



Neutral Citation Number: [2020] EWHC 1250 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Case No.CO/1361/2020

Royal Courts of Justice
Strand, London WC2A 2LL

1st May, 2020

Before:

MR JUSTICE SWIFT

The QUEEN
on the application of
WALSH

Claimant

- and -

SECRETARY OF STATE FOR JUSTICE

Defendant

MS S. WALKER (instructed by Scott -Moncrieff & Associates Ltd) appeared on behalf of the
Claimant

MR B. SEIFERT (instructed by the Government Legal Department) appeared on behalf of the
Defendant.

Hearing date: 1st May 2020

TRANSCRIPT OF JUDGMENT

MR JUSTICE SWIFT:

1 In 2007, the Claimant, Mr Craig Walsh, was convicted of offences of sexual assault and attempted robbery. The sentence imposed on him was a sentence of indeterminate imprisonment for public protection, with a tariff of three years and eight months. On 21 October 2019, the Parole Board determined that Mr Walsh could be released on licence. Licence conditions were imposed and set out in writing by the Secretary of State on 16 December 2019. Those conditions were mainly in a standard form. Condition 5 was that Mr Walsh should:

“Reside permanently at an address approved by the supervising officer and obtain the prior permission of the supervising officer for any stay of one or more nights at a different address.”

2 Mr Walsh was released from HMP Littlehey, on licence, on 16 December 2019. At the time of his release he was required to live at what are known as Approved Premises, in Peterborough. Approved Premises such as those at Peterborough are operated by the Her Majesty’s Prison and Probation Service “HMPPS” and are intended to provide a high level of supervision for offenders who are considered to present a high or very high risk of serious harm to the public. Approved Premises are described by HMPPS as a “scarce resource”. I am told there are 101 such premises in the whole of England and Wales, with a total capacity of 2,200 beds. Their purpose is not to provide permanent accommodation; rather, it is to play an important part in the safe management of offenders who, although released on licence, nevertheless present the most serious risks to the public.

3 On release, the intention was that Mr Walsh would spend 12 weeks at the approved premises in Peterborough. That period came to an end on 9 March 2020. I am told in a witness statement made on behalf of the defendant by David Leaberry, an officer of the Probation Service, that while Mr Walsh was in the approved premises at Peterborough an assessment was undertaken and a conclusion reached that he was suitable to live in what is referred to as “move-on” accommodation. I am told that move-on accommodation is synonymous with ordinary accommodation, for example, accommodation provided by local authorities, by housing authority or any other accommodation, either owned or rented on the private market. The further matter to consider is that Mr Walsh’s home probation area is Cardiff. That is the area from which he comes.

4 The matter before me now arises in circumstances where the defendant proposes to move Mr Walsh from the approved premises in Peterborough to different approved premises at Plas Y Wern approved premises in North Wales. Although, as Mr Leaberry explained, it was permissible for Mr Walsh to live in ordinary accommodation, as matters have turned out it has not been possible to identify such accommodation for Mr Walsh. Because he has no connection with the Peterborough area, the relevant local authority, Stevenage, has been unwilling or unable to provide accommodation for him there. It was originally thought that Mr Walsh might be housed by Cardiff Council, in his hometown. However, given concerns expressed by the South Wales Police in the event that Mr Walsh returned to the Cardiff area, that did not prove to be a viable possibility. In those circumstances, and since other local authorities would be likely to take the same position as Stevenage (that is to say that because Mr Walsh had no particular connection with the area they would not be able to provide accommodation for him), the result has been that the defendant has resorted to further use of approved premises, specifically the suggestion of a placement in the approved premises at Plas Y Wern. The decision that has been taken is that that is where Mr Walsh should be placed until 29 June 2020. I am told that the position remains that in principle there is no

necessity for Mr Walsh to live at approved premises. If he were able to identify an ordinary accommodation address, that was acceptable to his probation officer and approved by that officer in accordance with condition 5 of the licence.

- 5 By proceedings originally filed on 11 April 2020, Mr Walsh challenged the decision taken at that stage which was that he should move from the Peterborough approved premises, rather than a decision that he should specifically move from those premises to the approved premises at Plas Y Wern. Since starting the proceedings, Mr Walsh has remained in Peterborough by reason of an interim order that was made by Lambert J. Yesterday, Thornton J considered the application for permission to apply for judicial review and she refused that application on the papers. At that point, the interim order made by Lambert J lapsed. Mr Walsh, intends, as he is entitled to do, to apply to renew his application for permission to apply for judicial review at an oral hearing. Today, he seeks an order continuing the interim order that he remain at the Peterborough approved premises pending the determination of that renewed application.
- 6 The approach that I should apply today in respect of this application for interim relief is indistinguishable from that which would be applied on any application for interim relief made at the outset of proceedings. The question is whether there a real prospect at trial that the claimant will obtain an order in the form now sought, and if such a real prospect exists does the balance of convenience favour a decision to grant interim relief again in the form sought?
- 7 I do not consider that this case gets over the first, the real prospect, hurdle. Miss Walker, who appears for Mr Walsh today, has indicated that the renewed application for permission to apply for judicial review will be advanced on two primary grounds. The first is that requiring, through application of condition 5, Mr Walsh to move to the approved premises in Plas Y Wern would amount to a breach of his Article 8 rights. I accept that, in principle, Mr Walsh's Article 8 rights are engaged. In his evidence, he explains that he is in a relationship with a woman who lives near Peterborough, that that relationship has lasted some three years, obviously, started at a time when Mr Walsh remained in prison. In the event that Mr Walsh were removed from Peterborough to North Wales that would, clearly, have some adverse impact on that relationship. Miss Walker submits to me today that it would *de facto* bring about the end of the relationship because Mr Walsh would cease to be able to have contact with his partner. I do not accept that that is a likely conclusion. The extent of any interference with Article 8 rights is, of course, important and in my view the extent of that interference in this case will be limited. The duration of the placement in Plas Y Wern is no more than some eight weeks. During that period Mr Walsh and his partner will be able to maintain contact by phone and video calls, no doubt in much the same way as they have maintained contact recently, at least since the lockdown conditions were imposed on all of us in late March this year.
- 8 In my view, there is no serious prospect that at a full hearing Mr Walsh would convince a court that that interference with his Article 8 rights was not justified. As Mr Seifert for the defendant has pointed out, places in each of the approved premises locations are in short supply. So far as concerns Peterborough, it is the case that although being in Peterborough assists Mr Walsh to stay within reasonable distance of his partner, the fact is there are likely to be many others either released or due to be released from prison shortly who would need a place in approved premises who would have a much greater claim by reason of family connection to be in approved premises in the east of England. By contrast, Wales is Mr Walsh's home area and, as I say, the extent of the interference with his Article 8 rights will be very limited.

- 9 It is clear from the evidence, in particular, statements made by Amanda Lewis of the Cardiff and Vale Probation Delivery Unit, that the decision not to leave Mr Walsh in the Peterborough approved premises has also been influenced to some extent by concerns that if he were to live too close to his partner that could put at risk his partner's 16-year-old daughter. In particular, I have been taken to a letter setting out views expressed by the relevant social services authority, which are clearly to the effect that they consider that were Mr Walsh to have access to his partner's daughter that would present a risk to her wellbeing. I am satisfied that this was a relevant matter; it seems to me that that this too, is a matter that weighs into the balance of justification.
- 10 The second ground of challenge is put by Miss Walker on the basis that an "unwritten condition" is being imposed by the defendant. She formulates that condition by reference to statements in the evidence to the effect that Mr Walsh ought not to live within 90 minutes' travelling time of his partner, again, for the protection *pro tem* of her teenage daughter. In my view, it is not correct to say that some form of unwritten condition has been imposed. Rather, what is in issue here is the application of condition 5 of the licence, i.e. the condition that Mr Walsh may only reside at premises approved by his supervising officer. The question is whether applying condition 5 in the way that it has been applied amounts to a reasonable and lawful exercise of the discretion that is available to the Probation Service under condition 5. In my view, it is unarguable that this application of condition 5 is unlawful. So far as concerns exist as to the wellbeing of Mr Walsh's partner's daughter, those are matters which are quite properly to be taken into account by the Probation Service when deciding how condition 5 would be applied to Mr Walsh.
- 11 More important, however, is this. At present, the defendant has taken the view, in my view lawfully, that Mr Walsh should no longer reside at the Peterborough approved premises. Mr Walsh is not presently able to identify any ordinary accommodation that is available to him at an address that may or may not be approved his supervising officer. In those circumstances, the defendant has identified a place for a further eight weeks in approved premises in North Wales. The question is whether in the circumstances that prevail is that approach to this case one that is arguably unlawful. In my view, there can be no serious argument that it is not lawful. It seems to me that the steps taken by the defendant in this case, although clearly unwelcome to the claimant, are nevertheless lawful.
- 12 For those reasons, the balance of convenience does not arise to be considered. I would say, however, that had that balance fallen for consideration, I do not think that it would have favoured the making of an order for interim relief. As I have said, the requirement that Mr Walsh move to the premises in North Wales is only a requirement that subsists until 29 June 2020 and, as Mr Seifert has made clear, if in the meantime were Mr Walsh to identify some other address, be it in Wales or in England that he wished to move to, he would be free to do so. At that stage, his supervising officer would consider, in accordance with condition 5, whether or not to give his approval for Mr Walsh to live at that new address. That being so, any interference with Mr Walsh's Article 8 rights is at a low level. Even as a matter of discretion an order for interim relief would not have been appropriate.
- 13 The application for interim relief fails on all bases.