Neutral Citation Number: [2020] EWHC 2691 (Admin)

Case No: CO/3584/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7th October 2020

Before:

MR JUSTICE FORDHAM

- -

Between:

QH **Claimant**

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

- -
- -

PRIYA SOLANKI (instructed by Duncan Lewis) for the **claimant**
JAMES FRACZYK (instructed by the Government Legal Department) for the **respondent**

Hearing date: 7 October 2020

Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is an urgent application, in the context of judicial review proceedings, for interim relief. The papers came before me yesterday as 'the immediates judge' under cover of Form N463 inviting the Court to order interim relief by way of a mandatory order 'requiring the defendant to provide the claimant with suitable single occupancy accommodation in London for her and her new born child by 10am on 8 October 2020'. That would have been an order made yesterday required to be implemented by 10am tomorrow.

2. Having looked at the papers I made an immediate Order that was served on all those concerned. The timing of the Order was 14:42 yesterday and so it would have been received sometime after that yesterday afternoon. The Order I made yesterday directed that the application for urgent interim relief be listed for 3pm today. I did not impose any obligation on the Secretary of State (the defendant) in making that Order. But in my reasons I stated as follows: that I recognised the urgency; that 'achieving justice and fairness to the defendant' meant 'allowing a little time for consideration to be given material supplied and the defendant having its voice heard'. I recorded that the defendant was already on clear notice. I had seen and I have read email exchanges virtually on a daily basis from the claimant's solicitor to the defendant.

3. I stated in my reasons that: 'I would like if possible to see photographs of the accommodation in question and any reasoned document in which it was assessed by the defendant as suitable'. Photographs were provided already in the bundle from the claimant's representatives and some further photographs with two witness statements earlier today. Photographs were also provided midway through the hearing and (through the magic of the electronics of remote hearing) we were all able to look at those. The court was told, and I accept, that the defendant's solicitors (GLD) did not themselves receive those photographs until 15:24 that is to say well into the hearing; and they were promptly provided thereafter. No contemporaneous document has been produced which involves any assessment by anyone of the suitability of the accommodation in question.

4. After hearing argument on both sides this afternoon, I announced that I was going to make the Order sought but with an adjustment as to timeframe. I made an approved Order, and have distributed it (again through the magic of the options given by remote hearing sitting in front of a screen). The Order I have today made requires 'the defendant to provide the claimant with suitable single occupancy accommodation in London'. The adjustment is that instead of 10am tomorrow morning 8 October 2020 I am ordering the deadline of 2pm 9 October 2020, that is to say Friday.

5. I need to explain the context and the reasons why I have made this mandatory order in its terms, and why I have done so notwithstanding a two-pronged resistance by Counsel Mr Fraczyk on behalf of the Secretary of State. His position was that the court ought not to be taking the step today of granting interim relief in circumstances where problems with the accommodation could be resolved at the premises with the claimant remaining where she is. That submission was based on the contentions that there is 'no obligation to provide the best possible accommodation' and that 'this accommodation is appropriate in the circumstances'. The second prong was an alternative position. It

was that, even if the Court were making a mandatory order today it ought not to make the intrusive order of requiring 'suitable single occupancy accommodation'. What was said is that the defendant instead should be required to provide temporary accommodation, which was candidly recognised as in reality likely to have been a hotel room, while steps were taken to identify an alternative solution. Urged on me by Mr Fraczyk was the submission that this Court does not have the visibility in relation to the overall context and the competing needs on finite resources. He submitted that a mandatory order of the type sought (and now given) in this case would serve to prejudice the position of some other more worthy individual. As he submitted to me: 'there are numerous people in a far worse position'. He therefore cautioned me against any order other than immediate temporary accommodation in a hotel. Naturally, I considered all submissions in this case, particularly that last one, with anxious concern. However, am quite satisfied in all the circumstances of this particular case that it is appropriate to order interim relief and, moreover, that it is not appropriate to order that the claimant be moved again to another hotel room. And I need to explain why.

My reasons

6. The starting point is that the claimant is a recognised victim of trafficking, pursuant to a positive 'conclusive grounds determination' in April 2020. I do not have and do not need all the materials that relate to that context. But what I do have is an interim medicolegal report from Dr Francesca Brady. She states that she has read all of the underlying material and she summarises in her report the history for clarity, having made the point that it is a history which is to be taken as having now been accepted for all material purposes by the competent authority. It is sufficient if I say the following. The claimant in her narrative description of her history describes having been raped, in her country of origin, when aged 15 by her mother's boyfriend while her mother held her down. Aged just 16 she was abducted and trafficked, raped by her abductor and forced into prostitution in a different country, that is to say Italy. She was subsequently kidnapped raped and forced into prostitution in Belgium, and trafficked back to Italy to continue as a prostitute, in which circumstances she experienced a forced abortion. She was then trafficked to France and later to Spain and finally to the United Kingdom, now aged 22, and forced into prostitution here. The documents go on to record at least one suicide attempt. I granted anonymity yesterday in this case, for reasons which by now will be obvious. That is the context.

7. The claimant, on the face of it, falls squarely within the relevant descriptions of being a vulnerable person. The relevant policy guidance cited in the grounds for judicial review described those included within the category of 'vulnerable person' as those who are pregnant, or a lone parent with a minor child, or a person who has been subjected to torture and rape or other serious forms of psychological physical or sexual violence who has had an individual evaluation confirming their special needs. At the heart of this case is the fact that the claimant has just given birth, on 25 September 2020, to a baby girl. I will return to the circumstances relating to that later.

8. In the medico legal report, Dr Brady describes a diagnosis of symptoms of depression that are 'in the severe range'. She describes the experience of sexual abuse and trafficking as having had 'a profound impact' on the claimant and her interpersonal functioning. She describes two past attempts at suicide. She says that on account of the claimant's history of long-standing abuse and trafficking she should be considered

vulnerable to future harm or abuse. Dr Brady also says of the claimant: 'she is already struggling with significant mental health problems'.

9. The claimant is seeking asylum and has an extant asylum appeal. She has been for some considerable period within what is known as 'NASS accommodation'. She was accommodated at a place called Dorset Way. She was pregnant and known to be pregnant and concerns were raised as to the suitability of that accommodation from at least July 2020, culminating in a letter before claim on 15 July 2020. What was sought was the identification of suitable accommodation for the claimant bearing in mind that she was soon to be a mother with a young baby. By letter of response of 28 July 2020 the defendant informed the claimant's representatives that alternative accommodation was now 'being requested'. It did not materialise and so a further letter before claim did, on 11 September 2020.

10. The claimant went into hospital for a Caesarean and gave birth (on 25 September 2020) facing uncertainty as to where she was to be accommodated. It had by then been accepted that Dorset Way was not appropriate, but an alternative solution had not been identified. It was in those circumstances that the hospital was persuaded to agree to keep her in over the weekend. She came to be released from hospital on 28 September 2020. There is email traffic between the parties throughout the relevant period. On 28 September 2020 at 16:01 an email from the Home Office recorded that the claimant was 'going to be picked up at 4 o'clock today and taken to interim emergency accommodation for tonight'. I interpose: that was a hotel room. The email stated 'tomorrow she will be collected and taken to her new address Stamford Close'. An email (later on 28 September) had stated her new accommodation is a large double room with shared facilities. The claimant went into the hotel with her baby (28 September), was collected the next day (29 September) and was taken to Stamford Close. What happened next was that the claimant, on the evidence before the Court, was taken to Stamford Close along with another woman who was seeking to be accommodated. A room was available and the room was allocated to the other woman. The claimant was taken back to a hotel room. On Wednesday, 30 September 2020 the claimant was taken back to Stamford Close and provided with a room where she has been since. There has been ongoing communication between the claimant's representatives and the Home Office ever since as to that room and its suitability.

11. It is, in my judgment, highly material in this case to bear in mind that the issue of suitable alternative accommodation, and the reassurance that a solution would have brought, was something which had been raised two months before the claimant gave birth to her baby. There was, in my judgment, on the face of it clear and ample opportunity to find a solution prospectively. But no such solution was found.

12. Moreover, in my judgment, in considering the position that the claimant is in today it is highly relevant to remember her vulnerability, the circumstances and background as to which I have described them, and that of her young baby; and to remember the experience that she has gone through in going to different places: (i) she was at Dorset Way the day before she was due to give birth; (ii) she went into hospital, not knowing where she was going to go when discharged; (iii) discharged from hospital she was taken to a hotel; (iv) she was then taken to new premises where there was a room but not allocated that room, notwithstanding that it had clearly been represented at that she was to be given 'a large double room with shared facilities'; (v) she was then taken back to a hotel; (vi) finally she was taken to the room where she is currently, at Stamford

Close. It is vital in my judgment not to lose sight of that experience and sequence of events when considering what should happen next, as today.

13. The room where the claimant is currently occupied is described in various materials that are before the Court. The grounds for judicial review say this: 'the room appeared to be used for storage as it had a bunk bed and single bed in there; the fridge in the room was broken; the wardrobes in the room were broken; the window in the room was broken and letting cold air in; there was also a boiler in the room'.

14. Put to the defendant promptly on 1 October 2020 are two documents from external sources. The first is a letter written by a psychotherapist who had been working with the claimant prior to her giving birth and has now had a further session with the claimant. The psychotherapist said this in that letter of 1 October 2020: 'We met as usual via Skype; she showed me the conditions of the room in which they have been placed; including a malfunctioning fridge, inadequate bed and bugs on the walls; it is vital that the claimant's accommodation be changed immediately; the current situation would be adverse to a young and able-bodied single person let alone for a woman with a background of complex trauma who has just undergone major surgery and is adjusting to motherhood for the first time'. That description is, in my judgment on the face of it, a compelling piece of evidence. Also relevant is the fact that it was squarely put to the defendant on 1 October 2020, 6 days ago.

15. The other external document is another letter, this one written by a support worker. That letter writes 'to support the request to move the claimant to suitable accommodation as a matter of urgency'. It explains that 'the writer has been working with the claimant since February'. It says this: 'She has a bunk bed and a single bed there; for some reason the fridge in the room is broken; wardrobes broken; very small room is not painted; there are drawings on the wall; windows are broken allow the cold air in; boiler was next to the bed which is not safe for the claimant and her baby; the house is dirty and the claimant is very scared for the well-being of her baby'. It says: 'I am very worried the dirt in the house will increase her risk of infection following a major surgery last week'. Later on, the letter goes on to say that the claimant had 'not been able to take her regular medication; was not able to meet with a midwife because she did not have a permanent address; and was bleeding more than usual from her Caesarean scar'. The letter states: 'I am extremely concerned for her well-being'. It also makes the point that 'she is ordered to be on bed rest and absolutely not able to do that in the current accommodation'. It culminates with this request: 'that the claimant and her new-born be moved to suitable self-contained accommodation in Greater London where they can feel safe, as a matter of urgency, given the circumstances detailed'. That again in my judgment is cogent evidence, on the face of it. Again, it is relevant that it was provided to the defendant on 1 October 2020.

16. I am not going to rehearse the entirety of the exchanges between the parties I have already said enough to indicate that there have been ongoing communication describing the urgency and explaining that the urgent need to resolve these matters and, absent such resolution, the fact that it would be necessary to litigate, as has now occurred.

17. I need to put into the evaluative picture the fact that the defendant has had the opportunity but not been able to produce any contemporaneous documents in which any individual has evaluated this room in these premises as suitable for the claimant. Courts are always anxious to identify the appropriate division of labour between hard

pressed public authorities, with their experience and expertise, who have the bigger picture and aware of the constraints that they face. That court will always want to give great weight to an evaluative judgment that can be seen, that identifies the issue and that reasons out a conclusion in relation to them. I emphasise that is not a point which concerns 'decision letters' or the preparation of 'witness statements'. It simply is a reality check about the practicalities of decision-making, given that somebody somewhere must surely have applied their minds to the claimant's position and made a decision as to suitability. One imagines that ought to have happened in the run-up to this room being allocated. It was certainly something which presented an opportunity in the context of the various communications that were sent. If there is a contemporaneous document in which somebody somewhere has reached a view as to suitability, and possibly has expressed reasons for arriving at that view, this Court has not seen it and has not seen it notwithstanding giving a clear 24-hour notice in my Order yesterday for that to be provided if it existed. I am aware, moreover, that the order I made yesterday providing that opportunity itself came against a backcloth where the claimant's representatives had themselves been asking for disclosure of any relevant documentation.

18. There is one further matter arising from the evidence which has been placed before the Court and which is an incident which causes me concern. I will come to it.

19. I emphasise that I am only deciding the question of interim relief. I am quite satisfied that there is a triable issue. Indeed, I am satisfied that there is a strongly arguable case, as matters stand before me, that the defendant is not discharging an applicable legal duty to provide suitable accommodation to a new mother in her vulnerable situation and her young baby. I then have to evaluate as I have the balance of justice in the current circumstances as to what if any order is appropriate.

20. The incident to which I refer is not one about which I am making any finding of fact. Having said that, there is a witness statement from the claimant herself which describes an incident earlier today in which an individual concerned with the accommodation providers told her she 'could either stay at the property or go to interim accommodation while they try to sort out other accommodation'. She says 'he would not give me any details of this other accommodation and although I explained I had a Court hearing this afternoon he was trying to make me sign a document to say I was not moving'. She continues: 'I felt very threatened by his behaviour he kept telling me to pack up my belongings as I would be taken to interim accommodation; the incident has shaken me up considerably'. Alongside that evidence there is a witness statement from the claimant's solicitor who says that she overheard some of that conversation. She describes the man as having 'told the claimant that she was wasting his time and if she was to stay in the accommodation she was required to sign the papers'. The solicitor goes on: 'I heard her refused to sign the document; he then told her to pack her belongings and that someone would come and collect her; he would not give her any further information; I could hear that my client was becoming emotional and scared; I was trying to calm her down but from what I heard on the line this person's attitude towards my client was very aggressive and threatening'. Those are further relevant items of evidence, in my judgment, which affect the assessment of all the circumstances of this case bearing in mind what is said on behalf of the defendant.

21. The claimant's position, through Counsel Ms Solanki, is that the interim order sought is appropriate in this case, against the backcloth which I have described. She emphasises

that there is no storage in the room; that belongings have to be kept on the frame of a bed above which is the boiler; that the claimant and her baby are sleeping on a mattress on the floor because of the proximity between the boiler and the bunk bed; that there are insects that can be seen near the boiler and that the new born baby already has an insect bite on her lip; she says the problems with the room have not been addressed notwithstanding every opportunity by the accommodation providers; she emphasises that the heating is set only to come on for one hour; that the claimant in her evidence says she is not able to wash her child; that she cannot register, and therefore access, GP and health visitor services.

22. I turn then to the Secretary of State's response, in all the circumstances, to this application for interim relief. I recognise immediately the limitations on the Secretary of State, on GLD and on Counsel in assisting the Court and seeking to respond urgently to an Order that was only made yesterday afternoon for this hearing. On the other hand, I was not prepared to allow any further time. I was anxious to ensure that there was an opportunity for the Secretary of State to be heard and to produce any documents, if there were any documents. I was also anxious that the Secretary of State should have an opportunity to explain whether there was any solution that had been identified and was in train. In that regard, I asked whether the alternative of emergency interim accommodation was a concrete alternative that had been identified and could be described. As I have explained Mr Fraczyk, candidly and to his credit, accepted that that was very likely to be back to another hotel room .

23. Mr Fraczyk submitted as his primary position that the Court ought not to grant any interim relief today. He submitted on the evidence that this accommodation was, as he put it, 'sufficiently appropriate at this stage'. He submitted that many of the issues that have been described could readily be addressed by taking steps within the property itself: clutter could be removed and that matter resolved to create space; the room could be reconfigured were it necessary to do so that the claimant and her baby did not need to sleep on the floor. As I have already explained, he submitted that there is no obligation on the Secretary of State to provide 'the best possible accommodation'. He emphasised the resource pressures on the Secretary of State and the absence of the uniqueness of this case. He invited the court to apply a 'necessity' test in considering interim relief and I have done precisely that in considering these submissions. Mr Fraczyk submitted that there is not an adequate evidential platform for the contention that there is a window which is broken and allowing air into the room. He submitted that there is no evidence of an infestation of insects in the room. As he put it, it is a 'sad reality that one can be bitten by an insect in a bedroom in London'. He did not accept that drawings on the walls were matter of sufficient concern for the claimant to need to be relocated.

24. In relation to these matters, I am quite satisfied that in the circumstances of this case – the vulnerability of the claimant, the position of her and her baby, the experience she has had of being passed from pillar to post since the day before giving birth to her baby, with the uncertainty as to where she is to be accommodated – all lead to the conclusion that this room is unsuitable for them and that it is not a good answer to say that steps can be taken to adjust the situation within the room and the claimant and her baby be expected to stay there. There is, is in my judgment, a real 'hollow ring' to the contention that problems with the room could readily be resolved. The obvious questions that arise are: why the room was not made suitable, if it could be, before the claimant arrived?

Why it was not promptly made suitable thereafter? There has been, in my judgment on the face of it, every opportunity for action and action has not been taken. If and insofar as this room can readily be made suitable then no doubt that can urgently be done and the room can be used for somebody else, considering the resource realities and competing claims. But I am quite satisfied that the claimant and her baby cannot reasonably be expected to stay in this room in the circumstances of this case.

25. I am not in a position to make any finding in relation to whether there is or is not a 'broken window'. I have tried to match the photographs, belatedly supplied during the hearing by the Secretary of State, with the configuration of the room shown in the photographs in the bundle. I have looked at what is said in the email accompanying the Secretary of State's new photos, about there being a broken element to a window which is described as a 'broken lock', and which is said to 'prevent the window from locking', rather than a break that would involve a draught. I am not proceeding on the basis that the room is 'exposed to the elements' as Mr Fraczyk put it. I also have in mind that in her latest witness statement the claimant's own description of the room is to say this: 'there was a bunk bed, single bed, broken fridge and a broken wardrobe, there is cold coming in, the boiler was also in the room, I have had to move the mattress to the other side and sleep on the floor'. She goes on to talk about 'the heaters turning off after an hour' and her 'inability to keep the room warm for her daughter'. That description does not in terms say that there is a 'broken window'. I am not assuming that there is a 'broken window' that 'exposes the claimant to the elements'. I am, however, quite satisfied that notwithstanding the dispute in relation to the window, there are here matters of sufficient concern evidenced and supported by external points of view expressed in the letters from the beginning of October which mean on the face of it this claimant should be moved and should be moved as a matter of urgency.

26. That leaves the alternative position adopted as a fallback by Mr Fraczyk. He submitted that, even if the court were to make an order today requiring the Secretary of State to take some step, that step should not be to order that there be 'suitable single occupancy accommodation in London for the claimant and her new born child'. The Secretary of State's position was that there are finite resources and 'numerous people in a far worse position'. The Secretary of State submitted that the Court would be taking an overly intrusive step by imposing such an order at this stage. The submission was that the Secretary of State should be entitled to place the claimant instead in emergency interim accommodation – that is to say a hotel room - while evaluating what the options are for providing her with somewhere more settled. As I indicated near the beginning of this judgment the chilling submission was made – and I understand and respect it – that, given the visibility which this Court has or does not have, there was a real risk that by making an intrusive order some unknown individual would be caused a serious problem in circumstances where they have a much greater needs. I have obviously hesitated long and hard, having heard that resounding submission.

27. I am not however prepared to accede to the invitation to make the alternative order, requiring the Secretary of State do no more than to take the claimant, and take her yet again, back to a hotel room with the uncertainty as to what is to happen to her next. In that context I have had regard to the experience which she has undergone, on the evidence in this case, to get to this position. I have had regard to the strong and cogent views that have been expressed in the materials which I have described. I have had regard to the fact that there has been ample opportunity since 28 July 2020 to identify

a solution. Moreover, there has been a sequence of opportunities since the claimant gave birth on 25 September 2020 to resolve these matters and come up with a solution. I do not have visibility on the position that the defendant faces. Nor do I have visibility on the position of others who are vulnerable and in need. I cannot, however, accept the logic of the position which tells the Court that interim relief cannot be granted in the context of accommodation without that visibility and in circumstances where there could be a knock-on effect for others. Were that sufficient it would dictate the outcome adversely to any claimant in the context of interim relief and emergency accommodation. The position I am in is that I have the justice of the individual case before me and a decision-maker who is in a position that, if they wish to do so, to seek to put me in a more informed position. I cannot on the face of it accept the assertion that there are 'numerous' people 'in a far worse position' than the claimant and who cannot be accommodated and 'will be disadvantaged' by this Order for interim relief. Ultimately, I have to focus on the case that is before me.

28. It is clear in my judgment that it would not be in the interests of justice, and therefore satisfy 'the balance of justice', for the resolution today to be that the claimant is told she is going back to a hotel while some other steps are taken to identify some other alternative. She is vulnerable and in urgent need this case cries out, in my judgment, for concrete action that provides her with proper stability and reassurance. In my judgment what does, however, strike the appropriate balance is to give the claimant that clear message – now – that the Order has been made, to give the Secretary of State a clear deadline for complying with the Order, but to relax that deadline from the 10am tomorrow that was on the face of it being sought in the application that I was dealing with at 3pm today. The appropriate course is to require decisive action but to allow the Secretary of State until 2pm on Friday to deliver it. I am grateful to both Counsel and their instructing solicitors for the assistance that they have given me at this hearing this afternoon. In those circumstances and for all those reasons that I have made the order for interim relief in this case.

Costs

29. So far as costs are concerned, I will first of all need to revoke the rogue 'no order as to costs' paragraph which was contained in the order which I distributed earlier this afternoon, before giving these reasons, so that action could be taken promptly. I had at that stage heard no submissions as to costs and I now have. The position taken by Ms Solanki for the claimant is that the claimant shall have all the costs up to today and on an indemnity basis, given the nature of the Secretary of State's default in the ongoing communications and given that the claimant has succeeded and obtained interim relief. For the Secretary of State Mr Fraczyk opposes that in all respects and submits that the appropriate order is that cost be reserved. He says this is only the interim relief stage and the case waits to find out who will be vindicated at the end of the proceedings. I am quite satisfied that the appropriate course lies in between those two positions. In my judgment, it is clear that the claimant should have the costs of the application for interim relief. That application was foreshadowed, needed to be pursued, has been pursued, was resisted but has succeeded. Costs should follow the event so far as that is concerned. Interim relief was a discrete part of these proceedings and in resisting it the Secretary of State has caused the need for a hearing and the costs relating to it. I will order that the defendant pay the claimant's costs of the application for interim relief. I am not however going to order that those costs be paid on an indemnity basis. In my judgment

the appropriate and proportionate costs order is the one that I have identified. I am not satisfied that there is any basis in this case for taking the further step and requiring the indemnity basis.

7th October 2020