Judgments

QBD, ADMINISTRATIVE COURT

Case No: CO/996/2012

Neutral Citation Number: [2012] EWHC 1398 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Manchester Civil Justice Centre

1 Bridge Street West

Manchester

M3 3FX

Date: Tuesday, 24th April 2012

Before:

MR JUSTICE FOSKETT

- -

Between:

The Queen on the Application of
SOUTH MANCHESTER LAW CENTRE

Claimant

- and -

MANCHESTER CITY COUNCIL **Defendant**

- -

(DAR Transcript of

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165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7404 1424

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Mr Brown and Mr Nicholson appeared on behalf of the **Claimant**.

Mr Hickman appeared on behalf of the **Defendant**.

- -

Judgment

(As Approved)

Crown Copyright©Mr Justice Foskett:

1. Until the events with which this case is concerned occurred, the South Manchester Law Centre had been funded, or substantially funded, by Manchester City Council. The Centre has provided advice and representation to people who live in Manchester who have not been eligible for funding through the Legal Services Commission. Amongst the services it has offered is the provision of telephone advice by experienced case workers which, on the material placed before me, is, or at least was, a leading service in the area. The advice it offers is in the fields of social welfare law, including immigration and domestic abuse.

Those it assists are plainly amongst the most vulnerable in the locality. Again, on the material before me, the Centre has acquired a high reputation in the 35 years or so that it has been in operation. In the field of immigration the major part of the advice it offers is at levels 2 and 3 in the designations of the Office of the Immigration Services Commissioner ("the OISC") which are the more complex levels of advice and representation in that context.

2. Mr Brown and Mr Nicholson in their skeleton argument in support of this application have highlighted an extract from a report commissioned by the County Council in 2007 on the quality and provision of the advice sector in Manchester, which said this:

"There is overwhelming demand for advice in South Manchester, and the South Manchester Law Centre focuses its resources to provide advice and representation on asylum, immigration and nationality issues. It has a national reputation for expertise in this area of law, not only providing expert casework, but social policy evidence to campaign for changes in the legislation, and practice and theory with immigration and asylum issues."

There is, so far as I am aware, no reason to doubt that assessment.

3. Merely because an organisation has a high reputation in a particular field does not, of course, mean that it will necessarily be a successful bidder in any new tendering exercise undertaken by a local authority that had hitherto contracted with it. When sitting as a judge in London recently, I have encountered precisely that situation, where the well-reputed provider of a women's refuge in a particular locality for a period of over 30 years was an unsuccessful bidder in a recent tendering exercise. If anyone wants to see a further example reported in the Law Reports, the judgment handed down by the Court of Appeal only this morning concerning the Greenwich Community Law Centre, which had provided similar services in the London Borough of Greenwich to those provided by the South Manchester Law Centre in South Manchester for a period of 27 years, reveals a situation in which precisely that happened. I suspect that further examples could be found.

4. Decisions like those made by the local authorities in the cases to which I have referred will never be well received by those who have reason to thank the law centres concerned for the services they have provided. I am sure there was huge support locally for the law centre in Greenwich, just as the attendance in the court before me shows that there is for the South Manchester Law Centre. However, decisions of this nature can never usually be made by the simple counting of heads. It must also, I think, be clearly stated that any decision of the court, either on an application for permission to apply for judicial review or on the substantive hearing if permission is granted, is not done by reference to the size of the attendance of the supporters of a particular institution, but by reference to the evidence before the court and the well-established principles that govern judicial review applications.

5. My task today is simply to decide whether the grounds advanced by Mr Brown and Mr Nicholson in support of the proposed challenge to the decision of the City Council are arguable. If I do decide that, the matter will proceed to a substantive hearing in due course. If that should happen, the judge at that hearing does not decide whether the funding is to be, or should have been granted, to the Law Centre: his or her task will simply be to review the process on which the decision was made in order to see whether it was lawful and fair, in the legal sense of that term. So my job is to decide whether the points raised are sufficiently arguable for another hearing to take place in due course. If I was not persuaded that the grounds were arguable, it would be open to Mr Brown and Mr Nicholson to try to persuade the Court of Appeal that they were.

6. The essential issue is whether the process by which the Law Centre is no longer funded by the City Council for what is known as non-LSC-eligible OISC levels 2 and 3 immigration advice in the area was arguably unlawful or unfair. Although the City Council decided to provide interim funding for six months for this kind of work to the Greater Manchester Immigration Aid Unit (that arising from an extension to the exist-

ing contract of that unit) and not to the South Manchester Law Centre (and indeed complaint is made about this), in truth the real complaint is that the City Council did not consider fairly, or at all, the Law Centre's bid for longer-term financial support.

7. So far as the Law Centre is concerned, it was engaged in what was effectively a bid for such funding between November 2010 at the latest, when it put forward as requested a business case for such funding, and at least June or July 2011, when the e-mail contact between the Centre and the City Council rather petered out. I do not propose to repeat the substance of the contact that there had been, because it is set out substantially in Mr Brown and Mr Nicholson's skeleton argument and some references have been made to it during the course of the oral submissions today. But it ends with an e-mail from the Assistant Director of Integration and Partnerships in the Directorate for Adults of the City Council dated 28 June in these terms:

"We are having to deliver £2 million savings on our voluntary sector funding as part of our overall £39 million savings over two years, and we are right in the middle of our formal consultation period. Until we have completed that and done the analysis based on strategic priorities, and then had all that signed off, we are unlikely to know what we are funding until probably the end of July."

8. Mr Hickman for the City Council argues that it is obvious from that e-mail that it was unlikely that the City Council would find the funds to enter into a new contract with the Law Centre. Mr Brown contends that this was not the inference to be drawn from this e-mail and that it was really of a piece and consistent with earlier communications from the City Council that suggested that active consideration was being given to a further contract with the Law Centre, and it had remained in the frame, as it were, for such a contract once the consultation process that was underway had run its course.

9. I emphasise that it is not for me to decide this issue, but I cannot say that Mr Brown's contention is unarguable. There is to my mind an argument worthy of consideration at a substantive hearing that the Law Centre was led to believe over a period of several months that the merits of a further contract were being actively considered by the City Council. Mr Hickman has suggested that whatever process was being engaged in by the City Council during this period, it was not of that nature. He also says that there is no evidence of an unequivocal representation about the process being undertaken that would have given rise to a legitimate expectation to that effect. That will, of course, be a matter that can be considered at a substantive hearing; but it is a legitimate comment, as it seems to me, that it is surprising that the true position as it is now contended to be was not so expressed to the Law Centre's representatives at any stage during the period from November 2010 to June and July 2011. It was not until 29 October 2011 that Councillor Evans' e-mail revealed what was said to be the correct position.

10. In the publicly available documents, and in particular the report to the Health and Wellbeing Overview and Scrutiny Committee dated 20 October 2011, no reference is made at all to the South Manchester Law Centre. This at least demonstrates that it is arguable that whatever process was truly being engaged in during 2011 did not involve consideration of the Law Centre's position. If that fact is put together with the e-mail sequence to which I have referred, it seems to be to be capable of argument that the Law Centre's position was not treated fairly or lawfully during the ongoing process within the City Council during the last year up until about October.

11. I should say clearly that the position at the substantive hearing may be shown to be different, but on the material before me I cannot characterise the Law Centre's position as unarguable. Subject to the question of delay, and whether an effective remedy could be provided in due course, I would be inclined to grant permission to apply for judicial review. Mr Hickman submits that the judicial review claim has been brought out of time or has been substantially delayed. At one stage in his oral submissions he seemed to suggest that the decision about which complaint is being made was made in October 2010. Obviously, if that were so, the judicial review claim would indeed be well outside the usual time for bringing such a claim. However, no-one has, so far as I am aware, suggested that to the Law Centre's advisers and, of course, until someone

knows that an adverse decision has been made, it is impossible to complain about it. The Summary Grounds of Resistance suggest that too long a period was allowed to elapse between the communication of the decision in Councillor Evans' e-mail of 31 October and the issue of the claim form on 30 January 2012, just within the three-month normal time limit.

12. It does have to be said that a perfectly reasonable letter to the Director of Adult Services was written on behalf of the Law Centre on 24 November, about three weeks after the e-mail from Councillor Evans, to which there was no response at all. In that letter the following requests were made:

"(1) Details of the Council or officers' meetings at which it was decided the South Manchester Law Centre would not receive any funding, and the reports produced at the meetings (inaudible) of the decision.

(2) Details of the Council or officers' meetings at which it was decided that submission of the Law Centre business case was superseded by the national Government cuts, and reasons for this decision.

(3) Details of the Quality Impact Assessment analysis on the basis of which the decision was made.

(4) The reasons why there was no consultation with the Law Centre before the decision was made, and specifically why the Law Centre was excluded from the city-wide consultation to implement the £2 million saving applied."

Those were the requests, and the letter concluded in these terms:

"We also ask for information about how decisions would be made about the funding of advice services in the next part of the year, and specifically whether there would be a tendering process. We look forward to hearing from you."

13. I do not, with respect to Mr Hickman's argument, think it lies in the mouth of the City Council to complain about delay where a letter such as that, from an institution that knows it has served the local community so well over many years, goes completely unanswered.

14. The question of whether, even if the judge at the substantive hearing was persuaded of the Law Centre's case on its merits, that there is an effective remedy is a difficult one. Time has passed and new budgets have been concluded. However, even if only a judgment on the merits is all that can be achieved, or possibly a declaration about the process, it does not mean that there is not necessarily an effective remedy. However that, as it seems to me, is a matter for the substantive hearing: it is not something that dissuades me from granting permission.

15. One consequence of the grant of permission is that the City Council will be obliged to file evidence in opposition to the substantive application in respect of which there is an obligation of candour. That will, or at least should, reveal the details of the process by which the relevant decisions were made. The revelation of relevant documents may also be of importance. That process may, of course, yield material that offers support for the Law Centre's case. Equally, it may be material that undermines it. There is a continuing obligation on the part of any claimant to a judicial review case, where permission has been granted, to keep the merits of the case under review and not simply to press on regardless when it is plain that it cannot succeed. The Law Centre is run by responsible people and has responsible advisers who will doubtless observe this obligation, just as the Council's advisers will wish to observe the obligation of candour. As I have observed earlier, if this case does proceed to a substantive hearing in due course, the court's task, in everyday language, is to ensure that due process has been observed. The court does not make the decision as to whether the funding of the Law Centre by the City Council can continue; it is there to ensure that the prop-

er legal processes have been observed. I say this because I would not want the grant of permission to create a false dawn for those who would wish to see the continued funding of the Law Centre by the City Council. Everyone knows that, where a local authority is under an obligation to make significant reductions in its expenditure, some apparently harsh and unpopular decisions may have to be made, and I have alluded to this already. The court is simply there to see that the processes that led to any such decision are fair and lawful.

16. I have taken a little while to explain my reasons for granting permission to apply for judicial review in a way that I hope is understood by all those who have listened to me. I propose to direct that a transcript be prepared initially at the public expense, but I will provide in the order that is made giving effect to my decision that the judge at the substantive hearing may wish to consider whether one or the other party should ultimately be responsible for the costs of obtaining that transcript.

17. So for those reasons, perhaps expressed at slightly more length than I ordinarily would do, I am prepared to grant permission to apply for judicial review.

Order: Application granted.

Mr Justice Foskett: Mr Brown, do you have any particular directions that you think -

Mr Brown: My Lord, I have discussed this matter with my learned friends, and standard directions should suffice.

Mr Justice Foskett: Right. Are you in a position at this stage to estimate the length of the hearing, or should that better wait until we see what the evidence --

Mr Brown: I really want to see the evidence first before I can give a proper estimate as to time, my Lord.

Mr Justice Foskett: That is probably sensible, Mr Hickman, is it?

Mr Hickman: Yes.

Mr Justice Foskett: All right. I am very grateful to you both. Thank you very much, indeed.
