Neutral Citation Number: [2022] EWHC 85 (Admin)

Case No: CO/3005/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

18 January 2022

Before:
MR JUSTICE FORDHAM

- -

Between:

The Queen (on the application of ZLL)	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
-and-	
(1) CAMDEN LONDON BOROUGH COUNCIL	**Interested**
(2) SHELTER	**Parties**

- -
- -

Jamie Burton QC, Siân McGibbon and Joshua Hitchens (instructed by Camden Community Law Centre) for the **Claimant**
Jack Anderson (instructed by Government Legal Department) for the **Defendant**
The **Interested Parties** did not appear and were not represented

- -

Hearing date: 15/12/21

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is a case about Government policy, rough sleepers and the pandemic. It comes before the Court as a claim for judicial review, with permission granted by Jay J on 27 September 2021. The claim concerns the Government's "Everyone In initiative" for England, described as follows by Freedman J in R (Ncube) v Brighton and Hove City Council [2021] EWHC 578 (Admin) [2021] 1 WLR 4762 at §§1 and 12-13:

> ***At an early stage of the pandemic, there was rolled out the "Everyone In" scheme which was an initiative to get rough sleepers off the streets during the pandemic due to their vulnerability and the need to prevent others from being infected… On 23 March 2020, the first national lockdown was announced in response to the pandemic. On 26 March 2020, as part of the national measures adopted by the Government to counter the pandemic, Luke Hall MP, Minister for Local Government and Homelessness, wrote to all local authorities stating that "it is now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week". He referred to the need to "bring in those on the streets to protect their health and stop wider transmission". This marked the start of what has become known as the "Everyone In" initiative. The object of this public health initiative was to provide accommodation for rough sleepers as a matter of urgency. It recognised a heightened risk arising from homelessness.***

The foreword to the Kerslake Commission on Homelessness and Rough Sleeping (final report, September 2021) said this:

> ***Everyone In was an emergency response to a health crisis… By almost any measure, the initiative was a resounding success. Some 37,000 people were brought in off the streets according to Government estimates. An article in The Lancet calculated that at least 260 deaths have been avoided.***

It is safe to use the word "initiative" for "Everyone In", as Freedman J did in Ncube (he also used the word "scheme" and, elsewhere, "policy"). In this case, "initiative" was the word used: in the judicial review claim form; in the opening line of the Claimant's skeleton argument; throughout the witness statement in support of the claim (Derek Bernardi, 1.9.21); throughout the Acknowledgment of Service ("AOS") of the Second Interested Party ("Shelter"); in public statements by or for the Defendant (see eg. §§17, 24, 27, 29 below); and in the witness statement filed on behalf of the Defendant (Catherine Bennion, 1.11.21).

2. "Rough sleeping" is described in a research publication entitled "Coronavirus: Support for Rough Sleepers (England)" (12.10.21, HC Library No.9057), where Hannah Cromarty explains (§§1.1 and 1.2):

> ***Rough sleeping is the most extreme form of homelessness and many rough sleepers have high levels of complex needs. Many people who sleep rough do not have a statutory right to accommodation under the homelessness legislation, for example because they are not deemed to be in a 'priority need' category or are ineligible due to their immigration status… Rough sleepers are vulnerable to coronavirus (Covid-19); they are more likely to have underlying health conditions than the wider population and to face difficulties in following public health advice on self-isolation, social distancing and hygiene. They can also face barriers in accessing public health information and health care. Shared facilities used by rough sleepers – such as day centres, hostels and night shelters – may increase the risk of transmission of the virus.***

The foreword to the Kerslake Commission final report says this:

> ***… 'rough sleeping' … is deeply damaging to those experiencing it and to society at large. The health consequences of prolonged street homelessness are known to be severe and the costs of treatment and support escalate sharply the longer people are on the streets. For homeless young women, the risks of exploitation are high.***

3. The Claimant is a Chinese national who came to the United Kingdom in 2002 and whose visa expired in 2004. His immigration status puts him in the category NRPF (no recourse to public funds) and he has spent many years rough sleeping. Between March 2020 and April 2021, he was accommodated in a series of homeless shelters operated by various charities. In April 2021 he approached the First Interested Party ("Camden LBC") for accommodation, relying on the Everyone In initiative. Camden LBC accepted that it had a discretion to accommodate him but said it had decided not to exercise that discretion in his case, because he was NRPF and not within the "most vulnerable and at risk" group of rough sleepers. A separate claim for judicial review challenges that decision and has been stayed pending resolution of this claim. The Claimant is protected by an anonymity order. It was not in dispute before me that he has standing (a sufficient interest) to bring and maintain this judicial review claim.

4. The claim for judicial review challenges, as its target, the Defendant's "decision to end the 'Everyone In' initiative". As marking that "end", Mr Burton QC – in his submissions for the Claimant – focused specifically on what is said in passages in two documents generated in these proceedings: the Government Legal Department ("GLD")'s pre-action letter of response §23 (see §34 below) and the Defendant's pleaded Detained Grounds of Resistance ("Defence") §64 (see §36 below). Two grounds for judicial review are put forward: (1) breach of a public law duty by adopting an unpublished position in non-conformity with published Government policy; and (2) breach of a public law duty in not conducting prior consultation with Shelter. Before I turn to analyse these two grounds for judicial review, I will address three topics: first, some basic ideas regarding rough sleepers (§6 below); secondly, some basic legal points relevant to ground one (§7 below); and thirdly, some key events in sequence and outline (§§8-37 below). In doing so, and to make the judgment easier to navigate, I will use labels (with underlining) at the start of paragraphs or sub-paragraphs (§§6-37 below).

5. It is appropriate to record at the outset that the Human Rights Act 1998 ("HRA") does not feature in the Claimant's legal challenge in the present case. I mention this, because it is recognised that HRA:ECHR Article 3 (the right not to be subjected to inhuman or degrading treatment) can require state action in the context of rough sleeping and destitution, where suffering reaches the necessary degree of severity: see R (Limbuela) v Secretary of State for the Home Department [2005] UKHL 66 [2006] 1 AC 396. It is no part of the Claimant's case that curtailment of the Everybody In initiative breaches Article 3. Nor is it said that the Defendant has breached the public law duty to act "reasonably"; nor breached any public law "legitimate expectation".

Some basic ideas

6. I have found it helpful to keep the following points in mind, bearing in mind that – in principle – action could be taken in respect of any or all of those described here:

   (1) Rough sleepers and 'non-rough sleepers'. There is a basic distinction between a rough sleeper and a 'non-rough sleeper'. There would need to be an individualised assessment by a decision-maker, to decide whether an individual

is or is not a rough sleeper. The distinction between rough sleeper and non-rough sleeper is not the same as homeless and non-homeless.

(2) Persons 'at-risk' of becoming rough sleepers. A non-rough sleeper may be 'at-risk' of becoming a rough sleeper. Identifying an 'at-risk' rough sleeper will again involve an individualised assessment.

(3) 'New' rough sleepers. A rough sleeper may be a 'new' rough sleeper, who would not have been assessed to be a rough sleeper at a relevant stage in the past. A 'new' rough sleeper may have come onto the streets, or back onto the streets. They may be newly arrived in the UK. The point is that today's and tomorrow's rough sleepers are not necessarily catered for by action which dealt with yesterday's rough sleepers.

(4) 'Move-on accommodation' for previous rough-sleepers. There is a difference between providing immediate-response accommodation for a rough sleeper; and providing follow-up 'move-on accommodation' for a previous rough sleeper. The first helps them 'off the streets'. The second then helps them not to be 'back on the streets' in the future.

Some basic legal points

7. Here are some basic legal points relevant to ground one:

(1) The 'reach of powers' point. Local authorities have limited powers and cannot lawfully act beyond the scope and 'reach' of those powers. This point finds expression in Ncube at §43, where Freedman J explained that a local authority "is a statutory body and can only exercise those powers conferred on it by statute"; and that it "does not have any non-statutory or common law powers". The 'reach of powers' point was the essential backcloth for the Court's decision in Ncube (see §7(2) below).

(2) The 'no roadblock' point (Ncube). The issue in Ncube was whether the 'reach of powers' of local authorities precluded them from providing accommodation to rough sleepers who were NRPF individuals, viewed in the context of the pandemic and the Everyone In initiative. The statutory restrictions on what local authorities can do for NRPF individuals (see especially s.115 of the Immigration and Asylum Act 1999; Sch 3 to the Nationality Immigration and Asylum Act 2002; and s.185 of the Housing Act 1996) were considered in Ncube. The Court held (on 11.3.21) that there was, in principle, 'no roadblock' ("no vires block", as Mr Burton QC put it) to a local authority providing accommodation to an NRPF rough sleeper, in the context of the pandemic. The Court identified two statutory powers which a local authority could exercise. One was the power to provide temporary accommodation under s.138 of the Local Government Act 1972 (powers with respect to emergencies or disasters). That provision empowered a local authority to incur such expenditure as it considered necessary to avert, alleviate or eradicate the effects or potential effects of an emergency or imminent or reasonably apprehended emergency, involving danger to life, and likely to affect inhabitants of the local authority's area (see §§46 and 64). The Court held that those "emergency" powers could, in principle, be exercised in the context of periods of national lockdown, and probably also

in periods of 'Tier 1' restriction (see §§60-61). It was for the local authority to address whether the conditions for the statutory power were satisfied and whether it was appropriate to exercise the power, which power could not be used to circumvent the restrictions and prohibitions relating to NRPF and duties owed to homeless individuals (see §64). The other power was s.2B of the National Health Service Act 2006 (steps for improving the health of people in the area). In principle: accommodation was one of the non-exhaustively described steps which a local authority could take (§74); accommodating rough sleepers "in order to save lives" was capable of falling within section 2B; so that "an initiative to remove rough sleepers from the streets during the pandemic to reduce the risk of life of the sleepers and the persons with whom they may have contact might be permitted under section 2B" (§78). It would be a "question of fact and degree" for the local authority to decide whether s.2B was applicable and what steps were appropriate, and accommodation could be provided to NRPF persons provided that there was no circumvention of the statutory restrictions in the homelessness provisions (see §79). The consequence of the 'no roadblock point' is twofold. First, it can in principle be within the 'reach of powers' of a local authority to accommodate an NRPF rough sleeper in the context of the pandemic. Secondly, that action necessarily involves evaluative judgments by the authority.

(3) The 'blanket action' point. Following on from the 'no roadblock' point, Mr Anderson accepted that the following proposition is a legally sound one: that it would, in principle, be open to a local authority in the context of the pandemic, properly exercising its statutory powers within their 'reach' – if it considered it appropriate to do so, and if it were satisfied that the statutory preconditions were met – to decide to take 'blanket' action by which it provided accommodation to all rough sleepers in the local authority's area, including all NRPF individuals who are rough sleepers. What that means is that, in principle and consistent with the 'reach of powers' point, 'Everyone In' could indeed mean "everyone".

(4) The 'duty of prescription' point. It is a recognised feature of public law that there are contexts in which it is legally necessary for public authority powers to be circumscribed by means of the issuing of prescriptive policy guidance. In HRA cases, this need for 'prescription' familiarly falls within the "prescribed by law" (and equivalent) formulations found in the Convention rights. But a similar 'duty of prescription' can arise at common law. As Lord Dyson said, in the context of statutory powers of executive immigration detention, in R (Lumba) v Secretary of State for the Home Department [2011] UKSC 12 [2012] 1 AC 245 at §34: "The rule of law calls for a transparent statement by the executive of the circumstances in which the broad statutory criteria will be exercised". As Lord Phillips said in Lumba at §302: "under principles of public law, it was necessary for the Home Secretary to have policies in relation to the exercise of her powers of detention of immigrants"; "[t]his necessity springs from the standards of administration of public law requires"; "[u]nless there were uniformly applied practices, decisions would be inconsistent and arbitrary". As Sedley LJ had said, in the context of clawback of overpaid income support benefit, in B v Secretary of State for Work and Pensions [2005] EWCA Civ 929 [2005] 1 WLR 3796: "It is axiomatic in modern government that a lawful policy is necessary if an executive discretion of the significance of the

one now under consideration is to be exercised, as public law requires it to be exercised, consistently from case to case but adaptively to the facts of individual cases". As can be seen from those passages, the underpinning of the public law duty to issue prescriptive policy guidance guiding the exercise of discretionary powers is a recognition of the virtues of consistency and protection against arbitrariness.

(5) The 'duty of publication' point. A further recognised feature of public law is that prescriptive policy guidance, which has been issued, may in law need to be published. 'Prescription' and 'publication' are closely linked, as is their rationale. As has been seen above, in Lumba Lord Dyson emphasised (at §34) that what the rule of law called for was a "transparent" statement of the circumstances in which the broad statutory criteria would be exercised. He continued (at §35) that an affected individual, having "a basic public law right to have his or her case considered under whatever policy the executive sees fit to adopt provided that the adopted policy is a lawful exercise of the discretion conferred by the statute", had "a correlative right to know what the currently existing policy is, so that the individual can make relevant representations in relation to it". Lord Dyson, disagreeing with the Court of Appeal, was recognising "a general rule of law that policies must be published" (see §27). Lord Phillips (at §302) explained that "under principles of public law" it was not only "necessary for the Secretary of State to have policies in relation to the exercise of her powers of detention of immigrants" but that it was also necessary "that those policies had to be published". He explained: "Established principles of public law also required that the Secretary of State's policy should be published. Immigrants needed to be able to ascertain her policies in order to know whether or not the decisions that affected them were open to challenge". In B (at §43), Sedley LJ had said this: "If… such a policy has been formulated and is regularly used by officials, it is the antithesis of good government to keep it in a departmental drawer". He had gone on to explain that affected individuals were "entitled… to know the terms of the policy… so that they can either claim to be within it or put forward reasons for disapplying it, and so that the conformity of the policy and its application with principles of public law can be appraised". The 'duty of publication' is therefore linked, not only to the virtues of consistency and lack of arbitrariness, but also to the basic rights of affected individuals: to make representations as to how their case should be decided, and to consider and make an informed challenge to an adverse decision. The 'duty of publication' will therefore apply to any new policy or practice which curtails or discontinues a relevant policy which has previously been published, as was the position in Lumba itself.

(6) The 'externality' point. Prescriptive policy guidance, in accordance with these public law duties of prescription and publication, can – in principle – emanate 'externally': from a public authority who is not the ultimate decision-maker. So, as Lord Wilson explained in Mandalia v Secretary of State for the Home Department [2015] UKSC 59 [2015] 1 WLR 4546 at §29, there may be "guidance issued by one public body to another, for example by the Department of the Environment to local planning authorities".

(7) The 'duty of conformity' point (and its 'good reason exception'). Where there is relevant prescriptive policy guidance, public law recognises a basic duty on the decision-maker to act in conformity with (i.e. compatibly with) that policy guidance, absent good reason for departing from it. Where there is published policy guidance, there is relevant 'non-conformity' where a private policy or practice is issued, is not published, and is implemented (as happened in Lumba). The same point can be put another way. If there is a new policy which replaces the published policy guidance, the new policy must itself be published under the 'duty of publication'. The 'duty of conformity' was articulated in Lumba by Lord Dyson (at §26): "a decision-maker must follow his published policy (and not some different unpublished policy) unless there are good reasons for not doing so". Lady Hale (at §202) referred to "the duty, imposed by the common law, for the Secretary of State and his officials to comply with a published policy, unless there is good reason not to do so". Lord Phillips (at §313) described "the detention of a person in circumstances where, under the Secretary of State's published policies he should not have been detained" as being "a violation of principles of public law".

(8) The 'entitlement of conformity' point. Where there is relevant prescriptive policy guidance, public law recognises the basic 'entitlement' of an affected individual to a decision under the applicable policy guidance. This is the other side of the coin to the 'duty of conformity', because the public authority 'duty of conformity' carries a correlative 'entitlement of conformity' on the part of the affected individual. The same 'good reason exception' applies to that entitlement. This entitlement is also a key part of the rationale for the 'duty of publication', as has been seen (§7(5) above). In Lumba Lord Dyson (§35) called this the "basic public law right" of the individual "to have his or her case considered under whatever policy the executive sees fit to adopt" (provided that it is lawful). In Mandalia Lord Wilson (§29) referred to the "right" to a determination "in accordance with policy" and endorsed the view that that entitlement arose "as a requirement of good administration", distinct from the public law doctrine of 'legitimate expectation'.

(9) The 'role of the Court' point. The applicable objective standards of public law which arise in the context of the duties of 'prescription', of 'publication' and of 'conformity' involve the Court – in the exercise of its supervisory jurisdiction – identifying when those duties arise. That role on the part of the Court arises notwithstanding that the choice of the contents of any prescriptive policy guidance are for the relevant public authority, subject to the reasonableness duty. So is the choice of what new action or practice to promote. The application of prescriptive policy guidance to an individual case will be a question for the primary judgment of the decision-maker, though the interpretation (objective meaning) of the policy guidance in principle engages a hard-edged question for the judicial review Court. As to the latter (interpretation) point, relevant cases include Mandalia, where Lord Wilson (at §31) spoke of "the proper interpretation", there of a "process instruction", explaining (by reference to case-law on immigration policies) that "interpretation is a matter of law which the court must therefore decide for itself".

The sequence of key events in outline

8. The self-isolation funding announcement (17.3.20). By a press release published on 17 March 2020, the Secretary of State (Robert Jenrick MP) announced £3.2 million emergency funding to help rough sleepers to self-isolate in accordance with Public Health England's then advice (that those with Covid-19 symptoms should self-isolate for 7 days). The funding was intended to ensure that local authorities were able to put "emergency measures in place to help some of the most vulnerable people in our society to successfully self-isolate". This £3.2m funding was in addition to the £492m committed in 2020/2021 to support "the government's ambition to end rough sleeping in this Parliament", part of £643m in funding which had been announced at budget "to tackle homelessness and rough sleeping over the next four years". These were linked to the Rough Sleeping Initiative ("RSI"), launched by Government in 2018.

9. The Everyone In announcement (26.3.20). The first national lockdown was announced on 23 March 2020 and lockdown measures came into force on 26 March 2020. In that context, by a letter dated 26 March 2020 to chief executives of all local authorities in England (published on the gov.uk website) the Minister for Local Government and Homelessness (Luke Hall MP) said this:

> ***Last week, the Government asked Dame Louise Casey to lead the Government's response to Covid-19 and rough sleeping to help make sure that we bring everyone in. It is our joint responsibility to safeguard as many homeless people as we can from Covid-19. Our strategy must be to bring in those on the streets to protect their health and stop wider transmission, particularly in hotspot areas, and those in assessment centres and shelters that are unable to comply with social distancing advice.***
>
> ***This approach aims to reduce the impact of Covid-19 on people facing homelessness and ultimately preventing deaths during this public health emergency. Given the nature of the emergency, the priority is to ensure that the NHS and medical services are able to cope and we have built this strategy based on NHS medical guidance and support.***
>
> ***The basic principles are to:***
>
> - ***focus on people who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres;***
> - ***make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities;***
> - ***utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the Covid-19 pandemic;***
> - ***mitigate their own risk of infection, and transmission to others, by ensuring they are able to self-isolate as appropriate in line with public health guidance***
>
> …
>
> ***In the longer term it will of course be necessary to identify[] step-down arrangements for the future, including the re-opening of shelter-type accommodation.***
>
> ***Given the Prime Minister's announcement on Monday night that the public should be staying in their homes wherever possible, it is now imperative that rough sleepers and other vulnerable homeless are supported into appropriate accommodation by the end of the week. Dame Louise is spearheading all of our efforts to get everyone in. As she has said 'it won't be perfect but all of us together will do our best'.***

> ***We know that this requires funding. Last week, the Government announced £1.6bn for local authorities to respond to other Covid-19 pressures including for services helping the most vulnerable, including homeless people. This grant will cover all costs incurred in the first phase of the response, but we will keep future funding need under review. To support our understanding of what authorities or additional funding is likely to be required we will be working with local authorities to develop an ongoing assessment of costs …***

10. The Everyone In email (26.3.20). On the same day, 26 March 2020, an email was written by Dame Louise Casey to all local authority homelessness managers and rough sleeping coordinators in England. Within it was this:

> ***As you know, this is a public health emergency. We are all redoubling our efforts to do what we possibly can at this stage to ensure that everybody is safe… I want to assure you that our advisers stand alongside you with support and advice so that, together as central and local government working in partnership with the sector, we can ensure that everybody can have an offer of accommodation by this weekend… We know that this is not a perfect system, and in time we can take stock and work together to consider how best to continue this support for rough sleepers, but for now the priority is to ensure that everyone, all individuals across the country, have an offer to come inside.***

11. The global funding letter (30.4.20). On 30 April 2020 the Secretary of State wrote to all council leaders in England, referring to the (by then) £3.2bn which Government had committed in "Covid-specific funding for local government". That funding was 'non-ringfenced', so that local authorities could decide individually where it was best spent in their Covid responses. It was accessed through an allocations process with which local authorities were required to engage. The letter referred to the Secretary of State's:

> ***… commitment to support authorities with the additional cost pressures from the extra work and the specific tasks we have asked you to carry out as a result of the epidemic, in particular, in relation to… homelessness and rough sleeping…***

12. The task force announcement (2.5.20). By a press release published on 2 May 2020 the Secretary of State announced that:

> ***A specialist task force has been created to lead the next phase of the government's support for rough sleepers during the pandemic. Spearheaded by Dame Louise Casey, the task force will work hand-in-hand with councils across the country and plans to ensure rough sleepers can move into long-term, safe accommodation once the immediate crisis is over – ensuring as few people as possible return to life on the streets.***

The Secretary of State said this:

> ***By working closely with councils, charities, faith groups and health providers, we have provided accommodation to over 5,400 people who were sleeping rough at the beginning of the crisis: that's over 90% of known rough sleepers.***

13. The supported homes announcement (24.5.20). The first easing of lockdown restrictions was announced on 10 May 2020. By a press release published on 24 May 2020, the Secretary of State announced a commitment "to provide thousands of long-term, safe homes for vulnerable rough sleepers taken off the streets during the pandemic", backed by £160m in the current year.

14. The May 2020 next phase letter (28.5.20). By a letter dated 28 May 2020, headed "moving onto the next phase of accommodating rough sleepers", written by the Minister (Luke Hall MP) to all local authority chief executives in England, and published on the gov.uk website, the Minister said this:

> ***It remains important to continue to help and support vulnerable people as the virus continues to pose a risk. As the risk reduces and we look towards easing the lockdown restrictions, we begin to enter the next phase of this endeavour and need to make plans for the future. We must continue to focus on ensuring accommodation and support arrangements can be managed safely to protect the most vulnerable, including those with complex needs. At the same time we need now to start planning the next steps for accommodating and supporting people to move on from emergency accommodation. We are doing so, and that is why we announced £433m of funding for accommodation for rough sleepers last weekend.***
>
> ***The Government also announced, on 2 May, the appointment of Dame Louise Casey to lead a Taskforce on the next phase of the Government's support for rough sleepers. Through the Taskforce, backed by our existing MHCLG Rough Sleeping and Homelessness Advisers, we will be working to support you during this next phase. As part of this work I am now asking that you put in place a plan of support for all rough sleepers accommodated in hotels and other forms of emergency accommodation during the response to the pandemic.***
>
> ***… In particular, I ask that you consider the following points closely:***
>
> …
>
> - ***You should carry out individual assessments and take decisions on who you can provide support to, which would include providing accommodation to vulnerable people sleeping rough.***
>
> …
>
> ***I do recognise that these are challenging times and that you may have accommodated people who would normally and otherwise be ineligible for support, making judgements based on risk to life. I wanted to take this opportunity to restate the government's position on eligibility relating to immigration status, including for those with No Recourse to Public Funds (NRPF). The law regarding that status remains in place. Local authorities must use their judgment in assessing what support they may lawfully give to each person on an individual basis, considering that person's specific circumstances and support needs. You will already be used to making such judgements on accommodating individuals who might otherwise be ineligible, during extreme weather for example, where there is a risk to life.***

15. The June 2020 next phase letter and announcement (24.6.20). By a letter dated 24 June 2020 from the Minister (Luke Hall MP) to all chief executives of all local authorities in England, entitled "Covid-19 response: funding support for those in emergency accommodation and EEA rough sleepers", the Minister provided an "update" (further to the letter of 28.5.20) "regarding moving onto the next phase of accommodating those in emergency accommodation". This letter referred to the announcement of a further £105m:

> ***… to help local authorities implement a range of support interventions for people placed into emergency accommodation during the Covid-19 pandemic. This includes supporting moves into the private rented sector, helping individuals to reconnect with friends or family, and extending procuring interim accommodation.***

The letter also described the temporary suspension of an EU derogation, already (since 9.19) suspended in areas with acute and concentrated numbers of EEA nationals sleeping rough, the suspension being to enable local authorities to accommodate and support a specific group of rough sleeping EEA nationals (ineligible for other types of support) for up to 12 weeks from 24 June 2020. By a press release also dated 24 June 2020 the Secretary of State announced the additional £105m to be "used to support rough sleepers and those at risk of homelessness into tenancies of their own", "to ensure the work being done to take society's most vulnerable of the streets during the pandemic

has a lasting impact". The Secretary of State referred to the 15,000 vulnerable people taken off the streets "during the peak of the pandemic".

16. The Next Steps launch (18.7.20). On 18 July 2020 the Government launched the Next Steps Accommodation Programme, "to support local authorities and their partners to prevent the nearly 15,000 people accommodated during the pandemic from returning to the streets". That programme incorporated the £105m to pay for short-term and immediate accommodation support and £161m to deliver 3,300 units of longer term 'move-on accommodation' in the current year. Local authorities were required to submit proposals and allocations were to be made to them. A "Guidance" document was issued by the Ministry of Housing, Communities and Local Government ("MHCLG") in July 2020. The Guidance described the programme and how it would operate. It explained the two aspects: one being the interim accommodation and support for the 15,000 vulnerable people accommodated during the pandemic; the other being long-term accommodation and support for rough sleepers. The Guidance referred to the £105m as being "immediate support for local authorities", to be "used to rapidly support those in Covid-19 emergency accommodation".

17. The Next Steps follow-up statement (17.9.20). By a statement in Parliament on 17 September 2020 the Secretary of State referred to the allocations for the short-term aspect of the funding under the Next Steps Accommodation Programme, regarding the short-term and immediate accommodation and support "intended to prevent the nearly 15,000 people accommodated during the pandemic from returning to the streets". The Secretary of State, in that statement, referred to the Next Steps Accommodation Programme as being:

> ***… part of the Government's 'Everyone In' initiative.***

18. The Next Steps follow-up letter (22.9.20). By a letter dated 22 September 2020 from Catherine Bennion at the MHCLG, to all chief executives of all local authorities in England, local authorities were provided with further information regarding funding for the Next Steps Accommodation Programme "for continuing to support rough sleepers supported during the Covid response". (I was told at the hearing that this letter was "published"; in response to circulation of this judgment in confidential draft, I was told that it was instead "publicly available".) The letter included this:

> ***Many of you have also asked about how you should be assessing who is eligible for support now that the initial lockdown restrictions have eased, recognising that some parts of the country are subject to different, localised restrictions. Local authorities must carry out individual assessments of those who are not eligible for homelessness assistance to determine what services may be offered to them, taking into account legal duties and powers, and local resources. Local authorities should continue to offer accommodation to known rough sleepers who have refused offers or lost accommodation (if eligible), and to assess the needs and (within legal constraints) provide accommodation and/or support, to newly verified rough sleepers in their area using RSI and NSAP funded provision.***

The letter also included this:

> ***Support for individuals that are not eligible for homelessness assistance. Local authorities must ensure that any support offered to non-UK nationals who are not eligible for homelessness assistance complies with legal restrictions (for example, the restrictions contained in Schedule 3 to the Nationality, Immigration and Asylum Act 2002). Any funding provided for immigration advice is provided on the basis that this is to support individuals to determine or resolve their immigration status - not to challenge immigration decisions made***

> ***by the Government. Any voluntary reconnections funded should be made if there is a reasonable prospect of an individual returning to their home country for a sustained period.***

19. The support package announcement (13.10.20). On 12 October 2020 the three-tier system of Covid restrictions were announced, with effect from 14 October 2020. On 13 October 2020 the Minister announced a package of support to protect rough sleepers, and those at risk of becoming homeless, from life-threatening cold weather and the risks posed by the coronavirus. The package comprised of the following: a £10m "cold weather fund" to support local authorities to provide self-contained and Covid secure accommodation; £2m for faith and community groups to help them provide Covid-secure accommodation for rough sleepers; and comprehensive guidance (produced with Public Health England, Homeless Link and Housing Justice) to help shelters open safely.

20. The Protect Programme launch announcement (5.11.20). The second national lockdown was announced on 31 October 2020 and came into force on 5 November 2020. By a press release dated 5 November 2020 the Secretary of State announced the launch of the "Protect Programme", described as "the next step in winter rough sleeping plan". The three bullet points in the announcement were these:

> - ***Councils asked to make sure every rough sleeper offered somewhere safe to go, as new national restrictions start***
> - ***£15 million allocated for rough sleepers this year.***
> - ***All councils to review their current plans for housing rough sleepers***

The Protect Programme was to "help areas that need additional support most during the restrictions and throughout winter". The announcement said this:

> ***Areas with high numbers of rough sleepers will receive extra targeted support to provide accommodation for those currently sleeping rough, working with councils to prioritise those who are clinically vulnerable – this will continue throughout the winter until March 2021.***

The announcement also said this of the Protect Programme:

> ***This will run alongside the ongoing 'Everyone In' campaign, which is helping to protect thousands of lives during the pandemic – by September it had supported over 29,000 vulnerable people, with two thirds now moved into settled accommodation.***

21. The Protect Programme launch letters (5.11.20). By a series of letters dated 5 November 2020 from the Minister for Rough Sleeping and Housing (Kelly Tolhurst MP), which were not published at the time, written to the leaders of all local authorities in England and headed "additional surge support for rough sleepers", the Minister described the Protect Programme. There were three groups of these letters: first, to authorities who would be receiving additional funding; secondly, to London areas receiving funding with special arrangements for effective delivery engaging with the Greater London Authority; and thirdly for the authorities who would not be receiving additional funding. The letters all referred to prioritising or focusing on:

> ***… those who are clinically vulnerable, as well as those with a history of rough sleeping. We would also expect you to carry out a rapid assessment of need for everyone that you accommodate and consider time-limited interventions for those new to rough sleeping.***
>
> ***The aim should be to enable the population to protect themselves against Covid-19 so they can follow Government requirements and guidelines, as well as enable them to recover and***

> ***minimise the impact on ill-health in a safe environment. The approach aims to reduce the impact of Covid-19 on individuals rough sleeping and ultimately preventing deaths during this public health emergency.***

The letters to the Leaders of those authorities would not be receiving additional funding also said this:

> ***… we recognise the continuing efforts you are making alongside Government to support rough sleepers through your work on 'Everyone In', local Next Steps plans and longer term accommodation plans. By September we had successfully supported over 29,000 people, with over 10,000 still in emergency accommodation and nearly 19,000 provided with settled accommodation or move on support.***

22. The homelessness and rough sleeping funding letter (21.12.20). The second national lockdown had ended on 2 December 2020, with a return to the 3-tier system (to which tier-4 was added from 21 December 2020). By a letter dated 21 December 2020, from the Director of Homelessness and Rough Sleeping (Penny Hobman) at the MHCLG, entitled "homelessness and rough sleeping funding for 2021/2022", and sent to local authority Chief Executives in England, information was provided as to the allocations of a £310m homelessness prevention fund for 2021-2022 as well as confirming plans for the RSI. The letter said this:

> ***Taken together, this investment builds on the more than £700m that the Government is spending on rough sleeping and homelessness this year, with the ongoing 'Everyone In' campaign helping to protect thousands of lives during the pandemic by housing rough sleepers in safe accommodation …***

23. The third lockdown tweet (4.1.21). The third national lockdown was announced on 4 January 2021, taking effect from 6 January 2021. As recorded in an article in the Local Government Chronicle, the leader of the opposition (Sir Keir Starmer MP) had made a claim at that time that the Government was now "turning [its] back on people without a home" by "not renewing the Everyone In drive against rough sleeping". In response, a tweet on the MHCLG's official Twitter account described that claim as "not true" and stated that "the drive spearheaded by Baroness Louise Casey to successfully find accommodation for every rough-sleeper during the first lockdown was continuing".

24. The third lockdown announcement (8.1.21). By a press release dated 8 January 2021, the Secretary of State announced extra support to help protect rough sleepers. The press release said this:

> ***Backed by an additional £10m in funding, all councils in England are being asked to redouble their efforts to help accommodate all those currently sleeping rough…***

The Secretary of State said this:

> ***At the start of this pandemic we made sure that the most vulnerable in society were protected this winter. We are continuing in this vein and redoubling our efforts to help those most in need. Our ongoing Everyone In initiative is widely regarded as one of the most successful of its kind in the world, ensuring 33,000 people are safe in accommodation.***

The press release concluded with this:

> ***Through Everyone In, by November we had supported around 33,000 people with nearly 10,000 in emergency accommodation and over 23,000 already moved on into the longer-term accommodation.***

25. The third national lockdown letter (8.1.21). On 8 January 2021 the Secretary of State wrote a letter to all local authority chief executives in England, with one version of the letter being written for authorities who had been provided with additional funding under the Protect Programme, and another for those authorities who had not. The letter was not published by the Government (though it was published by the organisation Homeless Link). All of these letters included this:

> ***Through Everyone In, by November we had supported around 33,000 people with nearly 10,000 in emergency accommodation and over 23,000 already moved on into longer-term accommodation…***
>
> ***Our work to support rough sleepers never stopped and in November we asked all local authorities to update plans for rough sleepers to make sure people sleeping rough had somewhere safe to go over the winter. We provided additional funding through the Cold Weather Fund to all local authorities and targeted support through the Protect Programme to support local authorities with higher numbers of rough sleepers to meet the specific challenges they faced with the introduction of new national restrictions in November. However, given the new variant of COVID-19 that is driving infection rates, and the Prime Minister's announcement of a new national lockdown, it is clear we need to redouble our efforts to ensure that people who sleep rough, who we know are vulnerable to this disease, are kept safe and that we do everything we can to protect the NHS.***
>
> ***It is for this reason that I am asking you to redouble your efforts to help those currently sleeping rough to be accommodated. This means you should (subject to individual assessments) make offers of safe and appropriate accommodation to people who are rough sleeping now. This will include people who may have previously been offered accommodation but rejected it or left accommodation, and individuals new to rough sleeping who require help to move on from rough sleeping. As part of this, we also expect you to carry out a rapid assessment of need for everyone that you accommodate and consider interventions for those new to rough sleeping…***
>
> ***You will also need to consider the needs of those who might otherwise be ineligible for support as a result of immigration status. The law on eligibility relating to immigration status remains in place. Local authorities must use their judgement in assessing what support they may lawfully give to each person on an individual basis, considering that person's specific circumstances and support needs. You will no doubt currently be making similar judgements on accommodating otherwise ineligible individuals in the face of extreme weather.***

26. The RSI Toolkit (28.1.21). On 28 January 2021 the MHCLG issued a document entitled "Rough Sleeping Initiative 2021/22: Toolkit for local authorities". That was in the nature of a prospectus which described the Government's commitment to end rough sleeping by the end of the current Parliament, with the RSI being crucial to meeting that commitment. It described the launch of year 4 of the RSI. It explained the objectives, being to reduce the number of individuals currently sleeping rough and to reduce the number of individuals coming onto the streets for the first time as rough sleepers or returning to sleeping rough. It described funding which was to be available for 2021/22 and how local authorities should go about applying for it. The Toolkit included this:

> ***People with No Recourse to Public Funds. We know that some individuals will have a "No Recourse to Public Funds" (NRPF) condition attached to their immigration status. The rules as to eligibility relating to immigration status, including for those with NRPF, have not changed. Local authorities must use their judgement in assessing what support they may lawfully give to each person on an individual basis, considering that person's specific circumstances and support needs. For those that might otherwise be ineligible, local authorities may also provide basic safety net support if it is established that there is a genuine care need that does not arise solely from destitution, for example, where there are community care needs, migrants with serious health problems or family cases. Anyone that is assessed***

> ***as needing support based on this assessment, is covered by RSI 2021/22 funding. However, we remain clear that any support offered must comply with legal restrictions (for example, the current restrictions contained in Schedule 3 to the Nationality, Immigration and Asylum Act 2002).***

27. The next stage announcement (15.5.21). The roadmap for easing of the third national lockdown had been published on 22 February 2021, with the first easing taking effect from 8 March 2021. A press release published on 15 May 2021 from the Secretary of State (Robert Jenrick MP) and the Minister for Rough Sleeping (Eddie Hughes MP), entitled "Councils given further £200m in next stage of successful rough sleeping programme", said this:

> ***More rough sleepers are set to be helped off the streets and into safe accommodation thanks to a further £203m funding… [which] will be allocated to councils across England and will support vital projects such as shelters, specialist mental health or addiction services, and targeted support to help rough sleepers of the streets for good.***

The funding (which the Defendant points out was by way of a confirmation of RSI allocations) was described as "one part of an unprecedented £750m investment this year to tackle homelessness and rough sleeping" and "part of the government's drive to end rough sleeping by the end of this Parliament". Reference was made to the RSI, now in its fourth year. The announcement concluded with this:

> ***This is alongside the government's unprecedented Everyone In initiative, launched by the Housing Secretary at the start of the pandemic to protect rough sleepers, which has so far supported 37,000 people, with more than 26,000 already moved on to longer-term accommodation.***

28. The joined-up approach announcement (22.6.21). By a press release published on 22 June 2021 entitled "Government continues drive to end rough sleeping, building on success of Everyone In", the Secretary of State and Minister for Rough Sleeping and Housing announced that "rough sleepers are to be helped to stay off the streets for good through a joined-up approach to treating the underlying causes of rough sleeping". The Secretary of State was described as setting out government plans "to build on the hugely successful 'Everyone In' programme through a renewed focus on cross-agency cooperation". The Secretary of State and Minister for Rough Sleeping were described as praising local authority and charity leaders for their work since the pandemic began and:

> ***… asking them to continue to work together to cement the achievements of Everyone In, which has supported over 37,000 vulnerable people during the pandemic.***

The press release also said this:

> ***Councils will also be asked to exhaust all options within the law to support rough sleepers not eligible for statutory homelessness assistance due to their immigration status.***

29. The working together letter (5.7.21). On 5 July 2021, the Minister for Rough Sleeping and Housing (Eddie Hughes MP) wrote a letter, to all council leaders and chief executives of local authorities in England, entitled "working together to end rough sleeping event". The letter was a follow-up to an event for local authorities and partners which the Minister had hosted (on 22.6.21) "to celebrate the extraordinary work to support rough sleepers during the pandemic and to look forward to the next phase as we work to end rough sleeping this Parliament". The Minister said:

> ***… by January of this year the Government had supported over 37,000 people as part of our Everyone In initiative, with over 26,000 already moved into longer term accommodation – and hundreds of lives saved.***

The Minister spoke of the need to:

> ***… continue to work together, building on the broad range of partnerships with public health and others that were so critical to the success of 'Everyone In'.***

He said:

> ***I ask that you continue to focus relentlessly on reducing rough sleeping and make sure rough sleeping is as brief as possible and non-recurrent.***

The letter went on to describe the government's commitment to ending rough sleeping and its plans to spend £750m this year alone on tackling homelessness and rough sleeping. The letter said this (emphasis in the original):

> ***Non-UK nationals ineligible for statutory homelessness support due to immigration status. One of the key issues that has been raised with me is that of non-UK nationals ineligible for statutory homelessness support due to immigration status. Whilst this group is often referred to as those with no recourse to public funds, there are in fact several different statuses covered when this term is used generically. There are different options for individuals who may be ineligible for statutory homelessness support due to their immigration status and I want to be clear that the Government position is that you should exhaust all options within the law to provide a route off the streets for this cohort. Exhausting all options must start with a full and proper assessment of a person's status, it should include considering what discretionary powers can be used to support these individuals and fully exploring these powers in close partnership with the voluntary and community sector. I know this area can be complex which is why I have asked my officials to share further information about some of the legal powers you have to support individuals in this cohort. Exhausting all options should also include exploring how you can work with Home Office to regularise an individual's immigration status …***

30. The information sheet (7.21). By a document entitled "Information for local authorities on existing powers and changes to eligibility", made available by the MHCLG to local authorities (in July 2021), MHCLG said:

> ***We remain clear that the law with regards to immigration status has not changed, and it remains for each local authority to decide what assistance can be provide[d] to people who are homeless and rough sleeping, based upon an individual assessment of a person's status, circumstances and needs.***

31. The email to Camden LBC (5.7.21). By an email on 5 July 2021, an Adviser in the RSI Rough Sleeping Delivery Team at the MHCLG gave the Ministry's response to an email request from Camden LBC. Camden LBC's email (23.6.21), written in the context of the pending judicial review brought against it (by the Claimant), had invited the Ministry to state its position in the "factual" question of whether the Everyone In policy was "still in place" and "continued to apply" to those at risk of rough sleeping. The context for the question, as Camden LBC's email explained, was a response which the Secretary of State had given at the rough sleeping event (22.6.21), where he had referred to Everyone In as "continuing in the sense of ensuring ongoing support to those currently in emergency accommodation". In the response email (5.7.21), the Ministry stated its position for Camden LBC, as follows:

> ***The Everyone In initiative was part of the Government's response to the COVID-19 pandemic whereby central Government asked local authorities to support rough sleepers during an unprecedented public health crisis and made funding available for them to do so. The initiative was set out in the letter of 26 March 2020 from Minister Hall to Chief Executives. The Department did not provide designated funding for Everyone In, but has distributed grant funding to local authorities since March 2020 to cover additional spending related to COVID-19 and for move-on and ongoing support for rough sleepers. It was a matter for each local authority to deploy that funding to best effect and to consider the risks and need in their area. It should be emphasised that nothing in this initiative displaced the existing legal framework. As was made clear in communications from MHCLG to local authorities in correspondence dated 28 May 2020, the restrictions on eligibility on the grounds of immigration status continued to apply. Everyone In did not amount to a change in policy or approach in relation to eligibility for statutory assistance such as would need to be accompanied by formal guidance. Whilst it is the case that facts arising from the coronavirus epidemic may be relevant to the decision a local authority makes as to whether it does have a power or duty to provide accommodation in any particular case that will be a matter for the local authority's judgment in any individual case. The most recent published data shows that over 11,000 people continue to be supported through Everyone In in emergency accommodation. On 22 June 2021, the Housing Secretary asked Local Authorities to continue to work together to build on the achievements of Everyone In.***

32. The response blog (7.7.21). By a gov.uk blog post published on 7 July 2021 by the MHCLG, entitled "Response to claims about the Everyone In scheme", the Ministry said this:

> ***Some media outlets are reporting claims that we have told councils that the Everyone In scheme is ending. The work of Everyone In is ongoing. We've made huge progress to bring rough sleepers off the streets during the pandemic and this work continues. We've been clear with councils and partners that everyone helped into accommodation must be offered the tailored support they need to move forwards and that no one should find themselves back on the street without this. Tackling rough sleeping and homelessness remains an absolute priority for the Government. We are spending an unprecedented £750m over the next year, which includes further funding of £203m directly to councils to continue the work to help people off the streets. We're funding 6,000 long-term move-on homes for rough sleepers by the end of this parliament, with the majority becoming available this year. This demonstrates our commitment to end rough sleeping within this Parliament and fully implement the Homelessness Reduction Act.***

33. The House of Commons debate (19.7.21). An exchange in the House of Commons on 19 July 2021, between Leila Moran MP (Lib Dem, Oxford West and Abingdon) and Eddie Hughes MP (Parliamentary under-Secretary of State for Housing, Communities and Local Government), included this:

> ***Moran: With reference to the Government's commitment to end rough sleeping by 2024, whether he has plans to update the rough sleeping strategy to set out how that commitment will be met.***
>
> ***Hughes: Our focus in the last year has rightly been on managing the response to the pandemic and supporting tens of thousands of the most vulnerable people across our society. During the pandemic, we took unprecedented action to protect people sleeping rough or at risk of doing so. This saved lives and achieved huge reductions in the number of people sleeping rough: a 37% decrease in the latest statistics. Our ambition to end rough sleeping within this Parliament still stands. We are taking into account the lessons learned from our ongoing pandemic response, including Everyone In and the Protect Programme, to inform our long-term plans.***
>
> ***Moran: The Everyone In scheme has undoubtedly been a success and led to incredible stories of lives being turned around in a housing-first approach that has support from all sides of the House. However, several councils have reported that the Government have instructed***

> ***them, through the terms of the [RSI] funding allocations, to end the use of emergency accommodation for those sleeping rough, so signalling the end of the Everyone In scheme. To make matters worse, the rough sleeping strategy is still in need of updating following the pandemic. Were local authorities instructed to end Everyone In? If so, have charitable and third-sector groups been made aware so that they can fill in the gaps? When can we expect to see the updated rough sleeping strategy and, indeed, the promised review of the Vagrancy Act 1824?***
>
> ***Hughes: As is so often the case, the Lib Dems are more focused on two things: making plans—rather than taking action—and scaremongering. It is categorically not the case that either charities or local councils have been instructed as the hon. Member suggested. Indeed, funding through the [RSI] continues to fund people in emergency accommodation. More importantly, we should note that that is a temporary form of accommodation and it is incredibly important that we get people moved on to more permanent forms of accommodation. That should be the objective of all of us.***

34. LOR23 (26.7.21). GLD wrote the pre-action letter of response on 26 July 2021. The context was that, by a letter before claim (12.7.21), the Claimant's solicitors identified the Defendant's action of having "effectively discontinued guidance to local authorities to accommodate all those who are rough sleeping or at risk of rough sleeping". They proposed to challenge that action by judicial review identifying, as being among the proposed grounds for judicial review, the unlawfulness of the Defendant's "failure to publish its revised policies and guidance to local authorities" and "failure to consult major homeless charities". In the letter of response at §23 ("LOR23") GLD said this:

> ***[The Defendant] has been wholly transparent in its actions. "Everyone In" was not a permanent programme. Our client was transparent about the funding that was provided under it, and has been transparent about the fact that funding will not continue in the same way as the situation in England changes. [The Defendant] has written to local authorities making clear the still substantial additional resources that [the Defendant is] providing to local authorities in relation to the present stage of the epidemic. It remains the case – as it has always been – that it is for local authorities to decide how to exercise their statutory functions in light of local conditions and their assessment in individual cases.***

35. The Westminster Hall debate (8.9.21). On 8 September 2021, Leila Moran MP and Eddie Hughes MP had this further exchange in a House of Commons debate in Westminster Hall:

> ***Moran: On the [RSI], I would seek a point of clarification, and I think that many council officers would also be desperate for a clear answer on this. Councils received letters from the Government saying that, because of the [RSI], they should end all "Everyone In" programmes, and, in particular, the use of hotels. Meanwhile, they have heard elsewhere from Government that the "Everyone In" scheme is still ongoing. That has caused huge amounts of confusion, not least in my own area in Oxford, and other councils have also contacted me, desperate for an answer. My question is: has "Everyone In" now stopped completely, or are councils still allowed to use money to put people in hotels, or was that letter not saying the right thing?***
>
> ***Hughes: I would say that "Everyone In" continues; we still have people who are in emergency accommodation. However, we also need to appreciate that "Everyone In" is not a sustainable approach. It was fantastic that, during the height of a pandemic, we were able to move people into emergency accommodation, but the type of accommodation that many of those people were moved into is, by its very nature, not something we would expect people to stay in for a sustained period.***

36. Defence64 (1.11.21). The Defendant filed its pleaded Defence in these proceedings on 1 November 2021. Defence §64 ("Defence64") said this:

> ***The Next Steps Accommodation Programme introduced in July 2020 is described in detailed guidance which makes no reference to Everyone In. In September 2020, the Minister described that programme as being "launched" as "part of" the "Everyone In" initiative; but that only underscores that "Everyone In" does not identify with clarity any particular policy or guidance or decision. The "Protect Programme" was described as running "alongside" "Everyone In". Thousands of people accommodated in March 2020 in response to the 26 March 2020 letter remain accommodated, and the Government has made a succession of decisions to provide additional funding for move-on accommodation to support local authorities in preventing people from returning to the streets. In that broad sense the work of "Everyone In" has continued; but it is not a term that can be fixed to a particular policy or guidance or funding decision and so there has been no decision to "end" it.***

37. The PAC letter (15.11.21). By a letter dated 15 November 2021 to the Chair of the House of Commons Public Accounts Committee (Dame Meg Hillier MP) the Permanent Secretary of the Department for Levelling Up, Housing and Communities (Jeremy Pocklington) followed up on information provided to the Committee (on 1.11.21). The letter included this:

> ***Recourse to Public Funds. In July 2021, Eddie Hughes, Minister for Rough Sleeping and Housing, sent the attached letter to Local Authority Council Leaders asking that they ensure that they are exhausting all options within the law to support those who are unable to access statutory homelessness assistance as a result of their immigration status. This letter made clear that exhausting all options should include considering what discretionary powers can be used to support individuals; exploring partnership work with the voluntary and community sector; and engaging with Home Office on complex cases, to support regularisation of status. Any funding we have provided can be used to help anyone, including those with restricted eligibility due to their immigration status, as long as LAs are acting within the law in doing so. This includes the recently announced Winter Pressures Fund, specifically focussed on enabling LAs to build on existing RSI 2021/22 interventions where it is needed. We understand that this is a complex area, particularly in the context of the pandemic and the change in status of EEA nationals. In July we also made available to local authorities the attached information on some of the existing legal powers they have to support non-UK nationals with restricted eligibility. We are clear that the law with regards to immigration status has not changed, and it remains for each local authority to decide what assistance can be provided to people who are homeless and rough sleeping, based upon an individual assessment of a person's status, circumstances and needs.***

Ground one (conformity and publication): the Claimant's case

38. I will set out here (§§38-43), the essence of Mr Burton QC's argument in relation to the first ground for judicial review, as I see his analysis. The starting-point is that the context of the provision of accommodation for rough sleepers was one which called for – or at least allowed for – the issuing of prescriptive policy guidance to local authorities, 'externally' (§7(6) above), to which public law duties (see §7(4)-(9) above) would in principle be applicable. Next, the public statements made by (or for) the Defendant included prescriptive policy guidance, triggering the public law 'duty of conformity' (§7(7) above), unless and until there was compliance with the 'duty of publication' (§7(5) above) in relation to any policy diverging from or discontinuing that position. Next, the Defendant has, in the event, adopted a position in LOR23 and Defence64 (§4 above) which constitutes a divergence from, or discontinuance of, the position set out in published policy guidance. It constitutes the adoption of an unpublished policy position. Finally, given the 'role of the Court' (§7(9) above), the appropriate response on the part of the Court is to recognise these breaches of public law duties, to allow the claim for judicial review, and to grant appropriate declarations. In support of this

analysis, reliance is placed on all the circumstances of the case, and on the following key points in particular:

39. In approaching the correct legal analysis, it is necessary to recognise a number of 'legal truths' (as I shall call them) which the analysis 'takes in its stride':

(1) A first legal truth is the 'reach of powers' point (see §7(1) above). That means that any action by local authorities in providing accommodation to rough sleepers would always need to fall within the 'reach' of their statutory powers. That would include, for example, the pre-suspension position of the EEA nationals described in the June 2020 next phase letter and announcement (24.6.20: §15 above). This truth is one which went without saying. And it therefore constitutes no distraction where it is found stated or restated. By way of an example, when the Next Steps follow-up letter (22.9.20: §18 above) spoke of assessing needs and providing accommodation "within legal constraints" and "taking into account legal duties and powers", this was a reflection of this first legal truth. Importantly, the 'reach of powers' point is consistent with local authorities providing accommodation to rough sleepers, because there is 'no roadblock' (see §7(2) above) and because 'blanket action' (see §7(3) above) which provides accommodation to all rough sleepers (so that "everyone" really is "in") is in principle open to local authorities during the pandemic and therefore open to the Defendant in lawful external prescriptive policy guidance, directed to local authorities.

(2) A second legal truth, which is a manifestation of the first, concerns NRPF individuals in particular. Theirs is a specific position covered by the general points made within the first legal truth, by reference specifically to the 'no roadblock' point (§7(2) above). Again, this truth would persist even absent statement (or restatement) by the Defendant, which statement (or restatement) involves no distraction. When, for example, in the Next Steps follow-up letter (22.9.20: §18 above), reference was made to "legal duties and powers" and to "legal constraints", and specifically to "legal restrictions", all of this was an expression of this legal truth, and entirely consistent with a published policy under whose criteria local authorities were to provide accommodation to all rough sleepers ("everyone in"). By way of further examples, the same is true of the language of the Everyone In announcement (26.3.20: §9 above) ("utilise alternative powers"); the May 2020 next phase letter (28.5.20: §14 above) ("The law regarding that status remains in place"; "lawfully"); the third national lockdown letter (8.1.21: §25 above) ("The law on eligibility relating to immigration status remains in place"; "lawfully'); the RSI Toolkit (28.1.21: §26 above) ("The rules as to eligibility… Have not changed"; "lawfully"); the information sheet (7.21: §30 above) ("the law… has not changed"); and so on.

(3) A third legal truth concerns the inherent need for an individual assessment. That is something which arises in the context of identifying rough sleepers, as distinct from 'non-rough sleepers' (§6(1) above). It is therefore another truth entirely consistent with a published policy under whose criteria local authorities were to provide accommodation to all rough sleepers ("everyone in"). It is also consistent with a policy extending to include (within "everyone") those who are 'at-risk' of becoming rough sleepers (§6(2) above). So, for example, there is no distraction in the language of the Next Steps follow-up letter (22.9.20: §18

above) which spoke of "individual assessment", that reflecting the word "verified" in the phrase "verified rough sleepers in their area"; nor in the language of the third national lockdown letter (8.1.21: §25 above) which spoke of "individual assessments" and "rapid assessment", in the context of action for 'people who sleep rough"; and so on.

(4) A fourth legal truth concerns the appropriateness of prioritisation of the most 'vulnerable' rough sleepers. Prioritisation is something which can be expected to arise in any context where any decision-maker or person implementing a policy needs to decide where to start (who is "in" first and fastest: those most "vulnerable"). It is not to be confused with where to finish ("everyone"). It is again entirely consistent with a published policy under whose criteria local authorities would provide accommodation to all rough sleepers ("everyone in"). Moreover, reference to "vulnerable" individuals in the context of rough sleepers is apt to include all rough sleepers, as it repeatedly did. To illustrate these points: when the May 2020 next phase letter (28.5.20: §14 above) spoke of a "focus" which was "to protect the most vulnerable, including those with complex needs" that was in the context of needing "a plan of support for all rough sleepers accommodated"; when the Protect Programme launch announcement (5.11.20: §20 above) spoke of work "to prioritise those who are clinically vulnerable", that was in the context of "support to provide accommodation for those currently sleeping rough", it being recognised that all of the rough sleepers who had been supported from March 2020 by the Everyone In initiative had been "vulnerable people"; when the third lockdown announcement (8.1.21: §24 above) spoke of "those most in need" and "the most vulnerable in society" that was a reference to "all those currently sleeping rough"; and so on.

(5) A fifth legal truth is that there is always the 'good reason exception' to the 'duty of conformity' (see §7(7) above), and to the correlative 'entitlement of conformity' (§7(8) above). That 'good reason exception' recognises that the duty to act in conformity with prescriptive policy guidance is subject to a local authority's ability to depart from that guidance for "good reason". One example of a "good reason" would concern local circumstances and local resources, including whether a local authority had been equipped with insufficient funding, by way of additional resources, to be able to provide accommodation for "everyone". As was explained in the global funding letter (30.4.20: §11 above), the Everyone In initiative was one of the "specific tasks" – a task in relation to "rough sleeping" – which local authorities had been asked to carry out, for which the 'non-ringfenced' global funding was available, but it remained for local authorities to decide where this was "best spent". Accordingly, for example, when the Next Steps follow-up letter (22.9.20: §18 above) spoke of local authorities determining what services may be offered, it referred to the fact that the local authority would be "taking into account… local resources". Again, all of this is consistent with a published policy under whose criteria local authorities would provide accommodation to all rough sleepers ("everyone in").

40. Once the published announcements are seen against the backcloth of those five legal truths, the position in law – says Mr Burton QC – is straightforward. The clear, published prescriptive policy guidance in this area, since March 2020, has involved a policy of "everyone in". Those words have a clear and straightforward meaning.

"Everyone" means what it says. "Everyone in" means all rough sleepers given accommodation. Identifying the existence of the prescriptive policy guidance, and of its true interpretation, are key aspects in the 'role of the Court' (see §7(9) above). There has unmistakeably been the issuing of published policy of "everyone in". This is public health policy, by means of consistent, published guidance to local authorities. It has continued – and has expressly publicly been described by the Defendant as "ongoing" and "continuing" – with publicly stated denials that the policy was ending or had ended. There has been no published curtailment or discontinuance. A number of features of this case support that straightforward position:

(1) First, there are the clear and published policy statements concerning "everyone", meaning "every" rough sleeper – all those currently, at any time, sleeping rough – being offered accommodation by local authorities. The Everyone In announcement (26.3.20: §9 above) had as its clearly stated objective in the "response to Covid-19 and rough sleeping", to "make sure that we bring everyone in". It was expressed "to bring in those on the streets", to focus on people who are sleeping rough, as well as those who are at-risk of sleeping rough. The identified "imperative" was that "rough sleepers" are "supported into appropriate accommodation". The Everyone In email (26.3.20: §10 above) unmistakably referred to "everybody" and "everyone". The Protect Programme launch announcement (5.11.20: §20 above) unmistakably referred to "every rough sleeper". The third lockdown tweet (4.1.21: §23 above) unmistakably referred to finding accommodation "for every rough-sleeper". The third lockdown announcement (8.1.21: §24 above) unmistakably referred to "all those currently sleeping rough".

(2) Secondly, there are the clear and published policy statements concerning the utilisation and exhaustion of "all" powers and "all" options. There was the Everyone In announcement (26.3.20: §9 above) with its reference to one of the "basic principles" as being to "utilise alternative powers and funding to assist those with no recourse to public funds"; there was the joined-up approach announcement (22.6.21: §28 above), with its reference to local authorities being "asked to exhaust all options within the law"; there was the working together letter (5.7.21), in which the deliberate emphasis (in the original text) was on the phrase "exhaust all options" in the context of providing a route off the streets even for NRPF individuals who were rough sleepers; and there is the position maintained in the PAC letter (15.11.21: §37 above) regarding local authorities ensuring that they are "exhausting all options within the law". Bearing in mind the 'no roadblock' and the 'blanket action' points (see §§7(2) and (3) above), this clearly reflects the "everyone" policy as clearly issued and published.

(3) Thirdly, there is the clear and unmistakable ongoing inclusion of accommodation for current – including 'new' (see §6(3) above) rough sleepers – alongside the ongoing steps to provide 'move-on accommodation' for previous rough sleepers currently in accommodation (see §6(4) above). There is, for example, the Next Steps follow-up letter (22.9.20: §18 above), with its clear reference to the provision of accommodation and/or support "to newly verified rough sleepers in their area"; and the Protect Programme launch letters (5.11.20: §21 above), with the reference to interventions for those "new to rough sleeping". This ongoing inclusion has been alongside the published policy

guidance relating to 'move-on accommodation', reflected: in the task force announcement (2.5.20: §12 above) ("plans to ensure rough sleepers can move into long-term, safe accommodation… ensuring as few people as possible return to life on the streets"); in the supported homes announcement (24.5.20: §13 above) ("long-term, safe homes for vulnerable rough sleepers taken off the streets during the pandemic"); in the May 2020 next phase letter (28.5.20: §14 above) ("next steps for accommodating and supporting people to move on from emergency accommodation"); in the Next Steps launch (18.7.20: §16 above) ("to prevent the nearly 15,000 people accommodated during the pandemic from returning to the streets"); in the Next Steps follow-up statement (17.9.20: §17 above) (ditto); in the joined-up approach announcement (22.6.21: §28 above) ("helped to stay off the streets for good"); and so on.

(4) Fourthly, there are the clear and unmistakable published policy positions describing Everyone In as a policy which has been 'ongoing', which has been 'continuing', and which has not 'ended'. There was the homelessness and rough sleeping funding letter (21.12.20: §22 above), describing the "'Everyone In' campaign helping to protect thousands of lives during the pandemic by housing rough sleepers in safe accommodation" as being "ongoing". There was the third lockdown tweet (4.1.21: §23 above), which categorically denied a claim that the everyone in drive against rough sleeping was not being renewed, describing that claimed nonrenewal as being "not true", and which stated in terms that the "drive… to successfully find accommodation for every rough-sleeper" as seen "during the first lockdown" was "continuing". There was the third lockdown announcement (8.1.21: §24 above), which spoke of what the Defendant had "made sure" at the start of the pandemic, which described the policy as "continuing in this vein", and which expressly described the Everyone In initiative as "ongoing". There was the response blog (7.7.21: §32 above), which specifically denied reported claims that local authorities had been told that the Everyone In scheme was "ending", stating as the correct position that the "work of Everyone In is ongoing". And there was the explanation in the House of Commons debate (19.7.21: §33 above), stating that it was "categorically not the case" that local authorities had been "instructed… to end the use of emergency accommodation for those sleeping rough" and "instructed to end Everyone In".

(5) Fifthly, this can be added. Alongside the descriptions of Everyone In as ongoing, and continuing, and not having ended, have been clear descriptions of the growing numbers of rough sleepers who had been accommodated (taken 'off the streets') under the Everyone In initiative. Those references make clear that Everyone In was at no stage curtailed or restricted to the provision of 'move-on accommodation' (§6(4) above) for those rough sleepers who had previously been 'taken off the streets' and offered emergency accommodation at some past stage during the pandemic; still less those originally accommodated in the first national lockdown. Accordingly, the task force announcement (2.5.20: §12 above) was a description of the Everyone In initiative as having "provided accommodation to over 5,400 people who were sleeping rough at the beginning of the crisis"); then the June 2020 next phase letter and announcement (24.6.20: §15 above) and the next Steps launch (18.7.20: §16 above) spoke of the 15,000 vulnerable people taken off the streets during the peak of the pandemic. But then the Protect Programme launch letters (5.11.20: §21 above) made clear reference

> to successful support of over 29,000 people by September 2020 through local authorities' work on "Everyone In", with distinct reference being made to 'move-on accommodation' (next steps plans and longer-term accommodation plans) for those 29,000 people successfully taken off the streets, nearly 19,000 of whom had already been provided with settled accommodation or move-on support. Similarly, the third lockdown announcement (8.1.21: §24 above) made the clear and unmistakable claim that around 33,000 people had by November 2020 been supported by way of the successful operation of the "ongoing Everyone In initiative" (by being 'taken off the street'), of which a distinct sub-category of some 23,000 had already been provided with 'move-on accommodation'. Then the working together letter (5.7.21), like the next stage announcement (15.5.21: §27 above) before it, made the clear and unmistakable claim that 37,000 people had by January 2021 been supported "as part of our Everyone In initiative", of whom a sub-category of some 26,000 had already been provided with 'move-on accommodation'. These descriptions of growing numbers helped 'off the streets' reflect the fact that Everyone In continued to operate to provide accommodation to current (including 'new') rough sleepers, and not simply to secure 'move-on accommodation' for those rough sleepers previously or originally accommodated under Everyone In.

41. In the light of all this, says Mr Burton QC, the position so far as concerns the Defendant's published policy is that – subject always to the five legal truths (§39 above) – the applicable policy is inclusive: where "Everyone In" means straightforwardly what it says. To speak of the Everyone In initiative in the past tense (as LOR23 does), and to speak of Everyone In as continuing only in the sense of the provision of 'move-on accommodation' for previously accommodated rough sleepers (as Defence64 does: §36 above), is to adopt positions of clear non-conformity with the published policy guidance, which positions are moreover unpublished. That constitutes a breach of the 'duty of conformity' (see §7(7) above), and a breach of the 'duty of publication' (see §7(5) above). The Court should make findings to that effect, allow the claim and grant suitable declarations.

42. Then there is the practical reality 'on the ground'. Absent a rigorous application of the basic public law duties which – says Mr Burton QC – are applicable duties serving to promote transparency, the vices of uncertainty and arbitrariness arise. Those vices are visible in the present case, manifested in the uncertainty and confusion described in the papers by local authorities and relevant charities. One manifestation of that is Leila Moran MPs statement during the Westminster Hall debate (8.9.21: §35 above), where references to 'ending' Everyone In programmes and references to the Everyone In scheme as 'still continuing' were described as having "caused huge amounts of confusion". Another manifestation is in the communication which gave rise to the email to Camden LBC (5.7.21: §31 above), where Camden LBC had been constrained to email the Ministry (on 23.6.21) to ask a "factual" question, as to whether or not the "Everyone In policy" was "still in place". There were other references. They included Camden LBC's own communications, as to whether Everyone In had, or had not, ended. Other references are in Mr Bernardi's witness statement (1.9.21), which describes a number of local authorities as having refused accommodation to rough sleepers who are NRPF individuals; while other local authorities have been "more willing to provide [Everyone In] accommodation to people with NRPF". To take a practical example, among the documents before the Court there is a letter from Tower

Hamlets LBC (13.11.20) telling an NRPF individual "that Local Authorities have been advised that the Covid-19 initiative has now come to an end". There is also an announcement by Oxford City Council (2.7.21) stating that "the government has called an end to the 'everyone in' initiative for vulnerable homeless people during Covid-19". The 14 January 2021 report of the National Audit Office, entitled "Investigation into the housing of rough sleepers during the Covid-19 pandemic", recorded that after 28 May 2020 "the approach taken by local authorities to those who newly presented as rough sleeping increasingly diverged, with some continuing to take people into emergency accommodation regardless of eligibility, and others assessing people's eligibility for support", and with some local authorities having "stopped taking those who were ineligible for benefits into emergency accommodation' (key findings §§13 and 50). The NAO report also observed (§20c) that the "response to the resurgence of Covid-19" did "not appear as comprehensive as the initial Everyone In in the spring [of 2020]". Uncertainty of this kind is the product of Government action and messaging which is not in 'conformity' with published policy guidance, and which was never published, in breach of applicable public law duties.

43. That, then, is the essence of the Claimant's argument on ground one, as I see it. But is this the legally correct analysis?

Ground one (conformity and publication): discussion

44. Mr Burton QC and the Claimant's legal team have mounted a sustained and detailed critique of the position, adopted publicly by (and for) the Defendant, and adopted in communications between the Defendant and local authorities (so far as published or known), in relation to Everyone In: its nature, its scope and its continuation. In my judgment, when the judicial review Court is asked in this case to apply the disciplined objective legal standards of the 'duty of conformity' and the 'duty of publication' (§§7(7) and (5)), to the various phases of Government communications in the context of the Everyone In initiative, what the Court encounters is an elusiveness, a fluidity, and an ambiguity in those communications. It is difficult – and it becomes the more difficult, the more detailed and in-depth the scrutiny – to derive a solid 'foothold' as to what precisely the Everyone In initiative meant and entailed, and at different times in the chronology. In my judgment, there is something important underlying this. It is that the legal standards of the 'duty of conformity' and the 'duty of publication' are not triggered as applicable legal duties, engaged by these various statements of the Government "initiative". I leave aside the undoubtedly applicable standard of public law "reasonableness", which Mr Burton QC accepts has not been breached in this case. I also leave aside public law's principles regarding the protection of "legitimate expectations", which Mr Burton QC also accepts have not been breached in this case. In my judgment, insofar as there are question-marks about the clarity and straightforwardness of the Government messaging relating to the Everyone In initiative, these do not engage the public law 'duty of conformity' and 'duty of publication'. In those circumstances – and absent any unreasonableness or breach of any legitimate expectation – the resolution of those question-marks belongs to the arena of public opinion, and of political and democratic accountability. Mr Burton QC can certainly point to fluidity and elusiveness, and to examples of uncertainty. But what he cannot, in my judgment, establish is 'prescriptive policy guidance' engaging the public law 'duty of conformity', whose modification or discontinuance then engages the 'duty of publication'. And alongside all of that, it is appropriate to grapple with the legal logic

of the Claimant's case, if it were correct. If Mr Burton QC's analysis is right, it would mean that every rough sleeper has had – and continues to the present day to have – an 'entitlement of conformity' (§7(8) above) under the Everyone In initiative, as previously publicly announced by the Defendant, which 'entitlement' continues unless and until there is a publicly stated curtailment or withdrawal of that initiative along the lines of LOR23 and Defence64. I cannot accept that these duties are engaged. And I cannot accept that these consequences arise. I will now explain the key features of this case that have led me to those conclusions.

45. First, there is a need for care in relation to the concept of Government "policy", when addressing the applicability and application of judicial review's specific and contextual principles involving the 'duty of prescription', the 'duty of publication', the 'duty of conformity' and the 'entitlement of conformity' (see §§7(4)(5)(7)(8) above). One illustration of the range of species of "policy" is found in "Government policy – a spotter's guide" by Neil Williams (exhibited to a witness statement of the claimant's solicitor Derek Bernardi), which refers to these possible meanings of "policy": "a course or general plan of action to be adopted by government, party, person etc"; "the process by which governments translate their political vision into programmes and actions to deliver 'outcomes', desired changes in the real world"; and "statements of the government's position, intent or action". Plainly, in my judgment, it is not every "policy" which attracts the Lumba public law duties which are invoked in this case. It is not every Government "policy" attracts a 'duty of conformity', and an 'entitlement of conformity', and continues to do so unless and until Government has 'published' a statement which discontinues or varies the previous policy.

(1) The situation where the common law recognises a 'duty of prescription' is where there are broad discretionary powers needing a statement of criteria, in order to secure appropriate consistency, to protect against arbitrariness, to allow informed representations and to facilitate informed challenge (see §§7(4)(5)(7)(8) above). I accept that actions taken by local authorities in the context of rough sleepers can, in principle, be seen as falling well within that need. But such actions are already the subject of a well-established framework of legislation and guidance, together with a body of relevant case law. Mr Anderson accepted – rightly, in my judgment – that the context of local authority action in relation to rough sleepers is one in which central Government action is, in principle, "justiciable" in public law terms. This is not an area in which Government would make public statements calling for action, free of any legal accountability. If Government were to exhort action by local authorities, in the context of rough sleepers and the pandemic, calling for accommodation based on race or religion, or calling for accommodation of those with 'red hair' (to take the common law's conventional example of aberrant executive action) no doubt substantive principles of public law would doubtless be engaged. I would also accept, in principle, Mr Burton QC's submission that – even if the 'duty of prescription' does not arise (see §7(4) above) – where central Government chooses to issue prescriptive policy guidance, the 'duty of conformity' and the 'duty of publication' can be engaged in relation to action following having made that choice. The public law duties of 'conformity' and 'publication' do not follow wherever there is an "initiative" which is an aspect of Government "policy" with practical implications for individuals.

(2) As I put to Mr Burton QC, there is no general public law principle which requires of the executive in the context of all Government "policy" that which is required under the principle of legality, where Parliament is said to have legislated in a manner contrary to fundamental principles of human rights (see R v Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115 at 131E-F), namely that Parliament "must squarely confront what it is doing". There may – within the realms of Government "policy" – be nuance, subtlety and fluidity. There may – within those same realms – be ambiguity, prevarication and obfuscation. Indeed, ambiguity or lack of clarity in a "policy" statement is familiarly encountered, not least because it may be precisely those characteristics that prevent any 'legitimate expectation' from arising. The "constraints" on "policy" having these characteristics are "ultimately political, not legal" (cf. Simms at 131E). Mr Burton QC submits that the "Lumba principles" produce the same outcome as the principle in Simms: requiring the policy maker to "squarely confront" what it is doing. But the public law duties of 'prescription', of 'conformity', and of 'publication' (see §§7(4)(5)(7) above) are not engaged wherever there is an "initiative" which can be described as Government "policy". They are principles which concern a species of "policy". And there is good reason why that species is in the nature of 'prescriptive policy guidance', by which decision-making criteria are needed to be introduced (or are in fact introduced), to regulate the exercise of discretionary powers.

46. Secondly, the statements of Government "policy" in relation to the Everyone In initiative were not, by their nature, statements of prescriptive policy guidance. They did not purport to set out definitive decision-making criteria for local authorities; still less did they do so on an open-ended basis. Everyone In was an "initiative". There was no published guidance document, by contrast – for example – with the guidance document which accompanied the next Steps launch (18.7.20: §16 above), and by contrast with the RSI Toolkit (28.1.21: §26 above). The statements of "policy" were very different, for example, from policy guidance in the context of the exercise of executive immigration detention powers in Lumba. Mr Burton QC's critique exposes a lack of clarity as to 'operational duration' of aspects of the "initiative", but that reinforces the point. This was not prescriptive policy guidance, giving local authorities 'external' (§7(6) above) decision-making criteria. The statements of "policy" in relation to Everyone In are convincingly characterised by Ms Bennion, in her witness statement, as having been in the nature of a 'call to action' (as she puts it, a "call to arms"). The Everyone In initiative started as a specific task which Government "asked" local authorities to carry out, as it was put in the global funding letter (30.4.20: §11 above)). In the May 2020 next phase letter (28.5.20: §14 above) Government was "now asking" local authorities to put in place plans of support for rough sleepers accommodated in emergency accommodation. In the Protect Programme launch announcement (5.11.20: §20 above) local authorities were being "asked to make sure every rough sleeper offer somewhere safe to go". In the third lockdown announcement (8.1.21: §24 above) local authorities were being "asked to redouble their efforts to help accommodate all those currently sleeping rough". The joined-up approach announcement (22.6.21: §28 above) involved Government "asking" local authorities to work to cement the achievements of Everyone In and to exhaust all options within the law for NRPF individuals. The working together letter (5.7.21: §29 above) saw the Minister "ask that you continue to focus relentlessly on reducing rough sleeping and make sure rough sleeping is as brief as possible and non-recurrent". All of these were important "asks". They were

exhortations. I accept that they were not bereft of public law consequences. I can see that the "ask" would be a legal relevancy to which a local authority acting reasonably would need to have regard, especially when put alongside the provision of resources enabling it to act as exhorted. But I cannot accept that Government was issuing 'external' prescriptive policy guidance by way of identifying inclusive (or all-inclusive) criteria; still less, on an open-ended basis. One internal reference point reinforces this view of the published communications. An internal email written by Ms Bennion (25.3.20), about work on the published letter to chief executives constituting the Everyone In announcement (26.3.20: §9 above), asked for "a call to arms letter".

47. Thirdly, the statements of Government "policy" in relation to the Everyone In initiative arose in the specific context of the pandemic, alongside specific Government responses to the pandemic. The Everyone In announcement (26.3.20: §9 above) was described as an approach "during this public health emergency". It was in the context of the first national lockdown which had been announced three days earlier on 23 March 2020. The statement did not purport to communicate an 'open-ended' position. The "imperative" that "rough sleepers… are supported into appropriate accommodation by the end of the week" was in the context of the Prime Minister's announcement "that the public should be staying in their homes wherever possible". It was also made clear that there would be "step-down arrangements", "for the future", in the "longer term". By the May 2020 next phase letter (28.5.20: §14 above), followed by the June 2020 next phase letter and announcement (24.6.20: §15 above), Government was speaking about entering "the next phase of this endeavour". The Next Steps follow-up letter (22.9.20: §18 above), a document which was published (or rather, I was belatedly told, "publicly available") like the Everyone In announcement (26.3.20: §9 above), did not use all-inclusive language in describing eligibility for support. It spoke about the assessment of eligibility "now that the initial lockdown restrictions have eased", and the need to take account of individual circumstances, legal duties and powers and local resources. Yes, there were subsequent statements repeating an all-inclusive approach. But their timing and context was striking. The Protect Programme launch announcement (5.11.20: §20 above) repeated the exhortation to local authorities to make sure that every rough sleeper was offered somewhere safe to go, but that was in the specific context of "new national restrictions": the second national lockdown. The third lockdown tweet (4.1.21: §23 above), the third lockdown announcement (8.1.21: §24 above) and the third national lockdown letter (8.1.21: §25 above) 'renewed' the inclusive language of exhorting local authorities to accommodate those currently sleeping rough. But again, that was in a further national lockdown. Indeed, what the third lockdown tweet (4.1.21: §23 above) was addressing was a claim about the 'renewal', or 'non-renewal', of the Everyone In "drive". All of this suggests an 'ebb and flow' – or a 'foot on the gas' – with a general call to all-inclusive action, in the context of national measures. All of this fits with the careful, context-specific analysis of Freedman J's 'no roadblock' analysis of statutory powers in Ncube (§7(2) above). It fits with the carefully caveated 'blanket action' point as accepted by Mr Anderson (§7(3) above).

48. Fourthly, there was a link between the various exhortations to local authority action and the provision of funding. The self-isolation funding announcement (17.3.20) (§8 above) had exhorted emergency measures to help rough sleepers with a tranche of £3.2 million funding. The Everyone In announcement (26.3.20: §9 above) exhorted accommodation by reference to £1.6bn of recent (non-ringfenced) funding for local authorities. The link

between announcements regarding actions and funding tranches continued: the supported homes announcement (24.5.20: §13 above) related to 'move-on accommodation' by reference to £160m tranche of funding; the May 2020 next phase letter (28.5.20: §14 above) called for further action by reference to a further £433m funding; the June 2020 next phase letter announcement (24.6.20: §15 above) called for further action by reference to a further £105m funding; the next steps launch (18.7.20: §16 above) called for further action by reference to a further £161m tranche of funding: the support package announcement (13.10.20: §19 above) called for further action by local authorities referable to a further tranche of £10m funding; the Protect Programme launch announcement (5.11.20: §20 above) referred to action by reference to a further tranche of £15m; the homelessness and rough sleeping funding letter (21.12.20: §22 above) referred to action in the context of a further fund of £310m; the third lockdown announcement (8.1.21: §24 above) referred to action in the context of a further tranche of £10m; the next stage announcement (15.5.21: §27 above) referred to action in the context of a further tranche of £203m; and so on. The Everyone In initiative was not framed as a programme, supported by a continuum of designated funding (what Ms Bennion's witness statement calls a "specific funding stream"). The exhortations, accompanied by specific funding announcements, were not in nature open-ended or indefinite. Importantly, the Everyone In initiative flowed with year 4 of the RSI, which Government had launched in 2018. So, the homelessness and rough sleeping funding letter (21.12.20: §22 above) described rough sleeping funding for 2021/2022, involving plans for the RSI. And the RSI Toolkit (28.1.21: §26 above) was Government's prospectus and described the launch of RSI year 4. The RSI was linked to ending rough-sleeping by the end of the Parliament. An all-inclusive, pre-existing and continuing programme to ensure accommodation to all rough sleepers – from March 2020 onwards – would have subsumed such arrangements. If the RSI was back in play, that must have been because the Everyone In initiative was flowing into the RSI, with its underlying funding, about which announcements and arrangements were being made. Mr Burton QC characterises the practical limits of resources for local authorities, and questions as to whether they did or did not obtain allocations under the various funding mechanisms, as realities accommodated within this legal truth (see §39(5) above): the 'duty of conformity', even with all-inclusive ("everyone") policy guidance, carries its 'good reason exception' (see §7(7) above). But, in my judgment, a more convincing and straightforward explanation is that the limits as to the resources reflected a Government "policy" which did not involve a programme of prescriptive policy guidance in the first place; still less 'all-inclusive' and open-ended.

49. Fifthly, the points characterised within Mr Burton QC's analysis as having the nature of 'truths' which are accommodated within and do not distract from an all-inclusive prescribed policy of Everyone In (§39 above), in my judgment make a lot more sense when they are instead seen as features of a fluid and nuanced position, with its 'ebb and flow'. The emphasis – on individualised assessments, on close regard to the limits of statutory powers, on difficult judgments (especially in the context of NRPF individuals), and on vulnerable rough-sleepers – all stand as contra-indications to there being enduring all-inclusive decision-making criteria, as external prescriptive policy guidance. One internal reference-point reinforcing this conclusion about 'nuance' is a document produced at the end of May 2020, after the first easing of the restrictions of the first national lockdown. It was an unpublished "script", to be used within the Ministry when responding to local authorities who contacted it asking what they were

supposed to be doing in the context of Everyone In. The "script" document had a "Q&A" section which included this (with [Q] and [A] inserted):

> ***[Q] How should we be working with people sleeping rough? [A] You should continue to provide services to people identified as sleeping rough in your area, using your existing verification process with a focus on outreach services where these are in place. People are sleeping rough should be prioritised for accommodation and support where you assess that this is required based on their vulnerability.***
>
> ***[Q] Who is a vulnerable rough sleeper? [A] This is for you to decide based on your assessment of their individual circumstances. It will be important for housing act assessments to be carried out to assess the needs of people sleeping rough or at risk of sleeping rough. [If pushed] There are a range of factors to consider here but three important ones are: those rough sleepers who would be particularly vulnerable if they contracted the virus; those rough sleepers who have a known history of sleeping rough, associated for health, and who need support to access services; those who you have reason to believe may have priority need.***
>
> ***[Q] Are you asking us to get all rough sleepers of the streets? [A] We would still want you to work with all rough sleepers in your area offering accommodation and support interventions where these are available prioritising vulnerable rough sleepers as you see appropriate.***

This "script" was prepared for use alongside the (published) May 2020 next phase letter (28.5.20: §14 above), with its references to "the most vulnerable". Even focusing on the published communications, there was – as early as the "next phase" documents of May 2020 – a subtlety and nuance in the Government position. To a legal eye, in an enquiry into 'conformity' with published criteria, there is an elusiveness. But this was not a context in which decision-making criteria had been – and were being – issued, through prescriptive policy guidance, so as to engage the 'duty of conformity' on the part of local authorities (§7(7) above) and the 'entitlement of conformity' on the part of rough sleepers (§7(8) above). There was Government "policy", for which Government was accountable in the arena of public opinion and through the political and democratic process. Government's actions were subject to the general public law duty of reasonableness and subject to the duty to act compatibly with Convention rights under the HRA, neither of which is said on behalf of the Claimant to have been breached in this case. But they did not attract the specific public law 'duty of conformity' and 'duty of publication' that arise where prescriptive policy guidance has been published.

50. Sixthly, one of the key themes arising out of the Everyone In initiative concerned 'move-on accommodation' (§6(4) above) for those rough sleepers who had been provided with emergency accommodation under the initiative. One key question was whether and to what extent 'new' rough sleepers (§6(3) above) would be offered accommodation at a later stage in the pandemic. Another key question was whether suitable 'move on accommodation' would be secured for those offered accommodation at an earlier stage. The provision of 'move-on accommodation' would make an important difference, as to whether a previous rough sleeper would become a future rough sleeper. In circumstances where the 'call to action' in March 2020 during the first national lockdown involved a clear exhortation to get "everyone" off the streets at a time of emergency, this question regarding the availability of 'move-on accommodation' was a significant one. The fact is that many of the communications, and much of the accompanying funding, were undoubtedly focused on 'move-on accommodation'. It is not unnatural to describe 'move-on accommodation' for those taken off the streets under the Everyone In initiative as "continuing" the "work" of Everyone In. Views may differ as to whether there was clarity as to what precisely was

meant by what – and what "work" – was "continuing" and was "ongoing". But again, the accountability controls in relation to such questions are political.

51. Seventhly, a number of features in the published position of Government in the context of Everyone In – viewed with a 'legal eye' – do not square with the logic of a publicly communicated position involving prescriptive policy guidance for all rough-sleepers ("everyone") to be accommodated, which has continued to the present. One feature, which I have already discussed, is the launch and implementation of year 4 of the RSI, as part of a plan for ending rough-sleeping by the end of the Parliament. Another example is reference in the Protect Programme launch announcement (5.11.20: §20 above), in asking local authorities to make sure "every rough sleeper offered somewhere safe to go", in the context of new national restrictions (the second national lockdown), to that programme being "alongside" the "ongoing 'Everyone in' campaign". If there were an all-inclusive "ongoing" Everyone In prescriptive policy guidance, then the Protect Programme – with its targeted support to provide accommodation for those currently sleeping rough – would necessarily have fallen within it (not "alongside" it), and the announcement of the programme would have said nothing new at all. A further example is the fact that, even as late as July 2021 – in the working together letter (5.7.21: §29 above) the claim in relation to those supported as "part of our Everyone In initiative" was the 37,000 people who had been supported by January 2021. That is consistent with those assisted after January 2021 being regarded as having been supported under the RSI.

52. Mr Burton QC has been able to identify an evidenced picture involving doubt and uncertainty on the part of local authorities and charities. He has been able to submit, by undertaking detailed scrutiny, that there has been a deficit of clarity and consistency. Other documents before the Court can be mentioned on this theme. The House of Commons Public Accounts Committee in its report (8.3.21), entitled "Covid-19: housing people sleeping rough", stated that "[i]n some areas the Department lacks transparency and clarity in its communications", and described the "mixed messages to local authorities on how to support people sleeping rough who have no recourse to public funds" (pp.3, 7). Hannah Cromarty's research publication (see §2 above) said this (pp.26, 27):

> ***At the outset of the Government's Everyone In initiative, local authorities were encouraged to assist all rough sleepers into emergency accommodation… At the end of May 2020, however, this messaging became more ambiguous… There is evidence that from that point the support offered by local authorities to those with NRPF became increasingly divergent…***
>
> ***Whilst the direction at the start of the Covid-19 pandemic to get 'everyone in' was clear, as the pandemic progressed there were reports of increasingly divergent approaches being taken by local authorities. Whilst some authorities continued to take new rough sleepers into emergency accommodation regardless of eligibility, others returned to assessing people's eligibility for support.***

Catherine Bennion is Deputy Director for Rough Sleeping at the Department for Levelling Up, Housing and Communities (formerly MHCLG). Her witness statement on behalf of the Defendant in these proceedings accepts the following: that "Everyone In" was a phrase which became "branding", which was "easily recognised in the sector" and was "therefore useful to use"; that "the phrase 'Everyone In' was commonly used to refer to the Government's pandemic response in relation to rough sleepers"; that the phrase "continued to be used as a shorthand for our pandemic response"; that this

"shorthand" was used at times when the Ministry was "aware that not everybody was being 'brought in'"; that the Ministry "accept[s] that at some points throughout the pandemic response, there was some inconsistency in the use [of] the expression 'Everyone In'"; that "Everyone In" "continued to be described as ongoing in [the Ministry's] communications", and used "particularly" as meaning that "those who had been 'brought in' from March 2020 … continued to be supported". The Defendant's pleaded Defence64 (§36 above) says "Everyone In" did not "identify with clarity" any "particular policy or guidance or decision".

53. I can return at this point to the contention which is at the heart of the first ground for judicial review. Mr Burton QC submits that LOR23 and Defence64 constitute an unpublished policy position in non-conformity with the previously published policy position. I have explained why the public law duties of conformity and publication did not operate as is claimed. But I add this, in relation to these paragraphs in these documents. So far as concerns LOR23 (§34 above), this refers to Everyone In as not having been "a permanent programme". In fact, the publicly stated position of the Defendant at the time of the first national lockdown and the Everyone In announcement (26.3.20: §9 above) had made clear that: "In the longer term it will of course be necessary to identify step-down arrangements for the future". And by May 2020 announcements were speaking of the "next phase". So far as concerns Defence64 (§36 above), that paragraph emphasises the description of the Protect Programme as being "alongside" Everyone In, makes the point that Everyone In did not "identify with clarity" a "particular policy or guidance or decision" and then refers to "the work" of Everyone in having continued in the "broad sense" of the provision of 'move-on accommodation' for those accommodated under the Everyone In initiative. For the reasons which I have explained, I do not accept that the contents of these communications – or the Defendant's impugned position as to the 'ending' of the Everyone In initiative – were a breach of the public law duties invoked on behalf of the Claimant. The first ground for judicial review fails.

Ground two (consultation of Shelter)

54. The second ground for judicial review is a short point which does not call for detailed exposition. The argument is that there was a duty to consult the charity Shelter as to proposals to curtail or bring to an end the Everyone In initiative, with which duty of consultation the Defendant did not comply. That non-compliance lay in the failure to take the steps required of a lawful consultation. The public law standards of legally adequate consultation are familiar: see e.g. R (A) v South Kent Coastal CCG [2020] EWHC 372 (Admin) at §§58-59. The duty to consult Shelter was triggered by a combination of the practice of engaging with stakeholders, the significance of the impact of the decision on individuals and the role which stakeholders like Shelter could play in representing those affected. Mr Burton QC likens the curtailment or withdrawal of the Everyone In initiative to the "withdrawal of a benefit" (A at §57). So far as concerns the 'practice' of 'engaging with stakeholders', reliance is placed on a description of regular meetings between officials and Shelter's policy and public affairs teams since May 2020, together with a two-page chronology contained within the pleaded grounds for judicial review, detailing a sequence of relevant meetings. Particular emphasis is placed on the case of R (Luton Borough Council) v Secretary of State for Education [2011] EWHC 217 (Admin) where Holman J concluded that an "abrupt change" could not be made without prior consultation with the five claimant

local authorities, given the "continuous and intense dialogue" which the Secretary of State had previously had "over many years" with the five local authorities, and given the "pressing and focused" impact which the Department for Education's "past conduct" had on "the five claimants".

55. In my judgment, the merits of whether and when to engage with Shelter were questions for the Defendant to evaluate and decide. There has been no breach of any public law duty to consult Shelter. So far as the past "dialogue" is concerned, the position is this. In its AOS, Shelter tells the Court that there had been "an established practice of meetings between the Defendant and Shelter over a wide range of matters relating to homelessness", which "intensified in the course of the Covid pandemic". The AOS also describes members of Shelter's policy and public affairs teams as being "in regular communication with the Defendant's officials from March 2020, at least monthly, sometimes more frequently". The two-page chronology then lists some 28 events, involving meetings by prominent individuals within the MHCLG with representatives of non-governmental organisations ("NGOs"), which took place between March 2020 and March 2021. Among those 28 events there are four which refer to Shelter: (i) a meeting on 18 March 2020 between the Secretary of State and a number of homelessness NGOs including Shelter "to discuss Covid-19"; (ii) a meeting on 8 October 2020 between Kelly Tolhurst MP and Shelter ("to discuss rough sleeping"); (iii) a meeting on 17 November 2020 between Kelly Tolhurst MP, Shelter "and a service user"; and (iv) a meeting on 10 February 2021 between Eddie Hughes MP and Shelter. None of these four meetings are described as having been consultation exercises in relation to proposed actions. Mr Burton QC accepts that there is no basis for arguing that a "legitimate expectation" of consultation arose from any prior "practice of consultation". I cannot accept that the four meetings described as having taken place over the course of a year (March 2020 to March 2021), or the practice and communications described in Shelter's AOS, constitute a "continuous and intense dialogue" capable of triggering a duty of consultation, whether of itself or alongside the other features of this case, in the absence of any "legitimate expectation" of consultation or other trigger of a duty to consult. The Luton case was a case on its particular facts. So far as the function of consultation is concerned, Shelter in its AOS made two points. The first point was a specific concern about ensuring that the Defendant was made aware of the "numbers and profile of those likely to be affected" by a decision to 'end' the Everyone In initiative. But it really cannot be said that the Defendant needed to conduct a consultation exercise in order to be in touch with the numbers or profile of those affected. The second point in fact concerns 'advance notice' of any decision to 'end' Everyone In, so as to enable Shelter to brief its frontline advisers and local authority housing departments so that they would be able to provide accurate advice to people facing homelessness. But that is really a point about clarity and notification as to decisions, rather than consultation on proposals at a formative stage in deciding whether to adopt those decisions. In my judgment, the points emphasised on behalf of the Claimant fall far short of establishing a duty of prior consultation with the charity Shelter. It follows that the second ground for judicial review fails. But, in my judgment, it fails for a second and independent reason. The attempts to characterise the communication of LOR23 and Defence64 as being the curtailment (or 'ending') of a published policy position (see §4 above), as an impugned decision, themselves fail, for the reasons which I gave in the context of ground one. Those passages in those documents did not constitute an unannounced curtailment or closure of a published scheme, identifiable through prescriptive policy guidance with decision-making

criteria, 'externally' issued to local authority decision-makers. There was no extant 'entitlement of conformity' (§7(8) above) with the criteria of such a scheme. For the same reason, there was no extant 'conferral of a benefit', being curtailed or discontinued by virtue of some new – published or unpublished – policy position.

Conclusion

56. The Claimant's representatives have brought before the judicial review Court, for detailed examination and scrutiny, a sequence of events relating to a Government rough sleepers initiative with the resonant and inclusive title of "Everyone In". Insofar as there are open questions about how that aspect of Government policy was expressed and communicated, how it ebbed and flowed, how it was understood, and how NGOs were engaged along the way, those questions belong in the arenas of public opinion and of politics. The role of the judicial review Court, in the exercise of its supervisory jurisdiction, is to apply carefully delineated objective legal standards, to secure accountability of public authorities to law. The objective legal standards invoked in this case were not breached. The claim for judicial review fails.

'Deferred-PTA'

57. It was made clear when circulating the judgment to the parties in confidential draft (on 11 January 2022) that the Court wished if possible to deal with consequential matters in a Court Order at the same time as hand-down (18 January 2022). In the event, in a proposed agreed Order submitted on 14 January 2022, the parties invited this: "Any application to the lower court by the Claimant for permission to appeal is to be made in writing by 4pm on 28 January 2022". I decided, without further enquiry, to accede to the joint invitation to make such an Order, but I do so making clear that I do not see this 'deferred-PTA' course as a healthy general precedent.