



Neutral Citation Number: [2024] EWHC 2594 (Admin)

Case No: AC-2024-CDF-000134

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

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF64 2UA

Date: 15/10/2024

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

THE KING

(on the application of TJ)

Claimant

- and -

MONMOUTHSHIRE COUNTY COUNCIL

Defendant

Mr Christian Howells (instructed by **Watkins & Gunn Solicitors**) for the **claimant**

Mr Iain Alba (instructed by **Legal Services**) for the **defendant**

Hearing dates: 7 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 15 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimant by a claim form dated 24 July 2024 seeks judicial review of Monmouthshire County Council (the council)'s failure to make arrangements to provide the him with supported suitable living accommodation from the end of that month when he celebrated his 18th birthday. Up until that date he was in the care of the council as a looked-after child. The Social Services and Well-being (Wales) Act 2014 and part 6 of the Code of Practice issued under section 145 the 2014 Act imposes duties on the council to ensure a seamless transition. The claimant alleges that there were and are ongoing breaches of those duties by the council. The council denies any breaches.
2. Permission to bring the claim was refused on consideration of the papers by HHJ Keyser KC sitting as a judge of the High Court. The claimant renewed his application on one ground only, that the council is in breach of its duties towards the claimant under the 2014 Act and part 6 of the Code of Practice which imposes duties in respect of looked-after and accommodated children.
3. The renewal hearing came on before me and was listed for 30 minutes. Both parties attended with counsel and solicitors, and officers of the council also attended. Having regard to the need for expedition and proportionality and other requirements of the overriding objective under CPR Part 1, the relatively narrow issue between the parties, and because I had further time in my list that morning, I raised the possibility with counsel that the hearing should take place as a rolled up hearing. That would mean that if permission were granted, I would proceed to consider the claim substantively. I gave the parties some time to consider this possibility and to see if they could find some pragmatic solution. Although the latter proved not to be, both counsel indicated that they agreed to a rolled up hearing and that is how the hearing proceeded.
4. As a child, the claimant experienced traumatic episodes which have impacted upon his cognitive, social and emotional development. When he was about 13 he was diagnosed with ADHD and moved from mainstream school in Caldicott, to a special school in Bristol, and then to a pupil referral unit in Abergavenny. In May 2021 an order was made by consent in the family court that he was at risk of harm because he was beyond parental control. He became a looked-after child in the care of the council, with his adoptive mother retaining parental responsibility. In the family court proceedings a psychological assessment in October 2020 concluded that he has ADHD and ASD and requires a residential placement with a high level of adult supervision. He is prone to risk taking behaviour and was placed on the child protection register twice as a result of exploitation by county line criminal organisations. In 2023, he was diagnosed with autism and with a pathological demand avoidance disorder (PDA) in which there is resistance to ordinary demands made by others.
5. Since November 2022 he has been accommodated by the council in a flat in Newport, initially with 15 hours of support per day. In September 2023, the council gave him

28 days' notice to end his licence to occupy the flat in Newport, at a time when he was a looked-after child. He remains living there, the council says as a tolerated trespasser. He now receives no support, although there are issues as to why that is.

6. In December 2023 the council carried out a pathway assessment and plan for the claimant ('the assessment'). The traumatic childhood experiences and impact upon his cognitive, social and emotional development were noted. It was assessed that he requires ongoing support with cooking, safety processes, emotional regulation, the development of independent skills and compliance with the requirements of a tenancy. At that stage he had 20 hours of support per week. It was stated that if he is pushed into a placement he does not agree with, he will vote with his feet. This would result in risks escalating and the placement would have very little impact in achieving any desired positive change and development of independent living skills. Realistic options after he left care were set out, namely living with his parents or at a supported house in Chepstow called Pobl Hill House, as he continues to need development in home safety and managing a tenancy. He accepted that returning to live with his parents (whose views were not sought on this option) was not a sustainable long term option. The assessment highlighted concerns as to his being financially controlled or exploited. It was concluded that he continued to need support to develop his independent living skills, and Pobl Hill House would allow that in a supported environment with access to support at any time. It was also pointed out that that was a short distance from where his parents live.
7. The council accepts that on 18 January 2024, it informed the claimant that he should present as homeless. The next day, it sent an email to his solicitors which included the following:

“The Local Authority shall be meeting with your Client and his mother on Monday 22nd January 2024 to discuss matters further. Head of Service has agreed to extend the tenancy until Friday 26th January 2024 to support your Client to move from the current property. The options available to your Client during the week commencing 22nd January 2023 are as follows

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- The Local Authority can support your Client with a return home. A referral can still be made to Pobl and have him on the waiting list for Pobl whilst he is at home, should he consent.
- The Local Authority can support your Client to present as homeless to housing.
- The Local Authority Support your Client and his parents to link in with the current placement provider to explore option to remain in the current placement should they wish to assume the costs of the placement after the week

I would ask that you take urge your Client to engage with the Social Worker and/or Senior Practitioner as a matter of urgency

to enable the Local Authority to support your Client as outlined in the re-assessment and the updated pathway plan.”

8. The claimant and his mother attended Pobl Hill House for an introductory visit in March 2024. In her witness statement in these proceedings, his mother sets out the reasons why neither of them thought this was suitable. It offered his own bedroom in a house with seven others with shared kitchen and living accommodation. Unsurprisingly in these circumstances, there were many rules in place for residents. The house was noisy, and his mother was concerned that he might become overstimulated. The manager indicated that the house may not meet his needs.
9. After the visit, the council wrote to the claimant’s solicitor again, which letter included the following:

“The recent meeting was an assessment visit between Pobl and your client who attended with his mother. Due to information disclosed by your client’s mother during the assessment, the exact information is unknown, Pobl has questioned whether they can meet your client’s needs.

Despite the initial view provided by Pobl following the assessment meeting, as your client has been discussed regularly by the Young Persons Admission panel, Pobl have agreed to support your client to attend Pobl for further visits which could inform further assessment. Your client is able to consent to this support being provided and further visits taking place. The social worker and/or personal advisor would also be able to support your client to attend visits.

As you would have advised your client, there are limited housing options for young people leaving care. Your client will not be able to stay in his current accommodation post-18 years old.

In the absence of a suitable young person’s accommodation, your client’s route post-18 years old will be to present as homeless or return to his parents home. Your client’s mother is aware of the above.

The Social Worker has asked your client’s mother on multiple occasions for accommodation options that she deems suitable for your client so that the Local Authority can explore these options to consider whether they are viable. To date, your client’s mother has not shared ‘neurodiverse friendly’ options that she would deem appropriate for your client to reside.

The Local Authority wishes to work with your client to ensure that when he is 18 years old that he does not have to present as homeless and to work with your client to enable a transition to take place prior to his 18th birthday.”

10. The claimant did not further engage with Pobl Hill House. The council's position as at July 2024, as set out in correspondence and its summary grounds of resistance after this claim was commenced, is as follows. It is seeking to meet the claimant's needs and maintains the outcomes of the assessment. The offer of accommodation through Pobl remains open. The claimant "needs to decide" whether he wishes to engage in an assessment with Pobl regarding accommodation or "what alternative accommodation arrangement he would pursue." He could choose to present as homeless in order to gain assistance in obtaining accommodation. The council has not insisted that he takes this option, but has made it clear that his current accommodation cannot continue once he become an adult so that he "needed to decide what option he would pursue."
11. Since the claim was issued, there have been, perhaps unsurprisingly, further developments. Some two weeks before this hearing, the council began a further assessment. By that time, the claimant had recently formed a relationship with someone who resides at her family home in Newport, and he spends some nights there. Newport is his preferred place of residence. The council approached a young person shared accommodation scheme in Newport, which the claimant engaged with. He met with project workers, after which it was indicated to him that no accommodation was available within the scheme which would be suitable for him. It is not clear whether the council has as part of this assessment engaged with the social services or housing departments in Newport, but as Mr Alba for the council emphasised in his oral submissions, this assessment is ongoing, after what he said was a regrettable hiatus due to a complication.
12. Section 6 of the 2014 Act provides so far as material:

"Other overarching duties: general

 - (1) A person exercising functions under this Act in relation to —
 - (a) an individual who has, or may have, needs for care and support,
 - (b) a carer who has, or may have, needs for support, or
 - (c) an individual in respect of whom functions are exercisable under Part 6 (looked after children etc), must comply with the duties in subsection (2).
 - (2) The person must—
 - (a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,
 - (b) have regard to the importance of promoting and respecting the dignity of the individual,
 - (c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and

(d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.”

13. Part 6 Code of Practice contains mandatory requirements which the council must follow. Under the heading ‘care leavers who require additional specialist support’ [493] provides:

“Care leavers with complex needs, including disabled young people, may require continuing services as they transition to adulthood. The pathway plan will need to ensure that this transition is seamless and supported. In addition, the transition from child to adult constitutes a significant change in circumstances and so creates a right to a re-assessment of needs which will enable the Part 6 care and support plan to be reviewed and an exploration of their personal outcomes which may have changed at this stage in their lives.”

14. Under the heading ‘Planning and arranging suitable accommodation for the transition to independent living for care leavers’ [547] provides:

“When young people leave their care placement, the local authority must ensure that their new home is suitable for their needs and linked to their wider plans and aspirations – for example located near their education or work. Moving directly from a care placement to living independently will often be too big a step for young people. It will therefore be good practice for local authorities to commission a range of semi-independent and independent living options with appropriate support – for example supported accommodation schemes, supported lodgings, and access to independent tenancies in the social and private rented sectors with flexible support. Social services and housing departments should have joint protocols for the assessment and meeting of care leavers’ accommodation needs.”

15. At [554 – 556], there are set out requirements of a joint protocol between social services and housing departments of a local authority in relation to care leavers, and requires arrangements to be in place for the following:

- “• a shared commitment from children’s services and housing services to” adopt a 'corporate parenting' approach for looked after children and care leavers making the transition to adulthood
- clear roles and responsibilities for supporting the transition from care, including the role of the PA

- access for care leavers to the full range of potentially suitable supported accommodation options in the area
- pathway planning systems that anticipate accommodation needs
- arrangements to offer care leavers in need of social housing reasonable preference on welfare grounds through local housing authority allocations schemes
- contingency planning arrangements for when placements are at risk or break down, led by PAs working with accommodation providers, housing options teams and other support services
- planned access to accommodation and support for care leavers who will need accommodation on release from custodial institutions.”

16. Under the heading ‘contingency planning and homelessness’[578] provides:

“The homelessness legislation (Part 2 of the Housing (Wales) Act 2014) provides a safety net for people in housing crisis. It should not be used as a mechanism for meeting housing needs that can be anticipated and planned for. Local authority protocols for care leavers’ transition to independent living should reflect this by enabling the delivery of effective preparation for independence with planned, sustainable moves. There should be no expectation that care leavers will be treated as ‘homeless’ when their care placement comes to an end, in order to place the housing authority under an obligation to secure accommodation under Part 2 of the 2014 Act.”

17. Mr Howells, for the claimant, referred to the recent Supreme Court decision in *R (Marouf) v SSHD* [2023] UKSC 23 which considered the duty imposed on public authorities under section 149 of the Equality Act 2010. The duty is to have due regard in the exercise of their powers, amongst other matters, to take steps to take account of disabled persons’ disabilities. It was emphasised that in complying with this duty, if relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required. Mr Howells submits that a similar duty arises in respect of the council’s duty under the 2014 Act.
18. Mr Howells submits that the council is in breach of its duty in five main ways. First, at the time of the assessment, the claimant’s views had not been sought. Under section 6 of the 2014 Act the council must have regard to his views, wishes and feelings. The assessment has not yet been updated, even though he has indicated that he does not want to live at Pobl Hill House or at his parents’ house. The council has continued to indicate that such a placement is the only one it can offer.

19. Second, the Code of Practice requires the council as part of transition planning to have in place access for care leavers to the full range of potentially suitable supported accommodation options in the area, and arrangements to offer care leavers reasonable preference on welfare grounds through allocation schemes.
20. Third, by presenting the claimant with that option or homelessness, unless he identifies suitable options, the council is in breach of section 6(2)(a) and (c) of the 2014 Act and part 6 of the Code of Practice.
21. Fourth, there is no indication that the council's social services and housing departments have worked collaboratively to find suitable options. It is not for the claimant to propose alternative options. The failure to make enquiries about alternative options is also a breach of the duty referred to in *Marouf*.
22. Fifth, the council by saying, as it does in [12] of its summary grounds, that Newport is outside its control has misdirected itself. If the only suitable accommodation is out of area, the council is likely to remain responsible for the claimant for that placement; see for example section 194 of the 2014 Act. The council has power under section 34(1)(a) of the Act to meet needs by arranging for another person to provide a service on its behalf.
23. Mr Alba emphasises the complexity of the claimant's needs and the difficulties of finding suitable supported accommodation. I accept and do not underestimate those difficulties. He submits that the assessment shows that the council has clearly had regard to his needs and wishes. He set out a list of other placements which the council has investigated which for one reason or another have not been suitable. The process is ongoing, and the claimant does not always engage. If he wishes to reside in Newport, the only option presently available is private accommodation, but the claimant has not engaged with that.
24. In my judgment the ground of challenge is arguable and I give permission to bring the claim. Accordingly as agreed with counsel I proceed to deal with the substantive merits
25. In my judgment the council is in breach of its duty to the claimant. There is some overlap between the breaches which Mr Howells relies upon, and in my judgment the breaches may be summarised in three main ways as follows. First, the council did not have regard to his views, wishes or feelings as to the recommendation in the assessment of the Pobl Hill House option. This was presented as the only real option. To do this without ascertaining his views, wishes or feelings about such a placement and/or in doing so without having regard to his disabilities and particularly his PDA was a fundamental flaw from the outset of this process. That alone is sufficient to render the council in breach of its duty to the claimant. However, this continued to be the case after the claimant visited Pobl Hill House with his mother in March 2024 and expressed the understandable concerns which they did. Despite that, and despite his diagnosis of PDA, the council in its follow up letter continued to focus on this placement and referred to the alternatives of homelessness or a return to his parents' home.
26. Second, in my judgment, this also demonstrates a lack of transition planning to have in place access to the full range of potentially suitable supported accommodation

options in the area, and a failure to give reasonable preference on welfare grounds through allocation schemes. Third, that planning should have entailed collaboration between the social services and housing departments of the council, and there is no indication of such collaboration. The onus should not have been on the claimant or his mother to come up with alternatives, although of course if they could that would be helpful.

27. Although by July 2024, the council expressly stated that Newport was outside its control, in reality it had and has engaged with Newport. The claimant's present placement is there. In the present ongoing assessment, the council engaged with a youth accommodation project there. I am not persuaded that the council has failed to engage with authorities outside its area.
28. In terms of relief, Mr Howells seeks a declaration of the breaches and mandatory orders to secure compliance. I accept there is a need to make a declaration as to the breaches set out above. I would be grateful if counsel can agree the precise wording and include it in a draft order to be filed within 14 days of hand down of this judgment together with written submissions on consequential matters which cannot be agreed, which will then be determined on the basis of such submissions.
29. I am not persuaded that mandatory orders are necessary on top of declarations. Compliance with the council's duties in this particular case involves intricate and complex processes. The declarations will indicate to the council what has gone wrong in the past. There is at present an ongoing assessment, and engagement with a project in Newport, although that has not brought a solution as yet. There is a change in the claimant's circumstances because of his new relationship. It is better that the parties focus upon and engage with these processes rather than having to deal with potential rigidity of a mandatory order.
30. I am grateful to counsel and the parties' legal teams for their focussed and helpful submissions and in dealing with the hearing in the way that they did, which assisted the court in promoting the overriding objective.