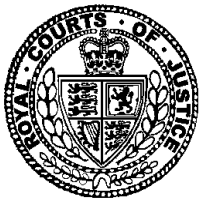

Neutral Citation Number: [2022] EWHC 707 (Admin)

Case No: CO/3882/2021

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

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 1 April 2022

Before :

MRS JUSTICE STEYN DBE

- -

Between :

JS (by her litigation friend KS)

Claimant

- and -

Cardiff City Council

Defendant

- -
- -

Owain Rhys James (instructed by Watkins and Gunn) for the Claimant
David Gardner (instructed by Cardiff City Council) for the Defendant

Hearing date: 2 March 2022

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn DBE :

A. Introduction

1. This is an application by the Claimant to initiate proceedings for contempt of court against Cardiff City Council ('the Council'). The particulars of breach are:

   i) "*A failure to comply with the mandatory injunction set out at paragraph 5 of the order of his Honour Judge Keyser QC, on the basis that the Defendant did not as of 7 January 2022 and still has not completed future placement planning for the Claimant.*"

   ii) "*The Defendant has also failed to comply with paragraph 6(a) of that order in that no sworn affidavit has been filed by the relevant director of the Defendant explaining the breach of the injunction.*"

2. The Claimant's application was made on 14 January 2022 pursuant to paragraph 6(b) of the order made by HHJ Keyser QC, sitting as a judge of the High Court, on 20 December 2021 ('the December Order'), and CPR 81.3(1). The Claimant's application is supported by an affidavit made by Ms Eleri Griffiths, the Claimant's solicitor.

3. In accordance with paragraph 6(c) of the December Order, on receipt of the Claimant's application the papers were referred to Judge Keyser QC for consideration of directions pursuant to CPR 81.7(1). The Judge made directions on 17 January 2022, including that the "*Defendant do file and service such evidence, if any, as it wishes to rely on in response to the application by 4pm on 1 February 2022*", and for the matter to be listed for a hearing before a High Court Judge. The Council has responded to the contempt application by filing and serving a witness statement made by the Claimant's allocated social worker, Christian Vaughan-Morris, on 1 February 2022 (in accordance with the 17 January order). The Council's primary position is that it has complied with the 20 December Order. In any event, the Council submits it is not in contempt of court.

4. At the hearing on 2 March 2022, the judgment given by Judge Keyser QC on 20 December 2021 ("Judge Keyser's judgment") was not yet available due to a delay in delivery or collection of the tape of the hearing. In circumstances where neither parties' Counsel had appeared at the hearing in December, I reserved judgment to enable the transcript to be obtained and gave the parties permission to file written submissions within 7 days of receipt of the transcript. A copy of that judgment was made available to the parties on 23 March 2022: *R (JS by his litigation friend KS) v Cardiff City Council* [2021] EWHC 3720 (Admin). In the event, both parties confirmed on 24 March 2022 that they did not intend to file any further submissions.

B. Background

5. The Claimant is a young man who has diagnoses of autistic spectrum disorder, severe communication and learning difficulties, attention deficit and hyperactivity disorder and anxiety disorder.

6. On 7 July 2021, the Claimant's mother (who is also his deputy and litigation friend) brought a judicial review claim (CO/2358/2021) on his behalf against the Council. Until June 2021, the Claimant had been attending Elidyr Communities Trust ('the Trust'), a

residential college providing education for young adults with learning difficulties. The Claimant attended a 3-year course at the Trust. The Welsh Government funded the educational element and the Council funded the social care element.

7. The Claimant's grounds of judicial review were that:

   i) The Council had, since around 26 May 2021, unreasonably failed to decide to fund an extension of the Claimant's placement at the Trust; and

   ii) The Council had failed to implement a care and support plan.

8. The Claimant sought urgent consideration and an interim injunction that the Council extend the claimant's placement at the Trust until: (i) it finalised a care and support plan; (ii) the Court of Protection ordered that the care and support plan is in the Claimant's best interests or until the Claimant's Deputy agreed with the care and support plan; and (iii) a 13 week transition process was implemented.

9. On 8 July 2021, HHJ Lambert granted an application for expedition and ordered a rolled-up hearing of the claim, listed to take place on 28 July 2021. In doing so, he remarked:

> "The Claimant needs certainty in his life which has not been achieved previously. In the past the Defendant has failed in its duty to the Claimant. The matter is now particularly urgent and the need for certainty has never been greater."

10. The reference to past failures was elaborated upon in Judge Keyser's judgment at [2]:

> "There has been an ongoing problem since 2020. That led to a Stage 2 adjudication in August 2020, which upheld numerous grounds of complaint by the claimant's mother (now litigation friend) against the defendant council: in particular, that there was a lack of timely planning, which caused anxiety and distress to the claimant; that the planning was too little and too late, even after allowing for the Coronavirus situation; and that, when the planning did start to take place, it was "completely wrong"."

11. On 23 July 2021, a consent order signed by both parties' solicitors was approved by the court ('the Consent Order'). The Consent Order stated so far as material:

> "AND UPON the Local Authority having received the report of the ASD assessor on 20 July 2021 and considered the same
>
> AND UPON the Local Authority agreeing that:
>
> (1) By 30 September 2021, the Local Authority will identify a list of placements, that it is willing to fund, that meet the recommendations set out by the ASD assessor, namely, that any placement will, as a minimum:
>
> [Detailed minimum criteria (a)-(j) were then set out.]

> (2) By 30 September 2021, the Local Authority will liaise with potential care and support providers and the Claimant's deputy and family members to identify activity plans for the Claimant. This will include work with Dimensions, the provider of the previously identified potential placement, Bridgewater Road.
>
> (3) The assessment from the Local Health Board is due to commence in August 2021. The Occupational Therapist will need to visit and complete observations of the Claimant in his current placement at the Trust. The Occupational Therapy assessment will therefore be completed after the Claimant returns to the Trust in September 2021.
>
> (4) By 29 October 2021, the Local Authority will have concluded future placement planning for the Claimant. The Local Authority will produce (a) a care and support plan; (b) a transition plan; and (c) an activity plan for the Claimant.
>
> (5) The Local Authority will continue to fund JS's current placement at the Trust until 31 December 2021.
>
> (6) If any necessary application to the Court of Protection has not been determined by 31 December 2021, the Local Authority will continue to fund the Claimant' s placement at the Trust to allow the Court of Protection proceedings to be determined and for the transition plan, if required, to be implemented.
>
> BY CONSENT IT IS ORDERED THAT:
>
> 1. The claim for judicial review is withdrawn.
>
> 2. The rolled up hearing listed by HHJ Lambert to take place on 28 July 2021, is vacated. …" (Emphasis added.)
>
> …"

12. In essence, the Claimant agreed to withdraw his judicial review claim on the basis of the Council's undertaking to the court (a) to continue to fund his placement at the Trust until the end of the year, (b) to identify by 30 September 2021 a list of alternative placements that it was willing to fund and (c) to conclude future placement planning and the production of a care support plan, transition plan and activity plan by 29 October 2021.

13. On 4 August 2021, the Council contacted the Trust to seek to extend the Claimant's placement. Unfortunately, in view of the Council's delay, that did not prove possible. The Trust responded to the Council that as a place had not been secured before the end of term, they were no longer able to offer the Claimant a place in September 2021 due to staff shortages.

14. As Judge Keyser observed at [3], the claimant's father had warned the defendant in an email dated 6 May 2021 that

> "leaving the decision on placement with the Trust to the last minute was going to lead to problems, because the Trust could not be expected to be left in a state of uncertainty awaiting a decision. That proved to be prophetic, although in truth no great gifts of prophecy were required."

15. The Council breached its undertakings to the court made in the consent order. Despite the added urgency as a result of the Claimant's residential placement at the Trust being unavailable, the Council failed to comply with the undertakings it had given in respect of the provision by 30 September 2021 of a list of placements that the Council was willing to fund and the conclusion by 29 October 2021 of future placement planning and the production of care support, transition and activity plans.

16. On 10 November 2021, the Claimant filed a further claim for judicial review against the Council (CO/3882/2021), together with an application for urgent consideration, and an application for interim relief. The Claimant relied on two grounds of claim:

> "a. The Defendant is failing to meet the Claimant's needs pursuant to section 35 of the Social Services and Well-being (Wales) Act ("the 2014 Act");
>
> b. The Defendant has failed to prepare, maintain and/or review a care and support plan pursuant to section 54 of the 2014 Act and/or in breach of the Claimant's legitimate expectation."

17. On 12 November 2021, Judge Lambert made an order listing the claim for an expedited rolled up hearing and he made a mandatory order in the following terms:

> "The Defendant must by 4pm [on] 21 December 2021 complete future placement planning and produce a care and support plan for the Claimant."

18. Judge Lambert observed:

> "I said in July in CO/2358/2021 "*The Claimant needs certainty in his life which has not been achieved previously. In the past the Defendant has failed in its duty to the Claimant. The matter is now particularly urgent and the need for certainty has never been greater.*" Things seem even worse now. I am appalled by the Defendant's conduct. It is going to take a very good explanation to disabuse a judge of that impression. The case is so bad that I have granted the interim injunction sought, even against a Local Authority."

C. Judge Keyser's judgment and the December Order

19. The rolled up hearing was listed to be heard on 20 December 2021, that is, one day prior to the date by which the Council was required to comply with the mandatory order made by Judge Lambert. The hearing took place before Judge Keyser QC. Both parties were represented by Counsel.

20. The Council did not defend the claim, conceding both grounds 1 and 2 and acceding to a declaration that it had unlawfully failed to prepare, maintain and/or review a care plan within a reasonable period of time.

21. The only dispute at the hearing concerned the terms of the final mandatory order the Claimant sought. The Council conceded that future placement planning and production of a Care and Support plan should have been completed earlier. The Council also agreed to a mandatory injunction requiring it to complete future placement planning and to produce a care and support plan for the Claimant. The issue concerned the date for compliance with that mandatory injunction. The 12 November order had required compliance by 21 December 2021. The Council submitted it was impossible to comply by that date and asked to be given until 29 April 2022 to complete future placement planning and to produce a care and support plan for the Claimant.

22. Judge Keyser QC observed:

> "6. No application was made to set aside or vary the order [of Judge Lambert granting a mandatory injunction]. The defendant's position is that it is simply unable to comply with the order. It sets out that inability in a witness statement from the social worker dated 17 December 2021; that was last Friday, the last working day before today—in fact, it was served today. The statement exhibits a schedule setting out the efforts that have been made to find placements; most of these are in the last fortnight, though some go back to November. (There is cursory information relating to 30 November. There is also a reference to 9 November, but I think that in context this must mean 9 December. Therefore, it appears that substantive efforts have been made in the period since 30 November.)
>
> …
>
> 10. The defendant council was not in the position of being able to choose whether or not to comply with the injunction. Compliance with the order of the court was mandatory. Further, the defendant's conduct had been lamentable in the period prior to the consent order of 23 July 2021, and it compounded this by breaching the terms of the agreement into which it voluntarily entered on that occasion.
>
> 11. The practical question is: what to do today? On the one hand, the defendant says, 'Well, we just cannot—and therefore, with regret, will not—comply with a requirement that we conclude this matter by tomorrow.' It is indeed quite clear that the defendant cannot and will not comply with such a requirement."

23. Although Judge Keyser QC saw force in the claimant's submissions that to accede to the Council's plea for an extension of time would be to let the Council 'off the hook', "because it would mean that the defendant would not be in contempt of court for breach of Judge Lambert's order" despite there having been no application to vary and the flimsiness of the evidence, he acceded to the Council's plea for more time than they

had been given in the order for interim relief. That was for two reasons. First, the priority was to achieve a practical outcome and that would not be assisted by maintaining a date for compliance of the following day, with which it was known that the defendant could not and would not comply. Secondly, he bore in mind that Judge Lambert's order had set a deadline for compliance which was after the directed time for the substantive hearing, which lessened, to a degree, the force of the point that no application to vary the order had been made.

24. However, Judge Keyser QC was not prepared to give the Council the four months that they sought, observing:

> "13. I have no intention at all of acceding to the defendant's request for a four-month extension until the end of April. The suggestion that they should be given that time because they do not want to make promises they cannot keep and so forth is lamentable. If the defendant is required by an injunction to do something, then it is legally obliged to do it. Despite what I have said, the failure to apply for a variation of an injunction that had already been made is to be deprecated.
>
> 14. I shall instead take a course that may appeal to nobody and shall grant an injunction with a deadline of compliance by the end of the first week of January, namely 7 January 2022. That is a final injunction. The defendant is not able to pick and choose whether it complies with it; it is not an injunction to use best efforts. It is an injunction to achieve an outcome.
>
> 15. I shall also—subject to anything that Mr Howells has to say on the point, because I do not want to be seen as encouraging or even envisaging a breach by the defendant of its obligations—give consideration to the possibility that, in the event of a failure of compliance (because the defendant's current position appears to be that it cannot comply by 7 January either), the order will require an affidavit to be sworn by the relevant director of the defendant council, giving the information that was directed to be given by the Secretary of State by Chamberlain J in *Mohammed v Secretary of State for the Home Department* [2021] EWHC 240 (Admin) at [28]."

25. Judge Keyser QC made an order in the following terms (so far as material):

> "AND UPON the Defendant having conceded both grounds of claim and acceding to the terms of the declaration set out below and consenting to a mandatory injunction in the terms of paragraph 5 of this Order save in respect of the date by which compliance is required
>
> UPON the Court expressly observing that compliance with the terms of the mandatory injunction in paragraph 5 of this Order is required and is not made optional by the terms of paragraph 6 of this Order

IT IS ORDERED BY CONSENT THAT:

1. The Claimant do have permission to apply for judicial review.

2. The claim for judicial review be and is allowed on both grounds.

AND IT IS DECLARED THAT:

3. The Defendant unlawfully failed to prepare, maintain and/or review a care plan within a reasonable period of time.

AND IT IS FURTER ORDERED THAT:

…

5. The Defendant do by 4pm on 7 January 2022 complete future placement planning and produce a care and support plan for the Claimant.

6. In the event that the Defendant breaches the injunction in paragraph 5 of this Order, the requirements of this paragraph shall have effect:

(a) The Director of Social Services of the Defendant must by 4pm on 7 January 2022 file and serve an affidavit explaining the circumstances in which the Defendant failed to comply with paragraph 5;

(b) The Claimant may if so advised by 4pm on 14 January 2022 file and serve an application under CPR r.81.3.(1);

(c) On receipt of the Claimant's application or after 14 January 2022 (whichever is sooner) the papers are to be referred to HHJ Keyser QC for consideration of:

(i) directions pursuant to CPR r.81.7(1) (if the Claimant has made an application pursuant to CPR r.81.3(1));

(ii) a decision pursuant to CPR r.81.6(1) as to whether the Court should proceed on its own initiative against the Director of Social Services at Cardiff City Council (if no such application has been made);

(iii) such further or other directions as may appear just and convenient.

7. The Defendant do pay to the Claimant his costs of the claim, to be subject of a detailed assessment on the indemnity basis if not agreed.

…"

26. The parties agree that the reference to the Director of Social Services ought, in fact, to have been a reference to the Director of Adults, Housing and Communities.

27. I make five observations at this stage. First, the court imposed, by paragraph 5, a final mandatory injunction.

28. Secondly, the final mandatory injunction was made in circumstances where the Council had given an undertaking on 22 July 2021 to "conclude" future placement planning for the Claimant and to produce a care and support plan by 29 October 2021: paragraph 1(4) of the preamble to the consent order. The injunction reflects, although it is not in precisely the same terms, paragraph 1(4) of the consent order, save to the extent that the order contains no requirement to prepare transition and activity plans, and the date imposed by the order is 10 weeks later than the date given in the undertaking.

29. Thirdly, the final mandatory injunction is in precisely the same terms as the interim mandatory injunction imposed by the order of 12 November 2021, save to the extent that the Council was given a further 17 days to comply.

30. Fourthly, the order imposed an obligation of result, not merely an obligation to make reasonable efforts to comply. As Chamberlain J observed in *Mohammad v Secretary of State for the Home Department* [2021] EWHC 240 (Admin) at [24]:

> "…when the court grants a mandatory injunction, it must be complied with by the time stipulated unless it is set aside before that time. If it is not complied with by the stipulated time, the obligation to comply remains. A pending application to discharge or vary it does not excuse a failure to comply. The obligation to comply remains unless and until the order is set aside by a judge: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, [29]-[33]."

31. Fifthly, breach of a mandatory injunction is a serious matter which may result in proceedings for contempt. Such proceedings can be initiated under CPR r. 81.3(1) by the party at whose instance the injunction was granted. They can also be initiated by the Court on its own initiative. Indeed, CPR r 81.6 obliges the court, where it considers that a contempt of court may have been committed, to consider whether to initiate contempt proceedings against the defendant. In this case, in circumstances where the Council contended it was not in a position to comply with the mandatory injunction by the date set in the order of 12 November 2021 and sought an additional period of more than four months for compliance (which the court was not prepared to grant), paragraph 6 of the 20 December order expressly provided for the possibility of breach, both by requiring an explanation in an affidavit from the Director and making abundantly clear that the Council potentially faced contempt proceedings if it failed to comply with the order of 20 December.

D. The evidence and the current position

32. On 7 January 2022, the Council sent the Claimant a letter (by email) stating that it was enclosing by way of service;

"the Local Authority's future placement planning documents and accompanying care and support plan pursuant to the Order of Judge Lambert [sic] dated 20 December 2021.

It is regrettable that there has been a significant delay in providing future planning for JS. The Local Authority finalised JS needs assessment on 6 December 2021 (a copy of which is enclosed) following receipt of the outstanding occupational therapist's assessment, dated 4 November 2021, on 30 November 2021 (a copy of which is enclosed). The parents have been provided with copies of both documents. Once the needs assessment was finalised, and the local authority had a clear understanding of JS' eligible needs and his personal outcomes, a focused search for suitable long-term placements could be undertaken. The Local Authority acknowledges the delays that have arisen in the matter and apologise for the same.

Placement options

In light of JS['s] assessed eligible needs and outcomes as set out in the finalised needs assessment, the Local Authority have identified the following long term placement options:

- Consensus, the Grange, Carmarthen (residential service) [placement profile enclosed]

- Accomplish, Whitehouse, Bridgend (residential service) [placement profile enclosed]

These options were presented to the parents during preliminary enquiries and discussed at a meeting between them and the social worker on 16 December 2021. At the meeting, the parents acknowledged that the placements appeared to have positive attributes. They have also engaged well with the placements' assessment processes. The parents have expressed their preference for a Camphill community placement. However, the Local Authority's assessment of JS' needs do not reflect that this is a necessary requirement to meet his eligible needs. As of 7 January 2022, there are no available camphill placements.

Outstanding enquiries for placements

However, in light of the parents' preferences, the Local Authority have made enquiries with camphill community placements. Although, the above placements are the only currently available options for JS there are further current live enquiries with other alternative placements, including camphill community placements, which may be in a position to offer a placement to JS. The current outstanding live enquiries are:

- The Hatch, Bristol (camphill community) due to assess on 10 January 2022
- Orchard Leigh, Gloucestershire (camphill community) due to assess on 10 January 2022
- Autism Spectrums Cymru (part of Autism Initiatives Group), the Heath, Cardiff (supported living service)
- Ocean Community Services (OCS) (residential service)
- Consensus, Ty Hendy, Pondardulais (residential service)
- Values in Care, Tyn y wern (residential service)

Next steps

The Local Authority shall await the Deputy's views on which of the available placements on offer is preferred. Additionally, should the outstanding placement assessments prove successful, the options offered for long term placements shall be amended accordingly. …" (Emphasis added.)

33. The email enclosed a Care and Support Plan dated 6 January 2022. The Care and Support Plan was in precisely the same terms as the version dated 17 December 2021, that had been adduced in evidence before the court at the hearing on 20 December 2021, save for the following amendments:

i) In the section headed "Significant Factors" the following words have been removed:

> "Whilst a suitable placement is found, the Local Authority is providing a Direct Payment Package of Care in line with his parents request and assessed need, to access the community and meet his needs on a temporary basis whilst living at home with his mother (Deputy). This is not a long-term sustainable Care Plan, but meets JS needs as agreed by his Deputy, mother & father."

ii) In the section headed "Other Plans in Place", the reference to "In house Elidyr Trust Risk Assessments" has been removed and reference to "Transition Plan" has been added.

iii) In the fifth section headed "Agreed Needs", minor amendments have been made to the first paragraph.

iv) In the seventh section headed "Agreed Needs" the words "*The Local Authority Continue to work with JS, Deputy and family to assess and identifying [sic] potential suitable future placement options for [JS], in order for Deputy [KS] to make best interests decision on the available options*" have been removed. At the end of the section, the following words have been added:

> "The Local Authority have identified 2 potential residential placements that are placed before the Court. When the agreement placement is confirmed, the Care Plan will be updated to reflect that chosen placement provider."

v) The sections headed "My Personal Outcomes" 1, 2 and 3 have been amended.

vi) In the section headed "Actions to be Taken" the following words have been removed: "*Local Authority to identify Jack needs [sic] a placement that can meet his eligible assessed needs. Whilst a suitable placement is found, the Local Authority to provide a Direct Payment Package of Care in line with his Deputy and family stated need and eligible assess need, to access the community and meet his needs on a temporary basis whilst living at home with his mother (Deputy).*" The following words have been added in their place:

> "Local Authority has identified 2 providers that could offer [JS] a placement that can meet his eligible assessed needs. These 2 placements are placed before the Court. When the agreed placement is confirmed, the Care Plan will be updated to reflect that chosen placement provider."

vii) Under the heading "Service Schedule" all references to "Direct Payments" have been removed. The Care and Support Plan continues to state, "The following services are provided: … Full Time … Ld Res Perm", but where the 17 December 2021 Plan had specified the provider of the full-time, learning disability residential placement as "Coleg Elidyr Ltd", in the Care and Support Plan dated 6 January 2022, the box marked "Provider" is left blank.

viii) Under the heading "Review Arrangements", the 6 January 2022 Plan states "Review within 3 months of move-in date, followed by Annual Review by Cardiff Social Services Learning Disability Team".

34. On 10 January 2022, the Claimant's solicitor sent an email to the Council's solicitor to clarify whether they considered the Care and Support Plan produced on 6 January 2022 complied with the injunction. The Council responded the same day:

> "The two options provided on Friday constitute compliance with the injunction. Both placements can commence the transition plan immediately. However, as a number of enquiries are outstanding, the Local Authority did not stop pursuing these enquiries with placements that could not assess during the holiday season period. As such, the alternative options will undertake their outstanding assessment and inform the Local Authority whether they can offer JS a placement. There is no guarantee that these outstanding assessments will be positive.
>
> By way of update, I am instructed that the Hatch, Bristol does not have a vacancy at present to officer JS. The Orchard Leigh Camphill have assessed that they could meet JS' eligible needs and have 2 vacancies at present."

35. The Claimant's solicitor states in her affidavit that:

> "The Claimant regretfully cannot agree with the Defendant's position that both placements can commence the transition immediately. The Claimant and indeed the Deputy has not been provided with any further information as to the placement save for one meeting with each provider and brochures."

36. Mr Vaughan-Morris has given evidence that by mid-December he had identified The Grange and Whitehouse as having potential placements with a vacancy. On 9 and 13 December 2021, respectively, he submitted to Consensus (the provider for The Grange) and Accomplish (the provider for Whitehouse) "*an initial brief pen picture of JS, followed by more detailed documentation on JS (i.e. Care and Support plan; ECT Weekly Activity Plan + PBS Plan + Risk Assessments and detailed Workshop plans)*".

37. Mr Vaughan-Morris states:

> "13. Providers Consensus (The Grange) and Accomplish (Whitehouse) indicated potential ability to meet needs and that they had a vacancy on 13-12-2021 and 10-12-21 respectively. Therefore, I conducted initial discussions with both the Providers to talk through specifics of need in more detail (on 15-12-2021 and 16-12-2021). This involved lengthy conversations focusing specifically on JS's needs in relation to (i) environment and space inside and outside the placements and nearby facilities, green spaces and type of environment in locality (ii) food and restrictions around access to kitchen (iii) activities available (iv) support approaches and staff skillsets and experience (v) compatibility considerations.
>
> 14. Discussion concluded with clear view from both providers that JS needs could be met by what they can provide at their respective placements."

38. I note these were steps that had been taken prior to the hearing before Judge Keyser QC.

39. Mr Vaughan-Morris continues that the next step was to involve the Claimant's mother and father. He states that he arranged an "initial assessment meeting" between each provider, that is Consensus (The Grange) and Accomplish (Whitehouse), and JS's mother and father on 30 December 2021 and 4 January 2022, respectively. His evidence is that the aim of each of these meetings was to reach one of two outcomes, namely, either:

> "9. … (i) an agreement that the placement or placements being considered show enough potential to meet the needs of the individual, to proceed to be one of the considered future placements, and proceed to the next step of introduction to the individual and further information gathering to establish detail around meeting needs or (ii) an agreement that the placement does not show the potential to meet the individual's needs and is

> not suitable to take the next step. The placement or placements showing potential suitability to meet needs would then be considered."

Mr Vaughan continues in the same paragraph, explaining the position in principle:

> "At this stage, once the available options are identified, future placement planning is complete, ready for a Best Interests meeting between all parties. At the Best Interests meeting all available options that could meet JS's eligible needs are put forward to all parties to agree which placement is in the individual's best interests. Following this, the selected placement would be contacted to proceed to the Transition Plan stage."

40. However, Mr Vaughan-Morris states that the initial assessment meetings did not result in either of the outcomes (i) or (ii) being achieved. Instead:

> "17. …the outcome of the meetings was a difference of views i.e. that both of the Providers and the Local Authority agree that The Grange and Whitehouse could meet JS's eligible needs, but the view of JS's mother and father was that they do not think the two placements could meet JS's needs and that there should be more time to assess in more detail and come to a conclusion."

41. Mr Vaughan-Morris states:

> "20. Provider's view: Accomplish stated they were confident that they can meet JS's needs around his socialisation, exercise and activities with the information they have received so far.
>
> 21. Provider's view: Consensus stated that they were confident that based on paperwork and through discussions they can meet JS's needs. Compatibility consideration with one other gentleman at the Grange would be explored through the transition process. …
>
> 23. Social worker view: Whilst the placements with Consensus and Accomplish are not Camphill type placements I am confident they meet JS's eligible needs. …
>
> 26. … Despite the confidence the Council had about the placements being able to meet JS['s] needs, introducing the providers to JS before 7th January would have been unethical and could have been unsettling and confusing to JS. We would not choose to arrange introductions and further assessment without confirmation from JS's mother, father and the Court that these placements could be pursued.
>
> 27. In addition, through this process, JS's mother and father are explicit in their preference to wait for a Camphill placement and

> continue to support JS at home with a direct payment, rather than proceed with Consensus or Accomplish. JS's mother and father have declined the available options at the conclusion of the future placement planning meetings, in order to explore Camphill placement instead. Therefore, the Council will work collaboratively with them to see if an appropriate placement can be found and accessed in a timely manner which meets their preferred model."

42. The current position is, therefore, that the Claimant's Deputy has not agreed that placement at either Consensus (The Grange) or Accomplish (Whitehouse) would be in the Claimant's best interests. The Council has not named either placement in the Care and Support Plan with a view to seeking an order from the Court of Protection that the Care and Support Plan is in the Claimant's best interests. Instead, the Council is continuing to search for a placement that all parties agree would be in his best interests. In the meantime, the Claimant remains at home with his mother, as he has been throughout the past seven months. It is common ground that she is not able to meet his needs on a long term basis. Although reference to direct payments has been removed from the Care and Support Plan dated 6 January 2022, such payments are in fact still being made.

43. With respect to the views of the potential providers, Mr Vaughan-Morris has exhibited an email from Lorraine Jackson of Consensus (The Grange) dated 6 January 2022 in which she states:

> "I have gone through all of [JS's] paperwork and through discussions in our teams call with yourselves and [the Claimant's parents], I do feel consensus can meet [JS's needs].
>
> I will be honest this is only based on information that I have been given and through discussions, this would need further assessment processes to be followed to gain a better understanding of [JS] and his needs.
>
> Currently I do feel that [JS's] needs could be met at The Grange in Carmarthenshire although I do have some reservation on compatibility with another gentleman, which would be explored through the assessment process."

44. Ms Jackson then referred to another potential placement before continuing:

> "I want to reiterate that these are at present possible options for [JS] and would be great if [the Claimant's parents] could visit each service to see whether they feel each service could be suitable, I could arrange this for whenever you would like this too [sic] happen, obviously if this progresses further would be great for [JS] to visit too, but not until something was agreed and deemed suitable for [JS] by all involved."

45. Ms Jackson concludes:

> "If agreed to progress we would complete assessments, meet [JS] and contact the trust to get to know him and make a decision whether we could possibly meet his needs and also if agreed we would ensure there was a transition plan to ensure a successful plan was in place to ensure it all was planned according to [JS's] needs."

46. Also on 6 January 2022, Iestyn Duggan of Accomplish (Whitehouse) sent an email, stating:

> "Yes you are correct. We are confident that we can meet JS's needs around his socialisation, exercise, and activities with the information we have received so far (full assessment to be completed). We have large grounds which JS could utilise if required. There are challenges around learning opportunities. For example, independent living skills and cookery classes in Neath YMCA have been cancelled due to COVID. We could however offer informal learning with the involvement of the local SALT team."

47. In relation to Consensus (the Grange), Mr Vaughan-Morris states at [21]:

> "Since the 7th January Consensus have confirmed that their further information gathering from a meeting with Elidyr Communities Trust staff on 19th January has been "incredibly helpful in answering our questions regarding J's tolerances, compatibility, characteristics and how J benefits from being supported with activities, his communication style and proactive strategies to support any presentation of agitation which eased any concerns we had re compatibility." (Consensus, 21-01-2022)."

48. Since Mr Vaughan-Morris's statement was filed on 1 February 2022, he has emailed the Claimant's parents on 15 February 2022 regarding other placements. He wrote:

> "Since the update from Orchard Leigh / The Hatch last week, I've been following up on other Camphills – wanted to consult your views on any alternatives and give a progress report.
>
> As I think you're aware, I referred your son to other Camphills also last year – including Gannicox (Stroud …) and Oaklands and The Grange, in Newnham Gloucestershire … I telephoned the 3 of them end of last week, not being able to speak to the right person.
>
> I'm still waiting for a response from Oaklands and The Grange Camphills. But I was a little more encouraged by the response from Sebastian at Gannicox that I was expecting yesterday. He rung me back and confirmed that whilst yes, there is already another person being considered for a placement with them, they would be very happy to accept some further information from

> me regarding [JS] and put him as a consideration alongside the other person already being considered at their referrals meeting this week. He said he'd endeavour to get back to me with a response by the end of the week. I provided [JS's] Care Plan to which he promptly confirmed receipt of. So a slight encouragement yesterday that I wanted to share with you both.
>
> Are there any other placements you've already identified that you'd like me to explore, alongside the ones I am? Here's a map of some of them …. (I'm aware of there being 'official Camphill Communities' and affiliated Camphill communities that appear to run in a very similar way."

E. The threshold issue

49. As a preliminary point, the Council submits that not every allegation of a breach must necessarily result in proceedings for contempt. The claimant (and the court thereafter) should consider the background and any explanation given by the defendant and consider whether a contempt application is necessary and/or appropriate. It is particularly important that full and proper consideration is given to whether it is appropriate to bring contempt proceedings when alleging contempt against a public body as it is very unlikely to be a case where any bad faith or dishonesty is alleged. Problems can often be resolved without the need to involve the court by way of discussions around the issues between the parties and agreed timetabling.

50. In support of these submissions the Council relies on *R (Mohammed) v Secretary of State for the Home Department* [2021] EWHC 240 (Admin) in which Chamberlain J observed at [27]:

> "Fifth, however, not every breach of an injunction must necessarily result in proceedings for contempt – especially where, as here, compliance has been achieved (albeit late), there is an apology and a full explanation for the default is offered. In public law proceedings such as this, the appropriate course is to invite the Secretary of State to give a formal explanation of the breach, supported by witness statements; and then to allow a period for the Claimant and the Court to consider whether any further proceedings are necessary. That may depend on the explanation. If the evidence provides sufficient reassurance that the breach was not intentional and that measures have been put in place to avoid any recurrence, further proceedings may be unnecessary."

51. The Council also relies on the judgment of Gloster LJ in *Stobart Group Ltd v Elliott* [2014] EWCA Civ 564 at [29] and [44] where she observed that "*in order to give leave the court must be satisfied in relation to each allegation that … the bringing of proceedings was in accordance with the public interest, proportionality and the overriding objective*". The Council acknowledges that the Court of Appeal was considering whether permission should be granted to bring contempt proceedings and, in this case, the claimant does not need permission as he is seeking to enforce an order: see CPR 81.3(5). Nonetheless, the Council contends the same principles apply.

52. The claimant submits no threshold issue arises. It is not suggested that this application is vexatious or an abuse of process. In the circumstances, the court should simply proceed to determine whether the Council has acted in contempt of court.

53. In my judgement, the application does not fall to be filtered out by reference to any threshold issue. I accept that, although permission was not required, when considering whether to initiate contempt proceedings for breach of an order by a public body, it would have been appropriate for the claimant to consider whether bringing such proceedings was in the public interest and proportionate, having regard to matters such as whether compliance with the order had been achieved (even if late), whether an apology for any default had been given, and the extent to which an explanation for any default had been given. Equally, those would have been matters for the court to have considered if the court were considering whether to initiate contempt proceedings. An allegation of contempt of court is serious and should not be raised lightly. But where (i) contempt proceedings have been initiated by a party, (ii) there is no requirement to obtain permission, and (iii) it is not contended the application is vexatious or abusive, the court should proceed to determine the application. Matters such as late compliance, apology or explanation for default (where applicable), fall to be considered in the context of penalty, if the public body is found to have committed a contempt of court.

54. In any event, against the background that I have described, it is clear that these proceedings have not been brought lightly.

F. The law

55. There is no dispute as to the applicable legal framework. Proceedings for contempt of court are intended to uphold the authority of the court and to make certain that its orders are obeyed. As Lord Donaldson observed in *M v Home Office* [1992] Q.B. 270 at 305-306: "*Any contempt of court is a matter of the utmost seriousness*".

56. Contempt proceedings may be brought against a public body for a failure to act in accordance with an order of the court. In proceedings in the Administrative Court, it is not the usual practice to include a penal notice on an order against a defendant public body. In *R (JM) v Croydon London Borough Council* [2009] EWHC 2474 (Admin), Collins J held that a penal notice is not necessary to enable the court to deal with public bodies by means of proceedings for contempt as public bodies would seldom find themselves in the position where committal would be contemplated. Collins J observed at [12]:

> "Accordingly, I do not think that a penal notice is necessary in orders made against a public body. A failure to comply with an order can be dealt with by an application to the court for a finding of contempt and, if necessary, a further mandatory order which may contain an indication of what might happen should there be any further failure to comply. Adverse findings coupled with what would probably be an order to pay indemnity costs should suffice since it is to be expected that a public body would not deliberately flout an order of the court. Were that to happen, the contemnor could be brought before the court and, were he to threaten to persist in his refusal, an order could be made which

> made it clear that if he did he would be liable to imprisonment or a fine."

57. Any breach alleged to constitute contempt must be strictly proved. The burden of proof is on the party alleging the contempt who must prove each element beyond reasonable doubt: *Stobart,* Gloster LJ, [44(ii)].

58. In *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch), Proudman J held at [2]:

> "The power of the court to commit for contempt is the court's ultimate weapon in securing compliance with its orders. However, as it is a powerful one which can deprive the subject of his liberty, it must be exercised only where the court is sure that the alleged contemnor is in breach of an unambiguous order."

59. Although the Claimant does not seek the committal of any individual, I accept that the rule that an order will not be enforced by contempt proceedings if its terms are ambiguous applies. It is analogous to the rule governing the interpretation of penal statutes.

60. In *Farnsworth*, Proudman J held at [20]:

> "A person is guilty of contempt by breach of an order only if all the following factors are proved to the relevant standard: (a) having received notice of the order the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order."

61. It is not necessary to show that the defendant intended to commit a breach, although intention or lack of intention to flout the court order is relevant to penalty. As Rose LJ observed in *Varma v Atkinson* [2021] Ch 180 at [54]:

> "once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

G. The parties' submissions

62. Although the sealed order was only served on 14 January 2022, the Council rightly accepts that it had notice of the December order. The Council was present at the hearing on 20 December 2021 when the order was made and was not in any doubt as to the terms of the order made at that hearing.

63. The principal allegation of contempt made in the Claimant's application is failure to complete future placement planning for the Claimant by 4pm on 7 January 2022, in breach of the mandatory injunction contained in paragraph 5 of the December Order.

64. The Claimant contends that the position was, as is clear from the language used, that on 7 January 2022 (and indeed now) options were still being identified and considered: no final placement decision had been made. The Council had not completed future placement planning. The Claimant submits this is obvious from the language used by the Council in the letter of 7 January 2022 (see paragraph 32 above), the minimal amendment to the Care and Support Plan, and the acknowledgment by the Council that enquiries with a number of placements were outstanding.

65. Regulation 3(1) of the Care and Support (Care Planning) (Wales) Regulations 2015 provides, so far as material:

> "A care and support plan and a support plan must contain a description of –
>
> (a) the person's eligible needs,
>
> (b) the personal outcomes,
>
> (c) the actions to be taken by the local authority and the actions to be taken by other persons to help the person achieve the personal outcomes or to otherwise meet their eligible needs, …"

66. Paragraph 91 of the Social Services and Well-being (Wales) Act 2014 Part 4 Code of Practice (Meeting Needs) states:

> "The depth and detail of the care and support planning process must be appropriate to the individual's needs. The complexity or severity of the person's, or family's, need will determine the scope and detail of the care and support plan and the range of interventions, including the type of support, and the frequency of reviews."

67. The Claimant submits that the care plan produced on 6 January 2022 signally failed to meet the requirement in subparagraph (c) of Regulation 3(1), or to comply with the requirements of the Code of Practice, because of the lack of any detail in the section "Actions to be Taken". The Claimant contends that it cannot be correct to say that by receiving a response from some (but not all) potential providers prior to 7 January 2022 the Council complied with the injunction. If, as appears to be the case, the Council required more time, the appropriate course would have been for the Director to file an affidavit in accordance with paragraph 6 of the December Order.

68. At the hearing, and in his skeleton argument, Mr James submitted that the failure to refer in the Care and Support Plan to the enquiries being made in respect of other placements rendered the Plan unlawful. He submitted that the December Order required the Council to produce a *lawful* Care and Support Plan, and so the unlawfulness of the Plan is a breach of the mandatory injunction and a contempt.

69. The Claimant's secondary allegation of contempt is that the Council also failed to comply with paragraph 6(a) of the December Order, as no affidavit of the Director was filed to explain the circumstances in which the Council failed to comply with paragraph 5. Mr James acknowledges that this allegation is contingent on the court first concluding the Council breached paragraph 5 of the December Order.

70. The Council's position is, first, that these contempt proceedings are not proportionate and in the public interest. I have already addressed, and rejected, this point (the threshold issue) in paragraphs 49 to 54 above.

71. Secondly, the Council contends it has completed future care planning and produced a care plan as required by paragraph 5 of the order. Therefore, the Council did not breach paragraph 5 of the December Order and the contingent order in paragraph 6(a) did not arise. In this regard, the Council relies on the evidence of Mr Vaughan-Morris to which I have referred.

72. In short, the Council submits this evidence confirms that it has (i) identified two providers whom it considers could meet JS's needs; (ii) approached these providers to enquire if a placement with them could meet JS's needs; (iii) received confirmation from both providers that they consider they could meet JS's needs and could offer JS a placement, subject to the normal transition planning and assessments going forward; (iv) confirmed the Council's own view that both providers could meet JS's needs; (v) offered both placements to JS's parents as options to provide care; and (vi) confirmed to JS's parents that the 6-8 week transition process of moving JS to a chosen provider could begin, provided JS's parents are agreeable. This, the Council contends, comprises a complete plan for a future placement for JS.

73. Mr Gardner, Counsel for the Council, submits that the allegation of contempt is not that the care plan produced is unlawful and any such allegation ought to be made by way of judicial review proceedings, particularising the ways in which the care plan is alleged to be unlawful. A care plan has been produced in time and any allegation it is defective should not be made by means of contempt proceedings.

74. Thirdly, the Council acknowledges that no affidavit of the Director was filed but if, as the Council contends, it had complied with paragraph 5 of the December Order, none was required. In any event, the Council submits that the obligation in paragraph 6(a) did not arise in circumstances where the Council believed that it had complied with paragraph 5 of the December Order.

75. Fourthly, if the court concludes the Council breached paragraphs 5 and 6 of the order, the Council submits that both paragraphs failed the requirement of clarity and lack of ambiguity. In relation to paragraph 5, it is unclear what is meant by the phrase "complete future placement planning", while the ambiguity in paragraph 6(a) arises from the fact that it is contingent on a failure to comply with paragraph 5, and does not address the circumstance where there is a dispute as to whether there has been a failure to comply with that paragraph.

76. Fifthly, and in the further alternative, the Council submits that the court should refuse to make a finding of contempt on the basis that there was clearly no intention on the part of the Council not to comply with the December order and any failure was not deliberate. This does not reflect the law: see paragraph 61 above. I referred Mr Gardner,

Counsel for the Council, to *Varma v Atkinson* during the hearing. He acknowledged that lack of intention to flout the order would be a matter to be considered at the stage of determining sanction: it is not a defence to the contempt proceedings. I turn, therefore, to address the Council's submissions that it was not in breach or, if it was, the order was unclear and ambiguous.

H. Decision and analysis

Is paragraph 5 of the December Order ambiguous?

77. Paragraph 5 of the December Order required the Council to "*complete future placement planning and produce a care and support plan for the Claimant*". This encompasses two requirements, first, to complete future placement planning and, second, to produce a care and support plan. It is not, and could not sensibly, be suggested that there is any ambiguity in an order requiring the production of a care and support plan for an identified individual by a specified time and date.

78. The alleged ambiguity lies in the obligation to "*complete future placement planning*". That part of the order unambiguously imposes an obligation to finish the process of determining the Claimant's placement. The word "*complete*" is an ordinary English word. In context, there can be no doubt that it means 'finish' or 'conclude'. The concept of future placement planning involves deciding on a future placement. As the Claimant acknowledges, the December Order did not require a transition plan to have been produced, still less for the Claimant to have moved into the identified placement. But it did require the Claimant's future placement to be identified and determined by 7 January 2022.

Did the Council fail to comply with paragraph 5 of the December Order?

79. Insofar as paragraph 5 required the Council to produce a care and support plan for the Claimant by 7 January, I reject the Claimant's contention that the Council has failed to comply. The Council produced a care and support plan by the specified date. The amendments to the draft that had been before the court on 20 December 2021 were limited (although not as limited as the Claimant contended). However, the Claimant's arguments that the care and support plan produced was unlawful are not matters that can fairly be determined on this contempt application. The particulars of contempt do not include an allegation of failure to produce a (lawful) care and support plan. Nor was the Council put on notice in the contempt application of the ways in which it is alleged the care and support plan is defective.

80. However, in my judgement, it is manifest that the Council did not comply with the requirement to complete future placement planning by 4pm on 7 January 2022, and indeed has still not done so.

81. By 7 January, the Council had made some progress. It had identified two placements that it was willing to fund, that it considered could meet JS's needs, which had vacancies and one of those placements (Accomplish (Whitehouse)) had confirmed their view that they could meet JS's needs. The other potential provider (Consensus (The Grange)) had not reached the same stage by 7 January, as they were still exploring the issue of compatibility with another resident. As the evidence makes clear, the Council

was still in the process of identifying other potential placements. No determination had been made as to the placement that would be in the Claimant's best interests.

82. Perhaps the most stark proof that placement planning is not complete is that on the Care and Support Plan dated 6 January 2022, the box marked "Provider", where the provider of the Claimant's full-time, learning disability residential placement should be named, remains blank (see paragraph 33 above).

83. Contrary to Mr Vaughan-Morris's evidence (see paragraph 39 above), future placement planning is not complete "once the available options are identified", prior to any determination of the future placement for the Claimant being made. It is plain not only from the words of the December Order, but also from the context of the earlier Consent Order, that the parties well understood that identification of available options is a stage prior to the completion of future placement planning (see paragraphs 11 to 12 above). Moreover, even on the interpretation of paragraph 5 put forward in Mr Vaughan-Morris's evidence, the obligation was not complied with because the Council was still in the process of identifying the available options.

84. In my judgement, it is clear beyond all question that the Council failed to comply with the requirement to complete future placement planning for the Claimant by 4pm on 7 January 2022.

85. I appreciate that the determination of the Claimant's future placement does not lie solely in the hands of the Council. The need to seek to agree a placement with the Claimant's parents, and in particular his Deputy, had the potential to create difficulty in complying with paragraph 5 of the December Order even if the Council had completed the process of identifying available suitable options to be considered at a best interests meeting prior to the 7 January. In the absence of any application to the court to vary the terms of the December Order, any difficulty of compliance goes to penalty, not to the question whether the Council has committed a contempt of court.

Is paragraph 6(a) of the December Order ambiguous?

86. Insofar as the alleged ambiguity of paragraph 6(a) is said to stem from the alleged ambiguity of paragraph 5, the contention fails for the reasons I have given in respect of paragraph 5.

87. I also reject the separate contention that the opening words of paragraph 6 are themselves ambiguous. The operation of paragraph 6(a) was, quite simply, contingent on a failure to comply with paragraph 5. The trigger for the operation of paragraph 6(a) is an objective one. On its face, the order makes clear that the question is whether the Council has failed to comply with paragraph 5. There is no reference in paragraph 6 to the Council's belief, a term which would itself raise questions. The opening words of paragraph 6 cannot sensibly be interpreted as depending on the Council's belief, rather than the objective fact of a breach of paragraph 5.

Did the Council fail to comply with paragraph 6(a) of the December Order?

88. It follows from my finding that Council had failed to comply with the order to complete future placement planning by 4pm on 7 January 2022 that the obligation in paragraph 6(a) to file and serve an affidavit of the Director was triggered. No such affidavit was

served, within time or at all, as is common ground. It is clear beyond all question that the Council has failed to comply with paragraph 6(a).

89. I reject the Council's contention that there was no breach because the Council believed it had complied with paragraph 5. Any belief on the part of the Council that the obligation in paragraph 6(a) had not been triggered goes only to penalty, not to the question whether the Council has committed a contempt of court.

I. Conclusion

90. Applying the criminal standard of beyond reasonable doubt, I find that Cardiff City Council has breached both paragraphs 5 and 6 of the Order made by this Court on 20 December 2021 and is in contempt of court. Any breach by anyone of a court order is always a matter of the utmost gravity. The matter is all the more grave when the breach is committed by a public authority.

91. In this case, this contempt of court comes against the background of, first, the Council having breached the undertakings to the court given in the consent order sealed on 23 July 2021; and second, the Council having failed to take the necessary steps to put itself in a position to comply with the interim mandatory injunction made by Judge Lambert, or to apply to vary it, and being saved on the day before compliance was required from an inevitable breach of that order only by the order that the Council has now breached.

92. This is appalling. The Council has failed to take the urgency of the situation, or the vital importance of complying with court orders, seriously. The strong impression that that is so is powerfully reinforced by the failure to file and serve an affidavit made by the Director. Even if Mr Vaughan-Morris (the Claimant's social worker) mistakenly believed that the steps the Council had taken sufficed to comply with paragraph 5, it is frankly astonishing against the background that I have described, and even when faced with a contempt application, that no senior officer of the Council has come forward to give evidence. The explanation that Mr Vaughan-Morris is better placed, as the individual directly involved, to explain the steps the Council has taken is unsatisfactory: it is no answer to the obvious need for a senior officer to take responsibility for the Council's failings in this case.

93. I will hear the parties on the question of the appropriate penalty (if any) for the Council's contempt and on what further order (if any) needs to be made to ensure that a suitable placement that is in the best interests of the Claimant is identified swiftly.

94. I bear in mind that in *R (Bempoa) v London Borough of Southwark* [2002] EWHC 153 (Admin), Munby J concluded that the gravity of that local authority's contempt could be adequately marked by the delivery of the court's judgment in public. The "public humiliation" of a judgment the contents of which publicly shamed the local authority was a greater penalty than the exaction of a financial penalty which could only be to the financial disadvantage of the inhabitants of the local authority area, and those who rely upon the authority for the services it provides, without providing any corresponding financial benefit for the claimant.

95. The contents of this judgment shame Cardiff City Council. Whether any further penalty is appropriate in this case is likely to depend, amongst other matters, on whether an

apology is forthcoming and on the strenuousness of the efforts the Council now makes to comply with the mandatory order which remains in effect.