

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/10/2010

Before :

THE HONOURABLE MR JUSTICE KENNETH PARKER

Between :

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| THE QUEEN on the application of A | <u>Claimant</u> |
| - and - | |
| LONDON BOROUGH OF LAMBETH | <u>Defendant</u> |

Ian Wise QC (instructed by **Maxwell Gillott**) for the Claimant
Hilton Harrop-Griffiths (instructed by **London Borough of Lambeth**) for the Defendant

Hearing dates: 25 June 2010

Judgment

Mr Justice Kenneth Parker :

1. This is an application for Judicial Review in which in the Claimant, “A”, seeks a declaration that the Defendant, The London Borough of Lambeth, has failed to assess A’s needs and to produce a Pathway Plan as required by the Children (Leaving Care) (England) Regulations 2001 (“the Regulations”) and further a mandatory order requiring the Defendant to assess A’s needs and to produce a plan as required by the Regulations.
2. In my judgment of 7 July 2010, [2010] EWHC 1652 (Admin), I set out the background to the claim and the relevant legislative framework. As I explained at paragraph 20 of that judgment the detailed provisions of the Act and the Regulations have been considered by the Courts on a number of occasions. It is important to emphasise that the scheme prescribes that the assessment and plan should deal with the 9 matters referred to in that paragraph. The first two of those matters are firstly the nature and level of personal support to be provided to the child or young person and, secondly, details of the accommodation the child or young person is to occupy. Furthermore, as was pointed out in paragraph 21 of the judgment, in each of these areas there should be a detailed operational plan which sets out who is to do what, where and when (see *R(J) v Caerphilly CBC* [2005] EWHC 586 (Admin); [2005] 2

FLR 860). The plan should look beyond the immediate needs of the young person and should deal with the imminent needs (see *R(K) v Manchester City Council* [2006] EWHC 3164 (Admin); [2007] 10 CCLR 87).

3. In the Judgment of 7 July 2010 I held, for the reasons there stated, that the Pathway Plan of June 2010 was not in conformity with the legislation and was unlawful. Following that judgment the Defendant produced a further Pathway Plan on 26 July 2010. The parties then both produced written submissions. The Claimant's submissions of 27 July 2010 focussed on the first two matters with which the Pathway Plan must deal and maintained that the revised plan did not adequately deal with those matters in accordance with the legislation. On 28 July 2010 the Defendant responded to the Claimant's submissions and submitted that the Pathway Plan was now in conformity with the legislation. It had been agreed at the earlier hearing that I would resolve any outstanding issues, including any issue as to costs, on the basis of the written submissions without the need for a further hearing.
4. In this judgment I shall focus upon the two matters that have been specifically identified by the Claimant, namely finance and accommodation. In the most recent Pathway Plan, at p16, there is identified under "Finance" a number of matters. It is there recorded that the Claimant receives a weekly subsistence payment of £51.85, that he appears able to manage a budget and that he is in a position to receive further financial advice. It is stated that he will be provided with further support by his personal adviser and key worker to access financial advice. It is also recorded that his weekly subsistence will end as soon as he is in receipt of job seeker's allowance.
5. At p31, under the heading "Support", it is noted that the Claimant will require support and assistance with arranging his finances now that he is no longer eligible for weekly subsistence. It is also stated that a Pathway Plan review would be completed at 6 monthly interviews until the Claimant is 21 if he was not in any higher education or until 24 if he was in higher education. That would be, it is stated, in order to monitor progress and assess future needs as they arose.
6. In my judgment, insofar as finance is concerned, the Pathway Plan does not adequately set out a proper operational plan. The document does little more than state the present financial position of the Claimant. It does not purport to analyse what the Claimant's likely future financial needs will be nor does it adequately specify how such identified needs may be met. It is clear from the case law that I have cited above that the operational plan must be at an acceptable level of specificity. In other words it must go beyond a mere statement of the current position and seek to identify so far as finance, for example, is concerned what likely future needs will be and how those needs can, in some detail, be met. It is clear that the Defendant has considered the financial situation of the Claimant and has done a certain amount of work in evaluating that financial position. However, in view of the case law, it does not seem to me that the present document sets out, with sufficient particularity, what the Claimant's likely needs will be and how and by whom those needs will be met. Therefore I agree with the Claimant that the Plan is defective so far as that important factor is concerned.
7. In relation to the second factor, namely accommodation, the July Plan states that the Claimant's identified needs are, firstly, that he currently has a placement with Klearwater supported homes and, secondly, he will be starting the application process

for an independent living tenancy imminently. The action which is identified to be undertaken to meet the Claimant's needs is firstly that the Claimant should be supported by Klearwater to develop adequate living skills in preparation for independent living and, secondly, that he will later be referred to the Lambeth SNAP team. Again, in my judgment, the July document does no more than state the present position of the Claimant so far as accommodation is concerned. It does not amount to a detailed operational plan dealing with the Claimant's accommodation needs. It does not specify where it is considered that it would be safe for him to live given the difficult background to which I referred in the July judgement. It does not consider whether, for example, he can live in supported accommodation and whether this would be in the public or private sector. Again, therefore, it seems to me that the July document does not analyse with sufficient precision what the Claimant's needs currently are and what they are likely to be as regards accommodation and how and by whom those needs will be dealt with.

8. It is common ground that finance and accommodation are, in this case, the most important matters to be dealt with by any Pathway Plan as I have set out. It seems to me that the July document does not deal adequately with those matters and therefore cannot be regarded as a lawful plan. I see force also in the criticisms made of the July document as regards the other matters that must be dealt with in a Pathway Plan. However, I do not intend to deal in detail with those other matters. It is sufficient for the purposes of this judgment to identify the two material respects in which the present document is deficient.
9. As to the costs of these proceedings, the Defendant submits that the Claimant should have only 50 per cent of its costs up until 7 July. The Defendant submits that the Claimant failed, without reasonable cause or excuse, to attend meetings and otherwise failed to engage with the Defendant in its efforts to help him help himself. It is also said that the claim, insofar as it related to the dangerousness of his location in Stratford, was misconceived. In reply the Claimant contends that there were, at least so far as certain of the occasions were concerned, good reasons why the Claimant failed, for example, to attend meetings but that in any event the recovery of costs should not be reduced by reason of any such failures. On this aspect it is not clear to me how the alleged failures of the Claimant, whether excusable or not, have added significantly to the litigation costs associated with this claim, whether the litigation costs of the Claimant or of the Defendant. Therefore, it seems to me that I should not seek to resolve any of the factual issues surrounding the Claimant's alleged failures. It does not seem to me that the Claimant should have the amount of costs reduced by reason of any such alleged conduct. Furthermore, it is clear that from the outset the central element of the claim concerned the failure to produce a lawful Pathway Plan. On that central element the Claimant has succeeded and there is no good reason why the Claimant should not have the full costs of the proceedings.
10. The Claimant, furthermore, asked for the costs to be assessed on an indemnity basis. When considering whether costs should be awarded on such a basis, the court is entitled to have regard to the conduct of the parties under CPR 44.3. The Claimant says that in this case the Defendant has failed to comply with Court Orders and such failure justifies the imposition of costs on an indemnity basis. In particular it is said that the Defendant failed to comply with the order of Mr Robin Purchas QC of 14 May 2010. The Defendant contends in reply that the failure to comply with the order

of 14 May was partly the fault of the Claimant. The Defendant, despite the exercise of best endeavours, had not been able to contact the Claimant during the relevant period. The Claimant also raises an alleged failure to comply with the order made in July as regards the provision of a taxi to make relevant visits. Again the Defendant contends that there were practical difficulties in organising the provision of a taxi because the members of the Claimant's family were unwell and the Claimant said he would come back to the Defendant as regards this matter but did not do so. Even if I were persuaded to accept the Claimant's submissions as regards the failure to comply with these particular orders of the Court, in my judgment any such failures in this case are not such as to justify the imposition of costs on an indemnity basis. Therefore the normal basis will apply to the assessment of the costs.