CO/2533/2016

Neutral Citation Number: [2016] EWHC 2559 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 25 May 2016

B e f o r e:

ANDREW THOMAS QC

Between:
THE QUEEN ON THE APPLICATION OF N

Claimant

v

LONDON BOROUGH OF GREENWICH

Defendant

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Ms Sarah Steinhardt (instructed by Cale Solicitors) appeared on behalf of the **Claimant**

Mr Leon Glensiter (instructed by London Borough of Greenwich) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved)
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1. THE DEPUTY JUDGE: This is an adjourned hearing of an application for interim relief. An order was made on 17 May, some eight days ago, directing that the defendant shall provide accommodation to the claimant and his mother until 27 May, with this renewed hearing on notice to the defendant today.

2. The claimant in this case is a child aged 7. He holds French nationality. He is currently living with his mother who is the litigation friend, who is a Gambian national. The parents separated a little time ago and there has been no contact with father.

3. On 11 May 2016, the claimant and his mother became homeless. They had been living in rented accommodation and, through no fault of theirs, they were unable to continue in that accommodation. They have since been placed in bed and breakfast accommodation, but it is suggested that funds are now exhausted.

4. The mother entered the United Kingdom in 2001 under a visitor's visa. She has remained living in this country, but has now been refused a residence card, a decision which is challenged, but the position is that currently she has no right to remain. The claimant, on the other hand, was born in this country, has always been resident in this country, is a national of the EEA and has been in full‑time education since September 2013.

5. They were evicted from their property by an order of the County Court. Mother was not entitled to any assistance under the Housing Act because of her own immigration status. On 11 April 2016 there was a meeting held with the defendant authority to discuss accommodation. A further meeting took place on 10 May 2016, at which it was indicated that accommodation and assistance would be refused. On 12 May 2016, a decision was produced by the defendant authority setting out details of an assessment carried out under section 17 of the Children Act and a decision that it was concluded that the claimant was not a child in need. An assessment report was later provided dated 16 May 2016, which added detailed reasons. The substantive challenge in this case is to the contents of that assessment.

6. There are two grounds set out. The first ground is that the decision that the claimant is not a child in need is an unreasonable and irrational decision. It had been wrongly assumed that, because mother has been able to provide accommodation in the past, she is going to continue to do so in the future. Ground 2 sets out further specific concerns, that the assistance in paying a deposit and one month's rent, which was the conclusion of assessment as to alternative accommodation, is insufficient and

unreasonable.

7. Elaborating on that point in the grounds and argument before me, it is submitted that the mother now finds herself in an impossible position because she has no immigration status. The effect of section 21 of the Immigration Act 2014 is that she has no right to rent accommodation, regardless of what funds are made available. The limitation on the 'right to rent' applies not only to tenancies but licences as well, and the conclusion in the assessment report of 12 May 2016 that mother had sufficient resources to be able to rent a room seems to have been based on the mistaken premise that she had an entitlement to do that. It seems to me that there is no evidence whatsoever of proper consideration being given by the local authority to the implications of section 21 in the present case. The Court is not concerned, so far as I can see at this stage, as to the wider implications of the effect of section 21. I am focussed on this particular application.

8. The practical position is that as of 27 May 2016 mother and son find themselves with an inability to obtain appropriate accommodation. The assessment report suggested as a fallback that friends or family might be able to provide accommodation in the short term whilst Miss N found proper accommodation. There are two difficulties with that: the first is that the assessment did not identify any particular person with whom it might be possible for Miss N and her son to reside; the second difficulty is that that was proposed as a short‑term solution pending more suitable accommodation being found. If the submission which is made on the claimant's behalf is correct, there is at present no immediate prospect of any ability to rent private accommodation.

9. The other alternative which is suggested in submissions is that bed and breakfast accommodation might be available to this family out of the resources that they have. Again, the difficulty with that is that forms no part of the assessment which was carried out. The actual cost of providing that accommodation through the bed and breakfast route compared with the actual resources of the mother have not been properly considered.

10. I turn to consider whether, for the purposes of this application, there is a strong prima facie case that the judicial review of this decision will succeed. I am reminded of the duty under section 17 which is a duty to safeguard and promote the welfare of children within the authority's area who are in need; and, so far as is consistent with that duty, to promote the upbringing of such children by their families. I am reminded also of the definition of a child in need being a child who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of services under this part, in other words by the authority, or whose health or development is likely to be impaired or further impaired without the provision of

such services. In deciding what support to provide, the best interests of the child will be a primary consideration.

11. I am reminded that section 17, where it is engaged, is not of itself a duty on the local authority; it gives rise to a discretion. But that should be read alongside the other duties of the local authority, not least the Article 8 duty to respect family life, and also the implications of section 20 and the duty to house a homeless child. As has been observed most recently in R (on the application of O) v London Borough of Lambeth (2016) EWHC 937 (Admin), when one considers the interrelationship between section 17 and the other duties of the local authority, that discretion may well become a duty imposed on the local authority of the provider of last resort in a case where a child and his or her family would otherwise be homeless or destitute.

12. I am satisfied that this is a case where the claimant is able to show a strong prima facie case and it will be a matter for a further hearing to consider the judicial review substantively.

13. I turn then to consider the application of the balance of convenience in the present case. I remind myself that in a challenge against a public authority there is a strong presumption in favour of upholding the reasonable decision of an authority and also that the limited resources of that authority have to be taken into account.

14. I am urged to consider four particular matters which are said to weigh in favour of the local authority in the present case. The first is that there is a fallback position, namely that section 20 of the Children Act imposes the duty to ensure that the child will not be street homeless. In my judgment, that would not be a proportionate answer in the present case because no assessment has been made or no proper assessment of the impact that there would be for this particular child. There has been no assessment of the effect on his education or his health or his development which might arise from the provision of foster care. In any event, it undermines the second point which is made on the local authority's behalf, which is consideration of its limited resources, because the provision of foster care would in itself have an impact on resources. I do very much bear in mind the point which is made in the case of G that the provision of interim relief of this kind or temporary accommodation can disincentivise a family of their own initiative of finding accommodation, and it has been the experience of authorities and of the courts that, when it comes to the crunch, often families can find accommodation through friends and family and other support networks, and I do bear that risk in mind.

15. It is also submitted that I should take into account the impact on other cases, not just in terms of resources but because of the reliance that has been made on section 21 of the 2014 Act in the present case. It seems to me that that is not a consideration that should deter me from looking at the balance of convenience in the present case. The

matters that weigh in the balance on the other side are the significant detriment that there would be to this child if appropriate accommodation were not provided and the status quo of residence with his mother was not maintained. He is 7 years old, he has never been separated from his mother and he is in full‑ time education. It seems to be that, in the absence of any realistic alternative, the balance of convenience in this case falls on the side of the claimant, and for that reason interim relief will be granted subject to the condition that an offer of contribution has been made by the mother in the present case.

16. That is the substance of my ruling. In the circumstances, it seems to me that directions should be given for this matter to be heard at the earliest opportunity. There is no acknowledgement of service yet.

17. MR GLENISTER: No, that is right. It has come to this point (Inaudible) was issued a week ago. There are two options, I imagine. One is simply to leave the CPR direction in place with 21 days from the date of issue, or I have no objection to the court providing the AOS and then having a rolled‑ up hearing as before. I leave it in the hands of the court.

18. THE DEPUTY JUDGE: I think expediting the acknowledgement of service and then listing for a rolled‑ up hearing may be the appropriate course in the present case. Do you seek further directions?

19. MISS STEINHARDT: No. I did flag up in my skeleton argument the issue of anonymity, but in fact the court is applying that in any event. There is a draft order at page 30 of the bundle. That said, my Lord, I am content for it to be listed for a rolled‑ up hearing and be dealt with in that way.

20. THE DEPUTY JUDGE: Thank you. Well, it has just a little gone 1 pm. We will take a moment just to adjust the order. Paragraph 1 stands, is that correct?

21. MISS STEINHARDT: Yes.

22. THE DEPUTY JUDGE: Paragraph 2 seems to be within 7 days of the date of this order. Are you content with that?

23. MR GLENISTER: I would be but I am in court. I imagine it will fall to me and I am in court I think all days until next Wednesday. So could I at least have maybe to Friday? I do not know what date that is.

24. THE DEPUTY JUDGE: So that would be by 3 June.

25. MR GLENISTER: Yes.

26. THE DEPUTY JUDGE: Paragraph 3: does that need to be adjusted to recognise the offer of contribution?

27. MISS STEINHARDT: It could be, or there could be a recital to the order saying "upon the claimant offering £50 per month by way of contribution".

28. MR GLENISTER: I do not have a strong preference, but given it was put forward by the claimant as a matter to take into account in the balance of convenience, I would ask for it to be in the order. I will leave it with the court, I do not have a strong view on it.

29. THE DEPUTY JUDGE: No objection to that?

30. MISS STEINHARDT: No.

31. THE DEPUTY JUDGE: So subject to the claimant's mother contributing £50 per month to the cost, the defendant shall provide accommodation to the claimant and his mother pending the resolution of this judicial review or further order. The application to be listed for a rolled‑up hearing on the first available date after the service of the acknowledgement of service. Time estimate two hours?

32. MR GLENISTER: My Lord, we took an hour and 20 minutes today.

33. MISS STEINHARDT: I would suggest three would be more realistic. May I ask for directions on skeleton arguments, because otherwise the default position would be 21 days before the hearing, which may be a little early. Perhaps 14 days before for the claimant and seven days before for the defendant?

34. THE DEPUTY JUDGE: Are you content with that?

35. MR GLENISTER: I am, although the application would need to be listed for the first open date after 14 days to ensure that there is time. I assume the court will not list before that date anyway.

36. THE DEPUTY JUDGE: Yes.

37. MR GLENISTER: The first day perhaps after late June?

38. THE DEPUTY JUDGE: Having specified a date for the service of acknowledgement of service, so the first available date after 27 June. Skeleton argument for the claimant 14 days before; defendant 7 days. The court would be assisted by a consolidated bundle of authorities as well. Costs reserved. Thank you very much.