Neutral Citation Number: [2023] EWHC 3330 (Admin)

Case No: **CO/1538/2023**

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 December 2023

Before:

DEXTER DIAS KC
(sitting as a Deputy High Court Judge)

- -

Between:

THE KING ON THE APPLICATION OF DF	**Claimant**
- and -	
ESSEX COUNTY COUNCIL	**Defendant**

- -

- -

Ms Hannett KC and Mr Clarke of counsel (instructed by **Coram Children's Legal Centre**) for the **Claimant**
Mr Sheldon KC and Ms Gannon of counsel (instructed by **Essex Legal Services**) for the **Defendant**

Hearing dates: 8 September 2023

- -

Approved Judgment

Circulated to parties 6 November 2023

This judgment was handed down remotely at 10.30am on 22 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.

2. To assist parties and the public follow the court's line of reasoning, the text is divided into 13 sections, as set out in the table below.

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B123: hearing bundle page number;

CS/DS §45 claimant/defendant skeleton paragraph number.

§I. INTRODUCTION

3. In this application for judicial review, the claimant, then aged 17, had been living with her mother in a council flat when her mother died from an unintentional drug overdose.

4. The mother's life had been blighted by severe addiction and mental health problems, but since the child was largely estranged from her father, she had been living in her mother's highly dysfunctional household. Following her mother's death, the claimant was assessed by the defendant local authority as a "child in need" for the purposes of child welfare and protection legislation. She told the local authority children's services that she wished to live on in the flat she had shared with her mother, but the landlord, an arms-length management organisation for the housing authority, served notice to terminate the tenancy by sending the claimant a formal notice to quit. A series of legal issues were thrown up. Did this make the child homeless or was she in fact already homeless for the purposes of the Housing Act 1996 ("HA 1996")? Where would this child, who had led such a chaotic life, live? Whose duty was it to ensure she

was supported and adequately housed – "accommodated"? Once she turned 18, how should she be treated and supported, if at all, by the local authority? These are among the vital questions arising in this case.

5. The court has granted an anonymity order to protect the claimant's right to respect for her private and family life. She will be known as DF for the purposes of the case title, but more simply as "C" within the text of this judgment. She is represented by Ms Hannett KC and Mr Clarke of counsel. The defendant local authority is Essex County Council. The defendant is represented by Mr Sheldon KC and Ms Gannon of counsel. The court is grateful to all counsel for their invaluable assistance.

6. The two prime grounds of judicial review are:

   (1) The defendant's failure to recognise that it owed a duty to the claimant under s.20 of the Children Act 1989 ("CA 1989") to provide accommodation for her as a child in need;

   (2) The defendant's failure after she turned 18 to exercise its discretion to treat the claimant as a former relevant child under s.23C CA 1989.

7. The simple statement of these grounds masks a series of potentially complex sub-issues generated by the underlying facts. I set out some brief background facts that will act as anchor points for the legal analysis that must follow. But let me emphasise that no one doubts, or could credibly doubt, that this child was properly classified as a child in need and was vulnerable. The case raises serious questions about the public duties – our collective obligations – to her.

§II. BRIEF FACTS

8. It is necessary, notwithstanding the high need for anonymity, to state the claimant's date of birth due to the significance and timing of events leading up to her 18th birthday. She was born on 8 April 2005. Due to the difficulties within the family, social services have been involved in her life from an early age. We see here a regrettably familiar but nevertheless alarming repeating cycle of dysfunction. C's mother was 14 years old when C was born. The mother suffered from various mental health problems, including bipolar disorder, emotionally unstable personality disorder, post-traumatic stress disorder, severe anxiety and depression. She also lived with drug problems, leading to repeated incidents of self-harm and overdose. C's parents separated when C was 11 or 12, with C and her sisters initially staying in the care of their mother. The family moved around often, including to escape domestic violence from her mother's new partner. After C's mother attempted suicide, C and her sisters went to live with their father.

9. However, C's relationship with her father was strained. She alleged that he was violent towards her. In May 2019, she left him to live with her mother again. This was in a one-bedroom flat and C had to sleep on the sofa. However, the mother's new partner was abusive and strangled her. Mother and child were

moved by Colchester Borough Council (from November 2022 Colchester City Council ("CCC")) into a two-bedroom flat with a secure tenancy granted by Colchester Borough Homes ("CBH"), an organisation that operates in an arms-length management capacity on behalf of the Council. Thus it was that from May 2021 C lived with her mother in the flat in which her mother was to die in August 2022.

10. When the mother died on 25 August 2022, the Ambulance Service made a referral to the defendant because of its concern about C. On 2 September, the defendant allocated Ms Pinchess, a senior social worker, to complete a Child and Family Assessment ("CFA") under s.17 CA 1989. On 13 September, C indicated to the defendant that she wished to continue living in the flat. By then, it had been her home for 18 months or so, and she lived there with her cats and boyfriend.

11. On 9 November 2022, CBH informed Ms Pinchess that C had applied to succeed to her mother's tenancy, but said that due to her minority this was impossible as the tenancy could not be passed on to a minor.

12. On 30 November 2022, Ms Pinchess completed the CFA. The conclusion was that C was a child in need for the purposes of s.17 CA 1989. The CFA records that "options [were] being explored with housing and family for [her] accommodation"; that she would "require the support of services to ensure her housing and financial needs [were] met until she is 18"; and that there would "need to be explorations of who is best placed to offer this support".

13. For some time, C had worked with Ms Chapman, a Young Carer's social worker, because despite her youth, C had provided her mother with some care. Ms Chapman's note of her conversation with Ms Pinchess records that C's father felt that any arrangement for C to live with him would break down quickly and C no longer saw living with her boyfriend's mother as an option, even if she were homeless.

14. On 1 December 2022, CBH served notice to quit terminating C's mother's tenancy of the property from 2 January 2023. The tenancy had vested in the Public Trustee upon the mother's death.

15. On 11 January 2023, C's case was transferred from Ms Pinchess to another social worker Ms Primmer.

16. On 24 January 2023, C instructed solicitors at Coram Children's Legal Centre ("CCLC"). They sent a letter before claim under the Pre-Action Protocol ("PAP") in respect of ECC's failure to provide C with accommodation under s.20 CA 1989 and, consequently, its failure to comply with its care planning duties to her as an eligible child.

17. On 1 February 2023, the defendant's PAP response rejected the claim that C was homeless. It stated that the only other options for accommodation under section 20 CA 1989 would be (i) placement with a foster carer which, for C to remain living with her boyfriend, would require him to be made C's foster carer or (ii) placement in semi-independent accommodation, without her cats. The

defendant offered to investigate the possibility of CBH exercising its discretion to offer C a tenancy of the property, or other accommodation where she could live with her boyfriend.

18. On 7 February 2023, CCLC wrote to CCC, providing a copy of the defendant's response to the letter before claim and asking for CCC's comments. CCC's solicitor responded the next day, saying that it would not exercise any discretion to accommodate C, but confirming that it might take around 12 months for the hearing of any possession claim.

19. On 10 February 2023, CCLC wrote to the defendant asserting that, contrary to the defendant's stated position, C had had no legal right to remain at the property and the s.20 duty arose on the basis that, although she had a roof over her head, her situation was precarious. CCLC also pointed out that it was open to the defendant to secure independent accommodation for C under s.22C(6)(d) CA 1989, where she and her boyfriend could stay, without any requirement for him to be her foster carer.

20. On 17 February 2023, as a result of the landlord's increasing concern for C's welfare and given that it would be likely to owe her a duty under the HA 1996 once she turned 18, CBH decided to offer C a tenancy. This was an exceptional exercise of its discretion. Part of the thinking that produced the decision can be seen from an internal CBH note which stated, "compassion and consideration should be given to the unique circumstances of the case" (B395). The property offered would be accommodation into which C could move with her boyfriend and cats once she turned 18. It was said in the internal note that:

> "Housing Options Manager has indicated they will have a homelessness duty for [C] when she reaches 18 because of her vulnerability. So, we are going to move her internally to a one bed property. We do not want to pursue mandatory possession as this will take a minimum of 12 months."

21. On 21 February 2023, Ms Primmer discussed with C the possibility of support to improve her relationship with her father, but C made clear that she did not want to pursue this.

22. On 27 February 2023, the defendant responded to CLCC stating that C did not seem to want social services support, having declined the offer of support to improve the relationship with her father. In light of CBH's indication that it would offer C alternative accommodation, the defendant could not "yet be satisfied about whether [she] does in fact appear to require accommodation under section 20". It could only arrange accommodation under section 22C(6)(d) CA 1989 and the Care Planning Placement and Case Review Regulations 2010/959 in accordance with the Sufficiency Guidance, that is in accommodation registered under the Care Standards Act 2000. Thus the defendant could not secure independent accommodation for C while a child to live with her adult boyfriend.

23. Also on 27 February, C had a meeting with Ms Primmer at which she was presented with a table of options for accommodation under section 20 CA 1989.

C was told that none of the options would allow her to be accommodated with her boyfriend or cats. C said she needed time to think about this.

24. On 8 April 2023, C turned 18.

25. On 19 April 2023, C signed a tenancy agreement and collected keys for alternative accommodation provided by CBH,

26. On 23 April 2023, C moved into the accommodation.

27. On 24 April 2023 C issued this judicial review claim.

28. On 26 June 2023, Ms Eleanor Grey KC, sitting as a Deputy High Court Judge, granted permission to bring the claim, anonymity and expedition.

29. The foregoing is just a thumbnail sketch of certain key events. The facts will be fleshed out during the course of the ensuing judgment. I emphasise that having reserved judgment, I have taken the opportunity to review the entirety of the materials before me, re-reading especially important sections.

§III. OVERARCHING LEGAL FRAMEWORK

30. The defendant's broad duties owed to the claimant are contained in the CA 1989. A general duty is owed by local authorities to "children in need" in their area: s.17 CA 1989. The concept of a child in need is defined by s.17(10). It provides:

> "For the purposes of this Part a child shall be taken to be in need if—
>
> (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
>
> (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
>
> (c) he is disabled,
>
> and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living."

31. A local authority has a separate duty to provide accommodation to a child in need in their area who appears "to require" accommodation under s.20(1) CA 1989:

> **20 Provision of accommodation for children: general.**
>
> (1) Every local authority shall provide accommodation for any child in need within their area **who appears to them to require accommodation** as a result of—
>
> (a) there being no person who has parental responsibility for him;
> (b) his being lost or having been abandoned; or
> (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.
>
> . . .
>
> (3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.
> (4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.
> (5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.
> (6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—
>
> (a) ascertain the child's wishes and feelings regarding the provision of accommodation; and
> (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain." [emphasis added]

32. Section 22 CA 1989 stipulates that a child who is accommodated under s.20 is a "looked after" child.

33. Section 22 CA 1989 provides that the local authority must provide certain support to a looked after child, stating that it is the duty of a local authority looking after a child to safeguard her or his welfare (s.22(3)(a) CA 1989). Section 22C sets out the ways in which a looked after child is to be accommodated.

34. Under s.23C CA 1989, a local authority has continuing obligations to a child who was an "eligible child", once they turn 18. The child is known as a Former Relevant Child ("FRC"). The reference to an "eligible child" is to one who is aged 16 or 17 and has been looked after for at least 13 weeks, in the

period beginning after the child reached the age of 14 and ending after the age of 16.

35. Aside from the statutory scheme, parties variously relied on several authorities. They include, but were not limited to:

- *R(A) v Croydon London Borough Council* [2009] UKSC 8
- *R(AB) v Brent LBC* [2021] EWHC 2843 ("*Brent*")
- *R (M) v London Borough of Hammersmith and Fulham* [2008] UKHL 14 ("*Hammersmith*")
- *TT v Essex County Council* [2023] EWHC 826 (Admin)
- *R (G) v Southwark LBC* [2009] UKHL 26 ("*Southwark*")

Particular emphasis was placed by the claimant on paragraph 28 of *Southwark* as set out by Baroness Hale:

> "28. Section 20(1) entails a series of judgments, helpfully set out by Ward LJ in *R (A) v Croydon London Borough Council* [2008] EWCA Civ 1445, at para 75. I take that list and apply it to this case.
>
> (1) Is the applicant a child? That was the issue in the *Croydon* case (in which leave to appeal has been granted) but it is not an issue in this.
>
> (2) Is the applicant a child in need? This will often require careful assessment. In this case it is common ground that A is a child in need, essentially because he is homeless. It is, perhaps, possible to envisage circumstances in which a 16 or 17 year old who is temporarily without accommodation is nevertheless not in need within the meaning of section 17(10): perhaps a child whose home has been temporarily damaged by fire or flood who can well afford hotel accommodation while it is repaired. There are hints of this in the social worker's view that "A is quite a resourceful teenager - by his own admission he has spent the last 1 - 2 months moving around amongst friends and girlfriends and sourcing his own accommodation. Furthermore, it appears that A has attempted to adhere to his own values around personal hygiene despite these circumstances. . . " But it cannot seriously be suggested that a child excluded from home who is "sofa surfing" in this way, more often sleeping in cars, snatching showers and washing his clothes when he can, is not in need. Mr Brims also pointed out that "A's lack of permanent housing will have a long term impact upon his educational attainment and will also impact upon other practical areas of his life. Without permanent accommodation, A does not have a base level of stability on which to build other areas of his life, and daily tasks such

as personal hygiene, washing clothes and maintaining a reasonable diet will pose significant challenges."

(3) Is he within the local authority's area? This again is not contentious. But it may be worth remembering that it was an important innovation in the forerunner provision in the Children Act 1948. Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may then pass a child on to the area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7). But there should be no more passing the child from pillar to post while the authorities argue about where he comes from.

(4) Does he appear to the local authority to require accommodation? In this case it is quite obvious that a sofa surfing child requires accommodation. But there may be cases where the child does have a home to go to, whether on his own or with family or friends, but needs help in getting there, or getting into it, or in having it made habitable or safe. This is the line between needing "help with accommodation" (not in itself a technical term) and needing "accommodation".

(5) Is that need the result of:

(a) there being no person who has parental responsibility for him; for example, where his parents were unmarried, his father does not have parental responsibility, and his mother had died without appointing a guardian for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented from providing him with suitable accommodation or care.

As Lord Hope pointed out in the *Barnet* case, (c) has to be given a wide construction, if children are not to suffer for the shortcomings of their parents or carers. It is not disputed that this covers a child who has been excluded from home even though this is the deliberate decision of the parent. However, it is possible to envisage circumstances in which a 16 or 17 year old requires accommodation for reasons which do not fall within (a), (b) or (c) above. For example, he may have been living independently for some time, with a job and somewhere to live, and without anyone caring for him at all; he may then lose his accommodation and become homeless; such a child would not fall within section 20(1) and would therefore fall within the 2002 Order and be in priority need under the 1996 Act.

(6) What are the child's wishes and feelings regarding the provision of accommodation for him? This is a reference to the requirement in section 20(6) of the 1989 Act, as amended by section 53(2) of the Children Act 2004:

"Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare -

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain."

Some have taken the view that this refers only to the child's views about the sort of accommodation he should have, rather than about whether he should be accommodated at all: see *R (S) v Sutton London Borough Council* [2007] EWHC 1196 (Admin), para 51. This is supported by the opening words, which are "before providing" rather than "before deciding whether to provide"; contrast the equivalent provision in section 17(4A), "before determining what (if any) service to provide . . ." On the other hand, as explained in *Hammersmith and Fulham*, it is unlikely that Parliament intended that local authorities should be able to oblige a competent 16 or 17 year old to accept a service which he does not want. This is supported by section 20(11), which provides that a child who has reached 16 may agree to be accommodated even if his parent objects or wishes to remove him. It is a service, not a coercive intervention. Whether one reaches the same result via a broader construction of section 20(6) or via the more direct route, that there is nothing in section 20 which allows the local authority to force their services upon older and competent children who do not want them, may not matter very much. It is not an issue in this case, because A wanted to be accommodated under section 20. But a homeless 16 or 17 year old who did not want to be accommodated under section 20 would be another example of a child in priority need under the 2002 Order.

(7) What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings? As Dyson LJ pointed out in *R (Liverpool City Council) v Hillingdon London Borough Council* [2009] EWCA Civ 43, para 32, "children are often not good judges of what is in their best interests". But that too should not be an issue here. A had been given legal advice as to which legal route to accommodation would be in his best interests. He needed help to get back into education and get his life on track towards responsible adult independence and away from whatever influence the gang culture was exerting over him. That would be better provided for him if he were accommodated under section 20 and became an "eligible" child.

Items (8) and (9) on the list given by Ward LJ, referring to the position of people with parental responsibility, do not apply in this case because A had reached the age of 16 and agreed to being provided with accommodation under section 20. It follows, therefore, that every item in the list had been assessed in A's favour, that the

> duty had arisen, and that the authority were not entitled to "side-step" that duty by giving the accommodation a different label."

36. There is also relevant guidance. It is the "Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation" (2018) ("Joint Guidance" or simply "the Guidance"). It was issued jointly by the Secretary of State for Education and the Secretary of State for Housing, Communities and Local Government under s.7 of the Local Authority Social Services 1970 and s.182 HA 1996.

37. Among the relevant passages from the statutory Guidance are:

> **3.1**
> Where a 16 or 17 year old seeks help from local authority children's services, or is referred to children's services by some other person or agency as appearing to be homeless or threatened with homelessness, children's services must carry out an assessment of what duties, if any, are owed to them.
> …
>
> **3.2**
> If the young person is at risk of becoming homeless in the future, for example because of conflict within the family home, it will be for children's services to determine what support is required depending on the circumstances and the needs of the young person and their family. Where there is no immediate threat of homelessness intervention may be more appropriately led by early help services, whereas if there is an imminent threat of homelessness or if the young person is actually homeless, a child in need assessment must be carried out and the child accommodated under section 20.
> …
>
> **3.13**
> There are only two circumstances in which a local authority might find that a homeless young person should not be accommodated under Section 20, and may instead be owed duties under Housing Act 1996. These are where the young person is: (a) not a child in need; (b) a 16 or 17 year old child in need who, having been properly and fully advised of the implications and having the capacity to reach a decision, has decided that they do not want to be accommodated under section 20.
> …
>
> **3.16**
> Determining who is in need and the extent of any needs requires professional judgment by social workers, informed by consultation with other professionals familiar with the circumstances of the individual young person and their family. However, where a young person is excluded from home and is, for example, staying with

various friends, or sleeping in a car, it is extremely likely that they will be a child in need.

…

3.29

In some cases, it may not be necessary for the young person to be accommodated by children's services because the young person's needs can be met by providing other services, for example, support to enable the young person to return to the care of their family or other responsible adults in the young person's network. If children's services conclude that the young person does not require accommodation for this reason, they should consider whether they should provide services for the young person under section 17 of the 1989 Act, as a child in need.

…

3.30

If the young person is threatened with homelessness but is not homeless -

where a decision reached is that the young person is a child in need, children's services will lead work to prevent the young person being threatened with or becoming homeless in the future. This will be based on the professional judgment of an individual young person's circumstances, whether it is in the young person's best interests to remain with their family and if so, what is needed to support this. Where the young person is a child in need, children's services should use their powers under section 17 of the 1989 Act to provide these services and set these out within a child in need plan.

…

3.34

[i]n the case of a 16 or 17 year old who is threatened with homelessness or is homeless, 45 days is a long period of time, which may involvement significant risk and hardship, impacting on their safety, welfare and physical and emotional well-being. Local working arrangements may set out a shorter timescale for completion of the assessment. If an assessment exceeds 45 working days, the social worker should record the reasons for exceeding the time period.

. . .

3.42

It will be essential that the young person is fully consulted about and understands the implications of being accommodated by children's services and becoming looked after. The social worker leading the assessment must provide realistic and full information about the package of support that the young person can expect as a looked after child and, subsequently, as a 'former relevant' care leaver (as defined in section 23C (1) of 1989 Act)

…

> **3.44**
> This information should be provided in a 'young person friendly' format at the start of the assessment process and be available for the young person to take away for full consideration and to help them seek advice.
> …
>
> **3.48**
> Some 16 and 17 year olds may decide that they do not wish to be provided
> with accommodation by children's services under section 20 of the [CA], for example, because they do not wish to be supported as a looked after child. In these circumstances it is important that children's services are clear that the young person's decision is properly informed, and has been reached after careful consideration of all the relevant information. If the young person is subsequently not accommodated by housing services and remains homeless, housing services must inform children's services who may need to take action.
> . . .
>
> **3.49**
> children's services must be satisfied that the young person … has been
> provided with all relevant information.
> …
>
> **4.8**
> Where children's services have decided that a section 20 duty is not owed,
> or the young person does not wish to be accommodated, housing services duties under Part 7 of the 1996 Act will continue.
> . . .
>
> **4.28**
> Where a young person aged 16 or 17 is homeless and requires accommodation, does not wish to be accommodated under section 20 of the 1989 Act but is subsequently not owed an accommodation duty by a housing authority, for example because they have refused a suitable offer of accommodation or are found to be intentionally homeless, then children's services should, given the change in circumstances, once again ask them their wishes regarding being accommodated under section 20.

38. There is also relevant guidance on homeless by way of the statutory Homelessness Code of Guidance for Local Authorities. It states:

> **6.11**

> A person who has been occupying accommodation as a licensee whose licence has been terminated (and who does not have any other accommodation available for their occupation) is homeless because they no longer have a legal right to continue to occupy, despite the fact that the person may continue to occupy but as an unauthorised occupier…
> …
>
> **6.17**
> A person who has been occupying accommodation as a tenant and who has received a valid NTQ will generally have a right to remain in occupation until a warrant for possession is executed, unless they are excluded from the protection of the Protection from Eviction Act (**"PEA 1977"**) 1977.
> …
>
> **6.18**
>
> Housing authorities should note that the fact that a tenant has a right to remain in occupation does not necessarily mean that they are not homeless.

39. I emphasise that this is a very short summation of some of the relevant authorities and provisions. I have considered the entirety of the authorities that parties wished me to review and detail further relevant principles and precepts derived from them when I examine each of the issues, to which I now turn.

§IV. ISSUES

40. The parties provided an agreed list of issues dated 31 August 2023. At the substantive hearing, they argued them in a different order to that with which they were drafted. It made no difference. If the analysis is correct, the order is immaterial. For the purposes of this judgment, I have reordered, renumbered and slightly reworded them, leaving the substance and essential thrust unchanged.

41. There are 8 issues:

- **Issue 1**. Was C homeless within the meaning of s.175(1) HA 1996?
- **Issue 2**. If C was s.175 homeless, did she *necessarily* require accommodation within the meaning of s.20 CA 1989?
- **Issue 3.** If not Issue 2, in deciding whether C required accommodation, was it in any event a relevant consideration that she was homeless and/or a trespasser, which the defendant failed to take into account?
- **Issue 4**. Was C provided with inaccurate information about the types of accommodation available?

- **Issue 5**. Did C refuse accommodation and support under s.20 CA 1989?

- **Issue 6**. In any event, was the defendant's decision that C did not require accommodation unreasonable in all the circumstances?

- **Issue 7**. Has the defendant lawfully considered whether it should exercise its discretion since C turned 18 to treat her as though she were a "former relevant child" within the meaning of s.23C CA 1989?

- **Issue 8.** To the extent that any of the grounds of challenge are made out, what relief should be granted?

42. I set out the parties' submissions on each issue and any further issue-specific law within the relevant section.

§V. ISSUE 1

Was C homeless within the meaning of s.175(1) HA 1996?

43. This issue is strictly confined to the question of whether C was at any point homeless in accordance with the statutory definition under HA 1996. The significance or otherwise of such a finding is for later issues, should the finding be made. Section 175(1) HA 1996 provides that:

> a person is homeless if he has no accommodation available for his occupation … which he
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

44. The claimant's case is that she was indeed homeless using the statutory test. The defendant submits that once the nature of her licence or permission to live in the flat is properly understood, C was not in fact homeless. Thus, the question of the existence of a licence and the type of licence that C possessed becomes of critical importance. It is this issue that the court examines by first assessing whether C was in possession of a "bare" licence or a contractual one.

45. In property law, a licence to occupy is an agreement between a property owner ('the licensor') and an occupier ('the licensee') to permit the licensee to use or occupy the property. It is essentially personal permission to allow occupation. There are two different types of licence to occupy:

- **bare licence**: this is where the licensee is given permission to stay in the licensor's property;

- **contractual licence**: whether it be in writing or verbally communicated, there is the creation of a contract for which there must be "consideration" (something given or given up, what is sometimes called a "detriment").

46. With a contractual licence, the licensor provides the licensee with non-exclusive possession. In return, the licensee usually pays the licensor a fee or provides something of value in return (the consideration). This is an important issue because it can affect whether there is a right to remain in occupation that restricts the right to recover possession under, for example, the PEA 1977.

47. In *Chandler v Kerley* [1978] 2 All ER 942 the court held that where the parties had intended to live as man and wife there was a contractual licence which was only terminable on reasonable notice, and in the circumstances 12 months was a reasonable notice period. In *Chandler* the parties were not actually married, but the defendant Ms Kerley was living, to use the language of the time, as his "mistress" in her former matrimonial home which he (adding to the complexity) had purchased at a significant discount. After six weeks, he served notice purporting to terminate her licence. The judgment of the Court of Appeal, delivered by Lord Scarman, makes plain that the court must weigh a number of factors and then find the "balance" between them (947D). In *Chandler*, the reasonable notice period had to be enough to afford the defendant "ample opportunity to rehouse herself and her children without disruption". An issue between parties in the instant case is whether similar considerations exists when a child lives with a parent.

48. A child's occupation of the parental home was considered in *Metropolitan Properties v Cronan* (1981-82) 4 HLR 47 per May LJ at 57:

> "Counsel's second submission was that if Mrs Cronan lost any security of tenure which she previously had as a result of the decree absolute, nevertheless on similar reasoning which gave rise to the apparent exception to the general rule principle in favour of the "deserted wife", the courts should uphold a similar exception in favour of the "abandoned child". Just as the decisions in favour of the deserted wife rested on the obligation of her husband to maintain her and to provide her with a roof over her head, so also should an infant son be entitled to rely upon his father's common law obligation to maintain him to support the contention that his, the son's, continuing occupation of premises within the Rent Acts should in law be considered to be that of his father, and thus attract the protection given by those Acts to a tenant (the father) in occupation of the relevant premises (Flat No 26) by the son (whom at common law he was bound to maintain)."

49. I will provide May LJ's reasoning in more detail shortly, but I observe that there must be serious doubt whether as between parent and child there is mutuality of a similar nature as exists between spouses. Here the claimant's submission develops as follows: because C's licence to occupy the property was a bare licence granted by her mother, it was determined automatically by her mother's death and C became a trespasser. Reliance is placed on the Privy Council case

of *Terunnanse v Terunnanse* [1968] AC 1086 and the judgment of Lord Devlin at 1095G.

50. In *Terunnanse*, the Privy Council took the case on appeal from the Supreme Court of Ceylon (as then was). In 1930 G., the chief priest of a temple, executed a deed conferring certain rights and duties on the Terunnanse appellant, also a priest belonging to the temple. In 1942 the appellant permitted the respondent, a priest of the temple, to live on the temple property, it being the respondent's obligation to hand over to the chief incumbent the landowner's share of the produce. In 1944 G. died. Until 1953 the respondent paid his debts to the appellant, but then ceased to do so. The appellant sought a declaration that he, the appellant, was the lawful chief priest of the temple and an order of ejectment. The district judge granted the declaration and made an order for ejectment but, on the respondent's appeal, the Supreme Court held that the appellant's action failed since he could not establish his title as chief priest. The question was whether a licence terminates on the death of the licensor. Lord Devlin held:

> "The licence which was granted to him in 1942 was clearly a revocable one. A revocable licence is automatically determined by the death of the licensor or by the assignment of the land over which the licence is exercised."

51. Against this, the defendant submits that C's argument that she was unlawfully occupying the property and for that reason "*required*" accommodation under s.20 CA 1989 is overly simplistic. It is not based on clear precedent, and fails to appreciate that there is at least a reasonable legal basis on which to conclude that the child was lawfully residing in the property and entitled to protection from eviction under the PEA 1997. The defendant's counter-argument runs: notice to quit was served on 1 December 2022 and came to an end on January 2023. Having been a licensee lawfully residing in the property until the termination of the former tenancy, C was at this stage then entitled to protection from eviction under s.3 PEA 1977 (entitled "Prohibition of eviction without due process of law"). Section 3 provides:

> "it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises."

52. Thus C was an "occupier" lawfully residing in the premises at the termination of the former tenancy (s.3(2) PEA 1977). Further, the PEA would be a relevant "enactment" under s.175(1)(c) HA 1996. In consequence, there is a reasonable legal argument that C was not "homeless" as defined by s.175 HA 1996.

53. Having set out the essential arguments, I now turn to the analysis of the court.

Discussion Issue 1

54. No one disputes that C lived in her mother's flat by way of a licence. The question is what was the nature of that licence. Was it merely a bare licence

(C's case) or a contractual licence (the defendant's case)? To recapitulate, a bare licence exists because of the grant of permission by the granting person (here C's mother). But did C offer, provide or forego anything in return for that permission which might promote the licence to contractual status?

55. For a contract to exist between C's mother ("M") and C, there must have been consideration in both directions. That is the essence of a contract (simplifying greatly): an agreement where both parties obtain a benefit. The question then is what would be the respective benefits. Certainly, C was given permission to live in M's house. That is a clear benefit. But what did C give M in exchange, if it was a contractual arrangement? The defendant's argument is that in exchange for permission to stay, C provided caring services to M.

56. The essence of contract law is that the benefit relied upon is provided *in exchange for* the other party's consideration. What is the evidence that this was the position here? The defendant submits that the relationship can be characterised in this way: "I am living here so I can care for you." Thus, there was "consideration [care and support] over and above love and affection". The defendant further submits that on death, the contractual licence vests in M's estate and thus the Public Trustee. That further licence would contain an implied term of reasonable time to terminate. In this way, C had a right to occupy. She had protection under PEA 1977. She could not be evicted. To assess whether this is a correct characterisation, one must look at the facts.

57. In May 2019, C, then aged 14, left her father's house. This is confirmed by C's witness statement which says that she "ran away" from her father's home when she was in Year 9. She said that she left because "he would regularly become angry and violent towards me for small things" (§7, B111). She said that he would grab her face and use physical chastisement. Having run away, she went to her mother's house and was taken in, having to sleep on the sofa. An assessment by the defendant on 11 December 2019 noted that C claimed to care for her mother between 31-40 hours per week. The defendant submits that this shows C was her mother's "full-time carer". This is supported by C being entitled to carer's allowance. Eligibility for such allowance requires the recipient to have cared for the other person for at least 35 hours per week.

58. At some point after the assessment in December 2019, the mother started a new relationship with a man. It was an abusive one. In May 2021, he strangled the mother. She and C moved into the two-bedroom accommodation provided by CBH that they were living in at the time of the mother's death in August 2022. To answer the question whether C's relationship with her mother at any point was a contractual one, one must carefully scrutinise the circumstances and reasons for them coming to live together. The evidence shows that it was because C had nowhere else to live. She ran away from her father's home. There is no evidence that she was granted permission to live with her mother in exchange for - in consideration for - providing caring and support services. She was a 14 year-old child with nowhere else to live. A mother took her daughter in. The claimant incidentally did provide support for her mother who found it very difficult to cope with her own life. But I find no or no sufficient evidence that this was the basis of their living together. Indeed, C's own evidence is that she "later received Carers Allowance" but "not until I was 16" (B111). Thus,

the reason for her going to her mother's to live was not to provide her mother with care, but as a refuge from difficulties with her father. When C was at her mother's, she appreciated that her mother "wasn't doing very well with her mental health" and social services were "heavily involved" (ibid.). C did provide support and care for her mother to the extent a child could. The mother was in any event being supported in a more formal way by professionals working for the defendant. I find it artificial to construe the child's caring as consideration in a contractual arrangement. Indeed, it is submitted on behalf of C that there might be something more akin to a contractual relationship between C and the defendant authority. The Department of Work and Pensions paid C the caring allowance, a clear benefit to C. In consequence, C provided caring services to her mother that, given the high degree of need and vulnerability of her mother, is likely to have required the local authority to provide more extensive caring intervention otherwise. Such was the submission on behalf of C.

59. Another way to examine the question is to ask whether the mother could have terminated the licence for the claimant to live in the flat with immediate effect. The answer almost certainly is yes. There would be no reasonable notice period of 12 months or anything remotely similar to the situation in *Chandler*. The relationship between a parent and child is not the same as that between a wife and a husband or other partners and cohabitees. The level and nature of mutuality is very different. As May LJ held in *Cronan* at 57:

> "I do not think that such a contention can be validly supported for a number of reasons. First, **the mutual duties and rights of parent and child are different from those of husband and wife. Although there is a duty on the husband and father to support his wife and children, there is in my opinion absent from the father/child relationship the mutual right and duty of both husband and wife to cohabit**. Although the right of a wife to remain in occupation of the matrimonial home even as against her deserting husband is incapable of precise definition and may change overnight by the act or behaviour of either spouse (see per Lord Upjohn in the *National Provincial Bank Ltd* case at page 1233) it certainly exists as an aspect of the status of marriage. On the other hand, at least in the case of an adult child, he or she is correctly described as a licensee in the parents' home and such a licence can be withdrawn. Although the court is especially slow to grant an injunction which will exclude even an adult child from that home, there is power to do so: see *Waterhouse v Waterhouse* (1905) 95 LT 133, *Stevens v Stevens* (1907) 24 TLR 20 and *Egan v Egan* (1975) I Ch 218. I cannot think, and at the least we were shown no authority to the contrary, that the legal nature of a child's position in the parents' home changes from one of status to that of licensee so soon as the child obtains his or her majority. **As at present advised, I think that in law a licence to remain in the parents' home can be withdrawn even in the case of a minor child, though of course one hopes that this would only occur in very special**

> **cases.** If such a course of action were adopted, then no doubt the appropriate care and other proceedings would follow under the general legislation relating to children. For present purposes I think that there is therefore a significant difference between the position of a deserted wife on the one hand and an abandoned child on the other, vis-a-vis the matrimonial or family home." (emphasis provided)

60. In this case, at any point the mother might have told C to leave and expected her to vacate the house instantly or very shortly after that. The child would have had no real basis to contest that revocation of permission. Naturally, the provisions of the CA 1989 and other child safeguarding frameworks would be immediately engaged for state support of the child to secure her welfare (the "paramount consideration" of the CA 1989) and guard against her becoming street homeless. But the claimant would not have anything to set against her mother's order to leave other than a bare licence, the basis of which – permission – had been revoked at the mother's unassailable election.

61. Thus, I am quite satisfied that there was no contractual licence in this case between the mother and C. C lived with her mother because of her mother's permission. This was plainly a bare licence. As such, on the mother's death, the bare licence was terminated in a similar way to that which Lord Devlin held in *Terunnanse*.

62. I now must consider if there was any other permission granted to C following her mother's death that would enable her to lawfully stay in her mother's flat. The defendant's argument that the contractual licence vests in M's estate depends fundamentally on there having been a contractual licence in existence between M and C. I have found that there was not. Therefore, there was no contractual licence to vest in the Public Trustee. In the alternative, the defendant submits that there would have been a bare licence granted by the Public Trustee to C. It is submitted that it would be inconceivable that the Public Trustee would act in a way to evict a child summarily. It is submitted that there is no evidence that the Public Trustee treated C as a trespasser, but "the opposite would be the case". Indeed, the defendant argues that "the Public Trustee must be taken to accept that C was entitled to stay in the premises" until the termination of the contractual tenancy by the notice to quit. On this basis C had a continuing right of occupation.

63. Against this analysis, the claimant submits that there is no evidence whatsoever about what the Public Trustee's position was. The court agrees. It is purely speculative. There is a glaring absence of evidence on this point. That void provides no sound basis to conclude that a bare licence was granted to C by the Public Trustee. Therefore, there was no one to continue to grant her permission after that terminated permission.

64. As regards her mother, I conclude that C only ever had a bare licence as a result of her mother's permission. There was no contractual arrangement with her mother. There was no contractual licence to vest with the Public Trustee. There is no evidence of a bare licence granted by the Public Trustee to C.

Other rights

65. M died intestate, and so M's contractual *tenancy* (as distinct from a contractual licence) vested in the Public Trustee as part of the mother's estate. This would mean that CBH would not have a direct right to possession of the property, but this fact did not confer any status on the claimant beyond her trespasser status. It simply meant that CBH could not obtain possession from the Public Trustee until the expiry of the notice to quit. That was on 2 January 2023. The bare licence terminated on the mother's death. After that, the claimant was a trespasser. CBH in its served notice to quit correctly understood this and informed the claimant in terms that any monies she paid would not be rent. They would be "mesne profits" – sums paid by someone without the right to occupy the property. They would be, as CBH put it explicitly, "damages for trespass".

66. The further consequence of my conclusion about bare licence is that following the mother's death, and certainly following the expiry of the notice to quit, the claimant was homeless for the purposes of s.175. Not having any right to occupy the property (not being a lawful occupier), and by being a trespasser, the protection under s.3(2) PEA 1977 did not bite. Thus the claimant was not in lawful occupation, subject to any other Convention right, which I next examine. As such, CBH did not need to obtain a court order for her eviction. That said, the claimant accepts that as a matter of pragmatism and practice, it was likely that CBH would have applied for an order (see concession at CS §52(c)(ii) and footnote 6).

67. The final issue for the court to consider in respect of s.175 is any Article 8 right under the European Convention on Human Rights that C could rely on. The defendant argues that C's historic occupation of the premises and the circumstances of her residence mean that she had accrued an Article 8 right to respect for her home life. However, in my judgment such right was procedural rather than substantive. Relying on the *Lewisham* case (*R (N) v Lewisham LBC* [2015] AC 62), there should be an opportunity for C to raise an Article 8 "defence" to eviction. As Lord Hodge stated:

> "62 … A public authority that interferes with a person's right to respect for his or her home, especially when it intervenes in the most extreme way by removing him or her from that home, must have in place a fair procedure in order to show that respect. This requires the occupier to be involved in the decision-making process in order to protect his or her rights. In assessing the effectiveness of the procedure to achieve respect for the safeguarded rights the court looks to the whole proceedings involving the interference with the home. See *Tysiac v Poland* (2007) 45 EHRR 947, paras 113 and 115; *Blecic v Croatia*, para 68 and *Zehentner v Austria* (2009) 52 EHRR 739, para 54.
>
> 63 A fair procedure requires the occupant to have a right to raise the issue of the proportionality of the interference and to have that issue determined by an independent tribunal: *Manchester City Council v Pinnock* (Secretary of State for Communities and Local Government intervening) [2011] 2 AC 104, para 45, Lord Neuberger of

> Abbotsbury MR; *McCann v United Kingdom* (2008) 47 EHRR 913, para 50; *Kay v United Kingdom* (2010) 54 EHRR 1056, para 68; *Paulic v Croatia* (Application No 3572/06) (unreported) given 22 October 2009, para 43 and *Buckland v United Kingdom* (2012) 56 EHRR 557, para 65. The appellants submit that that procedural protection requires the owner to obtain a court order before evicting the occupant, thus enabling the latter to raise the issue of proportionality as a defence. The respondent local authorities and the Secretary of State disagree and submit that it suffices if there are procedures by which the occupant can raise the issue before an independent tribunal."

68. The defendant argues that it follows that C would be entitled to raise her Article 8 claim and have it determined before eviction. It would be reasonable for her to continue to occupy until "the process is gone through". This constitutes a right that in s.175(1)(c) terms is "restricting the right of another person to recover". On behalf of C, it is submitted that such an Article 8 defence is "fanciful". It was stated in *Thurrock BC v West* [2012] EWCA Civ 1435 at [24] that:

> "24. … it is nevertheless clear that the threshold for establishing an arguable case that a local authority is acting disproportionately and so in breach of art.8 where repossession would otherwise be lawful is a high one and will be met in only a small proportion of cases: *Hounslow LBC v Powell* [2011] UKSC 8; [2011] 2 A.C. 186 at [35] The circumstances will have to be exceptional to substantiate an art.8 defence: *Powell* at [92] (Lord Phillips), *Corby BC v Scott* [2012] EWCA Civ 276; [2012] H.L.R. 23 at [35] (Lord Neuberger M.R.). In *Birmingham City Council v Lloyd* [2012] EWCA Civ 969 at [25], Lord Neuberger indicated that in some cases the circumstance might even have to be "extraordinarily exceptional", but I would respectfully suggest that references to degrees of exceptionality may unnecessarily complicate matters.
>
> 25. … the reasons why the threshold is so high lie in the public policy and public benefit inherent in the functions of the housing authority in dealing with its housing stock, a precious and limited public resource. Local authorities, like other social landlords, hold their housing stock for the benefit of the whole community and they are best equipped, certainly better equipped than the courts, to make management decisions about the way such stock should be administered.
>
> 30 … If the pleaded defence does not reach that threshold, it must be struck out or dismissed: ibid. The resources of the court and of the parties should not be further expended on it.
>
> 31. Eighthly, even where an art.8 defence is established, in a case where the defendant would otherwise have no legal right to remain in the property, it is difficult to imagine circumstances in which the

> defence could operate to give the defendant an unlimited and unconditional right to remain: comp. *Pinnock* at [52]. That might be the effect of a simple refusal of possession without any qualification. It is particularly difficult to imagine how that could possibly be appropriate in a case where the defendant has never been a tenant or licensee of the local authority. Otherwise, the effect of the art.8 defence would be that the court would have assumed the local authority's function of allocating its housing stock, preferring the right of the defendant to remain, without any tenancy or contract, over all the other people entitled to rely on the local authority's statutory housing duties and without the benefit of any knowledge of who those people are and their circumstances and of other relevant matters which would properly guide the local authority in housing management decisions.
>
> 32. Having regard to the above principles it is quite clear that the art.8 defence in the present case, as pleaded, does not even reach the threshold of being reasonably arguable. The defence should have been struck out summarily at the earliest opportunity. For what it is worth, even if the facts and matters in the witness statements of the appellant and Ms Dowward are taken into account, the art.8 defence still does not reach that threshold."

69. The claimant relies also on the case of *Holley v Hillingdon LBC* [2016] EWCA Civ 1052. There the court emphasised that while length of occupation may be a factor in assessing proportionality, it is "unlikely to be a weighty factor" (H20, AB441). It seems to me quite clear that there is a high threshold for making a successful Article 8 claim in the absence of a secure tenancy. It would require exceptional circumstances. There is no such exceptionality here. It is highly likely, as said in *Thurrock* at [32], that such a defence "should be struck out at the earliest opportunity", not having reached the threshold of reasonable arguability. I conclude, therefore, that Article 8 fails to provide C with a basis not to be deemed homeless under the s.175 test. Article 8 did not restrict the landlord's right of recovery and thus C remained homeless in statutory terms.

Conclusion Issue 1

70. I find that after 2 January 2023, at the very latest, the claimant was homeless for the purposes of s.175 HA 1996. The claimant had no right that would restrict the landlord's right of recovery. While CBH did not need to obtain a court order for her eviction, the claimant accepts that in all probability CBH would have applied for such an order. That would have materially affected the timescale within which the landlord could regain possession and end C's occupation of the flat.

§VI. ISSUE 2

If C was s.175 homeless, did she necessarily require accommodation within the meaning of s.20 CA 1989?

71. It is submitted on behalf of the claimant that if C were s.175 homeless (she was as of 2 January 2023), then she "necessarily" required accommodation under s.20 CA. That is because, as counsel submitted, the two statutes – the Children Act 1989 and the Housing Act 1996 – must "march hand-in-hand". There cannot be a "gap in the statutory scheme" whereby there is a category of children who are homeless under the Housing Act and yet do not require accommodation under the Children Act 1989. Ms Hannett submits that it would be surprising if more protection existed under the Housing Act than under the Children Act.

72. The defendant submits that even if C were, as counsel put it, "technically" homeless under s.175, it does not necessarily follow that she required s.20 accommodation. There is no gap in the legislation.

73. The court must be clear what the essence of the claimant's argument is here. It amounts to one statutory provision dictating – necessitating – consequences in the other. However, it seems to me that while there is an obvious overlap, they are directed at two different things. The focus of s.175 is whether a person has "accommodation available for occupation" whether through an entitlement to occupy through a court order, express or implied licence or legal enactment. Subsections (a)-(c) detail different routes that provide such available accommodation. By contrast, s.20 sets out the duty of a local authority to provide accommodation to children in need in its area in the circumstances identified in subsection 1 (a)-(c). It is thus entirely conceivable that a child may satisfy the s.175 test, but not "require accommodation" under s.20, because the child is in accommodation and will remain in the accommodation for the immediate or indefinite future and it is reasonable for the child to continue to occupy it. These will be intensely fact-specific matters. There will be many children who are s.175 homeless and who do require s.20 accommodation. But it is entirely plausible that on the proper interpretation of the distinct legal tests that there are children who come under s.175 but in all the circumstances of their specific case do not "require accommodation" for s.20 purposes.

Conclusion Issue 2

74. Therefore, I find that by reason of satisfying the s.175 homelessness test, the claimant did not *necessarily* require s.20 accommodation. She may do; she may not. It will depend on the specific facts of her case. However, it is not the inexorable consequence of satisfying s.175 – the first does not mandate the second. The s.20 question requires separate evaluation of a wide range of factors and not an assumption that since the s.175 test is met, the child automatically ("necessarily") requires accommodation under s.20.

75. While there is (joint) statutory guidance, the prime question under s.20 is, and must remain, whether C "requires accommodation", not whether she was homeless under s.175. Section 175 is not referred to in s.20 itself and homelessness is not part of the statutory test under s.20. Certainly, the defendant's duty is to have regard to the statutory guidance, but the guidance is not a "source of law" (*R (Khatun) v London Borough of Newham* [2004] EWCA Civ 55 at [47], per Laws LJ). The question becomes whether on the specific facts, there was good reason to depart from the guidance given the reality on the ground. As will be explored further, here (1) C was living in a flat in which she

had lived for 18 months and where she wished to continue living; (2) C was not under any immediate threat of eviction; (3) her situation was not precarious given that the landlord made clear that it would not seek her eviction without a court order; (4) it was highly unlikely that such order, even if sought, could be obtained before her 18th birthday; (5) the landlord took no further steps to seek an eviction order; (6) the landlord emphasised that it did not wish to exacerbate C's difficulties and stated in an internal note that it viewed C's situation with "compassion and consideration" and did not wish to pursue "a mandatory possession order" which would "take a minimum of 12 months"; (7) thus the landlord exercised its discretion exceptionally while C was still a child to offer her accommodation upon her turning 18. These factors justified a departure from the statutory guidance. In the end, the overwhelmingly likely outcome is precisely what occurred: no eviction and immediate accommodation provision by the landlord on turning 18. The defendant gave "clear reasons" for departing from the guidance that was not determinative (*Khatun* [47]). While the guidance (§3.13) mentions only "two circumstances" where a homeless young person should not be accommodated under s.20, this guidance must be capable of being departed from on specific and concrete facts – that is why it is guidance and not law. I cannot conceive that the guidance should operate as a forensic straightjacket inflexible to the very particular circumstances of a case.

§VII. ISSUE 3

If not Issue 2, in deciding whether C required accommodation, was it in any event a relevant consideration that she was homeless and/or a trespasser, which the defendant failed to take into account?

76. The issue contains two questions that I address in turn.

77. First, if s.175 homelessness did not necessarily require s.20 accommodation, was the fact of such statutory homelessness a relevant consideration for the defendant to take into account in any event? The defendant submits that it is not a mandatory consideration under s.20 required by the statute.

78. Against this, the claimant relies on the Homelessness Code of Guidance for Local Authorities (2018). Chapter 6 is entitled "Homeless or threatened with homelessness". Paragraph 6.33 provides:

> "Authorities should not adopt a blanket policy or practice on the point at which it will no longer be reasonable for an applicant to occupy following the expiry of a section 21 notice. As well as the factors set out elsewhere in this chapter, factors which may be relevant include the preference of the applicant (who may, for example, want to remain in the property until they can move into alternative settled accommodation if there is the prospect of a timely move, or alternatively to leave the property to avoid incurring court costs); the position of the landlord; the financial impact of court action and any build up of rent arrears on both landlord and tenant; the burden on the courts of unnecessary proceedings where there is

> no defence to a possession claim; and the general cost to the housing authority. Housing authorities will be mindful of the need to maintain good relations with landlords providing accommodation in the district."

79. What is clear from this is that the local authority should take into account a wide range of factors. I cannot see why the fact that the child qualifies as being homeless under s.175 would be irrelevant to the local authority's broad evaluation. Similar considerations apply for her status as a trespasser. These are factors that the defendant may properly take into account as being relevant to its s.20 decision. However, in such decisions, different potentially relevant factors may possess significantly different statuses and implications. Trespass and s.175 homelessness are not factors that the defendant is mandated to have regard to under the statute; nor can a duty to have regard to them can be implied as a matter of law (*Re Findlay* [1985] 1 AC 318, HL, 333–34 per Lord Scarman, cited in DS at footnote 8, p.18). Instead, these two factors fall into a subsidiary category of being potentially relevant whereby it would be permissible to take them into account while not being mandated to do so explicitly by statute or implicitly by legal implication.

80. As to the second question, whether the local authority did consider that C was homeless under s.175, I can see no evidence that the defendant concluded C was s.175 homeless. However, it did consider C's accommodation situation broadly, considering factors that fed into the test, while concluding that the test was not met. As to the question about whether she was a trespasser, there is a statement in the notice to quit from CBH that any monies paid would be mesne profits, and thus not rent but damages for trespass. However, I cannot see any evidence of how and if so to what extent the defendant itself (as opposed to CBH qua landlord) took this factor into account in making its s.20 decision.

Conclusion Issue 3

81. In its s.20 decision, the defendant may have properly taken these two factors, amongst several others, into account. However, such factors in the non-mandated category (by statute or legal implication) may carry more or less weight. The relevance of a failure to take such non-mandated factors into account will be considered when the court examines the overall reasonableness and rationality of the defendant's s.20 decision. A decision is not necessarily vitiated by a failure to consider factors in this category. As Lord Bingham stated in *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60 at [40]:

> "A discretionary decision is not … vitiated by a failure to take into account a consideration which the decision-maker is not obliged by the law or the facts to take into account, even if [he/she/it] may properly do so."

§VIII. ISSUE 4

Was C provided with inaccurate information about the types of accommodation available?

82. It is alleged that the defendant "misinformed" C about the "type of accommodation" that would be reasonably available to her. In doing so, she was not given a full and accurate picture of what choices she really had.

83. The parties agree that her strong wish was to live with her boyfriend and cats. The defendant offered no accommodation solution that would let that happen. It is C's case that this is a material and significant misstatement. It is submitted on her behalf that "there were steps the local authority could have taken to secure accommodation with her cats and/or boyfriend" but did not take. This is denied by the defendant. It maintains that all the reasonably available accommodation options were squarely put before C.

84. The claimant is correct in submitting that the options presented to her were premised on the assumption that she could not live with her boyfriend and/or cats. The table of options presented to her included fostering, supported lodging and semi-independent accommodation (B351). The claimant was unenthusiastic about any of these. But C submits that the defendant could have taken steps that would have resulted in it sourcing the independent accommodation C wanted so she could live with her boyfriend and cats. The basis for this submission starts with the Joint Guidance (see above):

> **"5.2**
> Some 16 and 17 year olds who require accommodation may be reluctant to take up a placement in foster care or a children's home and the assessment of their emotional and behavioural development may indicate that they do not require the level or kind of supervision and support that foster or children's home care provides. The option to use 'other arrangements' offers scope to provide alternative accommodation and support."

85. The claimant submits that this is applies precisely to her – "other arrangements" should have been made for her and were not. Counsel for C submitted that there is no evidence to suggest that the defendant "thought outside foster care et cetera." Indeed, it is submitted that there is nothing in the CA 1989 that requires that the accommodation must be provided by social services. In other words, the local authority can legitimately ask "other entities" to provide it. C relies on the comments by Baroness Hale in *Southwark* at [33]. Her Ladyship emphasised that there are a variety of ways in which a local authority can discharge its functions, including asking "another authority to use its powers to help them discharge theirs." Baroness Hale continued:

> "Section 23(2) gives them great flexibility in the ways in which they can provide accommodation for the children they are looking after, ranging from placing them with families, relatives or other suitable people, placing them in an appropriate children's home, or making such other arrangements as . . . seem appropriate to them". The very flexibility of what the children's authority can provide supports the construction which we have placed upon section 20(1)."

86. The defendant submits that there were limits to what the defendant could properly provide at that time. On 6 April 2023 – so just before the claimant's 18th birthday - the Government laid the Supporting Accommodation (England) Regulations 2023/416 before Parliament which when introduced from October 2023 would prohibit all unregulated accommodation for 16 and 17 year-olds. The purpose of it was to provide better safeguarding for children. Accommodation for children of these ages should be regulated; that provides the best prospect of protecting this often highly vulnerable cohort. The defendant maintains that it could not have provided the claimant with accommodation which included her boyfriend as it would run contrary to the defendant's safeguarding practices and the imminent change in the law.

Summary Issue 4

87. In its PAP response, the defendant stated that the "other arrangements" term is not open-ended and could be subject to restriction (B173). Here the defendant was concerned about the welfare and safeguarding of a child. It was not unreasonable to have these considerations at the forefront of its mind. Indeed, it would have been heavily criticised if it did not. The law was to change in the near future. Such legislative change would have prevented a child living with an adult (a "connected person") unless that person is a parent or a carer. Here the claimant's boyfriend falls into neither category. There would be an obvious concern if something went wrong between the claimant and her boyfriend if the defendant had placed a vulnerable female child with an adult male who was not providing care for the child. This is not to say that such an outcome would inevitably have happened (there had been no incidents whereby the boyfriend had caused harm to C), but that was the risk that the defendant was correct to have regard to, given that C was a child and the boyfriend was an adult male. The fact that the defendant took no safeguarding steps in respect of the boyfriend is not a sound reason to dismiss the question of the appropriateness of providing accommodation for C with him as the next step. Such safeguarding concerns lay at the heart of the imminent law-change: to better protect vulnerable children.

88. While the boyfriend was already living with her, that was an informal legacy arrangement under the tenancy granted to the claimant's mother. What was now being asked of the defendant was something quite different: the establishing of new accommodation whereby a female child could live with an adult male who was neither parent nor carer. In its 10 February 2023 email, the defendant stated that it was "unconscionable" to place the boyfriend in a "position of power" over the claimant "as her carer". This was an entirely reasonable approach. This serious concern for the safeguarding of the child was a responsible stance to take by the defendant. It stated in its response to the Letter Before Claim that there are restrictions for making "other arrangements" under s.22C(6)(d) CA 1989. The defendant's providers of semi-independent accommodation have to meet the sufficiency standards of the statutory guidance on securing sufficient accommodation for looked after children. The providers are all approved to meet the standards. Of particular significance is that the defendant stated in terms:

> "4. Ofsted has already required the Council to ensure that its approved providers are registering their provision under the Care Standards Act 2000 in readiness for new regulations which are about to be laid to introduce quality standards and registration and inspection requirements and which extend to the making of *'other arrangements which comply with any regulations made'* for the purposes of section 22C(6)(d) to 16/17 year old children.
>
> 5. The Council cannot reasonably be expected to agree to arrangements which are not compliant with section 22G CA and which are not capable of registration under the Care Standards Act 2000. The Council does not therefore agree that it could reasonably provide accommodation under section 22(6)(d) CA by *'making use of independent accommodation where suitable support is provided'* such as the property where [C] is living and 'by allowing her partner to stay at the accommodation as her licencee'.
>
> 8. It is most unlikely that any provider of section 20 accommodation would agree to [C] having 4 cats."

89. Overall, I find that it was entirely reasonable and responsible for the defendant to be mindful of the imminent change in the law. The claimant was a child with significant vulnerabilities who had led a fractured life in highly dysfunctional circumstances, none of it her fault. The defendant was right to be extremely cautious about the type of accommodation it would provide her while she remained a child. It was reasonable not to have offered this child accommodation with an adult who was not her parent or carer. The options offered to her would have provided her with additional support and were highly likely to be safe.

90. In any event, the council's practice was not to offer s.20 accommodation that permits adult visitors to stay overnight. That again is a safeguarding measure. The s.20 accommodation that was offered to C would permit her boyfriend to visit, but not stay overnight or live with her. She would shortly cease being a child.

Conclusion Issue 4

91. Accordingly, I cannot accept the submission that in order to comply with its duty under s.20 the defendant would have had to secure unregulated independent accommodation for the claimant and her boyfriend. I find that the claimant was not given inaccurate information by the defendant about the types of accommodation that it could properly make available to her. For similar *Khatun* reasons, it was reasonable for the defendant to depart from statutory guidance around accommodation with a "partner" (her boyfriend). It was a good reason to consider the imminent new child safeguarding regulations (Supporting Accommodation (England) Regulations 2023/416), laid before Parliament on 6 April 2023 (two days before C's 18th birthday), and ultimately introduced from October 2023. The lack of historic safeguarding concerns about the boyfriend was not determinative. It was reasonable for the defendant to have regard to the fact that the nature of the safeguarding regime for

accommodating such children was about to change. It was reasonable for the defendant not to agree to accommodation arrangements that were not compliant with section 22G CA 1989 and which are not capable of registration under the Care Standards Act 2000.

§IX. ISSUE 5

Did C refuse accommodation and support under s.20 CA 1989?

92. The defendant alleges that C refused the offers of s.20 accommodation made to her. The claimant's case is that she never refused.

93. When informing a child about available accommodation options, both the substance of the information and process by which it is imparted are important. It is important to recognise, as Ms Hannett submits, that this is a child being asked to make a difficult decision. Great care must be taken. The proper approach was considered by Mostyn J in *TT v Essex County Council* [2023] EWHC 826 (Admin) at [27]:

> "the local authority must present the alternatives neutrally and impartially. It must not apply spin or other undue pressure to solicit the non-section 20 choice by the child…".

94. I accept that any decision by the child or young person not to be accommodated under section 20 CA 1989 must be "fully informed" (*Hammersmith* at [43]). The child must have been provided with "all relevant information", including "full information about the package of support that the young person can expect as a looked after child and, subsequently, as a 'former relevant' care leaver" (16/17-year-olds Guidance at §§3.49, 3.42; and see generally §§3.38-3.50). Section 3.42 insists on the young person being fully consulted. Section 3.48 is said on behalf of the claimant to be "the crunch paragraph". Given the importance placed upon it by the claimant, it merits repetition here:

> "**3.48**
> Some 16 and 17 year olds may decide that they do not wish to be provided with accommodation by children's services under section 20 of the 1989 Act, for example, because they do not wish to be supported as a looked after child. In these circumstances it is important that children's services are clear that the young person's decision is properly informed, and has been reached after careful consideration of all the relevant information. If the young person is subsequently not accommodated by housing services and remains homeless, housing services must inform children's services who may need to take further action."

Further, the claimant relies on the next paragraph. It also bears repetition:

> "**3.49**

> Where a 16 or 17 year old child in need wishes to refuse accommodation offered under section 20 of the 1989 Act, children's services must be satisfied that the young person:
>
> a. has been provided with all relevant information;
> b. is competent to make such a decision; and
> c. that they do not need to take additional safeguarding action."

95. In this case an independent advocate was present at the options meeting with the claimant. Further, care was taken by the social worker to set the information out carefully in a clear table. The claimant was able to take the table away and review the options more fully and at greater length. The defendant had obviously put thought into this meeting and preparations were made to assist the claimant understand the available alternatives. This included explaining the impact and implications of being accommodated under s.20 and the support that could be provided as a former relevant child.

96. While the claimant relies on the case of *TT* and the comments of Mostyn J about undue or improper pressure, I find that this important principle has little practical application in this case due to my findings on Issue 4 that the accommodation options provided to the claimant were the reasonably available options. In such circumstances, there cannot be a question of improper pressure being applied due to being forced to choose from an inaccurate range of options.

97. Undoubtedly there was PAP correspondence in which it is set out that the claimant wished to have s.20 accommodation. This must be qualified by the point made by the defendant that the claimant wished to have accommodation on her terms. But what about the question of whether the claimant refused accommodation? What in fact the claimant does at the meeting of 27 February is to say that she would "need to think about it". This is confirmed by the note of the meeting ultimately disclosed by the defendant (Exhibit KL/1, B346-47). Equally, during the telephone call with the social worker on 1 March, while the claimant did not request s.20 accommodation, nor did she refuse it. At the meeting on 14 March, a similar pattern occurred. On the other hand, as is correctly stated by the defendant, at no point did the claimant accept any of the options provided to her.

Summary Issue 5

98. I agree with the defendant that the fact the claimant wished for a different type of accommodation arrangement does not make the options she was given unreasonable. But I cannot accept that her wish for some other preferred arrangement means that she was refusing. In any event, it cannot be forgotten that even on the defendant's case, these were not concrete offers to her, but an indication of what may be possible. This is because the defendant's case is that the s.20 duty had not "crystallised", so this was essentially an exploratory exercise. I do not accept that the "only inference", as Mr Sheldon put it, is that she refused because she "never came back and accepted any option". What must be remembered is that here there was a ticking clock as the claimant's 18th birthday approached. These were difficult decisions for her. She had lost her mother and to all intents and purposes lacked parental guidance. This was a

child making a major decision that could have far-reaching consequences for her life. I am not satisfied that the claimant refused the options. She simply set out what she would prefer. She did not take up any of the proposals suggested to her by the defendant. On 17 February 2023, the landlord made its decision to offer exceptional discretionary accommodation for C.

Conclusion Issue 5

99. What factually happened is more nuanced than the defendant's binary case on this issue. I accept the claimant's submission that dealing with a vulnerable child such as C, "there must be a clear refusal". This was far from the case. Thus, I find that the claimant did not refuse the offer of s.20 accommodation. She was thinking about it and on 17 February, CBH offered her own accommodation when she turned 18.

§X. ISSUE 6

In any event, was the defendant's decision that C did not require accommodation unreasonable in all the circumstances?

100. **Claimant submissions**. A prime point submitted on behalf of the claimant is that certainly by 2 January 2023 at the expiry of the notice to quit, C had no right to remain. Without the right to occupy, she was committing the tort of trespass. Thus, her situation was precarious and the s.20 duty crystallised on 2 January at the very latest.

101. What led to this was that on 11 November 2022, CBH wrote to the defendant stating that "we are at the stage that we may need to legally ask for the premises back if no voluntarily decision is to be made in the near future." It was uncertain how long the eviction would take and that increased C's precariousness. The contemporary evidence suggested that although it was thought that the claimant "may be okay", there was far from any guarantee.

102. Moreover, at the options meeting on 27 February 2023, C was asked if she would accept s.20 accommodation and various alternatives were discussed with her. That indicates that the defendant accepted its s.20 duty. There would be no point in discussing these alternatives if no duty was accepted – that must have been the point of the meeting. Consequently, the defendant now seeks to resile from its February position where s.20 duty must have been accepted. The defendant, by these actions, conceded that the claimant required accommodation for s.20 purposes.

103. **Defendant submissions**. The defendant's decision was not *Wednesbury* unreasonable (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [*1948] 1 K.B. 223).* There was no concession about owing the s.20 duty: the 27 February meeting was just prudent forward planning. It did not appear to the defendant that C required accommodation. The property she was living in was where she had lived with her mother and then where she had stayed on following her death and wished to live in. It was suitable. It was not a merely perfunctory "roof over her head" – it had been this child's home for two years. There was no realistic prospect of eviction before her 18th birthday. Thus, her

living arrangements were not precarious. She was not "sofa surfing" (DS §36b), and the landlord committed to obtaining a court order before any eviction. That would take months, and certainly well beyond her 18th birthday. Even if she were technically "homeless" for the purposes of s.175 HA 1996, there is no requirement to consider whether the s.175 test is met when considering the distinct s.20 test. As to policy, there was good reason to depart from the defendant's policy and not provide accommodation for C with her boyfriend in accordance with the Court of Appeal's decision in *R (Khatun) v London Borough of Newham* [2004] EWCA Civ 55 at [47]:

> "Although the guidance is provided for by statute and housing authorities are obliged by section 182 of the 1996 Act to have regard to it, it is not a source of law. … this case, I think, goes no further than to underline what is conventional law, namely that respondents to such a circular must (a) take it into account and (b) if they decide to depart from it, give clear reasons for doing so."

104. It was appropriate for the defendant to seek to rebuild the claimant's relationship with her father, as finding a solution within the family is typically better for child welfare.

Discussion Issue 6

105. I start by emphasising that I consider all the relevant factors touching on the s.20 decision together. I ask myself whether the defendant's decision was *Wednesbury* unreasonable in the recognised way. To answer that question, one must examine the relevant history.

106. The record of Ms Pinchess' visit with C on 11 November is that C is "at risk of being evicted". While that may be the case, the level of risk is a relevant factor as is how imminent it is.

107. On 16 November, Ms Pinchess told the Department of Work and Pensions that C:

> "is living alone in the property but does not have rights and they plan to evict her. She has a dad but the relationship is poor. We were told she does not have succession rights".

108. On 30 November, Ms Pinchess and Ms Chapman discuss "what options are available to [C] in regard to accommodation once she receives an eviction notice for the property she is currently living in" (B307).

109. By 1 February 2023, following the notice to quit expiry on 2 January, no steps had been taken to seek an order for eviction. It should be remembered that the "Prescribed Information" attached to the notice to quit stated that "the landlord or licensor must get an Order for Possession from the Court before the tenant or licensee can lawfully be evicted." (B382) The defendant's legal services manager wrote to the claimant's solicitors in a Pre-Action Protocol letter that:

> "You concede that it is an option for [C] to stay in her home by your proposal that this arrangement could be supported by Council with 'floating support'. The Council agrees that it is an option for [C] to remain in her home and contends that it remains lawful for [C] to have remained there both after the death of her mother on 25 August 2022 and after she received a notice to quit on 1 December 2023.
>
> You have misunderstood [C's] position because there is no need for her to leave her home yet. It will only become unlawful for [C] to stay in her home once CBH has obtained an eviction order and executed a warrant of possession **the likely timescale for which exceeds a year at present which is at some time beyond December 2023**." (emphasis provided)

110. Thus C is correct in submitting that there was no certainty about when any eviction would take place. However, that is not the end of the matter. A relevant factor in terms of risk to C's situation is assessing whether there was the real prospect of eviction in the near or immediate future, and importantly before her 18th birthday. It is significant that beyond the notice to quit, the landlord took no step to obtain an eviction order let alone execute a warrant for possession. For her part, C had made it clear at various points, but consistently, that she wished to stay on at the property. She had lived there with her mother from the time they moved in together in 2021.

111. One has to understand the approach of the landlord CBH in the context of what was happening on the ground. It did issue a notice to quit to protect its position in law. It judged, correctly, that the claimant could not succeed to the tenancy and thus here was one of its properties with occupants who did not and could not enjoy a lease. Rob Ward the housing officer made this clear to Ms Pinchess in the 11 November 2022 email where he spoke about the need to "legally ask for the premises back" (B277). But Mr Ward made it clear in the same email that:

> "I am keen to underline this is NOT to put any additional pressure on this situation, we do appreciate the stress of [C]'s mother's unexpected passing" (original emphasis).

112. On 2 December, C had a discussion with Ms Chapman from the Young Carers Service. C related that she was told by the person ("the lady") who "dropped round" the notice to quit on 1 December that following the expiry date on the notice "it would take a few weeks before it would go to court for her to be removed from the property if she did not move out by the date on the eviction notice" (B310). This is a report by C, still a child, of what the person who "dropped round" her the notice to quit told her. I do not consider that great weight can be placed on this evidence as an authoritative or accurate statement of the likely timetable for eviction.

113. On 6 December, the defendant's case note documenting the conversation with Zara at Coram Voice recorded, "Delivered eviction notice probably delay in the courts so she may be ok until April but not certain" (B312).

114. On 7 December, the records show that C was told that "although she has been asked to vacate, this won't be immediate. As there is a delay with the courts she may be able to remain until March April anyway"

115. I accept the proposition that requiring accommodation under s.20 is not simply reducible to the "roof over the head" question (Poole J in *Brent* at [46(5)]). The principal concern on behalf of C is the "precariousness" of her tenure and lack of status in the property. To understand the true position, one must examine the differing stages. I subdivide the timeline into three.

- **Stage 1**. M's death until expiry of the notice to quit on 2 January 2023.
- **Stage 2**. 2 January 2023 to 17 February, and the CBH offer of exceptional accommodation.
- **Stage 3**. 17 February CBH offer to 18th birthday on 8 April 2023.

116. **Stage 1**. Prior to the expiry of the notice to quit, there was no prospect of C being evicted from the property before expiry and then the execution of a possession order. She could remain in occupation until then. Following CBH's decision on 17 February to treat her as an exceptional case and to exercise its discretion in her favour, she was not going to be homeless: she would live in her home until the new one-bedroom flat was provided by CBH immediately following her 18th birthday. She continues to live in that new flat today.

117. **Stage 2**. The period between expiry on 2 January and the 17 February CBH decision was a time when the landlord CBH could have gone to court to make an application to evict C. The fact is that CBH as landlord did not go to court to seek an eviction and gave no indication whatsoever that it was proposing to do so prior to the claimant's 18th birthday. After notice to quit expired, it took no steps whatsoever in that direction. It did not indicate to C or to anyone else that it was intending to obtain possession immediately and evict this child. I accept that C's continuing occupation became less certain during that 6½-week window. But if one asks whether there was any prospect of her immediate or imminent eviction, the answer is and must be no – this is a relevant factor. The defendant makes the point that the test for when a person is "threatened with homelessness" under s.175(4) is when homelessness is "likely within 56 days". Here C was not 56 days from the point of eviction. The great likelihood is that any eviction would take significantly longer than this, even if there were any appetite for it.

118. **Stage 3**. Once we pass the CBH accommodation decision, the prospects of the claimant being evicted by CBH before her 18th birthday all but vanish. That is not the end of the matter in respect of the reasonableness of the overarching s.20 decision - there are other factors that must be taken into account – but it deals with the different considerations at different stages of the timeline.

119. **Homelessness/trespass**. I judge that it would have been proper for the defendant to have considered these two factors in its s.20 decision. I have found that C was homeless for the purposes of s.175. Certainly, from the expiry of the notice to quit at the very least, C was a trespasser (I do not need to decide the

further question of whether that was her true legal situation from her mother's death as opposed to the expiry of the notice to quit on 2 January 2023). Ms Hannett is correct that certainly from expiry, C was in principle at risk of being sued for trespass and exposed to the risk of damages. But one must inject a sense of realism. The notion that a body like CBH, which itself repeatedly expressed concerns about C's position, would take civil action against a child is fanciful - everyone involved knew C was impecunious (receiving food parcels and ad hoc cash payments) and highly vulnerable. One can test the likelihood of CBH pursuing her in trespass by reflecting on what CBH actually did on 17 February: it exercised its discretion *exceptionally* in C's favour to provide her with accommodation. Thus, while it would have been proper for the defendant to have considered both s.175 homelessness and trespass, their weight and significance is highly context-relevant, given the prevailing situation on the ground and the improbable prospect of C actually being evicted before she would move into her own flat just after her 18th birthday. Further, as previously explained, they do not fall into the category of factors that CA 1989 stipulates that the defendant must have regard to. The statute does not expressly mandate that the defendant has regard to either homelessness or trespass and they are not obliged to consider them by necessary implication. Falling then into a subsidiary category of permissible but non-mandated factors, the significance of a failure to consider them must figure in the court's overall assessment of reasonableness on a *Wednesbury* basis. The defendant in oral submissions argued that these were not "mandatory considerations" and C's real complaint was that she did not agree with the weight attributed to various factors. In other words, this is in an attempt at a merits appeal, not judicial review. I judge that on these very specific facts, the defendant's failure to consider these non-mandatory factors does not render its decision irrational; the decision was not vitiated by a failure to consider them or consider them adequately. The implications of trespass given the extreme unlikelihood of any action in tort as a result of it, reduce its significance as a factor. The failure to take into account that the s.175 homelessness test was met, does not render the overall s.20 decision unreasonable in a *Wednesbury* sense or irrational since the most important factors were considered by the defendant and given appropriate (not irrational) weight. It is clear that the defendant looked carefully at C's overall position, including factors that contributed towards the s.175 test, without concluding that the test was met. I judge that if the defendant had considered that there was s.175 homelessness (what Mr Sheldon submitted would mean that the test was "technically met") along with the fact of trespass, it would have made no material difference to the decision. I judge that even if the defendant had considered s.175 homelessness and trespass, it would be highly likely that the outcome for C would not have been substantially different.

120. **Door**. It is documented that there were concerns at the property in that the door did not work properly. While that adds to the concerns, that is not so much an argument for determining that C "required accommodation" in statutory terms, as fixing the door of the home she fervently wished to remain in.

121. **Support**. This may be termed the *Brent* point. The position is that C was receiving various types of support from the defendant, and in receipt of s.17 services. She had a social worker who liaised with her. She had contact with

the Young Carer Team. Social services had a duty to maintain her. She was being provided with vouchers and food parcels (she also received a little occasional money from her father). When one looks carefully at s.20(1), it seems to me that the question of care has relevance. The way s.20(1)(c) should be interpreted is that the requirement to accommodate can be triggered in one of two ways under that subsection. The first is where the parent is unable to provide suitable accommodation. But in addition to this, where for "whatever reason" the parent cannot provide suitable "care", then that would be another reason for the child to require accommodation. That could be when there is physically suitable accommodation, but the situation in the home due to the behaviours or deficits of the parent means that the parent cannot in practice care for the child. There was significant debate between counsel about whether the decision in *Brent* was correct in light of *Southwark* and whether *Coventry* (*R (A) v Coventry CC* [2009] EWHC 34 (Admin)) can "survive *Southwark*", as Mr Sheldon put it. I accept the point made by Poole J in *Brent* at [46(5)] that:

> "The need for accommodation is not simply about securing a building for the child to occupy. No local authority could reasonably hold the view that vulnerable children, who are children in need, do not require accommodation on the sole ground that they have use of a bed, a toilet, a shower, and a roof over their head."

122. I emphasise that my approach is that it is not just physical accommodation that should be considered in a s.20 evaluation by a local authority. However, the defendant did not simply ("solely" as Poole J put it) consider the fact of physical accommodation. As my analysis of s.20(1)(c) makes clear, there may be perfectly adequate accommodation in terms of bricks and mortar and amenities, but if the parent cannot provide appropriate care for the child, the s.20 duty may arise. Thus, in my evaluation of the reasonableness and rationality of the defendant's decision, I look at the wider picture, not restricted simply to the state or nature of the physical accommodation. As Ms Hannett submitted in terms, one "must look at the big picture". I do not take the discussion of s.20 options at the social worker meeting to be a concession or admission by the defendant that a s.20 duty was owed. It was a prudent course for the defendant to explore what C might want to do if (on the defendant's case) the s.20 duty crystallised. The timing is once more significant. This discussion was more than three weeks after the defendant's PAP response letter in which it made plain that C could stay in the property until CBH obtained a warrant for possession which CBH had taken no further strides to obtain beyond the notice to quit. On 7 February, CCC's lawyer Rebekah Straughan stated in an email that "Essex County are right that it may take approx. 12 months for a court hearing, in which time [C] will be 18 years old". Thus although s.20 options were presented to C in the form of a table of options and talked through, by that point the defendant had made it clear that C could stay in her current home until her 18th birthday. What was in fact happening on 27 February was, as Mr Sheldon put it, if C showed interest in any option, the defendant would then "take a view" about whether "the s.20 duty was engaged". It made sense to gauge C's wishes as a child cannot be compelled to go into s.20 accommodation.

123. **The father**. The defendant submits that there was also the possibility of C living with her father. It is submitted that it was right to explore that as a matter of child welfare, it being better for the child to live within the family. The difficulty with this submission is that C made it clear that the relationship with her father was a problematic one. She had left his house when she was 14 because of what she said was his aggressive, overbearing and at times violent behaviour. He did say that if she were about to become street homeless, he would provide her with accommodation. But he doubted it would work. His house rules, with their structure and obligations, would mean that the arrangement would break down, he felt. He was probably correct. C was living in a highly unstable and dysfunctional way, involving drugs, having lived with her mother who at one point was attempting to kill herself every three days. The defendant appreciated the difficulty and given the troubled history between father and daughter, social services accepted that there had to be an intervening step with a staged reintroduction before C could be accommodated with her father. Further, there had been no or no meaningful risk assessment of such an arrangement. This is particularly important given the allegations of historic abusive and violent conduct that C made against her father. One way to test the closeness of their relationship is to consider that over the 2022 Christmas period, notwithstanding that the father knew his daughter was living without a parent, there was no contact at all from him. In all these circumstances, I do not regard living with her father as a realistic option – it was certainly not an immediate solution. It is unsurprising that on 1 February, the defendant accepted in its PAP response that this was not a viable option. On these facts, I concur with Ms Hannett and do not consider that the possibility of living with her father can play any significant part in assessing whether C required accommodation in s.20 terms.

124. **Offer of reasonable alternatives**. I have judged that the defendant offered C the reasonable available alternatives that it could lawfully provide. The defendant could not reasonably grant her the type of accommodation the claimant desired, including especially living with her boyfriend, while she was a child. I have also concluded that while the claimant did not inform the defendant that she wished to take up any of the types of s.20 accommodation indicated to her, nor did she positively refuse. Events were overtaken by the CBH accommodation offer. I do not regard her stance in wanting time to think as any material reason to conclude that she did not require accommodation.

Conclusion Issue 6

125. Having assessed the pertinent factors, I now put all of this together. If one takes C's case at its highest, which is in the post-expiry/pre-17 February period, and adds other factors such the legal fact of being a trespasser, the risk (albeit very low) of CBH obtaining an eviction before C's 18th birthday and the levels of support being provided, I do not find that these factors taken globally are sufficient for it to "appear" to the defendant that C "require[s] accommodation" because her mother, due to her death, was "prevented … from providing her with suitable accommodation" – the s.20 test. Further, C was not living with her father and had made allegations against him that raised serious child safeguarding questions. Section 20(3) provides:

> "Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation."

126. There would be a risk given C's allegations against her father, and in the absence of a risk assessment, that her welfare is likely to be seriously prejudiced if she were to live with a parent against whom she had made such serious allegations and from whom she had "run away". In the end, C did not go to live with her father and stayed in her home until beyond her 18th birthday on 8 April 2023. She collected the keys and signed the tenancy agreement for her new one-bedroom flat on 19 April. Unlike in *Coventry*, where the child was on the "point of being evicted" or *Brent* where the child could be removed from the accommodation at any time, there was no immediacy or imminence of real risk here. In this case, C very firmly wanted to stay living in the home she had had lived in for two years – a very significant part of her adolescence. As the defendant assessed the situation, there was every likelihood that she was going to be able to do just that and the chances of an eviction before her 18th birthday were minimal. In the end, the overwhelmingly likely outcome (almost inevitably) came to pass - C lived in her home with the cats until beyond her 18th birthday.

127. Looking at the wider factors, as I have indicated I must, I take into account that as at 2 January 2023, C would be 18 in just over 3 months. She wanted to continue living with her boyfriend and four cats and none of the options that the defendant proposed to her would permit that. She was already receiving s.17 support. She had a social worker who liaised with her. A level of maintenance was provided by the defendant. Was s.20 accommodation something that C's circumstances required? The defendant's decision that at no point in that period up to her 18th birthday following expiry of the notice to quit, given the realities on the ground, did C require s.20 accommodation, was a reasonable decision.

128. I have found that it would not have been reasonable for the defendant to offer accommodation with her boyfriend, an adult male who was neither parent nor carer, while the claimant was still a child. The refusal to accede to this was in conformity with broader safeguarding considerations and reasonable. The question of whether the claimant refused the offer of those possible s.20 accommodation solutions advances the analysis little further. The point at the very heart of the matter is that the claimant did not require accommodation under s.20. It was reasonable for the defendant to reach this conclusion. Therefore, the defendant's decision was not irrational and not unlawful. Judging the defendant's decision, even during the period between 2 January and 17 February 2023 when there was less clarity, the risk of C being evicted was minimal. The defendant's decision was not "beyond the range of responses open to a reasonable decision-maker" (*R v Ministry of Defence, ex p Smith* [1996] QB 517, 554 per Sir Thomas Bingham MR (as then was)).

Summary Issue 6

129. Thus, examining the larger question of whether the defendant's s.20 decision was reasonable in public law terms, considering the wide range of identified factors, I conclude that it was a reasonable and rational decision.

§XI. ISSUE 7

Has the defendant lawfully considered whether it should exercise its discretion since C turned 18 to treat her as though she were a "former relevant child" within the meaning of s.23C CA 1989?

130. The argument advanced by the claimant that the defendant should exercise its discretion and treat C as a former relevant child is based in authority (see especially *R (HP) v Royal Borough of Greenwich* [2023] EWHC 744 (Admin) at [23]-[24], per Fordham J; *R (GE (Eritrea)) v Secretary of State for the Home Department* [2014] EWCA Civ 1490 at [3], per Davis LJ). The claimant puts this argument on two bases. First, that there was a material error of law and, if the error had not been made, the claimant would have been a looked-after child, and thus should have been a former relevant child when reaching 18. Second, the court should act on a residual discretion and due to the claimant's particular circumstances, exceptionally treat her as a former relevant child. In particular, (this was styled as the "third submission"), the court should take into account the services that would be open to a former relevant child to support her transition into adulthood. The relief sought is that the defendant should be directed to reconsider its discretion. The defendant disputes all the elements of this issue.

131. On the first question, my central decisions on the previous issues mean that the court has found no material error of law made by the defendant in respect of the s.20 decision. I respectfully adopt the approach of Fordham J (in *HP* at [23(iv)]) that the jurisprudence essentially relies on unlawfulness and the exercise of discretion to correct it. Fordham J set down a set of succinct propositions for the proper approach to flawed assessments that deprived a person of past entitlements. Such relevant flaws constitute "unlawfulness". Where the "additional consequence" is that the unlawfulness deprives the affected individual of former relevant child status, that constitutes an "injustice". Thus, the discretionary power to treat the person as a former relevant child is to "correct" or right the wrong generated by the unlawfulness. It is, as Fordham J put it, "a remedial response" to the injustice, particularly where the degree of unlawfulness or irrationality is "aggravated".

132. In C's case, I have found that the grounds advanced on behalf of the claimant that inform this question have failed. While the defendant failed to consider or consider adequately that C was s.175 homeless and a trespasser (certainly as at 2 January 2023), overall C has failed to establish that the defendant's decision on s.20 was unreasonable (Issue 6). The threshold of *Wednesbury* irrationality has not been met. Therefore, the first basis must fail. That is because the claimant did not fulfil the eligibility criteria to be treated as a former relevant child. Thus, the prime *HP* corrective jurisdiction is inapplicable in this case – there is nothing to correct.

133. As to the second basis, I recognise that a narrow residual discretion nevertheless exists to treat the claimant as a former relevant child. The defendant concedes the existence of this limited discretion, which exists even if the decision that she did not require accommodation was correct (Detailed Grounds of Resistance §48). Looking at relevant factors, I am not persuaded that the claimant's not attending the final CIN meeting is significant. To my mind that is not a valid basis to refuse to exercise the discretion, should it otherwise be appropriate. Of more significance is the fact that the claimant has not sought assistance from adult social services, as Ms Leach points out in her statement. But I do not place great weight on this factor. This basis depends on whether C would benefit from transitional support.

134. C relies on the matters at §63 of her skeleton argument and her witness statement at §§29-31. I have reviewed these matters carefully. These include the state of the house and the claimant's hygiene; the fact she was living alone with an 18 year-old adult; her living off food parcels; her history and unstable life, including the impact of her mother's death; the fact that she would benefit from CIN support, although aged 17; the insecurity of the premises and her indebtedness to a drug dealer. While all of this raises a range of concerns, I do not consider that it triggers the exceptional discretion. In cases of unlawfulness, Fordham J [ibid.] identified the

> "degree of unfairness, blameworthiness, culpability or other serious maladministration may be what make a favourable exercise of the Discretionary Power the sole justifiable outcome."

135. This indicates the type and degree deviation from the norm that may justify the exercise of the discretion. One is searching for the exceptional, particularly where there has been no relevant "flaw" or unlawfulness. Having reviewed the totality of C's circumstances, it was rational for the defendant to conclude that C should not be treated as if she required accommodation. Therefore, the defendant's decision not to exercise its discretion was not irrational. There is insufficient basis for concluding that this is one of those exceptional cases which reaches the threshold whereby the court should compel the defendant to exercise the discretion in a case where there has been no material or relevant unlawfulness. Fordham J noted in *HP* [ibid.] that the "relevance and weight [were] matters for the local authority's reasonable judgement". As Ms Leach points out in her statement at §58, the reasons provided for not exercising the discretion as set out in the SGD were "signed off" (endorsed) by the Director of Children's Service for Delivery in North Essex, Ms O'Shaughnessy (B138). This decision was therefore considered at senior level and taken seriously.

136. Conceivably, a significant number of 18 year-olds who are not formally former relevant children may benefit from the type of transitional support that a former relevant child is eligible to receive. But that does not mean that the exceptional discretion should be exercised in their cases. Receiving some conceivable benefit from the support and being legitimately entitled to the support on an exceptional discretionary basis are two distinct matters that should not be conflated. I am not persuaded that the test is met in the claimant's case.

Conclusion Issue 7

137. I judge that the defendant has properly considered its discretion on this question and was correct not to exercise it to treat the claimant as a former relevant child (what Fordham J terms the "Objective-Correctness Standard"). In any event, the defendant's decision was not unreasonable in a *Wednesbury* sense. Therefore, there is no valid basis for the court to intervene.

§XII. ISSUE 8

To the extent that any of the grounds of challenge are made out, what relief should be granted?

138. It follows as a matter of necessary consequence from the court's decisions on the preceding issues that there is no relief that the claimant is entitled to.

§XIII. DISPOSAL

139. This application for judicial review is dismissed.

140. I will hear further argument about consequential orders. The present situation is that C lives in the flat that CBH provided to her around her 18th birthday. She confirmed to the court, and the court was encouraged to hear, that she still lives there with the cats that are so important to her.