

ENGLAND AND WALES / JUDGMENT

ZZ v Croydon Council

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Neutral Citation Number: [2025] EWHC 1916 (Admin) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT Case No: AC-2024-LON-004249 Royal Courts of Justice Strand, London, WC2A 2LL Date: 24 July 2025 Before : JUDGE MELANIE PLIMMER (sitting as a Deputy High Court Judge)

- ----- Between : ZZ (a protected party, by his father and litigation friend, ZY)
- and - Croydon Council Claimant Defendant
- -----
- ----- Ms Arianna Kelly (instructed by Scott-Moncrieff & Associates Ltd) for the Claimant Mr Benjamin Tankel (instructed by Croydon Council Legal Department) for the Defendant Hearing date: 22 July 2025
- ----- Approved Judgment This judgment was handed down remotely at 2:00pm on 24 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Judgment Approved by the court for handing down. ZZ v Croydon Council Judge Melanie Plimmer: 1. 2. 3. In this judicial review application the Claimant challenges the Defendant's decision dated 19 September 2024 regarding his care needs under the Care Act 2014 ('the Care Act'). This application is brought on behalf of the Claimant, by his litigation friend, the Claimant's father. In an Order dated 27 February 2025, David Pittaway sitting as a Deputy High Court Judge ordered anonymity, and I maintain the Anonymity Order for the same reasons. The Claimant is 33 years old and has Early Infantile Epileptic Encephalopathy. He has a severe learning disability, epilepsy, autism, sensory processing difficulties and mild cerebral palsy. He presents with challenging behaviour on a daily basis which is unpredictable and, even with skilled management, often results in irreversible damage to property and injury or risk of injury to his carers. He requires continuous care and support. The Defendant has responsibility for meeting the Claimant's needs pursuant to the Care Act. Relevant procedural history 4. 5. 6. 7. The Defendant filed Summary Ground of Resistance on 16 January 2025, but has not complied with directions to file Detailed Grounds of Defence ('Detailed Grounds') following the grant of permission in the Order dated 27 February 2025. The Order also granted an Anonymity Order and required by 4pm on 7 March 2025 the Defendant to provide support to the Claimant in the form of direct payments sufficient to fund 2:1 support during all waking hours, 3:1 support for time out of the house and 1 waking night member of staff (including

adequate funding for carers to undertake training and to provide staff cover for absences and time for recording of care needs until further order). The Defendant did not implement the support provided in the mandatory Order by 7 March 2025, and only after the Claimant notified the Defendant of an intention to make an application for enforcement of the mandatory order, the Defendant made a first payment on 17 March 2025. On 13 May 2025, a hearing date was fixed for 22 July 2025. The Defendant's Detailed Grounds and any evidence on which the Defendant intended to rely were originally due on 15 April 2025. The Defendant made a number of applications for an extension of time to file and serve its Detailed Grounds and evidence, four of which were granted with the ultimate deadline being 1 July 2025. A fifth application, dated 25 June 2025, was refused in an Order dated 4 July 2025, in which it was observed that this was the fifth application for an extension of time made by the Defendant. The judge noted the danger of imperilling the trial date and the absence of any good reason for the extension sought. The Order made it clear the Detailed Grounds, and any evidence relied on, had to be served forthwith, so that this trial can be effective. No Detailed Grounds or evidence has been filed by the Defendant. There was no update or indication by either party as to what the Court was being invited to do, in the absence of a Detailed Defence and / or skeleton arguments, until the day before the hearing when the Claimant filed his skeleton argument, which was quickly followed by the Defendant's skeleton argument. The Defendant for the first time confirmed to the Court its overarching concession that the decision under Judgment Approved by the court for handing down. *ZZ v Croydon Council* challenge is unlawful for all the reasons set out in the Claimant's Statement of Facts and Grounds ('SFG'), and should therefore be quashed, following which the Defendant will conduct a fresh assessment and produce a new care and support plan. The Defendant also agreed that in the meantime, the Claimant should be fully protected by continuing to be provided with the package of support that is required pursuant to the interim Order made earlier in these proceedings.

8. 9. The Defendant has explained that the delay largely related to a hope that it could completely settle the claim, but has conceded an absence of satisfactory explanation for the whole of the delay and the breaches of Orders. Given the Defendant's concessions in the skeleton argument the day before the substantive hearing, I invited the parties to draft a Consent Order with an attached Statement of Reasons, which were submitted shortly before the hearing. The parties were able to reach significant agreement save on the issues of damages and costs. Issues in dispute

10. At the beginning of the hearing I indicated I was minded to approve the terms of the draft consent order for the reasoning outlined in detail in the draft Statement of Reasons, save that I would hear submissions on the remaining disputed issues: damages and costs. The Statement of Reasons is unusually lengthy and detailed but in the particular circumstances of this case, I am satisfied that this is justified. The parties have been in disagreement for a lengthy period of time and have finally agreed to focus on a constructive way forward. The chronology and concessions within the Statement of Reasons should contribute to ensuring that future assessments do not repeat public law errors and the Claimant can receive a lawful level of care to meet his needs.

11. Ms Kelly relied upon her skeleton argument and a supplementary document addressing the issues in dispute unresolved within the draft Consent Order. She invited the Court to order damages and to award indemnity costs. Mr Tankel submitted that any claim for damages should be made in the County Court, which was the more appropriate forum to determine damages in circumstances such as these, where the public law claim had been finally determined.
12. When responding to Mr Tankel's submissions, Ms Kelly initially asked me to provide a reasoned judgment on ground 1, which alleged a breach of s. 18 of the Care Act. Ms Kelly submitted that during the course of oral submissions Mr Tankel appeared to resile from the concession that ground 1 was made out. However upon further considering the matter and the parties agreeing to my suggestion to tighten the wording of the Statement of Reasons, both parties accepted the issues in dispute were limited to damages and costs. Statement of Reasons 13. I have considered the proposed amendment to the Statement of Reasons at [16], in the light of the agreement reached at the hearing, which now states as follows: "The Defendant concedes that its assessment and care plan are unlawful for the above reasons. The Defendant concedes that Judgment Approved by the court for handing down. ZZ v Croydon Council given 15(a)-(c) above, its care plan breached s.18 and was therefore unlawful, and that s.18(1) Care Act duties were not discharged by s.18(7). There was no issue before the Court as to the date from which the Defendant ought to have met those needs, which remains an open question." 14. In my judgment this adequately reflects the essence of ground 1 in the SFG and is appropriate. I am grateful that the parties, no doubt with the assistance of Counsel, have been able to promptly deal with the concern that arose during the hearing.
15. Ms Kelly raised a second concern regarding [18] of the Statement of Reasons, which states: "The Defendant's decision is unlawful because it fails to have regard to the evidence of care being provided on a 2:1 basis or 3:1 basis. There remains an evaluative question for the Defendant to consider a suitable level of care, having regard to all the relevant evidence, including but not limited to that of the Claimant." 16. 17. 18. In the event the parties were unable to agree a different form of wording, and it was confirmed on behalf of the Claimant that [18] of the Statement of Reasons remains agreed as originally drafted. Again I am satisfied that this is sufficiently clear and adequately reflects the nature and extent of the issue conceded by the Defendant. I entirely agree that the Defendant's assessment and review dated 19 September 2024 was unlawful for the reasons outlined in the amended Statement of Reasons. The Defendant has clearly acknowledged that as it filed no substantive defence or any evidence, the reasons for the conceded unlawfulness should carefully track the Claimant's pleaded case. I note the Defendant has highlighted that the Court should not make substitutionary findings as to the Claimant's level of need or the care and support that is required to meet that need, that being a matter of evaluative judgement for the Defendant upon further assessment. The parties have been able to distil the Claimant's grounds into clear public law errors, which will also assist the Defendant's staff in its future assessment. I agree with that approach, which reflects well-established principles.

In claims involving challenges to assessment of need, the Administrative Court has repeatedly highlighted that, whilst it may (subject to limitations) consider the lawfulness of the process by which an assessment has been carried out, it is exclusively for local authorities ultimately to decide about levels of need and how to meet them – see Fordham J at

- [15] in R (Daisy Simpson) v NHS Mid and South Essex Integrated Care Board [2024] EWHC 3063 (Admin) and [18] of R (BLZ) v Leeds City Council [2025] EWHC 154 (Admin). In short, judicial review is not a merits appeal and the Court does not have a substitutionary jurisdiction. The local authority must comply with its statutory duties and must act lawfully, reasonably and fairly. In considering the reasonableness of evaluative conclusions, the Court asks whether the primary decision-maker was reasonably entitled to take the view it did: R (L) v Westminster City Council [2013] UKSC 27 [2013] 1 WLR 1445 at §39. Judgment Approved by the court for handing down. ZZ v Croydon Council 19. It follows that I agree with the terms of draft Consent Order save for the issues of damages and costs, which I address below. The appropriate relief is therefore to quash the decision and require the Defendant to undertake a fresh assessment and care plan within three months of the date of the Consent Order.

Damages

20. Ms Kelly relied upon R (CP) v North East Lincolnshire Council [2019] EWCA Civ 1614, which she submitted bears significant similarities to the instant case. Ms Kelly drew particular attention to the following parts of the judgment of Haddon-Cave LJ: “82. In my view, the Judge’s approach and decision on this basis was wrong and heterodox. A breach of a statutory duty is a breach of statutory duty. It is, by definition, unlawful conduct. Unlawful conduct by a public body cannot merely be discounted or ignored. Moreover, s. 26 is no minor matter. A local authority’s statutory duty under s. 26 of the Care Act 2014 to provide a personal budget to meet a person’s care and support needs is fundamental to the operation of the care and support scheme which the Care Act 2014 underpins.
83. In the present case, having found the Council in breach of its statutory duties, he should have gone on to hold that the Council had acted unlawfully and, accordingly, was liable in principle to compensate CP in respect of any monetary shortfall in accordance with normal public law principles of legal accountability of public bodies.”
21. Ms Kelly submitted that there is a clear and obvious breach of the s.18 statutory duty in this case and the Court should award compensation in the form of damages. I entirely accept that the Claimant may, as a matter of principle, be entitled to damages for the conceded breach of the s. 18 statutory duty as set out in the amended Statement of Reasons. However, it is important to consider the appropriateness of determining damages in the Administrative Court in the particular circumstances of this case, including the fact that the Claimant has obtained all other relief sought.

22. Mr Tankel drew attention to [12.8.4] of the Administrative Court Guide, which provides: “Where the assessment and award of damages is likely to be a lengthy procedure, the general practice of the Court is to determine the judicial review claim, award the other remedy sought (if appropriate) and then transfer the claim either to the County Court or to an appropriate division of the High Court to determine the question of damages. All parties must address their minds to the possibility of transfer as soon as it becomes apparent that issues other than damages have been resolved.” 23. This cites *R (ZA (Pakistan)) v SSHD* [2020] EWCA Civ 146 at [72]), an unlawful detention claim in which by the time of trial the only real relief sought was a claim for damages. Dingemans LJ observed that in the future, parties should give timely Judgment Approved by the court for handing down. *ZZ v Croydon Council* consideration to transferring unlawful imprisonment cases from the Administrative Court when issues of detention have been resolved. He said this at [69]: “By the time of the trial of this claim on 14 and 15 December 2017 the real relief sought by the Appellant was a claim for damages for wrongful detention. Claims for damages alone may not be brought in the Administrative Court, see CPR 54.3(2) “a claim for judicial review may include a claim for damages, restitution or the recovery of a sum but may not seek such a remedy alone”. This procedural rule exists because the Administrative Court seeks to make speedy decisions auditing the legality of decision making by public bodies. The Administrative Court will not be able to do that if its lists are filled with damages claims. Further, the procedures of the Administrative Court are not well suited to determine contested historic events giving rise to claims for damages where disclosure and cross-examination of witnesses will be relevant. These are points which have been made by the Court of Appeal in *R(S) v Secretary of State for the Home Department* [2015] EWCA Civ 652 at paragraph 11, approving *Swaran v Secretary of State for the Home Department* [2014] EWHC 1062 (Admin) at paragraphs 30-34.” 24. 25. Damages arising from a breach of statutory duty under the Care Act raise different issues to unlawful detention damages. There may be straightforward cases in which breach of statutory duty and related damages can be easily and quickly determined in the Administrative Court – see for example the discrete issue in *CP*. However, other cases may require a lengthy and time-consuming procedure. Both parties sought to place reliance on *R (A) v North Central London Integrated Care Board v London Borough of Haringey* [2025] EWCA Civ 485 at [82-83] in different ways. Ms Kelly sought to distinguish *A* on the basis that it dealt with restitution / unjust enrichment and not a breach of a statutory duty. Mr Tankel submitted that *CP* could be distinguished from the instant case. For the reasons I set out below, the determination of damages in this case is likely to involve a lengthy procedure, unsuitable to the Administrative Court. It is for this overarching reason that I have concluded the issue of damages should be transferred to the County Court, and not because of claimed similarities or differences on the facts with *CP* / *A*. As Dingemans LJ noted at [72] of *ZA (Pakistan)*, the overriding objective requires that cases are allotted an appropriate share of the court's resources, see CPR Part 1.1(2)(e). Parties are required to help the court to further the overriding objective, see CPR Part 1.3. Matters should be allocated to and determined by the most suitable Court. There are advantages and disadvantages to both parties in a transfer to or lodging proceedings for damages in the County Court. Ms Kelly

submitted that the Defendant has been on notice that damages would be sought since December 2024, yet it has not defended this claim beyond the Summary Grounds of Resistance, which did not address these issues. There is some force in the Claimant's submission that the overriding objective does not support the Defendant insisting that the Claimant is obligated to incur the costs and time of beginning new proceedings in a separate court. Judgment Approved by the court for handing down. ZZ v Croydon Council 26. 27. 28. 29. Costs 30. However, in this particular case, delay is inevitable as the Court is not in a position to fully and fairly determine the damages being claimed by the Claimant. Ms Kelly submitted there are breaches of statutory duty which have led to significant losses and undischarged debts to the care team and HMRC in relation to the failure to provide care for 10 hours of overnight needs since May 2024 and the failure to provide adequate personal budget since April 2023. The instant case is different from CP, wherein there was a fixed amount that the Defendant could be required to pay. Unlike the damages in CP, the damages claimed here are not fixed or easily calculable – indeed the Claimant has not provided clear finalised calculations. In addition, the damages sought here are more wide-ranging. Other damages are sought, some of which the Claimant concedes to be not currently quantifiable for varying reasons: paucity of evidence; disputes regarding the evidence; or the need to await further assessments. By way of example, Ms Kelly expressly accepted that this Court may be reluctant to reach a positive conclusion on what staffing ratio is appropriate for the Claimant and it would be difficult to award damages under this claimed head. There remain questions as to the level of direct payments that the Claimant is lawfully assessed as requiring, plus an evidential issue as to how far back that should go. The damages sought by the Claimant may require a process for calling witnesses and for cross examination. There currently remain disputed issues of fact to be determined. This includes an evidential inquiry into whether the Defendant agreed the hourly figures claimed for the payment of care staff. The claim for damages is likely to be more suited to the County Court procedure - statements of case and full case management of the claim, including disclosure - which would give clarity to the case being made. That is probably best done after a lawful assessment of the Claimant's needs, which is not due to be completed for another three months. The real question is whether the determination of damages arising from the Defendant's conceded unlawful actions, should be determined in this Court or in the County Court. I do not accept that the assessment of damages is likely to be straightforward. There remain unresolved factual issues and gaps in the evidence. To fully resolve these matters, a lengthy procedure is likely to be required, in a case wherein all other grounds have been finally resolved in favour of the Claimant, and he has been provided with the remedies sought, save for damages. The appropriate course is for the matter to be transferred to a forum better suited to resolving such issues, the County Court. In the event I declined to consider damages in these proceedings, Ms Kelly invited me to issue directions to assist onward case management in the County Court. In my view the case would be more suitably case managed by the County Court, and probably at a point after the Claimant is re-assessed. It is agreed that costs should follow the event, but the Claimant has sought indemnity costs. The parties agreed that the relevant test is whether it can be said that the

Defendant's conduct has been "unreasonable to a high degree". Ms Kelly relied upon three headline factors: (i) the Defendant robustly defended the claim during the pre-action protocol stage for reasons demonstrating a blatant misunderstanding of the applicable law; (ii) the Defendant did not provide interim relief until chased, with a delay of some 10 days, in breach of the Court Order; (iii) the Defendant offered no Judgment Approved by the court for handing down. ZZ v Croydon Council 31. reasonable explanation for failing to comply with Court Orders by not providing Detailed Grounds at all and completely conceding the claim, save for damages, the day before the substantive hearing. It is very regrettable that the Defendant has flagrantly and repeatedly breached the Court's Orders. The delay in providing interim relief and the Defendant's failure to formally set out its position in Detailed Grounds has undoubtedly caused unnecessary delay and upset for the Claimant and his family. However, the Court takes some comfort from the clear acknowledgment within the Defendant's belated skeleton argument that the Defendant takes those breaches extremely seriously and has made every effort to clearly and comprehensively concede each of the claims brought, as set out in the amended Statement of Reasons. It was made clear by the Defendant and not disputed by the Claimant, that the Defendant indicated to the Claimant at a very early stage that it would concede the claim. There have been extensive negotiations behind the scenes. There is no reason to believe that these have been conducted in anything other than good faith. Whilst it is of concern that the Defendant initially clearly misunderstood the law governing the assessment process under the Care Act, that has been rectified and recorded in full, in order to avoid future errors.

32. Whilst I am satisfied that the Defendant acted unreasonably at times and this has led to unnecessary delay and uncertainty, when all the circumstances are considered together, I am unable to conclude the Defendant has acted unreasonably to a high degree. I therefore conclude that the high threshold required to order indemnity costs is not met. Final matter 33. The parties have finalised a Consent Order and Statement of Reasons, which I approve. 8

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