

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 September 2023

**Before :**

**MR JUSTICE LAVENDER**

**Between :**

**THE KING on the application of**  
**JHB LAW LIMITED (trading as LAWSTOP)**

**Claimant**

**- and -**

**THE LORD CHANCELLOR**

**Defendant**

**THE LAW SOCIETY OF ENGLAND AND WALES**

**Intervener**

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**David Wolfe KC** (instructed by the **Claimant**) for the **Claimant**  
**Malcolm Birdling** and **Joshua Pemberton** (instructed by the  
**Government Legal Department**) for the **Defendant**  
**David Pievsky KC** (instructed by the **Law Society's Legal Services Department**) for the  
**Intervener** (by way of written submissions only)

Hearing date: 30 March 2023

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**JUDGMENT**

**Mr Justice Lavender:****(1) Introduction**

1. The claimant is a recognised body regulated by the Solicitors Regulation Authority. The claimant specialises, inter alia, in both housing law and community care. It provides legal services pursuant to the legal aid scheme and, in particular, pursuant to a contract (“the Contract”) with the defendant entered into in 2018. The Contract confers delegated authority on the claimant to decide whether a person is eligible for legal aid. When the claimant decides that one of its clients is eligible for legal aid and provides what is known as “legal help” to that client, that process is referred to as opening a “matter start”.
2. In 2018 the claimant provided legal help to, amongst others, four new clients, who have been referred to as “RK”, “PW”, “SAM” and “JG”. In each case, the claimant opened two matter starts for each client, one in housing law and one in community care. No issue arises about the housing law matter starts. However, on 25 June 2019 the Legal Aid Agency decided that the claimant had been in breach of the Contract in opening a second matter start in each case in community care.
3. The claimant appealed against this decision to an independent costs assessor (“the assessor”) and on 8 February 2022 the assessor dismissed the claimant’s appeals in these four cases (but allowed similar appeals in two other cases). The claimant challenges the decisions of the assessor in these four cases.
4. The amounts at issue are modest, namely £266 in each of the four cases, but the issues raised may be of significant importance both for the claimant more generally and for anyone else who provides legal help pursuant to a contract with the defendant. Consequently, in addition to the parties’ evidence and submissions, I have been assisted by written submissions from the Law Society, who were given permission to intervene.

**(2) The Statutory Framework*****(2)(a) The Duty Imposed on the Defendant***

5. Subsections 1(1) and (2) in Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) provide that:
  - “(1) The Lord Chancellor must secure that legal aid is made available in accordance with this Part.
  - (2) In this Part “legal aid” means—
    - (a) civil legal services required to be made available under section 9 or 10 or paragraph 3 of Schedule 3 (civil legal aid), ...”
6. Subsection 8(1) of LASPO provides, insofar as is relevant for present purposes, as follows:
  - “(1) In this Part “legal services” means the following types of services—
    - (a) providing advice as to how the law applies in particular circumstances,

...

- (c) providing other advice and assistance in relation to the prevention of disputes about legal rights or duties (“legal disputes”) or the settlement or other resolution of legal disputes, ...”

7. “Legal help” is a subset of “legal services” and is defined in regulation 4 of the Civil Legal Aid (Procedure) Regulations 2012 (“the Procedure Regulations”) and regulation 13 of the Civil Legal Aid (Merits Criteria) Regulations 2013 (“the Merits Regulations”) as meaning the provision of civil legal services other than certain specified categories of civil legal services. There is no dispute that what the claimant provided to its clients in the present cases constituted legal help.

8. Subsection 9(1) of LASPO provides as follows:

“Civil legal services are to be available to an individual under this Part if—

- (a) they are civil legal services described in Part 1 of Schedule 1, and
- (b) the Director has determined that the individual qualifies for the services in accordance with this Part (and has not withdrawn the determination).”

9. For present purposes, the relevant paragraphs of Part 1 of Schedule 1 to LASPO are paragraph 6, entitled “Community care”, and paragraph 34, entitled “Homelessness”:

(1) Subparagraphs 6(1) and 6(3)(n) of Schedule 1 to LASPO provide as follows:

“(1) Civil legal services provided in relation to community care services.”

“(3) In this paragraph—

“community care services” means services which a relevant person may provide or arrange to be provided under—

...

- (n) Part 1 of the Care Act 2014 (local authority's functions of meeting adult's needs for care and support);”

(2) Subparagraph 34(1) of Schedule 1 to LASPO provides as follows:

“(1) Civil legal services provided to an individual who is homeless, or threatened with homelessness, in relation to the provision of accommodation and assistance for the individual under—

- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
- (b) Part 7 of that Act (homelessness);”

10. As to the question whether an individual qualifies for civil legal services, subsection 11(1) of LASPO provides as follows:

“The Director must determine whether an individual qualifies under this Part for civil legal services in accordance with—

- (a) section 21 (financial resources) and regulations under that section, and
- (b) criteria set out in regulations made under this paragraph.”

11. As to subsection 11(1)(a), no issue arises as to the financial resources of the claimant’s four clients. As to subsection 11(1)(b), the relevant criteria for present purposes are those set out in regulation 32 of the Merits Regulations, which provides as follows:

“An individual may qualify for legal help only if the Director is satisfied that the following criteria are met—

...

- (b) there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of legal help.”

12. The “Director” referred to in these provisions is the Director of Legal Aid Casework, an office created by section 4(1) of LASPO. Although section 11(1) of LASPO provides that the Director must determine whether an individual qualifies for civil legal services, section 5 of LASPO provides for the delegation of the Director’s functions. That is the basis for the delegation to the claimant, pursuant to the Contract, of the function of determining whether its clients qualified for legal help.

13. Part 2 of the Procedure Regulations makes provision in relation to the making and withdrawal of determinations under section 9 of LASPO about “Controlled Work”, which, as defined in regulation 21(2), includes legal help. In particular, regulation 26(a) provides that:

“The Director may withdraw a determination about Controlled Work where—

- (a) the individual no longer qualifies for the services to be made available by the determination in accordance with—
  - (i) the criteria set out in regulations made under section 11 of the Act; ...”

**(3) The Contract**

14. The Contract is in the form of the 2018 Standard Civil Contract and is a contract between the claimant and the defendant (who was identified in the Contract as “the Lord Chancellor acting through the LAA”, i.e. the Legal Aid Agency, which has no legal personality). The Contract consists of:

- (1) the Contract for Signature;
- (2) the Standard Terms;
- (3) the Schedule, which sets out provisions specific to the claimant; and

- (4) the Specification, which consists of various sections, including sections 1 to 6 (“the General Rules”), section 10 (“the Housing and Debt Specification”) and section 11 (“the Community Care Specification”).
15. In addition, as will be seen, the Category Definitions 2018 are incorporated by reference into the Contract.
16. It was not suggested that any of the terms of the Contract for Signature or the Schedule were relevant to the present claim.

**(3)(a) *The Standard Terms***

17. Clause 1.1 of the Standard Terms provides that:
- “In this Contract the following expressions have the following meanings:
- “Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- ...
- “Authorisation” means any authorisation given for the purposes of section 5 of the Act or regulations made under that section;
- ...
- “Contract” means the agreement between you and us which consists of the Contract Documents;
- “Contract Documents” has the meaning given to it in Clause 12.1;
- ...
- “Delegated Functions” means a function of the Director or the Lord Chancellor delegated to you by an Authorisation;
- ...
- “Matter” means as specified in the Specification;
- “Matter Start” means the authority to start a Controlled Work case for a Client in accordance with the rules set out in the Specification;
- ...”
18. Clause 7.14 of the Standard Terms provides that:
- “You must comply with all relevant legislation (including all Legal Aid Legislation).”
19. Clause 9.1 of the Standard Terms obliges the claimant to provide information to the defendant when required to do so. Clause 9.2 provides that the defendant may conduct an Audit at any time during the Contract Period and clause 9.6 obliges the claimant to co-operate with the defendant during any Audit.
20. Clause 12.1 of the Standard Terms provides that:
- “The Contract Documents, being the documents which form part of this Contract, are listed below. ... Unless one provision is stated expressly to

override, or to be subject to, another, then in the event of any conflict between any of the provisions of the Contract Documents, the conflict will be resolved according to the following order of priority:

- (a) the Contract for Signature (including the annex);
- (b) the Standard Terms;
- (c) the Schedule(s); and
- (d) the Specification.”

21. Clause 14.3 of the Standard Terms provides that:

“Without limiting your obligations in the Specification in respect of Claims your Claims must be true, accurate and reasonable. Any breach of this Clause 14.3 shall be a material breach.”

***(3)(b) The General Rules***

***(3)(b)(i) Section 1 of the General Rules***

22. Section 1 of the General Rules is headed “General”. Within section 1, paragraph 1.5 provides that:

“In this Specification, the following expressions have the following meanings:

...

“Category”, “Categories”, “Category of Law” or “Category of Work” means the definitions of each category of law that apply to this Specification, which are set out in the Category Definitions 2018;

“Category Definitions 2018 means the document published on our website that outlines the Categories of Work that apply to this Specification, which is incorporated into this Contract. ...

“Category Specific Rules” means Sections 7 to 15 of this Specification which apply only to Contract Work carried out within specific Categories of Law, and all other provisions of this Specification which are expressed to apply only to a particular Category or Categories;”

...

“General Rules” means Sections 1 to 6 of this Specification that apply to all Categories of Work;

...”

23. Paragraph 1.6 provides that:

“For Controlled Work, the decisions to provide services are taken by you on behalf of the Director in accordance with an Authorisation. This Specification controls the numbers of Matters you may start through Matter Start Limits. You have our authority to commence Controlled Work Matter Starts without further permission from us in accordance with and as set out in your Schedule.”

*(3)(b)(ii) Section 2 of the General Rules*

24. Paragraph 2.31 of the General Rules provides that:

“Certain cases may fall within more than one Category, in which case you can choose which Category to carry the case out in, in accordance with the Category Definitions 2018.”

*(3)(b)(iii) Section 3 of the General Rules*

25. Section 3 of the General Rules is headed “Scope of Controlled Work”. Within section 3, paragraphs 3.28 to 3.49 are headed “Matter Start Rules”. Paragraphs 3.28 and 3.29, under the sub-heading “General”, provide as follows:

“3.28 Paragraphs 3.29 to 3.45 and relevant Matter Start Category Specific Rules in Sections 7 to 15 of this Specification set out the rules for when a Legal Help Matter Start may be commenced. No fee may be claimed for a Matter Start which does not comply with these Matter Start rules and if we discover a breach of the Matter Start rules, on Audit or otherwise, any payments we have made may be reclaimed.

3.29 The following rules are of general application:

- (a) a Matter Start should be commenced only where all applicable criteria in the Merits Regulations and Financial Regulations are met in respect of opening the new Matter. In particular, each separate Legal Help Matter Start must satisfy the sufficient benefit criteria set out in regulation 32(b) of the Merits Regulations;
- (b) a Matter Start cannot be in more than one Category of Law; ...”

26. Paragraphs 3.30 to 3.33, under the sub-heading “When can more than one Matter Start be opened for a single Client?”, provide as follows:

“3.30 You must not open more than one Matter Start for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will only satisfy this test if they are genuinely separate and distinct, typically because they arise out of different causes or events, and where either:

- (a) they necessarily fall under different Categories; or
- (b) if they fall within the same Category, both
  - (i) if legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and
  - (ii) each problem requires substantial legal work which does not address the other problem(s).

3.31 For the purpose of Paragraph 3.30(b)(ii) “substantial legal work” must consist of at least:

- (a) an additional 30 minutes of preparation or advice; or
  - (b) separate communication with other parties on legal issues.
- 3.32 Where the Client raises several issues at the first meeting, a single Matter Start should be commenced to identify the legal problems and provide general, preliminary advice. If one legal problem is identified then the original, single Matter Start should be used for the provision of further Controlled Work. However, more than one Matter Start may be opened at the initial meeting where this is justified under Paragraph 3.30.
- 3.33 Whether a further Matter Start is justified depends on the nature of the Client’s problems and does not depend on whether you purport to limit your retainer to any particular part of the Client’s problem.”

*(3)(b)(iv) Section 4 of the General Rules*

27. Section 4 of the General Rules is headed “Payment for Controlled Work”. Within section 4, paragraphs 4.5 to 4.12 are headed “Standard Fee and Graduated Fee Schemes”. Paragraph 4.5 provides as follows:

“We will pay for each Matter Start covered by Standard Fees and Graduated Fees which is:

- (a) properly conducted; and
- (b) claimed in accordance with the terms of this Contract.”

28. The standard fee for a housing matter start is £157. The standard fee for a community care matter start is £266. These are the figures prescribed in paragraph 3 of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013.

29. Paragraphs 4.43 to 4.50 of the General Rules are headed “Assessment Procedures”. Paragraph 4.44 provides as follows:

“We have the right to Assess all your claims for Standard Fees and Graduated Fees in accordance with the provisions of the Contract. However, we will not amend any Standard Fee or Graduated Fee payable to you as a result of an Assessment unless:

...

- (c) where more than one Standard Fee or Graduated Fee has been claimed for a case that should, in our reasonable view, have been treated as one Matter Start (see Paragraphs 3.28 to 3.49 and the Category Specific Rules) then we may Assess the costs of any additional Standard Fee and Graduated Fee Claims as nil, so that only one Standard Fee or Graduated Fee is payable;”

*(3)(b)(iv) Section 6 of the General Rules*

30. Section 6 of the General Rules is headed “Payment for Licensed Work”, but, by virtue of paragraph 4.43, paragraphs 6.8 and 6.54 to 6.82 apply to the assessment of Controlled Work Matters, unless they are expressed as applying to Licensed Work Matters only.



Paragraphs 6.71 to 6.81 concern appeals to assessors. In particular, paragraphs 6.71 to 6.73 provide as follows:

“6.71 If you or counsel are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor (“the Assessor”).

6.72 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28-day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.

6.73 Failure to comply with any of the requirements set out in Paragraph 6.72 means that you accept our decision and lose your right to dispute it.”

31. I was not addressed on paragraph 6.73 but, as I will explain, it appears to be potentially relevant to an argument advanced by Mr Birdling as to the scope of the court’s jurisdiction, since it is arguable that the effect of paragraph 6.73 was that the claimant could only challenge the defendant’s decision by means of an appeal under paragraph 6.71 brought in the manner and within the time limit prescribed by paragraph 6.72.

***(3)(c) The Category Definitions 2018***

32. Paragraphs 9 and 10 of the Category Definitions 2018 provide as follows, under the heading “Overlaps between Categories”:

“9. The Categories are drafted to ensure that the majority of cases clearly fall within one Category or another. However, there will be some cases which genuinely fall within more than one Category. For example, certain work under the Mental Capacity Act 2005 falls under both the Mental Health Category of Law and Community Care.

10. Some cases will arise as the result of a number of different underlying issues, which may either be in scope or the subject of an exceptional funding application, and in those instances classification to a Category will depend upon the overall substance or predominant issue of the case when taken as a whole.”

33. Paragraph 25 of the Category Definitions 2018 defines community care, inter alia, as:

“Legal Help and related proceedings in relation to:

- (a) the provision of community care services (as described in paragraph 6 of Part 1 of Schedule 1 to the Act);

...”

34. Paragraph 37 of the Category Definitions 2018 defines housing, inter alia, as:

“Legal Help and proceedings in relation to:

...

- (c) The provision of accommodation and assistance under Parts 6 and 7 of the Housing Act 1996 for an individual who is homeless or threatened with homelessness (as described in paragraph 34 of Part 1 of Schedule 1 to the Act);
- (d) The provision of accommodation by way of community care services as specified in paragraph 6 of Part 1 of Schedule 1 to the Act, in relation to an individual who is homeless or threatened with homelessness;  
 ...”

35. It will be noted that there is an overlap between paragraphs 25(a) and 37(d) of the Category Definitions 2018. In order to understand the relationship between the different categories, it will be necessary later in this judgment to consider the two areas of law.

***(3)(d) The Housing and Debt Specification***

36. First, however, it is necessary to mention certain provisions of the Housing and Debt Specification. Paragraphs 10.10 to 10.15 of the Housing and Debt Specification are headed “Housing specific rules”. Paragraph 10.11, which has the sub-heading “Matter Start rules”, provides as follows:

“A single Matter Start should encompass investigation of both:

- (a) Any appropriate civil remedies, including where appropriate an application for Licensed Work; ...”

37. Paragraphs 10.12 to 10.15 appear under the sub-heading “Homelessness”. Paragraphs 10.12 and 10.13 provide, inter alia, as follows:

“10.12 Legal Help given in relation to homelessness must be provided on a specific legal issue or issues and should not cover practical matters such as identifying accommodation agencies or making a referral to them.

10.13 The general rule is that all steps within the course of a homelessness application should be dealt with under a single Matter Start. This is subject to the following detailed provisions: ...”

38. It is not suggested that the present case falls within any of the exceptions listed in paragraph 10.13.

39. Paragraph 10.15 of the Housing and Debt Specification provides as follows:

“A separate Matter Start should not be opened simply to confirm that your Client wishes to apply for accommodation under Part VI of the Housing Act at the same time as pursuing his or her homelessness application. Separate Matter Starts for concurrent applications under Part VI and Part VII of the Housing Act will only be justified where substantially different issues arise in the two applications and there is sufficient benefit to the Client in carrying out work concurrently in respect of both applications.”

#### **(4) Community Care and Homelessness**

##### **(4)(a) *The Care Act***

40. Nicola Davies LJ summarised the process created by the Care Act 2014 (“the Care Act”) in paragraph 65 of her judgment in *R (BG) v Suffolk County Council* [2022] 4 WLR 107:

“The CA 2014 provides for a sequential approach to the provision of social care and support to individuals in need. Under the Act, councils are required to:

- (i) Carry out a needs assessment (section 9);
- (ii) Assess whether the needs for care and support found are “eligible needs” under the 2015 Regulations (section 13);
- (iii) Meet the needs identified as eligible needs unless such needs are being met by a carer (section 18(1) and (7));
- (iv) Consider whether to exercise its discretion to meet needs identified in the assessment which are not “eligible needs” (section 19(1));
- (v) Draw up a care and support plan (section 24–25).”

41. Subsections 9(1) and (2) of the Care Act provide as follows:

- “(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’.”

42. A needs assessment can lead, subject to the other provisions of the Care Act and regulations made thereunder, to either a duty (under section 18(1)) or a power (under section 19(1)) on the part of a local authority to meet the needs identified by the needs assessment. Subsections 8(1) and (2) of the Care Act provide as follows:

- “(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.”

43. A wide range of needs can be identified by a needs assessment. This can also be seen from paragraph 2 of the Care and Support (Eligibility Criteria) Regulations 2015, which provides as follows:

- “(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.
- (2) The specified outcomes 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.
- (3) For the purposes of this regulation 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.”

44. If accommodation is a need identified by the needs assessment, this can give rise in an appropriate case to either a duty or a power to provide accommodation. However, any

such accommodation will be temporary, pending the determination of an application for accommodation pursuant to the Housing Act 1996 (“the Housing Act”), since subsection 23(1) of the Care Act provides as follows:

“A local authority may not meet needs under sections 18 to 20 by doing anything which it or another local authority is required to do under—

- (a) the Housing Act 1996, or
- (b) any other enactment specified in regulations.”

***(4)(b) The Housing Act***

45. Part VII of the Housing Act concerns homelessness and sets out, inter alia, the duties of local housing authorities in relation to eligible applicants who are homeless. It is unnecessary for me to consider the provisions of Part VII in any detail.

**(5) The Principal Areas of Dispute**

46. It is appropriate to note at this stage that there was a certain amount of common ground between the parties, given the statutory and contractual provisions to which I have referred:

- (1) On the one hand, Mr Wolfe accepted that firms such as the claimant may be retained by clients whose only need is accommodation. In such a case, it may well be appropriate for the firm both to make a claim on their client’s behalf under the Housing Act and to request a needs assessment by the relevant local authority under the Care Act, but he accepted that in such a case it would only be appropriate for the firm to open one matter start, in the housing category.
- (2) On the other hand, as the assessor found in the two related cases, and as Mr Birdling accepted, there can be cases in which firms such as the claimant are retained by clients on whose behalf it is appropriate for the firm both to make a claim on their client’s behalf under the Housing Act and to request a needs assessment by the relevant local authority under the Care Act, but in circumstances where it is appropriate for the firm to open two matter starts, one in the housing category and one in the community care category.

47. At the heart of the present claim is the question where the dividing line is to be drawn between these two categories of case. However, two other matters affect the court’s approach to this case:

- (1) First, the defendant relies on the words “in our reasonable view” in paragraph 4.44(c) of the General Rules as meaning that it was not simply a matter of the assessor in each of the four cases deciding whether the claimant should have opened one or two matter starts, but rather the assessor had to decide whether the defendant’s view in each case that the claimant should have opened only one matter start was a reasonable view.
- (2) Secondly, since this is an application for judicial review, the court has to consider whether there is a public law ground for challenging the assessor’s decision in any of the four cases.

**(6) The Four Cases**

48. In each of the four cases, a representative of the claimant met the client, took his instructions, prepared an attendance note (which I have not seen) and then wrote three letters:
- (1) A client care letter addressed to the client, which appears to have been largely in standard form, but which included a section on “Your instructions & Objectives”. (I have only seen the client care letter sent to PW.)
  - (2) A letter to the housing department of the relevant council, requesting accommodation under the Housing Act. (I have not seen these letters.)
  - (3) A letter to the social services department of the same or, where appropriate, a different council, in the form of a pre-action protocol letter, giving notice of a proposed claim for judicial review and requesting that the council carry out a needs assessment. (I have seen these letters in RK’s, SAM’s and JG’s cases.)

**(6)(a) RK**

49. The claimant’s representative met RK on 18 September 2018. He had been homeless since 2014, but he was living in temporary accommodation provided by a charity. He suffered from anxiety, depression, asthma and pain in his knees, ankles and back.
50. The claimant wrote to the social services department of Brighton and Hove City Council on 18 September 2018, stating, inter alia, that RK’s current temporary accommodation was unsuitable for him because of his health issues and that:

“Because of the Claimant’s numerous health issues, it is submitted that the Defendant’s Social Services Department should carry out a care needs assessment to consider his needs and provide suitable temporary accommodation pending the outcome of that assessment. It is also submitted that the Claimant is homeless and the Defendant’s Housing Department has a duty to accept a homelessness application and provide him with temporary accommodation pending the outcome of that assessment.”

51. The section of the letter headed “Details of the action the Defendant is expected to take:” was in the following terms:
- “i) Carry out a lawful needs assessment pursuant to Section 9 of the Care Act 2014.
  - ii) Provide emergency accommodation pending that assessment pursuant to your powers under Section 19(3) of the Care Act 2014.
  - iii) Provide accommodation under section 18 of the Care Act 2014.”

**(6)(b) PW**

52. The claimant’s representative met PW on or before 28 September 2018. PW had been homeless since January 2017, when he had been raped in his flat, and he was sleeping rough. He had been diagnosed with anxiety, depression, PTSD, mild learning

difficulties and hepatitis C. He had been referred to a specialist with suspected Asperger's syndrome.

53. Although I have not seen the claimant's attendance note, the assessor's decision records that it contained reference to:

- (1) a Single Combined Assessment of Risk Form completed by the police in November 2017 (which was an indication that the police regarded PW as vulnerable); and
- (2) a needs assessment conducted by the local authority on 24 July (apparently in 2018) which concluded that PW had no eligible care needs.

54. Also on PW's file (according to the assessor's decision) were:

- (1) a letter (dated 15 August 2016, but apparently dating from 2017) from Dr Tara O'Neill, a consultant clinical psychologist with Psygroup, commenting on PW's mental health and expressing support for his being housed as a matter of urgency; and
- (2) a letter from St Mungo's, a charity, detailing PW's difficulties, including concerns which PW would have in obtaining employment.

55. The claimant's client care letter, dated 28 September 2018, stated, inter alia, under the heading "Your Instructions & Objectives":

"Ultimately, it is your objective that you are provided with suitable accommodation by the local authority. To achieve this objective, you require us to write to Brighton and Hove City Council Housing and Social Services Departments on your behalf requesting that the Housing Department make enquiries into your homelessness and provide interim accommodation and provide interim accommodation, pursuant to Section 194 and Section 188 of the Housing Act 1996, and that the Social Services Department conduct an assessment of your needs and provide interim accommodation, pursuant to Section 9 and 19(3) of the Care Act 2014."

56. The letter also stated, under the heading "Medical History":

"Because of your numerous health issues, we will submit to the local authority that the Social Services Department should carry out a care needs assessment to consider your needs and provide suitable temporary accommodation pending the outcome of that assessment. We will also submit that you are street homeless and therefore in need of temporary accommodation pending the outcome of that assessment."

57. The letter contained advice, in generic terms, about needs assessments, but did not identify any specific needs which PW might have other than his need for accommodation. The letter did not refer to the needs assessment on 24 July 2018.

58. I have not seen the claimant's letter to the social services department of the Brighton and Hove City Council, but it appears from the assessor's decision that it contained no reference to the needs assessment on 24 July 2018.

**(6)(c) SAM**

59. The claimant's representative met SAM on or before 31 October 2018. He was living in temporary accommodation provided by Lambeth Borough Council, but he contended that it was unsuitable for him for a number of reasons. He suffered from depression and had been in hospital by reason of his mental health on a number of occasions, most recently between February and July 2018.
60. Although I have not seen the claimant's client care letter, it appears from the assessor's decision that:
- (1) it stated, inter alia:
- “Ultimately, it is your objective that you are provided with suitable accommodation by the local authority”; and
- (2) it continued by saying that it was to achieve that objective that the claimant would be taking steps under the Housing Act and the Care Act.
61. The claimant wrote to the social services department of Lambeth Borough Council on 31 October 2018, stating, inter alia, as follows:

“Due to the Claimant's health needs and his previous admissions to hospital, we request the local authority to conduct an assessment of his needs, pursuant Section 9 of the Care Act 2014, and provide interim accommodation pending the outcome of that assessment.”

62. The section of the letter headed “Details of the action the Defendant is expected to take:” was in the same terms as the letter written in RK's case, save that it did not include paragraph iii).

**(6)(d) JG**

63. The claimant's representative met JG on or before 29 November 2018. JG had been homeless since 7 November 2018, sleeping on friends' sofas or sleeping rough. He was taking medication for anxiety and depression, a condition which made him unfit for work. He had been referred to a psychiatrist.
64. I have not seen the client care letter sent to JG, but, according to the assessor's decision, as in PW's case:

- (1) it stated:

“Ultimately, it is your objective that you are provided with suitable accommodation by the local authority”; and

- (2) it continued by saying that it was to achieve that objective that the claimant would be making an approach to the relevant housing department and requesting an assessment of needs.



65. The claimant wrote to the social services department of East Sussex County Council on 29 November 2018. The letter stated, inter alia, as follows, under the heading “Medical History”:

“The Claimant instructed us that, due to his housing situation, he is unable to try and see his four-year-old daughter. Due to his mental health and his wellbeing, he has found it difficult to eat and, in addition, has had difficulties accessing food and drink due to his struggles with his benefits, although he has been using the local food bank. He advised us that he has been struggling with maintaining his personal hygiene due to him not having access to accommodation as well as him stating that he “don’t want to move” due to his mental health.

The Claimant has advised us that he has had difficulties maintaining family and other personal relationships. He has stated that he would like to see his daughter, who he has not seen since March 2018. Furthermore, he advised that he would like support to access and engage work training and education. In addition, he advised that, due to his situation, he has had difficulties trying to see his daughter and carry out related responsibilities.”

66. The section of the letter headed “Details of the action the Defendant is expected to take:” was in the same terms as the letter written in RK’s case.

**(7) The Contract Notice**

67. Following correspondence between the parties, on 25 June 2019 the defendant sent a Contract Notice to the claimant which was in the following terms:

“Following a file review conducted by the Contract Manager on the 15<sup>th</sup> April 2019, you are considered to be in breach of the contracts in the following area[s]:”

68. The notice then set out clause 14.3 of the Standard Terms and paragraphs 3.30 and 3.32 to 3.34 of the General Rules and listed seven files, including the files in the four cases at issue in this application for judicial review. The notice also stated that further breaches might lead to a sanction, including termination of the Contract.

69. The notice did not set out the defendant’s reasons for his view that the claimant was in breach of contract. An email dated 14 June 2019 from Darren Chamberlain gave two reasons. First, he said that “there appears to be no further evidence to demonstrate you meet the following contract requirements” (i.e. the requirements of paragraph 3.30 and 3.32 of the General Rules). Secondly, he said that it was premature for the claimant to issue pre-action protocol letters and that there should have been further review under a single matter start whilst full facts were being established. This second reason was not relied on by the defendant before me.

**(8) The Assessor’s Decisions**

70. The claimant appealed against the defendant’s decision in each of the seven cases, but one appeal was subsequently withdrawn. The appeals were initially considered by an assessor who, as the parties subsequently agreed, applied the wrong legal test. The claimant applied for judicial review of his decisions and an order quashing them was

made by consent on 1 February 2022. A new assessor made his decisions in the remaining six cases on 8 February 2022. He allowed the appeal in two cases and dismissed it in the four cases with which the present application is concerned.

71. The assessor’s decision in each of the four cases follows the same format:
- (1) The decision begins with a statement that “The LAA decision has been upheld on the following grounds” and then sets out the grounds in 3 or 4 numbered paragraphs.
  - (2) The grounds are followed by reasons in unnumbered paragraphs, which I have numbered for ease of reference. The first two paragraphs of the reasons list the documents which the assessor has considered and the documents (including LASPO, the Standard Terms, the General Rules, the Community Care Specification, the Housing Specification and the 2018 Category Definitions) to which he has had reference.
  - (3) The next 14 paragraphs are common to all four decisions. They set out the assessor’s understanding of the law which he had to apply.
  - (4) The next paragraphs address the facts of the individual case.
  - (5) The last two paragraphs are the same in each decision and address paragraph 3.30(b) of the General Rules.

***(8)(a) The Grounds***

72. In the assessor’s decision in the case of RK, the grounds are as follows:
- “1) At the time of the initial attendance, it is not clear that the Client had more than one distinct legal problem as required by 3.30 of the Standard Specification to the 2018 Standard Civil Contract. The remedy sought from both the Local Authority’s housing department and Social Services is suitable accommodation. The request for a needs assessment is not a separate and distinct legal issue: it is intrinsically linked to the request for accommodation.
  - 2) The overriding objective in relation to both the housing aspect and community care aspect relates solely to accommodation. Consequently, both aspects are effectively the same category matter in this case as per paragraph 37 of the 2018 Standard Civil Contract Category Definitions.
  - 3) Whilst it is accepted that the Client was suffering with health problems, all references to the Client’s needs appear to relate to accommodation. There is no suggestion of other remedies sought or to be covered in the needs assessment. One matter start was appropriate until such time as a separate and distinct legal problem arose.
  - 4) From a reasonable viewpoint, the matters should be treated as one matter start and therefore the Community Care matter ought to be nil assessed in accordance with 4.44(c) of the Standard Specification.”

73. The grounds in the assessor’s decision in the other three cases were substantially the same, save that:

(1) Paragraph 2 of the grounds in SAM’s and JG’s case referred to the “ultimate objective” rather than the “overriding objective”.

(2) Paragraph 3 of the grounds in PW’s case was in the following terms:

“Whilst it is accepted that the Client had been referred to the local authority by the Police and there is an indication that a previous care assessment had been carried out, the previous care assessment and client’s lack of eligibility were not addressed in the client care letter or letter before action. One matter start was appropriate until such time as a separate and distinct legal problem arose.”

(3) In the decision in SAM’s case, paragraph 3 was omitted.

(4) Paragraph 3 of the grounds in JG’s case was in the following terms:

“Whilst it is accepted that the Client presented with some needs which may require assessment by the local authority, the Client had not requested an assessment by the local authority at the time of initial instruction. The request appears to be solely linked to the request for accommodation. A clear and distinct problem in relation to the request for an assessment under section 9 of the Care Act is not evidenced, particularly since the duty to assess had not been considered or refused by the local authority. One matter start was appropriate until such time as a separate and distinct legal problem arose.”

***(8)(b) Paragraphs 3 to 16 of the Reasons in Each Case***

74. Paragraphs 3 and 4 of the reasons in each decision concerned the background and the assessor’s independence.

75. Paragraph 5 of the reasons in each decision was in the following terms:

“In considering the provider’s appeal, I need to determine whether, based on the evidence provided, the opening of two matter starts for the client was correct in that the client had more than one separate and distinct legal problem in accordance with 3.30 of the Standard Specification. I do not intend to set out the provision of 3.30 of the Standard Specification save to acknowledge that 3.30 of the Standard Specification only allows providers to open more than one matter start for a client in certain circumstances i.e. where there are separate and distinct legal problems at the outset. Where more than one Standard Fee has been claimed that should, on a reasonable viewpoint, have been treated as one matter start, the LAA is entitled to nil assess one of the matters (4.44(c) of the Standard Specification). It is noteworthy that the wording of 4.44 of the Standard Specification specifically provides that it is the LAA’s “reasonable view” which determines whether they should have been treated as one.”

76. Paragraph 6 of the reasons in each decision addressed the correct approach to assessing reasonableness when assessing costs and paragraph 7 addressed the correct approach to the assessment of costs on the standard basis, concluding as follows:

“... Consequently, the correct approach to considering the assessment of the matter starts is to consider the reasonableness of opening two matter starts at the outset based on whether or not there was more than one separate and distinct legal matter applying 3.28 to 3.33 of the Standard Specification with any doubt as to reasonableness resolved in favour of the paying party i.e. the LAA.”

77. It will be noted that paragraphs 6 and 7 were based on the false premise that the assessor was conducting an assessment of costs and that he was conducting an assessment of costs on the standard basis. I will address the consequences of this later.

78. Paragraph 8 of the reasons in each decision was in the following terms:

“Whilst it is acknowledged that people presenting with homelessness may have multiple additional needs that require addressing, when considering whether two matter starts are appropriate under 3.30 of the Standard Specification, it is necessary to determine whether or not the client has more than one separate and distinct legal problem. In considering whether a client has more than one separate and distinct legal matter, it is necessary to ascertain whether the client’s legal issues fall under different categories or the same category; this I important due to the distinction at 3.30(a) and (b). At 1.1 of the Standards Terms, the following assistance is provided regarding the definition of “Category”: ...”

79. Paragraph 9 of the reasons in each decision addressed the definitions of community care and housing in the Category Definitions 2018 and concluded:

“... Whilst the categories are designed so that most cases will fall within one category, the Category Definitions accept that there will be some cases where work falls under two categories (paragraph 9 of the Category Definitions). Where a case arises as a result of a number of different underlying issues, classification to a category will depend on the overall substance or predominant issue of the case when taken as a whole (paragraph 10 of the Category Definitions ).”

80. Paragraph 10 of the reasons in each decision contained a reference to regulation 47 in the Merits Regulations. Paragraph 11 was in the following terms:

“Thus, just because part of the client’s legal issues could relate to community care considerations and another part to housing does not automatically mean that are [sic] two separate and distinct matters which justify the opening of two matter starts. That is not to say that a person presenting with homelessness and community care issues will automatically only be able to obtain representation under one matter start; it is necessary to consider each set of matters on its own facts and circumstances. Thus, there will be circumstances where two matter starts are justified under 3.30 of the Standard Specification and there will be circumstances where only one matter start is justified.”

81. Paragraph 12 of the reasons in each decision was in the following terms:

“Where a person’s community care issues predominantly relate to provision of accommodation and their housing issue is homelessness, the issues relate to the same category under the Category Definitions. In that situation, I am of the view that there is a factual consideration as to whether the person has a separate and distinct legal problem if the legal remedy sought is effectively the same. If there is a question as to whether there is genuinely more than one distinct and separate problem, then consideration is given to 3.30(b) of the Standard Specification which requires that 2 conditions are effectively passed before more than one matter start is opened: ...”

82. Paragraphs 13 and 14 of the reasons in each decision referred to the claimant’s billing guides, but said that the assessor had found these to be of limited assistance.
83. In paragraph 15 of the reasons in each decision, the assessor considered and dismissed an argument advanced by the claimant that an email sent by the defendant to the claimant on 5 October 2018 gave rise to a legitimate expectation. That argument was not relied on before me, so I need say no more about it.
84. In paragraph 16 of the reasons in each of the decisions the assessor considered whether the subsequent grant or refusal of a funding certificate was relevant to the decision which he had to make. He decided that it was not relevant and this aspect of his decision was not criticised.

***(8)(c) The Case-Specific Reasons in RK’s Case***

85. In RK’s case, the assessor noted that neither the attendance note nor the client care letter nor the letter to the council’s social services department identified any needs on RK’s part other than his need for suitable accommodation. This led the assessor to say that it was reasonable to conclude that, at the time when the matter starts were opened, RK had only one separate and distinct legal problem, i.e. the provision of suitable accommodation.
86. Having expressed that conclusion, the assessor added the following:

“I am not convinced that the request for an assessment forms a distinct and separate legal issue to the request for accommodation at the point the provider utilised delegated functions to open both matter starts. The request for a care assessment is part and parcel of the request for accommodation under 19(3) of the Care Act. Paragraph 10 of the Category Definitions does indicate that, for cases which have a number of different underlying issues, classification will depend on the overall substance or predominant issue of the case when taken as a whole. In considering the aspect which related to the needs assessment separate to the request for accommodation, I do not believe that the needs assessment is the predominant issue. Whilst the provider has apportioned costs between the two files, the apportionment as to how the time has been split will be somewhat academic as work would be required on the housing matter in any event. Consideration needs to given to how much, if any, additional time/work the needs aspect accounted for separate to the underlying need for provision of accommodation. Given the contents of the attendance note, I don’t consider that the initial attendance with the client would have taken much longer as a result of the request for a needs assessment, and there is no indication that

consideration was given to the eligibility criteria under the Care Act/Care and Support (Eligibility Criteria) Regulations 2015. The client care letter does contain advice on assessment of need under the Care Act, however, having had sight of the other files, it is clear that the majority of the advice under the heading “Community Care” is a pro forma letter/template. Consequently, I do not believe that there was any additional time to add the advice regarding the needs assessment. In terms of the letters before action, the housing letter and the letter to social services are virtually identical in the main body of the content. Whilst the letters are addressed to different departments and contain different remedies, the time it would take to amend the housing letter would not be significant. Furthermore, the thrust of the letter to the social services department is in relation to accommodation pending the needs assessment. All other work appears generic i.e. would have been incurred in any event with regards to the client’s accommodation issue. Consequently, I am of the view that the overall substance of the work done in relation to the community care aspect is the provision of accommodation.”

87. I will refer to this as the “I am not convinced” paragraph.

***(8)(d) The Case-Specific Reasons in PW’s Case***

88. In his decision in PW’s case, the assessor referred to the SCARF report, the letter from St Mungo’s and the needs assessment which had been carried out in PW’s case. The assessor noted that there was no reference to the needs assessment in either the client care letter or the letter to the social services department. He also noted:

- (1) the statement in the client care letter as to PW’s objective;
- (2) the statement in that letter that it was “To achieve this objective” that the claimant would be writing to the council’s housing and social services departments; and
- (3) the fact that neither the client care letter nor the letter to the social services department referred to PW’s earlier needs assessment, saying:

“... In view of the fact that the existing care assessment was not specifically advised on/challenged, it cannot be considered to be a distinct and separate legal problem to the provision of accommodation. Had it been a distinct and separate legal problem, it would have been a clear objective in the client care letter, detailed advice would have been given to the care assessment and client’s eligibility and/or it would have been dealt in the letter before action without being linked to the issue of accommodation. ...”,

89. The assessor then said, in very similar terms to his decision in RK’s case, that it was reasonable to conclude that, at the time when the matter starts were opened, RK had only one separate and distinct legal problem, i.e. the provision of suitable accommodation. This was followed by the “I am not convinced” paragraph, with the addition of a brief reference to the earlier needs assessment in PW’s case.

***(8)(e) The Case-Specific Reasons in SAM’s Case***

90. In his decision in SAM’s case, the assessor noted that the attendance note did not refer to any needs other than accommodation which SAM was seeking from the local authority. He also noted the reference in the client care letter to SAM’s ultimate objective being suitable accommodation and the statement in the letter that it was to achieve that objective that steps would be taken under the Housing Act and the Care Act. He further noted that the letter to the social services department did not identify any need on SAM’s part other than accommodation.
91. The assessor concluded that the request for an assessment of needs appeared ancillary to the request for temporary accommodation and was not separate or distinct from that request, but was intrinsically linked to it. He then included a version of the “I am not convinced” paragraph, less the first two sentences, but including some minor changes.

***(8)(f) The Case-Specific Reasons in JG’s case***

92. In his decision in JG’s case, the assessor noted the reference in the client care letter to JG’s ultimate objective being suitable accommodation and the statement that it was to achieve that objective that the claimant would be approaching the relevant housing department and requesting a needs assessment. The assessor also stated that JG’s needs all appeared to be predominantly linked to the lack of accommodation. He added the following:

“Within the client care letter, there is reference to the client’s mental health and wellbeing impacting upon the client’s eating, struggles with benefits and an indication that his mental health is impacting upon his motivation to move.

Based on the client care letter, the client’s clear main legal issue is the need for accommodation.”

93. The assessor’s decision then included the “I am not convinced” paragraph, with some minor amendments and commencing with the following instead of the first two sentences:

“There is suggestion within the files that the client has other potential needs but I am not convinced that these actually form a distinct and separate legal issue at the point the provider utilised delegated functions to open both matter starts. I am mindful that most of the needs are linked to the client’s need for accommodation and paragraph 10 of the Category Definitions ...”

94. The next paragraph of the assessor’s decision was in the following terms:

“I am also conscious of the fact that whilst the client had been in touch with the local authority’s housing department, it doesn’t appear that he had made contact to request a needs assessment (the letter before action to the social services department indicates no referral made to social services). In the circumstances, at the time the matter were opened, it is not clear if the client had a legal problem in relation to the referral or needs assessment because the referral had yet to be made and was only made at the same time as requesting temporary accommodation which was the primary reason for the referral for a needs assessment. Consequently, whilst I accept that the client had mental health difficulties, I am not convinced that, on a reasonable view, the making of the

referral was a distinct and separate legal issue to the request for accommodation at the stage the legal help forms were signed.”

**(8)(g) *The Last Two Paragraphs of the Reasons in Each Case***

95. The last two paragraphs of the reasons in each case were in the following terms:

“I do not consider that 3.30(b) if the Standard Specification ought to apply because this part of the specification requires that there be more than one legal problem and the facts of this matter evidence only one legal problem, albeit one which had multiple ways of achieving the same stated aim. In my view, 3.32 and 3.34 of the Standard Specification applied such that one matter start should have been commenced and then had the provider identified issues with the local authority’s assessment of needs then this would justify a second matter start at a later date.

Nevertheless, I have considered the application of 3.30(b) and if the request for a needs assessment were to be considered a second legal problem as distinct the request for provision of information(having determined that are still the same category by virtue of paragraph 10 of the Category Definitions) then I do not believe it passes the “substantial legal work” threshold in that the individual costs relating specifically to the needs assessment would not have required an additional 30 minutes work or separate communications with other parties (the local authority being the party against whom proceedings would be issued in both matters.”

**(9) The Grounds for Judicial Review and the Parties’ Submissions**

96. The parties’ submissions were set out clearly in their skeleton arguments and so I give here only a brief summary. However, it is necessary to deal with a preliminary jurisdictional issue raised by Mr Birdling for the defendant.

**(9)(a) *The Defendant’s Jurisdictional Submission***

97. Mr Birdling submitted, by reference to the judgment of Bourne J in *R (Shashikanth) v NHS Litigation Authority* [2022] EWHC 2526 (Admin) (“*Shashikanth*”) and the authorities considered therein, that the court did not have jurisdiction to determine an application for judicial review such as the present, or at least did not have jurisdiction in the absence of fraud or bad faith (which is not alleged), and that, consequently, this application was in the wrong forum. In support of that submission, he submitted that the appeal to the assessor was not mandatory and that the claimant could simply have brought a civil claim to enforce its contractual rights. These are factors which were accorded some significance in *Shashikanth*: see paragraphs 144 and 145 of the judgment.
98. The judgment in *Shashikanth* was handed down on 11 October 2022, which was a week after Sir Ross Cranston granted permission to apply for judicial review in the present case, although the authorities relied on by the defendant in *Shashikanth* were decided before the present application was made. For whatever reason, the jurisdictional submission made by Mr Birdling:



- (1) was not relied on by the defendant at the permission stage;
- (2) was not included in the defendant's detailed grounds of resistance;
- (3) was not included in the defendant's skeleton argument for the substantive hearing (in paragraph 49 of which, echoing a similar submission made in the detailed grounds of resistance, it was submitted that "a cautious approach to the exercise of the Court's supervisory jurisdiction is appropriate", a submission which acknowledged the existence of the court's supervisory jurisdiction and was therefore inconsistent with the jurisdictional submission advanced at the hearing);
- (4) was advanced for the first time in the substantive hearing before me; and
- (5) was not the subject of an application by the defendant for permission to amend his detailed grounds of resistance.

99. In those circumstances, I consider that I should not allow the defendant to rely on its jurisdictional submission, since it is not part of the defendant's pleaded case. Even if there had been an application for permission to amend, I might well have refused it, given the lateness of the application and my concern, having considered the submission, that, because it had not been raised before the hearing, it was not fully dealt with at the hearing. I refer, for instance, to the issue, which was not addressed in the hearing, whether paragraph 6.73 of the General Rules meant that the claimant could only challenge the defendant's decisions by an appeal and could not have brought a civil claim to enforce its contractual rights.

***(9)(b) The Claimant's Submissions***

100. The claimant submitted, in effect, that:

- (1) The only test applicable to the question whether the claimant was permitted to open two matter starts in a particular case was that set out in paragraph 3.30 and 3.32 of the General Rules, i.e. whether the client had more than one separate and distinct legal problem.
- (2) The assessor misdirected himself in law and/or took account of irrelevant considerations in a number of respects.
- (3) If he had not done so, he would have concluded that each of the four clients had more than one separate and distinct legal problem.

101. The claimant contended that the assessor made the following errors of law:

- (1) The assessor was mistaken in concluding that the only remedy sought in each case was suitable accommodation. See: paragraph 1 of the grounds in each decision; paragraph 3 of the grounds in RK's, PW's and JG's case; and the reference in paragraph 12 of the reasons in each case to the position "if the legal remedy sought is effectively the same." The claimant contends that it asked the relevant social services department in each case for a needs assessment which was not limited to assessing the client's need for accommodation.

- (2) The assessor asked himself what was the client’s “overriding objective”, “ultimate objective”, “predominant issue” or “main legal issue”, or what was the “overall substance” of the work done, none of which were part of the applicable test. See: paragraph 2 of the grounds in each decision; paragraph 12 of the reasons in each decision; the references to paragraph 10 of the Category Definitions 2018 in both paragraph 9 of the reasons in each case and in the “I am not convinced” paragraph in each case; the case-specific reasons in JG’s case; and the final sentence of the “I am not convinced” paragraph.
- (3) The assessor proceeded on the incorrect basis that legal help was only available once a legal dispute had arisen (i.e. after a request for a needs assessment had been considered and refused by the local authority). See: paragraph 3 of the grounds in the decisions in RK’s and JG’s case; and the paragraph beginning “I am also conscious” in the reasons in JG’s case
- (4) The assessor acknowledged that JG had needs which did not relate to accommodation, but wrongly failed to conclude that this showed that JG had a separate and distinct legal problem in the community care category. See paragraph 3 of the grounds and the case-specific reasons in JG’s case.
- (5) The assessor was wrong to apply a “reasonable viewpoint” in arriving at his decision. See paragraph 3 of the grounds in SAM’s case and paragraph 4 of the grounds in the other cases. Moreover, the assessor was wrong to regard himself as conducting an assessment of costs on the standard basis and, consequently, wrong to conclude that any doubt as to reasonableness should be resolved in favour of the defendant. See paragraphs 6 and 7 of the reasons in each case.
- (6) The assessor was wrong to have regard to paragraph 3.30(b) of the General Rules, which did not apply. See: paragraph 12 of the reasons in each case; and the final two paragraphs of the reasons in each case.

***(9)(b) The Defendant’s Submissions***

102. The defendant submitted, in effect, that:

- (1) The assessor correctly identified the applicable test, namely whether the client in each case had more than one distinct and separate legal problem. See: paragraph 1 of the grounds in each case; paragraph 3 of the grounds in RK’s, PW’s and JG’s cases; paragraphs 5, 8 and 11 of the reasons in each case; and the first sentence of the “I am not convinced” paragraph in RK’s, PW’s and JG’s cases.
- (2) The question for the assessor was whether the defendant’s view that the client in each case did not have more than one distinct and separate legal problem was a reasonable view.
- (3) The assessor concluded that it was and that conclusion was a conclusion on a factual issue.
- (4) The assessor did not commit any errors of law.

103. As to the errors of law alleged by the claimant, the defendant submitted that:

- (1) The assessor was entitled to conclude that in the four cases in which he dismissed the appeal, in contrast with the two cases in which he allowed the appeal, the only remedy sought was suitable accommodation. The letters to the social services departments of the local authorities were in terms which would be used for a client whose only legal problem was obtaining suitable accommodation.
- (2) The assessor used the expression “ultimate objective” because of the terms of the claimant’s own client care letter in PW’s, SAM’s and JG’s cases that, “Ultimately, it is your objective that you are provided with suitable accommodation by the local authority.” In using the expression, “ultimate objective” and other expressions, the assessor was not stating a legal test, but a factual finding. It was appropriate for the assessor to consider paragraphs 9 and 10 of the Category Definitions 2018, since they were relevant to the question whether a case fell into one category or more than one category, an issue which is logically prior to the consideration of paragraph 3.30 of the General Rules.
- (3) The assessor did not treat the existence of a legal dispute as a precondition to the existence of a separate and distinct legal problem.
- (4) The assessor’s conclusion in each case was a conclusion on a factual issue.
- (5) The assessor was right to ask himself whether the defendant’s view was reasonable, given the terms of paragraph 4.44(c) of the General Rules.
- (6) The assessor applied the correct test.

**(10) Decision**

104. It is convenient to begin with some observations about the law to be applied by the assessor.
105. Unsurprisingly, it was common ground that the test to be applied when deciding whether the claimant could open two matter starts in any case was whether the claimant’s client had more than one separate and distinct legal problem, as provided in the first sentence of paragraph 3.30 of the General Rules. The Contract contained no definition of “legal problem”, although I note that paragraph 3.32 of the general rules draws a distinction between “issues” which may be raised by a client and a legal problem.
106. The second sentence of paragraph 3.30 of the General Rules imposes two requirements which must be met if the test is to be satisfied:
  - (1) the legal problems must be “genuinely separate and distinct, typically because they arise out of different causes and event”; and
  - (2) the requirements of either paragraph 30(a) or paragraph 30(b) must be met.
107. It was also common ground that a legal problem can exist before there is a dispute. I note in this context that the definition of legal services in subsection 8(1)(c) of LASPO includes providing advice and assistance in relation to the prevention of legal disputes.

108. It is also implicit in paragraph 3.32 of the General Rules that it may take time to identify a legal problem. This supports another point which also appeared to be common ground before me, namely that the question whether the test for opening a matter start was met in any case should be addressed by reference to the information available to the claimant when the matter starts were opened, and not by reference to subsequent developments in the case. For instance, as I have said, the assessor was not criticised for deciding, in paragraph 16 of the reasons in each case, that the subsequent grant or refusal of a funding certificate was irrelevant to the decision which he had to make.
109. Given the terms of paragraph 4.44(c) of the General Rules, I agree with the defendant's submission that the question for the assessor was whether the defendant's view that the client in each case did not have more than one distinct and separate legal problem was a reasonable view.
110. Turning to the assessor's decisions, I begin by noting that they are each to be considered as a whole and that it is often the case that reasons could be better expressed.
111. I accept Mr Birdling's submission that the assessor directed himself correctly in paragraphs 5 and 11 of the reasons in each case: he identified in paragraph 5 both that the test for whether it was appropriate to open two matter starts was whether there were separate and distinct legal problems and that paragraph 4.44(c) of the General Rules referred to the defendant's reasonable view; and he noted in paragraph 11 that in the case of a client presenting with homelessness and community care issues, it was necessary to consider the facts and circumstance of the individual case, since two matter starts will be justified in some cases, but not others.
112. As to whether the test was met, the assessor's clear conclusion was that it was not. See, in each case: the first sentence of ground 1; the case-specific reasons; and the penultimate paragraph of the reasons.
113. The case-specific reasons in each case identified those aspects of the contemporary documents which led the assessor to this conclusion. Given that, in three of those cases (PW's, SAM's and JG's), the claimant itself summarised the client's position as being that his ultimate objective was the provision of suitable accommodation and that, in three of those cases (RK's, SAM's and JG's), the claimant's letter to the social services department of the relevant local authority specified in the section headed "Details of the action the Defendant is expected to take:" a request for accommodation, but no request for any provision to meet any other alleged need, it is understandable that the assessor should have reached the conclusion which he did.
114. I turn next to the errors of law which are alleged to have vitiated the assessor's conclusion in each case.

***(10)(a) The Remedy Sought***

115. I do not consider that the assessor made an error of law when he said that the only remedy sought in each case was suitable accommodation. I see no basis for inferring that the assessor failed to appreciate that the request for a needs assessment made by the claimant in each of its letters to the social services department of the relevant local authority was a request for an assessment which was not limited to an alleged need for accommodation, but which would consider all of the client's needs, which might

include needs other than accommodation. It is clear that what the assessor was addressing was that what the claimant, on behalf of its client, was seeking by way of a result from the needs assessment was suitable accommodation. As to that, as I have pointed out, the contemporary documents contained indications that the only provision being sought was accommodation.

116. I accept Mr Wolfe’s submission that the claimant, when requesting a needs assessment for a client, was not obliged, as a matter of law, to specify what it contended should be the outcome of such an assessment. That consideration, however, is not determinative of the question whether a client who claimed both to be homeless and to have mental health issues and on whose behalf the claimant requested a needs assessment had more than one separate and distinct legal problem. Putting the point another way, the mere fact that the claimant requested a needs assessment for one of its clients who claimed to be homeless and to have mental health issues does not, in itself, establish that that client had more than one separate and distinct legal problem. That much, as I have said, I understood to be common ground.
117. I note also that, having regard to paragraph 2(1)(a) of the Care and Support (Eligibility Criteria) Regulations 2015, the claimant could not request a needs assessment for a client, even if all the client was seeking was suitable accommodation, unless the client had needs which arose from or were related to a physical or mental impairment or illness. It follows that, even in a case in which the client’s only objective was to obtain suitable accommodation, it would be necessary for the claimant to set out in its letter requesting a needs assessment details of the client’s physical or mental impairment or illness.
118. Although the claimant was not obliged, when requesting a needs assessment on behalf of a client, to specify the proposed outcome or outcomes of the needs assessment, the claimant had the opportunity to do so and, indeed, did so in those cases (RK’s, SAM’s and JG’s cases) in which I have seen the request for a needs assessment. The claimant chose to specify that the council was expected to provide emergency accommodation pending the assessment and, in RK’s and JG’s cases, to provide accommodation under section 18 of the Care Act 2014. The claimant chose not to indicate that the council was expected to make any other provision for the client following the needs assessment. The fact that the claimant chose to frame its request in this way was relevant to the issue which the assessor had to decide.

***(10)(b) “Overriding Objective” etc.***

119. I do not consider that the assessor made an error of law when he referred to the client’s “overriding objective”, “ultimate objective”, “predominant purpose” or “main legal issue”, or what was the “overall substance” of the work done. As I have said, the assessor correctly identified in each of his decisions that the applicable test was whether the client in each case had “more than one separate and distinct legal problem” and he expressed his conclusion, at the beginning and end of each decision, that that test was not satisfied. I do not consider that, on a fair reading of his decisions, he is to be understood as having substituted a different test.
120. The expression “ultimate objective” used in paragraph 2 of the reasons in SAM’s and JG’s case was taken from the evidence, i.e. from the section of the claimant’s client care letter headed “Your Instructions and Objectives”. The claimant itself recorded that

the client's ultimate objective was the provision of suitable accommodation. Indeed, I note that the client care letter in PW's, SAM's and JG's case went on to state that it was to achieve this objective (i.e. the provision of suitable accommodation) that the client required the claimant to write to the relevant social services department and request a needs assessment. In the circumstances, the decision is not to be read as indicating that the assessor regarded "ultimate objective" as a legal test.

121. The same applies to:

- (1) the words "overriding objective", which were used in paragraph 2 of the grounds in RK's and PW's case and which appear to have been no more than a synonym for "ultimate objective"; and
- (2) the words "predominantly linked to the lack of accommodation" and "main legal issue", which were used in the case-specific reasons in JG's case, but which were, in context, no more than a reference back to the "ultimate objective" identified by the claimant in its client care letter. The assessor addressed the fact that other potential needs were identified in JG's case, but concluded that these did not form a distinct and separate legal issue and that the client had only one legal problem at the time of the matter starts.

122. The assessor used the words "overall substance or predominant issue" in paragraph 9 of the reasons in each decision (which also contained the expression "overall substance of the work done") and in the "I am not convinced" paragraph in each decision and he used the word "predominantly" in paragraph 12 of the reasons in each decision. This was all in the context of considering paragraph 10 of the Category Definitions 2018 or paragraph 3.30 of the General Rules:

- (1) In the last sentence of paragraph 9, the assessor merely recited the words of paragraph 10 of the Category Definitions 2018.
- (2) In the first sentence of paragraph 12 he referred, as part of a general proposition, to a case where the client's community care issues predominantly related to the provision of accommodation and their housing issue was homelessness. It will be noted that he was talking there about issues (the term used in paragraph 10 of the Category Definitions 2018), and not legal problems (the term used in paragraph 3.30 of the General Rules). He went on to say that in such a case there was a factual consideration whether the client had a separate and distinct legal problem. That is the test laid down by paragraph 3.30 of the General Rules. As I have said, the assessor's conclusion on that factual issue was that the client in each case had only one legal problem.
- (3) In RK's, PW's and SAM's case, the assessor expressed that conclusion before considering, in the "I am not convinced" paragraph, the potential application of paragraph 10 of the Category Definitions. In JG's case, the assessor began the "I am not convinced" paragraph by saying that he was not convinced that the client's other potential needs formed a distinct and separate legal issue.
- (4) The reference to the "overall substance of the work done" was made in the context of considering paragraph 3.30(b) of the General Rules, which the assessor decided did not apply.

123. I do not consider that any of this demonstrated an error of law on the part of the assessor. I can see that it was perhaps not helpful for the assessor to consider paragraph 10 of the Category Definitions 2018, since that paragraph was concerned with issues and not legal problems and, if a client had the distinct and separate legal problems for which the claimant contended, then it appears that each problem would have fallen into a separate category, i.e. housing and community care. However, the assessor's consideration of paragraph 10 of the Category Definitions 2018 does not appear to have detracted from his decision on the factual question whether the client in each case had more than one separate and distinct legal problem. This is illustrated by his decision on the two other cases, in each of which he found that the client did have two separate and distinct legal problems which related to two separate categories of work.

***(10)(c) Legal Dispute as Precondition to Legal Problem***

124. I accept that it would have been an error of law for the assessor to proceed on the basis that a client could not have a legal problem in the community care category unless and until a dispute had arisen, for instance because a needs assessment had been requested and refused. However, I do not consider that the assessor proceeded on that basis.
125. It is instructive in this context to compare paragraph 3 of the grounds in PW's case with the equivalent paragraph in JG's case. In PW's case, there had been an earlier needs assessment, which had concluded that PW had no eligible care needs. In JG's case, there had been no needs assessment and none had been requested. The assessor referred to both of these sets of facts, which were relevant matters for him to consider. However, the common feature, in the assessor's judgment, appears to have been that in each case the claimant's request for a needs assessment appeared to have been solely related to accommodation. This was expressly stated in paragraph 3 of the grounds in JG's case and was implicit in the assessor's observation in PW's case that the previous needs assessment was not addressed in either the client care letter or the letter to the social services department of the relevant local authority.

***(10)(d) JG's Needs***

126. The assessor acknowledged in his case-specific reasons in JG's case that the client care letter referred to issues caused by JG's mental health problems which were unrelated to accommodation. The assessor described these as potential needs which he was not convinced formed a distinct and separate legal issue when the two matter starts were opened. It was a question for the judgment of the assessor whether these matters had graduated from being issues to giving rise to a legal problem by the time the matter starts were opened.

***(10)(e) Reasonableness***

127. There was an error in paragraphs 6 and 7 of the reasons in each case. Indeed, after discussion in the hearing, I did not understand Mr Birdling to dispute this. As I have already said, those paragraphs were based on the false premise that the assessor was conducting an assessment of costs on the standard basis. In fact, he was considering an appeal against the defendant's decision that a standard (i.e. fixed) fee was not payable because the condition in paragraph 3.30 of the General Rules was not met.

128. Having said that, it was, as I have said, relevant for the assessor to consider what was reasonable insofar as he considered whether the defendant's view that the client in each case did not have more than one distinct and separate legal problem was a reasonable view. It follows that I do not regard the assessor's references to a "reasonable viewpoint" in the grounds in each case as indicating any error of law.
129. However, the claimant also submitted that the assessor was wrong to conclude that any doubt as to reasonableness should be resolved in favour of the defendant. The claimant submitted that there was nothing in the Contract to indicate where the burden of proof lay on an appeal.
130. This submission might have given rise to an issue if the assessor had said that he was in doubt whether the defendant's view in any case that the client did not have more than one distinct and separate legal problem was a reasonable one. However, the assessor did not say that. On the contrary, the assessor said in each case, in effect, that he considered that it was right that the client did not have more than one distinct and separate legal problem. Since he considered that the defendant's view to that effect was right, it follows that he cannot have been in doubt whether it was reasonable.

***(10)(f) Paragraph 3.30(b) of the General Rules***

131. I do not consider that the assessor's decisions were affected by an error of law in relation to paragraph 3.30(b) of the General Rules. In the penultimate paragraph of each decision, the assessor said that he did not consider that paragraph 3.30(b) ought to apply, because he considered that the client had only one legal problem. It follows that his conclusion was not based on the application of paragraph 3.30(b).

**(11) Conclusion**

132. For the reasons set out in this judgment, I dismiss the application for judicial review.
133. I express my gratitude to all counsel and solicitors for their efforts, which enabled so much material to be addressed so comprehensively.