



Neutral Citation Number: [2022] EWHC 2270 (Admin)

Case No: CO/2945/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 August 2022

Before :

MR JUSTICE WALL

Between :

**HERSHI BRIM (by his father and litigation friend
HAIM BRIM)**

Claimant

- and -

LONDON BOROUGH OF HACKNEY

Defendant

- and -

BAYIS SHELI LIMITED

Interested Party

Mr Jamie Burton QC (instructed by Scott-Moncrieff & Associates) for the Claimant
Mr Ali Sinai (instructed by London Borough of Hackney) for the Defendant

Hearing date: 25th August 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Wall :

1. A local authority is under a duty to provide accommodation for any child in need within its area who appears to them to require accommodation as a result of the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care: see s20(1)(c) Children Act 1989. It is settled law that this is a wide duty. It does not arise simply where there is not sufficient physical space to accommodate the child. It has not been disputed in the course of argument in this case that the test would be satisfied if the child's carers genuinely through mental or physical exhaustion had reached the point where they could no longer offer proper care for the child. This is a duty not a power but it arises only where it appears to the local authority that a child has such a need for accommodation. The local authority must of course properly assess the evidence and reach a reasonable conclusion as to that need. If they carry out a proper assessment and reach a rational judgment, it is not for the court to substitute its own view for that of the local authority.
2. The Claimant is a child who resides in the Defendant's area. He is aged 15 and has significant difficulties in life. He has Global Development Delay and a severe to profound learning disability. He is agreed to be a child in need as defined by s17 Children Act 1989.
3. His parents have nine children in total. Five of those children (including the Claimant) live with them in their four bedroom house. The Claimant has to share a bedroom with his two younger brothers. It is beyond dispute that the Claimant's difficulties and the ordinary needs of the other children – the youngest of whom is 3 years old – place significant pressures on the Claimant's parents. I have read their witness statements and the Child and Family Assessments carried out in 2020 and 2021. The difficulties range from the unintentional infliction of violence by the Claimant on his siblings to the mental fatigue of the parents. Those difficulties are not to be underestimated.
4. Unsurprisingly, the Defendant local authority is involved with the family and has sought to improve the conditions in which they live. For two days a week the Claimant attends a home run by the Interested Party ("the home") to afford his parents respite care. Other assistance is made available to the family in the family home in an attempt to make things somewhat easier for them.
5. The Claimants' parents now assert that, despite the assistance with which they are provided, they are at the end of their tether and no longer able to care for their son in their home. On 18 July 2022 the Claimant's father sent an email to the Defendant asking that the Defendant arrange for the Claimant to be accommodated elsewhere and in particular for him to reside full-time at "the home". The email contained phrases such as "my family is at breaking point", and "my wife, in particular, is suffering greatly due to the immense strain this places on her and the risk of her entering an unrecoverable state is, unfortunately, very high". The request that the Claimant be accommodated full-time at "the home" is not novel. Since 2019 they have protested to the Defendant on a number of occasions that they cannot cope and asked that their son be accommodated full-time away from their family home. Those earlier requests resulted in the 2020 and 2021 Child and Family Assessments being undertaken. The parents are keen that he should be accommodated in "the home" as they are observant Jews and this home would in their opinion provide a suitable residence for their son as it is, according to Mr

Herzog who is one of its directors, “the UK’s only Jewish residential and respite home offering specialist care to children with disability and challenging needs”. I have confirmation that, subject to the necessary funding being made available, the home would accept the Claimant as a full-time resident.

6. The email from the Claimant’s father did not result in a further Child and Family Assessment being undertaken. Indeed, I am told that as at the date of this hearing (38 days on from the father’s email request for urgent help) the Defendant has not spoken to the Claimant’s mother at all to garner information from her in order to make any formal or informal assessment of the current situation.
7. The Defendant’s case is that they are currently under no duty to remove the Claimant from the family home and accommodate him elsewhere. Their decision was recorded in emails sent by the Defendant to the Claimant on 1 and 2 August 2022. The first email merely recorded that “senior management did not authorise section 20”. The second, that “the local authority at this stage is not in agreement with the parents’ request”. It did offer the parents an increase in respite care at “the home” from the then current two days a week to four days a week. It went on, “the local authority’s position is that we still need to engage in the PLO process and for Dr Burgess to undertake the neurocognitive assessment in respect of Hershi in order for appropriate recommendations to be made with regards to his future care”.
8. Thereafter a PAP letter was written on behalf of the Claimant to the Defendant which included an overt reference to the duties of a local authority under s20(1) Children Act 1989. The response to that letter made no reference to the s20(1) duty at all but contained the following passage: “the local authority is also aware of the provisions of s20(4) of the Children Act 1989 and is of the professional view that Hershi can be safely cared for at home in the intermediate period pending receipt of Dr Burchess report and do not believe that it is in Hershi’s interests to reside full time in a residential placement at this moment in time”.
9. Today, I am asked to consider granting permission to judicially review that decision and to order interim relief in the form of an order that the Claimant should be accommodated full-time at “the home” until this claim is determined. Firstly, I shall deal with the application for permission. If that succeeds I will consider interim relief. If that fails, the application for interim relief would fail with it.
10. There are four grounds of challenge: (1) the Defendant failed to apply the statutory test at all; (2) if the test was applied, relevant matters were not taken into consideration; (3) if the test was applied, irrelevant matter were considered; and (4) any decision taken was irrational. I give permission to bring judicial review and for all four grounds to be argued. However, it appears to me that, in reality, grounds 1 and 4 are at the heart of this application.
11. The basis on which I regard the first ground as arguable is as follows:
 - i) There is no reference in the email responses to the application for urgent assistance made by the parents to the Defendant’s s20(1) duty having been considered at all;

- ii) There is no reference to consideration having been given to that duty in the response to the PAP letter in which the s20(1) duty was expressly raised as an issue;
- iii) In neither of the emails (nor the response to the PAP letter) is there any reference to the legal test which the Defendant was under a duty to apply to the facts of the case by virtue of s20(1) which might allow for a reasonable inference that the test has been considered but reference to the section itself merely omitted;
- iv) It is arguable that the whole tenor of the decision and the response to the PAP letter is that the Defendants have only considered their s20(4) power to accommodate and not their s20(1) duty to do so. This, if right, would suggest that they approached this case on the basis that they had a discretion as to whether to provide accommodation and not a duty to do so if the appropriate criteria were met.

12. I have also concluded that, if considered at all, the decision reached on the s20(1) application is arguable irrational. The need to consider the duties imposed on the Defendant under this subsection stemmed from the email written to the Defendants by the Claimant's father. He set out his assertion that he and, in particular, his wife could no longer cope with the Claimant living at home. That was not a communication sent out of the blue. It fell to be considered by the Defendants against the background that the Claimant had severe developmental difficulties; that the parents had regularly expressed concerns about their ability to cope; and that they had a number of other children for whom they cared who themselves had previously spoken of difficulties they faced from the Claimant or who had been seen to be endangered by him. All of these were difficulties were known to the Defendants. The Defendants do not dispute the genuineness of the Claimant's parents. It was expressly accepted on behalf of the Defendants at the hearing that the cries for help were genuine and represented a true perception of the position as the parents saw it. The Defendants further accepted through their counsel in the course of legal argument that the parents had sought to cooperate with them in order to see whether sufficient help could be found for the family. It is arguable that against the background of the previous difficulties and in the belief that the parents were genuine, a cry for help like this had properly to be investigated if the views of the parents that they could not cope any longer were to be rejected. The decision that the family could cope was made without any further investigatory work being undertaken. The Defendants' argument was that they responded to this cry for help by offering an increased level of respite care. That, with respect, may not be a proper answer to this claim. It appears at the very least to be an acceptance that the situation had worsened from the time of the previous Child and Family Assessments (the latest of which was now 15 months out of date). In any event, s20(1) is designed to impose a duty on a local authority in a situation of crisis. They must decide at the moment of that alleged crisis whether the duty is triggered and, if it is, they have no alternative but to act to remove the child to safe accommodation. The proper approach would have been to consider whether the s20(1) duty arose and, if it did, to react as they are then duty bound to do – that is by providing accommodation. The provision at an earlier stage of extra care might have averted the crisis arising but is arguably an insufficient reaction if the criteria in s20(1) have already come to pass.
13. Having recorded in short form the reasons for my decision to grant permission, I now move to consider the application for interim relief.

14. The apparent strength of the case is an important factor when considering whether to grant a mandatory interim order. I take the view that this is a case with real strength to it. Permission has been granted on the bases that there is arguably no evidence that the statutory duty has been considered at all and that if the statutory duty was considered the decision was irrational. Each alternative ground has merit to it.
15. I next consider the likely effect on the Defendant if I grant the relief sought but later the claim fails against the likely effect on the Claimant if I do not grant relief but the claim later succeeds.
16. If I grant the interim relief but the claim ultimately fails there will be little harm to the Defendants. Any disadvantage will be purely financial. They will have to fund the placement for the period up to the time of the hearing. That extra funding will be limited. They have already indicated that they will fund the placement for four days out of every seven in any event. The extra costs will be off-set to at least some extent by the savings to be made in the in-home care currently provided to the family which will be rendered unnecessary.
17. On the other hand, if I fail to grant the interim relief and the claim succeeds, the Claimant will have been left in a home in which he was effectively in some danger because of his parents inability to cope with him. The Claimants' parents mental and physical health would also have been placed at risk as would the physical health of his sister and the ability of his siblings to live full lives in their own family home. These risks are genuine and not fanciful. In assessing the level of risk I have regard to the witness statements filed by the Claimant's parents (the contents of which are not challenged). Those potential risks could not later be properly compensated by financial provision.
18. The balance of convenience falls significantly in favour of granting the relief sought.
19. In making that decision I have taken into account the fact that neither party envisages the status quo continuing. The Claimant envisages living full-time in "the home". The Defendants envisage him living at his family home for three days a week but with more than half of each week being spent by him in "the home". The Claimant is already accustomed to "the home" and is apparently happy there. There is evidence from the director of "the home" that his needs are well catered for while he is there. His parents live very close to "the home" and will continue to visit him regularly if he is there full-time. Therefore what is envisaged is not a dramatic change in the Claimant's lifestyle. Different considerations might apply had the Claimant been living full-time at his family home and it was proposed to move him to a residential home with which he was not familiar and in respect of which no suitability assessment had been carried out. That is not the case here. Were this claim ultimately to fail, the Claimant would not likely be removed permanently from "the home" and sent back to his family home full time: he would merely spend less time at the residential home than he will have spent there on an interim basis awaiting the hearing. This would again not amount to a traumatic change for him.
20. I have also had regard to the need to show due deference to the decisions of public authorities unless and until those decisions are held to be unlawful. That is not as significant a point in this case as it might be in others as the Defendant has already decided that "the home" is a suitable environment for the Claimant to spend more than

half of his life. In any event, it is a factor far outweighed by the other factors in favour of granting relief as set out above.

21. It follows that I will grant the interim relief sought.
22. I have been asked to consider expediting the final hearing of this case. I will not do so. The Claimant will be safe in the interim and there is no other pressing need for this case to take precedence in the list over any other.
23. I am, however, mindful of the fact that this case is proceeding against the background of the Defendants continuing to investigate what care regime would be in the long-term interests of the Claimant. What must not happen is that the interim order makes more difficult any advancement of that cause. I am also mindful of the possibility that the Claimants' family's home situation might change in ways at present unimaginable so that they could cope with the Claimant at home again. Therefore, I give either party leave on 7 days notice in writing to the other side to come back to court to seek a variation of the interim order should that be necessary.