

Neutral Citation Number: [2020] EWHC 843 (Admin)

Case Number: CO/1241/2020

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

**In the matter of an application for judicial review**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07/04/2020

**Before:**

**MR JUSTICE ROBIN KNOWLES CBE**

**THE QUEEN on the application of**  
**AQS**

**Claimant**

**and**

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

**Defendant**

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**Mr Simon Cox and Ms Agata Patyna** (instructed by **Duncan Lewis**) for the Applicant

**Mr Jack Anderson** (instructed by the **Government Legal Department**) for the Secretary of State for the Home Department

Argument in writing: 31 March 2020

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**Judgment Approved**

**Robin Knowles J:**

## **Introduction**

1. Formally, these proceedings for judicial review are at an early stage. All that I say on them is to be regarded as provisional and subject to further evidence, clarification, argument and consideration should the proceedings continue substantively.
2. The Applicant (“AQS”) seeks asylum and it is common ground he is destitute. The Secretary of State for the Home Department (“the Secretary of State”) accepts that he should be provided with support, and in particular accommodation, under section 95 of the Immigration and Asylum Act 1999 (“the 1999 Act”) and the Asylum Seekers (Reception Conditions) Regulations 2005 (“the 2005 Regulations”).
3. The context of the present matter is the Covid-19 pandemic. AQS applies for urgent orders and directions in connection with the provision of accommodation. There is an individual dimension and a wider public health dimension.

## **The facts**

4. The evidence and argument presented on behalf of AQS does contain some internal differences on the facts, but I will try to give the essence. I also record that the Secretary of State has said that she has not yet been able fully to investigate the background facts.
5. AQS is single. On the evidence AQS suffers significant difficulties with his mental health and has not received the support for this for which he has been referred.
6. As at Thursday 19 March 2020 AQS was in shared accommodation provided by the Secretary of State. Another man was moved into that accommodation. On evidence currently before the Court that man had “a persistent cough and night sweats”. AQS was concerned that this was related to Covid-19.
7. The man departed the next day, by which time AQS had a “symptoms of a high fever and a persistent cough”. He was now allowed to have his own room. Feeling that this was too late AQS became angry at his situation. There was an incident with the manager of the accommodation and AQS caused some property damage. The police were called and he was required to leave.
8. Migrant Health Limited (“MHL”) are referred to in the evidence and argument as the Secretary of State’s agents, and as the “single point of contact” for “Service Users within the Asylum and Asylum Support systems”. On Friday 20 March 2020 both AQS’ solicitor and Mr Daniel Smith of the charity Young Roots contacted MHL about AQS. They received no substantive response.

9. That weekend AQS stayed with some people who had offered help and who gave him a bed and some food.
10. On Monday 23 March 2020 a further request was made by Mr Smith to MHL that AQS be provided with single room accommodation. On Mr Smith's evidence he was informed that Home Office guidance for asylum-seekers presenting with Covid-19 symptoms was to call NHS 111 for medical advice.
11. Mr Smith was also informed by MHL that asylum-seekers so presenting could not apply for or access what was termed "section 98 emergency accommodation". Section 98 of the 1999 Act addresses temporary support and provides that the Secretary of State may provide, or arrange for the provision of, support for asylum-seekers or their dependents who it appears to the Secretary of State may be destitute but "only until the Secretary of State is able to determine whether support may be provided under section 95".
12. In a further call to MHL on Tuesday 24 March 2020 Mr Smith was told that homeless asylum-seekers with symptoms of Covid-19 should call NHS111. On his evidence he was told to "ask for accommodation through the NHS". A request that the information given be put in writing was refused. A call to NHS111 established that NHS111 could not accommodate AQS.
13. By now AQS reported that his symptoms appeared to be improving gradually. However the person who had given him accommodation the night before, and who had children, had by then developed "symptoms of a high fever" and required AQS to leave.
14. From Wednesday 25 March 2020 AQS stayed in accommodation provided by an acquaintance and housing 6 or 7 people in one room. As at Thursday 26 March 2020 he was feeling unwell; not feverish but weak and dizzy and with eyes aching.
15. In the late afternoon of Friday 27 March 2020 these proceedings for judicial review were commenced for AQS and an application for urgent interim relief was made.
16. The Grounds prepared on behalf of AQS, advanced the possibility that, based on what MHL is alleged to have said, the Secretary of State had a policy not to accommodate persons with Covid-19 symptoms. Regardless of the merits of that point, the immediate need was to address AQS' accommodation, in his own interests and that of the wider public, and in the context of section 95 of the 1999 Act and the 2005 Regulations. I made an order that Friday evening that the Secretary of State must provide him with single person accommodation until further order. I gave the Secretary of State liberty to apply to revoke any part of the Order on notice to AQS' solicitors.
17. On Saturday 28 March 2020 the Secretary of State took steps to provide AQS with accommodation at what has been described as "a facility operated specifically for those entitled to asylum accommodation with symptoms of Covid-19". By the early hours of Sunday 29 March 2020 AQS was in that accommodation.

18. From correspondence between the parties and provided to the Court it appears that on Tuesday 31 March AQS was transferred to accommodation in a different location and where he is in sole occupancy of a room.

### **The Secretary of State's response**

19. The Secretary of State's Acknowledgement of Service in these proceedings was served within an abridged time, on Tuesday 31 March 2020, and included Summary Grounds.
20. These confirm that the Secretary of State does not have a policy not to accommodate persons with Covid-19 symptoms. The Secretary of State also made clear that she had not taken any decision to terminate the provision of support, including accommodation, to AQS under section 95 of the 1999 Act.
21. The Summary Grounds acknowledged on behalf of the Secretary of State that "[i]t appears that [AQS] may have been unilaterally evicted by his accommodation provider" and that "... it appears that there was some confusion on the part of MHL in terms of the information that was conveyed."
22. These acknowledgements are phrased by her Counsel in the Summary Grounds in a way that detaches the Secretary of State from what is described. It is, however, appropriate to be direct about this in the present context. It is the Secretary of State who is the accommodation provider, acting through others. And when MHL conveys information it is the Secretary of State who is conveying information, through that channel.
23. The Secretary of State advised that she had made urgent enquiry as to whether MHL was telling people that if they were Covid-19 symptomatic they could not be accommodated. The result of that enquiry was stated as follows in her Summary Grounds:

"The response received was to the effect that there had been a bit of confusion last week about whether persons with symptoms should ring 111 for accommodation (instead of seeking asylum accommodation); but that this has since been clarified, and all staff have been reminded of the correct position ... which is that the Secretary of State is continuing to accept applications for accommodation and support and provide the same for those who are eligible. It is obviously unfortunate that the wrong information was given, but this has been (and remains) a fast moving situation, and that error has been identified and corrected."
24. I had directed that in her Acknowledgement of Service the Secretary of State should identify her policy or practice in relation to the provision of accommodation under section 95 where an asylum seeker is destitute and shows symptoms of Covid-19. The Summary Grounds served on her behalf state that:

"... the Secretary of State was initially advised by Public Health England that symptomatic asylum seekers should not be moved and should self-

isolate where they are to reduce the risk of transmission. Public Health England further advised that persons with symptoms in need of support should ring 111 for assistance.

However, the [Secretary of State]’s position has since developed”

25. The Summary Grounds indicate that the current position, including the development to which she referred, is as follows, in summary:
- a. “[T]he Secretary of State has taken, and is taking, a series of measures to ensure the safety of those entitled to accommodation and the wider public.”
  - b. “The Secretary of State has provided guidance to accommodation providers in relation to each stage of the accommodation process, in liaison with Public Health England.”
  - c. A dedicated facility has been set up in London to accommodate persons with symptoms of Covid-19 in isolation.
  - d. The Secretary of State has also guaranteed those with asylum accommodation that they can remain in that accommodation over the next three months, subject to review prior to the end of June.
  - e. The Secretary of State will continue to keep her policies in relation to Covid-19 under review in conjunction with advice from Public Health England in light of the unprecedented circumstances.

### **AQS’s reply**

26. I received further written representations on behalf of AQS later on Tuesday 31 March 2020.
27. In these, “the statement of policy” is welcomed but it is suggested there remain “gaps and lack of clarity”, “in particular on out of hours accommodation transport and on persons who have shown Covid-19 symptoms but those may have abated.”
28. On behalf of AQS it is also pressed that the history of the matter “show[s] that the Court cannot with confidence accept that there are no issues of lawfulness with the policy and its implementation, especially as regards persons in the situation that [AQS] has been in”.
29. Those representing AQS invite the Court to make an order providing time for the Secretary of State “urgently to clarify further her policy on accommodating persons suspected of Covid 19 and her communication of that policy ...”. It is said that “[t]here is nothing to show how [the measures and guidance] ha[ve] been communicated to the many different staff and agents of [the Secretary of State].”

### **Discussion**

30. The Claim Form on behalf of AQS sought a review of an alleged failure of the Secretary of State to provide support to AQS under section 95. The Secretary of State is now providing that support.
31. The Grounds prepared on behalf of AQS, based on what MHL is alleged to have said, concerned the question whether the Secretary of State had a policy not to accommodate persons with Covid-19 symptoms. On the evidence, that is not the case at present, and AQS' accommodation for a short period at a dedicated facility appears to demonstrate that.
32. On behalf of the Secretary of State it is also stated that there was no such a policy in the past. That is a matter for later, when the application for permission to apply for judicial review is considered, if it still needs to be in light of the fact that events have moved on.
33. Out of hours accommodation transport, and accommodation after Covid-19 symptoms have abated, each identified in the further written representations, are very important areas but were not the subject matter of the application for judicial review by which these proceedings were begun. There is also no question that communication, whether of measures, guidance or policy, is of crucial importance.
34. However the importance of these areas does not mean that these particular proceedings, commenced in the particular circumstances for AQS that I have described, and having seen the progress for AQS that I have described, are now the place where the Secretary of State should be required to set out further details of the arrangements she has made or is making more generally. The concerns have been raised in correspondence, helpfully in substance although perhaps unhelpfully in tone, and it is for the Secretary of State to consider them. Nor are these present proceedings the place for a wide debate on the question whether "there are no issues of lawfulness".
35. In all aspects I am mindful of the seriousness of the issues, and also of the pressures on the Secretary of State and the officials working in her Department, as well as on all those seeking to represent and bring forward the circumstances of vulnerable people like AQS.

## **Disposal**

36. The interim order has, for the time being and on the face of things, served its purpose, provided of course the Secretary of State (as it is clear she will) continues to provide accommodation whilst section 95 continues to apply.
37. I do not propose to discharge the interim order at least for now. If the Secretary of State wishes to press to a hearing an application to discharge the interim order, that is a matter for the Secretary of State and the Court will hear that application. It may not however be necessary or a priority.

38. I decline to make an order, as sought on behalf of AQS, that would expect the Secretary of State in these particular proceedings “urgently to clarify further her policy on accommodating persons suspected of Covid 19 and her communication of that policy ...”.
39. It is also now for AQS to consider, with the benefit of advice from his lawyers, whether it is useful or appropriate to seek to continue these proceedings. On behalf of AQS it is suggested that there is a claim for damages, but it will be for careful consideration with his advisers whether it is proportionate or appropriate to pursue that.