Neutral Citation Number: [2020] EWHC 3420 (Admin)

Case No: CO/3502/2020

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

Date: 14/12/2020

Before:

HIS HONOUR JUDGE COTTER Q.C.

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Between:

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Claimant

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

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- -

Adrian Berry (instructed by Bhatia Best) for the Claimant
Mona Bayoumi (instructed by The Government Legal Department) for the Defendant

Hearing dates: 9th November and 7th December 2020

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JUDGMENT

His Honour Judge Cotter QC:

Introduction

1. The Claimant, who is a national of Afghanistan, has been provided with accommodation under section 4 of the Immigration and Asylum Act 1999 ('the 1999 Act') as a failed asylum seeker. He challenges the decision to disperse him from accommodation he had occupied for almost three years in Bristol, to accommodation in Gloucester, with effect from 18th August 2020.

2. The Claimant suffers from poor mental health with a diagnosis of post-traumatic stress disorder and receives care and support in Bristol and has a support network in place. On 13th August 2020, immediately after he became aware of the impending removal of his existing accommodation and relocation, a pre-action protocol letter, with evidence in support, was sent to the Defendant. In brief it was pointed out that the Claimant was receiving medical treatment from primary and secondary health services and that this would be disrupted by the proposed move and that he would lose access to the support he received, and required, from the Young People's Project (an initiative run by Bristol Refugee Rights) and others within his support network in the Bristol area (which also would enable him to access medical treatment). It was argued that the move would be contrary to the Defendant's own policy.

3. The Defendant responded on the 14th August 2020 but it is the Claimant's case that the response wholly failed to engage with the evidence and submissions made on behalf of the Claimant. The letter merely referred to the ability to raise issues with Migrant Help if he required any specific arrangements, and gave no indication as to how the Claimant was to continue to access his medical treatment, and whether, in the view of the decision maker, this could be in Gloucester and/or Bristol. The Claimant was left in ignorance of the basis for the decision to continue to relocate him notwithstanding the issues which had been raised on his behalf and the content of the relevant policy. As a result, Mr Berry submitted that the decision to proceed with relocation on 18th August was irrational and/or unreasonable.

4. On behalf of the Defendant Ms Bayoumi submitted that the response letter was adequate and there was "no need to say anymore" as accommodation was provided on a "no choice basis" and the Claimant had failed to raise any exceptional circumstances to require the provision of accommodation in Bristol.

5. The Claimant refused to move on 18th August and proceedings were issued supported by a witness statement. Detailed grounds of defence were filed but no evidence has been provided on behalf of the Defendant.

6. An anonymity order was granted by Judge Grubb on 30th September 2020.

7. I granted permission at the hearing on 9th November when the claim proceeded together with two other cases as rolled up hearings[1]. The two other case were eventually the subject of consent orders.

Facts

8. The Claimant arrived from Afghanistan concealed in the back of a lorry on 27th August 2015, was encountered by immigration officers and detained. He claimed asylum and after screening was released from detention on 15 September 2015.

9. His claim was refused on 16th May 2016.

10. On 20th January 2017 the Claimant was encountered by immigration officers and detained. On 24th January he was served with a removal notice and the following day he lodged further submissions. On the 2nd February 2017 the further submissions were refused with no right of appeal. Yet further submissions were lodged on 6th March 2017 (refused on 14 March) and on 24th March (refused on 29th March).

11. On 31st March 2017 the Claimant lodged a claim for judicial review, challenging the refusal of his further submissions. An application for interim relief against his removal directions was refused. The Claimant was due to be removed but failed to comply. On 4th May 2017 the Claimant was served with a further notice of removal. On 11th May his application for permission to bring judicial review proceedings was refused on the papers. His removal was then stayed by court order and he was released from detention on 7th July 2017. Permission to proceed was refused at an oral permission hearing on 27th July 2017. The Claimant lodged yet further submissions on 25th July 2019, which were refused with a right of appeal. The Claimant duly lodged an appeal on 11th October 2019 challenging the refusal of his further submissions and, as I understand matters, this appeal is currently outstanding.

12. Sometime in the summer of 2017 the Claimant made an application for support and accommodation under section 4 of the 1999 Act. Up to that stage, i.e. between summer 2015 and summer 2017, he was accommodated and supported by friends.

13. From August 2017 onwards the Claimant was under the care of the Haven GP surgery in Bristol (a surgery with a specialism in treating asylum seekers and refugees). As at the time of the hearing he remained under their care. The Claimant was diagnosed by Dr Wallond (in August 2017) as suffering from post-traumatic stress disorder.

14. On 4 September 2017 Claimant was informed of the decision that he was entitled to support under section 4 of the 1999 Act. He was informed that accommodation

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[1]The cases concerned the same legal principles and the Claimants had lived together at 29 Linden Road, Bristol, a property owned by a private landlord but managed by a provider of asylum support accommodation. In each case the Claimant sought judicial review on the ground that the decision to disperse was unreasonable

was provided on a no choice basis. The dispersal notice, which was eventually created sometime in 2020 notes under the rubric "dispersal comment"

"single male; 22yr ; dispersal requested18/09/2017, proposed due..[2]/2017 dispersal due by 20/09/17-priority B – App No .... Rep No (Leeds S4 case) "not London request accommodation in Bristol or within a max of one hour travel time of Bristol".

Ms Bayoumi was unable to help me with the date or provenance of these comments. It appeared to me likely that the reference to being within a maximum one hour time travel time of Bristol was made in 2017; but the rationale for it is unknown.

15. The accommodation provided was at 29 Linden Road, Bristol and the Claimant lived there from 20th September 2017 until his eviction on 18th August 2020, i.e. just under three years and on any rational/objective assessment; "a considerable period of time". After I granted permission to proceed with this claim he was allowed back into the property. This property is owned by a private landlord and managed by Clearsprings Ready Homes Limited which is a provider of asylum support accommodation for and on behalf of the Defendant.

16. Since July 2018 he has been receiving treatment from Dr Caroline Crentsil at The Haven (as confirmed by a letter of 18th August 2020). From May 2019 onwards the Claimant has been supported by the Young People's Project (a body sponsored by Bristol Refugee Rights).

17. On 25th June 2020 the Claimant was seen at the Haven. As a subsequent letter from Dr Crentsil stated; prior to this

"he had struggled to engage with the service missing appointments due to oversleeping for example and also with other agencies trying to support him with his mental health. His last appointment at the Haven prior to this was September 2019 and resulted in referral to a secondary care mental health services. He was referred at the same time to ACE, an access an engagement team, supporting to attend assessment but sadly he was not followed up by this team and the mental health assessment never took place. As (the Claimant) failed to attend subsequent follow-up appointment to the Haven this was not picked up until now."

Due to his ongoing poor mental health, including suicidal ideation he was re-referred urgently to secondary mental health services. His referral was accepted and the Claimant was assessed on 2nd July 2020. The recommendation was for the Claimant to receive talking therapy and to restart antidepressant medication under close supervision by his GP. As was the case previously it was felt that he needed to be supported to attend appointments so referral to ACE was again recommended.

18. On 20th July 2020 Dr Crenstil wrote a detailed letter (addressed to whom it may concern) outlining the Claimant's immediate past and present medical history.

[2] Illegible.

This letter was clearly obtained in light of his ongoing legal challenges to the refusal to grant refugee status. Brief relevant extracts for the decision-maker/s in respect of the dispersal from Bristol Gloucester are:

"I have seen (the Claimant) as a patient at the Haven since July 2018. Prior to this he was under the care of Dr Julia Wallond from August 2017. Dr Wallond is a GP of 16 years experience..... (the Claimant) was diagnosed with post-traumatic stress disorder by my colleague Dr Wallond in August 2017.
.. at the time (the Claimant) found it very difficult to talk openly about his past and previous traumas because it made him upset/depressed and he stated that his "brain doesn't work properly"...
He was able to talk more openly about his journey to the UK including sustaining a traumatic head injury after falling from a taxi and being beaten by agents. It appears that the death of his parents in Afghanistan, particularly his father who was reportedly murdered by the Taliban/distant relatives, is the initial trauma leading to the current symptoms...
It appears that (the claimant) may have been re-traumatised by his period of detention.

And

"My most recent appointment with (the Claimant) was by phone 25th of June 2020....

At his last appointment (the Claimant) reported ongoing symptoms of depression and PTSD. He is still unable to sleep having frequent nightmares. (He) no longer attends college and is socially isolated because of both his depression (low mood and lack of motivation to engage with others) and the current pandemic. As with his previous detention this is again created a situation where he cannot employ a coping strategy of avoidance of traumatic thoughts and memories. Due to his ongoing poor mental health, including suicidal thoughts, I referred (the Claimant) urgently to secondary mental health services again. His referral was accepted and he was assessed on 2 July 2020.
The recommendation was for (the Claimant) to receive talking therapy and to restart antidepressant medication under close supervision by his GP. As previously, it was felt that (he) needed to be supported to attend appointments so referral to ACE has again been recommended. These arrangements are being made currently.

..

Should (he) remain in the UK he will continue to require input from primary and mental health services to try and improve his condition."

19. Although he had struggled to engage with medical treatment prior to June 2020, despite being a long-term patient of the Haven, by the summer of 2020 the Claimant was under primary (through Dr Crentsil) and secondary care for his mental health condition. Further he was being supported by his GP and outstanding request was with ACE, the access and engagement team, to assist him with engagement.

20. On 13th August 2020 the Defendant issued a dispersal notice to the Claimant stating that on 18th August 2020 (only five days later) he would be moving from his home of very nearly three years standing, to 84 Wellington Street, Gloucester, as the property at Linden Road was to be returned to the private landlord. I would observe that the very short timeframe provided to the Claimant was of the Defendant's making. It is highly unlikely that the Defendant did not have notice much earlier that the landlord (with whom there must have been a contractual relationship) wanted the property back (as at the date of the hearing the property had not been given back).

21. In response to the notice, on the same day, Bristol Refugee Rights wrote a letter on the Claimant's behalf (written by Mr Tom Daly, immigration adviser at the Young People's Project). It stated:

"we've been in contact with him regularly and he generally needs help from us every few weeks"

And

"(the Claimant) was very upset about the idea of having to relocate and has been expressing a lot of anxiety and fear about it to myself and several other agencies. He's been very isolated over lockdown we have been highly concerned that he is a suicide risk and is not coping. (The Claimant's) mental health is very poor and he should be receiving counselling. He has lots of symptoms of PTSD and his memory and cognition are impaired. Sadly he is not well enough to manage to attend appointments or answer phone calls in order to engage with the help is available. We have tried to help him access mental health support. He attended the young people moving on after trauma group in the past, but he withdrew because he was feeling so upset and unwell."

"... He does go to see Caroline Crentsil at the Haven when he is particularly unwell and she offers informal support when he presents himself there. If you relocate then he would have to go back to the beginning again with mental health referrals and would lose this relationship. (The Claimant) was in college before lockdown and has been formally will start again classes soon…. It would be a major setback for him to lose this opportunity to be in education.."

And

"(The Claimant) also has a circle of friends in Bristol who help him with informal translation and interpreting and to go cope (sic) with appointments, life admin and keeping on track. His asylum and immigration solicitor Khalid Khashy is based in Bristol and…. The claimant needs face-to-face appointments in order to engage. Overall, myself and my colleagues are of the opinion that (the claimant) has been really struggling. He needs extensive support in numerous areas of life and is someone we have been worried about in terms of his vulnerability to exploitation. He has not managed yet to build independent life in the UK despite getting help from various statutory and

voluntary organisations. It is therefore concerning to imagine how we might cope with the add to relocate and had none of this support available"

22. On 13th August 2020 a full letter before claim was sent to the Defendant by Bristol Refugee Rights (written by Evie Oldfield), alleging a failure to provide adequate accommodation under section 4 of the 1999 Act. It attached Dr Crentsil's letter 20 July 2020 and Mr Daly's letter. It was stated that:

    "relocation from the Bristol area to Gloucester will remove the Claimant from the catchment area for his GP and secondary mental health care services; he will also be unable to continue to access support from the Young People's Project. The Claimant requires accommodation in Bristol in order to continue to access treatment with primary and secondary health services the treatment of his mental health, and to be able to maintain ties with this support network in the area"

23. The grounds of challenge were stated to be that the proposed new accommodation was inadequate and failed to comply with the requirements under section 4 as it would preclude him from continued treatment and cut him off from his support network with an inevitable deterioration in his mental health. Further it was argued that:

    (a) the Defendant's actions/omissions were in breach of the Claimant's article 8 ECHR, and potentially article 3 ECHR, rights.

    (b) the Defendant was plainly in breach the of the relevant policy on the allocation of individuals with healthcare conditions; "Healthcare Needs and Pregnancy Dispersal Policy" ("the Defendant's Policy ") and specifically paragraph 7.3.; "Mental health-dispersal guidelines". It was stated that the Defendant had "completely ignored" the relevant factors in the Claimant's case and also her own policy.

24. The response was sent on 14th August 2020, and noted that there had been request for a formal response within one day. It stated that the postcode of the proposed new accommodation was GL1 1DR and the property was a five-person male house of multiple occupancy and that:

    "Please note as per your client's grant letter, your client was granted accommodation on a no choice basis. If you wish to raise any medical conditions which would require any specific arrangements, these should be raised via Migrant Help[3]"

25. No further detail or reasoning was given and there was no attempt to engage in any detail with the matters raised in either the letter before action or the supporting evidence from Dr Crentsil or Mr Daly.

[3] Ms Bayoumi interpreted this as a reference to the option to seek help after dispersal to Gloucester.

26. On 14th August 2020, the Defendant's medical adviser, Dr Keen, responded to an email asking if it was "*imperative that the claimant lives in Bristol*" by stating

    "suitable psychiatric and other medical and support services exist in other UK cities. I can't find anything to indicate residing in Bristol is medically essential in this case"

27. I pause to observe that there is no reference to either an "*imperative*" need or to location being "*medically essential*" in the Defendant's policy. Rather there are very different and broader considerations to be applied, including whether the dispersal may *"adversely affect the mental health of an individual and the care he receives"*[4]

28. The e-mail to Dr Keen had no attachments and Ms Bayoumi was unable to help me with what he knew of the Claimant's representations and/or the two letters provided in support of it.

29. On 18th August 2020, the Claimant was due to be dispersed to Gloucester from Bristol. A taxi was sent to collect him and move him to Gloucester, but he refused to travel. The Claimant's friend, Jalat Khan, was able to accommodate him in Bristol on a temporary basis but asked him to leave as soon as the Defendant was able to provide him with suitable accommodation (Mr Khan normally charges rent for the room and he cannot afford to keep letting the Claimant stay in the accommodation without receiving any rent. The Claimant cannot afford to pay his friend rent as he only receives enough asylum support to meet his basic living needs). As I have stated, after I granted permission, he was allowed back into the Linden Road property.

Evidence

30. I have a statement from Jamila Fatima, a paralegal at the Claimant's solicitors.

31. It was told that the Claimant has not been able to obtain any up to date medical evidence given the current circumstances with COVID-19 (as confirmed by a letter dated 20 September 2020, from The Haven Health Centre).

32. I had no evidence on behalf of the Defendant as to who took the relevant dispersal decision and/or the decision to continue to implement the decision, notwithstanding the issues raised on behalf of the Claimant in the letter of 13th August and its enclosures. I have no detail of the reasoning as to why, if any consideration was in fact given to the Defendant's detailed and precautionary policy, that the Claimant's arguments did not amount to exceptional circumstances meaning that there should be deviation from the "no choice" principle in relation to provision of accommodation. I do not know what test or tests or thresholds were applied; other than the reference to "imperative" need and

[4] See paragraph 7.3 as considered below

"medically essential"; neither of which feature in the policy. Remarkably I still do not know whether the decision-maker believed that the Claimant could access the necessary medical treatment and support in Gloucester or whether it was believed he could travel back to Bristol (and whether this was thought to be a journey of a reasonable length and/or an hour or less); or a mixture of the two. Further, I have no evidence as to what materials were put before Dr Keen (as I have already stated the relevant email to him had no attachments). The absence of any evidence on these issues, against a background of no detailed reasoning in any correspondence, is, to say the least, surprising.

Grounds

33. Ground 1 as set out in the Claim form argued (as an amalgam) that the decision to disperse was unreasonable and irrational and thereby unlawful. In particular, in deciding to disperse the Claimant to Gloucester from Bristol the Defendant;

    (a) failed to take account of the relevant considerations in the reports and evidence before her and the need for the Claimant to remain in Bristol to continue with these services and support networks.

    (b) failed to provide a decision founded on any evidence (e.g. that equivalent specialist treatment was available in Gloucester).

    (c) failed to provide any adequate reasons to justify and maintain the decision to disperse the Claimant.

    (d) failed to assess the Claimant's mental health need in accordance with her own published guidance prior to dispersal.

34. Mr Berry conceded that ground 2 added little if anything to ground 1[5].

Defence

35. Ms Bayoumi submitted that the Claimant had provided no evidence which could have amounted to exceptional circumstances and warranted the Defendant departing from her decision to rehouse him outside Bristol.

36. She pointed out that the Claimant had relied (and continued to rely) upon the letters from Dr Crentsil and Mr Tom Daly in support of his claim to remain in Bristol. However, this evidence demonstrated the Claimant's failure to avail himself of the support offered in Bristol and the sporadic contact with the various agencies/organisations there to assist him. Dr Crentsil noted in the letter of 20th July 2020 that her most recent appointment with the claimant was by telephone on 25th June 2020. Prior to that, the Claimant's last appointment was in September 2019. Dr Crentsil further wrote that the claimant had failed

[5] Mr Berry had not drafted the grounds.

"to engage with the service and also with other agencies trying to support him with his mental health"

And

"One of the biggest barriers to his (the claimants) progress has been his inability to engage with any form of therapy despite multiple referrals in the past"

The Claimant also failed to attend appointments with the Young People's Project and withdrew from the young people moving on trauma group. However, an obvious problem with these submissions is that (as Dr Crentsil and Mr Daly state) the Claimant appears to have struggled, at least in part, to access services prior to June 2020 because of the features of his medical condition. Further and more significantly he had been engaging since June and was now under a treatment plan.

37. Ms Bayoumi also relied upon the email of 14th August 2020 in which Dr Keen indicated that he could not see anything to indicate residing in Bristol was "medically essential". She submitted (although there is no evidence that this was the view of the decision maker) that proposed dispersal would not interrupt treatment as:

    (a) medication can be resumed in Gloucester under the supervision of a new GP, and
    (b) the Claimant can be put on a waiting list in Gloucester for mental health support services

    She also referred to the policy guidance in respect of allocation of accommodation[6] which states:

    "Treatment for most medical conditions is available in all parts of the UK and the transfer of responsibility for providing that treatment to different medical practitioners is a normal everyday occurrence within the NHS. Unless there are exceptional circumstances, requests to be provided with accommodation in a specific location solely on the grounds that medical treatment is already being provided in the area should be refused"

38. She also submitted that the proposed new address is still within one hour of Bristol and therefore it is still a reasonable distance from Bristol where the Claimant could access his friends and other agencies that have offered him support. Again there is no evidence that this was the view of the decision maker and/or formed any part of the conclusion reached.

39. When pressed Ms Bayoumi stated that it was not necessary decision-maker to have given any reasons why the dispersal would continue having regard to the

[6] Not directly applicable as the Claimant is a failed asylum seeker and provided with accommodation under section 4 and not section 95 of the 1999 Act.

issues raised in the letter of 13 August as no exceptional circumstances have been raised and accommodation was provided on a no choice basis.

Legal and Policy Framework

40. In 2017 the Defendant accepted that the Claimant was eligible for support under section 4(2) of the Immigration and Asylum Act 1999:

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—
(a) he was (but is no longer) an asylum-seeker, and
(b) his claim for asylum was rejected.

41. Thereafter, there is an enabling power to make connected regulations as to the exercise of s 4 powers:

> *(10) The Secretary of State may make regulations permitting a person who is provided with accommodation under this section to be supplied also with services or facilities of a specified kind.*
> *(11) Regulations under subsection (10)—*
> > *(a) may, in particular, permit a person to be supplied with a voucher which may be exchanged for goods or services,*
> > *(b) may not permit a person to be supplied with money,*
> > *(c) may restrict the extent or value of services or facilities to be provided, and*
> > *(d) may confer a discretion*

42. The only regulations made under the section are the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007. These contain two regulations of note: the first concerns the ability of the Secretary of State to make provision as regards travel to receive healthcare treatment; the second concerns the ability to meet exceptional needs including facilities for travel. These regulations may have been of practical importance if the rationale of the decision in maker relied (in whole or part) on the Claimant being able to travel back to Bristol.

43. The Defendant has provided comprehensive, detailed policy guidance for the caseworkers (and others) which covers, inter alia, the provision of accommodation under section 4 of the 1999 Act: the Healthcare Needs and Pregnancy Dispersal Policy.

44. Chapter 4 of the policy provides guidance on the identification of health care needs when assessing dispersal requirements. It sets out at paragraph 4.3 that information may be obtained from a number of sources including letters submitted on behalf of the applicant by treating clinician and that

"Each application should be assessed on its individual merits. <u>Careful consideration </u>must be given to the specific circumstances of each case.

Decisions must be taken based on the circumstances of the applicant's entire household who been granted support, and where required, with the guidance of medical experts." (underling added)

45. Paragraph 4.4 explains the role of the Asylum Support Medical Adviser.

The Asylum Support Medical Adviser's role in the dispersal process, based upon the written medical evidence/reports submitted, is to:

- *Advise Home Office caseworkers about the general availability and capacity of medical treatment in particular regions;*
- *Advise on fitness to travel to dispersal accommodation;*
- *Recommend the nature of any accommodation to be provided*
- *Advise on requirement to stay in a particular area for medical reasons;*
- *Advise on medical need to relocate supported persons/applicants from one area to another;*
- *Advise on whether failed asylum seekers are unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason.*

46. Paragraph 4.5 states

"The Asylum support medical advisers advice will be based on the information provided in the referral. It is, therefore, essential that all relevant medical information is included in the referral and that all relevant medical documents are attached. The Asylum support medical adviser does not have access to ASYS." (underling added)

47. As set out above it was not possible to determine what information was provided to Dr Keen in the absence of any evidence on the issue, indeed any documentation save for two emails. If Dr Keen was not provided with the letter of Dr Crentsil, that would constitute a clear breach of the requirements of the policy.

48. At paragraph 4.6: "Considering Medical Evidence" it is stated that

"Applicants may submit medical evidence that may have an impact on the dispersal location or the nature of the property allocated. If caseworkers are unsure about what dispersal arrangements would be suitable as a result of the applicant's medical condition/treatment, advice may be requested from the Asylum Support Medical Adviser using the "Asylum Support Medical Adviser Referral Form".

Caseworkers must consider the advice of the Asylum Support Medical Adviser, but should also weigh the circumstances of each case against the relevant legislation and policy instructions. In the majority of cases, the caseworker should be able make a final decision on the applicant's dispersal requirements

which balances the advice from the Asylum Support Medical Adviser on medical needs with access to appropriate housing.

Please note that when Asylum support medical adviser states that treatment is available at any major UK city, this means locations such as: London, Birmingham, Leeds, Manchester, Liverpool, Newcastle, Sheffield, Bristol, Glasgow (populations over 300,000 persons).

..

Where an applicant asserts in his application that he has a medical need which impacts on dispersal arrangements, but there is insufficient evidence to conclusively prove the claimed medical need, the caseworker should write to the applicant requesting the required supporting medical evidence,

49. In the present case the caseworker sought some guidance from Dr Keen. This would tend to indicate uncertainty as to what dispersal arrangements would be suitable given the Applicant's medical condition/treatment. Unlike Bristol, Gloucester is not a major UK city within the definition used in the guidance. Ms Bayoumi made some submissions that the letter of Dr Crentsil did not provide an adequate basis or support for a diagnosis of post-traumatic stress disorder. However, given that there was no indication at any stage that the adequacy of the diagnosis was an issue for the decision maker (or Dr Keen) or any request for further information made, these submissions were wisely left to wither on the vine.

50. Under paragraph 4.10 of the policy, "Location of accommodation", it is stated

"When determining locations of dispersal accommodation, decisions must be taken in adherence of the dispersal policy set out in the policy document - Dispersal: accommodation requests.

Caseworkers must have regard to the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation. This means that, as a general rule, unless there are circumstances which warrant dispersal to the London and the South East, caseworkers should allocate accommodation in areas outside London and the South East region. Accommodation is provided on a no-choice basis.

There may be cases where particular issues on their own would not require special arrangements, but when taken together the combination of issues may warrant special arrangements regarding the location of the accommodation. For example, a member of the household:

- *is receiving ongoing treatment for a pre-existing medical condition, or is pregnant*
- *has lived in a location for a considerable period of time; and*
- *has an existing network of support from family and friends.*

51. Mr Berry submitted that it is clear from the above that consideration could be given to the combined weight of the factors indicated; and the Claimant had all three, including an existing network of support. However, no indication has ever been given on behalf of the Defendant as the extent to which the second and third factors were considered at all. The only reference to the consideration applied is to whether it was "*imperative"* and /or "*medically essential*" that the Claimant remain in Bristol.

52. As regards ongoing medical treatment the guidance notes that many applicants request accommodation in London or the south-east on the basis that they are currently in receipt of medical treatment in the region and, in my view, importantly, continues:

"The caseworker should consider all the circumstances of the case, including

- *the nature of the treatment being provided*
- *whether it can be readily transferred elsewhere in the UK*
- *whether the effectiveness of the course of treatment would be affected if interrupted*[7] *; and*
- *whether individual support network would be interrupted.*

When considering whether a person requires accommodation in a particular area (London and city such as Birmingham, Manchester, etc), caseworkers can, if required, request advice from the Asylum Support Medical Adviser.
Where a decision is made to provide accommodation at a location other than that requested by the applicant, the caseworker must fully minute his decisions on ASYS and explain the reasoning behind the decision to the applicant in the dispersal letter" (underling added)

53. There is no evidence that the caseworker considered the specific factors set out above. I have no evidence in relation to any, let alone any fully minuted decision and the Claimant did not receive a letter explaining the reasoning behind the decision to disperse given the matters that have been set out in the letter of 13th August 2020. Whilst Ms Bayoumi did not concede that the failure to explain to the claimant the reasoning behind the dispersal was a breach of the policy, she had little to say in response to the argument that it clearly was.

54. The policy also, sensibly, pointed to the ability to take stock of matters upon notification of a medical condition; such as occurred when the letter 13th August was received (assuming no reference was made to other material submitted in relation to the asylum application). It is stated:

4.11 Dispersal: Criteria for deferral or selective dispersal on health grounds

At the dispersal stage where the Home Office is notified of a medical condition and the condition is confirmed in writing by a qualified medical clinician, consideration must be given to selective/deferred out of region dispersal from IA or selective dispersal from non-IA accommodation. The process of

[7] Again this is to be compared with "medically essential"

selective/deferred out of region dispersal is dependent upon the availability of appropriate accommodation in the area concerned/

The following are some of the circumstances in which selective/deferred out of region dispersal may be considered:

…

- *Severe mental health problems (before making dispersal arrangements for applicants with severe mental health problems, refer to chapter 7.3 on mental health);*
- *Where replication of treatment is difficult to implement, particularly in cases where the treatment is broad in its nature e.g. where an applicant has more than one ailment that requires more than one specialist to provide treatment, and where the individual has an active support network in that area;*

(underling added)

55. Here the Claimant had notified the Defendant of a medical condition and provided evidence to support the existence of one, if not both, of the circumstances set out. It is made clear (again) that having an existing network of support from family and friends is a relevant factor as regards the location of accommodation *a fortiori* when that support assists with medical treatment. There is no evidence, despite the mandatory requirement, that the decisionmaker considered deferred dispersal. Rather the decision was to press on with dispersal giving only five days' notice.

56. The policy continues:

"where treatment is ongoing and available only at a particular hospital/clinic and the applicant needs to attend appointments at least on a fortnightly basis, serious consideration should be given to accommodating the household as close as possible to were the regular medical treatment occurs. All of the cases where treatment is ongoing and available only at a particular hospital/clinic, the applicant should be accommodated within reasonable travelling distance from where the regular medical treatment occurs. A reasonable travelling distance depends on the nature of the medical condition. If an applicant's medical condition appears to affect the length of journey that is suitable to him to travel to attend medical appointments, advice should be sought from the Asylum Support Medical Adviser.

Where, on advice from the Asylum Support Medical Adviser, out of area dispersal is assessed as being suitable, but treating clinicians/midwives need to make appropriate handover arrangements to enable continuity of care, it may be appropriate to temporarily accommodate the applicant within the area he can access his current treating medical facility. This will give the treating clinicians/midwives suitable opportunity to make

appropriate arrangements, the four dispersal commences. The applicants dispersal arrangements should be reviewed at regular intervals".

57. As a result of the above a caseworker faced with the information provided in the letter 13th August had to decide whether the claimant's medical treatment (primary and secondary) could continue in Gloucester or required visits back to Bristol. It is still unclear to me what decision was reached. If the decision was that the claimant could continue to access medical treatment and assistance in Bristol then consideration had to be given to what was a reasonable travelling distance for this claimant bearing in mind the medical evidence as to his mental health and the requirement for support to access relevant services. The original dispersal comment referred to a maximum travelling distance of an hour. In the detail grounds of defence and in her oral submissions (but without any evidence either that the decision-maker considered the issue or as to relevant modes of travel) Ms Bayoumi submitted that the Claimant would be able to access current treatment/assistance within Bristol from Gloucester within an hour. In this regard she was perhaps unfortunate to be presenting a case to the Designated Civil Judge for Bristol and Gloucestershire (living in Bristol but with family near Gloucester) with very considerable experience of travel between the two cities using public transport. I pointed out that I recognised that it was necessary to be careful about the extent of judicial knowledge on the issue given the absence of evidence, but that I did not accept her submissions without more. Further it would only be possible to make the journey within that timeframe by train with consequential costs that needed to be met. Here the Claimant remains unaware whether the decision-maker considered such journeys necessary or not and hence whether an application for the expenses to be met under the regulations made under section 4(10) of the 1999 Act is likely to be successful. As a result he cannot begin to consult with the providers of either primary or secondary medical treatment.

58. Alternatively, if it was the view of the decision-maker that all treatment/assistance could be gained in Gloucester then consideration should have been given as to whether it was necessary to consider the need for a handover of care so to minimise disruption to the Claimant's treatment plan. Again there is no evidence that this was considered and no explanation given to the Claimant as to whether a handover was thought necessary or not (and whether, as a result dispersal could be delayed and/or temporary accommodation provided)

59. Unsurprisingly given the nature of the policy and of those subject to it, it specifically deals with mental health:

    7.3 Mental Health – Dispersal Guidelines

    Where an applicant is engaged in psychological and psychiatric services, the dispersal process, wherever possible, <u>must not adversely affect the mental health of an individual and the care he receives</u>.

…
Caseworkers should also be aware that some applicants may be used to a more holistic approach to mental health issues, which may rely more heavily on the support of family and other networks rather than counselling and medication. For this reason consideration should be given to requests for applicants not to be separated from existing support networks on a case-by-case basis, taking advice from the Asylum Support Medical Adviser.

(underlining added)

So, when considering the Claimant's case in light of the policy, the decision-maker had to bear in mind the need, whenever possible, not to adversely affect the mental health of an individual and the care he receives. Further, to have regard to the request not to be separated from existing support network. Again there is no indication in a decision letter, or any evidence, that these considerations were borne in mind. The only reference I have to what the decision maker considered seems to indicate the only question was whether it was imperative that the Claimant remain in Bristol.

Analysis

60. As a result of the current public health crisis dispersal accommodation is in very short supply and the asylum support system is under very significant pressure.

61. On 27th March 2020 a decision was taken that for the immediate future people would not be required to leave accommodation because their asylum claim or appeal had been finally decided (as would normally be the case). The net effect was that the supported asylum population continued to grow as new asylum seekers entered the system and required housing. Many additional bedrooms have been provided since March, principally in hotels on a full board basis. The Defendant is continuing to endeavour to source new accommodation throughout the United Kingdom within current restraints but inevitably is not able to source new accommodation in all areas including large cities. However, the Defendant is still processing accommodation requests and making dispersal decisions in accordance with the guidance in relation her dispersal policies; they provide guidance on the relevant issues and the processes to be adopted. The accommodation pressures have not resulted in their abandonment and they provide a necessary safeguard against arbitrary decision making. In this case the Claimant argues that the decision maker appears to have had little or no regard to the relevant policy; "*in the decision making has failed to consider or apply (the) guidance rationally or at all*[8]".

[8] Per Mr Berry's skeleton argument.

62. As I have already set out the irrationality ground as set out in the grounds[9] is somewhat of an inelegant amalgam. It is said that

> *In deciding to disperse the Claimant to Gloucester from Bristol the Defendant has failed to take account of the relevant considerations in the reports and evidence before it and the need for him to remain in Bristol to continue with these services and support networks.*
>
> *The Defendant has failed to provide a decision founded on any evidence that such equivalent specialist treatment is available in Gloucester.*
>
> *The Defendant has failed to provide any adequate reasons to justify and maintain its decision to disperse the Claimant to accommodation in Gloucester.*
>
> *It is submitted the Defendant's decision is irrational and not properly founded on evidence before it.*
>
> *The Defendant in the decision making has failed to consider or apply its guidance rationally or at all.*

63. As a very broad generalisation in my experience grounds alleging irrationality are quite frequently put forward in judicial review claims, but much less frequently established. There is a high hurdle.

64. I was not taken to any authority and I think that the issues in this case can be determined with basic and well established legal principles. When addressing the question of whether the decision to disperse was unreasonable and/or irrational the Court is not deciding the question of reasonableness for itself and substituting its own view. Rather it is reviewing the process by which the decision was made and the result reached. A decision may potentially be considered irrational if it is unreasoned, lacking comprehensible justification, or made in an arbitrary fashion. Irrationality may also sometimes be inferred from an absence of adequate and intelligible reasons.

65. In my view the decision to proceed to dispersal was irrational and must be quashed for the following reasons. Each of the five reasons would be sufficient of itself.

66. Firstly, to reach a rational decision required consideration of the Claimant's circumstances, all relevant matters including medical evidence and, significantly, the Defendant's own precautionary and detailed policy guidance. Further it required consideration of the need to ensure that the Claimant understood why the dispersal (which was at very short notice) was still taking place notwithstanding the issues that he had raised and the need to consider these matters i.e. the basis of the decision.

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[9] Paragraphs 37-43.

67. In my view it was irrational and unreasonable of the decision-maker (whoever that was), taking into account basic common sense and the serious ramifications, to have reached the decision to simply proceed to dispersal without answering any of the points raised within the letter 13th August 2020 (including in relation to the policy) and leaving the Claimant in the dark as to the basis upon which the decision was taken and whether the issues had been addressed at all. No reasons have ever been given to explain justify the decision. I cannot accept Ms Bayoumi's submission that, given the "no choice" principle in relation to provision of accommodation, no detailed reasoned explanation was necessary.

68. In my judgment any decision maker approaching the matter rationally would have recognised that an obvious consequence of providing no explanation for proceeding to dispersal was that the Claimant was unable to respond or make representations as to the adequacy or correctness of the reasons. He would not know whether the decision reached was that treatment could take place adequately in Gloucester (given the need for support) or whether the view taken was that the Claimant could travel back to Bristol. As a result he could not point to the fact that adequate medical treatment for his PTSD through talking therapy and/or suitable support to enable him to access that therapy (something that had caused difficulty in the past), may not available in Gloucester or that the journey to Bristol was unreasonably long and/or he needed time for a suitable handover to take place. In my view no rational decision maker could take the view that it was appropriate and proper simply not tell the Claimant what the rationale for the decision was given the immediate and potentially severe impact on his health *a fortiori* when the Defendant's own policy stated that the dispersal process, wherever possible, must not adversely affect the mental health of an individual and the care that he receives.

69. Secondly, the decision to proceed without explaining the reasoning behind the decision was directly contrary to an express requirement of the Defendant's own policy and taken without any good reason. It was irrational to simply ignore the policy and give no explanation why.

70. Thirdly, it is a well-established principle that a failure to offer reasons for a decision may justify an inference that the actual reasons were inadequate and/or contrary to extant policy. In the present case I have received no evidence about the decision-making process other than sight of the reply of 14th August 2020 (which provides no reasoning) and two emails (which raise obvious questions as the information provided to Dr Keen given the mandatory requirement as to the provision of information). My view is that given the reasons, arguments and evidence advanced by the Claimant and the importance of the decision, it is proper to draw the inference from the absence of explanation or reasoning for the decision that no evidence can be provided to show that a supportable decision was reached and that the decision maker failed to make a proper reasoned and rational decision after due consideration of all relevant factors/evidence and in line with the policy.

71. Fourthly, the only indication within the available documentation as to the test or threshold applied by the decision maker for departing from the no choice principle was that the Claimant had to establish that it was imperative and/or a

medical necessity that he remain accommodated in Bristol. The Defendant's own policy set out a detailed approach which did not contain reference to either concept and it was irrational and arbitrary to apply them to the Claimant. The *raison d'etre* of the policy was to prevent arbitrary decision-making and to provide structured consideration to avoid damage to the health of those who had been provided with accommodation. Mr Berry properly conceded that it may have been possible for a rational decision to have been reached, after the obtaining and consideration of all necessary information (which may have included requests for further information from the Claimant or the medical advisor) and consideration of the policy, that a dispersal could take place, probably with what he described as a "basket of measures" (including deferred dispersal ; consideration of which was mandatory under the policy, and or ensuring a handover and /or funding to travel back to Bristol). However, the decision reached plainly did not address the matters raised in line with the policy as otherwise very different issues would have been raised with Dr Keen and more information obtained before it was reached.

72. Fifthly, given the content of paragraph 4.11 of the policy and the notification of a medical condition, the decision, without more, to continue to proceed to immediate dispersal to Gloucester within five days does not "add up".

73. For the reasons set out the claim succeeds. I find that the decision was irrational and must not stand.

74. I leave the parties to consider the terms of an appropriate order.