[2025] EWHC 143 (Admin)

AC-2024-LON-000215

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/01/2025

Before :
MR DAVID PITTAWAY KC
(SITTING AS A DEPUTY HIGH COURT JUDGE)

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Between :

THE KING (on the application of MM, by his litigation friend Cathrin Istifanous) — **Claimant**

- and -

(1) SECRETARY OF STATE FOR HOME DEPARTMENT

(2) LONDON BOROUGH OF HILLINGDON — **Defendants**

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Ms Shu Shin Luh (instructed by **Bhatt Murphy Solicitors**) for the **Claimant**
Mr Matthew Howarth (instructed by the Government Legal Department for the **First Defendant**)
Ms Catherine Rowlands (instructed by London Borough of Hillingdon for the **Second Defendant**)

Hearing Dates: 17 December 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 28 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR DAVID PITTAWAY KC

Mr David Pittaway KC (sitting as a Deputy High Court Judge):

1. There are two applications before the Court (1) to enforce the interim relief order made by Andrew Kinnier KC , sitting as a Deputy High Court Judge, on 18 April 2024 and (2) an application by the Second Defendant ("the council") to discharge the same order. At the outset of the hearing the Claimant maintained that the only issue was the balance of convenience, however, the council's submissions are wide ranging and submit that the Court should look at the order for interim relief anew.

2. The First Defendant ("SSHD") has filed a skeleton argument but has made no oral submissions. The SSHD's position is that the council is responsible for accommodating the Claimant under the Care Act 2014.

3. There are also separate proceedings in the Court of Protection ("CoP"), which I believe to be as a result of the Claimant's traumatic brain injury. On 10 September 2024, the CoP determined that there was reason to believe that the Claimant lacked capacity to conduct those proceedings and appointed the Official Solicitor the Claimant's litigation friend. On 10 December 2024, the CoP made directions for enquiries to be made to identify appropriate experts in neuropsychology and gave further directions. There have also been other hearings before the CoP to which I do not propose to refer.

4. On 3 December 2024 Dexter Dias J ordered that this hearing come before the Court before the end of the Michaelmas Term. He envisaged that the matter should come before a judge in who was also able to sit in the Court of Protection, however, if that was not possible, before an Administrative Court Judge, which is how it came to be before me.

5. As Andrew Kinnier KC stated at paragraph 2 of his judgment:

> "The second defendant is the London Borough of Hillingdon which is the local authority where Harmondsworth IRC is situated. The council has accepted a duty to assess the claimant under section 9 of the Care Act 2014 because he appears to have needs for care and support. However, the council has declined to exercise its power under section 19(3) of the Care Act 2014 to provide the claimant with supported accommodation pending assessment to facilitate the claimant's release. The council concluded, on 18 March 2024, that the claimant had no current urgent needs for care and support. That decision is also subject to challenge."

6. The Court is therefore considering solely the issue of continuing the order for interim relief made on 18 April 2024. The order, made after a one day contested hearing, required the council to provide accommodation with care and support on site pending the determination of the judicial review claim or further order. The judge was satisfied that there was a serious issue to be tried, and the balance of convenience fell in favour of granting the injunction. The full reasons for the order are detailed in the judgment. I have set out below what I see to be the relevant parts.

7. At paragraph 6 of the judgment, the judge stated:

> "The bare facts of this case can be shortly stated. The claimant is a national of Niger. He arrived in this country in September 2021. As indicated at the start, he has been in immigration detention since 2 October 2023. Between September 2021 and October 2023, he lived in Derby and Skegness. In the three venues in which he lived during that time, he was catered for, cleaned for and his accommodation had en suite bathroom facilities. I should note that between May 2023 and October 2023, the claimant was in His Majesty's Prison Lincoln following an incident in which he started a fire in the accommodation in which he lived."

8. I am informed that the Claimant's asylum claim has not been progressed beyond a screening interview because of concerns raised by the SSHD's interviewing officer about the impact of the Claimant's cognitive impairment on his ability to answer questions concerning his asylum claim.

9. At paragraphs 25 to 32 of the judgment, the judge stated:

> "25. I turn first to the threshold test. The Secretary of State accepts that there is a serious issue to be tried against him as is reflected by his position that the claimant should be released from detention.
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> 26. The next question is whether there is a serious issue to be tried against the council. I have heard argument today, with reference to legislation, to regulations, to statutory guidance and to case law. As matters stand this afternoon and for the purposes of deciding this application, there are, in my judgment, six serious issues to be tried against the council.
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> 27. First, it is arguable that the council's decision of 18 March 2024 was unlawful because it limited itself to asking whether the claimant had urgent needs for care and support currently. It is, in my view, arguable that a lawful assessment of needs should examine both the immediate current circumstances of the relevant individual and the imminent and known changes in that person's circumstances. Here, such a change could well be the imminence of the claimant's particular needs for care and support on release.
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> 28. Secondly, it is arguable that the council's decision failed to give due regard to the well-being principles established under sections 1(1) and (2) of the Care Act 2014. Equally, there is an argument to be had as to whether the decision had paid proper regard to the particular considerations that are set out in section 1(3) of the Care Act and to which the council should have regard when performing its duties and functions.
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> 29. Thirdly, it is arguable that where, as here, the claimant was found to have possibly fluctuating needs, it is not enough for the

social worker simply to say that those needs are fluctuating to discharge the duty. On that particular point, it is arguable whether regulation 2(4) of the Care and Support (Eligibility Criteria) Regulations requires more: i.e. does the regulation make it clear that, where a person has or appears to have fluctuating needs, the relevant social worker (invariably the assessor in these circumstances) still has to determine accurately the levels of the adult needs, which can only be done by looking at the adult's circumstances over such period of time as is necessary to "establish accurately the adult's level of need". It is arguable on the facts of this case that a social worker did not do that in this case.

30. Fourthly, there is an arguable question about the extent to which the social worker, Ms Ocante, had sufficient regard to the conclusions of the relevant medical experts. I should note that Dr Alsaraf's report was produced after Ms Ocante reported, but, crucially, there is an arguable question whether Ms Ocante attached adequate weight to the other medical experts' views, the safeguarding reports and notes and records in the documents which I briefly summarised at the start of this judgment.

31. Fifthly, it is arguable that it was not enough for Ms Ocante to have discussed matters with the IRC staff and then effectively to have relied upon their view that the claimant has no current needs. It is arguable that such an approach failed to attach sufficient weight to the fact that the claimant benefits from significant supervision and monitoring in the detention centre in order to support his daily functioning. In particular, it is arguable that Ms Ocante's approach did not attach enough weight to the nature of detention custody in which the claimant's food is provided, where his laundry is done and his toileting and cleaning arrangements are also provided.

32. Finally, an argument arises from Hillingdon's view that the provision of supported accommodation on a 24/7 basis would deprive the claimant of any independence and self-determination and that Care Act decisions have to be taken on a "strengths-based approach". It seems to me that it is arguable that a strengths-based approach should not be taken at the expense of a proper consideration in the round of what is required to meet an individual's well-being under section 1 of the Care Act. It is arguable that Hillingdon's assessment has been reached at the expense of such a proper consideration. Also, a strengths-based approach should not override the statutory question under regulation 2 of the Regulations about whether the adult is able to achieve specified statutory outcomes without assistance or any of the aspects of harm to them. It is also arguable that a strengths-based approach should not permit the social worker,

> in the position of assessing needs, to ignore or afford less weight to clear and consistent clinical evidence of concerns about the claimant's inability to live independently such as those as those which arise in this case."

10. From 12 May to 9 September 2024, the council provided the Claimant with accommodation at Ferrini House, a supported living scheme operated by St Martin of Tours Housing Association. The Claimant maintains that during that four-month period, the council had completed no needs assessment. It is also submitted that no investigations been commenced (or completed) by the council into the nature and extent of the Claimant's cognitive impairment and its effect on his capacity to carry out everyday tasks.

11. Witness statements on behalf of the claimant have been filed by Ms Istifanous, the Claimant's Litigation Friend in these proceedings, Mr Arnott, the Claimant's solicitor, and Ms Gotz, the case worker at the charity, Medical Justice. There are also the medical reports from Dr Clark, Dr Alsaraf and Dr Patel referred to in the interim relief judgment and other contemporaneous records. Witness statements have been filed on behalf of the council by Ms Ocante which challenge whether the Claimant requires care and support and also detail the attempts made to obtain accommodation. They are supported by a witness statement from Ms Panesar, attendance notes and other correspondence from Ferrini House.

12. A further unsolicited witness statement has been received by the Court after the hearing from Ms Ocante dated 10 January 2025. I have also received further submissions from the council, the Claimant, an additional witness statement from Mr Arnott and prison medical records. Although I have taken this additional information into account in making my decision, it is in my view, for reasons that become clear later in this judgment, unsatisfactory that this information emerged after the reserved judgment. To the extent that it did not contain new information, it should have been available at the hearing. Notwithstanding I directed that no further information should be filed, further letters from the council to the Claimant and in reply was copied to me on 20 January 2024. Again, the letters sought to reargue aspects of the applications albeit the letter from the Claimant's solicitor sought to correct the allegation that they had sought to mislead the court, which I accept they had not sought to do.

13. The Claimant submits that an interim mandatory injunction has binding legal effect and must be complied with unless it is set aside: ***Mohammad v SSHD*** [2021] EWHC 240 (Admin) per Chamberlain J at §§23-26.

14. In a careful judgment the judge at the interim relief hearing considered that there was a serious issue to be tried, satisfying the modified public law test in ***American Cyanamid***. There are contrary submissions as to whether on an application to discharge an order for interim relief, I should seek to go behind that finding. It is to be observed that the council did not appeal the order for interim relief.

15. The Claimant submits that an application to set aside an interim injunction is not a rehearing of the original application. The Court is to start from the assumption that the Order was justified when made, for the reasons given by the Judge who granted it: ***Perkier Foods Limited v Halo Foods*** [2019] EWHC. 3492 per Chamberlain J at §17,

and the judgment of Buckley LJ (with whom Shaw and Oliver LLJ agreed), in ***Chanel v FN Woolworth & Co Ltd*** [1981] 1 WLR 485, 492H-3B:

> "Even in interlocutory matters a party cannot fight over again a battle which has already been fought unless there has been some significant change of circumstances, or the party has become aware of facts which he could not reasonably have known, or found out, in time for the first encounter."

16. It is submitted that what counts as a significant change of circumstances is fact specific. In ***Perkier*** at §18, Chamberlain J said that:

> "In principle a change of circumstances could, if significant, relate to any of the elements material to the grant of an interlocutory injunction: the assessment whether there is a serious issue to be tried, the balance of convenience or any other factor relevant to the exercise of the discretion to grant the remedy (including the conduct of the parties)."

17. The council has sought to argue that it is open to me to consider the order for interim relief anew, ***R (on the application of Saaed) v Secretary of State for the Home Department*** [2018] EWHC 2507 (Admin). I accept, however, the Claimant's submissions that the case of Saeed is not comparable as it concerned an ex parte order to return the defendant from Pakistan. The subsequent hearing was the first opportunity for the case to be heard on the merits.

18. The council's skeleton argument sets out six submission as to why the Court should consider the order anew, including, but not restricted to, whether the council erred in its assessment of the facts as to the Claimant's care needs, how section 19(3) of the Care Act 2014 was applied in this case, and whether the London Borough of Greenwich is now the appropriate council to whom an application should be made.

19. In my view, it is necessary to separate out the matters relied upon by the judge at the interim relief hearing, set out above, from issues regarding the balance of convenience, and a consideration of the changes in circumstances which have occurred since the order for interim relief was made. Having considered the submissions made, I do not propose to revisit judge's reasoning on the threshold test, which will no doubt separately form part of the consideration by the judge on paper of whether permission for judicial review is granted or refused. In my view, to that extent, the council are seeking to re-argue the case which was heard on 18 April 2024 when the order was made. It follows that I accept the submissions made on behalf of the Claimant that the issue before the Court is one of the balance of convenience.

20. It is submitted on behalf of the council that it is no longer practicable to comply with the order and the balance of convenience is now so far tilted against the grant of relief that the order should be discharged. The council principally relies upon the events that have occurred since the Claimant was provided with accommodation at Ferrini House.

21. I should add that there is a stark disagreement between the parties as to the Claimant's capabilities, which I am not in a position to resolve.

22. It is submitted on behalf of the Claimant that his cognitive impairment severely impacts on his ability to function without care and support, relying principally upon the witness statements from Ms Istifianous, Mr Arnott and Ms Gotz and the medical evidence and other records to which I have already referred. The contents of the statements are summarised in paragraph 21 of the Claimant's skeleton argument. The council relies upon the evidence of Ms Ocante, Ms Panesar and records from Ferrini House. It maintains that so far as his personal needs were concerned, he did not access any support and managed independently whilst living there. He kept his room clean and tidy, he could prepare meals and was able to carry out the tasks of daily living. He had a smartphone which he used without assistance, and he socialised with other residents. It also relies upon referrals to the GP made by St Martin's in respect of the Claimant's cognitive impairment and his refusal to engage with services made available.

23. The course of events that led to the termination of the Claimant's accommodation at Ferrini House, in my view, is relevant to whether there has been a significant change in circumstances since the order for interim relief was made, particularly his alleged criminal behaviour. I am informed that by August 2024 the Claimant exhibited violent and aggressive behaviour. He received written warnings, and an acceptable behaviour contract was issued, but his conduct remained unchanged. No criminal proceedings were pursued. On 27 August 2024, he set fire to the counter at reception area, following which St Martin's terminated his accommodation. There had been a previous incident of arson at his accommodation in Skegness in 2023 leading to a custodial sentence. I am informed that the council did manage to find another provider who was prepared to offer him accommodation in Watford about which the Claimant was aware. He committed, however, another offence of arson at Ferrini House and was arrested. On 9 September 2024, the police released the Claimant on bail, giving his address as Ferrini House, even though that he was no longer a resident, after which he absconded. His whereabouts were unknown until he was located on 1 November 2024. He was taken to Walworth Road Police Station, where he committed a further offence of arson. As a result of this offence, he was remanded in custody. He has subsequently been moved to the healthcare wing of HMP Thameside for functional testing. Some of his recent prison medical records have been made available to me.

24. It is submitted on behalf of the Claimant that there has been no significant change of circumstances in fact or law since the grant of interim relief. The thrust of the submissions made is that (1) there has been a failure by the council to carry out an assessment of the Claimant in the period following the order made for interim relief and (2) more recently since his arrest and remand in custody there has been a failure to find him accommodation which can be used in connection with an application for bail.

25. At paragraph 50 of the Claimant's skeleton argument it stated:

> "The Judge placed significant weight on the ability of LBH to complete an assessment of MM's needs on his being released and investigate the nature and extent of his cognitive impairment and its effect on his capacity to carryout everyday tasks and his presenting behavioural risks."

26. At paragraph 51 it stated:

> "The Judge noted the time-limited nature of the relief, and the possibility that on coming to a "fully informed view" of MM's needs, other accommodation option would be become apparent and found an evidenced basis for LBH to seek a variation of the interim relief."

27. The criticism is made of the absence of an assessment and investigation into his neurological condition both before the Claimant absconded in September 2024 and after his remand in custody. The matters relied on are set out in paragraphs 53 to 64 of the Claimant's skeleton argument.

28. As the judge observed on 18 April 2024:

> "The starting point is the claimant's liberty. Having regard to the evidence, in my judgment the parties rightly agreed that his release is necessary. Although there is a dispute between the claimant and the council about what accommodation is appropriate and whether he has any urgent care needs, the parties agree that it is not in the claimant's interests to remain in detention, an outcome which the parties accept is prejudicial to the claimant for the obvious reasons. In any event, his release has been authorised by the Home Office."

29. Whilst that agreement related to immigration detention, the situation has moved on following the arrest of the Claimant for offences of arson and his remand in custody. The Claimant's remand in custody following charges of two offences of arson and absconding whilst on bail are separate matters outside the parties' control, regardless of his neurological condition. The SSHD's skeleton argument states that a case management hearing took place at the Crown Court on 18 December 2024 and the trial is listed to take place on 28 July 2025. It is noteworthy that the SSHD's skeleton argument states that the SSHD considers that the Claimant is too high risk to be accommodated at a bail address.

30. It is accepted by the council that they are presently bound by the order for interim relief made on 18 April 2024 and they maintain that they have continued to seek accommodation, but no offers have been obtained. That position is significantly modified in the additional information, which has been provided to me by both the Claimant and the council since the hearing.

31. In the witness statement from Ms Ocante dated 10 January 2025, the council states that it will not be carrying out an assessment of the Claimant under section 9 of the Care Act 2014. It maintains that its assessment process ended following him absconding from the council's care. The same oral submission was made at the hearing that by absconding the Claimant had frustrated the assessment, which it maintains was a series of assessments that he did not require care and support. In my view, these are matters of relevance to the application for judicial review rather than considering the balance of convenience in an order made for interim relief. The other additional information provided by the council is that a needs assessment is being completed by the Royal Borough of Greenwich and the outcome of that assessment is awaited.

32. The council maintains that there are obstacles in providing accommodation, both procedural and substantive.

33. At the hearing it was submitted that the main obstacle in arranging accommodation whilst the Claimant was in prison was that any provider would need to assess the Claimant before making an offer. At the hearing I was informed that the providers were unwilling to make that assessment whilst the Claimant was in custody. Although that position is modified in Ms Ocante's witness statement, it is substantially undermined by the additional information contained in Mr Arnott's sixth witness statement which indicates from enquiries which he has made that at least four providers are prepared to interview the Claimant in prison. It seems to me that a substantial plank in the council's application to discharge the order for interim relief has now fallen away. I should add that it is a matter of some concern to me that the information contained in Ms Ocante and Mr Arnott's latest witness statements are at such variance.

34. The council also rely upon the fact that no application for bail has been made on behalf of the Claimant. Again, the information obtained by Mr Arnott from the Claimant's criminal solicitors is that no such application will be made unless suitable accommodation is available.

35. Finally, the council submits that Claimant is a serial arsonist for whom no provider would be prepared to provide accommodation without 1:1 continuous care in circumstances where, in their view, he does not require urgent care and support. Reliance is placed on the prison medical records. As I have said, I am not able to resolve this issue other to observe that his requirements in a controlled custodial environment may be very different from living in a non-custodial accommodation. If he presents a risk to fellow residents and staff at a facility where he is accommodated, it may require additional measures to protect both himself and other residents and staff. I am aware of the continued involvement of the CoP, which is relevant to issues of deprivation of liberty that the council submit may arise. The CoP's involvement may also be relevant to the Claimant's refusal to engage with the services made available.

36. It is submitted on behalf of the Claimant that there has been no significant change in since the order for interim relief was made and on behalf of the council that the balance of convenience is strongly tilted against continuing the order.

37. The most significant change in this case that has occurred since the order was made is that the Claimant is now in custody for further offences of arson. If the incident at Ferrini House on 27 August 2024 had not occurred, the order would have remained in place until the determination of the application for judicial review. I should add that it is not disputed that the Claimant suffered a traumatic brain injury, but the effect of that injury is not clear. Although a referral was made to a neurologist, that did not take place because he was evicted from his accommodation and then absconded. The determination of that issue may be highly relevant to the care and support the Claimant requires.

38. In my view the events which have taken place since the order of 18 April 2024 have not significantly shifted the balance of convenience from when the order was made to now discharging it. It is a matter of speculation as to whether any such bail application will be granted as a result of the Claimant's prolific offending, his absconding, and being charged with a serious criminal offence of arson. Nevertheless, I accept the

Claimant's submissions that the council continue to be bound by the order for interim relief for the reasons given by the judge on 18 April 2024 and should identify accommodation that would ground a bail application. The issue of whether or not an assessment of the Claimant's requirements for care and support has or should be carried out will be considered in the application for judicial review. Pending the determination of that application, I do not see how the recent involvement of the London Borough of Greenwich alters that position, however, that position may change.

39. In these circumstances I grant the Claimant's application to enforce the order made for interim relief and dismiss the council's application to discharge the order made by the deputy High Court Judge on 18 April 2024.

40. I invited the parties to provide me with an agreed draft order, which they were unable to agree. Both the Claimant and the Second Defendant filed further submissions which related to the enforceability of the order in the event that the Claimant did not cooperate with an assessment by an accommodation provider. I accept the Claimant's submissions in preference to those of the Second Defendant. In my view it is important to provide a time scale in which accommodation should be obtained to enable a bail application to be made. Further delays should be avoided as far as possible. I have allowed 21 days.

41. I have directed that in the event that further case management directions are required, which I hope will not be necessary, the claim should be listed before a Judge of the Administrative Court authorised to hear proceedings in the Court of Protection. As far as I have power to do so, the file in the proceedings in the Court of Protection should be made available for that hearing and consideration given by the Claimant's legal teams as to how best the two sets of proceedings can be managed together. In my view costs should follow the event for both applications and the Claimant's and the First Defendant's costs should be paid by the Second Defendant.