



Neutral Citation Number: [2021] EWHC 240 (Admin)

Case No: CO/332/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/02/2021

Before :

MR JUSTICE CHAMBERLAIN

Between :

KHARAJAN ARSHAD FATHULA MOHAMMAD

Claimant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

RANJIV KHUBBER (instructed by **Greater Manchester Law Centre**) for the **Claimant**
BEN KEITH (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 8 February 2021

Approved Judgment

MR JUSTICE CHAMBERLAIN :

Introduction

- 1 There was a directions hearing in this matter on 8 February 2021. The hearing was necessary because the Secretary of State for the Home Department failed to comply with a mandatory injunction issued by a judge of this Court. At the conclusion of the hearing, I gave directions. Given the potential importance of the issues raised, I said that I would give reasons in writing. These are my reasons.

The background to the claim

- 2 The Claimant is an Iranian national. In 2016 he was convicted of a sexual offence involving a minor and sentenced to 1 year and 8 months' imprisonment. After he had served this sentence, he was detained under immigration powers, but in May 2018 was released on bail subject to a condition that he wear an electronic tag. On release, he initially lived at a friend's house.
- 3 On 15 October 2020, the Claimant applied through the charity Refugee Action for accommodation and support from the Secretary of State under s. 4 of the Immigration and Asylum Act 1999. On 22 October 2020, the Secretary of State granted his request for support under that provision and informed him that he would receive further correspondence containing details of his accommodation and proposed travel plans once suitable accommodation had been found.
- 4 Over the next few months, no accommodation was provided. Refugee Action followed this up on a number of occasions, to no avail. On 7 December 2020, they sent a letter before claim. The Secretary of State responded on 14 December 2020 noting that because of the Claimant's conviction suitable accommodation was limited and that the pandemic had given rise to problems in sourcing accommodation.
- 5 On 22 January 2021, the Greater Manchester Immigration Unit emailed the Home Office indicating that since the previous night the Claimant had been street homeless and that he was suffering from depression, at risk of suicide and exposed to the risk of contracting COVID-19. They pointed out that his application for s. 4 accommodation had been granted some three months previously. On the same day, the Claimant was referred to the Greater Manchester Law Centre ("the Law Centre").
- 6 The Law Centre sent a pre-action letter on 22 January 2021, asking for a response by 25 January 2021. A response was received on 26 January 2021, but it was in generic terms and contained no attempt to deal with – nor indeed any substantive reference to – the specific facts of the Claimant's case. On 27 January 2021, the Law Centre sent a further email to the Secretary of State notifying her that funding had been granted and proceedings would be issued urgently in light of the fact that the Claimant was now street homeless and destitute.

The claim, application for interim relief and subsequent events

- 7 On Friday 29 January 2021, a claim for judicial review was issued, together with an application for urgent consideration applying for interim relief. The documents were copied to the Government Legal Service and the Home Office by email.
- 8 The claim was considered by Lang J on the same day. After considering the documents lodged by the Claimant, she made an Order. Paragraph 1 was in these terms:

“The Defendant do provide suitable accommodation and financial support for the Claimant, pursuant to section 4 of the Immigration and Asylum Act 1999, by 1 pm on Tuesday 2 February 2021, until the determination of the permission application or further order.”
- 9 Lang J also abridged time for service of the Defendant’s Acknowledgement of Service to 14 days from service of her Order, gave the Defendant liberty to apply to vary or discharge her order on 2 days’ notice to the Claimant’s solicitors, and reserved the costs. She said that the appropriate time to review the grant of interim relief would be at the permission stage, when the judge would have all the relevant information available.
- 10 The Government Legal Department was notified of this order by email from the court at 15.35 on 29 January. Ms Laura Gibbons of the Law Centre also emailed a copy of the order to the Government Legal Department, asking them to confirm the arrangements for the provision of accommodation in compliance with the order.
- 11 By 12.05 on Tuesday 2 February 2021, Ms Gibbons had received no response, so she emailed the Government Legal Department again. There was still no response. The deadline of 13.00 came and went and, at 14.11, Ms Gibbons emailed the court, copied to the Government Legal Department, noting that the Claimant remained homeless, the Defendant had failed to comply with the Order and making clear that she intended to make an application for contempt of court if confirmation was not received by 15.00 that the Order had been complied with.
- 12 Next, Ms Gibbons called the Government Legal Department’s enquiry line and obtained the name of the lawyer assigned to the matter. Ms Gibbons spoke to that lawyer. At 15.16, she emailed the lawyer her contact details. The email was acknowledged. At 16.39, Ms Gibbons emailed again asking if there was any update or explanation and noting that she had no choice but to pursue proceedings in respect of the Defendant’s failure to comply with the order.
- 13 There was no response. Ms Gibbons therefore contacted Manchester City Council, who provided temporary hotel accommodation for the night of Tuesday 2 February 2021, on condition that appropriate action was taken to secure compliance by the Defendant with its obligation.
- 14 In these circumstances, Ms Gibbons made a further application to the Court on Wednesday 3 February 2021, seeking further relief to compel the Secretary of State to comply with the order of Lang J. That application was not placed before a judge until the following day. Mr Ranjiv Khubber, for the Claimant, told me that the Claimant spent the night of 3 February on the street because, although Manchester City Council had found

somewhere for him to stay, he had no means of getting there. Mr Ben Keith, for the Secretary of State, said that it was his understanding that the Claimant had spent the night of 3 February in a hotel.

- 15 The Claimant's second application for interim relief came before me on Thursday 4 February 2021. I gave the Secretary of State until 16.00 that day to give a written explanation of the following matters:

“(a) whether she accepts that she has failed to comply with the Order of Lang J in this case; (b) if not, in what respects she disputes the matters set out in the Witness Statement of Laura Gibbons; if so, why she had failed to comply with Lang J's Order and how she intends to rectify this failure; (c) in any event, the name and business address of the official who was and is responsible for compliance with Lang J's Order”.

- 16 My Order prompted a letter on 4 February 2021 from Ms Jessica Da Costa, a Deputy Director at the Government Legal Department. In it she said this:

“I accept there has been a failure to comply with the order of Lang J dated 19 January 2021 (sic). I sincerely and profusely apologise to the Court and the Claimant for this failure.

The delay in providing accommodation to the Claimant was due to difficulties the Defendant has faced with compliance in the light of the current demand on the asylum support system. I accept that notwithstanding the email sent from GLD to the Claimant's solicitors and copied to the court at 12.08 today (copy attached) that the Defendant should have made the appropriate application to the court for an extension of time once it became clear that she could not comply with the previous Order.

...

The Defendant can now confirm that a suitable address has been sourced for the Claimant and that the transport is now being arranged to disperse the claimant to the address. It is hoped that this can be achieved by Monday due to the need to sanitise the property as a result of COVID-19. The defendant will consider appropriate steps to accommodate the claimant in the interim and make a retrospective application at the earliest opportunity tomorrow.

In relation to the request for identification of the official responsible for compliance with the order of Lang J, as the Court will be aware a number of individuals at the Home Office are responsible for provision of asylum support.”

- 17 The email referred to in this letter was in these terms:

“The [sic] has escalated this matter within the Accommodation Team and Serco NW have been told to treat this case as a priority. The Defendant continues to pursue the situation with the property provider. We will provide a further update as soon as at all possible. The Defendant is aware of the

Court Order and is the endeavouring to comply despite the deadline being passed.”

- 18 The papers were passed back to me and I made a second Order, requiring the Defendant to confirm in writing to the court by 12 noon on 5 February 2021 whether she had provided the Claimant with interim accommodation overnight from 4 to 5 February and, if not, why not. I noted that Lang J’s Order remained in force and fixed this hearing to give directions for the determination of (a) any “retrospective application” by the Defendant to vary the Order of Lang J and (b) any application by the Claimant pursuant to CPR Pt 81 in respect of the Defendant’s contempt of court.
- 19 In response to that, the Secretary of State made an offer of accommodation to the Claimant for the night of 4-5 February. The accommodation was in a hotel in London and the Secretary of State offered to take the claimant there by taxi from central Manchester. The emails attached show that the offer was made in an email at 19.23. Ms Gibbons responded that a return journey of 7-8 hours was not acceptable or realistic for one night’s accommodation. The Claimant slept on the street that night.
- 20 Ms Da Costa responded in a further letter on 5 February 2021 that the Claimant was to be accommodated from that afternoon in a property in Widnes and a pick-up was being arranged. The letter continued as follows:
- “I would like to assure the court that the Defendant understands its obligations to comply with court orders and regrets that the situation has arisen. The Defendant would like the opportunity to set out in detail what steps she took to source accommodation for the Claimant to address issues arising from her failure to comply with the court order. We therefore intend to make proposals as appropriate at the hearing on Monday for relevant directions to this effect.”
- 21 On the afternoon of 5 February 2021, the Secretary of State filed an application notice seeking to vary the order of Lang J to extend the date for providing accommodation to the Claimant to 5 February 2021 and/or for relief from sanctions for breach of the said order.
- 22 I make five observations at this stage.
- 23 First, paragraph 1 of Lang J’s order was not simply a procedural direction requiring a particular step in the litigation to be taken by a particular date. It was an interim mandatory injunction. The distinction between procedural directions and mandatory injunctions was explained by Johnson J in *R (Humnyntski) v Secretary of State for the Home Department* [2020] EWHC 1912 (Admin), [2021] 1 WLR 320, at [219]-[220]. As is usual in the Administrative Court, the injunction was made on paper rather than at a hearing and no penal notice was attached. Neither of these features detracts in any way from its binding effect: see *R (JM) v Croydon London Borough Council (Practice Note)* [2009] EWHC 2474 (Admin), [2010] 1 WLR 1658 (Collins J). It is well established that the court has power to issue an injunction (including a mandatory injunction) with binding legal effect against a Minister of the Crown: *M v Home Office* [1994] 1 AC 377.

- 24 Second, and relatedly, when the court grants a mandatory injunction, it must be complied with by the time stipulated unless it is set aside before that time. If it is not complied with by the stipulated time, the obligation to comply remains. A pending application to discharge or vary it does not excuse a failure to comply. The obligation to comply remains unless and until the order is set aside by a judge: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, [29]-[33]. In this case, there was no application to set aside Lang J's Order. The application to vary it came some three days after the expiry of the deadline contained in its paragraph 1 and only after two further Orders of the court. It is not obvious that the concept of relief from sanctions applies at all to a mandatory injunction, nor that an injunction can in principle or should in the present circumstances be varied retrospectively. Given that the Secretary of State's application notice seeks both relief from sanctions and retrospective variation of Lang J's order, these matters may have to be considered further in due course.
- 25 Third, on its face, paragraph 1 of Lang J's order imposed an obligation of result, not merely an obligation to make reasonable efforts to comply. As Ms Da Costa's letter accepts, the Secretary of State was in breach of that obligation from 13.00 on Tuesday 2 February 2021. She remained in breach until at least the evening of Thursday 4 February 2021 and possibly the afternoon of Friday 5 February 2021.
- 26 Fourth, breach of an injunction is a matter which can result in proceedings for contempt. This is so even where the breach is by a Minister. Such proceedings can be initiated under CPR r. 81.3(1) by the party at whose instance the injunction was granted. They can also be initiated by the Court on its own initiative. Indeed, CPR r. 81.6 obliges the court, where it considers that a contempt of court may have been committed, to consider whether to initiate contempt proceedings against the Defendant.
- 27 Fifth, however, not every breach of an injunction must necessarily result in proceedings for contempt – especially where, as here, compliance has been achieved (albeit late), there is an apology and a full explanation for the default is offered. In public law proceedings such as this, the appropriate course is to invite the Secretary of State to give a formal explanation of the breach, supported by witness statements; and then to allow a period for the Claimant and the Court to consider whether any further proceedings are necessary. That may depend on the explanation. If the evidence provides sufficient reassurance that the breach was not intentional and that measures have been put in place to avoid any recurrence, further proceedings may be unnecessary.
- 28 I shall therefore give the following directions:
- (a) The Secretary of State may by 4pm on 22 February 2021 file and serve:
 - (i) evidence in the form of a witness statement or statements explaining the circumstances in which she failed to comply with paragraph 1 of Lang J's Order of 29 January 2021;
 - (ii) submissions in support of her application to vary that Order and/or for relief from sanctions.
 - (b) The Claimant may by 4pm on 8 March 2021:

- (i) indicate in writing to the Court and the Defendant whether he intends to make an application under CPR r. 81.3(1);
 - (ii) if so, file and serve that application; and
 - (iii) in any event, respond to the Secretary of State's application to vary Lang J's Order and/or for relief from sanctions.
- (c) Thereafter, the papers are to be referred to me for:
- (i) directions pursuant to CPR r. 81.7(1) (if the Claimant has made an application pursuant to CPR r. 81.3(1));
 - (ii) a decision pursuant to CPR r. 81.6(1) as to whether the court should proceed on its own initiative against the Secretary of State (if no such application has been made); and
 - (iii) a decision on the Secretary of State's application to vary Lang J's Order and/or for relief from sanctions.
- 29 The costs of the Claimant's application of 3 February 2021 and of today's hearing will be reserved.