



Neutral Citation Number: [2023] EWHC 3235 (Admin)

Case No: AC-2023-MAN-00435

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Determination: Thursday 14th December 2023

Hand-Down: Tuesday, 19th December 2023

Before:

FORDHAM J

Between:

THE KING (on the application of LHG)
BY HER LITIGATION FRIEND, HHG

Claimant

- and -

BURY COUNCIL

Defendant

Eliza Sharron (instructed by Irwin Mitchell) for the **Claimant**
David Pojur (instructed by Bury Council) for the **Defendant**

Determination on the Papers: 14.12.23

Hand-down: 19.12.23

Approved Second 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.

FORDHAM J

FORDHAM J:

1. This is a sequel to my judgment [2023] EWHC 3162 (Admin) (the “Judgment”). It is a determination on the papers pursuant to §7 of the previous Order (Judgment §26). I am grateful to both parties and their representatives for their speedy assistance. This is a judicial act and embodying my reasons in a short judgment promotes open justice. I will treat the Judgment as read. Here is what I have decided. I have made directions for an expedited substantive hearing in March 2024, with a timetable for further evidence and submissions. As to interim relief, have determined that §6 of the Order be replaced by this Order:

In addition to the 4 hours per week of Direct Payments (at the hourly rate of £12.10) which the Claimant currently receives outside school holidays, and the 8 hours per week of Direct Payments which the Claimant currently receives during the school holidays, the Defendant shall provide an additional 10 hours of Direct Payments per week (making a total of 14 hours per week outside school holidays and 18 hours per week in school holidays).

2. The Court now has further documentary evidence from both parties. I am making no finding of fact; just assessing the evidence provisionally for the purposes of interim relief. I am not, and would not be at a substantive hearing, the primary decision-maker. These are not my resources to spend. There is a bigger picture. Caution is appropriate.
3. On its face, the evidence supports the position that Special Spirits was only available to the family from 1 September 2023 at £30 per session. It shows me that the arrears are (6.12.23) £1,489.20, from £2,070 billed at £30 per session, in circumstances where the family have paid £580.80. That is consistent with having been paid “up to date” at 2.8.23 (as the email that date recorded). This, and a new letter from the Director of Special Spirits (Chaya Einhorn), suggests that HHG’s witness statement (10.11.23) contained a mistake when it said “currently” (Judgment §22), but was in the same paragraph correct when it referred to the £30 rate and the debt being incurred.
4. I have submissions and documents from the Council, but nothing gives me any sufficient new enlightenment as to the basis for the position adopted in the original summary grounds of resistance (21.11.23), about the £15 rate being available to the family. There was the ambiguous “may” in the undisclosed email (2.8.23) obtained by the family, and the witness statement (10.11.23). The documents now disclosed show that there were indeed lines of communication with, and about, Special Spirits. I can also now see that £30 per session was already being funded by the Council for some other supported children. Mr Pojur’s submission is now that the Council “has been” under an “impression” that the £15 rate was available to the family. I cannot see a clear contention – still less one evidentially supported – that this is the position.
5. The position appears precarious. The family’s debts appear to be mounting. The sessions appear to be the lifeline described. Mr Pojur submits that “Direct Payments” (4 hours a week) “have been provided to ensure that the cost of some sessions can be met”. That is a submission. It appears to raise many questions about the purpose and the thinking. The Council started with “we fund these sessions” (1.8.23). It ended with allocating 4 hours spread across the week including preparing for Shabbat (Judgment §15). I am directing expedition, so interim relief will last for 3 months. Interim relief and expedition are properly to be considered together. Expedition lessens the injustice which arises, for each side, from interim defeat being followed by ultimate victory. I am satisfied that covering the sessions at the £30 rate, from now and going forward (no

back-payment being sought at this interim stage), is the course necessitated by the balance of justice (sometimes called the balance of convenience), with the assessed and allocated 4 hours as additional support.

6. That leaves the school holidays. The new documentation tells me that Special Spirits (at £240 per week) is not suitable for the Claimant in the school holidays. There are the December/January holidays and the February 2024 half-term to consider. With expedition, we are getting through to March 2024. I am not prepared to order interim relief to require the funding of a residential camp in London. I accept that the caring challenges are far greater for the family in the school holidays, with no school and no Special Spirits. But I do not need to start with the old 4 hours (plus 4 for the holidays). The new 10 extra hours is now no longer usable for, or required by reference to, the £30 rate Special Spirits sessions. It can be used differently. The Claimant's father is available at the holiday, but I am told that his school terms are longer than the Claimant's, by 4 days in December/January and 3 days in February. I need to factor in the current and ongoing 4 hours and there is the additional 4 hours allocated by the Council for school holidays. Standing back, I am sufficiently satisfied – for the school holidays and for this short term – that allowing the 10 hours (the equivalent of covering the Special Spirits sessions at the £30 rate), in addition to the existing 8 hours, provides 18 hours which constitutes the course necessitated by, and sufficient for, the balance of justice as mandatory interim relief for these next two school holidays.
7. Absent resolution by agreement, the substantive issues in this case will all be resolved at the substantive hearing in March 2024. That will be the time for substantive findings in this case. For now, I have identified what – as a judge with a secondary and supervisory jurisdiction – I consider to be the just interim position having regard to the nature of the claim, the currently available evidence, the legal framework and all the circumstances.

Determination: 14.12.23

Hand-Down: 18.12.23