



Neutral Citation Number: [2020] EWHC 2847 (Admin)

Case Nos: CO/3021/2020, CO/3059/2020 & CO/3136/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15 October 2020

**Before :**

**MRS JUSTICE LANG DBE**

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**Between :**

**THE QUEEN**

**CO/3021/2020**  
**Claimant**

**on the application of**

**NG**

**(by his litigation friend, FRANCESCO JEFF)**

**- and -**

**LONDON BOROUGH OF HILLINGDON**

**Defendant**

**THE QUEEN**

**CO/3059/2020**  
**Claimant**

**on the application of**

**AL**

**(by his litigation friend, FRANCESCO JEFF)**

**- and -**

**LONDON BOROUGH OF HILLINGDON**

**Defendant**

**THE QUEEN**

**CO/3136/2020**  
**Claimant**

**on the application of**

**KM**

**(by his litigation friend, FRANCESCO JEFF)**

**- and -**

**LONDON BOROUGH OF HILLINGDON**

**Defendant**

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**Antonia Benfield and Donnchadh Greene** (instructed by **InstaLaw**) for the **Claimants**  
**Lee Parkhill** (instructed by **Legal Services**) for the **Defendant**

Hearing date (remotely via MS Teams): 15 October 2020

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**Extempore Judgment**  
**reconstructed from notes as the recording**  
**of the hearing failed.**

**Mrs Justice Lang :**

1. The Claimants apply for permission to apply for judicial review and for interim relief. Interim relief was refused on the papers by Julian Knowles J. on 11 September 2020.
2. The Claimants are unaccompanied asylum seekers who claim that they are young persons aged 17. They arrived in the UK in July and August 2020.
3. Each Claimant has been initially assessed by the Home Office as an adult and placed in temporary accommodation for adult asylum seekers, namely, a hotel which is currently accommodating more than 400 asylum seekers.
4. Because their age is disputed, the Claimants have been referred to the relevant local authority, which is Hillingdon Council (“the Council”), to carry out an age assessment, and to provide support and accommodation pursuant to section 20 of the Children Act 1989 (“CA 1989”).
5. In each case, the Council has accepted that the Claimant’s age is in doubt and that a *Merton* compliant age assessment is required.
6. In each case, the Council accepts that, pending the completion of the age assessment, the Claimant should be treated as a putative child. The Council also accepts that ordinarily unaccompanied asylum seeking children are the responsibility of local authorities not the National Asylum Support Service (“NASS”), and are eligible to be accommodated as a child in need under section 20 CA 1989. That position is in accordance with the relevant Statutory guidance for local authorities, dated November 2017, and the Association of Directors of Children’s Services Guidance (“the ADCS guidance”), as confirmed in *R(S) v London Borough of Croydon* [2017] EWHC 265 (Admin), among other cases.
7. However in these cases, the Council submits that, although the Claimants fall within the definition of a child in need for the purposes of sub-section 17(10) CA 1989, no duty to accommodate them arises under section 20(1) CA 1989 because they do not require accommodation. The accommodation which is being provided in the hotel under section 95 of the Immigration and Asylum Act 1999 (“IAA 1999”) by NASS is suitable for them. The Claimants only need services from the Council to support them and to ensure that their needs are met whilst at the hotel, which can be provided pursuant to section 17 CA 1989.
8. In my judgment, the Claimants have a good arguable case that the Council is failing to discharge its statutory duties under the CA 1989, and instead is seeking to side step its statutory duty (as Lady Hale put it in *R(on the application of G) v Southwark LBC* [2009] UKHL 26, at 25B/C and 31H/I).
9. The accommodation at the hotel has been provided by the Home Office to the Claimants on the basis that they are adult asylum seekers. Under section 95 IAA 1999, the Secretary of State may provide support and accommodation to asylum seekers who are destitute, but section 94 IAA 1999 defines an asylum seeker as “a person who is not under 18 and has made a claim for asylum”.

10. Asylum seekers under 18 are the responsibility of local authorities and would not usually be found in adult accommodation. Thus, NASS accommodation is not set up to cater for the needs of children and young persons.
11. A practical consequence of this is that the Claimants are not identified as children by the staff at the hotel. When the Claimants' solicitor spoke to the hotel managers, they were unaware that the Claimants claimed to be aged 17 and were undergoing a local authority age assessment. The evidence from the Claimants confirms that the hotel staff have not been giving the Claimants any extra help. The Claimants' solicitor ascertained that hotel staff have not been given training in safeguarding and there is no evidence that they have enhanced "Disclosure and Barring Service" ("DBS") checks although they are working with children.
12. One of the reasons why the statutory and non-statutory guidance advises that putative children should be accommodated according to their claimed age is that teenagers may be vulnerable to abuse by adult asylum seekers displaying disturbing behaviour who share their accommodation. Although this issue has arisen in the context of bed and breakfast and hostel accommodation, I consider that hotels pose similar risks, though I accept that individual en suite rooms and room service meals reduce the contact with other residents. Although this risk could perhaps have been ameliorated if the child asylum seekers were accommodated in separate wings or floors of the building, with a dedicated lounge/dining area, there is no suggestion that this has been done at the hotel and the communal facilities are open to everyone.
13. Whilst the bedroom accommodation is satisfactory, the Claimants' evidence is that they are very isolated and fearful of leaving their rooms. They have had minimal contact with anyone. They are also having practical difficulties with the provision of food, laundry, clothing, toiletries etc, contrary to the Council's submission that a system for providing all these things is in place. Requests to see a doctor was not actioned promptly. There has been no educational provision, despite their desire to learn English. Internet access is inadequate. Their limited English and the lack of an interpreter means it is difficult for them to communicate their needs. They are not allowed to leave the hotel unaccompanied.
14. The Council's initial responses to these claims relied upon the services provided by staff from an agency called Clearsprings, engaged by the Home Office. Its policy document includes guidance on the safeguarding of both children and adults. The Council contended that Clearsprings staff were providing the level of safeguarding support that would normally be provided in semi-independent settings offered to 17 year olds by local authorities, with a key worker on site. However, investigation by the Claimants' solicitor revealed that the Clearsprings staff were not even aware that the Claimants were putative children, and there was no evidence that they had provided support to the Claimants. This does not inspire confidence in the Council's evidence.
15. During the course of this litigation, the Council appears to have recognised that Clearsprings was not providing the services needed, as in early September it commissioned an agency called Harvest Care to provide qualified key workers to support the Claimants and others in a similar position on a 24 hour basis. According to Mr Madden, Head of Service First Response and out of hours social work, there will be a package providing practical as well as psychological support, recognising that many asylum seekers have had traumatic experiences and are now separated from their

families. Recreational and sporting activities will be organised as well, giving the claimants some opportunity to socialise and to leave the hotel. The evidence from Mr Madden was only served yesterday and it is very general. There are no records of what has actually been provided to the Claimants and when. Further evidence from one Claimant indicates that, whilst there have been some improvements, and there are some support workers based at the hotel, some basic provision is still lacking.

16. I conclude that the Claimants have an arguable case that this hotel accommodation is not suitable for asylum seekers under the age of 18, essentially because it is NASS accommodation for adult asylum seekers, and the Council is acting unreasonably in refusing to offer them suitable accommodation under section 20 CA 1989.
17. The Council is not merely seeking to use the hotel as a temporary or emergency housing solution, although it is possible that NASS will reduce its use of hotel accommodation once the Covid 19 pandemic is over. The age assessment process takes months and a negative outcome may result in a legal challenge causing more delay. Indeed the Council has said it considers the hotel to be a suitable means of accommodating older child asylum seekers in the long term, presumably even after they are confirmed as children.
18. This is a significant departure from past practice by local authorities, which if it is adopted more widely will affect other asylum seekers too. It will also impact upon the ability of asylum seekers to obtain the status of a “looked after child” which makes them eligible for support once they turn 18, to ease the transition into independent adult life.
19. Importantly, those residing in a NASS hotel, which is only temporary accommodation, are at risk of being dispersed to other adult accommodation around the country, where there may not be any facilities for children in place and any educational and welfare provision put in place for them by this Council will be disrupted. There is evidence that dispersal is continuing, despite the pandemic.
20. For all these reasons, permission to apply for judicial review is granted.
21. In considering whether to grant interim relief, I apply the test in *American Cyanamid v Ethicon Ltd* [1975] AC 396, modified in the public law context. I am satisfied that the Claimants have identified a serious issue to be tried and have a strong prima facie case. As to the balance of convenience, the Claimants are vulnerable in the sense that they are putative children who appear to have suffered trauma and are now separated from their families and are struggling to manage alone in a foreign country with very limited English.
22. It is strongly arguable that their current accommodation with adult asylum seekers is unsuitable for them, and it is detrimental for them to be at risk of dispersal to other adult accommodation and not to be treated as a looked after child under the CA 1989. All the Claimants will turn 18 during the course of the year. KM will turn 18 on 27 December 2020, AL on 1 January 2021 and NF on 26 August 2021. Mr Parkhill accepts that if the Claimants succeed in their claims, they will be entitled retrospectively to the post-18 support for looked after children, which may include accommodation and financial support as well as guidance. However, the time when that support is most acutely needed is the point at which their under-18 accommodation and support ends.

With birthdays in December, January and August, it is possible the Claimant will turn 18 before the proceedings are concluded.

23. Set against that, there are budget and resources advantages for the Council if NASS foots the bill for accommodating child asylum seekers, rather than the Council. Even if the Council defeats the claims for judicial review, there is no prospect of the Claimants being able to compensate the Council for the costs incurred by accommodating them under section 20 CA 1989. I recognise the importance of this for the Council and the Council tax payers of Hillingdon.
24. However, I consider that the risk to the wellbeing of the Claimants weighs more heavily in the balance, and the potential harm to them cannot be easily remedied.
25. Therefore interim relief should be granted.
26. I will make an order for an expedited hearing so that there will be a full hearing and a final decision as soon as reasonably possible.