



Neutral Citation Number: [2022] EWHC 844 (QB)

Case No: QB-2019-004272

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/04/2022

**Before :**

**MR JUSTICE MARTIN SPENCER**

**Between :**

**OBJECTIVE CARE LIMITED**

**Claimant**

**- and -**

**THE LONDON BOROUGH OF EALING**

**Defendant**

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**Simon Butler** (instructed by **BSG Solicitors LLP**) for the **Claimant**  
**Genevieve Screeche-Powell** (instructed by **Legal Services L.B. Ealing**) for the **Defendant**

Hearing dates: 1 April 2022  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 am 11 April 2022.

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**MR JUSTICE MARTIN SPENCER :**

1. In this matter, which remains at a relatively preliminary stage, the parties have made cross-applications: the claimant for permission to amend the Particulars of Claim and the defendant for Summary Judgment. It was agreed between the parties that I should hear the application for Summary Judgment first followed by the application to amend although the application to amend in fact came first in time.

**The Relevant Background**

2. The Claimant Company owns and runs a care home situated at Parkside House, 77 West Avenue, Southall, London, UB1 2AR (“Parkside”) which has the capacity to accommodate up to eight adults with mental health needs. The sole shareholder and managing Director is Mr Nadarajah Pragashparan. The Claimant is registered with the Care Quality Commission (“CQC”) to carry out the following regulated services: the care of those with learning disabilities, mental health conditions and substance misuse problems. The Claimant is required to have a registered manager for these services at this location. The Defendant is the Local Authority for Ealing in West London and, as such, has a duty to care for, and protect, vulnerable adults which includes the placement of such adults in accommodation such as Parkside, in consultation with West London Mental Health Trust. The Council has three “levels” of care home providers: first, those with whom the Council has block contracts; secondly there is a framework of approved providers; thirdly the Council uses other providers on an ad-hoc basis if needed. The Council has a standard Individual Placement Agreement (“IPA”) for ad-hoc placements which are also referred to as “spot purchases”.
3. Mr Gordon Crighton, the Council’s Operations Manager, in a statement dated 16 February 2021, says that a short-stay placement will be for a defined period as part of a planned “journey of rehabilitation”. A permanent placement may be considered where there is no likely outcome of a “move-on” at that particular stage and where the client does not move on, his or her placement is reviewed at least annually. However, a placement evolving from short-stay to permanent does not imply that it is for life which, Mr Crighton says, is wholly counter to a social care approach which is required by law to respect patient choice.
4. An employed social worker with the Council was Ms Samera Rashid and, in that role, Ms Rashid arranged for the placement of Mrs ST with the Claimant on 3 August 2011. Mrs ST, and others placed at Parkside, are variously referred to either as “clients” or “residents” or “service users”. This was the Council’s first placement at Parkside and the cost was £650 per week. At that time, Parkside was simply a provider of supported living. On 16 May 2012, Mrs Harpinder Kaur was appointed as Manager of Parkside and on 19 July 2012, Parkside became a specialist care home for those with mental health needs.
5. It is the Claimant’s case that at some point after 3 August 2011, Ms Rashid telephoned Mr Pragashparan and informed him that she wished to manage Parkside, that she was fed up with her job and wanted to earn more money. It should be noted that, for the purposes of this summary judgment application, I generally take the Claimant’s case as true, although the facts of course remain to be ascertained. On 10 September 2012 Ms Rashid sent Mr Pragashparan an unsolicited email with her curriculum vitae attached.

Thereafter, she would telephone Mr Pragashparan and insist that he give her the position as manager even though she did not have the appropriate qualifications and Mrs Kaur was already in post. It is the Claimant's case that these telephone calls continued for a period of at least six months.

6. Two further clients were placed at Parkside by the Council: Ms KS on 10 December 2012 and Ms SK on 27 July 2013. In relation to Ms SK, there is a copy of the IPA which is dated 6 August 2013. Although the Council has been unable to produce the IPAs for Mrs ST or Ms KS, it is common ground between the parties that IPAs on the same core terms as that for Ms SK would have been entered into. The only differences would have been in relation to what Ms Screeche-Powell, Counsel for the Defendant, referred to as the "surface details": the name of the client, date of birth and the length of placement. I shall return to the core terms later in this judgment. However, it is to be noted that, so far as Ms SK was concerned, the length of the placement was six months, starting on 22 July 2013 and ending on 22 January 2014. On the basis of Mr Crighton's evidence that Mrs ST and Ms KS were also placed pursuant to IPAs, it is reasonable to assume that they too were initially placed on six-month placements which were then extended and this is consistent with the Claimant's case that the purpose of the initial six month placement was to see that Parkside was suitable for the client and that the placement was working out. There is nothing to indicate that the same would not have applied to Ms SK and that at the expiry of the initial period on 22 January 2014, her placement would not have been extended as had occurred with Mrs ST and Ms KS, but for the matters forming the basis of this claim.
7. There is no indication that until the events of November 2013, to which I shall come, there was any dissatisfaction with the placements of the three clients at Parkside, nor with the standard of care being provided under the management of Mrs Kaur. According to the Council's procedures, there should have been at least annual reviews and Parkside was also subject to inspection by the CQC.
8. At some stage during the summer of 2013 Ms Rashid changed her role within the Council from social worker to working with the placements team, known as the "Commissioning Team", conducting placement reviews. Her immediate manager was one Jeremy Mulcaire but she also reported to Mr Karl Mellor, the Council's Commissioning Manager, and Mr Crighton. On the Claimant's case, Ms Rashid was, by now, a disappointed woman, having failed to secure the job of Manager at Parkside, and bore a grudge against Mr Pragashparan. On 11 November 2013 she and Mr Mellor carried out a spot inspection of Parkside. In a statement dated 27 April 2021 Mr Mellor indicates that after Ms Rashid started working in the Commissioning Team from about the summer of 2013, she would make derogatory comments to him about Parkside. He says that Ms Rashid created enough concern amongst the Commissioning Team for them to decide that they needed to review Parkside. She also told Mr Mellor that Mr Pragashparan had been stalking her. Thus, it is the Claimant's case that the review of Parkside in November 2013 was effectively orchestrated by Ms Rashid, motivated by her wish to exact revenge upon Mr Pragashparan.
9. Ms Rashid and Mr Mellor attended Parkside at about 08:50 hours and explained to Mrs Kaur that they were going to carry out an inspection. Whilst Mr Mellor stayed in the office going through Parkside's paperwork and policies, procedures and HR files, Ms Rashid purported to conduct placement reviews in respect of the three clients who had

been placed at Parkside by the Council. Those placement reviews, which are mysteriously dated 29 October 2013, ie two weeks before the review to which they relate, are uniformly critical of Parkside. It is the Claimant's case that those documents were completed by Ms Rashid maliciously as part of her grudge against Mr Pragashparan and the contents of them were false.

10. Following the inspection, on 6 December 2013 two members of Mr Crighton's team attended Parkside and the three clients placed there by the Council, who were in fact the only residents at Parkside at the time, left that day. It is the Council's case that this was the choice of the three clients, but this is a further matter in dispute and it is the Claimant's case that they and the Council were given false information by Ms Rashid which led to their peremptory removal without notice. There appears to be no evidence that the Claimant was informed of any concerns about the level of care at Parkside and it is the Claimant's case that there was no opportunity for consultation or for those concerns to be addressed.
11. In his statement dated 17 May 2021, Mr Pragashparan says that Mrs Kaur called him on the afternoon of 6 December 2013 in a distressed state to advise him that social services workers sent by the Council had said they had instructions to remove ST, KS and SK from Parkside. Shortly after this he received a telephone call from Mr Crighton. He says that he explained to Mr Crighton that Ms Rashid "had a personal vendetta against me and that I suspected that the removal of the service users had been orchestrated by her in retaliation to my refusal to her repeated requests to offer her employment with the company. Mr Crighton replied that this was a serious allegation and that Ms Rashid was shaking her head in disagreement to my statement which suggested that I was on loudspeaker and that Ms Rashid was also present and listening to the conversation."
12. On 11 December 2013, the Council sent to the Claimant a letter in the following terms:

"Following on from your conversation with the Director of Adults' Services, I'm writing to you to confirm the background reasons for the transfer of the 3 Ealing funded clients at Parkside Care Home to alternative accommodation and support.

As you will be aware each resident's support arrangements are routinely reviewed by Adults' Services in early – mid November 2013. During the reviews (held at Parkside) each client raised serious concerns as to the quality of support being provided at the home; and each requested that they be urgently moved to alternative accommodation. The concerns cited included:

  - Feeling intimidated and unable to express their needs and views to staff
  - Residents advised that they were only allowed out of the home between the hours of 9 AM – 6 PM; and that if they returned late then they "were told off by staff"
  - No access to the kitchen – residents advised that the kitchen was continuously locked that they were not

allowed access to make their own drinks, access snacks or prepare meals. It was noted by Council Officers that the kitchen was locked during a brief tour of the home.

- Independence skills restricted. Whilst, each care plan reflected the need for independence building, in practice residents advised that they were not allowed to carry out domestic chores, unable to clean their rooms, or do their own laundry. It was noted by Council Officers that the laundry room was locked during a brief tour of the home.
- Many restrictions – residents complained as to the lack of choice of menu and when they made suggestions to staff they were refused.
- Activities – the residents advised that they were not supported in developing their skills ought supported to engage in meaningful activities, rather they were simply left all day to their own devices.”

It is the Claimant’s case that all these concerns were orchestrated, indeed fabricated, by Ms Rashid as part of her vendetta against Mr Pragashparan and were untrue.

13. On the same date, 11 December 2013, solicitors on behalf of the Claimant, Messrs Ridouts, sent a letter of claim to the Council alleging breach of contract in relation to the termination of the placements of the three clients at Parkside. The letter set out some details of the clients to establish their vulnerability, emphasising the need for them to feel stable and secure in their home environment, and then stating:

*“Despite the above, on 6 December 2013, all three of these service users were unlawfully removed from their home by social workers from Ealing Council, breach of the Council’s contractual obligations and duty of care to these service users and with complete disregard for the service users’ rights under the Human Rights Act 1998. There has been no notice to terminate the contract, nor are there adequate grounds to do so. ...*

*Given the above, you can understand why the provider was shocked at the unlawful removal of these residents. This has been compounded by the fact that he always received extremely positive feedback about Parkside House. Only as recently as June 2013, the same Mr Mellow of Ealing Council told the provider that his home was “the best care home in the borough”.*

*The only reason which Mr Pragashparan can think this could have happened is because of Ms Rashid may be harbouring a grudge against him. On more than one occasion since 2011, Ms*

*Rashid has sought to apply for a job as a manager of the home. Mr Pragashparan and was initially considering her for this position but was ultimately unable to provide her this job because she was unwilling to undertake the necessary NVQ training. Since Ms Rashid started her new position in the commissioning team as a placement officer in the summer of 2013, no new referrals had been made to Objective Care Ltd.”*

Thus, the Council has been on notice of the principal issues in this case from an early stage.

14. On 17 December 2013, the Council sent a letter of response denying that there had been any breach of contract arising from its actions regarding the movement of ST, SK and KS from Parkside. The Council’s account of what happened on 6 December 2013 was very different to the Claimant’s account: it was (and is) the Council’s case that the three service users, being adults with capacity (despite their mental health problems), chose to move from Parkside and that the Council supported them in respect of that decision by offering alternative accommodation. It was stated:

“On 6 December 2013 the Care coordinators who had attended Parkside asked the 3 service users if they would like to move that same day. All 3 said that they would like to move on that day 6 December 2013 and the service users were supported in moving to alternative accommodation.”

15. The Council ceased to fund the placements for the three clients on 3 January 2014.
16. It is further the Claimant’s case that one of the clients, Ms KS, visited Parkside on 25 February 2014 and said to Mrs Kaur that she had not wished to leave Parkside. She visited again on 7 March 2014 when she told Mr Pragashparan that she wanted to return to Parkside and did not like her new placement. Mr Pragashparan says that he asked Ms KS what had happened at the inspection visit of 11 November 2013 and Ms KS advised him that Ms Rashid had told her that she was closing Parkside down so they would need to move. She further said that when the Council’s employees attended on 6 December 2013, she was informed that she had to leave Parkside as it was being closed. This contradicts the Defendant’s case that all three clients chose to leave Parkside. The brother of Ms KS wrote to the CEO of the Council on 4 March 2014 raising concerns about the reasons behind the removal of Ms KS from Parkside against her express wishes and the failure to follow due process.

### **The Core Terms of the IPA**

17. As stated, although we only have the IPA for Ms SK, it is common ground that the core terms of that IPA would have applied to all three placements. The relevant core terms are as follows:

#### **“4. Termination of Agreement**

4.1 *This agreement may be terminated by either party giving a minimum twenty-eight days written notice to terminate – subject to justified and reasoned rationale for same. Each party therefore may at any time by notice in writing to the other party terminate their participation within this agreement twenty-eight days from the date of serving of such notice.*

4.2 *However, Ealing Council reserves the right to terminate this agreement with immediate effect in the event of: [certain events such as the death of the nominated customer are then set out, none of which apply here]*

...

#### **6. Payment method, fee increases and insurance requirements**

6.1 *Payment will be as follows:*

- *[provision is then made for the making of payments]*

6.2 *Cancellation of payment(s)*

*There are a number of circumstances where the service provider will cease to provide the service and Ealing Council will cease to make payments, these include:*

- *The death of the nominated customer. Please note that for all care home placements Ealing Council will only pay up to a maximum of 3 additional days following death of the nominated customer to allow the service provider to remove/store personal effects.*
- *The hospitalisation of the nominated customer from the care home placement for a period exceeding or expected to exceed twenty-eight days.*
- *The inability of the service provider to supply the level of care identified as being required by the nominated customer either in their support plan following a re-assessment of need.*
- *The nominated customer’s departure from the service for any other reason, including the exercise of a choice to transfer to another support service or care home (subject to CQC licensed/regulated activity requirements where appropriate).*

...

## **9. Complaints**

9.1 *The service provider will maintain and make available a robust complaints policy and procedure.*

9.2 *All complaints about the service will in the first instance be dealt with through the service providers' own complaints procedure. However, this does not affect the right of the nominated customer and/or their representative to have recourse to Ealing Council's complaints procedures.*

9.3 *The provider shall provide Ealing Council with a quarterly report detailing all customer complaints and outlining action taken by provider to remedy complaint.*

...

## **11. Monitoring Visits**

11.1 *The provider shall permit access by Ealing Council to the provider's premises/services for compliance checks and monitoring visits. Such visits will be evidenced-based inspections and will be made by a Council Officer(s). The visits may be announced or unannounced. While it is not possible to limit the number of such visits, Ealing Council acknowledges that such visits are an intrusion, and undertakes to keep compliance visits to the necessary minimum. Ealing Council will supply the provider with a copy of any written report compiled following compliance visits."*

## **The Proceedings**

18. For reasons of which I am not aware, the Claim Form was not issued until 29 November 2019. The Particulars of Claim are dated 4 March 2020. In them, the Claimant asserts that the information contained in the Placement Review Documents was not verified or signed by the service user, Mr Mellor, a relative, Mr Pragashparan or Mrs Kaur. It is pleaded that the information is misleading and was created by Ms Rashid to justify and provide a reasoned rationale for removing the residents, when the decision to remove the residents had already been pre-determined prior to the inspection. The Claimant pleads that the information contained in the Placement Review Documents did not raise any safeguarding and/or establishment concerns. At paragraph 39, it is pleaded:

*"The discretion exercised by the Defendant in removing the residents from Parkside was exercised dishonestly, as particularised above, and for an improper purpose. Ms Rashid intended to remove the residents from Parkside and the decision to remove the residents was made prior to the inspection on 11 November 2013."*



Thus, breach of contract is alleged and damages are claimed by reference to the period that the Claimant was deprived of the income referable to the three clients ending with the date when replacements were found, namely 16 November 2016.

### **The Application for Summary Judgment**

19. The application for summary judgment is dated 17 February 2021 and the grounds are set out in the witness statement of the Defendant's Operations Manager for Adult Social Services, Mr Gordon Crighton where he states:

*"42. Under Clause 6.2 of the Agreement, the Council's liability to make payment ceases on the nominated customer's departure from the service for any other reason, including the exercise of a choice of transfer. Accordingly, under the terms of the agreement Ealing's contractual liability to make payment, and Objective Care's obligation to provide a service, ceased when the residents departed on 6 December 2013. For this reason alone the claim is doomed to fail.*

*43. Clause 4.1 entitles either party at any time to terminate their participation in the agreement on 28 days' notice. Accordingly, there can be no contractual basis for a claim that the Council is under any continuing liability to make payment to Objective Care.*

*44. Clause 4.2 also entitles the Council to terminate the agreement with immediate effect if the provider cannot supply the level of care identified. The service-users were in the age range 40-50 years old at the relevant time. The recovery model, promoting independence and maintaining their daily life skills, was an integral part of their care plan. The restrictions placed on them while residing at Parkside, as detailed in their placement reviews, did not meet that."*

20. Miss Screeche-Powell, on behalf of the Defendant, made a number of necessary concessions for the purposes of the hearing: thus, she conceded that in relation to ST and KS, their placements at Parkside might be regarded as permanent or indefinite, subject to 12-monthly reviews. She submitted that the position in relation to SK was different because the IPA is available giving a termination date of 22 January 2014. She further conceded that the issue whether the residents chose to leave is a matter in dispute and that, for the purposes of summary judgment, she has to proceed on the basis generally of the Claimant's evidence. She advanced her principal argument on the basis of clause 6.2. She submitted that this clause is a complete answer to the claim because, pursuant to its terms, the Claimant is no longer required to provide a service and the Defendant is no longer required to make payments in a number of circumstances which include the departure of the nominated customer from the service for "any other reason" including the exercise of a choice of transfer to another support service or care home. She submits that these words are clear and unambiguous and that

there can be no legal basis for reading into those words anything other than their clear and natural meaning.

21. Alternatively, Miss Screeche-Powell submitted that, if she is wrong in relation to clause 6.2, the Defendant was nevertheless entitled to terminate on the basis of clause 4.1. She referred to the reasons for termination set out in the Council's letter of 11 December 2013 which, from the point of view of the Council, was a justifiable rationale. She submitted that, for the Claimant's case to succeed, it would have to show a conspiracy on the part of employees of the Council but, even on the Claimant's case, the decision to terminate the placements was one made by the Council in good faith: Mr Mellor had no reason to doubt the information he was being given by Ms Rashid.
22. For the Claimant, Mr Butler submitted that the interpretation of clause 6.2 by the Defendant was erroneous. He submitted that clause 6.2 needs to be read in the context of the contract as a whole and, when placed in context, is purely a mechanism for cancellation of payment: it is not a free-standing provision entitling the Council to terminate the contract. He said that, upon a proper construction of the contract, the only clause dealing with termination is clause 4. If Miss Screeche-Powell were correct, the effect of clause 6.2 would be to exclude a claim in contract for damages and this is neither what clause 6.2 says, nor what it is intended to achieve.
23. So far as clause 4 is concerned, Mr Butler submitted that there is clearly a triable issue in relation to the circumstances in which the placements of the three clients were terminated. He submitted that the Council cannot distance itself from its employee, Ms Rashid, who purported to be acting in the course of her employment, and if, as the Claimant alleges, she was acting in bad faith, the Council is clothed with the same bad faith for the purposes of this action. Thus, he submitted that the Council and Ms Rashid stand in the same shoes: in reality, her decision was the Council's decision because the Council placed total reliance on her. Although he did not need to do so, he also pointed to factors which he submitted favoured the Claimant: the mismatch of the dates of the Placement Reviews, the lack of previous concerns about the service provided at Parkside, the lack of any consultation, the lack of any investigation by the Council. Thus, Mr Butler submitted that there is clearly a triable issue in relation to clause 4.1 and in particular the words "subject to justified and reasoned rationale for same."

### **Discussion**

24. I start with the principles governing applications for summary judgment which were helpfully summarised by Mr Butler in his skeleton argument. He relied on the principles set out by the House of Lords in *Three Rivers District Council v Bank of England* No. 3 [2001] All ER 513 which, although referring to strike-out, are, he submitted, equally applicable to applications for summary judgment:
  - (i) Strike-out is only appropriate for plain and obvious cases;
  - (ii) Judges should not rush to make findings of fact and contested evidence as a summary stage: there are many cases in which a full trial is the only appropriate means of determining issues;
  - (iii) If an application to strike out involves a prolonged and serious argument, the judge should, as a general rule, decline to proceed with the argument unless he

not only harbours doubts about the soundness of the pleading but is also satisfied that striking out and remove the necessity for a trial;

- (iv) Judges hearing strike-out applications should not conduct many trials involving protracted examination of the documents and facts;
- (v) A judge may refuse to hear a strike-out application if the application is unlikely to succeed or will not be decisive or appreciably simplify the eventual trial.

25. Mr Butler also referred to the useful dictum of Coulson LJ in *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326 where he said:

“(a) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 1 All ER 91. A realistic claim is one that carries some degree of conviction: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472. But that should not be carried too far: in essence, the court is determining whether or not the claim is “bound to fail”: *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at [80] and [82].

(b) The court must not conduct a mini-trial [referring to the *Three Rivers* case]. Although the court should not automatically accept what the claimant says at face value, it will ordinarily do so unless it’s factual assertions are demonstrably unsupportable [referring to the *ED & F* case]. The court should also allow for the possibility that further facts may emerge on discovery or at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 5450.”

26. In fact, there was no essential difference between the parties so far as the applicable principles are concerned. Miss Screeche-Powell submitted:

“(i) Whilst there is disputed content in the witness statements filed by C, it is not the function of the court in summary judgement to conduct a “mini-trial”.

(ii) That does not mean that the court must take at face value and without analysis everything a claimant says in a statement if it clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel*. However, the court should also take into account evidence that can also reasonably be expected to be available at trial.

(iii) If an application raises a short point of law or construction and the court is satisfied it has before it all the evidence necessary for the proper determination of the issue it should grasp the nettle and decide it.”

27. In my judgment Mr Butler is correct in his interpretation of clause 6.2 of the contract. As he submitted, clause 6.2 is intended to deal with, and has the effect of dealing with, mechanism of payment as clearly indicated by its title, “6. Payment method, fee increases and insurance requirements”. Reading the contract as a whole, the clause which is intended to deal with Termination is clause 4 and clause 6 does not have the effect of ousting a claim in damages where a contract has been wrongfully terminated otherwise than in accordance with clause 4, nor does it have the effect of limiting the damages which can be claimed. I therefore reject the Defendant’s principal ground for claiming summary judgment.
28. So far as the Defendant’s secondary ground is concerned, again I accept Mr Butler’s submission that the Council cannot distance itself from the motives and fraudulent conduct (as I assume for the purposes of this application) on the part of Ms Rashid. The Council, on the Claimant’s case, put Ms Rashid in a position whereby she was able to manipulate the Council into terminating the placements of the three clients and whereby the Council did not put into place systems to cross-check the information it was being given by Ms Rashid. In those circumstances, the Council is endowed with the alleged bad faith of Ms Rashid and cannot claim to have been acting in good faith independently of her bad faith and extraneous motives. In effect, the Council chose to stand in Ms Rashid’s shoes and must therefore bear the consequences.
29. There is clearly an issue to be tried in relation to whether Ms Rashid was or was not acting in bad faith and whether or not the decision of the Council to terminate the placements of the three clients amounted to a breach of contract. In those circumstances, and having rejected the argument in relation to clause 6.2, the application for summary judgment must fail.

### **Amendment**

30. So far as the Claimant’s application to amend the Particulars of Claim is concerned, the Application Notice states:

“The need for the amendment has transpired in the review of the case prior to the Costs and Case Management Conference fixed for 2 February 2021. Whilst preparing the draft witness statements the Claimant’s Solicitors observed an inconsistency with the statement of case, which the amendment seeks to rectify.”

In the course of the hearing, residual deficiencies in the proposed Amended Particulars of Claim were identified and I required Mr Butler to submit to the court, in due course, a draft amended pleading which addressed those deficiencies.

31. When the application to amend was originally made, it was thought by the Defendant, understandably, that the Claimant’s intention was to depart from an admission which had been made that the placement contracts for the three clients were on the basis of the written IPA for Ms SK. However, in his skeleton argument for the Claimant, Mr Butler clarified that it remains the Claimant’s case that the standard core terms of the IPA apply to all three clients. In a supplemental skeleton argument, Miss Screeche-Powell for the Defendant acknowledges that the Claimant’s clarified position removes the most

significant area of contention in relation to the application to amend. Nevertheless, there remain two opposed clauses.

32. First, it is submitted that the amendment seeks to change the nature of SK's occupancy as set out in the IPA for her, of which we have a copy, which was a short-term occupancy ending on 22 January 2014. I have no hesitation in rejecting this submission: in the case of the other two clients, who it is agreed were placed at Parkside pursuant to IPAs in the same terms as Ms SK's IPA, they did not leave after six months but their occupancies were converted into indefinite placements, and I have no doubt that, but for what happened in November/December 2013, the same would have happened in relation to SK. See paragraph 6 above. In my judgment, the Claimant is entitled to plead this without altering significantly, if at all, the stance it has taken from the beginning.
33. The second objection taken by the Defendant is to a proposed new paragraph 14 which seeks to plead that the parties were required to enter into meaningful discussion before a final decision was taken by the Defendant to terminate the placements of the three clients so that the Defendant should have consulted the Claimant in respect of issues raised by the clients before taking a final decision to terminate the arrangements. Miss Screeche-Powell submits that this has the effect of introducing a new cause of action after the expiry of the limitation period. However, in my judgment, the proposed pleading arises out of what are essentially the same facts and reflects what was contained in the letter of claim from Messrs Ridouts at a very early stage and 11 December 2013 when it was claimed that there had been a failure to follow due process. Thus, it was stated:

**“Failure to follow due process”**

in addition to breaching the contract by failing to give notice to terminate and removing the service users unlawfully, there have been other failures to follow due process: no meeting was convened to discuss concerns with the provider and/or relatives or advocates acting for the service users, the written report was produced in relation to the inspection and no risk assessment was conducted prior to removing the service users to assess the possible harm would be caused to them following this stressful and highly disruptive event. Gordon Crighton, Ms Rashid's new manager, even told Mr Pragashparan “we do not need to follow protocols” when he spoke to him on 6 December 2013.”

34. As I stated at the beginning of this judgment, although a lot of time has passed since the events surrounding the termination of the placements of the three clients from Parkside, these proceedings remain at a relatively early stage, there not yet having taken place a Costs and Case Management Conference. It is right that the Defendant should know with precision the case which it has to meet, but it is also right that the Claimant should have an opportunity to refine its pleading so that it accurately reflects the case supported by the evidence, reflecting the true nature of the claim. In my judgment, amendment can take place at this stage without any prejudice to the Defendant, which has known the nature of the Claimant's case for a long time. Had the case as the Claimant now seeks to plead it been set out in the original Particulars of Claim in March 2020, the Defendant could have had no complaint. There is no evidence that the

time that has passed since then has in some way eroded the Defendant's evidence in addition to the inevitable erosion caused by the fact that these proceedings were issued almost 6 years after the events to which they relate. The Defendant was aware of the issues for virtually the whole of those six years and had every opportunity to gather the evidence it required to meet this claim. I do not accept that the Defendant was in any way misled or encouraged to have a false sense of security in relation to the evidence it required, and I do not consider that the proposed amendment by the Claimant does more than regularise the pleaded case so that it accords precisely with the evidence which it seeks to adduce in due course.

35. In the circumstances, I allow the Claimant's application for permission to amend.

### **Costs**

36. It is conceded by the Defendant that it should bear the costs of and occasioned by the failed application for summary judgment. In my judgment, the Claimant should pay the costs of and occasioned by the application to amend. In due course, those costs can be set off against each other and the parties have agreed that their quantification should go to detailed assessment.
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