Neutral Citation Number: [2025] EWHC 1040 (Admin)

Case No: AC-2024-LON-003062

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

Royal Courts of Justice
Strand
London
WC2A 2LL

Date of hearing: 3 April 2025

Before:

THE HONOURABLE MR JUSTICE RITCHIE

- -

Between:

THE KING
(on the application of)

FREDERICK AYINDE	**Claimant**
- and -	
THE LONDON BOROUGH OF HARINGEY	**Defendant**

SARAH FOREY (C) (instructed by **Haringey Law Centre**) for the **Claimant**
DAVID MOLD (C) for the **Defendant**

- -

APPROVED JUDGMENT

(Given extemporary, transcribed and approved, handed down on 30.4.2025)

Mr Justice Ritchie:

1. In this case I have before me an application for relief from sanctions dated 7 March 2023. What it says is that the London Borough of Haringey asks the order to grant:

   "d) Relief from sanctions so that we can participate in the trial of this matter on 3 April 2025 despite not having filed detailed grounds of resistance".

   Then 2:

   "To make a wasted costs order under section 51(6) of the Senior Courts Act 1981 against:
   a) Haringey Law Centre, and
   b) Ms Sarah Forey of counsel".

2. That application is supported by a witness statement from Yisroel Greenberg sworn on 7 March 2025.

3. The alleged breaches involved: failing to file an acknowledgement of service, failing to file a statement of facts and grounds of defence and breaching the express order of David Lock, KC that was made on an interim application for relief within the judicial review, the relief being housing for a homeless person. That order was made on 23 October 2024. It granted permission for judicial review and it listed the judicial review hearing for a day, which turns out to be this day. Case management directions were given in a fairly standard form. The case management directions involved providing that:

   "The Defendant who wishes to contest the claim or support it on additional grounds shall within 35 days of the date of service of this order file and serve a detailed grounds of contesting and any written evidence".

4. It also required the parties to agree the contents of the hearing bundle not less than four weeks before the date of the hearing. An electronic version of the bundle was to be prepared and lodged in accordance with the guidance on the Administrative Court website and two hard copies were to be provided if requested. The Defendant was to file a skeleton argument 14 days before the hearing and the bundles were to be lodged not less than three days before the hearing.

5. The Defendant did not lodge a hearing bundle until, I believe, 31 March 2025 and the Defendant did not provide the skeleton argument 14 days before the hearing. The date of the skeleton argument is 31 March 2025 and the date today is 3 April.

6. This Defendant has taken part in a wholesale breach of court orders. It is, in my view, improper that they have failed to file a statement of facts and grounds of defence and an acknowledgement of service, and that they did not file skeletons and bundles on time. The witness statement explaining why says little more than: "We didn't. It was my predecessor's fault".

7. Running through the *Denton v TH White* [2014] EWCA Civ. 96, factors, firstly, it is admitted the breaches were serious and significant. Secondly, it is pretty much admitted there was no good reason because none was put forwards by Ms Greenberg. Thirdly, in relation to the justice and all the circumstances of the case, the need for efficiency and proportionality, that does not save the Defendant from their significant breaches for no good reason. In particular, in relation to compliance with court orders, the Defendant provides no explanation and just ignored them. This is not an adequate explanation. Thus, I refuse relief from scnations.

8. What is the effect of me refusing relief from sanctions, as I do, because the *Denton* grounds are not satisfied? The Civil Procedure Rules, Part 54 govern judicial review. Under part 54.9, the rule says this:

> "(1) Where a person served with a claim form has failed to file an acknowledgement of service in accordance with rule 54.8e(a), he may not take part in a hearing to decide whether permission should be given, but provided he complies with rule 54.14 or any other direction of the court regarding file and service of:
>
> i) detailed grounds for contesting a claim or supporting it on additional grounds and
> ii) any written evidence,
>
> may take part in a hearing of the judicial review".

The Defendant has not filed an acknowledgement of service and has not filed detailed grounds for contesting the claim and therefore may not take part in the hearing of the judicial review, which is the hearing today. The Defendant is debarred from doing so.

9. Secondly, CPR rule 54.14 states:

> "A Defendant and any other person served with a claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it and any written evidence within 35 days of the order giving permission".

10. In his elegantly-phrased submissions, what Mr Mold seeks to do on behalf of the Defendant is to say that the costs arguments are in some way an add-on to and separate from the hearing. Further, that wasted costs arguments are different from the hearing of the judicial review and therefore should be permitted, despite the fact that the Defendant is debarred from making submissions at the hearing. I am afraid that no authority for that proposition. Issues and arguments on costs are all part and parcel of the consequences of the substantive hearing.

11. I am informed that the parties have reached agreement on the substantive judicial review. I am not surprised because, after the order made by David Lock KC, the Defendant accommodated the Claimant so that he was no longer street homeless. I am informed that the agreed order was filed yesterday and the parties thought that was sufficient, in circumstances where the factual matrix has not changed for months. It is not appropriate for parties to file last-minute consent orders that should have been filed months ago. In any event, I am told that that the draft consent order left the issue of costs open following the Defendant's applications (1) for relief from sanctions and (2) for a wasted costs order.

12. Addressing the wasted costs allegations that are made. Taking all of the circumstances into account, many of which I will examine in detail below, I do consider that these allegations are separate matters. They may have arisen out of the substance of this claim but the wasted costs order application arises from potentially unprofessional behaviour which is separate from the substance of this claim.

13. I have decided that I am going to deal firstly, in the absence of submissions from the Defendant because they are debarred, with the costs of the judicial review. Then, after I have dealt with that, I am going to move on to deal with the application for wasted costs, which I consider is separate from the costs of the judicial review due to the substance thereof.

Submissions were heard

MR JUSTICE RITCHIE:

14. I have been asked to consider the appropriate costs award in this judicial review which was listed for a one-day hearing today, which involved the following chronology. The Claimant lived at 98 Scales Road, London N1 for five years until May 2023, when he was forced to leave. I do not have evidence of the circumstances of him being forced to leave. On 15 June 2023 the Claimant sent a homelessness application to the Defendant with medical evidence of his chronic kidney disease and hypertension. On 10 July 2023, the Defendant decided that he did not have priority-needed housing. I shall come to the medical evidence later.
15. On 12 July 2023, the Claimant applied for review of that decision and put in additional medical evidence. I shall come to that evidence later. On 2 August 2023, the Defendant decided that it was minded to not decided that the Claimant had priority need or was a vulnerable applicant. On 23 November 2023 the Defendant decided to uphold its original decision, so therefore did not providing housing. On 13 December 2023, the Claimant appealed to the County Court. It took some nine months, but the hearing took place on 1 August 2024 before His Honour Judge Hellman, who quashed the Defendant's decision under section 204 of *the Housing Act 1996* and ordered the Defendant to pay the Claimant's costs.
16. On 13 August 2024, the Claimant again requested interim accommodation and, on 16 August 2024, the Claimant sent a letter before action to the Defendant. The Defendant failed to respond.
17. The legal basis of the claim was set out in the letter, namely providing accommodation under section 188(3) of *the Housing Act 1996*, pending a judicial review, arising from the decision of His Honour Judge Hellman. The accommodation was requested to be provided by 14 August, which is a bit odd for a letter before action which was dated the 16th August. In any event, no proper response was provided. The Claimant remained homeless and as a result, on 19 August 2024, the Claim Form for judicial review was issued. At that time, oddly, no application was made for urgent relief. A declaration was sought and an full order was sought.
18. The grounds were set out in a document dated 28 August 2024. Procedural impropriety was the first ground, namely was failing to follow section 188(3) in relation to providing interim accommodation when the Claimant had applied for review, pending a decision on homelessness. The case law which was relied on was cited as *R (El Gendi) v Camden* [2020] EWHC 2435 (Admin). As I shall explain below, it turns out that the cited case does not exist, but I will come back to that in a minute.
19. Ground 2 was failure to consider relevant evidence, the Claimant's medical evidence and the significant risk of homelessness. Case law was relied on including: *R (Hotak) v Southwark* [2015] UKSC 30. That seems to be a valid reference, but also : *R (Ibrahim) v Waltham Forest* [2019] EWHC 1873. That is a non-existent case.
20. In ground 3 the Claimant asserted unreasonableness and irrationality in view of the County Court decision which was being ignored by the Defendant and relied on *Wednesbury*.
21. In ground 4, the Claimant relied upon unfairness and the cited case was: *R v SSHD ex parte Doody* [1994] 1 AC 531, which is a valid case. Also, the Claimant relied upon: *R (KN) v The London Borough of Lambeth on the application of Balogun*, which was a made-up case and did not exist. There was a further reference to *R (on the application of KN) v Barnet*, which was also a made-up case.
22. On 10 September 2024, so two or three weeks after the Claim Form was issued, an urgent application was made with a draft order and a witness statement from the Claimant, Mr Ayinde,

dated 11 September 2024 in support. That statement set out that in June 2023 he was put in emergency accommodation for a month. He was then asked to leave because he was not a priority, according to the Defendant. He slept on park benches and did some sofa-surfing. Then in July 2024, as predicted in the medical evidence which I will come to in a minute which made it absolutely clear that he had quite a severe medical condition and was at risk of serious injury to his internal organs, including a heart attack, he duly had a heart attack. He was taken to St Bartholomew's Hospital in London for an operation and because he does not have an address, he has difficulty attending outpatient appointments thereafter. He relied on the County Court's quashing of the Defendant's refusal decision and requested interim accommodation. He said he was suicidal. This sad story led, on 24 October 2024, to David Lock KC, sitting as a Deputy High Court Judge, granting permission for judicial review, granting an interim housing order and making directions, which I have referred to previously. Those included that within 35 days the Defendant was to file and serve a statement of facts and grounds of defence, the Defendant having failed to comply with the requirement that an acknowledgement of service should be filed. The Defendant promptly breached this new direction and did not file a statement of facts and grounds of defence.

23. Nothing much happened until February of 2025 when a new employee clearly joined the Defendant's organisation and asked for the citations for the cases that had been set out in the Claimant's statement of facts and grounds. On 18 February it was asserted by the lawyer in the Defendant's organisation that the citations were all wrong and that the statement of facts and grounds misleadingly made a submission about the effect of section 188(3) of *the Housing Act 1996,* suggesting it was mandatory rather than discretionary.

24. On 25 February 2025, the Defendant then threatened that the Claimant should withdraw his claim, otherwise, they needed to agree a bundle for the hearing and the Defendant proposed an index. On 5 March 2025 the Claimant apologised for the incorrect citations.

25. I come now to the medical evidence. On 24 March 2023, Dr Duraisingham, a nephrologist at North Mids hospital, wrote a document that said that the Claimant had suffered hypertension since 2011, set out his creatinine levels and said that an MRAC had shown narrow renal arteries. Four months later, on 17 July 2023, from the Royal Free Hospital, Dr Petrosino wrote to the Defendant stating that the diagnoses for the Claimant were: severe medical conditions requiring invasive procedures for both diagnosis and therapy. He was homeless, he had a significant risk to his well-being and the Doctor was very concerned about the Claimant's survival. Matters were urgent.

26. In July 2023, the Claimant's GP wrote to the Defendant diagnosing early hypertension with end organ damage, renal artery stenosis and a high risk of stroke or heart attack. He needed strict blood pressure monitoring. Homelessness created a ten times increase in the risk that the Claimant faced: "*With a home he would get the care he needs and be able to get renal angiography leading to potential renal angioplasty*". "…ography" being a look-at, and "….plasty" being a mending. Both related to the blood vessels to the kidneys. *"He cannot do without a home",* said his GP.

27. In response to that there is a medical report from the adviser to the Defendant, Dr Hornibrook, from 22 July 2023, so bang in the same zone, he advised that:

> "There is nothing serious to suggest he requires urgent or operative intervention or that his kidney disease adversely affects him day to day".

I must say, I find that evidence remarkable and surprising, when compared with the evidence from the North Mids hospital, the Royal Free hospital and from the Claimant's GP.

28. In addition, on 20 October 2023, Dr Anmar wrote "to whom it may concern" that the Claimant was awaiting life-saving treatment. It was urgent and he had a priority housing need. The Defendant ignored all the Claimant's medical evidence both before and during the course of these proceedings and I find that remarkable and less than ideal.

29. We then come to the fact that I have rejected the Defendant's application for relief from sanctions because they failed to engage with the court process at all and broke the court's directions about service of the statement of facts and grounds relating to the defence. They are debarred from defending.

30. I make a costs award in the Claimant's favour on the standard basis.

31. So, I come to look at the bill for summary assessment. It was filed and served too late by the Claimant. It should have been served more than 24 hours before the hearing on the Defendant. It seems to me that service on the Defendant becomes less relevant if the Defendant is debarred from defending as a result of their gross default of court orders. However, I consider it should have been served 24 hours or more before the hearing because the relief from sanctions application was filed and I suppose might have had some feint glimmer of success.

32. Despite the late service, I am going to summarily assess the costs, but I am going to take something off for the late service. I consider the hourly rates are appropriate. The total bill comes to £21,007.97. No VAT is charged. The explanation given by counsel is that she is not VAT-registered. I accept that at face value. The explanation given by the solicitors is that they are not VAT-registered. I think that is a bit odd, but I accept that at face value they are a charity.

33. When I look at the work on documents there is, for instance, £3,978 for perusal of the file, which is unexplained. There is £1,294 for perusal of the Respondent's authorities bundle, which is a matter for counsel, it seems to me. There are 30 items in total which come to a total for documentation perusal, of £13,566. I have little doubt that that is unreasonable and disproportionately high in a case where the Defendant never defended properly. All that really happened was that an interim order was obtained, quite properly, on hard work from the Haringey Law Centre and as a result they achieved accommodation for their client. In addition, I consider that there have been excessive hours put in this statement of costs. I look at counsel's fees at £1,500 for conferences and documentation and £2,000 for this hearing. I allow those at the rates claimed but I reduce the solicitors' fees, so that the total fees awarded here will come to £13,500, including counsel's fees, which I have not reduced. That is my summary assessment of costs, taking into account proportionality, the serious matters involved but also the amount of work that should have been involved for obtaining an emergency injunction and little else.

<u>Submissions on the Wasted Costs application</u>

MR JUSTICE RITCHIE:

34. I refer back to the previous *ex tempore* judgment that I have given in this case, firstly in relation to the application for relief from sanctions and secondly in relation to the costs order made in the judicial review, in the light of the Defendant being debarred from defending for failing to put in an acknowledgement of service or a statement of facts and grounds of defence in breach

of the Civil Procedure Rules and an express order made by a Deputy High Court Judge in late 2024.

35. In this part of the judgment I deal with the application for wasted costs against the Claimant's lawyers made by the Defendant. By an application dated 7 March 2025, the Defendant applies for a wasted costs order against the Claimant's solicitors and barrister. The solicitors are the Haringey Law Centre, Ground Floor Office, 7 Holcombe Road, London N17 9AA and the barrister is Sarah Forey of 3 Bolt Court Chambers. The application is founded on three factual assertions:

(1) The first is that the Claimant's barrister and solicitor put five fake cases in the Claimant's statement of facts and grounds for the judicial review. Those are in paragraphs 17, 20, 24, 27 and 28.

(2) Secondly, that when requested to produce copies of those cases, they did not.

(3) Thirdly, that in the statement of facts and grounds at paragraphs 15 and 16 and by implication throughout, the Claimant's lawyers asserted that section 188(3) of the *Housing Act 1996* was a "Must" provision instead of a discretionary "May" provision.

36. The law relating to wasted costs applications starts with section 51(6) of *the Senior Courts Act 1981*, which empowers the courts to make wasted costs orders against lawyers. Under CPR rule 46.8 headed: "Personal Liability of Legal Representatives for Costs - Wasted Costs Orders", the rule provides:

> "(1) This rule applies where the court is considering whether to make an order under section 51(6) of the Senior Courts Act of 1981 (court's power to disallow or (as the case may be) order a legal representative to meet 'wasted costs')."
>
> (2) the court will give the legal representative a reasonable opportunity to make written submissions or if the legal representative prefers, to attend a hearing before it makes such an order.
>
> (3) when the court makes a wasted costs order it will:
>
> a) specify the amount to be disallowed or paid; or
>
> b) direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid.
>
> (4) The court may direct that notice be given to the legal representative's client in such manner as the court may direct".

37. Next, the Practice Direction to rule 46 has within it paragraphs 5.1 to 5.9 which give requirements in wasted costs applications.

Para. 5.1 states:

> "A wasted costs order is an order that the legal representative pay a sum, either specified or to be assessed, in respect of costs to a party", or (b): "For costs relating to a specified sum or item of work to be disallowed".

Para. 5.2 states that rule 46.8 deals with wasted costs orders against legal representatives:

> "Such orders can be made at any stage in the proceedings up to and including the detailed assessment proceedings. In general, applications for wasted costs are best left until after the end of the trial".
>
> 5.3: "The court may make a wasted costs order against a legal representative on its own initiative".

> 5.4: "A party may apply for a wasted costs order by filing an application notice in accordance with part 23 or (b) by making an application orally in the course of the hearing".
>
> 5.5: "It is appropriate for the court to make a wasted costs order against a legal representative only if:
>
> a) the legal representative has acted improperly, unreasonably or negligently;
>
> b) the legal representative's conduct has caused a party to incur unnecessary costs or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted;
>
> c) it is just in all the circumstances to order a legal representative to compensate that party for the whole or part of those costs".

38. Paras. 5.6, 5.7, 5.8 and 5.9 relate to rolled-up hearings and separate hearings but the parties agree that a rolled-up hearing is appropriate because the Applicant made a part 23 application, put in evidence and the Respondents, who are the lawyers for the Claimant, have had the time to put in whatever evidence they wanted and whatever submissions they wanted. In particular, at the hearing I gave the Respondent's solicitors the opportunity to give verbal evidence and they chose not to do so. The Respondent counsel has made her submissions and partially, I accept, gave evidence whilst making those submissions. I did not require her to swear an oath.

39. I consider that the Respondents have had a reasonable, fair and proper opportunity to answer the allegations that have plainly and clearly been set out in the skeleton argument provided by Mr Mold on behalf of the Defendant/Applicant in support of this application. I have also taken into account the skeleton argument of Ms Forey which was provided yesterday, 2 April 2024, despite the fact that it should have been provided earlier in accordance with the directions.

40. I have taken into account the bundles which have been put before me. Those bundles are: the JR bundle; both skeletons; the Defendant's authorities bundle; the Claimant's authorities bundle, which was handed up this morning; the witness statement of S Hussain of 2 April 2025, and a supplementary bundle from the Defendant which set out various correspondence.

41. I refer for the chronology to the previous *ex tempore* judgments that I have given earlier today. However, there is some updating needed for that chronology. I shall give that now.

42. On 4 February 2025, the Defendant wrote to the Claimant's solicitors stating that having read the statement of facts and grounds drafted by Ms Forey, they could not find five of the cases set out therein.

43. On 18 February 2025, the Defendant wrote to the Claimant enclosing a letter. That letter itself was dated 13 February but as I say, it was attached to an email dated the 18th. In that letter, the Defendant pointed out that they had not received a response to their letter of 4 February asking for copies of the five cases, setting those five cases out and stating specifically in relation to each the defects within them. I will come back to those defects but they are basically saying the cases are fake. The Defendant also raised that the grounds for judicial review at paragraphs 15-16 asserted that section 188(3) of *the Housing Act 1996* required that the Respondent was obliged to provide interim accommodation whereas in fact it was a discretionary obligation. They Defendant threatened to apply for wasted costs against the Claimant's barrister and solicitor.

44. On 25 February 2025, the Defendant wrote to the Claimant's lawyers inviting them to withdraw the claim or, if it was to go on, to agree a bundle and to provide an index in accordance with the judge's directions.

45. On 5 March 2025, so a month after the issue was first raised, a remarkable communication was propagated by Sunnelah Hussain of the Claimant solicitor's firm. In that she wrote as follows:

> *"Thank you for your email. We write in respect of your letter dated 13 February 2025 on the matter at subject is referred (sic)".*

(I have not made an error in reading that part out.)

> *"We regret to say that we still do not see the point you are making by correlating any errors in citations to the issues addressed in the request for judicial review in this matter. Admittedly, there could be some concessions from our side in relation to any erroneous citation in the grounds, which are easily explained and can be corrected on the record if it were immediately necessary to do so. What you have not done is to refute the veracity of the points and legal arguments that prevailed against your position and any failures of your client to measure up to its obligations under the 1996 Act. Indeed, it appears that you have not only taken any and all of our paraphrases and references out of context, but that you have also misinterpreted the context, scope and authority of section 188(3) of the said Act.*
>
> *We do not think that our duty of care should go so far as to provide legal interpretation of the laws for your benefit, but we hasten to say that section 188(3) provides for discretionary action in relation to section 202 and so long as that duty falls outside section 189B(2). It is not a broad brushed discretion that results from the 'May' in that subsection. We therefore do not quite grasp in what context you say: Haringey have a discretion. There is no obligation.*
>
> *So let us agree that the citation errors can be corrected on the record ahead of our April hearing. Apart from adding our deepest apologies, we do not consider that we are obliged to explain anything further to you directly. You may better serve your organisation by giving attention not to the normative discoveries you have made, but whether you can locate the authorities in support of the points raised, which points you are clearly in agreement with, as demonstrated both by conduct in offering the necessary relief to our client and acting in accordance with the mandate of your client. We hope that you are not raising these errors as technicalities to avoid undertaking really serious legal research. Treating with citations is a totally separate matter for which we will take full responsibility. It appears to us improper to barter our client's legal position for cosmetic errors as serious as those can be for us as legal practitioners. For the foregoing reasons alone, your claim for costs and the costs of your letters are rejected as without foundation. Your response or arguments in defence cannot rely on errors in citation to prevail but on the evidential and meritorious basis of your points. We will prepare the bundle index and send this to you shortly for your consideration".*

46. That was, I must say, a remarkable letter. I do not consider that it was fair or reasonable to say that the erroneous citations could easily be explained and then to refuse to explain them. Nor do I consider it was professional, reasonable or fair to say it was not necessary to explain the citations. The assertion that they agreed to correct the citations before April never came true,

for they never did. The assertion that no further explanation or obligation to provide an explanation was necessary or arose is, in my judgment, quite wrong. Worst of all, the assertion that the citations are merely cosmetic errors is a grossly unprofessional categorisation.

47. I will finish the chronology and then I will come back to the citation errors in a minute. In response, on the same day, the Defendant wrote to the Claimant and said they took a different view as to the seriousness of the citation errors and their concern about section 188(3), as set out in the statement of facts and grounds. Then, two days, later the Defendant issued their application for relief, which was ultimately unsuccessful. On 19 March the Claimant wrote to the court saying that they would oppose the Defendant's application and would put in a witness statement by 26 March. The Claimant did not do so. The Claimant's lawyers breached the court rules and put the witness statement in this morning, and the Claimant's lawyers also put a bundle of authorities in this morning.

48. That brings me back to the factual substance of the wasted costs order. I am going to lay the factual substance out and then I am going to come to the tests that are required as set out in the law relating to wasted costs that I have already summarised. In ground 1 of the statement of facts and grounds drafted by Sarah Forey, at paragraphs 15 and 16 she submits the Respondent has acted with procedural impropriety by failing to adhere to the statutory framework. She stated:

> "Under section 188(3) of the Housing Act 1996, the respondent is obliged to provide interim accommodation pending the review decision. The failure to do so violates statutory and procedural obligations".

49. At paragraph 16, Ms Forey stated:

> "The statutory duty under section 188(3) of the Housing Act 1996 requires a local authority to provide interim accommodation when an individual has applied for a review of a homelessness decision. The Respondent's failure to provide such accommodation despite the ongoing review process presents a clear breach of this duty. This procedural impropriety has deprived the Claimant of his statutory rights and placed him in a situation of continued homelessness".

50. It was not argued today before me by Sarah Forey that either of those paragraphs was legally correct. Instead, she was wholly silent in response to the submissions made by Mr Mold, which were that: under S.188(1) there is a duty that the Defendant *must* provide housing. However, under S.188(3) the duty is only a *may* duty, it is not a must, and it is wrong to submit that it is a must duty. What Ms Forey sought to argue was that what she meant by ground 1 was the whole of section 188, but that is not what she wrote.

51. Secondly and more importantly, in paragraph 17 Ms Forey wrote:

> "In *R (on the application of El Gendi) v Camden London Borough Council* [2020] EWHC 2435 (Admin), the High Court emphasised that failing to provide interim accommodation during the review process undermines the protective purposes of homelessness legislation. The court found that such a failure not only constitutes a breach of statutory duty but also creates unnecessary hardship for vulnerable individuals. The respondent's similar failure in the present case demonstrates a procedural impropriety warranting judicial review".

52. It transpires that when the Defendant looked that case up, it did not exist. As a result, the Defendant wrote to the Claimant and asked for have a copy. The Claimant's solicitors never

provided one so then the Defendant asserted that the case did not exist. I find it remarkable that neither the Claimant's solicitors' firm nor barrister has put in any written explanation in relation to that assertion.

53. What I was told from the Bar today by Ms Forey is that she kept a box of copies of cases and she kept a paper and digital list of cases with their ratios in it. She dragged and dropped the case of *El Gendi* from that list into this document. I do not understand that explanation or how it hangs together. If she herself had put together, through research, a list of cases and they were photocopied in a box, this case could not have been one of them because it does not exist. Secondly, if she had written a table of cases and the ratio of each case, this could not have been in that table because it does not exist. Thirdly, if she had dropped it into an important court pleading, for which she bears professional responsibility because she puts her name on it, she should not have been making the submission to a High Court Judge that this case actually ever existed, because it does not exist. I find as a fact that the case did not exist. I reject Miss Forey's explanation.

54. I am going to deal with the other cases cited in the grounds in the judicial review, then I am going to come to whether they pass the wasted costs test.

55. What Ms Forey says about this twice in submissions was that these are "minor citation errors". When I challenged her the first time she backtracked on that and accepted they are serious. However, in her later submissions she returned to them being "minor citation errors". She said there was no dishonesty and submitted that there was no material prejudice. Then she sought, remarkably, without having put in a bundle of authorities or anything in writing, to provide in submissions references to further cases which she did not put before the court, which she says made out the principles that she had put out in each paragraph containing the fake cases.

56. So, for instance, in relation to *El Gendi*, Ms Forey referred to *R (Kelly & Ors) v Birmingham* [2009] EWHC 3240 (Admin). Quite apart from never having provided that authority to the Defendant,and never putting in any written response to the Defendant's wasted costs application, Ms Forey did not provide a copy to me, so I have no way of knowing whether that case exists or if it does exist, whether it supports the proposition of law which she put into her statement of facts and grounds. This is not the right way of going about defending a wasted costs order or citing authority.

57. Moving to the second ground for judicial review, failure to consider relevant evidence, I accept that there was a lot of substance in that ground because, having read the medical evidence, I had taken a preliminary view that the judicial review had quite strong legs to show that the Claimant had a priority need and was seriously at risk, and the Claimant's medical evidence had been overlooked, ignored or irrationally not taken into account. I do not make that finding, I just set out here that this was my preliminary view. However, I do not need to make that finding and I had not heard any of the evidence by the time the parties actually came to settle the substantive issues and the Defendant had provided accommodation to the Claimant after the order made by the Deputy High Court Judge last October. However, although ground 2 had substance to it the case cited in paragraph 20 did not exist. The text was drafted as follows by Ms Forey:

> "Moreover, in *R (on the application of Ibrahim) v Waltham Forest LBC* [2019] EWHC 1873 (Admin), the court quashed the local authority decision due to its failure to properly consider the applicant's medical needs, underscoring for necessity the careful

> evaluation of such evidence in homelessness determinations. The respondent's failure to consider the appellant's medical conditions in their entirety, despite being presented with comprehensive medical documentation, renders their decision procedurally improper and irrational".

58. The problem with that paragraph was not the submission that was made, which seems to me to be wholly logical, reasonable and fair in law, it was that the case of *Ibrahim* does not exist, it was a fake. I do find this extremely troubling. I do not accept Ms Forey's explanation for how these fake cases arose. I do not accept that she photocopied a fake case, put it in a box, tabulated it and then put it into her submissions. The only other explanation that has been provided before me, by Mr Mold, was to point the finger at Ms Forey using Artificial Intelligence. I do not know whether that is true, and I cannot make a finding on it because Ms Forey was not sworn and was not cross examined. However, the finding which I can make and do make is that Ms Forey put a completely fake case in her submissions. That much was admitted. It is such a professional shame. The submission was a good one. The medical evidence was strong. The ground was potentially good. Why put a fake case in?

59. Ground 3, unreasonableness and irrationality. Various submissions were set out there in paragraphs 21 and 22 including based on *Wednesbury* and then in paragraph 23 a case which is not attacked by the Defendant. However, in paragraph 24, Ms Forey wrote this:

> "The appellant's situation mirrors the facts in *R (on the application of H) v Ealing London Borough Council* [2021] EWHC 939 (Admin) where the court found the local authority's failure to provide interim accommodation irrational in light of the appellant's vulnerability and the potential consequences of homelessness. The respondent's conduct in this case similarly lacks a rational basis and demonstrates a failure to properly exercise its discretion".

60. This was yet another fake case. It does not exist. Therefore, the description of what it is in the case was fake and untrue.

61. Finally in relation to ground 4, breach of duty to act fairly, Ms Forey herself breached her duty to act fairly and not to mislead the court by paragraphs 27 and 28. In 27 she wrote:

> "The respondent's failure to provide a timely response and its refusal to offer interim accommodation have denied the appellant a fair opportunity to secure his rights under the homelessness legislation. This breach is further highlighted in *R (on the application of KN) v Barnet LBC* [2020] EWHC 1066 (Admin) where the court held that procedural fairness includes timely decision-making and the provision of necessary accommodation during the review process. The respondent's failure to adhere to these principles constitutes a breach of the duty to act fairly".

That sounds fine. The trouble is, the case does not exist, it was a fake.

62. Worse still, in paragraph 28, Ms Forey wrote:

> "The appellant's case further aligns with the principles set out in *R (on the application of Balogun) v London Borough of Lambeth* [2020] EWCA Civ. 1442 — where the Court of Appeal emphasise that local authorities must ensure fair treatment of applicants in the homelessness review process. The respondent's conduct in failing to provide interim accommodation or a timely decision breaches the standard of fairness".

63. Ms Forey had moved on from fake High Court cases to fake Court of Appeal cases. I have no difficulty with the submission that the Respondent local authority had to ensure fair treatment of applicants in the homelessness review process, but I do have a substantial difficulty with members of the Bar who put fake cases in statements of facts and grounds.

64. I now come to the relevant test. Has the behaviour of Ms Forey and the Claimant's solicitors been improper, unreasonable or negligent? I consider that it has been all three. It is wholly improper to put fake cases in a pleading. It was unreasonable, when it was pointed out, to say that these fake cases were "minor citation errors" or to use the phrase of the solicitors, "Cosmetic errors". I should say it is the responsibility of the legal team, including the solicitors, to see that the statement of facts and grounds are correct. They should have been shocked when they were told that the citations did not exist. Ms Forey should have reported herself to the Bar Council. I think also that the solicitors should have reported themselves to the Solicitors Regulation Authority. I consider that providing a fake description of five fake cases, including a Court of Appeal case, qualifies quite clearly as professional misconduct.

65. On the balance of probabilities, I consider that it would have been negligent for this barrister, if she used AI and did not check it, to put that text into her pleading. However, I am not in a position to determine whether she did use AI. I find as a fact that Ms Forey intentionally put these cases into her statement of facts and grounds, not caring whether they existed or not, because she had got them from a source which I do not know but certainly was not photocopying cases, putting them in a box and tabulating them, and certainly not from any law report. I do not accept that it is possible to photocopy a non-existent case and tabulate it. Improper and unreasonable conduct are finding about which I am sure. In relation to negligence I am unsure but I consider that it would fall into that category if Ms Forey obtained the text from AI and failed to check it.

66. Secondly, causation of loss. I think it was wholly proper for the Defendant, when they had tried to find but failed to find these cases, to raise the point. When they did raise the point, what response did the Claimant's lawyers provide? To say that the citations could easily be explained. I ask rhetorically: is that a professional way forwards for solicitors of the Supreme Court who have produced fake cases, or who have not spotted that counsel has produced fake cases? Then when they are shown that counsel has produced fake cases, they say: "it can be easily explained". Well, it has not been explained easily before me. The solicitors hid behind their letters, which I find were unprofessional. These were not cosmetic errors, they were substantive fakes and no proper explanation has been given for putting them into a pleading. This questions and answer session led to causation of loss and the costs in February of 2025. I have been through the correspondence. I think it was wholly proper for the Defendant not only to raise the matter but to ask for an explanation and then to issue a wasted costs application. This sort of behaviour should not be left unexposed. It undermines the integrity of the legal profession and the Bar.

67. So the application that is before me in relation to wasted costs and all of the squabbling between the parties over the costs of the judicial review, it seems to me, are involved here. Subject of course to the fact that I have already made a costs order against the Defendant because through their inactivity in failing to enter an acknowledgement of service and failing to provide the respondent's statement of facts and grounds, they debarred themselves from appearing at the hearing of the judicial review itself.

68. When I look at the Defendant's statement of costs for the wasted application which is put in before me, I would need to tease out from that the parts of it which relate to the other part of the application, namely relief from sanctions, which failed. That is going to be rather difficult to do in the time remaining this afternoon. I have heard no legal argument on it because the point was not taken by Ms Forey. But I am going to attempt to do it justice when I come to that stage.

69. The third part of the test for a wasted costs order is looking at all the circumstances of the case and the justice in the round. I do take into account that the Defendant managed, through its own breach of court orders and default, to become debarred from defending the judicial review proceedings. I take into account that the Defendant, having been ordered on an interim basis to provide accommodation, has not sought to overturn that at the return date or to fight the substantive judicial review. I consider that is not irrelevant to the justice of this case.

70. However, it does not, it seems to me, outweigh the appalling professional misbehaviour of the Claimant's solicitors and the barristers in relation to the fake citations and the way, when those were raised, that they tried to finesse them into being "minor citation errors". I consider that it is self-evident that both counsel and solicitors should never knowingly mislead the court. Producing submissions based on fake cases is misleading the Court. The justice of the case requires me to make a wasted costs order and I shall do so.

71. In doing so I look at the total of the costs bill of the Defendant of £5,147 and I consider that I can only take off a small amount of that because it says:

> "For the avoidance of doubt, we confirm this statement only includes work relating to these judicial review proceedings from 4 February onwards".

It does not say that it only relates to the costs of the wasted costs application. In those circumstances I will assess it down £4,000. I do not assess down counsel's brief fee for the hearing, which is £2,100 plus VAT on top. I allow that in full, I allow the court fees in full. Therefore, when assessing it down to £4,000 in total, it is the solicitors' fees that are being reduced.

72. That wasted costs order shall be paid by the Respondents to the wasted costs application in equal measure. So, £2,000 by Ms Forey and £2,000 by the Harringay Law Centre. The usual order is 14 days to pay but I will hear submissions upon that.

Submissions

MR JUSTICE RITCHIE:

73. Having made a wasted costs order I am invited to reconsider the costs within the judicial review claim which I made earlier today. I summarily assessed the Claimant's costs down from £21,007.97 to £13,500. I am invited by the successful Defendant in the wasted costs application to disapply the whole of the costs order for £13,500 now that the wasted costs has been determined. In reply, Ms Forey says I should not disallow those costs and I should treat them separately.

74. I tend towards a middle ground for this, for two reasons. Firstly this was a successful judicial review application both on an interim basis and on a final basis. The Claimant's solicitors and counsel were representing a homeless person with what I think are likely to have been very severe medical difficulties who was entitled, probably, to immediate accommodation due to his vulnerability. In any event, accommodation was provided after an interim order made by

the Deputy High Court Judge and it is still being provided until the Defendant's review is finally completed.

75. However, the pleading documentation drafted by Ms Forey was at a charge of £1,500. I have found that the pleading included fake citations. The Claimant's counsel's fee for the hearing today was £2,000. It seems to me that it would be contrary to principle and improper for me to allow the whole cost of a pleading that included fake citations. Therefore, I reduce the £1,500 of counsel's fees for documentation to £500. As for the fee for the hearing, I disallow half of it so it is reduced to £1,000. Therefore, what was previously £13,500, including all counsel's fees, has been reduced by £2,000 to £1,500 in total for counsel's fees.

76. As for the solicitors' conduct and involvement in the fake citations, I think that should be marked by a disallowing of their fees in the sum of £5,000. Therefore, the costs award of £13,500 is reduced by £7,000 to £6,500 in total.

77. So the first order that I made, which I would be grateful, Mr Mold, if you would draw up, is going to have to have a cross-reference to the second order. Which means, I think, both orders should be in one document, otherwise there may be confusion. I am going to invite you to draft the totality of the order with the normal recitals, so that means before me on an application for judicial review, upon noting the interim order of the Deputy High Court Judge, upon the wasted costs application and the relief application, upon hearing, and then the order I made about the judicial review, then the order I made about the wasted costs.

78. If you could agree that with Ms Forey I would be grateful, and then send it in to my clerk. I am going to do two further things which I am going to want recorded in the order. The first is that I order at public expense a transcript of these extemporary judgments that I have provided in this case, all three of them. Secondly, I will require the Defendant to send the transcript to the Bar Standards Board and to the Solicitors Regulation Authority. It will be a matter for both counsel whether they comply with, what I believe are their obligations of self-reporting and reporting of knowledge of another, and it will be a matter for the solicitors' firm as to whether they have a similar requirement of self-reporting under the Solicitors Regulation Authority rules.

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