impugned decision.

§VIII. DISPOSAL

57. This is a judicial review, not an appeal. It is not open to the court to substitute its view of what decision the defendant should have reached – that is exclusively a matter for the defendant's determination. However, the decision of the defendant must be in compliance with the law. Here it was not. This was a poorly reasoned decision. It is not possible for the claimant to deduce why the arguments and evidence he put before the defendant were rejected or what significance was attached to any factor and what meaningful evaluative analysis conducted. The court finds itself in the same unsatisfactory position.

58. Further, there is no analysis whatsoever of whether the claimant's Article 8 rights are engaged – this important Convention right is not even mentioned, and no analysis

provided. I judge that in these two material and vital respects, the decision-making of the defendant so far departs from recognised public law standards that it is unlawful.

59. This court recognises the strain on the asylum system and the high demands on the limited available accommodation, but this points to a greater need to carefully consider and apply the defendant's published policy, which is a guide to consistency, rationality and fairness. The court does not seek to prescribe or constrain the merits decision the Secretary of State must remake. That remains his responsibility. But the decision must now be made in accordance with recognised public law principles and standards.

60. Therefore, for the reasons provided in the judgment, the court's order is as follows:

(1) The claim is allowed.
(2) The defendant's decision dated 20 December 2023 to refuse a request for accommodation to be provided in Norwich is quashed.
(3) The defendant is mandated to remake his decision giving written reasons which directly address the points raised by the claimant, and in particular:
    a. Whether temporary accommodation in Norwich can be provided until the end of the claimant's one-year Master's course at the University of East Anglia, Norwich, and if not, why not;
    b. Whether the claimant's Article 8 rights are engaged, and if so, what is the defendant's proportionality analysis.
(4) The defendant is restrained from taking steps to disperse the claimant from Norwich until 14 days after service of the sealed order.
(5) The defendant to pay the claimant's costs on the standard basis, to be subject to detailed assessment if not agreed.