IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 1120 (Admin)

No. CO/1043/2019

Royal Courts of Justice

Thursday, 28 March 2019

Before:

MRS JUSTICE THORNTON DBE

B E T W E E N :

THE QUEEN ON THE APPLICATION OF
LXD AND OTHERS — Claimants

- and -

CHIEF CONSTABLE OF MERSEYSIDE POLICE — Defendant

MS B. NI GHRALAIGH (instructed by Hodge Jones & Allen) appeared on behalf of the Claimants.

MR P. FERNANDO (instructed by Legal Services, Merseyside Police) appeared on behalf of the Defendant.

J U D G M E N T

MRS JUSTICE THORNTON:

1 This is an application for interim relief requiring the defendant, the Chief Constable of Merseyside Police, to provide the Claimants with temporary accommodation pending determination of their claim under the Human Rights Act alleging breaches of Articles 2, 3 and 8 of the European Convention on Human Rights. The claim arises out of alleged failings by the police to protect the Claimants following threats to their lives and a failure to adequately investigate the threats.

2 The threats made relate to the alleged failure of the First Claimant's ex-partner (referred to in this judgment as RT) to repay money owing to associates of his. RT has been threatened with a firearm. Following the threats, the police provided RT with temporary accommodation for his safety.

3 The issues that arise for the court on this application are, firstly, whether there is a real issue to be tried in relation to the Human Rights Act; secondly, the balance of convenience and, thirdly, whether the claim should be expedited.

The background facts

4 The First Claimant is a 34-year-old single mother to three young children, who are Claimants 2, 3 and 4 on this application. The children are aged between six years to seven months. At approximately 10 p.m. on 16 January 2019, three men knocked on the door of the Claimants' home. The men informed the Claimants' neighbour that they were looking for RT. One of the men came back the next day and knocked on the Claimants' door at 1.30 p.m. He returned again at 7.30 p.m. and threatened to kill the Claimants if RT failed to pay the money owed.

5 The police were called to the Claimant's house and arrived approximately forty minutes later to find the Claimants preparing to leave the house to stay with the First Claimant's brother. The police log records that arrangements were being made to move the Claimants to the address of a family member. The log records the threat assessment as "standard threat" as of 18 January 2019. The log records the police locating the First Claimant at her brother's address and "she was seen safe and well and confirmed she has not disclosed her whereabouts to anyone". The log entries include consideration of whether to move the subject to a safe location and concludes:

> "The intelligence picture is likely to develop over the next few days. The best way to safeguard these subjects is the prompt arrest of the suspects."

Target hardening measures were put in place and local officers were notified of the threat.

6 Shortly after the visit by the unknown suspects, the Claimants moved to reside with the First Claimant's father, the children's grandfather, his wife and their son. They have been residing there for the last ten weeks.

7 On 19 January 2019 one of the two men suspected of threatening the Claimants was arrested and interviewed. He was bailed with conditions not to approach the victims or witnesses. On 22 January 2019 police reviewed the threat assessment. It was noted that whilst one suspect had been arrested and bailed, the other had not. There had been no further incidents, information or intelligence. The threat was to remain open until such time as the second

suspect had been arrested and target hardening had been completed. The assessment would be reviewed in seven days.

8 On 24 January 2019 the second suspect was arrested and interviewed. He was bailed with conditions, including reporting three times a week to the police and not to approach victims or witnesses.

9 On 25 January 2019 the threat assessment was reviewed. The log records the following entry (references to LXD are to the First Claimant):

> "I have today spoken to LXD, as has an officer from the LP team who has been able to provide LXD with advice about obtaining a new property through the council. LXD remains at a family address not known to offenders and feels safe there, although this is clearly not a long-term solution. The two named offenders have been arrested and bailed with conditions. Target hardening has been completed and there have been no more reported incidents. Based upon the above, I am satisfied that this threat can be closed. Should there be any need information, intelligence or incidents consideration can be given to re-opening the threat."

10 On 28 February 2019 the police log entries report that the First Claimant had been in distress as over the weekend she had noticed a black Audi which she believed to be following her whenever she was out in her car. She also had a call from a neighbour who asked if she was okay because the neighbour's son had seen two men in balaclavas outside her house. The log details investigative action to be undertaken but they did not, in the event, produce any material results. An assessment was made not to re-open the threat assessment.

11 On 1 March 2019 the police log records that the First Claimant had become concerned about any consequential threats to her security as a result of her participation in an identification procedure to identify the suspects who had allegedly threatened her. Thereafter, the First Claimant instructed solicitors. On 14 February to 7 March 2019 her solicitors engaged in correspondence with the police. The correspondence did not resolve matters and an application for urgent relief was made.

12 On 14 March 2019 Swift J made an order for anonymity and ordered the applications for interim relief and expedition to be determined at a hearing on notice.

13 There have been a number of recent developments on the ground. Firstly, on 21 March 2019 the police updated the risk assessment. The pertinent conclusions are set out in a witness statement from the solicitor for the Merseyside Police:

> "Temporary Detective Inspector Speight is of the opinion that the threat to the Claimants, such as it is, can be managed by an urgent TAU marker and target hardening. Temporary Detective Speight believes that the Claimants have returned to their home address which they left in January 2019. Secondly, as from 2 April 2019 RT will no longer be provided with safe house accommodation by Merseyside Police. Thirdly, a witness statement served by the father of the First Claimant, dated 25 March 2019, outlines the difficulties caused by the Claimant staying at his home, namely the cramped accommodation, the adverse impact on sleep for all the household, the tension arising between family members

> and his concerns about the risks to his wife and son due to the ongoing situation. Fourthly, an undated witness statement from the First Claimant, served shortly before the court hearing, also explains the difficulties with the present accommodation, the lack of alternative places to stay and it explains that her accommodation situation has become desperate."

Legal framework

14 The legal framework is common ground. The classic statement of the relevant obligations of the State under Article 2 of the European Convention of Human Rights is to be found in *Osman v United Kingdom* [1998] 29 EHRR 245 at 115:

> "… Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.
>
> ... bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.
>
> ... where there is an allegation that the authorities have violated their positive obligation ... it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. ... This is a question which can only be answered in the light of all the circumstances of any particular case."

15 Subsequent case law has made clear that the positive obligation on the State only arises when the risk is "real and immediate", i.e. "a real risk is one that is objectively verified and an immediate risk is one that is present and continuing". The threshold is high (*In Re Officer L*, per Lord Carswell [2007] 1 WLR 2135). Secondly, there is a reflection of the principle of proportionality, striking a fair balance between the general rights of the community and the personal rights of the individual, to be found in the degree of stringency imposed on state authorities, in the level of precautions which they have to take to avoid being in breach of Article 2. The standard is based on reasonableness which brings in consideration of the circumstances of the case, the ease or difficulty of taking precautions and resources available.

16 Pursuant to Article 3 of the ECHR state authorities have a general duty to rigorously enforce laws which prohibit conduct amounting to a breach of Article 3, so as to effectively deter such conduct, which in turn requires that complaints of ill treatment amounting to a violation of Article 3 are properly investigated. Serious operational failures to investigate crimes will constitute a breach of the Article, provided the failures are egregious and significant and not merely simply errors or isolated omissions (*DSD v Commissioner of the Police of the Metropolis* [2018] 2 WLR 895).

17 Under Article 8 of the ECHR everyone has the right to respect for private and family life and that there should be no interference by a public authority with the exercise of this right, except such as is in accordance with the law and necessary. In actions concerning children, public authorities, including the police and this Court, are required to treat the best interests of the children as a primary consideration. Any decision taken without having regard to the need to safeguard and promote the welfare of any children involved will not be in accordance with the law for the purposes of Article 8(2) (*ZH (Tanzania)* [2011] 2 AC 166).

Interim relief

18 The court's jurisdiction to grant interim relief is provided for by s.37(1) and (2) of the Senior Courts Act, which states that relief may be granted where it appears to the court to be just and convenient to do so. The principles applicable to applications for interim relief are set out in the case of *American Cyanamid v Ethicon Limited* [1975] AC 396, as modified in the judicial review context to provide the court with a wide discretion "to take the course which seems most likely to produce a just result or, to put the matter less ambitiously, to minimise the risk of an unjust result" (*Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment (Belize)* [2003] UKPC 63, per Lord Walker).

19 Counsel were agreed that for present purposes the issues for this court are whether there is a serious issue to be tried and the balance of convenience.

Submissions on behalf of the Claimants

20 Ms Ni Ghralaigh, on behalf of the Claimants, seeks temporary budget hostel accommodation for the Claimants pending determination of the claim. The threats are serious threats to life. The Claimants have been in cramped, unsatisfactory alternative accommodation for ten weeks now, which is threatening their right to a family life under Article 8 of the ECHR. In contrast, RT has been living in budget hostel-type accommodation at the defendant's expense. The safety of the father and stepmother and stepson is potentially compromised.

Submissions on behalf of the defendant

21 On behalf of the defendant, Mr Skelt submitted that there cannot be said to be a serious issue to be tried. Even back at the height of the threat in January 2019 there was never a "real and immediate threat to the Claimants by virtue of the fact they placed themselves in accommodation belonging to family members which was safe." As time has passed the threat has diminished. As of 22 March 2019, the police were of the view that the Claimants can return home providing protective measures are in place. In any event, the balance of convenience favours the status quo. The Claimants are currently safe. Whilst the cramped nature of the accommodation is less than ideal, this does not justify a move to a more spacious and unidentified property. The children's best interests are maintained by continuing to attend the same school and reside with their relatives.

Discussion
Interim Relief – serious issue to be tried

22 Turning then to the first question, the real issue to be tried. On balance, I am persuaded that there is a real issue to be tried. The Claimants' primary case is put under Article 2 ECHR and the alleged operational failures to keep the Claimants safe. I accept Ms Ni Ghralaigh's submission that it is not currently clear how the defendant arrived at the view that the threat

level was "standard", as of 18 January 2019, in light of the extracts from the defendant's own policy guidance provided to the court. These extracts suggest a typical standard threat to be threats unlikely to result in more than actual bodily harm if carried out, minimal previous history or where the victims are not vulnerable. In this case the threats were to kill and were made to a mother and her young children. The threats appear to have been made by convicted, dangerous criminals and are threats which the police took sufficiently seriously to place RT in a safe house. However, it may be, as Mr Skelt appeared to indicate, that the threat assessment arrived at, at that juncture, took into account the Claimants' access to safe accommodation.

23 Potentially of more concern is the way in which matters then developed. There are some indications in the evidence before me that officers took the view that the First Claimant was being difficult in rejecting alternative accommodation; in refusing to participate in the ID parade and in returning to her own house. The decision to return to her own house appears to have played a part in the latest risk assessment that it is safe for the Claimants to return. However, her decision to return appears to have been driven by the unsatisfactory accommodation situation the Claimants find themselves in through no fault of their own. If so, there may be an argument that the First Claimant was driven to her risky behaviour. Similarly, the First Claimant's concerns about her involvement in the ID parade appear, on their face, to be justified, albeit that I accept that at the hearing the factual position was somewhat confused. These are matters which will need to be looked at at trial.

Balance of convenience

24 I turn then to the balance of convenience as between the Claimants' accommodation needs and scarce public resources during the period pending trial of this matter. I remind myself of the provision in the Judicial Review Guide 2018 at para.15.6.2:

> "Generally, there is a strong public interest in permitting a public authority's decision to continue, so the applicant for interim relief must make out a strong case for relief in advance of the substantive hearing."

25 In assessing the balance of convenience, the paramount consideration seems to me to be whether the Claimants are currently safe. On this, as of 22 March 2019, the police have assessed that it is safe for the Claimants to return home. This is clearly a significant development in my consideration of interim relief. I accept this proposition may be of great concern to the First Claimant, which is understandable given the distressing experience she has been through. However, as Ms Ni Ghralaigh accepted, the court must proceed on the basis of an objective assessment of the threat, not subjective fears. Ms Ni Ghralaigh urges me to treat this assessment with caution, given her criticisms of previous threat assessments made by the police. However, even if I do so, the fact remains that it is common ground that the Claimants are currently safe at the First Claimant's father's house and they have been safe since 18 January 2019. It seems to me that this factor weighs heavily in the balance of convenience.

26 Another material development is the fact that the safe accommodation for RT is now being withdrawn as from 2 April. Prior to this development, Ms Ni Ghralaigh had focused her written case squarely on her clients being entitled to the same treatment as RT. RT has, it seems, been the primary target of the threats. It would, it seems to me, sit oddly with this development for the Court to order the provision of safe accommodation for the Claimants at a point when the primary target of the threats is coming out of a safe house.

27 The focus of Ms Ni Ghralaigh's submissions was on the cramped living accommodation and the family tensions, a situation which has been subsisting for ten weeks. Ms Ni Ghralaigh advanced an argument that the tensions threatened an irreparable rift within the family, as between the First Claimant and her father and mother-in-law, thus giving rise to an Article 8 consideration. Moreover, Ms Ni Ghralaigh submitted that the police and court were obliged to give primary consideration to the best interests of the three Claimant children as well as the ten year old child of the First Claimant's father, who I understand is the First Claimant's half-brother and whose education is being affected by the accommodation difficulties.

28 I accept that the families are in cramped and difficult living arrangements through no fault of their own and as a result of distressing circumstances. The First Claimant's father and stepmother are to be commended for their generosity and selflessness in looking after the Claimants for the last ten weeks. However, I am not satisfied that it would be in the Claimant children's best interests to undergo another potentially disruptive and short term move pending an expedited trial, which the parties are agreed I should order. Any move may present difficulties in getting the older children to school. The sleeping difficulties look likely to continue unless the new accommodation has at least two bedrooms and I have no information on the availability or location or nature of any accommodation, save that Ms Ni Ghralaigh seeks only budget hostel accommodation. It is not clear to me that leaving the home of their relatives to go to unknown budget hostel accommodation would necessarily be in the best interests of the children.

29 It seems to me that the best interests of all the children, including the First Claimant's half-brother, would be met by an expedited trial, which I am prepared to order. Ms Ni Ghralaigh suggested in written argument that the court should take into account the fact that temporary accommodation provided by the police is necessary in order to facilitate permanent local authority accommodation. However, she was not able to provide the court with any information as to how this might help. Moreover, I reject any submission that the court should take a decision based on a third party's housing association priorities and not on objective evidence of real and immediate risk to safety. My understanding is that the First Claimant is engaging with the local authority in relation to new housing and the police have also provided advice in this context.

30 Accordingly, I decline to grant interim relief. I am, however, prepared to expedite the timetable for the Claimant. Both parties urge the court to order a rolled-up hearing to consider permission with a substantive hearing to follow immediately if permission was granted, on the basis that this would be the most efficient and time-effective way of dealing with matters. I expressed some concern about this course of action because it appeared to me at the hearing that there were a number of factual disputes between the parties that might need witnesses to be called to assist with their resolution and that this may be better dealt with in the Queen's Bench Division or at County Court level, with greater facilities for hearing witness evidence. Mr Skelt expressed similar concerns.

31 However, Ms Ni Ghralaigh made clear on instructions that her clients' claim could and would be advanced without the need to call witness evidence. On this basis, I am prepared to order an expedited, rolled-up hearing.

32 Given that I have not ordered interim relief, I accept Ms Ni Ghralaigh's submission that I should shorten the timetable currently proposed by the defendant. I have made enquiries of the Listing Office and they currently have availability for a one-day hearing on 2 May or 14 May 2019. These are the only available dates in the Administrative Court in May. Accordingly, I propose to list the matter for one of these two dates, at the convenience of the parties, and invite the parties to agree a timetable working back from these dates.

33 I must now turn to another court hearing listed before me this morning but, given the need for speed, I can sit for a few minutes at 2 p.m. today to hear the parties on any consequential aspects relating to timetable arising out of this judgment, if that would assist. If so, I would require the parties to notify my clerk by 12.30 so she can get a message to me before I rise at 1 p.m. so that I can inform the parties before me in the other matter.

MS NI GHRALAIGH: (Inaudible).

MRS JUSTICE THORNTON: Yes. Yes, if you could – I appreciate that Mr Skelt is not here and you may not be fully appraised of this matter. If it is possible to – I mean, it may not be possible to come back at two on costs because Mr Skelt is not available, in which case I am in your hands. I just wanted to make it clear that I am available if it helps with a speedy resolution.

MR FERNANDO: I am grateful, my Lady. I think (inaudible) as to costs (inaudible).

MRS JUSTICE THORNTON: Yes, or do you want to seek to agree – why do you not see if you can agree costs between yourselves and put them into a draft order with a timetable? That would be the quickest way forward. Come back before two if you need to but it may be that you do not need to. I will now rise.

(Short Break)

MS NI GHRALAIGH: My Lady, I must begin by apologising to the court for the late notification of the need for this hearing. I have apologised to my learned friend.

MRS JUSTICE THORNTON: That is all right.

MS NI GHRALAIGH: It was just a miscommunication on my part.

MRS JUSTICE THORNTON: Do not worry at all. Do not worry. Yes.

MS NI GHRALAIGH: My Lady, we have agreed a timetable----

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: -- between us, which would be to a hearing on 16 May.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: That has required -- I have something in my diary that date already, but we are making efforts to move that around and I hope that that will be possible.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: Mr Skelt was not available on the 2nd. The current proposed timetable is that----

MRS JUSTICE THORNTON: Sorry to interrupt. (Talks to the associate) That is what I thought actually. I thought I had said -- you think the same, yes.

MS NI GHRALAIGH: I have a note of the 16th.

MRS JUSTICE THORNTON: Is that going to cause difficulties? Unless, I read it out. I am sorry. Let me just check my note.

MR FERNANDO: My Lady, I originally thought it was the 14th.

MRS JUSTICE THORNTON: Right. Right. I am afraid----

MS NI GHRALAIGH: 14th is okay for me. Would you need to take instructions?

MR FERNANDO: I would need to check Mr Skelt's diary.

MRS JUSTICE THORNTON: Why don't you tell me what else you want to raise and, hopefully, you can check. Is there a way you can check Mr Skelt's diary while we are in court?

MR FERNANDO: My Lady, if you would permit me to switch on my phone, I can email from my phone.

MRS JUSTICE THORNTON: Yes. I am conscious you might want to listen to the submissions. Just take it as you wish. We may have to break for a bit.

MS NI GHRALAIGH: We then made, well, the submissions that I was going to make were about timetabling, but I will come back to those then, given that we will need to abridge those in terms of the date of the hearing.

The two submissions which I would like to make to support are regarding costs and the calling of live evidence.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: I will deal with those in reverse order. As I submitted yesterday, to resolve primarily an issue about forum, the matter is properly before this court.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: There would be no basis upon which to transfer it to the Civil Court, because the Civil Courts have no jurisdiction to make the orders that we are seeking.

In terms of giving live evidence, I have never been involved in a judicial review that required the giving of live evidence and neither has my solicitor and, as I said yesterday, I can see nothing in this case, as it currently stands, that requires the calling of live evidence. The factual disputes, for example was it a council house was it not, I imagine that those will be resolved on the papers without difficulty.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: They are not matters that in my opinion at present require the calling of live evidence and they are matters that can be determined on the papers. I cannot see why this case would be different from any other judicial review, but we have had very limited disclosure to date. So, I cannot obviously with a crystal ball foresee what will arise and what I cannot do, because I have no power to do this, is of course to bind the court.

As the cases law makes absolutely clear, this court will not normally order cross-examination, no more than they will ordinarily order disclosure, but such orders can

and should be made where justice requires it and where it is necessary for the fair disposal of the case. The rules under the CPR rule, CPR 8.6(2) “The court may require or permit a party to give oral evidence at the hearing." Or Rule 8.6(3) "The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence."

Now, there is only one witness who has given written evidence at present and there is certainly nothing arising in her statement.

MRS JUSTICE THORNTON: Who is that?

MS NI GHRALAIGH: It is the----

MRS JUSTICE THORNTON: Ms Hardy, is it?

MS NI GHRALAIGH: No, for the defendant. It is a police officer. Her name is Caroline Anne----

MRS JUSTICE THORNTON: Ashurst. The solicitor. Yes.

MS NI GHRALAIGH: There is nothing in her statement which I can foresee requiring.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: There may be in the exhibits, but she does not give evidence about the statements made in the exhibits. So, all I mean to say by that is I cannot fetter the court, I cannot fetter my client's right to a fair disposal of the case, but if it becomes necessary to either call live evidence or to order disclosure in the case, it may well be that the court determines that the timetable is no longer appropriate.

MRS JUSTICE THORNTON: Yes, of course. To take it clear what I was trying to say was on matters, as they have developed so far, we ought to be able to manage without live evidence and you have accepted that. I entirely accept that something may come out of the blue and we may have to change track and so there should be a liberty to apply and that may affect timetable. That is a matter for your client, because in a way the burden falls on her or the disadvantage of that falls on her because she is where she is. So, yes, of course. You will have to come back to the court and so be it.

MS NI GHRALAIGH: Indeed. What I have discussed with my learned friend is that perhaps on the timetable for us providing our skeleton argument that we should at that stage obviously raise if we do need further disclosure, if we believe we need to make an application for disclosure, or for the hearing of live evidence that we would make it at that stage and at that stage----

MRS JUSTICE THORNTON: That would be, presumably, only a few days before.

MS NI GHRALAIGH: Well, it would be on the current timetable, and I accept that that now needs to be tweaked, it would be about two weeks.

MRS JUSTICE THORNTON: I see.

MS NI GHRALAIGH: Because we would be submitting----

MRS JUSTICE THORNTON: What is the current?

MS NI GHRALAIGH: The current timetable if I can begin with that----

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: -- is----

MRS JUSTICE THORNTON: I mean the key next step is the grounds of defence and the evidence.

MS NI GHRALAIGH: Indeed.

MRS JUSTICE THORNTON: When is that?

MS NI GHRALAIGH: Absolutely. The first step we thought was an updated statement of facts and grounds, which will need to be slightly modified in light of the information that we have already, including regarding the new information regarding RT.

MRS JUSTICE THORNTON: Yes. Well, I mean it might just be better to -- really you probably just want to hear from them.

MS NI GHRALAIGH: Indeed.

MRS JUSTICE THORNTON: I mean I am not -- I am just thinking of getting this done as quickly as possible. I am not sure we need that.

MS NI GHRALAIGH: If the court does not believe that that is needed, then that is a step we are very happy to -- we had suggested an abridged time for that.

MRS JUSTICE THORNTON: Put it this way, I am sure your summary grounds, your ground of defence will make what they will of RT having been released and then you can pick it up in the skeleton. That might be a more efficient way to cover it.

MR FERNANDO: My Lady, if I just rise briefly just to explain.

MRS JUSTICE THORNTON: Yes.

MR FERNANDO: If the grounds were amended, the statement of facts and grounds were amended, there may be less of a dispute between the defendant and Claimant, factually. That was a thought process----

MRS JUSTICE THORNTON: I see.

MR FERNANDO: -- behind an amendment to see if we can proceed within the next week or so and find a more common ground. That may not be necessary and it may just be creating work for the sake of it, but it might focus minds.

MRS JUSTICE THORNTON: I see. If you could get all this done before 14 May then so be it. I will leave it to you.

MS NI GHRALAIGH: My Lady, I do not anticipate that it will resolve factual matters, because, as my Lady has highlighted, what we need is to hear from the defendant what their position is.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: So, we had, in any event, suggested an abridged timetable for that. We could perhaps -- I would be content to skip that process entirely and to move directly to a----

MRS JUSTICE THORNTON: I think what I am hearing -- I am sorry I do not know your name.

MR FERNANDO: Mr Fernando.

MS NI GHRALAIGH: If we suggest this----

MRS JUSTICE THORNTON: You would like this extra stage or your client would like to see some -- I think if your client would like to see some revised grounds.

MR FERNANDO: I think, my Lady, my client has anticipated, on the basis of the factual differences, that there would be some communication between the parties where that would be clarified and then there would be a further response to those grounds, but my learned friend says that there is no need for this step, because she will not amend her grounds to a more common position or then it is perhaps a step we do not need to take, but the logic behind it is to see if, given the comments of the court about the factual differences, whether that would be taken.

MRS JUSTICE THORNTON: Yes, I can certainly see the logic of what you are saying. I think the reason I made the comments I did in my judgment was to get to the place we have now got to which is where Ms Ni Ghralaigh accepts that she will not need it call witness evidence, but, understandably, reserves her position.

MR FERNANDO: Yes.

MRS JUSTICE THORNTON: I do not think we are probably going to get that much further. So it seems to me we may as well go straight for your grounds, because that is going to be the really important part of this case.

MR FERNANDO: Yes.

MRS JUSTICE THORNTON: And you need time for that. How long are you asking for?

MS NI GHRALAIGH: In the current timetable, the updated statement of facts and grounds was to be by 5 April and, thereafter, the defendant's response by 18 April.

MRS JUSTICE THORNTON: I mean I would propose that we go straight to the response. 21 days takes you to 15 April or something like that and then skeleton arguments, because what I am concerned about from the court's perspective is I do not want to find a few weeks beforehand we might need to start talking about three or four witnesses, because that really will throw matters.

That is the problem with leaving these matters to skeleton argument. So, I would rather have the grounds of defence within 21 days, or even shorter if you can, but that is a matter for you and then any application for witness evidence to be made very promptly after that so everybody, including the court, knows where we are going.

MS NI GHRALAIGH: Indeed.

MRS JUSTICE THORNTON: So shall I leave you to agree? I mean why don't I leave you to agree the timetable in light of (a) the 14th not the 16th and (b) in light of my comments.

MR FERNANDO: Yes.

MRS JUSTICE THORNTON: Unless you have any more generally points to make on timetable, I think you know where I am going. So it ought to be possible for both parties to agree that timetable and we could then turn to costs. Do either of you want to say anything else about timetable at the moment?

MR FERNANDO: No.

MS NI GHRALAIGH: No, my Lady.

MRS JUSTICE THORNTON: So we are effectively just building in provision for you to come back to the court pretty immediately. If you look at whatever grounds of defence and think, right, this rolled-up hearing is not going to work in the current format.

MR FERNANDO: My Lady, just to clarify. The provision for service by the defendant is for updated grounds and evidence upon which they rely?

MRS JUSTICE THORNTON: Yes. That is always -- that should not come as a surprise to your client, because that has always been their case. They were going to do that.

So, costs.

MS NI GHRALAIGH: So, in terms of costs, my Lady, the Claimant's position is that the order should be costs in the case.

MRS JUSTICE THORNTON: Yes.

MS NI GHRALAIGH: The two key factors impacting on my Lady's ruling on interim relief where the decision was that with which the defendant informed the Claimant on the morning of the hearing that RT was no longer to be accommodated in the safe house and the view of the defendant indicated at 4.03 of the hearing that the assessment was that it was safe for the Claimant to return home.

While reference had been made to a prior threat assessment, in fact the prior threat assessments are based on her not being at her home address and, indeed, the court has seen no assessment, other than the verbal assessment, that it is indeed safe for the Claimant to return home. It is pretty clearly post the balaclava incident.

The defendant did refuse to meet with the Claimant on five occasions prior to this hearing in what was anticipated to be a way of avoiding the need for this hearing and failed also to correct the Claimant's misapprehension that RT was in protective custody and failed to correct the Claimant's misapprehension about the underlying basis for the threat; namely, that it was linked to money laundering. They also failed to alert the Claimant to the fact that she was in fact at risk and the threat involved gun crime but, perhaps more importantly, if the Claimant were to succeed at the main hearing, it would simply mean that the court had not had sufficient information at this hearing to determine the balance of convenience in the Claimant's favour.

The defendant had could not have indicated in not providing her with protective measures if indeed she succeeds in her main claim. Until there is proper disclosure, effectively, it will be impossible to know whether interim relief would have been granted or not on that information. As such, the Claimant's position is that no order for costs should be made against the Claimants for this hearing.

MRS JUSTICE THORNTON: So costs in the case, yes.

MS NI GHRALAIGH: Yes.

MRS JUSTICE THORNTON: Mr Fernando.

MR FERNANDO: I am grateful, my Lady. Well, I think the first point is of course that the application made by the Claimant for interim relief was unsuccessful and the ordinary course would be that costs follow the event and nothing in this matter should detract from that.

There was I understand an issue about the expedited hearing being agreed. I think that is still the position. I clarified, my Lady, with Mr Skelt this morning that he had not reneged from that position simply to say that he required and his clients required more time to consider the material. So, the basis for dismissing the application, my learned friend I understand to be corrected, is, firstly, that RT was to move from a safe house on 2 April and, secondly, the risk assessment posed or the risk posed to the Claimant.

It is accepted that the information about RT was conveyed on the day of the hearing, simply because the decision, as I understand it, to move him was made very late, or at least communicated to him, very late in the day. So, there was no delay as such on the defendant's part. My Lady, you will appreciate that I am in a slightly invidious position in not having been involved in this case nor heard and only having picked it up in fact yesterday and this morning. So, my in depth knowledge is not the same, of course, as Mr Skelt.

But, in respect of the risk posed to the Claimant, my learned friend says that this was something raised latterly, indeed on the day, but in Ms Ashurst's statement, which is dated on 22 March, the risk of the downgrading of that risk to the Claimant was known. It is there and it is plain within the logs to see. So that should not have come as new news. It was something that was known.

It is also relevant in this case, my Lady, I think again I speak on behalf of Mr Skelt when he says he took my Lady to the chronology of this claim and the very short duration within which the defendant was allowed to respond before the claim was issued. That also must be taken to account the fact that the defendant did not really have a proper opportunity to respond and was thrust into these proceedings, somewhat based on the Claimant's instance

on immediate responses, which does not and would not fall within the natural pre-action timetable.

It should also be said, my Lady, that the day before the hearing there was an offer to the Claimant to install CCTV within her property and that was served on a without prejudice basis, but to be installed within her property to provide additional insurance and that was something she rejected and of course the hearing took place, commenced.

So, all those matters are relevant, my Lady, in considering whether costs should be awarded. I understand, of course, that the Claimant is legally aided, but, subject to s.26 the defendant says that costs should be awarded in this event in the ordinary course and follow the event of the unsuccessful interim application.

MRS JUSTICE THORNTON: Thank you both for your submissions.

My decision is that there should be costs in the case. The fact that RT is no longer going to be accommodated within the safe house as from 2 April and the assessment that it is now safe for the Claimant to go back home, did weigh heavily in the balance of convenience and those were matters that became apparent very late in the day.

My understanding is, and I will be corrected, is that the police log was disclosed after the application for interim relief and there was an attempt in a pre-action process by the Claimant's solicitors to seek information in meetings which might have avoided the application for interim relief. I do accept that the timescales are short, but the way in which that should be dealt with, it seems to me, is for all this to be looked at the end of this hearing and not for the Claimant's to be penalised at this stage. That is my decision.

Is there anything I can assist further with at this stage?

MS NI GHRALAIGH: No.

MRS JUSTICE THORNTON: I will expect to see an agreed order in writing which I will sign and will be sealed. Thank you.

CERTIFICATE

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