

The Queen on the Application of Piwandi Sabiri v London Borough of Croydon

CO/614/2012

High Court of Justice Queen's Bench Division the Administrative Court

23 April 2012

[2012] EWHC 1236 (Admin)

2012 WL 1358000

Before: Charles George QC (Sitting as a Deputy High Court Judge)

Monday, 23 April 2012

Representation

Mr Stephen Knafler QC and Miss Irena Sabic (instructed by Pierce Glynn) appeared on behalf of the Claimant.

Mr Andrew Lane (instructed by London Borough of Croydon, Legal Services) appeared on behalf of the Defendant.

Judgment

The Deputy Judge:

1 The claimant is an Iranian Kurd. He was born on 27 December 1990, although the claimant asserts he is a year younger. For the sake of these proceedings, it has been agreed that matters are to be considered on the basis of the earlier date, which is the date at which the defendant considers him to have been born.

2 The claimant made his way by lorry from Iran to this country via various other countries including Greece, and on arrival in this country in 2007 he put in a claim for asylum which was rejected and his appeal failed. He has been in the country since then without any rights, and on condition that he is not to undertake any work.

3 He was "looked after" by the local authority, who are the defendant in these proceedings, under [section 23 of the Children Act 1989](#) ("the 1989 Act") until he became 18 in December 2008. Thereafter, with some interruption, he was the beneficiary of the local authority's continuing functions in respect of former relevant children under [section 23C](#) of the 1989 Act, as amended by the [Children \(Leaving Care\) Act 2000](#) ("the 2000 Act") until his 21st birthday in December 2011.

4 A dispute having arisen between the claimant and the local authority in relation to the continued provision of accommodation and assistance, proceedings were issued for judicial review. The court date for receipt of the application is 20 January 2012. In the claim form, various declarations and other orders were sought, and an interim order that the defendant be restrained from ceasing to support and accommodate the

claimant until the resolution of the application for judicial review.

5 So far as the application for interim relief is concerned, that first came before Keith J, who on 20 January 2012, dealing with the matter on the papers, stated that he had difficulty in discerning the basis on which the claimant was entitled to accommodation or support now that he was to be treated as aged 21. He called for some further explanation to be provided on this matter by the claimant's advisers, and on receipt of the further materials, he still expressed concern. What he said, in a further note also dated 20 January 2012, was that he did not think that assistance of the kind referred to in [section 23C\(4\)\(b\)](#) could include accommodation. He did not believe that the language of [section 24B\(2\)](#) could justify that, and therefore it followed that the Council's duty to provide the claimant with accommodation could not be regarded as having been extended.

6 He briefly commented in respect of [section 23CA\(5\)](#) , added by the [Children and Young Persons Act 2008](#) ("the 2008 Act"), that accommodation could not be regarded as among the kinds of assistance to which that section applied.

7 Notwithstanding those observations, interim relief was eventually granted, and when the matter came before Ouseley J for an oral permission hearing, the point was held to be arguable, permission to bring the judicial review proceedings was granted, and the matter was to come on before the court for a substantive hearing today (ie 23 April).

8 Within recent weeks there have been a number of recent developments in the case. In particular, the claimant's solicitors (and I should say these are specialist immigration solicitors, not the solicitors acting for him in the proceedings before me) have submitted a detailed application that the claimant should be entitled to remain in the country in that he needs asylum and on human rights grounds. Additionally, the defendant has very recently reviewed the partnership plan (that is a statutory document), and has made a human rights determination of its own in respect of the claimant, concluding, in brief, that he should not have the benefit of further full-time education, and that he should either have some part-time education, which he is said to be able to support through obtaining work, or alternatively that he should make his own way back to Iran.

9 These are very recent developments, and in the circumstances, the parties are agreed that time is needed on both sides to reconsider this litigation, and in particular the claimant may wish to seek to amend, or indeed re-amend, the statement of facts and grounds on which relief is sought. For this reason, it was common ground that it was not sensible that the substantive proceedings continue today.

10 On the other hand, the parties were agreed that the court should determine a question of statutory construction concerning the extent of a local authority's powers under [section 23C\(4\)\(b\)](#) of the 1989 Act, as amended by [section 2\(4\)](#) of the 2000 Act. Further amendments have been made to [section 23C](#) by [section 21](#) of the 2008 Act. In effect, I am asked to reach a determination on what is a preliminary issue. It is unlikely to resolve the matters in dispute between the parties, but they assure me that they will be assisted by having a determination of that matter at this stage. I am also asked to assume that the provisions in [section 23C and 23CA](#) are not disapplied in this case under [Schedule 3 of the Nationality, Immigration and Asylum Act 2002](#) .

11 In brief, the issue is whether, on a proper construction, [section 23C\(4\)\(b\)](#) is sufficiently wide to cover assistance by way of financial contribution to the cost of accommodation in connection with the receipt of education, the contention of the claimant being that the sub-section does so extend, whereas the defendant argues that the assistance which can be provided does not extend to contributions to the cost of accommodation in connection with education.

12 The terms of the proposed declaration sought by the claimant are “that the words “contributing to expenses incurred by him in living near the place where he is or will be receiving education or training” in [section 24B\(2\) and 23CA\(5\) of the Children Act 1989](#) permit the local authority to make a contribution, including 100 per cent contribution, to accommodation and accommodation-related expenses.”

Statutory framework

13 In the case of [R\(M\) v Hammersmith and Fulham London Borough Council \[2008\] 1 WLR 535](#), Baroness Hale had cause to review the 1989 Act and the duties that arose under it. She explained the nature of the duties which arose towards a “looked after” child, and how once a child is “looked after” by a local authority, a great many other duties arise. As she said at paragraph 20 of her speech:

“These include, crucially, the duty to safeguard and promote her welfare and to maintain her in other respects apart from providing accommodation for her ... It would not be consistent with those duties, for example, to place a young person in a bed and breakfast hotel or hostel accommodation without providing her with enough money for food and other essentials. Although the local authority do not have “parental responsibility” for a child who is accommodated under section 20, they are nevertheless replacing to some extent the role played by a parent in the child's life, and are expected to look after the child in all the ways that a good parent would.”

14 Then in paragraph 21 she continued by referring to the duties towards older children inserted by the 2000 Act. Of these, she said:

“The aim was to supply for those older children the same sort of continuing support and guidance which children can normally expect from their own families as they move from childhood to adulthood.”

15 Turning then to the statutory provisions which are in play, the first is [section 23C](#) of the 1989 Act (as amended), which is headed, “Continuing functions in respect of former relevant children”. It provides:

“23C Continuing functions in respect of former relevant children

(1) Each local authority shall have the duties provided for in this section towards—

(a) a person who has been a relevant child for the purposes of section 23A (and would be one if he were under eighteen), and in relation to whom they were the last responsible authority; and

(b) a person who was being looked after by them when he attained the age of eighteen, and immediately before ceasing to be looked after was an eligible child,

and in this section such a person is referred to as a “former relevant child”.

(2) It is the duty of the local authority to take reasonable steps—

(a) to keep in touch with a former relevant child whether he is within their area or not; and

(b) if they lose touch with him, to re-establish Contact.

(3) It is the duty of the local authority—

(a) to continue the appointment of a personal adviser for a former relevant child; and

(b) to continue to keep his pathway plan under regular review.

(4) It is the duty of the local authority to give a former relevant child—

(a) assistance of the kind referred to in section 24B(1), to the extent that his welfare requires it;

(b) assistance of the kind referred to in section 24B(2), to the extent that his welfare and his educational or training needs require it;

(c) other assistance, to the extent that his welfare requires it.

(5) The assistance given under subsection (4)(c) may be in kind or, in exceptional circumstances, in cash.

(5A) It is the duty of the local authority to pay the relevant amount to a former relevant child who pursues higher education in accordance with a pathway plan prepared for that person.

(5B) The appropriate national authority may by regulations—

(a) prescribe the relevant amount for the purposes of subsection (5A);

(b) prescribe the meaning of “higher education” for those purposes;

(c) make provision as to the payment of the relevant amount;

(d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by the local authority from a former relevant child to whom a payment has been made.

(5C) The duty set out in subsection (5A) is without prejudice to that set out in subsection (4)(b).

(6) Subject to subsection (7), the duties set out in subsections (2), (3) and (4) subsist until the former relevant child reaches the age of twenty-one.

(7) If the former relevant child's pathway plan sets out a programme of education or training which extends beyond his twenty-first birthday—

(a) the duty set out in subsection (4)(b) continues to subsist for so long as the former relevant child continues to pursue that programme; and

(b) the duties set out in subsections (2) and (3) continue to subsist concurrently with that duty.

(8) For the purposes of subsection (7)(a) there shall be disregarded any interruption in a former relevant child's pursuance of a programme of education or training if the local authority are satisfied that he will resume it as soon as is reasonably practicable.

(9) Section 24B(5) applies in relation to a person being given assistance under subsection (4)(b) or who is in receipt of a payment under subsection (5A) as it

applies in relation to a person to whom section 24B(3) applies.

(10) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section as they apply in relation to assistance given under that section.”

16 Within this section, I am of course solely concerned to construe [section 23C\(4\)\(b\)](#) . I interpose, however, to say that, although the claimant in this case is now over 21, it is part of his argument in the substantive proceedings that, notwithstanding [section 23C\(6\)](#) , he can benefit from the provisions of [section 23C\(7\)](#) .

17 [Section 23C\(4\)\(b\)](#) expressly refers to [section 24B\(2\)](#) of the same Act, and this provides under the heading “Employment, education and training”:

“(1) The relevant local authority may give assistance to any person who qualifies for advice and assistance by virtue of section 24(1A) or section 24(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.

(2) The relevant local authority may give assistance to a person to whom subsection (3) applies by—

(a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or

(b) making a grant to enable him to meet expenses connected with his education or training.

(3) This subsection applies to any person who—

(a) is under twenty-four; and

(b) qualifies for advice and assistance by virtue of section 24(1A) or section 24(2)(a), or would have done so if he were under twenty-one.

(4) Where a local authority are assisting a person under subsection (2) they may disregard any interruption in his attendance on the course if he resumes it as soon as is reasonably practicable.

(5) Where the local authority are satisfied that a person to whom subsection (3) applies who is in full-time further or higher education needs accommodation during a vacation because his term-time accommodation is not available to him then, they shall give him assistance by—

(a) providing him with suitable accommodation during the vacation; or

(b) paying him enough to enable him to secure such accommodation himself.

(6) The "appropriate national authority may prescribe the meaning of "full-time", "further education", "higher education" and "vacation" for the purposes of subsection (5)."

18 The key provision here for present purposes is [section 24B\(2\)](#) , although [section 24B\(5\)](#) plays an important part in the defendant's submissions in this matter.

19 For completeness, it is also necessary to refer to [section 23CA](#) , "Further assistance to pursue education or training". It provides:

"(1) This section applies to a person if—

(a) he is under the age of twenty-five or of such lesser age as may be prescribed by the appropriate national authority;

(b) he is a former relevant child (within the meaning of section 23C) towards whom the duties imposed by subsections (2), (3) and (4) of that section no longer subsist; and

(c) he has informed the responsible local authority that he is pursuing, or wishes to pursue, a programme of education or training.

(2) It is the duty of the responsible local authority to appoint a personal adviser for a person to whom this section applies.

(3) It is the duty of the responsible local authority—

(a) to carry out an assessment of the needs of a person to whom this section applies with a view to determining what assistance (if any) it would be appropriate for them to provide to him under this section; and

(b) to prepare a pathway plan for him.

(4) It is the duty of the responsible local authority to give assistance of a kind referred to subsection (5) to a person to whom this section applies to the extent that his educational or training needs require it.

(5) The kinds of assistance are—

(a) contributing to expenses incurred by him in living near the place where he is, or will be, receiving education or training; or

(b) making a grant to enable him to meet expenses connected with his education and training.

(6) If a person to whom this section applies pursues a programme of education or training in accordance with the pathway plan prepared for him, the duties of the local authority under this section (and under any provision applicable to the pathway plan prepared under this section for that person) subsist for as long as he continues to pursue that programme.

(7) For the purposes of subsection (6), the local authority may disregard any interruption in the person's pursuance of a programme of education or training if they are satisfied that he will resume it as soon as is reasonably practicable.

(8) Subsections (7) to (9) of section 17 apply to assistance given to a person under this section as they apply to assistance given to or in respect of a child under that section, but with the omission in subsection (8) of the words "and of each of his parents".

(9) Subsection (5) of section 24B applies to a person to whom this section applies as it applies to a person to whom subsection (3) of that section applies.

(10) Nothing in this section affects the duty imposed by subsection (5A) of section 23C to the extent that it subsists in relation to a person to whom this section applies; but the duty to make a payment under that subsection may be taken into account in the assessment of the person's needs under subsection (3)(a).

(11) In this section "the responsible local authority" means, in relation to a person to whom this section applies, the local authority which had the duties provided for in section 23C towards him."

20 The similarity between [section 23C\(4\)\(b\) and section 23CA\(5\)](#) is readily apparent. The claimant in this case advances precisely the same arguments in respect of [section 23CA\(5\)](#) as he does in respect of the other provision, although reliance on [section 23CA](#) is a fall-back position so far as his case is concerned.

Statutory guidance

21 The Secretary of State is under a statutory duty to give guidance in respect of the exercise by local authorities of their powers under the 1989 Act (as amended) and he has done so in two sets of guidance: first, in guidance which was given on 8 October 2001, namely the [Children \(Leaving Care\) Act 2000](#) guidance; and then more recently and following the 2008 Act and further regulations, the Secretary of State has published further guidance called Planning Transition to Adulthood for Care Leavers. My attention has been drawn to various passages in these two sets of guidance. Of course, as counsel readily accept, the guidance cannot be determinative as to the meaning of the statutory provision.

22 In the first guidance, paragraph 1 of the Introduction emphasised that—

“The main purpose of the [Children \(Leaving Care\) Act 2000](#) is to improve the life chances of young people living in and leaving local authority care. Its main aims are: to delay young people's discharge from care until they are prepared and ready to leave; to improve the assessment, preparation and planning for leaving care; to provide better personal support for young people after leaving care; and to improve the financial arrangements for care leavers.”

23 Paragraph 9 set out the aims and objectives for local authorities, to include under item (e):

“Enable young people leaving care to fulfil their potential in education, training and employment ... ”

24 Paragraph 13 said:

“Whether or not the local authority has parental responsibility (under a care order), it adopts, in effect part of the role of the parent of a young person it is looking after and to whom it will provide subsequent advice and assistance.”

25 Assistance with education and training was dealt with in paragraph 22 and 23 of Chapter 8:

“22. Councils have a duty to assist former relevant children with the expenses associated with education and training. Unlike the other duties, which cease when the young person reaches 21, this duty runs until the young person has completed the programme of education and training agreed with the responsible authority and set out in the Pathway Plan. Since young people who have been looked after are liable to have suffered disruption to their education, they are quite likely to be embarking on Further Education, for example, later than their peers, and this will be reflected in their Pathway Plan. Given that the Plan must be reviewed and revised at least every six months, there is scope to take account of a former relevant child's educational achievement should this qualify them, say, to undertake a degree course and then postgraduate work.

The responsible authority would not be expected to provide accommodation and maintenance for those in Higher Education: under such circumstances, the prime funding must come from whatever mainstream sources would be available to support anyone else. However should the young person's welfare or educational or training needs require it the responsible authority would be under a duty to provide assistance such as travel or equipment costs as well as contributing to the expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training. Former relevant children in Further Education may not have access to any other help – Income Support and Housing Benefit are not available for those aged 19 and over in full time Further Education – and in such circumstances the responsible authority would need to provide them with maintenance and accommodation.

23. In addition, authorities are under a duty to provide vacation accommodation, or funds to secure it to all local authority care leavers in Higher Education who need it. The duty also extends to Further Education courses which require a student to live away from home. The duty applies in relation to all vacations within a course but not any time immediately preceding the first term or after the final term of the course as a whole."

26 My attention was drawn by counsel to various passages within the more recent guidance, particularly those in chapter 5 and the section, "Planning for education, training and careers". Paragraph 5.4 reads:

"Local authorities should make sure that they have policies and processes in place to support every care leaver undertaking apprenticeships, traineeships, vocational courses or employment. These policies will need to take into account the universal financial support that the young person will receive and allow for the local authority to assess whether the young person requires any additional financial contribution from the authority, so that they can benefit fully from taking part in a broad range of training opportunities or employment."

27 Paragraph 5.6 says:

"Young people require a great deal of stability when undertaking education activities. Early planning is vital ... "

28 Paragraph 5.7 says:

"Young people will need to know what practical and financial support they will receive from local authorities ... "

29 Paragraph 5.9 says:

“Pathway plans must set out accommodation arrangements, including financial arrangements during term time, short vacations and the long vacation during the summer.”

30 My attention was also drawn to appendix B of the latest guidance, where, in a section headed “Higher education”, paragraph B.7, giving examples of financial assistance which a local authority might give, listed:

- A living and maintenance allowance (term time and vacations);
- An accommodation grant (term time and vacations) – this may involve providing allowances to enable young people to remain with their previous foster carers during the whole course, or to return to them in the vacations. It may also be used to fund university halls of residence and/or independent accommodation ... ”

Other regulations

31 My attention was also drawn to the [Care Leavers \(England\) Regulations 2010](#) (“the 2010 Regulations”). In these, particular reference was made to [Regulation 7](#) dealing with the review of pathway plans:

“(1) The responsible authority must review the pathway plan of each relevant and former relevant child in accordance with this regulation.

(2) The responsible authority must arrange a review—

(a) if requested to do so by the relevant or former relevant child,

(b) if the responsible authority, or the personal adviser, consider a review necessary, and

(c) in any event, at intervals of not more than six months.

(3) If the responsible authority provide the relevant child or former relevant child with accommodation under section 23B or section 24B, the responsible authority must also—

(a) arrange a review as soon as is practicable after the end of a period of 28 days beginning on the day on which the accommodation is first provided,

and

(b) on completing a review under sub-paragraph (a), determine at what intervals (not exceeding three months) subsequent reviews will be carried out.

(4) In carrying out a review the responsible authority must—

(a) to the extent it considers it appropriate to do so, seek and take account of the views of the persons mentioned in regulation 5(4)(b) or, as the case may be, regulation 5(5)(b), and

(b) consider whether, in relation to each of the matters set out in the pathway plan, any change is necessary.

(5) The results of the review and any change to the pathway plan must be recorded in writing.”

32 I was also referred to [Regulation 8](#) , “Functions of personal advisers”:

“(1) A personal adviser has the following functions in relation to the relevant child or former relevant child for whom they are appointed—

(a) to provide advice (including practical advice) and support,

(b) where applicable, to participate in the assessment and the preparation of the pathway plan,

(c) to participate in reviews of the pathway plan,

(d) to liaise with the responsible authority in the implementation of the pathway plan,

(e) to co-ordinate the provision of services, and to take reasonable steps to ensure that the child makes use of such services and that they are appropriate to the child's needs,

(f) to remain informed about the relevant child's or former relevant child's progress and wellbeing, and

(g) to keep a written record of contacts with, and of services provided to, the relevant or former relevant child.

(2) In addition, where accommodation is provided to a relevant child or former relevant child by the responsible authority under section 23B or section 24B, the personal adviser must visit the relevant child or former relevant child at that accommodation—

(a) within 7 days of the accommodation first being provided,

(b) subsequently, before the pathway plan is reviewed under [regulation 7\(3\)](#) , and

(c) at subsequent intervals of not more than two months.”

33 As will be apparent, both [Regulation 7\(3\)](#) and [Regulation 8\(2\)](#) refer to [section 24B](#) , which is one of the provisions which I am asked to construe.

34 Again, the assistance which the court can obtain from statutory regulations is limited since interpretation is primarily a matter of the meaning of the words used.

Submissions

35 Mr Knafler for the claimant contends that the words of [section 24B\(2\)](#) are clear. When they refer to the relevant local authority giving assistance to a qualifying person by “contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training”, there is no reason, so he says, to exclude from those expenses, the expenses of accommodation.

36 Initially, he had been minded to assert that 24B(2) was broad enough to include the provision of accommodation, but on reflection, his revised submission was that the words did not so extend because that would lead to a strained interpretation of the words used, since the provision of accommodation does not naturally fall within either (a) or (b) of [section 24B\(2\)](#) . Nonetheless, there was every reason to suppose that assistance in relation to expenses incurred by a person in living near his place of education should include, and did include, accommodation costs. Likewise, although not essential to his submission, he argued that in [section](#) the making of a grant to enable a person to meet expenses connected to his education or training could readily

include expenses in relation to the cost of accommodation.

37 Mr Knafler was in no way deterred by the provision in [section 24B\(5\)](#) where express reference is made to the provision of suitable accommodation during the vacation in certain circumstances. It might, he said, be considerably more difficult for the individual concerned to find for himself vacation accommodation when his term time accommodation was not available to him, hence the more onerous duty on the local authority under [section 24B\(5\)](#) in those circumstances. But 24B(5) was not an indication that expenses under 24B(2)(a) excluded accommodation costs.

38 Although the words in Mr Knafler's submission were not ambiguous, and what he was arguing for did not, so he asserted, involve any form of strained interpretation, nevertheless a purposive approach to the words used supported, so he said, the argument for which he was contending. He drew my attention to Lord Steyn's observations in [Attorney General's Reference \(No 5 of 2002\) \[2005\] 1 AC 167](#) at paragraph 31 where Lord Steyn said:

“No explanation for resorting to purposive interpretation of a statute is necessary. One can confidently assume that Parliament intends its legislation to be interpreted not in the way of a black letter lawyer, but in a meaningful and purposive way giving effect to the basic objectives of the legislation.”

39 Here, so Mr Knafler says, the basic objectives of the legislation were to provide the sort of assistance to qualifying persons which a parent would provide, or would have provided had such a parent existed. Such a parent would have been the primary source of funding towards the costs of accommodation during further and higher education, and it was essential if the statutory provisions were to fulfil their purpose for them to be given the meaning for which he contended.

40 Furthermore, he said that the various references in the guidance and in the regulations were perfectly consistent with, and supportive of, the interpretation for which he argued.

41 Mr Lane, for the local authority, whilst accepting that this is a difficult point of statutory instruction, contends that a narrow interpretation of the relevant statutory provisions is to be preferred. Central to his submission was the contention that the costs of accommodation connected with the education or training of a qualifying person were likely to be met from other sources, although those other sources were not clearly identified to me, and he drew the distinction between the provisions of the 1989 Act contained in [section 17](#) and following, which made it clear that there were duties to provide or to secure sufficient accommodation for children, which he distinguished from the absence of any such express provision in relation to those who had passed the age of 18.

42 It followed, so Mr Lane argued, that the words of [section 24B\(2\)\(a\)](#) were broad enough to cover, for instance, travel expenses or the expenses of childcare, and the scope of a grant under [section 24B\(2\)\(b\)](#) could cover the costs of the provision of the course or materials in connection with it, but accommodation costs fell neither within 24B(2)(a) nor (b).

43 He also placed some reliance on the provisions in the 2010 Regulations to which I have already referred, arguing that the references in those regulations to accommodation provided under [section 24B](#) were references to, and only to, accommodation provided under [section 24B\(5\)](#), ie vacation accommodation.

44 Both parties [referred me to the Court of Appeal decision in R\(O\) v Barking and Dagenham London Borough Council \[2011\] 1 WLR 1283](#), a case in which the Court of Appeal had cause to construe the ambit of [section 23C\(4\)\(c\)](#) of the 1989 Act (as amended). In that case Tomlinson LJ, with whose judgment the other two members of the court agreed, concluded that the expression “other assistance, to the extent that his welfare requires it” included the provision of accommodation. As Tomlinson LJ made clear in paragraph 30 of his judgment, the “critical point” was the use by the draftsman in [sub-section \(4\)\(c\)](#) of language which had already twice been construed by the Court of Appeal in a similar context as encompassing the provision of accommodation. In those circumstances, he reached the conclusion that [sub-section \(4\)\(c\)](#) should be read broadly, and that the learned judge below had erred in holding that the sub-section afforded to a local authority no power to provide accommodation to a former relevant child.

45 When this claim was launched, the claimant made a bold submission that it was part of the ratio of Tomlinson LJ that the interpretation of [section 23C\(4\)\(b\)](#), with which the court is now concerned, had been part of the ratio of his decision, and that he had thereby endorsed a wide interpretation of [sub-section \(4\)\(b\)](#) to include the provision of accommodation.

46 On further reflection, Mr Knafler did not seek so to argue, accepting that the Court of Appeal had not based itself on any conclusion in relation to the earlier sub-section.

47 What is, however, clear, and Mr Knafler bases considerable reliance on this, is that all parties in that litigation, including some very experienced counsel, were plainly of the view that [section 23C\(4\)\(a\)](#) did enable a local authority to provide assistance with accommodation which was near to a place of employment, and that the same was true of [sub-section \(4\)\(b\)](#) in respect of educational accommodation: see in particular paragraphs 27 through to 28 of the judgment.

48 As against that, Mr Lane, in addition to pointing out that that was merely the submissions of counsel without any endorsement from the Court of Appeal, submits that, on the facts of the Barking and Dagenham case, it was in the interests of the local authority to make that concession so as to seek to reduce the scope of [sub-section \(4\)\(c\)](#). He argues that, on that account, very limited weight should attach to that concession in the Barking and Dagenham case.

Conclusions

49 I agree that the decision in the Barking and Dagenham case does not assist in the matter I have to decide, for the reasons set out in paragraph 30 of Tomlinson LJ's judgment. I take account of the way that counsel approached the earlier provision in that case, but I readily accept that it cannot determine in any way what is the true

construction of the section.

50 I gain little assistance from the 2010 Regulations, and I am wary of placing reliance on the contents of the two sets of guidance, although I note that they are more consistent with a broad than a narrow reinterpretation of [section 23C\(4\)\(b\)](#) .

51 From the outset it was plain to me that [section 24B\(2\)](#) , on its simple wording, could not extend to the provision of accommodation itself, as is now conceded by Mr Knafler. On the other hand, I do not consider that [section 24B\(5\)](#) is determinative of, or assists, the construction of [section 24B\(2\)](#) . I see no reason to restrict the expenses referred to in [section 24B\(2\)\(a\)](#) to expenses other than the cost of accommodation. Similarly, in [section 24B\(2\)\(b\)](#) , I regard it as an unnatural construction of the phrase “expenses connected with his education or training” to exclude accommodation expenses. The same considerations apply to [section 23CA\(5\)](#) , the wording of which mirrors [section 24B\(2\)\(b\)](#) .

52 I do not find it necessary to invoke a purposive approach, since the ordinary and natural meaning of the words seems to me to support a broad construction. It is, however, some encouragement that a narrow construction would, as it seems to me, be inconsistent with the purpose of this legislation, which is that the local authority should stand in the place of a parent for those who lack a natural parent, who would normally fund those accommodation expenses.

53 For those reasons, I make a declaration in the terms sought, which have already been set out in paragraph 12 of this judgment. I make it plain, however, that I am not determining that the claimant is entitled to financial support under either [section 24B\(2\)](#) or [section 23CA\(5\)](#) . That is not the matter I have been asked to determine, and it will be for consideration on another occasion, if these proceedings continue.

54 Now, I think we have the question of some directions, have we not? I think formally I ought to give leave for the claim to be amended to include seeking that declaration. I think the claimant also formally needs leave to put in the original amended statement of facts and grounds and so forth. So I give leave for that. I give leave to the claimant to file — is it two more witness statements, Mr Knafler?

55 MR KNAFLER: I think one was envisaged by Ouseley J.

56 THE DEPUTY JUDGE: You certainly filed one. I thought there was something more supporting the amended grounds? I give leave for you to file the witness statement, which is the one which you sent me down over the weekend.

57 MR KNAFLER: Miss Jolly number 5.

58 THE DEPUTY JUDGE: For the record, that is the 5th witness statement of Anne-Marie Jolly of 22 April 2012, and I grant Mr Lane leave to file the third, I think it is, witness statement of Megan Clement of 18 April 2012.

59 MR LANE: I think it might be — I know it said 18 — I think it might have been signed on the 17th.

60 THE DEPUTY JUDGE: You are quite right. It says at the top “18th”, but it is actually signed “17th”. Now, are there any other historical directions in the sense of, you know,

documents that you filed for which you need leave?

61 MR LANE: I suppose technically the document in the defendant's bundle that did not have leave, that is the Pathway Plan.

62 THE DEPUTY JUDGE: That is an exhibit. If I have given permission to file the witness statement, those are exhibits to it and so they come in.

63 MR LANE: Certainly if they are treated as exhibits, that is fair enough. I am not sure the statement makes it abundantly clear.

64 THE DEPUTY JUDGE: They are all referred to, are they not?

65 MR LANE: Yes, they are certainly referred to.

66 MR KNAFLER: I am happy for them to be treated as exhibits.

67 THE DEPUTY JUDGE: Shall I give leave for the latest version of the Pathway Plan, and have you got a date for that?

68 MR LANE: That will be 18 April.

69 THE DEPUTY JUDGE: Leave for the Pathway Plan of 18 April and the human rights assessment of 16 April 2012 to be regarded as exhibits to Miss Clement's witness statement of 17 April.

70 MR LANE: Yes.

71 THE DEPUTY JUDGE: Now, does that get us up-to-date at any rate?

72 MR LANE: I think the only other exhibit was the Leaving Care Policy Document.

73 THE DEPUTY JUDGE: Let us add that in also. Yes, the Leaving Care Policy document, which was approved by the Corporate Parenting Panel on 11 January 2012, is also to be treated as an exhibit.

74 MR LANE: And the final one, I should have mentioned it when you mentioned the Pathway Plan, my Lord, it is the 17 June 2010 Plan, tab 3 of the defendant's bundle.

75 THE DEPUTY JUDGE: Tab 3, all right.

76 MR LANE: I think that should give some historical—

77 THE DEPUTY JUDGE: And the 17 June 2010 Pathway Plan. So we have two Pathway Plans, June 2010 and April 2012. We have got the human rights assessment and we have got the Corporate Parenting Panel's approval of the Leaving Care Policy. Those four to be treated as part of the witness statement. Now, what else by way of directions is needed?

78 MR KNAFLER: Well, we have had a brief opportunity to discuss this. The first direction that we seek is a direction that Croydon should file and serve any revised human rights assessment Pathway Plan and any further evidence by 4 o'clock on, let us say, 7 May 2012. The rationale for that is that the current human rights assessment and Pathway Plan, to put it in the most charitable way, do not take into account a number of recent developments and evidence.

79 THE DEPUTY JUDGE: In particular, they were assuming that there had been a new application to the Home Office, but they did not know anything about what it was going to say, did they?

80 MR KNAFLER: They were premised on the basis that there was not and never had been a fresh application. We now know that that is not right. There are a number of other factual matters that the Council may wish to address, such as ability to work and so on and so forth. The next direction would be that the claimant would file amended grounds, revised skeleton and any evidence all in one go by, let us say, 4 o'clock on 21 May. So that would be addressing Croydon's hopefully final statement as to their position, and then Croydon to file a revised skeleton argument by, let us say, 4 o'clock on 28 May, and then one day may be sufficient, but potentially some of these issues could take somewhat longer.

81 THE DEPUTY JUDGE: I thought I was going to get through this whole matter in one day, and I have taken pretty much a whole day including judgment on what is quite a small part of the whole thing. I would have thought you would need a day and a half, would you not?

82 MR LANE: I think a day and a half would be a fairer estimate. I would say, by the way, on the directions—

83 THE DEPUTY JUDGE: I will come back to you about the specifics of it. Do you agree a day and a half?

84 MR KNAFLER: Yes. I am just dealing with directions.

85 THE DEPUTY JUDGE: You want the first available date, presumably?

86 MR KNAFLER: Of course, the first available date.

87 THE DEPUTY JUDGE: With your convenience as well.

88 MR LANE: The first available date after whatever the last revised skeleton by the defendant is.

89 MR KNAFLER: That will be the first available date after 28 May.

90 MR LANE: We have not talked about dates at all. It will not be possible to do it within 2 weeks. I think 4 weeks for that first direction.

91 THE DEPUTY JUDGE: Let me come back to you, Mr Lane. The first one, it was suggested 7 May.

92 MR LANE: I am simply asking for a further 14 days, so that would be 21 May.

93 THE DEPUTY JUDGE: You are asking for another two weeks from 7 May?

94 MR LANE: Yes.

95 THE DEPUTY JUDGE: 7 May gives you two weeks from now. There is a bank holiday, though.

96 MR LANE: There is a bank holiday. It is not so much the bank holiday; it is the fact that the officer who has been primarily dealing with the matter and dealing with any

revised assessments will not be around for almost, not quite but almost, two weeks.

97 THE DEPUTY JUDGE: So that goes to 21 May, and presumably the injunction lapses today unless there is further order. But in the circumstances that we have, presumably it lasts until the substantive hearing, does it not?

98 MR LANE: I presume that is right.

99 THE DEPUTY JUDGE: If it lasts until the substantive hearing, the claimants no longer are too stressed about speed. They do not want it dragged out and the claimant needs a decision and he has got to make his arrangements and so forth, but some of the urgency goes out of it if the defendants agree that the injunction continues.

100 MR KNAFLER: Subject to one point, my Lord. Subject to one small point.

101 THE DEPUTY JUDGE: It is probably to your advantage to have the 21 May, which will enable the local authority to do it adequately. They plainly make lots of phone calls and it is probably one of those cases — I mean, you may not like what comes out of it, but it is best for him and it is best that the local authority have the fullest time to reflect on all the matters.

102 MR KNAFLER: Of course.

103 THE DEPUTY JUDGE: Do you agree 21 May?

104 MR KNAFLER: Yes, particularly in the circumstances that the relevant officer will not be around.

105 THE DEPUTY JUDGE: In which case the date for you to file your amended grounds would go back by 2 weeks also. What is two weeks after 21 May?

106 MR LANE: I think that is 4 June.

107 THE DEPUTY JUDGE: It would go to 4 June, and the revised skeleton argument, which is at present 28 May—

108 MR LANE: Would be 11 June, my Lord.

109 THE DEPUTY JUDGE: Would be 11 June.

110 MR LANE: I would seek permission to file a further statement, though, because clearly if Croydon are producing the evidence of a further Pathway Plan and assessment, it may be appropriate to produce a statement.

111 THE DEPUTY JUDGE: So you will be filing a revised skeleton argument and witness statement, if so advised?

112 MR KNAFLER: Well, the direction I proposed was that by the date, which has now been agreed to be 21 May, Croydon file and serve any revised human rights assessment and Pathway Plan, and any further evidence. We must have the evidence before we file our skeleton argument.

113 THE DEPUTY JUDGE: The only difficulty is that once you have your amended grounds, they may wish to reply to your amended grounds, and they normally would not be putting in any witness statements until they have your amended grounds, would

they?

114 MR LANE: We have the amended grounds that were submitted.

115 THE DEPUTY JUDGE: You have the first lot of amended grounds, but this should be re-amended grounds.

116 MR LANE: Yes.

117 THE DEPUTY JUDGE: I think it had better be that all those first materials to be filed had better include "and witness statement if so advised". Then you have your revised statement and any evidence by 4 June, and then the defendant serves their revised skeleton argument and any further witness statement by 11 June, and then we have the one and a half days as soon as possible after 11 June; acceptable?

118 MR KNAFLER: Yes. We will be filing a skeleton argument when there is still some evidence to come, but in the interests of efficiency and getting the thing done, I am sure we will live with that, my Lord.

119 THE DEPUTY JUDGE: Okay. Now, I was just wondering, looking at the size of the bundle, it may be sensible for you to start a new bundle frankly. Just for your notification, the bundles are unlikely to take terribly much more.

120 Then we have the question of the costs of today, presumably.

121 MR KNAFLER: Yes. My Lord, as far as concerns the costs of today, I think we would be content, to avoid prolonged argument, for the costs simply to be reserved for the judge who hears the final showdown, as it were, to look at everything in the round.

122 THE DEPUTY JUDGE: I do not suppose you will oppose that, Mr Lane?

123 MR LANE: I do not.

124 THE DEPUTY JUDGE: And then you need legal aid taxation, do you?

125 MR KNAFLER: Yes, I am grateful, my Lord, in the interim. What is of particular concern for the claimant is the question of interim relief.

126 THE DEPUTY JUDGE: The interim relief is to continue on the same terms until the substantive hearing or further order.

127 MR KNAFLER: My Lord, I am very grateful for that. The small, financially small, but for the claimant highly significant additional part of interim relief that we seek is for Croydon to cover the costs of the course that he is hoping to start this summer term, which your Lordship may have read in Miss Jolly's 5th statement, this is his ESOL (English for Speakers of other Languages) course, Entry Level 3 at Mary Ward, which he is due to do in the summer term which will cement his application for the one-year business course at Croydon College starting in December 2010. The cost, according to Miss Jolly — we do not have the specific costs from Mary Ward as yet, but based on the costs of all their other courses for ESOL Level 3, the cost is likely to be, I think she says between £82 and £182. That is the range of usual costs for courses of this type. In the overall scale of the legal costs and the costs of accommodation for the claimant on a further interim basis and his maintenance, this is a very, very small sum of money, but it is extremely important to him (a) to get back into education and not simply sit at

home, but (b) to continue to prepare for the important course at Croydon.

128 THE DEPUTY JUDGE: As I have read the material, it is not actually a precondition for the Croydon course that he has the Level 3, but it does seem to be wholly appropriate, having done the previous ones. Mr Lane, do you have any observations on this matter?

129 MR LANE: It is not so much the finance, although it is a bit up in the air, it is the fact that the purpose of this claim is to determine what, if any, duties are owed to the claimant in respect of his educational needs and follow on support that thereon takes place. In a sense, of course, by effectively allowing him onto this course funded by Croydon, one is effectively acceding to the claim itself, and I appreciate that—

130 THE DEPUTY JUDGE: Any offer could be entirely without prejudice to the determination of the proceedings. Plainly it could not possibly be right for it to be then held against you that because you have funded this course, you accepted that his needs required him to go on to Croydon.

131 MR LANE: The difficulty is, my Lord, we do not know when this is going to be listed, and even if we make the assumption that he gets on to the Croydon course following his interview next month, we could be in the situation where he is effectively starting that course before we have had a determination of the substantive issue. It does concern those instructing me that effectively, although I appreciate the argument that, yes, this can be done without prejudice to the determination of the matter, but it is effectively putting the cart before the horse. I appreciate that we are up against the time as far as this particular course is concerned; that is not to say, of course, there are not further courses available to this young man. It is a serious matter being disputed between the parties, and it seems to us to be prejudging the issue, and making it very difficult for any court to suddenly pull the order if he is halfway through a course when it comes before the court again, and, of course, there is the unknown financial factor as well, which we are not entirely clear about.

132 MR KNAFLER: It is implicit in any event, but we are completely happy to draft, together with Mr Lane, something that goes into the order that makes it quite clear that any form of interim relief must not be taken to prejudice the Council's legal position in these proceedings. As far as concerns the value, we cannot say what it is, but one can certainly put a cap on the value in the order of £200 or £250. Hopefully the restored hearing will be before the end of the summer term.

133 THE DEPUTY JUDGE: When I said one and a half days, the first available date after 11 June, and I think we can say that it is highly desirable that it be heard before the end of July.

134 MR KNAFLER: My instructing solicitor carried out enquiries this morning, and understood that — I think I am right — that there were spaces in July at the moment for a one-day hearing. We asked about a one-day hearing.

135 THE DEPUTY JUDGE: You would be asking for a day and a half, but I doubt that will make a key difference. I do not think that the court should be ordering a local authority to fund the particular course in circumstances that there is no suggestion that that course is essential for him to do the other course at Croydon. The authority will, no

doubt, reflect on the matter that it is a relatively small amount, and it would certainly be very desirable that they should fund it, but I do not think it would be right for the court to grant a specific order that a particular course be funded. I think that would be to usurp the scope of the local authority.

136 MR KNAFLER: May I check with your Lordship one point of fact; it is of course our clear evidence that only ESOL at Level 2 is required to go onto this course, and that is in Miss Jolly's statement. Your Lordship will have seen that Miss Clement's statement states categorically that he does need ESOL Level 3, and that actually is Croydon's position, but it is not our position. I just wanted to make sure that your Lordship had that in mind.

137 THE DEPUTY JUDGE: Mr Lane, is it your case that he cannot?

138 MR LANE: I do not have that information, but it may be that the college is more relaxed about that if that is what Miss Jolly has found out from the college itself. It is something that can be checked, of course, and that is something that will be done, no doubt, after the process—

139 THE DEPUTY JUDGE: If the situation arises that it is discovered that the Croydon course is available for him and the only thing missing is that he has got to have done the Level 3 course at Mary Ward, you may want to consider renewing and an application to vary the terms of the present order. But I think on the state of the evidence at present I am not minded to make that a requirement, having indicated that it is a relatively small amount and I hope that that may be the outcome, but that is a matter where the local authority must make their own decision.

140 Is there anything else? Is that your client in the back of the court?

141 MR KNAFLER: Yes, it is.

142 THE DEPUTY JUDGE: I hope he has not found it overwhelmingly boring. It is very good to see litigants appearing in the court when aspects of their own case is being argued. It is a welcome sight. I congratulate him for staying the course. Thank you both.

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