Neutral Citation Number: [2015] EWHC 3146 (Admin)

Case No: CO/3406/2015

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

Cardiff Civil Justice Centre
2 Park Street Cardiff

Date: 30/10/2015

Before :

HIS HONOUR JUDGE MILWYN JARMAN QC

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Between :

THE QUEEN (on the application of D)	**Claimant**
- and -	
CARDIFF CITY COUNCIL	
CARDIFF AND VALE UNIVERSITY LOCAL HEALTH BOARD	**Defendants**
CHIEF CONSTABLE OF SOUTH WALES POLICE	
	Interested Party

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- -

Miss Williams (instructed by **Howard League for Penal Reform**) for the **claimant**
Miss Henke QC and Miss Harrington (instructed by **Cardiff City Council**) for the **first defendant**
Miss Khalique QC and Miss Stickler (instructed by **Cardiff and Vale Health Board**) for the **second defendant**

Hearing dates: 28 and 30 October 2015

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Approved Judgment

HH Judge Jarman QC :

1. The claimant is 22 years old and has served custodial sentences since she was 16 years old for offences of a sexual nature and assault. In 2010 whilst in a secure children's home she gave birth to a child who has since lived with the claimant's mother. Since her last release from custody in July 2013, the claimant has lived in the community without further offending. She is in contact with her child and her wider family, who give what support they can, but she also relies heavily upon social care from the first defendant (the council) and health care from the second defendant (the health board). By a claim form lodged on 20 July 2015, she seeks with permission granted by His Honour Judge Bidder QC judicial review of what she claims are ongoing failures by the defendants to comply with statutory duties and guidance to provide social and health care respectively to meet her complex needs. She also claims that there has been a failure by the defendants to cooperate with one another to provide the necessary care. This failure is also alleged to amount to unlawful interference with her rights to family life and her right not to be subjected to inhumane treatment under Articles 8 or 3 respectively of the European Convention of Human Rights (ECHR), and to disability discrimination in breach of Article 14 of the ECHR or under the Equality Act 2010. She seeks declarations as to such failures and orders that her needs be properly assessed and that a care plan to meet those needs be implemented.

2. It is accepted by the council that it has failed to meet its statutory duty by failing to provide a care plan in response to an integrated assessment dated May 2015, and that a subsequent care plan does not include all the factors required to be dealt with by the relevant guidance. Nevertheless, the council submits that as a matter of fact each of the claimant's needs has been appropriately met and that care plan provision is an ongoing process. Accordingly it is submitted that intervention by the court is unnecessary. Apart from that concession, each of the defendants submits that it has complied and is complying with its statutory obligations. Each points to the fact that the claimant is now an adult with mental capacity and the freedom to make her own choices, good or bad.

The background

3. The background to the present claim is long and involved. In dealing with these claims, in my judgment I must bear firmly in mind two principles which are fundamental to this judicial review claim. The first is that Parliament has entrusted difficult decisions as to what social and health care is appropriate for the claimant to the council and to the health board respectively. It is not for this court to substitute its own view of what is appropriate or to review the merits of such decisions, particularly when they involve clinical judgment. The defendants submit in essence that this is what the court is being asked to do. Miss Williams for the claimant accepts that the focus of this judicial review must be whether the decision making process for the provision of care is unlawful on public law grounds, and submits that the court is being asked to make orders to ensure that statutory duties are complied with.

4. The second principle is that such claims for the review of decisions or failures by public bodies must be made promptly and in any event no later than 3 months after the grounds to make the claim first arose (Civil Procedure Rules 1998 Part 54.5(3)). In the present case, in which there is no application for an extension of that period,

that means that the focus of review must be upon events which occurred after 20 April 2015. Miss Williams, whilst properly accepting that proposition, nevertheless submits that it is important to understand some of the background in order to determine the claim. Miss Henke QC for the council and Miss Khalique QC for the health board each made submissions in respect of the background on that basis. I will set out the background insofar as it is necessary to understand and determine the claims, but keeping in mind this principle.

5. The claimant is a care leaver and the council has since 2010 maintained a pathway plan for the claimant to progress to adult life pursuant to its statutory duty. It was reviewed regularly to ensure that it continued to meet her needs. No issue is taken with that plan in the present claim.

6. In August 2013, just after the claimant's release from custody, the council requested an assessment of her under the Mental Health Act 1983 and she was admitted compulsorily to Whitchurch Hospital Cardiff where an appropriate assessment concluded that no follow up was needed from mental health services and she was discharged about one week after admission.

7. At about the same time her local GP surgery requested the health board to remove the claimant from its patient list and placed on the Safe-haven list, because there was concern about her past offending and that she posed a significant risk to staff and other patients. Safe-haven was set up by the health board to deal with patients who may become violent and abusive. The policy to do so was subject to an equality impact assessment which concluded that the policy has low impact on statutory provisions relating to equality.

8. The decision making process in response to this request involved the primary care support manager and operational director, who also requested to be involved in ongoing multi agency public protection arrangements (MAPPA). In mid August it was decided to accede to the request and to place the claimant on the Safe-haven list. The Safe-haven surgery is open for two hours every Thursday afternoon and has one receptionist, one nurse and one GP. Monthly meetings are held between Safe-haven managers and primary care managers to review whether a patient's continued placement on the scheme is appropriate or whether he or she should be supported in accessing what is described as mainstream services. The reviews of the claimant are not in evidence but it is not in dispute that they have taken place and written evidence indicates that the risk rating for the claimant at this time was "very high" to reflect a similar risk rating under MAPPA. The present claim involves no challenge to this policy as such.

9. In October 2013, the Howard League for Penal Reform (HL) requested the council for an assessment of the claimant's adult social care needs. Andrew Cole, an operational manager employed by the council liaised with the community forensic mental health team (CFMHT) and Rob Kidd, a clinical forensic psychologist with the health board.

10. After a home visit to the claimant's council flat in December 2013, the assessment concluded that she did not suffer from a mental disorder of a nature and degree which required treatment from mental health services, but that she did have noticeable inter personal communication difficulties which may or may not amount to a personality

disorder. She was referred back to the care of her GP in respect of her difficulty in sleeping.

11. In February 2014 a report was obtained on behalf of the claimant from a consultant in forensic clinical psychology Jon Coldwell who concluded that she had complex and multifaceted personality disorder best described as borderline personality disorder. He found that her standard of personal care and domestic cleanliness had deteriorated to the point where it presented a significant risk to her health. She was socially isolated with no close friends, limited contact with her family and poor community presence. He concluded that treatment in a secure hospital setting was the treatment of choice, but that it was important for her to register with a GP who could prescribe appropriate medication and would be able to seek assistance from local psychiatric services. In addition, it would be of considerable help if the claimant could have regular support from a practitioner experienced in such disorders. Mr Cole received a copy of this report in mid March 2014 and immediately forwarded a copy to CFMHT. A week later it was agreed between the council and the health board to carry out a further assessment in light of this report.

12. By this time a claim for judicial review on behalf of the claimant had been lodged against the council by the legal team of HL for failing to provide appropriate social care. The issue of permission came before me to decide on the papers and in April 2014 I refused permission on the basis that as the council had agreed to conduct a new assessment in light of the report that claim was academic. I also noted that the pathway plan prepared by the council in February 2014 to deal with the transition from child to adult services, was evidenced and properly reasoned. The contrary has not been argued. Support was continued under that plan, which was reviewed as required by statute.

13. Shortly thereafter Mr Cole chased Mr Kidd for his comments on Mr Coldwell's report but these were not forthcoming until July 2014. In that month Mr Cole and a colleague made another home visit to the claimant, who said that she had no problems that social services could help with and was not supportive of any further involvement from such services. The new assessment concluded that the claimant had no ongoing substantial or critical community care needs which required such services. In the months that followed, this assessment was updated to take account of comments of those providing support under the pathway plan, but the conclusion was not amended and by the end of 2014 the council considered that assessment as concluded. However it was not formally signed off. HL during this time made repeated requests to the council's solicitor for disclosure of this assessment but it was not forthcoming.

14. In August and September 2014 the claimant attended Safe-haven surgery complaining, amongst other matters, of panic attacks and anxiety. During these attendances, breathing and sleeping techniques were discussed, a blood test was undertaken to exclude a physical cause, and medication was prescribed.

15. In February 2015 the claimant's risk to the public, having been downgraded, was raised back up to the highest level after an incident of threatening behaviour. The following month the claimant reported to Claire Salama, the solicitor at HL who was acting for her, that she was feeling depressed, hearing voices and suffering up to five panic attacks every day. The claimant attended her local GP surgery and she was prescribed anti depressants, but despite the assistance of HL the surgery informed her

that she would not be registered there as she was registered at Safe-haven and she would need to attend there. The same month she woke up with a panic attack and phoned 999 asking to be taken to any hospital. She was taken back to Whitchurch Hospital by police officers who thought she should be assessed as vulnerable. An emergency assessment was carried out by a doctor there who noted the previous admission. The recent prescription for anti-depressant was also noted but it was stated the claimant was reluctant to take them, asking how they would help with panic attacks. Her behaviour was noted to be appropriate and polite although somewhat childlike, but not displaying anything which could be associated with her responding to hallucinations. She denied thoughts of suicide or self harm, and there was found to be no evidence of delusional ideas or formal thought disorder. The impression of the doctor there was that there was no major mental illness and she was advised to contact her GP for advice on anxiety management.

16. In February 2015, two neighbours had complained of threatening and abusive behaviour by the claimant, and by application dated 27 February 2015 the council applied to the county court for an injunction to prevent such behaviour, and an order was made to that effect initially at the beginning of March. However, the court noted concerns about the capacity of the claimant to understand the process and directed that a report on that issue be obtained. A report was obtained at the end of March from another consultant psychiatrist Dr Timothy Garvey. He fully supported Mr Coldwell's conclusions as to a personality disorder, which he termed severe, but concluded that she could be assisted to understand any such order and the consequences of breaking it. He also concluded that the disorder is such that her capacity to choose to adhere to an order, whilst undoubtedly present, is compromised and she requires help and support from services, albeit that the provision of such support is going to be highly problematic. In the event an injunction was granted with a power of arrest until March 2016.

17. By the end of March 2015 it was agreed under MAPPA that the claimant's risk to the public would be downgraded as from May 2015.

Events from 20 April 2015 to the present claim

18. By letter dated 21 April HL requested the health board to provide the claimant with immediate access to healthcare, preferably at her local GP surgery, in order that she can receive confidential home visits to get the treatment she needs. The board responded a week later explaining why the claimant had access to healthcare and that she remained registered at Safe-haven, saying that every attempt would be made to rectify any experience of Safe-haven which was less than positive.

19. The final review of the pathway plan was carried out on 28 April. The claimant was consulted prior to the review and told of the intended transition to support from adult services provided by the council. It was not until the end of that month that the 2014 assessment was signed off and shortly afterwards the council decided that another new assessment was needed in anticipation of the claimant's transition to adult services. A team manager in adult services, Lisa Wood, discussed this transition with a senior social worker Allison Sagar and with representatives of the support team (BASE) which had been commissioned by children services. It was decided that whilst the administrative procedures were carried out and pending a further

assessment, the support regime then in place would be continued on what was described as an "as is basis" in order to provide the claimant with continuity.

20. On 5 May, council support staff took her shopping where she purchased a small amount of food for herself and her pet dog, and cleaning products. She said that her mother was going to come with her for food shopping in a few days time and that she, the claimant, was going to make an effort to clean her flat that day. The staff offered to help which the claimant declined and would not allow the support worker into her flat, saying it was too messy. A few days later, Ms Salama visited the claimant and found the conditions in her flat and in particular the bedroom to be disturbing including broken furniture, soiled bed linen and clothes, pet mess, and no food. The claimant was using the sofa in the living room to sleep upon.

21. Support staff were unable to make contact with her on 19 May. Two days later Ms Wood and Ms Sagar made a joint home visit. The flat, apart from the bedroom and some empty food cartons, was found to be generally clean. She said she had not been in the bedroom for over a year but agreed that the bedroom could be inspected, and it was found to be full of black bags and infected with insects. She agreed to this being cleared and cleaned. She was given money from her own budget to buy food and top up electricity and agreed to food vouchers. Healthcare access was discussed and Ms Wood noted that this was poor. The claimant had gone to A&E earlier in the week and Ms Wood thought that she may be viewing this as the easiest way to access health care, and noted that an action under MAPPA was to contact Safe-haven and clarify the requirement for the claimant to remain on that list.

22. On the afternoon of 28 May a further support visit was carried out, when the claimant said she had had a panic further attack that morning but not as severe as before. The staff offered to make an appointment with Safe-haven but she said she did not want to go there and that she would make an appointment at another surgery. She had since her release in July 2013 attended the Safe-haven surgery on 6 or so occasions with various health issues including anxiety as indicated above. Staff also offered to assist with cleaning her flat, which was described as not too bad at that time, but the claimant declined as she wanted to go back to bed.

23. On 1 June Ms Sagar emailed Wales NHS saying that she had taken over as the claimant's social worker from children services. She said it had been a matter of concern for some months that the claimant was unable to access health services when she is unwell, often during the early hours, and asking what could be done to enable the claimant to have access to health services on a flexible basis, as do others. She said that she was concerned that the claimant's health could be placed at significant risk and that she understood from BASE staff who had attended Safe-haven appointments with the claimant that the latter always behaved appropriately.

24. A day or so later another visit revealed that there was food litter and waste on the floor and a strong odour but again the claimant declined assistance to clean, saying that she would make a start herself. It was agreed that staff would make contact a couple of days later to check on progress and offer further assistance, but in the event she was not then at home and not contactable by phone for some days.

25. By this time Ms Wood had discussed with her line manager a decision to update the assessment, but as this was now a year old it was decided to request Ms Sagar to write

a new assessment which would encompass all the information available including her own observations, information from support workers, and from MAPPA meetings. What was called an integrated assessment was completed and sent to HL on 3 June. The new title was taken from the Social Services and Wellbeing (Wales) Act 2014 in advance of its coming into force. It concluded that there were substantial levels of risk in health and well being, safety and relationships, and critical level of risks in education training and recreation, contribution to society and social and economic well being. The action plan was to continue to receive weekly support from the BASE team, fortnightly assistance with Jobseekers Allowance (JSA) appointments, shopping and cleaning. It also stated that the claimant's health needs were not being fairly addressed, and highlighted the risk of social isolation and lack of access to educational and training services.

26. On 16 June staff made contact and met with the claimant at the local shops to buy food, and, with the encouragement of staff, cleaning products. On return the flat was found to be in a much improved condition but still needed some attention, which was offered but again declined, the claimant saying she would do this herself.

27. At the beginning of June the defendants had corresponded with one another as to why the claimant remained registered at Safe-haven and a joint meeting was held on 18 June to discuss the issue. It was explained that appointments are 20 minutes long, as opposed to 10 minutes long in a mainstream surgery. Police meet the patient at the main entrance, but wait outside the consulting room door whilst the patient sees a practitioner. Patients are able to telephone a triage service every weekday from 8.30am to 6pm. It was confirmed that the claimant could attend A&E out of hours, and the staff there would be aware that she was on the Safe-haven list. Towards the end of the month the claimant attended A&E on two occasions with various complaints, including on the latter occasion, anxiety. No treatment was required but she was directed to her GP.

28. On 30 June HL sent a letter before action to the defendants, setting out over some 18 pages the history and requiring that immediate support be given to ensure a clean and secure home, adequate food, financial support, reintegration into the community, access to her local GP surgery, and to provide an assessment and care plan with full psychiatric imput.

29. At the time of the integrated assessment Ms Wood and Ms Sagar had seen none of the mental health reports. Moreover, the BASE team gave notice that it was felt that there was no further input which the team could give. The claimant had already contacted MIND, an organisation which offers personal support and group work and arranged to attend group sessions about life skills. Ms Wood thought that it may be beneficial to develop that relationship. On 14 July, HL sent a copy of Dr Garvey's report to Ms Wood, who immediately contacted her line manager Ms Schelewa saying that the report highlighted mental health needs of the claimant which she did not think adult services could meet. The email continued "We are in the meantime continuing to look to commission support and to ensure that she signs on." It was then decided to update the integrated assessment in light of Dr Garvey's report (which Ms Wood thought presented the claimant in a different way to the information previously available to her), the injunction proceedings, and the cessation of BASE support.

30. Ms Schelewa in light of that report immediately requested a further assessment of the claimant by mental health services and copied in Mr Cole. On 15 July he emailed CFMHT asking for a further assessment and followed this up on 22 July with a formal referral.

Events since the present claim was lodged

31. There has been no application to amend the claim, so I deal with events after it was lodged insofar as they may affect the issue of what relief, if any, is appropriate. The day after the claim was lodged, the council informed the claimant that MIND had agreed to visit her twice weekly and to support her with shopping, cleaning, budget management, access to the community, and assist with Safe-haven and JSA appointments. The claimant attended Safe-haven on 23 July on two matters unrelated to anxiety and was appropriately treated. The contact with MIND had been made by the claimant with the assistance of a member of her local church, Jacqui Bebb, who got to know the claimant through the church towards the end of July. She visited the claimant's flat and found it to be unclean, untidy and with an odour, and described the bedroom as uninhabitable. She gave help with cleaning the flat, provision of food and clean clothes, dealing with finances and also with an application for new accommodation. She was in contact with Ms Sagar.

32. A final amended integrated assessment was concluded on 28 July. The risk in relation to safety was upgraded to critical and a new substantial risk was indentified in respect of securing rights and entitlements. The action recommended was that the claimant should continue to offer the support that was then being offered by MIND and the claimant should be supported to attend MIND's Coping with Life course beginning on 12 August. On the same day at a MAPPA meeting, it was agreed that the claimant's risk to others could again be downgraded.

33. On 30 July a care plan was drawn up which addressed the majority, but not all, of the substantial or critical risk factors identified in the amended assessment and a copy of the plan and the assessment was given to MIND on the same day.

34. In August the claimant moved to new accommodation. She missed two appointments with CFMHT. There was a further joint meeting between the defendants which concluded that there was not enough assurance about the claimant's behaviour to change her registration with Safe-haven.

35. On 8 September the claimant attended an appointment at Whitchurch Hospital with Mr Kidd and a consultant forensic psychiatrist Dr Sabarigirivasan. They wrote to her shortly afterwards saying that it was obvious from their conversation that the claimant felt more in control of her behaviour and a stronger person. However it was also recorded that the claimant had said she was never going to forgive the council for taking her child away and that she felt the council, the police and MIND were all acting against her.

36. There was a further such appointment on 24 September, after which the consultants again wrote to the claimant. They recorded that she had told them that since the first meeting she had had two panic attacks which were horrible experiences but that this had improved from some time ago when she used to have them three times a day. She gave the example of a recent experience of seeing a police van outside her flat and

panicking because she thought they were coming for her. She did not understand why she was still being checked by the police, as what she "had done is in the past."

37. The letter continued that the consultants did not think that these experiences were symptoms of any illness but a reaction to her circumstances. They noted previous references to a borderline personality disorder but thought there were important features of that which the claimant did not show, perhaps reflecting her account that she was doing better than a few years ago. They continued that the panic attacks and anxiety were the most important mental health issues at that time and best dealt with by primary care and that her GP could give her a book prescription. They also said they would refer her to the panic disorder service, included some help sheets, and give details of a course available locally in November at which she could just turn up. The main recommendation was that her relationship with the council needs to improve and the council must focus on improving relationships, and that such changes would have a big impact on the panic attacks and anxiety and general sense of well being. A second opinion was also thought to be helpful and they had requested another consultant in their team to make arrangements to see her.

38. Also in September the Safe-haven panel concluded that steps would be taken to facilitate the claimant's registration with a mainstream GP. She is due to attend another meeting with the health board to discuss this on 5 November.

Ground 1: failure of the council to provide an assessment or care plan as to the claimants social needs.

39. I now turn to the first ground of this claim and deal firstly with the relevant law, which is not in dispute. Section 47(1) of the National Health Service and Community Care Act 1990, so far as it applies in Wales and to the council and to the claimant, provides that where it appears to the council that any person for whom they may provide for the provision of community care services may be in need of such services it shall carry out an assessment of her needs for those services; and having regard to the result of that assessment, shall then decide whether her needs call for the provision by the council of any such services.

40. Section 47(2) provides that if during the assessment it appears to the council that the person is a disabled person the council shall proceed to make such a decision as to the services she requires as is mentioned in section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 and shall inform her of that and her rights under that Act. That in turn refers to services under section 2 of the Chronically Sick and Disabled Persons Act 1970 which include practical assistance in the home, provision of recreational facilities, assistance with education, facilities to secure greater safety and the provision of meals.

41. Section 47(3) as so applied and insofar as is material provides that if during the assessment it appears to the council that there may be a need for the provision to that person of services by the health board then the council shall inform the health board and invite them to assist to such extent as is reasonable as to the provision of services needed for the person in question and the council shall take into account any services which are likely to be made available to her by the health board.

42. The Welsh Assembly Government has issued statutory guidance called Health and Social Care for Adults which states that the purpose of such assessment is to identify, describe and evaluate people's needs, circumstances, risk to independence and other aspects of daily life. Account should be taken both of the current situation and the foreseeable future. It is essential that eligibility and care planning decisions are based on a thorough analysis of the assessment information. Once it is established that an individual is eligible for support then and only then should decisions be made about the type and level of service to be provided.

43. Miss Williams submits that there was unlawful delay in producing the integrated assessment and that it did not initially involve imput from mental health services as required by section 47(3) of the 1990 Act, even though the council had the report from Mr Coldwell and Dr Garvey, nor did it amount to a unified assessment involving NHS bodies as required by statutory Care Guidance. Consequently there was no direct application of section 47(2) requiring a decision as to the provision of services. Moreover the council did not make a decision as to the level of care pursuant to section 47(1)(b) because the integrated assessment merely maintained the status quo and the amended integrated assessment merely provided that MIND was to provide a similar service.

44. Furthermore, submits Miss Williams, the care plan now served makes no clear action targets or steps to be taken in relation to the critical need for education training and recreation, or to protect her from abuse which is another need identified in the integrated assessment as critical. This is particularly troubling in view of reports by the claimant to the council of abusive aspects of a sexual relationship in which she was involved in 2014.

45. Miss Henke accepts that the integrated assessment did not initially take into account Dr Garvey's report because she says that that was prepared in the injunction proceedings and, in her words, did not make its way across. She relies upon observations by Hallett LJ in *R (on the application of Ireneschild) v Lambeth LBC* [2007] EWCA Civ 234 paragraph 2, to the effect that an assessment is prepared as part of an ongoing process which by its very nature is capable of further review. Miss Henke says that the real issue is the failure to prepare a care plan until the end of July, and realistically and properly accepts that even then the care plan was not compliant with the statutory provisions and guidance.

46. I accept that events between April and July were fast moving and that many changes were taking place, including the transition from children to adult services, the injunction proceedings and Dr Garvey's report. All these matters however, in my judgment were known or ought to have been known to the council by the end of April. Yet the integrated assessment concluded in early June was made without reference to Dr Garvey's report, and did not in my judgment properly deal with the transition from child to adult services but simply maintained the status quo. It is clear that the council were still looking to commission support in mid July, when they had known or ought to have known for some months that the support provided by children services was likely to end. In my judgment an integrated assessment ought to have been finalised by early June to ensure the smooth transition from children to adult services.

47. The care plan in my judgment could and should have followed shortly after and the plan that was eventually concluded is deficient in the two very important ways indentified by Miss Williams. To this extent in terms of the assessment and the plan ground 1 is made out.

Ground 2: failure by the health board to provide health care..

48. I turn to ground 2. Miss Williams refers to the Continuing NHS Healthcare Guidance which requires a clear reasoned decision as to whether an individual's primary need is a health care need based on evidence of needs from a comprehensive assessment. Health and social care practitioners involved are expected to comply with existing Welsh Government practice guidance and care planning including the Unified Assessment Process, which is the process that applies in Wales. Moreover the guidance requires that health boards should not preclude anyone from having an assessment for community health and social care services if their needs appear to be such that they are eligible for support. The Mental Health Framework requires that users with complex and enduring needs must receive a structured formal assessment and care which encourages engagement, anticipates or prevents a crisis and reduces risk.

49. Moreover, submits Miss Williams, the Safe-haven policy does not provide the claimant with core hour services as required by the National Health Service (General Medical Services Contracts)(Wales) Regulations 2004. Removal from a contractor's list is dealt with in paragraphs 20-22 and although disclosure of the decision making process has been requested it has not been forthcoming. Due to the fact that the claimant is barred from seeing the GP she has had no referral under the Mental Health (Wales) Measure 2010 leading to the provision of mental health care assessment and planning.

50. Miss Khalique submits that the duty of the health board under sections 3 and 41 of the National Health Service (Wales) Act 2006 towards the claimant is to meet her "reasonable requirements." The health board has discretion whether or not to assign a person to a mainstream practice under schedule 6, paragraph 32 of the 2004 regulations. Accordingly any challenge is a rationality challenge, and there is no basis for saying that the health board's decision not to place the claimant on a mainstream list since April 2015 when the claimant's complaint was first made was irrational or unlawful. The claimant continues to have access to health care through Safe-haven, telephone triage and out of hours A&E. The claimant has not been assessed as having a primary health need or considered eligible suitable for an NHS continuing healthcare package.

51. This in my judgment is a ground where the two principles stated above are particularly important. The focus must be whether there has been an unlawful failure to provide access to health services since April 2015. Moreover, it is not for this court to choose between two sets of clinical opinion where they differ (see *R(on the application of Nathan Brooks) v Secretary of State for Justice and Isle of Wight Primary Care Trust* [2008] EWHC 2041 Admin).

52. In that context I prefer the submissions of Miss Khalique. The letter of HL on 21 April focussed upon access to a GP and in my judgment the response was appropriate. The decision at that time to continue to provide GP access via Safe-haven was

evidence based and rational. The health authority co-operated with the council in June to discuss that provision. Within an appropriate time of the letter before action and the request by Mr Cole for a further assessment, appointments were arranged with the consultants at Whitchurch in August. In the event the consultants did not identify a primary care need, and the decision has been made to take steps to facilitate placement with a mainstream GP.

53. I am not persuaded that ground 2 is made out.

Ground 3: failure of the defendants to co-operate.

54. In my judgment there is no evidence of such failure. The defendants co-operated appropriately in respect of the concern raised as to GP access. It may be said that the council should have asked for mental health assessment earlier than it did in July, but that was a failure on the part of the council and not a failure of the defendants to co-operate. For the reasons given above, once the request for such an assessment was made I am satisfied that the defendants co-operated appropriately. Ground 3 is not made out.

Ground 4: breach of EHCR rights.

55. So far as material Article 8 provides that everyone has the right to respect for private life and home, and Article 3 that no one shall be subjected to inhuman or degrading treatment. Article 8 protects the right to identity and personal development and the right to develop relationships, rehabilitation and reintegration into the community (see the decision of the European Court in *Bensaid v UK* (2001) 33 EHRR 205 and that of the Supreme Court in *Gaughran v Chief Constable of the Police Service of Northern Ireland* [2015] UKSC 29). In *R(Bernard) v Enfield* [2002] EWHC 2282, there was found to be a serious breach where a family had to live in conditions wholly inimical to family life for a considerable period of time.

56. Miss Williams submits that the failures set out in ground 1 to 3 have lead to a deprivation of social care including housing and health care. Although in my judgment there are serious failings under ground 1, these do not in my judgment amount to interference by the council of the claimant's Article 8 rights. The evidence supports Mr Garvey's view that providing support for the claimant's needs is likely to be highly problematic. It is clear in my judgment that she is sometimes inclined to not to accept help from council staff, for example with cleaning. Moreover it is clear that she does not always keep appointments with council staff.

57. For similar reasons I am not persuaded that the council has subjected the claimant to inhumane treatment. Ground 4 is not made out.

Ground 5: discrimination.

58. Article 14 of the EHCR provides a right not to be discriminated against in the enjoyment of rights thereunder. Miss Williams further submits that Article 14 imposes a positive obligation on the state to make provision for significance difference. That is to be read in the light of the UN Convention on the Rights of Persons with Disabilities, which requires services to enable full participation in life and to assist in independent living and basic healthcare. Moreover by failing to provide the social

and health care that the claimant needs, Miss Williams submits that the defendants are in breach of their duty under section 29 of the Equality Act 2010 not to discriminate against the claimant by not providing services.

59. Insofar as this claim is directed against the health board, for the reasons given above in my judgment there is no such breach. As for the council, it is accepted that the claimant does suffer from a disability within the meaning of Article 14 and the 2010 Act. However, I am not persuaded that the failings which I have found under ground 1 are discriminatory to the claimant. Ground 5 is not made out.

Relief.

60. Finally I turn to relief. The court may decline to grant relief if such remedy is no longer necessary. Miss Henke submits, in respect of the failings of the council under ground 1 that that is the case here, because the failings are accepted and are now in the process of being remedied.

61. My findings in relation to those failings have gone a little further than was conceded. Moreover no lawful plan has yet been concluded and it is now October. As I have indicated, in my judgment such a plan should have been concluded in June. In my judgment it is appropriate to grant relief in this regard by order, if no appropriate undertaking is offered or accept, and I shall hear counsel further on the precise wording.