Neutral Citation Number: [2025] EWHC 2929 (Admin)

Case No: AC-2024-BHM-000301

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

Birmingham Civil and Family Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date: 14th November 2025

Before:

MR JUSTICE EYRE

- -

Between:

THE KING
on the application of
COVENTRY CITY COUNCIL

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Defendant**

- -
- -

Peter Oldham KC and Ronnie Dennis (instructed by **Coventry City Council**) for the **Claimant**
Paul Brown KC and John Goss (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 28th and 29th July 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 14th November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE EYRE

Mr Justice Eyre:

Introduction.

1. This claim arises out of the Claimant's challenge to the lawfulness of the Defendant's actions in placing asylum seekers in accommodation in the Claimant's local authority area. The Defendant's actions were taken in purported exercise of her powers derived from and in purported performance of her duties under the Immigration and Asylum Act 1999 ("the 1999 Act"). The Claimant accepts that it is appropriate for a number of asylum seekers to be accommodated in its area but says that the number being accommodated there is excessive. It says that the Defendant's failure to reduce the number of asylum seekers accommodated in Coventry more quickly and her placement of further asylum seekers are both unlawful. The Defendant accepts that the number of asylum seekers accommodated in Coventry should be reduced. She contends that she is moving to implement a policy under which asylum seekers are accommodated more widely throughout the United Kingdom but she denies that there is any unlawfulness in the action she has taken thus far.

2. The trigger for these proceedings was the Defendant's decision of 13th November 2024 to procure accommodation at the Ibis Hotel in Coventry for asylum seekers with effect from 15th November 2024. However, it is clear that the Claimant already had more wide-ranging concerns about the number of asylum seekers accommodated in Coventry and about the pace of the Defendant's moves to a wider distribution of accommodation for asylum seekers.

3. As I will explain more fully below the Claimant had volunteered at an early stage to assist in allowing asylum seekers to be accommodated in Coventry and had provided support to those who were placed in the city. The Claimant is proud of the support it has provided to those seeking asylum. It remains willing to play its part in meeting the needs of asylum seekers. However, it is concerned that it is bearing more than its fair share and this claim is motivated by a concern to ensure that the burden of accommodating asylum seekers is shared more widely across the country. The Defendant is sympathetic to the Claimant's concerns. She says that she has sought to reduce the number of asylum seekers accommodated in Coventry and intends to continue to do so. However, the Defendant points out that she has a statutory duty to house asylum seekers. She also says that the need to provide such accommodation can arise at short notice and, on occasion, the circumstances will be such that the location of the accommodation to be used can carry little weight in the decision-making process.

4. The Claimant advances six grounds of challenge pursuant to permission given by Lang J. It contends that the approach which the Defendant has taken to accommodating asylum seekers in its area has been in breach of substantive and procedural legitimate expectations and contrary to the Defendant's own policy; that the approach is unlawful as thwarting the purpose of the 1999 Act; that the Defendant is in breach of her duty under section 149 of the Equality Act 2010; and, finally, that her approach is irrational.

The Legislative Framework.

5. The relevant parts of section 94(1) and (5) of the 1999 Act provide that:

> "(1) ... "asylum-seeker" means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;
>
> ...
>
> (5) If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while— (a) the child is under 18; and (b) he and the child remain in the United Kingdom."

6. Section 95(1) and (3) empower the Defendant to provide or arrange for the provision of support to asylum seekers who appear to be destitute or who appear likely to become destitute in these terms:

> "(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."

7. Section 96(1)(a) stipulates that support under section 95 may be provided by way of the provision of accommodation.

8. Section 97 identifies matters to which the Defendant may and may not have regard in the exercise of her powers under section 95 in these terms:

> "(1) When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—
>
> (a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim;
>
> (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and
>
> (c) such other matters (if any) as may be prescribed.
>
> (2) But he may not have regard to—
>
> (a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or
>
> (b) such other matters (if any) as may be prescribed."

9. Under the heading "temporary support" section 98(1) and (2) provide that:

> "(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 it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95."

10. The effect of regulation 5 of the Asylum Seekers (Reception Conditions) Regulations 2005 is to convert the Defendant's power to provide support under sections 95 and 98 into a duty to do so.

11. Section 100 makes provision for a local authority to assist the Defendant in these terms:

"(1) This section applies if the Secretary of State asks—

(a) a local authority...

... to assist him to exercise his power under section 95 to provide accommodation.

(2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.

…

(4) A local authority must supply to the Secretary of State such information about their housing accommodation (whether or not occupied) as he may from time to time request."

12. By section 101 the Defendant has a power to designate an area as a reception zone and to direct a local authority within such a zone to make accommodation available to her for the purposes of providing support under section 95. The power is provided thus:

"(1) The Secretary of State may by order designate as reception zones—

(a) areas in England and Wales consisting of the areas of one or more local authorities;

(b) areas in Scotland consisting of the areas of one or more local authorities;

(c) Northern Ireland.

(2) Subsection (3) applies if the Secretary of State considers that—

(a) a local authority whose area is within a reception zone has suitable housing accommodation within that zone; or

(b) the Executive has suitable housing accommodation.

(3) The Secretary of State may direct the local authority or the Executive to make available such of the accommodation as may be specified in the direction for a period so specified—

(a) to him for the purpose of providing support under section 95; or

(b) to a person with whom the Secretary of State has made arrangements under section 95."

13. The power under section 101 has not been exercised since the 1999 Act came into force, and as will be explained below, the Defendant does not use local authority accommodation to fulfil her duty to accommodate destitute asylum seekers.

The Factual Background.

14. The Defendant performs her duty to arrange accommodation for asylum seekers through contracts with private suppliers. In return for payment from the Defendant those suppliers procure accommodation in the ways described below and then manage

that accommodation. The contractor responsible for procuring and managing such accommodation in Coventry is Serco Ltd.

15. The scale of the Defendant's task was explained in the evidence of Belinda Mather, the Director of Asylum Accommodation in the Home Office. Miss Mather explained that the number of asylum seekers being accommodated had risen from 42,017 in December 2005 to a peak of 119,010 in September 2023. The latest figure given in Miss Mather's evidence was that of 106,181 asylum seekers being accommodated in September 2024. Miss Mather also pointed out that continuing effects of the backlog caused by the measures introduced to deal with the Covid-19 pandemic have coincided with an increase in the number of migrants seeking to enter the United Kingdom in small boats. Miss Mather says that "almost all of those arriving in the country by small boat subsequently submit an asylum claim". She explained that peaks in the numbers arriving by that route have "contributed significantly to extreme and urgent demand for asylum accommodation".

16. The accommodation provided for asylum seekers is divided into three categories. In descending order of permanence (at least as originally intended) those are:

    i) Dispersal Accommodation ("DA"): this is intended for those being accommodated pursuant to section 95 of the 1999 Act. It typically takes the form of self-contained units (houses, flats, or houses in multiple occupation) in the private rented sector.

    ii) Initial Accommodation ("IA"): this is accommodation for those being accommodated pursuant to section 98 of the 1999 Act while a decision is being made as to whether they should be accommodated under section 95. It typically takes the form of dedicated hostels although it can include accommodation in hotels.

    iii) Contingency Accommodation ("CA") which is sometimes referred to as Contingency Initial Accommodation: this is a category which was introduced in response to the circumstances of the Covid-19 pandemic and the consequent lockdowns. It now relates to accommodation intended for shorter term use and is used to address the need for accommodation when there is an influx of asylum seekers exceeding the capacity of DA and IA. This primarily takes the form of the block-booking of a hotel though it can include spot booking of rooms for a limited period.

17. The Defendant's intention is that asylum seekers should only remain in IA or, even more so, in CA on a temporary and short-term basis. It was not, however, in question that the combined effect of the number of asylum seekers needing to be accommodated; the time taken to process their claims; and the difficulties in finding alternative accommodation has been that at least some asylum seekers stayed in such accommodation for longer periods. In that regard the Claimant referred to the October 2024 report of the Chief Inspector of Borders and Immigration which had noted that as at 28th November 2023 the average length of stay in CA was 223.75 days. The Defendant's evidence was that as at November 2024 the typical duration of a stay in CA was about 115 days.

18. The Claimant was at pains to point out that it remained proud of its history of providing accommodation for asylum seekers who would otherwise be destitute and proud of the fact that it volunteered to provide such accommodation at a time when the majority of local authorities did not do so. However, it pointed to the effects which accommodating asylum seekers had on local services. The Claimant's experience has been that asylum seekers rely heavily on public services. Many asylum seekers and their children have particular health and educational needs and their presence increases the demand on education and health facilities. The Claimant is also concerned about the strains to social cohesion which can result from the presence of large numbers of asylum seekers. The use of accommodation in the private rented sector to house asylum seekers reduces the quantity of such accommodation which is available for use by the Claimant to fulfil its duty to house homeless families. The Claimant points out that there is little difference in these consequences whether asylum seekers are accommodated in DA, IA, or CA.

19. In earlier judicial review proceedings, to which I will refer below, the claimant local authorities pointed out that the consequences of accommodating an asylum seeker in a particular local authority area often continued after the determination of that person's asylum claim. Those whose claims to asylum were granted would have a local connexion to the area in which they had been accommodated and a consequent entitlement to housing support in that area. A number of those whose asylum claims were refused would seek to remain in the United Kingdom. Some of those would remain in the area where they had been accommodated and become homeless there.

20. The Defendant acknowledges these concerns. She is committed to working to end the accommodation of asylum seekers in hotels and, as I will now explain, she is also working to disperse asylum seekers throughout the country. However, as Mr Brown KC pointed out in his submissions on behalf of the Defendant, progress on the former of those objectives can hinder the latter. A reduction in the use of hotels can increase the need for DA and IA and so reduce the scope for ending the use of accommodation which is already providing DA and IA.

21. Until April 2022 the Defendant only sought to procure accommodation for asylum seekers in the areas of those local authorities which had volunteered to accept asylum seekers into their area. Less than half of the total number of local authorities volunteered in that way. The Claimant did volunteer to accept asylum seekers and is proud of the role it played in supporting those in need of assistance.

22. Since 2022 the Defendant's approach has been to disperse asylum seekers throughout the country through the Full Dispersal Model. The Claimant believes that the Defendant's change of approach was a response to judicial review proceedings which the Claimant and a number of other local authorities commenced in September 2021. In March 2021 the Claimant and a number of other local authorities in the West Midlands, all of which had volunteered to accept asylum seekers, informed the Defendant that they could no longer volunteer to receive asylum seekers into their authorities. Those authorities did so because of their concern about the burdens they were facing as a result of the accommodation of asylum seekers in their areas. The Defendant nonetheless continued to place asylum seekers in accommodation in the areas of authorities who had previously volunteered to accept asylum seekers while maintaining the approach of not placing asylum seekers in the areas of authorities which had not volunteered in that way. That led to the judicial review proceedings in which

the local authorities asserted that the Defendant's approach was unlawful. The proceedings were compromised after the Defendant confirmed that she had introduced a new policy whereby accommodation for asylum seekers would be procured in all the local authority areas in England, Scotland, and Wales regardless of whether or not the authority had previously volunteered to accept asylum seekers.

23. The Defendant does not accept that the change of approach was a response to the judicial review proceedings and says that it resulted from her independent consideration of the position. I note that in his judgment on the costs of those proceedings (*R (City of Wolverhampton) v Secretary of State for the Home Department* [2022] EWHC 1721 (Admin)) Fordham J concluded that although the judicial review proceedings were "one aspect of the context and circumstances" of the change of approach they did not cause or materially contribute to that change. That issue is not material for current purposes and it suffices to know that the Defendant's current policy is that of the dispersal of asylum seekers to all local authority areas in England, Scotland and Wales.

24. There is dispute about the significance of the different headline figures but substantial agreement as to how they are calculated.

i) The 1:200 Ratio is the number of asylum seekers equivalent to 1 asylum seeker for every 200 residents there were in the relevant local authority area at the date of the 2021 census. It is, accordingly, a fixed figure. For Coventry the figure is 1,730 asylum seekers. It is common ground that the 1:200 Ratio is to be calculated by reference to the total number of asylum seekers in a local authority's area. It includes those in CA as well as those accommodated in DA and IA. The 1:200 Ratio is a longstanding figure agreed between the Defendant and local authorities. However, the former sees it as being a target while the Claimant characterizes it as a limit. Paul Bilbao is the Home Office official responsible for Dispersal Planning and Procurement. He makes the point that the 1:200 Ratio was not the result of evidence-based research into the appropriate proportion of asylum seekers to be accommodated in an area. Rather it is, Mr Bilbao says, a "historical and arbitrary" figure.

ii) The Defendant's Service User Demand Plan ("the SUDP") was introduced in June 2024 and was explained in a letter of May 2024. The SUDP figure is calculated using the Asylum Accommodation Plan ("the AAP") and is the number of asylum seekers needed to be accommodated in each local authority area for the total number of asylum seekers present in England, Wales, and Scotland to be accommodated. Miss Mather explained that the successive AAPs have been:

> "derived from indexation of each local authority to assess the suitability and volume of dispersal. This indexation considers a range of evidential factors including availability of housing, other supported Home Office cohorts, viability of the local authority to support service user needs and wider social factors including homelessness and cohesion. These evidenced based plans have been established in partnership with local government using a specially developed indexing tool factoring in a range of socio-economic factors, for example homelessness, pressures on GPs and hate crime."

The AAP is set so as to ensure that the SUDP figure for each local authority is always less than the 1:200 Ratio. The SUDP figures for local authorities were

first published in May 2024. The SUDP figure changes over time depending on changes in the total number of asylum seekers and modifications to the algorithms used in the AAP**.** For Coventry the SUDP figures have been: 782 (May 2024 – February 2025), 599 (February – May 2025), and 526 (since May 2025). The Defendant says that the SUDP is intended solely to relate to those asylum seekers in DA and IA and does not include those accommodated in CA from time to time. In that regard it can be said immediately that the Defendant's interpretation of the SUDP figure is correct. The documentation to which I will refer below makes it clear that the SUDP figure is a planning tool which is used to assess the need for accommodation and to identify how much accommodation should be procured in each local authority area. It is calculated using the AAP. That is a different exercise from identifying how many asylum seekers will need to be accommodated in CA. The need for CA is inherently unpredictable and can arise at short notice. Such accommodation and the need for it are different in nature from the matters being addressed in the calculation of the SUDP and are not apt to be addressed in that calculation.

iii) Finally, the Bedspace Demand Plan ("the BDP") figure is calculated by reference to the SUDP and is an uplift of 25% from the latter figure. It is the number of bedspaces which need to be provided in the area of a local authority so that the number of asylum seekers represented by the SUDP can be accommodated. The uplift from the SUDP is necessary because of the difficulty of achieving full occupancy of the procured accommodation. By way of example, a particular property might contain four bedspaces but if three of those are occupied by a single family the fourth space will be unavailable. Similarly, different accommodation is needed for single adult males, single adult females, and families. A space may be available in accommodation for single adult males but that will not assist when the need is to accommodate a single adult female or a family and *vice versa*. It follows that to achieve a particular SUDP figure it will be necessary for the BDP to be a higher figure. The BDP for Coventry has varied in line with the changes in the SUDP figure. Since May 2025 the figure has been 619.

25. Each month there are meetings on a regional basis between Home Office officials, the representatives of contractors, and representatives of the local authorities. Figures are presented showing, *inter alia*, the size of the estate (in the sense of the number of bedspaces procured) and the number of asylum seekers accommodated with each being broken down by authority.

26. The figures presented to the July 2025 meeting show the position as at 29th June 2025. Those show that 1,692 asylum seekers were then accommodated in Coventry, of whom 1,638 were in DA or IA. That was less than the 1:200 figure of 1,730 but 1,112 over the SUDP figure of 526 (and so over three times that figure). The parties referred to different conclusions which they said flowed from those and the figures for earlier months. The Claimant contended that they show that Coventry remains an outlier. It is one of only five West Midlands authorities where the SUDP is exceeded and in no other authority are three times as many asylum seekers accommodated as provided for in the SUDP. The Claimant points out that there are still a number of local authority areas where no asylum seekers are accommodated. It also says that the figures show that there are sufficient already procured bedspaces to reduce the burden on Coventry. The total

estate of procured bedspaces in the West Midlands region was 10,326 as at July 2025 while only 9,086 asylum seekers were being accommodated. Nationally, there were 84,148 bedspaces with 68,151 asylum seekers being accommodated. The Claimant says that these figures show that there are spaces available in other local authority areas and that there is no need for it to bear more than its fair share of the burden posed by accommodating asylum seekers. The Defendant says that the figures from the monthly meetings show that the Full Dispersal Model is working and that good progress is being made towards full dispersal. She points to the fact that asylum seekers are being housed in an increasing number of local authorities and adds that the figures show that there is a pipeline of further bedspaces which are being procured. She also says that the progress which has been made is shown by the figures for Coventry. In October 2023 the total number of asylum seekers accommodated in Coventry was 2,023. By July 2025 that figure had been reduced to 1,692 although the downwards movement has been uneven with a peak of 2,156 asylum seekers being accommodated in January 2025. There has also been a fall in the proportion of those accommodated in Coventry who are in CA. The number in such accommodation has fallen from 551 in October 2023 to 54 in July 2025 (though, again, the downwards movement has not been a linear progression). I have noted above the downwards reductions in the SUDP figure for Coventry and the Defendant points to this as a further indication of the progress which is being made towards full dispersal.

27. At 16.44 on Wednesday 13th November 2024 the Defendant informed the Claimant that she had decided to use the Ibis Hotel in Coventry for CA and that the use of the hotel would begin on Friday 15th November 2024. The use of that accommodation continued to 13th February 2025.

28. The Defendant has not procured any new DA or IA in Coventry since 16th October 2023. However, until February 2025 when asylum seekers moved from existing DA accommodation they were replaced and other asylum seekers were moved into that accommodation. Until then if space in a particular property remained available to accommodate asylum seekers then that space was used. However, when a particular property ceased to be available to house asylum seekers (through the expiry of the lease or a similar event) that property was not replaced and new DA accommodation was not acquired. There was, accordingly, a reduction over time in the number of properties being used. On 11th February 2025 the Defendant instructed Serco to ensure that there was no net increase in the number of asylum seekers accommodated in Coventry. This was achieved by ensuring that when spaces in DA became available only those already in either IA or CA in Coventry moved into that accommodation save where the Defendant was required to accommodate a particular asylum seeker in Coventry by legal obligation. The Defendant has not sought to procure CA accommodation in Coventry since the ending of the use of the Ibis Hotel on 13th February 2025. The Defendant says that this approach has brought about a "relatively rapid decrease" in the number of asylum seekers accommodated in Coventry. The Claimant is concerned that there is no assurance that this approach will continue.

29. The Defendant says that on a national level she has given strict instructions that contractors are not to procure additional accommodation in any local authority area where the number of asylum seekers housed exceeds either the 1:200 ratio or the SUDP. The Defendant only authorizes the procurement of accommodation which would exacerbate any existing excess over the 1:200 figure where the relevant local authority

has agreed that this can be done. She says that an aspect of the Full Dispersal Model is her active work to reduce the numbers of asylum seekers accommodated in any given area to below the 1:200 figure. She says that the figures from the monthly meetings, as noted above, demonstrate that progress is being made towards full dispersal.

The Competing Contentions in Summary.

30. Against that background the parties' cases are as follows in summary.

31. In ground 1 the Claimant says that the Defendant's representations and actions gave rise to separate substantive legitimate expectations that:

    i) the number of asylum seekers accommodated in Coventry would not exceed the 1:200 Ratio;

    ii) the number of asylum seekers accommodated in Coventry would not exceed the SUDP figure;

    iii) the number of bedspaces for asylum seekers procured in Coventry would not exceed the BDP figure for Coventry;

    iv) there would be no additional procurement of accommodation for asylum seekers in Coventry, even to replace existing accommodation and even for the purposes of providing CA, while the preceding numbers were exceeded.

32. The Claimant says that because the number of asylum seekers accommodated in Coventry exceeds those numbers and because there has nonetheless been the procurement of additional accommodation for asylum seekers the Defendant is in breach of those substantive legitimate expectations in circumstances where there is no good reason for the breach. It says that the procurement of the Ibis Hotel for CA was a breach of the fourth of those elements.

33. Ground 6 is closely related to ground 1. The Claimant asserts that the Defendant adopted policies to the effect that the number of asylum seekers accommodated in a local authority area should not exceed either the 1:200 Ratio or the SUDP figure for that area and that bedspaces in excess of the BDP figure for any local authority area would not be procured. The actions which constitute a breach of the substantive legitimate expectations also amount, the Claimant says, to departures from the Defendant's policies in circumstances where the Defendant has failed to have regard to those policies; where there is no good reason for the departure; and where the Defendant has not given good reasons for the departures.

34. The Defendant says that the Claimant's case in respect of the SUDP and BDP figures is based on a mischaracterization of those figures. They were never, the Defendant says, put forward as limits. Instead, they are targets used for planning purposes. They are calculated by reference to the DA and IA which is needed in each local authority in order to achieve dispersal throughout the country of the number of asylum seekers who have to be housed. There cannot, therefore, be a legitimate expectation that the number will not be exceeded nor was there a policy to that effect (as opposed to a policy of seeking to move to wider dispersal).

35. In respect of the 1:200 figure the Defendant says that the Claimant has again mischaracterized the material which is said to have given rise to a legitimate expectation and has failed properly to set that material in context and particularly in the context of the Defendant's statutory duty to accommodate asylum seekers. Initially, the Defendant's position was that the 1:200 figure operated solely as a trigger for engagement with a local authority. In the course of the oral submissions from Mr Brown KC, the Defendant's position was refined. Mr Brown accepted that in deciding whether the 1:200 figure was being exceeded regard was to be had to the total number of asylum seekers being accommodated in a local authority area (and so included those in CA as well as those in DA and IA). He also accepted that the facts either (a) that a placement of asylum seekers would cause the 1:200 ratio to be exceeded in a particular local authority area or (b) that the ratio was already exceeded in a particular area were mandatory relevant considerations to which the Defendant had to have regard if the circumstances were such that, in reality, she had a choice as to where to place further asylum seekers. He did not accept that either aspect could be a relevant consideration if the circumstances were such that the Defendant had only one realistic option if she was to accommodate a particular number of asylum seekers or to accommodate them within an appropriate time period.

36. It follows that the difference between the positions of the parties on the 1:200 Ratio has narrowed but it remains real. If the Claimant is right and there is a substantive legitimate expectation that the figure will not be exceeded then it will be unlawful to make a placement which would exceed the figure unless that is objectively justifiable as a proportionate response with the court being the arbiter of that issue. If the Defendant is right and the fact that the figure will be exceeded is a mandatory relevant consideration then a placement will be unlawful if the Defendant fails to take account of the 1:200 Ratio but provided she has done so the weight to be given to that consideration in the particular circumstances will be a matter for her subject only to a rationality challenge.

37. In respect of the fourth asserted legitimate expectation the Defendant does not accept that the exchanges on which the Claimant relies amounted to a representation not to procure any new accommodation even if it was needed for CA. It says that to the extent that there was any legitimate expectation it was confined to the procuring of property for DA or IA. It has not procured new accommodation in Coventry for DA or IA since October 2023.

38. In ground 2 the Claimant says that there was a procedural legitimate expectation that the Defendant would consult the Claimant before procuring accommodation in Coventry for asylum seekers in excess of the 1:200 figure or the SUDP figure. It says that the Defendant was in breach of that legitimate expectation by failing to consult it before arranging the procurement of accommodation at the Ibis Hotel. The Claimant accepted that the expectation was not such as to require compliance with each of the four criteria set out in *R v Brent LBC ex p Gunning* (1985) 84 LGR 168 but did say that there had to be a proper opportunity for it to express a view on the proposed procurement. In the case of the procurement of the Ibis Hotel this was not done. Instead, the Claimant was presented with a *fait accompli* and was told less than 48 hours before the accommodation was to be used.

39. The Defendant accepts that as a matter of policy she will consult a local authority about procuring CA in the area of that authority. She says that she seeks to inform local authorities seven days before such procurement is to take effect to give an opportunity

for representations to be made. The Defendant does not accept that there is a procedural legitimate expectation in the form asserted by the Claimant. In addition, she says that the approach to be taken in that regard has to take account of the circumstances in which the need to provide CA can arise. It is not possible accurately to predict when or for how many asylum seekers such accommodation will be needed. The need for such accommodation can arise at short notice and in circumstances when there are only a very few places in which accommodation can be found. This means that on occasion it is not possible to give weight to the location of the potential accommodation. This is what happened, the Defendant says, in respect of the procurement of the Ibis Hotel with the consequence that even if there was a procedural legitimate expectation of consultation there was a good reason for departing from it on this occasion.

40. In ground 3 the Claimant alleges a breach of the principle derived from the speech of Lord Reid in *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030 B – D. The Claimant says that an object of the 1999 Act was the dispersal of asylum seekers throughout the country. Based on that interpretation of the 1999 Act the Claimant contends that the Defendant's actions in continuing to procure accommodation for asylum seekers in Coventry in excess of the 1:200 Ratio and the SUDP figure are *ultra vires.* That is because those actions thwart or fail to promote that object with the consequence that the Defendant is not using her powers under the 1999 Act to promote the purposes of the Act. The Defendant says that the object of the relevant part of the 1999 Act was simply the taking of action to prevent asylum seekers becoming destitute. She does not accept that the dispersal of asylum seekers was an object of the 1999 Act and so does not accept that there was any failure to promote the object of that Act nor that her powers were not being used for the purpose intended by the 1999 Act.

41. Ground 4 asserts a breach of the Defendant's Public Sector Equality Duty under the Equality Act 2010. The Claimant says that the equalities impacts of the Defendant's failure to disperse asylum seekers more widely are such that the Defendant should have had regard to those impacts and to its obligations under the Public Sector Equality Duty. It is common ground that the duty applies only in a modified form. The Defendant points out that she recognizes the adverse effects of the current arrangements and that this recognition is why she is moving to a policy of full dispersal. She says that the Equalities Impact Assessment prepared for the purpose of that exercise discharged her duties in this respect.

42. Ground 5 is a rationality challenge. It asserts that the Defendant acted irrationally generally and in respect of the procurement of places at the Ibis Hotel. The allegation of general irrationality relates to three matters. The first is the action of the Defendant in accommodating asylum seekers in CA in Coventry. This is said to have been irrational because the Defendant had agreed in July 2024 not to procure further accommodation for asylum seekers in Coventry. The Defendant applied that approach to DA and IA but continued to procure CA in the city. The Claimant says that this was irrational because there is no material difference between the needs which asylum seekers placed in the differing kinds of accommodation have. Next, it is said that the Defendant had a policy of treating the 1:200 Ratio as a "final red line" and that in making placements which took the number of asylum seekers over that level she was acting contrary to that policy without good reason. The last element of the alleged general irrationality is said to be a failure to take adequate steps to reduce the number

of asylum seekers accommodated in Coventry below the 1:200 Ratio. The second of the principal elements of this ground is a contention that the Defendant acted irrationally in procuring the Ibis Hotel because it had previously been rejected as being unsuitable to accommodate asylum seekers. The Defendant does not accept that the reason why the Ibis Hotel was not used previously was that it was regarded as unsuitable. As to the first element of this ground she does not accept that there was the alleged agreement; contends that there are material differences between DA and IA on the one hand and CA on the other; and denies that she is not taking adequate or appropriate steps to move to full dispersal.

43. By way of a general response, in addition to her response to the individual grounds, the Defendant says that the matters advanced by the Claimant are now academic such that the court should decline to address them. In that regard the Defendant points out that she has not procured new DA or IA for asylum seekers in Coventry since 21st October 2023. She has paused the movement into DA in Coventry of any asylum seeker who is not already accommodated there (for example in IA or CA). This has had the effect of achieving a reduction in the number of asylum seekers accommodated in Coventry. In addition, the last asylum seeker accommodated in the Ibis Hotel left there on 13th February 2025 and the hotel was handed back to its owners on 19th March 2025. The Claimant does not accept that the issues it has advanced are academic. It points to the facts that although there are currently fewer asylum seekers accommodated in Coventry than the 1:200 Ratio there remain more than the SUDP figure and more bedspaces than the BDP figure. In addition, the Claimant points out that although the Defendant has paused the procurement of further DA the Defendant has not conceded that she would not be entitled to resume such procurement. The Defendant has, in any event, declined to confirm that there will not be renewed procurement for IA or CA even if that were to cause the number of asylum seekers accommodated in the future to exceed the 1:200 Ratio.

Is the Claim academic?

44. In determining a judicial review claim the court has discretion to address an issue which is academic at the time of the hearing. However, that power will only be exercised with considerable caution. The normal course is for the court to decline to address an academic matter. It should normally only determine such a matter if there is a good reason in the public interest for doing so: see per Lloyd LJ in *R (Parsipoor) v Secretary of State for the Home Department* [2011] EWCA Civ 276, [2011] 1 WLR 3187 at [36].

45. Here, the Defendant says that the claim is academic or if not entirely academic then it is academic save to the extent that it relates to the continued use of existing accommodation. Mr Brown pointed out that the use of the Ibis Hotel ceased on 13th February 2025 and that the Defendant has not procured any new accommodation for DA or IA in Coventry since October 2023. The Defendant has, moreover, (in the words of the skeleton argument) "made it clear to Serco that the total population of asylum seekers accommodated in Coventry should remain under 1,730 until further notice". Although the Defendant was not able to confirm that there would not be further procurement, Mr Brown submitted that if the Defendant were subsequently to move to procure further accommodation in Coventry that would be a fresh decision the lawfulness of which could be subject to a separate challenge and which would have to be considered in light of the circumstances at the time of that further decision.

46. For the Claimant Mr Oldham KC submitted that there were a number of issues which were not academic. The number of asylum seekers accommodated in Coventry remains above the SUDP and BDP levels and the Defendant was not prepared to give an undertaking that the total numbers would remain below the 1:200 Ratio figure of 1,730 indefinitely. In addition, although the use of the Ibis Hotel to house asylum seekers was the trigger for the commencement of these proceedings, it was not the only cause of concern for the Claimant.

47. At one point Mr Oldham submitted that the question of whether the claim was academic was only relevant to the grant or refusal of permission with the consequence that Lang J's grant of permission precluded the Defendant from arguing that the court should not consider the matter. On reflection, Mr Oldham accepted, rightly, that the grant of permission did not have that effect. The fact that a claim is academic will often be a reason for refusing permission but the grant of permission does not prevent the court at a final hearing from concluding that a claim or part of a claim is academic. First, that is because it is possible for a claim to become academic between the giving of permission and the substantive hearing. Second, the effect of the grant of permission is only that the claim is to be seen as arguable with a real prospects of success. The same applies to the question of whether the matter is academic: a grant of permission does not mean that a claim is definitively to be regarded as not academic but instead means that it is reasonably arguable that it is not academic. Here, it is of note that in the Summary Grounds of Resistance the Defendant did not say that the entirety of the claim was academic. Instead, she said that the claim in relation to the Ibis Hotel was academic and the balance of the claim was premature.

48. The issue of whether the use of the Ibis Hotel was the unlawful breach of a substantive legitimate expectation by reason of causing more asylum seekers to be accommodated in Coventry at a time when the 1:200 limit had been exceeded is academic in the sense of relating to past events which have no continuing effect. However, the dispute underlying the competing contentions remains relevant to the current rights of the parties. The parties disagree as to the basis on which any decision which would result in more than 1,730 asylum seekers being accommodated in Coventry should be approached. The Claimant says that such a decision would be in breach of a substantive legitimate expectation and/or in breach of a policy adopted by the Defendant. On that basis, the Claimant says, such a decision would only be lawful if the Defendant had an objectively good reason for resiling from the legitimate expectation or departing from the policy. The Defendant accepts that the 1:200 Ratio, and so the 1,730 figure, is a relevant consideration to be taken into account when deciding whether to accommodate asylum seekers in Coventry rather than elsewhere but she does not accept that there is a substantive legitimate expectation or a policy. In that regard, Mr Brown was right to say that the lawfulness of any future procurement will have to be determined on its merits in light of the circumstances at the time. He was also right to say that the Defendant could give notice of a change of approach and, thereby, bring any substantive legitimate expectation to an end. Nonetheless, the approach to be taken to further procurement in the absence of such a change is not an academic issue in light of the pressing need to accommodate asylum seekers and the Defendant's position that she is not able to undertake that there will not be further placement in Coventry. The Defendant has reserved the right to place asylum seekers in Coventry and the history shows that the need for her at least to consider doing so could arise at short notice. The

approach to be taken in order for such a placement to be made lawfully is, therefore, a matter of real and current concern.

49. It follows that the question of whether the past placements resulting in the accommodation of more than 1,730 asylum seekers in Coventry were in breach of a substantive legitimate expectation is, therefore, not academic. Alternatively, it is a matter which there is a good reason in the public interest to determine at this stage. That is because it has importance for the future dealings between the parties and the existence or otherwise of the asserted substantive legitimate expectation depends on an analysis of the history to date.

50. There are similarly live issues as to whether the current accommodation of asylum seekers in excess of the numbers in the SUDP and BDP is lawful and whether the Defendant's approach has been unlawful as being contrary to the *Padfield* principle and/or in breach of the Defendant's Public Sector Equality Duty.

51. However, for the reasons I will explain below the challenge in respect of the failure to consult in advance of the placement of asylum seekers in the Ibis Hotel is academic. The challenge to the rationality of the placement of asylum seekers in the Ibis Hotel on the footing that it was not suitable accommodation is similarly academic and in neither case is there a good reason for the court to consider the matter.

Grounds 1 and 6: Were the Defendant's Actions contrary to a Substantive Legitimate Expectation or to Policy?

The Relevant Legal Principles.

52. The actions of a public body can give rise to a substantive legitimate expectation that it will act in a particular way with the consequence that a failure to act in that way will amount to an abuse of power which the court will overturn.

53. Where the legitimate expectation is said to have arisen because of a promise given or representation made by the public body then the promise or representation must be "clear, unambiguous and devoid of relevant qualification" when read in the way it would reasonably have been understood by those to whom it was addressed: *Paponette v Attorney General of Trinidad and Tobago* [2010] UKPC 32, [2012] AC 1 at [28] and [30] per Lord Dyson. The person invoking the legitimate expectation does not have to have known of it at the time it was made nor to have acted in reliance on it provided that the representation was made to the public at large or to a large class of persons: *R (RD) v Worcestershire County Council* [2019] EWHC 449 (Admin) at [82] and following per Nicklin J.

54. Where there is a substantive legitimate expectation it will be unfairness amounting to an abuse of power for the public body to act contrary to the expectation unless doing so can be "objectively justified as a proportionate response, having regard to a legitimate aim pursued by [the public body] in the public interest": *R (Alliance of Turkish Businesspeople Ltd) v Secretary of State for the Home Department* [2020] EWCA Civ 553, [2020] 1 WLR 2436 at [12] per Flaux LJ. It will also be permissible for a public body to depart from a legitimate expectation where it is required to act in a particular way as a matter of law: *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at [68] per Laws LJ. The court is the arbiter of whether the departure from the legitimate expectation is objectively justified: *Paponette* at [37] –

[39]. The proportionality of the action in breach of the expectation is to be assessed by reference to the four-stage test set out by Lord Reed in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] AC 700 at [74].

55. Where a public body has published a policy governing particular circumstances then it must have regard to that policy and act in accordance with it unless having had such regard it gives clear reasons for departing from it: *Swords v Secretary of State for Communities and Local Government* [2007] EWCA Civ 795 at [50] – [52] per Wilson LJ; *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, [2011] 2 WLR 671 at [26] per Lord Dyson; and *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546 at [29] – [30] per Lord Wilson. However, the test here is primarily one of rationality. Provided that the public body has had regard to the policy and has given clear reasons for departing from it then the decision will only be susceptible to challenge on the ground of irrationality. However, it is not every policy which will bring this principle into play. Rather, it only applies to policies which involve some form of dealing with the public and it does not apply to policies governing the internal administration of government departments and not involving the exercise of public power: *R (Good Law Project) v Prime Minister* [2022] EWCA Civ 1580, [2023] 1 WLR 785 at [55] – [59].

56. Finally in respect of the law applicable to these grounds, it is to be noted that where there is a consideration which a decision maker is required to take into account then provided it is taken into account the weight to be attached to it is a matter for the decision maker subject only to a rationality challenge. Moreover, where there is a consideration which is potentially relevant but which the decision maker is not required to take into account then a decision not to have regard to the factor can, again, only be challenged on the basis of rationality: *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3 at [30] – [31] per Lord Carnwath.

The Relevant Documents and Exchanges.

57. The Claimant relied on a number of documents which were said to have given rise to the legitimate expectation and/or to demonstrate its existence. It will be necessary to look at these with some care and to have particular regard to their context. As will be seen some of the documents on which the Claimant relies were exchanges between the Defendant and Serco. The Defendant says that those were internal documents and that those exchanges were not known to the Claimant or to other local authorities before these proceedings and so cannot be relevant to the alleged legitimate expectation. It is right that such exchanges cannot in themselves have given rise to a legitimate expectation on the part of the Claimant. In addition, the person to whom a comment is made or to whom a direction is given is a very important aspect of the context of the comment or direction. Any assessment of the effect of an exchange must take account of the context of the exchange. The Defendant's instructions to Serco and other contractors were instructions to her contractors and not representations to local authorities. Although that is a very relevant consideration in assessing the effect of those instructions they cannot be dismissed as wholly irrelevant in the way the Defendant seeks to do. It is to be assumed that the Defendant was being accurate in what she said to Serco and the instructions to Serco can throw light on the context of the exchanges with the Claimant. In addition, those instructions will potentially be relevant to the question of whether the Defendant had a policy and, if so, what it was.

58. On 31st January 2017 the House of Commons Home Affairs Committee published a report on "Asylum Accommodation". Section 4 addressed Dispersal Accommodation and under the heading "Local Authority Consent" the report said in paragraph 34:

> "Under the terms of the COMPASS contracts dispersal accommodation can only be located in areas where the local authority has agreed to take asylum seekers, up to a defined `cluster limit' of no more than one asylum seeker per 200 residents (though there are examples of this limit being breached)."

59. The Defendant points out that the report was in respect of the former arrangements which were in place before the introduction of the Full Dispersal Model. She also points out that the COMPASS contracts have now been superseded. The Claimant, for its part, places stress on the use of the word "limit" to describe the 1:200 Ratio. It is apparent that this passage occurs in a section of the report in which the Committee was focussing on the work of the contractors through whom the Defendant provided accommodation. It is unclear from the extract provided to me whether the Committee was describing the 1:200 Ratio as a limit imposed by the Defendant on the contractors or as a limit beyond which the Defendant would not go and the former appears the better reading from the context.

60. The Home Affairs Committee returned to the topic of asylum accommodation in its report of 8th March 2019. This addressed the proposed arrangements to replace the COMPASS contracts. The report included a passage reciting the Home Office's response and that included a list of "key principles" which had been agreed between the Home Office and the Local Government Chief Executive Group. Those principles included:

> "Commitment to a fair and equitable asylum dispersal system in the UK. This will require redistribution across regions, an agreement to operate within the 1:200 cluster limit and an allocation process that is cognisant of local intelligence relating to deprivation and cohesion in particular;"

61. The Defendant points out that this was before the introduction of the Full Dispersal Model but the Claimant says that it, again, shows the 1:200 Ratio being seen as a limit and indicates that the limit came about through agreement.

62. In October 2019 the Home Office and the Local Government Associations drew up a Memorandum of Understanding. The Memorandum was not formally signed off by ministers but the Claimant contends that this does not prevent it being recognised as a joint understanding of the approach to be taken. It is not suggested by the Defendant that there was any formal retraction on her part of the principles set out in the Memorandum. The purpose of the Memorandum was explained thus:

> "The overriding purpose of this MoU is to transform the relationship between local and central government, recognising each other as partners along with the accommodation providers in the delivery of asylum dispersal. Underpinned by a set of principles of joint working, this partnership will work collaboratively to deliver a more equitable and place based asylum dispersal system which meets the demands of the UKs international obligation to asylum seekers and refugees and improves outcomes for asylum seekers and the communities in which they reside."

63. The Memorandum provided for the work it envisaged to be overseen by a Group consisting of the Home Office and the Local Government Chief Executive Group on

Asylum. The Memorandum set out what would be required for there to be "a more equitable and place based approach to dispersal". It said:

> "Unless there is mutual and ongoing agreement to operate otherwise or if there is a change with a return to agreed levels within an agreed timeline, the Group has agreed that the 1:200 cluster limit should be the maximum within a council and ward level...
>
> ...Reflecting all the above, large scale and long term use of hotel accommodation as a contingency arrangement should only be utilised once capacity across the estate has been exhausted, and only with the advance agreement of the council."

64. In March 2021 the local authorities in the West Midlands wrote to the Defendant saying that they were suspending participation in the arrangements for housing new asylum seekers. Their concerns were reiterated in a letter of May 2021 and that correspondence was the precursor to the judicial review proceedings to which I have referred above.

65. The Defendant replied on 3rd June 2021. In her minister's letter the Defendant said that she was undertaking a review of dispersal arrangements (this ultimately led to the adoption of the Full Dispersal Model). The Defendant said that she did not wish to pre-empt the outcome of the review but did set out her understanding of the position as it was at that time and of her initial thinking. In response to a proposal from the local authorities that limits should be set at ward rather than local authority level the Defendant said:

> "Currently, we will not disperse asylum seekers into a Local Authority area in numbers exceeding 0.5% of the census population, or (1:200)."

66. As part of the review of dispersal arrangements a note was provided to ministers setting out information as to the operation of the asylum dispersal scheme. Under the heading "local authority control around dispersal" this said:

> "there is a general agreement that we will limit the number of asylum seekers in each LA area to one support[ed] asylum seeker to every 200 of the population"

67. The ministers asked for further information and a note of 17th June 2021 set out a number of options. In respect of each option it was suggested that the Defendant "continue to honour the 1:200 limit in each local authority area". The same expression was used in a paper of 24th March 2022 proposing a move to the Full Dispersal Model.

68. A contract change note of 14th December 2022 provided to contractors contained the following:

> "D1.7.3.1 The Provider having unrestricted ability to source and acquire bedspaces in all Local Authorities up to the established cluster limit of 1 Service User to 200 residents in the Region;"

69. There was a further exchange between Serco and the Defendant in December 2022. Serco was seeking the Defendant's support in procuring "to 100% of the agreed cluster level (1/200) without restriction". In the Defendant's consideration of how to respond Helen Hurley, the Informal Consultation Lead in the Asylum and Protection Transformation team said:

> "They also seem to be suggesting that they will need to procure up to 1:200 limit in certain areas regardless of what the regional plans says as they will not meet their cap. We have been very clear that 1:200 remains the capacity measure for the plans but my understanding is that this is a limit not a target..."

70. Reference was made to two Serco documents from January 2023.

71. The first was entitled "Principles on Engagement and Joint Working". This included the following:

> "Whilst the AASC contract stipulates that Serco must operate at a density cluster limit of 1 asylum seeker for every 200 members of the Indigenous population at a borough level before additional procurement must cease; and that density levels below this are not a material reason in isolation that Local Authorities can provide in requesting a restriction on procurement, Serco will continue as has always been the case to be open to discussions with Local Authorities where there are concerns related to more acute community impact in this context, and would seek to explore and address such concerns through the relationships held with the Property & Stakeholder Engagement teams."

72. The second entitled "Procurement Consultation Process" outlined the postcode consultation process which Serco undertook with local authorities. It said:

> "The current AASC contract states that Providers should operate at a Local Authority cluster density limit of 1 asylum seeker per every 200 members of the population at borough level and this continues to be the threshold that Serco and other AASC providers nationally are contracted to deliver against, however it is acknowledged that a national dialogue remains underway between the Home Office Transformation Team and Local Authorities at a regional level on volume parameters currently."

73. Both of those passages suggest that Serco was approaching matters on the basis that it was to work up to the 1:200 Ratio with that being a threshold laid down in the AASC contract.

74. On 19th May 2023 Paul Bilbao, the Home Office Deputy Director of Full Dispersal, wrote to the Defendant's contractors about "Full Dispersal and the Regional Plans". Under the heading "1:200" he said:

> "I also wanted to take some time to touch on the issue of 1:200 which I know has come up in recent meetings and to clearly set out our position.
>
> 1:200 was a measure in contractual arrangements that go back some time, which would trigger a conversation with a particular place about the concentration of asylum seekers in an area. I want to be clear that at no stage has it been described as a target to aim for and at various times over the years we have paused procurement in a place, below the 1:200, where it has been right to do so based on an evidenced position.
>
> In relation to procurement in general, we ask you, through the contract, to liaise and consult with local government on a range of factors when procuring accommodation, of which 1:200 would only be one consideration amongst many. It is equally important to consider the availability of services, local authority development plans, intelligence from Police and Health colleagues as well as careful consideration of social cohesion and the safety of the people we place in localities as well as the wider community. No one measure takes higher priority than another and it is important that we consider all relevant factors when procuring accommodation.
>
> In this context I want to be clear that in relation to the regional plans we are asking you to work to the numbers set out in the plan or help us to change those numbers where they are not deliverable. Those discussions should be dynamic and the trigger for conversations with local government is not linked to approaching or exceeding 1:200."

75. In September 2023 Gloucester City Council had written to the Defendant seeking a pause in the procurement of DA in its area. In his reply Mr Bilbao said:

> "… the 1:200 ratio has always been a long-standing advisory/guiding principle set by the Home Office and applies to the whole of a local authority area and is not set at ward level. As you can appreciate, whilst our accommodation providers have always tried to comply with the 1:200 guiding principle, in recent years this has become increasingly difficult owing to the exponential rise in the number of claims for asylum."

76. In an update of March 2024 the Defendant provided the West Midlands local authorities with detailed figures setting out the position at that time. That update included an annex entitled "1:200 threshold". In that the 1:200 Ratio for each authority was given under the heading "Capacity (1 in 200)". There was also a percentage figure showing the relation of the number of asylum seekers accommodated to the 1:200 Ratio and the column containing those figures was entitled "Proximity to 1/200 threshold – total accommodated population".

77. In May 2024 Andrew Larter, the Chief Operating Officer responsible for Asylum Support, Resettlement and Accommodation in the Home Office wrote to local authorities announcing the introduction of AAPs. Mr Larter said:

> "We have worked hard to carefully consider the feedback we have had, recognising what has worked and what hasn't. We want to work with you and with our providers on achieving this, based on the key developments below:
>
> • Local Authorities across the UK have asked for the Home Office to include wider asylum accommodation into the plans and we can confirm that the national allocations under the new plans include CA and large sites, as well as DA and Initial Accommodation. We have therefore renamed them as Asylum Accommodation Plans to reflect this.
>
> • The new Asylum Accommodation Plans take account of dispersal under previous plans, and we will pause procurement of further DA where areas are over their agreed plan number.
>
> • We will ensure adherence to the 1:200 threshold with routes for council level engagement when the 1 in 200 is exceeded at ward level."

78. Under the heading "Achieving against the plans" Mr Larter set out a number of measures which would be taken but began by saying "we know we will need to increase our DA estate nationally in order for us to exit CA".

79. The introduction of the AAP was preceded by presentations to local authorities and on 9th May 2024 there was a presentation to the West Midlands local authorities. The following appear from the slides used on behalf of the Defendant in that presentation.

80. In setting out the background to the Full Dispersal Model reference was made to the legal obligations under sections 95 and 97 of the 1999 Act. The "Core Principles" of Full Dispersal were stated and the first and third of these were:

> "(1) Full Dispersal continues to promote a fair and equitable approach to the national, regional and local distribution of asylum seekers across the UK in a way that both takes into account all asylum seekers in all asylum accommodation and seeks to reduce of pressures in areas with unsustainable numbers
>
> ...
>
> (3) Increasing our Dispersal Accommodation estate is critical in enabling us to reduce our reliance on contingency accommodation"

81. Illustrative figures were set out based on a projected peak demand to accommodate approximately 127,000 asylum seekers in 2024. The sidebar points out that "none of the targets outlined in the following slides are above the 1:200 number for each respective LA". The illustrative figures noted that Coventry and five other West Midlands authorities were accommodating asylum seekers in excess of their respective SUDP figures. The column headed "New Procurement Plan" identified the number of bedspaces which needed to be procured in each authority to bring the capacity there up to the BDP figure and the entry for Coventry and the five other authorities in the same position was "0".

82. Mr Brown submitted that the May 2024 documents represented the high point of the Claimant's contention that the 1:200 Ratio and the SUDP and BDP figures had been put forward as limits. He said that even in those documents the context of the obligation to accommodate asylum seekers was emphasized. He submitted that, when read in context, the various figures were being put forward as targets towards which the Full Dispersal Model was working and not as limits to which the Defendant was committing herself.

83. In May 2024 Serco had written to the Defendant requesting a 10% buffer to enable better management of the cluster limit. On 6th June 2024 the Home Office Full Dispersal Team replied explaining why that request was being refused. The Claimant relies on the following passage in that reply:

> "In respects to your request for a 10% buffer in the cluster limit, the Home Office is unable to agree to such a request. The cluster limit has been de facto Home Office policy for decades, and has been reiterated as such on multiple occasions. We have always made it clear to all stakeholders, including our providers and local authorities, that the cluster limit is the upper limit of how many asylum seekers should be accommodated in a specific local authority area, and it is in effect a final 'red line'. As such, we do expect that all our providers manage procurement and pipelines across all areas, in a manner that is cognizant of this red line. Furthermore, AASC contracts between the Home Office and our provider, do not out that the 1 :200 cluster limits are a safe or sustainable limit on the quantity of dispersal in an area. Since the announcement of Full Dispersal in 2022, the Home Office has provided our accommodation providers with new limits for procurement in every LA they operate across, via the regional plans. It is our expectations that all providers should work to those regional plans and not the 1 :200 cluster limits as appears to be the case in some instances."

84. The Claimant accepts that the reply was sent to Serco but points out that the Defendant said in that email that the position had been made clear both to contractors and to local authorities that the 1:200 limit (and the Claimant relies also on the use of that word) was a "final red line".

85. The Claimant also relied on comments made at the July 2024 West Midlands Full Dispersal Governance meeting. The minutes place the following exchange in a section headed "Serco Update" but it is clear from the language of the exchange that Inderjit Kaur, who represented the Claimant at that meeting, was right in saying that the answer was given by a Home Office representative. The exchange was:

> "Q: Would the Home Office move closer to fair redistribution. If they are replacing properties in high dispersal areas, there would be perhaps less motivation to procure in areas with low dispersal. There should be reference to 1:200.

> A: The ambition is to ultimately bring areas with high dispersal over target down and to have the bed spaces elsewhere. If they are procuring in Coventry this will only be for backfilling hand back properties. It is important for the Home Office to show what they are doing in uplifted area. The Home Office has new Ministers and they may have a new steer.
>
> Where local authorities have gone to 1:200 they have take steps to make sure occupancy levels are brought to below that level."

86. The minutes of the meeting record that exchange in the form I have just quoted namely "they have take steps". Miss Kaur says that this should read as "they have to take steps". Miss Kaur says that she recalls that being said. The Defendant says that the passage should be read as "they have taken steps". The latter is the more natural reading in the context of the preceding answer. However, it is not suggested that Miss Kaur was not giving her honest recollection and I will proceed on the basis that Miss Kaur understood the comment as being "they have to take steps".

87. On 30th August 2024 Mr Bilbao wrote to the Claimant in relation to the AAP and "to confirm what they mean for Dispersed Accommodation in Coventry". Mr Bilbao said:

> "Within these new plans, Coventry has been allocated a procurement plan of zero. This means that based on the new model and indexing, your local authority is already housing the allocated number of asylum seekers. Therefore, your local authority area is not required to have any additional Dispersed Accommodation procured at this moment in time.
>
> Under the new plans this is called 'Maintain and Replace'. This means that our accommodation providers will be expected to maintain the current dispersed estate or service user levels within your Local Authority. They will however be expected to procure like for like replacements for those bedspaces that are lost from the estate via hand backs or due to other reasons, such as deterioration in quality. Therefore, you will likely see procurement requests coming through to your Local Authority, however this should only to be to replace any bedspaces that are lost.
>
> We believe this strategy will be beneficial to all parties in allowing us to maintain the much needed capacity within the dispersed estate, whilst ensuring our estate is composed of safe and suitable accommodation. This strategy of 'Maintain and Replace' will be closely monitored and reviewed."

88. As explained above, the Defendant has now moved away from the Maintain and Replace approach in Coventry and new accommodation is no longer being procured to replace that which falls away.

89. At the October 2024 monthly meeting Miss Kaur protested that because of the numbers of asylum seekers being accommodated in Coventry the Maintain and Replace approach was unjustified there. Nicholas Walter and Diana Ogonyo of the Home Office responded to Miss Kaur and to other similar points by emphasizing the demands which had to be met and the need for flexibility. The following exchanges are of note:

> "NW. The conversation with the Local Government Association (LGA) was that while there was a rebalancing process taking place nationally, and making sure that equitable distribution does happen, the levels of accommodation that are in place have to be maintained. There isn't enough accommodation in the system so the levels have to be held where they are, however that was not a blanket agreement forever in terms of full dispersal.

> Once the estate is rebalancing naturally then there can be talks about those areas that are currently over. In terms of the pipeline for Coventry, there are none listed, so there are no bed spaces coming online.
>
> It will be raised with the LGA to see if they are happy with the replace and maintain approach nationally.
>
> IK. Shouldn't it be focused on a place by place basis? It would be different if Coventry was only slightly over. But Coventry is not and no review is happening. There has to be a compromise.
>
> Diana Ogonyo (DO). Currently Coventry has nothing in the pipeline that is being used to replace any properties that are being handed back. Also due to Coventry's exceeding the limit, there won't be any active procurement, not even to replace. We are also working hard to ensure that where it is appropriate and we can, that some of the lower quality stock is being divested.
>
> That is balanced against the need to maintain and protect the capacity there is in the system because it is needed.
>
> NW. As we go through the quarterly reviews all the feedback that's received from the LAs is fed into the working groups and the LGA. The consideration is do we move away from 'maintain and replace' either in full or in part and that will be made through those forums.
>
> ...
>
> MH are the contingency sites that have been planned for the region taken into consideration?
>
> NW. IA accommodation is directly factored into these plans. IA sites should appear in the pipelines and then be counted against the bed space plan. CA is treated differently and isn't included in these plans. If it was included there wouldn't be the flexibility to obtain enough DA to get out of CA."

90. In November 2024 Jennifer Mckeown of the Home Office wrote to the Claimant saying:

> "At the West Midlands Governance Forum we discussed the position of Maintain and Replace in Coventry given your position against your plan, and with the recent CA being stood up in your local authority area.
>
> Given you are over the 1:200, we have asked Serco not to actively procure against handbacks of bedspaces in your local authority for the next two months while we assess the situation – as you will be aware there are no bedspaces in the pipeline for Coventry at present. We will review this again at the end of January and have a conversation with you at that time.
>
> Given we have recently stood up CA in parts of the country, reducing DA bedspaces is very challenging as we need to build our DA estate in order to exit hotels. However, as mentioned in the call, the Home Office is sensitive of the situation in Coventry."

91. There was a multi-agency forum meeting on 14th November 2024 to discuss the procurement of the Ibis Hotel. Miss Kaur quotes from the minutes of that meeting and then adds:

> "During the same meeting, albeit not recorded in the minutes, I recall that Dalvinder Panesar (West Midlands Strategic Migration Partnership .. Lead Officer) asked the Home Office to confirm that they had agreed nationally they would not procure new asylum seeker contingency accommodation in areas that had fulfilled their agreed plans. I understood this was something she had been told by the Home Office prior to this

> meeting on 14 November. However, the Home Office representative responded that due to pressures this was no longer the policy."

92. The Claimant relies on this as showing that before 14th November there had been an assurance that CA would not be procured in areas where the number of accommodated asylum seekers was at the planned level. However, the details are sketchy at best. The evidence is Miss Kaur's recollection of Miss Panesar asking for confirmation of something which Miss Panesar had been told previously. The precise terms of the response given to Miss Panesar are also not clear. Even if there was an acknowledgement that there had previously been a policy to that effect it is of note that on 14th November 2024 it was said that this was no longer the policy because of the pressure of the need to accommodate asylum seekers. There is no indication of when any policy was adopted nor of when the Defendant stopped applying it.

93. On 5th February 2025 the Defendant circulated an internal email with the subject line "areas over/approaching 1:200". This pointed out that nationally there were seven local authorities "that have exceeded the 1:200 limit" and noted that there had been increases in DA occupancy in three of those. The Defendant says that this demonstrates both that it is rare for a local authority to be accommodating in excess of the 1:200 Ratio and that the Defendant is seeking to prevent that happening. The Claimant points to the use of the word "limit" and submits that its position as one of those seven authorities demonstrates the extent to which it has borne a greater share of the burden than other local authorities.

Policy or Legitimate Expectation: the 1:200 Figure.

94. The Claimant's case is that there was a substantive legitimate expectation that "the number of asylum seekers accommodated in the Council's area at any time would not exceed 1:200 of the local population".

95. The Claimant's contention is supported by the longstanding and repeated references to the 1:200 Ratio and its description as being a limit. That ratio is described as a limit in dealings with local authorities as well as with the Defendant's contractors. It is also of note that the AAP algorithms were set so that the SUDP figure for each local authority would always be less than the 1:200 Ratio.

96. The exchanges between the Defendant and the contractors are relevant as part of the background and as throwing some light on the Defendant's understanding of its role as a limit. They cannot, however, amount to a representation to the local authorities or to the public generally such as to give rise to a legitimate expectation. It was open to the Defendant to instruct her contractors that they were not to exceed a particular limit without representing to the local authorities that she would herself be bound by that limit. It is of note that the references to the 1:200 Ratio as a limit which were made in the exchanges with contractors (such as the reference to it being a "final red line") were in markedly starker terms than in the correspondence with and statements to local authorities. It is on the latter that any legitimate expectation must be based. The references there were in rather more nuanced terms.

97. The various statements to and exchanges with the local authorities are to be read in context. That context poses the fundamental difficulty for the Claimant's case that there was a legitimate expectation or a policy to the effect that the 1:200 Ratio would not be exceeded. A substantive legitimate expectation can only arise from a clear and

unambiguous representation made without relevant qualification. In order to determine what is being represented in a particular statement it is necessary to have regard to the way in which it would reasonably have been understood. The context of a statement is crucial to the assessment of how that statement would reasonably have been understood. Here the following aspects of the context are significant:

i) The Defendant is obliged by law to provide accommodation for destitute asylum seekers and for those asylum seekers who are at risk of destitution. Not only are the statements to be seen against the background of that duty but it is well-established that there cannot be a legitimate expectation that a public body will act in breach of a legal duty. The expectation which the Claimant advances would create a risk that the Defendant would be unable to perform her statutory duty under the 1999 Act.

ii) The number of asylum seekers to be accommodated is not fixed. That number has risen substantially at times and the Defendant has often had little, if any, notice of the increase. The Defendant does not have control over the number of asylum seekers whom she must accommodate if she is to comply with her duty. That is a potent factor against reading the statements as being a representation that the Defendant would not place more than a fixed proportion of asylum seekers in a particular area. Similarly, it is a potent factor against reading the statements as indicating any time scale for the movement to wider dispersal. The proper interpretation of the statements might well be very different if the number of asylum seekers to be accommodated were fixed but it is not fixed. Both the Defendant and those reading or hearing the statements knew that the number was not fixed and was liable to increase.

iii) The Defendant was moving to a wider dispersal of asylum seekers. However, that was necessarily a process which required a period of time because suitable accommodation has to be identified and procured.

iv) There were a number of local authorities, including the Claimant, in which more than the 1:200 Ratio of asylum seekers were being accommodated at the time of the statements. It is not realistic to read the statements as indicating that position would be changed immediately and it is of note that no time scale was laid down for the move to full dispersal.

v) Although the 1:200 Ratio was a longstanding figure, it was an arbitrary one. There was no objective assessment that more or less than that figure was an appropriate number of asylum seekers to accommodate in a particular area. Nor could it objectively be said that the 1:200 Ratio was the appropriate limit in every local authority area notwithstanding the different circumstances of different local authorities. The contrast with the AAP is of note in that regard.

98. Those aspects of the context were known to the Claimant and to the other local authorities to whom the statements were made and the way in which they would have understood the statements is to be assessed against the background of those matters and of the authorities' knowledge of them.

99. In light of those matters the exchanges and the statements made on behalf of the Defendant cannot properly be understood as having given rise to a substantive

legitimate expectation in the stark terms advanced by the Claimant. The context operates even more strongly against the Claimant's contention that there was a policy to the same effect. It is also of note that the legitimate expectation for which the Claimant contends would amount to an expectation that the Defendant would not use bedspaces which had already been procured and would not do so even if there were other asylum seekers in the procured accommodation and even though there was a need to place further asylum seekers. It is simply unrealistic to suggest that the Defendant's statements could reasonably have been understood as having that effect.

100. However, the Defendant's initial stance that the 1:200 Ratio operated solely as a trigger for engagement with a local authority understates the significance of that figure. The documents I have quoted above make it clear that the Defendant was proceeding on the basis that the 1:200 Ratio carried more weight than that.

101. There was considerable force in Mr Brown's submission that the statements and exchanges amount to an acknowledgement by the Defendant that the fact that the 1:200 Ratio had been or would be exceeded was a relevant consideration which had to be taken into account if the Defendant had a choice as to the local authority area in which asylum seekers were to be accommodated. On balance, however, I am satisfied that the effect of the statements goes beyond that. In those statements the Defendant is making clear that reducing the number of asylum seekers in each local authority area to below the 1:200 Ratio is a target which the Defendant is working towards. They were capable of giving rise to a legitimate expectation that the Defendant would continue to work towards that target. They were a demonstration that it was her policy to put in place arrangements to remove the need to exceed that figure. However, that is very different from the legitimate expectation and policy for which the Claimant contended.

102. Mr Oldham sought to argue that in any event the Defendant was not taking adequate steps to move to wider dispersal. He pointed to Coventry's position as an outlier; to the fact that, until recently, it was one of a limited number of local authorities where the 1:200 Ratio was exceeded; to the fact that there was unoccupied accommodation in some other local authority areas; and to the fact that there remained some local authorities where no asylum seekers were accommodated. In reality, however, those points amount to an argument that the Defendant should be moving more quickly to achieving full dispersal and to reducing all local authorities to below the 1:200 Ratio. That does not amount to a breach of any legitimate expectation which can properly be said to have arisen. That is because there is no basis for concluding that the Defendant was committing herself to achieving full dispersal by a particular date.

103. The context is again of particular relevance. The number of asylum seekers needing to be accommodated is unpredictable and liable to increase without warning. Not all of the procured accommodation will be suitable for every asylum seeker needing accommodation. In addition, time is needed to procure further accommodation. In light of those matters the Claimant has not shown that the Defendant is not genuinely seeking to achieve full dispersal nor that her action is to be regarded as so ineffective as to amount to a failure to move towards full dispersal. A deliberate decision to halt moves to full dispersal might well amount to a breach of a legitimate expectation or to a change of policy as might inaction amounting to a failure to move towards that target. The Claimant has not, however, come close to establishing that such is the position here.

104. It follows that this aspect of grounds 1 and 6 fails.

Policy or Legitimate Expectation: the SUDP and BDP Figures.

105. Here, again, neither the proposed legitimate expectation nor the policy for which the Claimant contends are tenable when matters are seen in context.

106. The SUDP figure is avowedly and expressly a planning figure. As I have explained above, the Service User Demand Plan is a plan to work out how many asylum seekers should be accommodated in each local authority area in order to achieve full dispersal. The process is one of moving away from circumstances in which asylum seekers were only accommodated in volunteering local authorities to a position where there are asylum seekers accommodated in every local authority area. As already noted time is needed for that process to be completed because suitable properties have to be identified and procured.

107. The SUDP is, therefore, to be seen as a target. The figures presented to the monthly meetings demonstrate that it was regarded in this way because those figures show the extent to which the number of asylum seekers in some areas needed to be reduced and the number in others to be increased to arrive at the position envisaged in the Service User Demand Plan. As with the 1:200 Ratio any legitimate expectation or policy is at the most one that the Defendant will genuinely seek to move to the position where the SUDP figure is not exceeded.

108. In this regard there was considerable force in the point made on behalf of the Defendant that the SUDP for Coventry (and for other authorities) has been repeatedly revised downwards. This demonstrates the moves being made to full dispersal. It would also have the effect if the Claimant's contention is correct that there would be repeated breaches of the asserted legitimate expectation. The downwards reduction of the SUDP can, if seen in isolation, give the impression of the limit being exceeded even if there is no change in number of asylum seekers. Thus, if the number of asylum seekers being accommodated is at the SUDP figure on a given date then a downwards reduction of the figure would mean that the limit will be exceeded unless the number of asylum seekers actually accommodated is reduced at precisely the same time. The statements about the SUDP figure cannot realistically have been understood as having that effect. Putting it more shortly, the extent of the excess of the number of asylum seekers accommodated over the SUDP figure at a given time can be a function of the progressive reduction of the move to full dispersal. It demonstrates that the arrangements were working as intended and reinforces the conclusion that the SUDP figure was to be seen as a target and not a limit.

109. The BDP figure is closely related to the SUDP figure. It is also a planning figure and a target. There is a logical distinction between the two and it is open to the Claimant to say that there is a difference between an expectation that the SUDP figure will not be exceeded and an expectation that the Defendant will not procure bedspaces in excess of the BDP figure. However, although there is such a distinction as a matter of logic, that is an artificial approach given that the BDP figure is an assessment of the number of bedspaces which need to be procured so as to ensure that asylum seekers up to the SUDP figure can be accommodated. Those aspects of the factual context which preclude the alleged legitimate expectation or policy in relation to the SUDP figure have the same effect here.

Policy or Legitimate Expectation: No Additional Procurement.

110. The Defendant has not procured accommodation in Coventry for DA or IA since 2023. The issue on this part of grounds 1 and 6 is whether the exchanges on which the Claimant relies amounted to a representation that there would be no new procurement of accommodation in Coventry even for CA or demonstrated that there was a policy to that effect.

111. The Claimant says that the legitimate expectation arose from the statements at the July 2024 meeting (paragraphs 85 and 86 above); the 30th August 2024 letter (paragraph 87); the October 2024 meeting (paragraph 89); and the November 2024 meeting (paragraphs 91 and 92).

112. The documents and exchanges on which the Claimant relies do not show a representation capable of giving rise to a legitimate expectation that the Defendant would not procure further accommodation in Coventry even if it became necessary to do so in order to provide CA. Nor has the Claimant demonstrated that there was a policy to that effect. The exchanges and documents are to be read against the context which I have described above. When they are read in that way the following points emerge:

    i) The statements made on behalf of the Defendant in July 2024 are expressed as aspiration rather than commitment.

    ii) The August 2024 letter was addressing DA and not CA.

    iii) At the October 2024 meeting the Defendant's representatives expressly made it clear that CA was being treated differently from DA and IA. The comments made at the meeting are to be seen in that light and as being addressed to DA and IA but not to CA.

    iv) I have already noted that the background to the exchange with Miss Panesar at the November 2024 meeting is unclear. The response to Miss Panesar's question was that the policy which was said to have been applied previously was no longer in place. If there were other material establishing the details of what the policy was and the terms in which it was applied then the comments at the meeting might give some support to that material. The comments at that meeting do not, of themselves, indicate that there was a policy or a representation giving rise to a legitimate expectation. This part of ground 1 is put forward as a legitimate expectation that there would not be fresh procurement in Coventry and that meeting provides no support for that contention.

113. The picture that emerges from the material is that the Claimant was pressing the Defendant to give a commitment not to procure any further accommodation in Coventry. It is apparent that although the Defendant expressed sympathy for the Claimant's position and did indicate that she would not procure accommodation for DA or IA she did not represent that there would be no procurement for CA.

Grounds 1 and 6: Conclusion.

114. It follows that grounds 1 and 6 fail.

Ground 2: Breach of a Procedural Legitimate Expectation.

115. The parties are agreed that there should normally be consultation before the Defendant procures CA in the area of a local authority. The Claimant accepts that this will necessarily be a limited form of consultation.

116. The parties differ in their characterization of the source of the obligation to consult. The Claimant says that it arises by reason of a procedural legitimate expectation such that an objectively good reason is required if there is not to be consultation. The Defendant says that it is a matter of policy from which she can depart provided that it is rational for her to do so. In the circumstances here the difference between their positions is even narrower because the Defendant contends that if an objectively good reason was required then there was one in respect of the procurement of the Ibis Hotel.

117. The procurement of the Ibis Hotel without consultation was a single event. The use of the Ibis Hotel has now ceased. The issue of whether the failure to consult was in breach of a procedural legitimate expectation is, therefore, academic. Given the narrowness of the difference between the parties there is no good reason to depart from the general rule that the court will not determine academic issues. This is particularly so given that any determination of whether the circumstances amounted to an objectively good reason for the Defendant's failure to consult would necessarily be highly fact specific.

Ground 3: Breach of the *Padfield* Principle.

118. The *Padfield* principle is that "a discretion conferred by statute must be exercised so as to promote and not to defeat the object of the legislation in question" (per Sir Terence Etherton MR in *R (BritCits) v SSHD* [2017] EWCA Civ 368, [2017] 1 WLR 3345 at [63]). Action which has the effect of defeating or failing to promote the object of the legislation from which it is derived is, for that reason, *ultra vires*.

119. In ground 3 the Claimant asserts that one object of the 1999 Act is that accommodation for asylum seekers should be distributed across the country so that there is not a disproportionate number of asylum seekers in any one area. It says that by procuring accommodation in Coventry such that the number of asylum seekers is in excess of Coventry's SUDP and of the 1:200 Ratio the Defendant has thwarted and/or failed to promote that principle. The Claimant contends that the procurement of accommodation in those circumstances is, accordingly, unlawful. In his skeleton argument Mr Oldham made it clear that the challenge was not just to the procuring of new accommodation but also to the retention of existing accommodation and to the continued accommodation of asylum seekers in excess of the SUDP figure.

120. The Claimant accepts that one object of the 1999 Act is "to prevent asylum seekers and their dependants from becoming destitute while they are in this country waiting for their asylum claims to be processed" (per Brooke LJ in *R(A) v National Asylum Support Service* [2003] EWCA Civ 1473, [2004] 1 WLR 752 at [85]). It contends, however, that the dispersal of asylum seekers across the country is also an object of the 1999 Act.

121. In contending that dispersal was also an object of the 1999 Act Mr Oldham relied on the terms of sections 100 and 101 of the Act. He said that those provisions, particularly when regard was had to the Explanatory Notes, indicated that the Act had the object of dispersing asylum seekers. In addition, Mr Oldham referred to a document produced by the Defendant. This was the "Funding Instruction for Local Authorities: Asylum Grant 2022 – 2023". That document set out the terms under which the Defendant would make

funding available to local authorities to assist with the costs of supporting asylum seekers under the Full Asylum Dispersal plan. In the definitions section the document said, at 1.2:

> *" "Asylum Dispersal"* means the policy of dispersal of those seeking asylum accommodation in the UK introduced by the Immigration and Asylum Act 1999. The legislative intention was that by distribution across the country no one area would be overburdened by the obligation of supporting asylum seekers."

122. Mr Oldham submitted that the objects were not in tension let alone incompatible because the dispersal of asylum seekers was to be regarded as assisting in preventing destitution.

123. It was common ground that the dispersal of asylum seekers is desirable and that the burdens flowing from their presence should be shared between local authorities across the country. I am satisfied that the Defendant was right to say that desirable though dispersal is it was not an object of the 1999 Act. The object of this part of the 1999 Act was the prevention of destitution with the provision of accommodation for asylum seekers being an aspect of the action taken to prevent destitution.

124. The view expressed by the Defendant in the Funding Instruction can carry little weight. It was a view expressed by way of assertion rather than a reasoned analysis. Such assertion does not assist this court in the task of identifying the object of the 1999 Act: a task which involves having regard to the terms of the Act with a view to identifying the intention of the legislature and the object at which the Act was directed.

125. Similarly, the reference to sections 100 and 101 does not assist the Claimant. Even when regard is had to the Explanatory Notes, sections 100 and 101 do not indicate that the dispersal of asylum seekers was an object of the 1999 Act. Those sections give the Defendant power to require the cooperation of local authorities and others and, if necessary, to require a local authority to make specified accommodation available to the Defendant or to a person with whom she has made arrangements. There is no indication in those provisions that the accommodation should be dispersed across the country. Indeed, the fact that section 101 provides for particular areas to be designated as reception zones is an indication to the contrary. Such a designation would have the effect of one or more local authority areas being under an obligation which was not imposed on others.

126. It is of note that section 97(1) identifies particular matters to which the Defendant is to have regard when exercising her power under section 95. There is no indication there that the desirability of dispersing the accommodation for asylum seekers throughout the country is a factor which must be considered. Instead, section 97(1)(b) requires the Defendant to have regard to "the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation". That is a consideration which has the potential, at least, to operate against rather than in favour of dispersal throughout the country.

127. It follows that, desirable though the dispersal of asylum seekers is agreed to be, it is not an object of the 1999 Act from which the Defendant derives her powers and this ground fails.

Ground 4: Breach of the Defendant's Public Sector Equality Duty.

128. The Claimant accepts that in the circumstances with which I am concerned the Defendant's duty pursuant to section 149 of the Equality Act 2010 is an attenuated one. It says that, nonetheless, the Defendant is in breach of her duty by failing to make an assessment of the impact of the current position on the matters listed in section 149. The Claimant contends that such an assessment would alert the Defendant to the harmful consequences of the concentration of asylum seekers in particular areas and would lead to an acceleration of the move to a wider dispersal of the accommodation for asylum seekers.

129. This ground of challenge is artificial and unrealistic. The Defendant accepts that it is desirable that accommodation for asylum seekers should be dispersed more widely across the country. She is seeking to move to a position in which some asylum seekers will be accommodated in every local authority. She has put in place metrics to identify the appropriate number of asylum seekers to be accommodated in each local authority area. That approach was influenced by the very concerns which influence the Claimant and an assessment for the purposes of the Equality Act was undertaken at the time of the Defendant's decision to move to a policy of full dispersal. The Claimant believes that the move to full dispersal should be happening more quickly and points to the fact that there remain local authority areas where no asylum seekers are accommodated and others where the numbers accommodated are markedly less than the SUDP figure let alone the 1:200 figure. Regard must, however, be had to what is practicable and there is force in the Defendant's point that time is needed to identify and obtain suitable accommodation. It is also relevant to note that it is not suggested that the Defendant is delaying the move to full dispersal either deliberately or by way of a policy approach.

130. The Claimant's argument amounts to a contention that the Defendant should carry out further equality impact assessments at intervals to assess the impact at the time when each assessment is made of a failure to move to full dispersal. That is simply unrealistic. Such assessments would confirm what is already common ground in respect of the impacts of housing asylum seekers and the desirability of a move to full dispersal. The contention that such renewed knowledge would lead to an increase in the speed of the move to full dispersal is without substance.

131. It follows that this ground fails.

Ground 5: Rationality.

132. This ground can be addressed relatively briefly. If the Claimant had succeeded in showing a substantive legitimate expectation which had been breached or a failure to act in accordance with policy then the rationality challenge would have added nothing to those points. In the absence of such a legitimate expectation or policy the rationality challenge fails for the following reasons.

133. The rationality of the Defendant's actions is to be assessed in the context which I have set out above. In short, account is to be taken of the Defendant's duty to accommodate asylum seekers; the unpredictable (and potentially rising) number of asylum seekers to be accommodated; the limited quantities of suitable accommodation; and the fact that obtaining further suitable accommodation takes time. In addition, account is to be taken of my rejection of the Claimant's case as to the status of the 1:200 Ratio.

134. In order to establish that the Defendant's actions were irrational the Claimant would need to show that the Defendant could in fact have acted differently against that background and that it was irrational for her not to have done so. The Claimant is concerned that it is an outlier; that other authorities have capacity which is not being used; and that the Defendant could move faster to full dispersal. However, those concerns are expressed in general terms only and the Claimant has not demonstrated that the Defendant could in reality have acted differently let alone that it was irrational for her not to do so. Mr Oldham placed considerable emphasis on the figures which showed that there were other authorities with fewer asylum seekers accommodated than either the applicable 1:200 Ratio or the SUDP figure and also on those which showed that the overall capacity (in the sense of procured bedspaces) exceeded the number of asylum seekers being accommodated. However, those matters do not, without more, demonstrate that the Defendant could have acted differently nor that it was irrational for her not to have done so. I have already indicated my acceptance of the Defendant's position that time is needed to acquire suitable accommodation in local authority areas where asylum seekers have not previously been accommodated or where it is now intended to accommodate more asylum seekers. Similarly, and again as explained above, the fact that a bedspace has been procured does not mean that it will necessarily be possible to accommodate a given asylum seeker in that location.

135. The Defendant contended that it was not irrational for her to treat DA and IA differently from CA nor for her to treat the SUDP and BDP figures as targets for the former kinds of accommodation and not for CA. I accept that contention. The Claimant was right to point out that the effects on a local authority area are substantially the same whether an asylum seeker is accommodated in DA, IA, or in CA. Nonetheless, the unpredictability of the need for CA and the scope for it to be required at very short notice mean that it is appropriate to take a different approach. Moreover, the fact that SUDP and BDP figures are reached in the context of a planned approach means that it is at the very least within the range of approaches rationally open to the Defendant for her to have no regard to the potential need for CA in calculating those figures.

136. The second limb of this ground was a challenge to the rationality of placing asylum seekers in the Ibis Hotel. This was said to have been irrational because that accommodation had previously been accepted to be unsuitable for asylum seekers. The Defendant does not accept that this was the reason for the previous action. I am satisfied that this dispute is academic and that there is not a good reason why it should be addressed. That is because the use of the Ibis Hotel has now ceased and the rationality of the decision to use it is academic. The rationality of any future decision to use other accommodation (or indeed the Ibis Hotel) will have to be judged by reference to the circumstances at the time of that decision.

Conclusion.

137. The claim is accordingly dismissed.