Neutral Citation Number: [2016] EWHC 1211 (Admin)

CO/6507/2015; CO/6508/2015; CO/6489/2015; CO/6514/2015
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 8 April 2016

B e f o r e:

MRS JUSTICE THIRLWALL

Between:
(1) VO
(2) RAFIQ
(3) SATHANANTHAM
(4) ALI

Claimants

v

SECRETARY OF STATE FOR JUSTICE

Defendant

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(Official Shorthand Writers to the Court)

Ms Stephanie Harrison QC (hearing only) and **Mr G O'Ceallaigh** appeared on behalf of the **Claimants**
Mr T Poole (instructed by the Government Legal Department) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved)

MRS JUSTICE THIRLWALL:

1. These are four renewed applications for permission to claim judicial review. Jay J ordered that the four applications be linked on 22 December 2015, and they were put before the single judge who considered the papers and refused permission in all four cases on 4 March this year. I heard extensive argument from Ms Harrison QC who appears on behalf of all 4 claimants, and from Mr Poole, who represented the Secretary of State.
2. The claimants seek judicial review on 5 grounds. The grounds and other documents in support are discursive. I have not dealt with all the arguments but concentrated on those issues that I needed to determine in order to decide arguability. In short, I give permission on grounds 1, 3 and both limbs of ground 5. I refuse permission on grounds 2 and 4. These are my reasons.

<u>The background</u>

3. At the beginning of proceedings, all four claimants were in immigration detention. All four have served prison sentences in the United Kingdom for offences committed here. The focus of these claims for judicial review is upon the lawfulness of the system operated by the Secretary of State for providing accommodation under section 4(1)(c) of the Immigration and Asylum Act 1999 to people released on bail from immigration detention.
4. Since proceedings began, one claimant, Mr Ali, has been released on bail. The precise circumstances of his release are unclear. It occurred one day after the Secretary of State had successfully opposed his bail application before the First-tier Tribunal. At the time of the application before the First-tier Tribunal, the Secretary of State had offered section 4 accommodation to Mr Ali, but it appears that the accommodation was not

available when he was released, and he was released to another address that had earlier been available to him but which was no longer available. I was told that he is now street homeless but complying with bail conditions.

5. Section 4(1) reads as follows:

> "The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons...
>
> (c) released on bail from detention under any provision of the Immigration Acts."

6. It is accepted that section 4(1)(c) does not confer a duty. It is a power. It is accepted by the Secretary of State that she should use reasonable endeavours to secure accommodation. In this case the Secretary of State has not refused to provide accommodation (a refusal may be appealed to the First-tier Tribunal). On the contrary, she has accepted the applications and it is her case that she is using reasonable endeavours to secure the provision of accommodation. It is common ground that there have been delays in bringing the applications for accommodation to a conclusion. The overall delay from application to the hearing is now up to 18 months. The significance of the length of the delays is a matter in issue between the parties. The Secretary of State does not suggest that there has not been delay; not all of the delay is yet explained. At least one period is said to be the result of oversight. Some of the delay is said to be the result of maladministration.

7. The report of Bail for Immigration Detainees ("BID"), a well known organisation which intervened in an earlier case to which I shall turn in a moment, makes clear that in many cases accommodation is provided without prolonged delay or great difficulty but there is an increasing problem for those offenders who are considered to be high risk. These

claimants, like others, are part of a significant minority who, because of their offending histories and their risk profiles cannot be accommodated in shared accommodation. There is a shortage of suitable accommodation for this category of person. A practical effect of the delays in the provision of accommodation is that any application to the First-tier Tribunal for bail is, arguably at least, bound to fail. In those circumstances, it is argued, the right to apply for bail has been unlawfully curtailed. It is the Secretary of State's case that she has taken reasonable steps to secure accommodation, and even had she succeeded in doing so, it does not follow that any of the applicants would in fact be released on bail.

8. A very similar, but not identical challenge, was brought in 2010. It came before Nicol J in the case of Razai v Secretary of State for the Home Department [2010] EWHC 3151 (Admin). The first paragraph summarises the difficulties that the claimants faced in those cases. In that case the delays complained of were at most 7 months, very significantly shorter than the delays here. There were other grounds of complaint too. BID was an intervener before Nicol J. At paragraph 92, Nicol J considered the position as then set out on behalf of the Secretary of State. At that stage the Secretary of State had changed her system for the securing of accommodation in order to avoid waste and improve efficiency. The apparently unexpected effect of the new system was that fewer places were available for people who were considered to be high risk. At paragraph 92 Nicol J said:

> "The SSHD's evidence had explained why ad hoc arrangements had not been made for the individual high risk cases. There were plans being made for the next round of contracts to make greater provision for self-contained accommodation, but this had to be done within the department's limited budget."

9. At paragraph 99:

> “Notably, in the summer of 2010, there was a reappraisal of some of the cases which had previously been identified as requiring self-contained accommodation and offers of Initial Accommodation were made instead. Steps are being taken to expand the amount of self-contained accommodation that is available. But, as the Claimants accept, the amount of available resources, is a real constraint which the Court cannot ignore. It would seem that the completion of some pro formas is taking very much longer than the policy itself says is appropriate. The reasons for this are not very clear, but, here too, the SSHD appears to be taking steps to deal with the issue. In any case, as Carnwarth LJ emphasised, maladministration and muddle have to be distinguished from illegality."

10. That was over 5 years ago. Notwithstanding what was said to Nicol J in that case, I was told that there has been no increase in the availability of accommodation for high risk cases. That may well explain a large proportion of the lengthy delays now. It may well be that reductions in funding are the reasons for that shortage. The courts must have regard to the availability of resources but there is a difference, at least arguably, between a shortage of administrative resources to run the system effectively and a shortage of the accommodation required for the section 41 power to achieve its purpose.

<u>The grounds relied on</u>

11. Grounds 1 and 3 are linked, in my view. High risk applicants are entitled to apply for bail. In any individual case it may well be refused for reasons which have nothing to do with the availability of accommodation. But I accept that where a high risk applicant has no address and is said to be a flight risk, the chances of his obtaining bail are significantly diminished. It is therefore arguable that the effect of protracted delays in the system is to create unfairness to high risk applicants (ground 3) and arguably to defeat the purpose of section 4 (ground 1).

12. I do not consider ground 2 to be arguable. I pressed Ms Harrison on this. The only breaches of policy identified are failures to meet the deadlines (if that is what they are, the Secretary of State refers to them as targets) in the policy guidance to case workers.

At each stage a time is set for a particular process to take place. Ms Harrison argues that each time that period is exceeded, there is a breach of policy and the breach is unlawful. This is not, in my judgment, arguable, and I refuse permission on that ground.

13. Ground 4. I agree with the single judge's observations. She accepted the submission of the Secretary of State at paragraph 84 of her summary grounds of defence. The claimant's position is plainly distinguishable from the situation of prisoners addressed in Haney [2014] UKSC 66. Whether any of the mattes relied on under ground 4 or elsewhere are relevant to other grounds, I shall leave to the judge who determines this case.

14. I consider that both limbs of ground 5 are arguable.