



Neutral Citation Number: [2023] EWHC 3209 (Admin)

Case No: CO/2916/2022  
AC-2022-LON-002189

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Friday 15 December 2023

**Before :**

**Mr Justice Calver**

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**Between :**

**THE KING on the Application of  
BC**

**Claimant**

**- and -**

**SURREY COUNTY COUNCIL**

**Defendant**

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**Shu Shin Luh and Tessa Buchanan (instructed by Lawstop) for the Claimant**  
**Catherine Rowlands (instructed by Surrey County Council) for the Defendant**

Hearing dates: 8-9 November 2023  
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## **JUDGMENT**

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 15<sup>th</sup> December 2023.**

**Mr Justice Calver:**

**A. The Claim**

1. By this claim for judicial review the Claimant (“BC”) challenges the refusal of the Defendant local authority (“SCC”) to comply with duties allegedly owed to him under the Children Act 1989 (“CA89”) when he was 17 years old, in particular the duty under section 20(1)(c) to provide accommodation for a “child in need” in the local authority’s area who appears to it to require it as a result of *“the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care”*.
2. The claim was listed for a rolled-up hearing by order of Sir Duncan Ouseley (sitting as a High Court Judge) dated 8 March 2023.

**B. The provisions of the Children Act 1989 and their judicial interpretation**

3. Section 17 CA89 provides in particular as follows:

*“(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—*

*(a) to safeguard and promote the welfare of children within their area who are in need...*

*by providing a range and level of services appropriate to those children's needs.*

...

*(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.*

...

*(10) 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... ”*

4. Section 20 of the CA89 then concerns the provision of accommodation for children. It provides in particular as follows:

*“(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—*

...

*(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.*

...

*(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.*

*(7) A local authority may not provide accommodation under this section for any child if any person who—*

*(a) has parental responsibility for him; and*

*(b) is willing and able to—*

*(i) provide accommodation for him; or*

*(ii) arrange for accommodation to be provided for him, objects.”*

5. As Lord Hope explained in *R (G) v Barnet LBC* [2004] 2 AC 208 at 99-100:

*“99 ... First, [the appellants] must show that their children are children in need within the meaning of section 17(10). It was not suggested that there would have been any serious room for doubt on this point. Their mothers were unable to provide them with accommodation, and in both cases the children were at serious risk of having no roof over their heads at all.*

Leaving them to sleep in doorways was not an option in their case. Children who are reduced to this level of destitution are plainly children in need. Their health or development is likely to be significantly impaired if they are not provided with services by the local social services authority: section 17(10)(b).

100 The claimants must show, in the second place, that the defendants were under a duty to provide their children with accommodation. Local social services authorities are under a duty to provide accommodation for a child in need within their area who appears to them to require accommodation as a result, among other things, of 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: section 20(1)(c). This provision must be read in the light of the general duties set out in section 17(1). Among these duties there is the duty to safeguard and promote the welfare of the child. At first sight the concept of the carer being prevented from providing the child with suitable accommodation or care does not sit easily with the situation where the carer has chosen to refuse offers of accommodation or other forms of assistance by the relevant local authority. But the words "for whatever reason" indicate that the widest possible scope must be given to this provision. The guiding principle is the need to safeguard and promote the child's welfare. So it makes no difference whether the reason is one which the carer has brought about by her own act or is one which she was resisting to the best of her ability. On the facts, it is plain that the defendants were under a duty to provide accommodation for the claimants' children under section 20(1)." (emphasis added)

6. Five years later in *R (G) v Southwark LBC* [2009] 1 WLR 1299, Lady Hale at [28] explained that whether a duty arises under section 20(1) CA89 is to be answered by addressing a series of structured questions as follows:
- (i) is the applicant a child?
  - (ii) is the applicant a child in need?
  - (iii) is he within the local authority's area?
  - (iv) does he appear to the local authority to require accommodation?
  - (v) does that need arise as a result of one of the three reasons in section 20(1) CA89? Thus, is the need the 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 from providing him with suitable accommodation or care?

- (vi) what are the child's wishes and feelings regarding the provision of accommodation for him?
- (vii) what consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings?

[As in *Southwark*, the criteria in paragraphs 28(7) and 28(8) are of no application in this case].

7. Consistently with the analysis of Lord Hope in *Barnet*, Lady Hale answered question (ii) - “*is the applicant a child in need?*” - as follows:

“(2) ... *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 one-two 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.” (emphasis added)*

8. The duty resting upon the local authority once section 20(1) is satisfied is to provide the child with *suitable* accommodation appropriate to his needs. That is apparent from the use of the word “*suitable*” in section 20(1)(c) of the CA89 and see also *R (KI) v LB Brent* [2018] EWHC 1068 at [22] per David Elvin QC (sitting as a Deputy Judge of the High Court):

“*It is common ground that the accommodation to be provided must be suitable to the child's needs but whether it is suitable is a matter for the*

*Council's expert judgment, subject to normal public law principles which set a high threshold for intervention by the Court. It is also right when considering the exercise of judgment to have regard to the current difficult and financially straightened circumstances in which local authorities have to operate: see ... R (O) v London Borough of Lambeth [2016] EWHC 937 (Admin) at [17] and [18]."*<sup>1</sup>

9. However, in a case where the issue is whether suitable accommodation is available for the child, the relevant facts will frequently not be in dispute and so the Court can often readily itself determine whether the local authority's assessment of that question is irrational or not. That is what Lady Hale did in *Southwark* (at [28(2)]) and it is what Antony Edwards-Stuart QC (sitting as a Deputy Judge of the High Court) did in *R (A) v Coventry CC* [2009] EWHC 34 (Admin) at [74], where he held as follows:

*"In my judgment accommodation which is uncertain as to duration because it is not founded on any secure financial footing is not accommodation that can be said to be suitable for a 15 year old who is a child in need, however caring the prospective family may appear to be. Accordingly, a child in that situation lacks suitable accommodation and therefore requires it unless he is a resourceful person whose accommodation needs can be met in other ways (as in G). I doubt whether that will often be the case where a 15 year old boy is concerned. I therefore conclude that, on the facts of this case, leaving Terry in the care of Ms Casey in circumstances where it was questionable as to how long she could afford to keep him would not have amounted to him having accommodation suitable for a 15 year old – it was too precarious and insecure. Accordingly, Terry was a child in need who required accommodation and in my judgment no local authority could reasonably have concluded otherwise."*

10. Once the criteria under section 20 are met, the duty is immediate, and unqualified, and the local authority must accommodate the child. An authority cannot resist the duty either because of lack of resources (*R (JL) v Islington LBC* [2009] EWHC 458 (Admin) at [68, 71]); or because it considers that provision can or should be made under some other power (*G v Southwark* per Lady Hale [§28]); or because some other authority or body (such as the housing authority) can provide accommodation under a different legislative

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<sup>1</sup> See also *R (FL) v LB Lambeth* [2010] EWHC 49 at [144] per Christopher Symons QC (sitting as a Deputy Judge of the High Court).

scheme (e.g. the Housing Act 1996) (*R (M) v Hammersmith and Fulham* [2008] 1 WLR 535 per Lady Hale at [29]-[31]).

11. Indeed, the statutory Guidance on the *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* (“the Guidance”), to which I was referred by Shu Shin Luh (leading Tessa Buchanan) for BC, expressly and consistently provides as follows:

*“3.4 Where a 16 or 17 year old seeks help or is referred, and it appears that they have nowhere safe to stay that night, then children’s services must secure suitable emergency accommodation for them under section 20 of the 1989 Act, whilst their needs, including their need for continuing accommodation and support, are further assessed. If the young person is accommodated for a continuous period of more than 24 hours the young person will become looked after (further information on section 20 below).*

*3.23 The most crucial issues to be determined in the first instance will be whether the young person is actually homeless, if the young person is a child in need (section 17) and/or is suffering, or likely to suffer, significant harm (section 47), and/or if the young person requires emergency accommodation. If this is the case, children’s services must accommodate them immediately. The welfare of the child is paramount and a 16 or 17 year old must not be placed at risk whilst waiting for the completion of an assessment.”*

12. Furthermore, section 22 of the CA89 itself provides as follows:

***“22 General duty of local authority in relation to children looked after by them.***

*(1) In this section, any reference to a child who is looked after by a local authority is a reference to a child who is—*

*(a) in their care; or*

*(b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions within the meaning of the Local Authority Social Services Act 1970, apart from functions under sections 17, 23B and 24B.*

*(2) In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.*

*(3) It shall be the duty of a local authority looking after any child—*

*(a) to safeguard and promote his welfare; and*

*(b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.*

*(3A)The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.”*

13. Thus, as the Guidance correctly states, where a local authority provides accommodation for a child under section 20 for more than 24 hours, they become a “*looked after*” child (section 22(1)(b) and (2)). That triggers duties under section 22(3) “*to safeguard and promote [the child’s] welfare*”; a duty under section 22(3A) “*to promote the child’s educational achievement*”; and a duty to make detailed plans for the child’s care and welfare and how their needs will be met: see also the *Care Planning, Placement and Case Review Regulations 2010* (‘the 2010 Regulations’).
14. In a case where, as here, the child presents as homeless or without accommodation and/or in need, the duty to assess is an immediate and ongoing duty which requires a local authority to review the child’s needs and progress at the beginning of and throughout the period of intervention. This ongoing duty to investigate and review is confirmed by section 47 CA89 which provides as follows:

***“Local authority’s duty to investigate.***

*(1)Where a local authority—*

*...*

*(b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm,*

*the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”*

15. Moreover, under section 1 of the Children and Social Work Act (“CSWA”) 2017, the local authority becomes the “corporate parent” of its *looked after* children. That is a long-term and ongoing duty in that the local authority must have regard to the need, *inter alia*, (a) to act in their best interests and promote their physical and mental health and well-being, (b) to encourage them to express their views, wishes and feelings and take them into account; (c) to help them to gain access to and make best use of the services provided by the local authority and its partners; (d) to seek to “*secure the best outcomes*” for them;



(e) for those children “*to be safe and for stability in their home lives, relationships, and education or work*” and (f) to prepare them for adulthood and independent living.

16. A child who has been looked after for a cumulative total of at least 13 weeks beginning after the age of 14 and ending after the child reaches 16 will be an “*eligible child*”: para 19B, Sched 2, CA89 and regulation 40 of the 2010 Regulations. If the child ceases being looked after some time after the age of 16, he is a “*relevant child*”: section 23A(2) CA89.
17. Once eligible and relevant children reach the age of 18, they become “*former relevant children*” (section 23C(1) CA89). The local authority’s duties toward them then continue under the “*leaving care*” provisions until they turn 25: sections 23C, 23CZB, 23CA CA89. There is a range of specific duties resting upon the local authority including duties to appoint a personal advisor (to act as an advocate and liaison between the young adult and the local authority) (sections 23C(3)(a), 23CA(2)); to provide advice and maintain contact with the young adult (sections 23C(2), 23CZB(6)); to maintain a pathway plan (sections 23C(3)(b), 23CZB(4)(b), 23CA(3)(b)); and to provide such assistance that the young adult requires for their welfare, educational or vocational needs. Such assistance includes accommodation, financial and in-kind support.
18. A looked after child who has *not* spent 13 weeks in the local authority’s care prior to turning 18 acquires “qualifying young person” status under section 24 CA89, to whom duties and powers are owed by the local authority to assist the child post-18. As will be seen, this is relevant in BC’s case.
19. In summary, the continuing nature of the local authorities’ “looking after” duties and powers into the child’s adulthood reflects an accepted reality that young people seldom “*leave*” the care of their parents until, on average, the age of 24, and need continued support into their young adulthood: *M v Hammersmith and Fulham LBC* at [4] per Lady Hale. They need more than a “roof over their heads.”

### **C. The factual background to the claim**

20. BC was born on 25 December 2001. He is now 22 years old. When he was around 9 years old, he suffered from a benign brain tumour which was removed. This allegedly left him

with long-standing health problems, including left-sided weakness, fatigue, difficulties with executive functioning and memory, and anxiety and depression.

21. BC's family life was difficult and his parents struggled to cope with their children as they grew older, with all of them living together in a caravan. SCC's social services received a number of referrals in respect of BC's older siblings, all of whom left home before they turned 18. By 2017 BC himself had come to the attention of SCC's social services because of reports that he was being bullied. On 27 March 2017 SCC received a report from the child protection team within the police raising concerns that BC had been the victim of child sexual abuse. Enquiries under section 47 of the CA89 were commenced. During the course of these enquiries, BC was noted to have Special Educational Needs in respect of his social, emotional, and mental health. He was said to have been the victim of bullying at school and there were also reports that he had taken drugs.
22. SCC completed its assessment of BC on 12 June 2017 and concluded that there was no need for ongoing support. However, on 12 July 2017 another referral was received from the child protection team, this time raising concerns that BC had been found in possession of a knife and that he was the subject of ongoing bullying. Further referrals were received from the child protection team on 24 July 2017, 14 October 2017, and 18 October 2017 raising concerns about BC's behaviour. A decision was made in this period to progress BC's case to "Early Help". This was level 2 of SCC's four levels of need, indicating a child whose needs require some extra support, necessitating a Team Around the Family meeting and an Early Help Plan.
23. The referral received on 18 October 2017 noted that BC was arguing with his mother, not enjoying life at home, and considering running away. On 28 November 2017, his support worker reported that he was not attending school, had disengaged from support services, and had been reported as using cannabis. SCC's social services were regularly involved with BC throughout 2018.
24. A Team Around the Family meeting took place on 15 January 2018. It noted that social services were worried about relations between BC and his mother breaking down and his being asked to leave the home and not return. Another record of 25 January 2018 noted that BC was finding it difficult living with his family in a static caravan with limited space. On 18 April 2018, the relationship between BC and his mother was stated not to

be good. Despite this, in September 2018 SCC's social services department decided to close BC's case.

25. BC and his younger siblings came to SCC's attention again in April 2019 when an anonymous caller raised safeguarding concerns about them being left at home on their own and not being properly cared for. BC's mother denied the child protection allegations and denied that there was drug and alcohol use on the property. She stated that BC was the one with a drug problem. SCC recommended that Early Help support be provided to BC and closed the file.
26. In late August 2019, another anonymous safeguarding referral was made to SCC, reporting that BC was sleeping in the family caravan but all of his belongings were being left in a van next to the family caravan so he had to "live out of a van", was "not being given food" and had "to beg for food." The referral also stated that the younger 14-year old sibling was being left home alone. BC's mother, when contacted, again denied the allegations. A social care record dated 28 August 2019, just before the August bank holiday, noted that it "would be worrying if concerns raised are substantiated" and recommended consideration of the referral by MAPE (Multi-Agency Partnership). On 2 September 2019, the Bank Holiday Monday, SCC decided to close the referral (it appears without any investigation), observing that the concerns had "not been substantiated and advice has been given to the parents".
27. It follows that when, on 13 September 2019, BC (aged 17) approached the local housing authority, Runnymede Borough Council, presenting as homeless, he was already well known to SCC having previously been a child in need of support. The housing officer emailed SCC on that day with an urgent referral for social services intervention. As had been feared and anticipated by SCC's social services department, matters within BC's household had clearly deteriorated further as he had not been accommodated at home for 3 weeks. The referral stated in particular that:

"Mum asked [BC] to leave about 3 weeks ago, since then he has been living with his friend [K] and his Mum. He stays there overnight, and then goes home to shower and get clothes from his Mums [sic]. [K's] mum has now said she doesn't want him to stay any longer and is unable to stay tonight. [K] and his family live in Chertsey. [BC] has been arguing for a

*while now regarding the drug issues. [BC] is just smoking weed and his mum is worried that the dealer will find out where they live. ... [the dealers] have been pushing [BC] for the money and have been making threats ... Mum or dad doesn't support him financially but gives out £5.00 here and there when they have it...*" (emphasis added).

The housing officer confirmed in the referral that it was made with BC's mother's knowledge and consent. The referral also noted that BC had asked his sister if he could stay with her but his sister had children of her own so it was not possible.

28. The referral was marked urgent and in red by SCC because “[BC] doesn't have anywhere he can stay tonight” as a result of K's mother withdrawing her offer of a temporary place to stay. SCC's records further noted that “[BC] homeless today – 17 year old – 3 weeks ago mum asked him to leave as he's smoking cannabis, owes drug dealer money, staying with friend whose mum said he can no longer stay there.” It went on: “This referral is a level 4 threshold for an Assessment due to him being homeless, have issues with drugs. His mother appears to have abdicated her responsibility for him. Therefore is deemed vulnerable. (Southwark Judgement). [BC] has a history of children's services involvement, was a victim of CSE<sup>2</sup> .. [BC] was previously subject to YRI (Youth Restoration Initiative).” (emphasis added)
29. BC's case had, accordingly, been elevated by SCC from Level two to Level four over a two year period of its involvement in his case. Level four is the highest level of intervention in the case of a child/young person whose needs are complex such that more than one service is normally involved with a co-ordinated multi-agency approach. It applies in particular where the child has been rejected by a parent/cases of family breakdown, or has been accommodated by the local authority. In other words, it is reserved for cases where children are in serious need.
30. The reference to “[h]is mother appears to have abdicated her responsibility for him. Therefore is deemed vulnerable. (Southwark judgment)” is undoubtedly an intended reference to *R (G) v Southwark LBC* [2009] 1 WLR 1299 in which Baroness Hale

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<sup>2</sup> Child sexual exploitation

explained in paragraph 28(2) of her speech that a child excluded from home who is sofa surfing is clearly “in need” within the meaning of section 20(1).

31. It follows that I reject the submission of Catherine Rowlands, who appeared for SCC, that SCC was being asked to make a “snap judgment” which it was unable to make, and instead it was entitled to take time to determine what enquiries were necessary to enable it to decide what action to take, before determining whether BC was a child in need of accommodation under section 20(1) CA89<sup>3</sup>. BC was well known to SCC with his “*history of children’s services involvement*”, and SCC had already made considerable enquiries about his needs and welfare. His being prevented from residing at home was the culmination of the known progressive deterioration in his relationship with his parents. It was clearly the case that, in accordance with paragraph 3.4 of the Guidance, suitable emergency accommodation for BC under section 20 CA89 was required, whilst his full needs, including his need for continuing accommodation and support, were further assessed. Despite this, SCC inexplicably failed to provide BC with any accommodation and indeed failed to take any steps to assess his case at all until 18 September 2019, being 5 days later, which is highly regrettable. It seems likely, although the court does not know for sure, that BC managed to persuade K’s mother to let him stay at her home during that period.
32. On 18 September 2019 SCC contacted Runnymede BC to find out whether BC had re-approached them. Runnymede BC correctly told SCC that it “*wouldn’t be able to support his application at this stage*” by reason of the fact that he was still a child (being 17 years old). He was SCC’s responsibility.
33. What happened thereafter is apparent from the belatedly disclosed social services file of contemporaneous written reports concerning BC (with SCC’s inconsistent redactions).
34. On the same day, 18 September 2019, SCC spoke to BC’s mother, M. She called BC a “*complete twat*”. She said he moved out because he couldn’t get his own way and was smoking weed. His father told BC to move out because he was violent. After BC moved out she moved one of his sisters into his bedroom in the caravan. M said that her partner’s parents had another caravan that they no longer needed and had offered it to her. She told BC they could put it next to their caravan and BC could use it if he got a job and paid

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<sup>3</sup> I return to this below.

half of the site rent of £80. He would also be fed and have his washing done if he paid £40 per week. She also said that BC was selling weed for a drug dealer and she couldn't put her daughters at risk. She said BC had chosen not to live at home. He was staying with K's mother. M said that BC's claim that he could no longer stay at K's mother's house was "a story".

35. On the same day, 18 September, SCC also spoke to BC. He said that "*his mum doesn't want him living at home*" but that it was "*okay for him to go back for a shower and change of clothes.*" He said he had "*no plan*" and was "*confused*" having been "*kicked out*" of his parents' home. When asked about his grandparents' caravan, BC said that "*they have been saying that since December [2018]*" and that he had been relying on it, but it never materialised. The social worker did not probe any further about the apparent availability of the caravan and took no steps to ascertain if it was suitable, available accommodation. Indeed, as Ms Luh pointed out, it appears that SCC did not visit BC's mother's caravan to inspect the living arrangements, nor did it visit the grandparents' caravan (being what she called "*desktop social services*"). I accept the uncontradicted evidence contained in the first witness statement of BC at [34]-[35] in which he explained that the caravan was dilapidated, was in Bournemouth and would have to be brought to the family's caravan site and refurbished before it could be habitable. There is no evidence to support the suggestion that that was possible.
36. It follows that it is clear that by this stage, 18 September 2019, the relationship between BC and his parents had clearly broken down. He was not accommodated at home and he had been temporarily staying at K's mother's house, having nowhere else to go. He had to return to his parents' caravan for a shower and a change of clothes. SCC had no reliable evidence that the grandparents' caravan amounted to suitable alternative accommodation which was available.
37. Despite the 5 day delay in dealing with BC's case and despite the fact that SCC had only made these two telephone calls, on the same day SCC's social worker (Vanessa Young) made her findings in respect of the assessment: she recommended a referral to SCC's Targeted Youth Support ("TYS") to assist BC with education, encouragement to BC to engage with Catch 22's drugs counselling, and "*work with him and the family to look at reintegration into the family home*". But, as Ms Luh pointed out, none of these

recommendations addressed the immediate issue of BC's homelessness, despite the explicit recognition of SCC that he was excluded from the family home.

38. The next relevant event occurred on 20 September 2019. On that date, SCC informed BC by text of the decision to refer him for education support only. SCC also telephoned BC's mother on that date to offer "*mediation with a view to [BC] returning home*". BC's mother responded by telling SCC that she "*would have [had] him back yesterday*" "*but his relationship with his father is not good at the moment*". BC's mother said she would worry for her safety if BC stayed with her. BC had now been staying with K's mother for the past four weeks.
39. It is plain in my judgment that as at 18 September 2019 it was or ought to have been clear to SCC on the facts as known to them that BC could not return home, and did not otherwise have stable, suitable accommodation. Instead it merely recommended a referral to its TYS.
40. 25 September 2019 marked 13 weeks before BC's 18<sup>th</sup> birthday.
41. On 26 September 2019, SCC's Social Services Manager, Oliver Fernandes, made notes on BC's case. He referred to the fact that:

*"Mum asked [BC] to leave about 3 weeks ago, since then he has been living with his friend K and his mum. He stays there overnight and then goes home to shower and get clothes from his mums. K's mum has now said she doesn't want him to stay any longer and is unable to stay tonight. K and his family live in Chertsey... BC has spoken to his sister but doesn't want to live there as it is in London and said it is dangerous and he gets himself into bad situations, also said his sister has two children so it is not possible. Please look at alternative friends and family placement ...possible mediation with mother."*

42. Thereafter, BC's mother continued to tell SCC that he could not return home. In an SCC record dated 1 October 2019, BC's mother was recorded as stating that she "*currently wants nothing to do with him as he is being vile to her*". BC's mother also told SCC that she refused to give BC a key to the family home and as a result he had climbed into the caravan through a small window in order to have a shower.

43. At BC's first meeting with TYS on 1 October 2019, the support worker (Ms Jayne Stubbs) identified a need to support BC to put his name on the housing register despite the fact that Runnymede BC had already correctly explained to SCC that they could not assist while BC was a child. Yet she also noted that his living arrangement with K's family was not settled as K's mother required payment for BC living there and BC had no money to pay her. Ms Stubbs made a list of next steps which included speaking to K's mother to confirm he was able to continue living there, and arranging a meeting between BC and his mother "*to see if they can try to resolve some of their issues*". This was despite her recording that BC said he "*hates his mum*" and the "*relationship between them has broken down.*"
44. An SCC "management oversight" record dated 1 October 2019, created by Oliver Fernandes, also noted that BC was refusing to go home and BC's "*mother is refusing to have him back.*" He referred to the need to "*double check*" BC's living arrangements with BC's mother and K's parents where he is staying. Despite this, Mr. Fernandes reached the surprising conclusion that "*provided this situation remains the same in two weeks the case can be closed.*"
45. On 4 October 2019 K's mother called SCC and asked for a meeting to discuss BC's future. This did not seem to get progressed until 16 October 2019 when Ms Stubbs called K's mother to ask how she felt about BC staying with her. K's mother said she was happy for him to stay with her but he would need to find a job as she was unable to support him financially indefinitely. K's mother asked Ms Stubbs to see if BC's mother could offer financial support. Ms Stubbs said she would try and arrange a meeting with family to decide next steps. It is accordingly clear in my judgment that K's mother could not continue to have BC living at her house unless she obtained financial help.
46. On 16 October 2019 a Family Action Plan was drawn up. This document paints a consistent picture with the foregoing. In the column headed "*what do we want to achieve?*" it states "*[BC] to be living in a secure and stable environment*". That necessarily recognises that that was not currently the case, and it referred in particular to the fact that BC was "*currently staying at a friend's home ... if their relationship was to break down he is at risk of homelessness*". The Action column "*How will we get there?*" states "*Work with parents and [BC] to look at suitable housing options*". Again, that carries with it the implication that the current housing is unsuitable. This document



confirms in my judgment that SCC's view was that BC continued to require, but did not have, suitable accommodation.

47. BC's witness evidence is consistent with the picture painted by these contemporaneous internal records of SCC. He did not have suitable accommodation. In his first witness statement he states as follows:

*"37. Throughout this period I continued staying with [K] and his mum. I felt that I was overstaying my welcome and was very nervous because of this.*

*38. Things got really bad for me in this period. [K] was a member of the gang that I used to be affiliated with. At the time I was sofa surfing at his home, I had no choice but to go out with him all the time, and to also take part in gang affiliated activities. There was no option for me to stay at [K's] house when he was not there, and if I told him I didn't want to go out then he would threaten to hurt me. I had no choice but to go."*

48. And in his second witness statement he states:

*"27. Social services knew that my staying with K and his mum was really a temporary thing and that the reason I was referred to social services on 13th September 2019 was because K's mum said I couldn't really stay any longer. Ms. Andrews' witness statement refers at paragraph 24 to a social services record dated 26 September 2019 which records this and records K's mum saying to social services that she doesn't want me to stay any longer. That is correct because as I explained in my first witness statement, K's mother was just providing accommodation for me because I had nowhere else to go. She didn't agree for me to stay there long term.*

*28. As explained in my first statement, it was really difficult living at K's house because I felt bad using his shower and kitchen. I couldn't shower and bathe because I felt it was disrespectful to do this and to sleep there. I felt like they would think I was taking advantage of them and ask me to leave. I was on edge all the time. This meant that I wasn't washing myself very often at their house. I never felt clean and I would wear the same clothes every day. That's also why I kept going back to my parents' or my sisters' to shower or get clean clothes, but that just made things worse with our relationship."*

49. Matters came to a head for BC on the evening of 16 October 2019 when a family member called the police stating that BC was suicidal and going to jump in front of a train. BC was found on Guildford Road near a train station. When police approached BC, he said he wanted to kill himself. He was sectioned at Farnham Road Hospital under section 136 Mental Health Act 1983.
50. Farnham Road Hospital notified SCC about BC's hospitalisation after identifying that he was known to SCC's TYS and "*known to have unstable accommodation,*" and that he had "*recently been kicked out of his friend's place*". They noted that on admission he "*appears unke[m]pt. Dirty loose jeans*"; "*[BC] was starving hungry on arrival.*"
51. A mental health assessment carried out by the hospital on 17 October 2019 records BC's mother as saying "*he is no longer able to live at home.*" Ms Stubbs, SCC's social worker, said that she had been "*working with [BC] since he became homeless, to support him in finding appropriate accommodation, employment and addressing his alcohol and illicit drug use.*" When BC was asked what led him to feeling suicidal he said "*just life, not having a job, no money and nowhere to live.*" It concluded that BC did not have a mental disorder and that his suicidal ideations related to alcohol use. "*He will be taken back to his friend's home by Jayne Stubbs who will continue to support him.*"
52. Ms Stubbs then called K's mother on 17 October 2019 to ask if she would be willing to have him. It is notable that K's mother was unaware that he had been hospitalised because he was no longer staying with her. She believed he had been staying at his sister's. K's mother agreed that BC could stay with her but wanted contact with BC's mother. Ms Stubbs then called BC's mother. BC's mother refused to have him back in her home. Ms Stubbs asked her if she could give financial support to K's mother to have him, but she said that she and BC's father were both struggling financially and they could not keep giving BC money. SCC asked BC's mother to speak to K's mother but she was reluctant to do so as she felt she would be judged.
53. A meeting was arranged by SCC with BC's mother and K's mother on 21 October 2019 to discuss BC's living arrangements. On the day, BC's mother texted the social worker to say that she would not be coming to the meeting and that "*I've washed my hands with [BC] completely. I asked him not to come round ... Ringing all hours of the night for money. I'm not being scared of my son ever again he is not welcome anymore.*" When

the social worker called, BC's mother repeated her position and that she "*did not want to see [BC] as he is continually upsetting her.*"

54. However, the meeting arranged by SCC appears to have proceeded in the end. A social services record of the meeting noted K's mother again asking for financial support for the costs of caring for BC. BC's mother agreed to make a contribution but not immediately as she was not able to do so. It was decided, again, that BC would be registered with Runnymede Borough Council for housing and BC would also be referred to Catch 22 for drugs support.
55. On 26 October 2019, just five days later, Surrey police contacted SCC to inform them that BC had engaged in anti-social behaviour with a group of youths and that he told them he was "*currently sofa surfing*".
56. Despite this background, it is extraordinary that on 28 October 2019 SCC nonetheless closed BC's case. The reasons for closure were said to be:
- BC is living with K, a friend.
  - A referral has been made to Catch 22.
  - A further referral has been made to MIT for a training course/apprenticeship
  - K's mother and BC's mother have given each other their contact details.
  - BC has been sign posted to Runnymede BC to add his name to the housing register.
  - A safety plan is in place.
57. This surprising decision was called into question on 13 November 2019 by Catch 22 as is recorded in SCC's case note. Catch 22 were currently working with BC and they asked in terms why the case had been closed by SCC when BC "*is sleeping on the sofa and is not getting any finances.*" Catch 22 was told by SCC that "*an agreement is in place with where he staying. He is not in education or training and is open to drug and alcohol services.*" It was noted that Catch 22 was "*not happy that [SCC] was no longer involved and felt that the[y] should be. I explained that she could make a referral but at this moment in time it does not meet our threshold.*"

58. At the time when BC was turning 18, K's mother told him to leave. BC's friendship with K had broken down. As explained by BC in his witness statement, K had gang affiliations and BC was forced to be involved because he was staying with him. He was threatened with physical violence if he did not do as he was told: BC's first witness statement at [41].
59. BC had nowhere else to go in the Surrey area and went to London where he slept rough on the streets until he came across a friend of his older sister who put him in touch with her. BC stayed with his sister for a while. But she had a boyfriend who was verbally and physically violent toward him so he left his sister's after 7 months and continued to sleep rough for a few months: see BC's first witness statement at [46-49] and his second witness statement at [39]. Throughout this period of time, BC's life was chaotic; he abused alcohol to numb his distress at his situation and self-harmed and attempted suicide: *ibid*, first witness statement at [52] and his second witness statement at [39] and [42]. In many ways, this sad outcome was a predictable consequence of SCC closing his case.
60. BC returned to the Surrey area in 2020 and managed to get psychological intervention and help to make a homelessness application. He was provided with supported accommodation at Transform Housing by Spelthorne Borough Council ("SBC") in recognition of his vulnerabilities and need for day-to-day support which he was otherwise without because of SCC's refusal to accept duties towards him under CA89: *ibid*, first witness statement at [53]-[59] and his second witness statement at [46]-[49].
61. There is no doubt that Ms Stubbs herself was a caring and diligent social/support worker. But it is clear that SCC as an organisation seriously failed BC. I do not accept the submission of SCC that no purpose would be served now in granting the relief sought by this claim and that "*there is no apparent lacuna in the Claimant's life that [SCC] would be required to fill.*" The support he receives from his supported accommodation key worker is being stepped down over time, and is accommodation-based. BC's evidence, which I accept, is that he still requires but cannot access support to return to college, access vocational training, plan his future and manage his social anxiety, all practical challenges which he struggles with owing to the lasting effects of his childhood brain injury and his difficult childhood.

#### **D. Grounds of challenge and relief sought**

62. There are four grounds of challenge as follows:

*Ground 1:* the Claimant is a former relevant child as a matter of law because he became a looked after child as soon as the section 20 CA89 duty arose.

*Ground 2:* in the alternative, the Claimant is a former relevant child as a matter of law because the actions taken by SCC after the section 20 CA89 duty arose (whilst inadequate) amounted to providing the Claimant with accommodation under section 20 CA89 and he thus became a looked after child.

*Ground 3:* in the alternative, SCC failed, unlawfully, to comply with the section 20 CA89 duty. Had it complied, the Claimant would have become an eligible child and would now be a former relevant child. SCC should therefore exercise its discretion to treat him as a former relevant child and its refusal to do so is unlawful.

*Ground 4:* in the alternative, the Claimant is a qualifying child. This is either because he was looked after but for less than 13 weeks, or because he was privately fostered for at least 28 days, and SCC's refusal to recognise him as such is unlawful.

63. However, in their skeleton arguments and in their oral argument, the parties agreed that the issues which the Court is required to determine may be more appropriately formulated as follows:

(1) Did SCC owe BC a duty under section 20 CA89 to provide him with accommodation?

(2) Were the arrangements that SCC made for BC to stay with his friend's mother arrangements made by SCC pursuant to section 20 CA89?

(3) Does SCC owe BC leaving care duties?

(4) Should SCC have exercised its discretion to treat BC as being owed leaving care duties as if he had been looked after? This issue only arises if the Court answers issues (2) and (3) in the negative.

(5) Should permission to bring a claim for judicial review be refused by reason of delay in bringing the claim?

## E. Discussion

(i) *Did SCC owe BC a duty under section 20 CA89 to provide him with accommodation and if so, from when?*

64. In order to answer this question, both Ms Luh and Ms Rowlands agree that it is necessary to answer the structured questions posed by Lady Hale in *Southwark*, set out in paragraph 6 of the judgment above.

*BC was a child within SCC's area*

65. The parties agree that BC was a child at the material time and was within SCC's area. They disagree as to whether he was a child in need.

*BC was a child in need*

66. I consider that it is apparent from the contemporaneous documentary record set out above that BC was plainly a child in need by 18 September 2019 at the latest. His relationship with his parents had deteriorated over a period of time, until by this date he was excluded from home (his sister now occupied his old room), with his father having told him to move out, and he was temporarily sleeping at K's mother's house. Whether he slept on the sofa or shared a bedroom with K is unimportant; on any view that unstable accommodation was not suitable for a 17 year old child. It was unsuitable in nature, as BC did not shower there; he had to wear the same clothes day after day or occasionally go and get a change of clothes from his mother's caravan (or the van parked next to it), and he had to try to snatch a shower at home. It was in any event precarious, being uncertain in duration: from time to time BC had to find somewhere else to stay overnight (as when he presented as homeless to Runnymede BC), and K's mother could not have him stay with her unless she obtained financial help which was not forthcoming. BC himself had no money and no financial support. All of this was known to SCC by 18 September when it made its assessment.
67. Adapting the wording of Lady Hale in *Southwark*, it cannot seriously be suggested that a child excluded from home and who is "sofa surfing" from day to day in this way, snatching showers and either having to wear the same clothes day after day or managing sometimes to get a change of clothes from home, is not in need.

*BC was without suitable accommodation*

68. The next question is whether BC appeared to the local authority to require accommodation. As to the correctness or otherwise of the local authority's answer to this question, the court applies the *Wednesbury* unreasonableness test. As Lady Hale explained in *R (A) v LB Croydon* [2009] 1 WLR 2557 at [26]:

*“But where the issue is not, what order should the court make, but what service should the local authority provide, it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the public authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and “Wednesbury reasonableness” there are no clear cut right or wrong answers.”*

69. Ms Rowlands argued that the offer to bring the grandparents' caravan to the site or the arrangement with K's mother meant that he did not reasonably appear to SCC to require accommodation. I do not accept that submission. The grandparents' caravan was obviously not suitable accommodation and SCC could not reasonably have concluded that it was as at 18 September (or thereafter). Indeed, SCC did not even bother to inspect it in order to assess its suitability (nor indeed did it inspect BC's mother's caravan to assess its suitability, even had it been available), and in any event there was no evidence that it was reasonably available: it was never moved from Bournemouth, had a flat tyre and required renovation to be fit for habitation, and yet BC's parents were financially impecunious.
70. Likewise, the suggestion that the accommodation offered by K's mother was suitable for BC is unsustainable by reason of its nature and precarious duration. Indeed, its duration was uncertain from day to day. Again, SCC took no steps to visit K's mother's house and assess the suitability of that accommodation either, and it made no substantive contact with K's mother until 16 October 2019. SCC could not reasonably have concluded as at 18 September that K's mother's house was suitable accommodation for BC.
71. Indeed, the lack of suitability of BC's accommodation is underscored by the fact that as early as 26 September 2019 Mr. Fernandes of SCC was urging the Social Services department to “*look at alternative family and friends placements*” instead of the temporary arrangement at K's mother's house.

72. BC was clearly a child in need by 18 September 2019. He was without suitable accommodation. On any view, his health or development was likely to be significantly impaired, or further impaired, without the provision for him of accommodation by SCC.

*BC's mother was prevented from providing him with suitable accommodation*

73. The next question which arises for determination is whether BC appeared to SCC to require accommodation as a result of the person who had been caring for him being *prevented* (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care: section 20(1)(c) CA89.
74. As Lord Hope explained in *Barnet* the widest possible scope must be given to this provision (“for whatever reason”) and it “*makes no difference whether the reason is one which the carer has brought about by her own act or is one which she was resisting to the best of her ability.*”
75. The precise cause or causes of BC being excluded from his home do not matter. It may well be that blame could be attributed to all parties. But on any view, BC’s parents were plainly prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care and in my judgment no local authority could reasonably have concluded otherwise by 18 September 2019. Whilst it does not matter, it seems that SCC simply assumed that BC would be accommodated by Runnymede BC upon reaching 18 years old, which was only some three months away, and in the interim BC could be accommodated by K’s mother.
76. BC also expressed a clear wish to be accommodated by SCC. I reject the submission of Ms Rowlands that he expressed a wish to live with K’s mother. On the contrary, on 13 September he sought accommodation by the local authority (albeit that he mistakenly believed that Runnymede BC was the appropriate body to which he should apply) and by 18 September that remained the position. SCC, however, was content to encourage BC to continue to stay at K’s mother’s house for as long as she was willing to let him do so.
77. Furthermore, nobody objected to the local authority’s intervention. K’s mother did not; nor did BC’s parents. Indeed, BC’s mother agreed to TYS being provided by SCC.



78. It follows that by 18 September 2019 SCC did owe BC a duty under section 20 CA89 to provide him with accommodation.
- (ii) *Were the arrangements that SCC made, or is taken to have made, for BC to stay with K's mother pending a mediated return to his family, pursuant to section 20 CA89?*
79. I agree with Ms Luh that the answer to this question is “Yes”; however, I do not consider that he was accommodated by SCC at K’s mother’s house pursuant to section 20 CA89 until 17 October 2019. I do not accept Ms Luh’s submission that BC was so accommodated as early as 20 September 2019. By that stage, and despite its section 20 duty, SCC had played no role, let alone a major role, in BC’s accommodation arrangement with K’s mother. All that SCC knew was that BC was “*still staying with his friend K*”, and SCC were looking at trying to reintegrate BC into the family home. SCC referred to the fact that “*the mother of the friend that he is currently staying with has not told him he has to leave despite telling Housing this.*”
80. At this early stage I do not therefore consider that it can be said that SCC was “providing” accommodation to BC pursuant to section 22(1)(b) of the CA89. Whilst there is no requirement that the local authority must provide the accommodation itself, a local authority must be shown to have facilitated the arrangements or “played a role” for the child to be accommodated: *Southwark LBC v D* [2007] EWCA Civ 182 at [49] per Smith LJ. Indeed, provided it does so, it may not even matter that the child entered into the accommodation prior to the section 20 CA89 duty arising: *R (Collins) v Knowsley MBC* [2008] EWHC 2551 (Admin) at [30]-[31].
81. By 20 September SCC had not yet played any role in the accommodation of BC at K’s mother’s house. The dearth of any material to show SCC playing such a role is illustrated by paragraph 61(i) of BC’s skeleton argument. However, after 20 September 2019 and by 17 October 2019 the position had materially changed. By that date, SCC had indeed played a central or significant role in ensuring that BC had accommodation (at K’s mother’s house) throughout the remainder of his childhood and I accept Ms Luh’s submissions in this respect which are supported by the contemporaneous documentary record as follows:

- a. *20 September 2019*: SCC telephoned BC's mother, suggesting a mediation with a view to BC returning home. SCC began assuming a role to ensure that BC did not become street homeless.
- b. *26 September 2019*: SCC identified the need to "*look at alternative friends and family placements*" but on the assumption that in the interim, BC should remain at K's house.
- c. *1 October 2019*: SCC's social services manager, Mr. Fernandes, confirmed (again) that it was not possible for BC to return home, and identified, as "*next steps*", that SCC should "*speak with [K's] mum to confirm he is able to continue living there*". The manager's decision confirmed the need to "*double check these arrangements*" with both BC's mother and K's mother, recognising it was not an arrangement privately agreed between the families. Had it not been satisfied that BC could stay at K's house, SCC would have had to provide alternative accommodation. Mr. Fernandes concluded that "*provided this situation remains the same in two weeks, the case can be closed.*"
- d. *4 October 2019*: K's mother contacted Mr. Fernandes of SCC to request "*a meeting to discuss [BC's] future*", recognising the central involvement of SCC. Mr. Fernandes referred to the fact that BC is currently staying with her and her family. Subsequent contact between K's mother and SCC demonstrates that SCC's involvement was required to maintain BC's living arrangements at K's house. SCC recognised the role that was required and agreed to liaise with BC's family.
- e. *16 October 2019*: SCC's Family Action Plan recognised the role that SCC needed to play to ensure that BC was "*living in a secure and stable environment*". Under "*How will we get there?*", SCC wrote "*Work with parents and [BC] to look at suitable housing options*". Under "*Who will do this*", SCC wrote "*Jayne [Stubbs, SCC social/support worker], Parents and [BC]*". This is the best illustration of SCC taking the central role in relation to BC's needs, including the provision of suitable accommodation for him.

- f. *17 October 2019*: Consistently with the terms of SCC’s Family Action Plan, the Approved Mental Health Professional Report on this date noted SCC’s Jayne Stubbs describing her role as “*working with [BC] since he became homeless<sup>4</sup>, to support him in finding appropriate accommodation, employment and addressing his alcohol and illicit drug use ...*”. The follow-up plan was for BC to be “*discharged back to [SCC’s] Jayne Stubbs, support with accommodation, employment and encourage him to address alcohol and drug use via Catch 22. Return to friends [sic] home*” (emphasis added). This is another clear illustration of SCC taking the central role in relation to BC’s needs, including the provision of suitable accommodation for him.
- g. *17 October 2019*: After BC was sectioned on 16 October 2019, SCC was told by BC’s mother that she “*would not have [BC] back at home*”. So SCC called K’s mother and “*explained circumstances and asked if she still felt able to have him living with her*”. K’s mother agreed to let BC continue to stay at her home but she wanted contact with BC’s mother. Jayne Stubbs agreed to arrange a meeting to that end for 21 October 2019.
- h. The central role played by SCC in BC’s accommodation arrangements is clear from these records (in particular at (e), (f) and (g) above) and from the fact that when BC was discharged on 17 October 2019, it was SCC’s TYS support worker, Jayne Stubbs, who collected BC from hospital, and took him back to K’s house after confirming with K’s mother that she would continue to accommodate him. Contrary to the submissions of Ms Rowlands, seen against the background of the contemporaneous documents described above, this was much more than just a friendly person giving BC a lift home.
- i. *21 October 2019*: SCC arranged the Team Around the Family meeting which K’s mother had requested, the purpose of which was to discuss BC’s accommodation arrangements. SCC was aware, in advance of the meeting, that BC’s mother refused to allow him to return home. She told SCC that she had “*washed [her] hands*” of him completely and “*I’m not being scared of my son every [sic] again he is not welcome anymore*”. Ms Stubbs encouraged

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<sup>4</sup> A reference to 13 September 2019

BC's mother to attend the meeting because "*we all needed to be on the same page*". It was decided that BC would remain at K's for the time being but that SCC would "*work with parents and [the BCC] to look at suitable housing options*". SCC accordingly played a central role in securing continued agreement for BC to continue to be accommodated at K's house.

82. It follows that I reject Ms Rowlands' submission that "[SCC] had no hand in arranging the accommodation with [BC's] friend." Whilst SCC may not have had a hand in *originally* arranging the accommodation at K's mother's house, it thereafter played a central role in arranging for that accommodation to continue after K's mother had told BC on 13 September 2019 that he could no longer be accommodated there, at least without payment. The continued accommodation provided by K's mother came about as a result of SCC's intervention and not as a result of private discussions between K's mother and BC's mother. At no stage did SCC make clear to K's mother that this was a purely private arrangement between her and BC's mother. In a slightly different factual context in *Southwark LBC v D* [2007] 1 FLR 2181, in considering the local authority's duty under section 20 CA89, Smith LJ stated at [49]:

*"We are prepared to accept that, in some circumstances, a private fostering arrangement might become available in such a way as to permit a local authority, which is on the verge of having to provide accommodation for a child, to 'side-step' that duty by helping to make a private fostering arrangement. However, it will be a question of fact as to whether that happens in any particular case. Usually, a private fostering arrangement will come about as the result of discussions between the proposed foster parent and either the child's parent(s) or a person with parental responsibility. But we accept that there might be occasions when a private arrangement is made without such direct contact. We accept that there might be cases in which the local authority plays a part in bringing about such an arrangement. However, where a local authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that, in doing so, it is exercising its powers and duties as a public authority pursuant to sections 20 and 23. If a local authority wishes to play some role in making a private arrangement, it must make the nature of the arrangement plain to those involved. If the local authority is facilitating a private arrangement, it must make it plain to the proposed foster parent that she or he must look to the parents or person with parental responsibility for financial support. The local authority must explain that any financial assistance from public funds*

*would be entirely a matter for the discretion of the local authority for the area in which the foster parent is living. Only on receipt of such information could the foster parent give informed consent to acceptance of the child under a private fostering agreement. If such matters are left unclear, there is a danger that the foster parent (and subsequently the court) will conclude that the local authority was acting under its statutory powers and duties and that the arrangement was not a private one at all.”*  
(emphasis added)

83. By 17 October 2019 SCC had taken a major role in ensuring that BC was accommodated for the foreseeable future at K’s mother’s house (whatever the suitability, or lack thereof, of that accommodation). It follows that BC was provided with accommodation by SCC under section 22(1)(b) CA89 on and after 17 October 2019.

*(iii) Does SCC owe BC leaving care duties?*

84. The Parties’ time estimate for the hearing of this claim was 1 ½ days. That was insufficient, and the court sat late in order to accommodate as much of the oral argument as possible. This inadequate time estimate led to Ms Rowlands referring in reply to caselaw which was not contained in the agreed bundle of authorities and instead inviting the court itself subsequently to source and read these further authorities after the conclusion of the hearing. This puts an unreasonable burden on the court as judgment writing time is not available to the court to undertake such a process.
85. This inadequate time estimate also led to little or no argument being advanced in respect of this third question. Ms Luh dealt with it very shortly in her skeleton argument at paragraphs 62-64 but accepted, in answer to a question from the court, that paragraph 64 incorrectly states the applicable statutory provisions and instead submitted that, if the section 20 duty was performed by 17 October 2019 (as I have found), then BC would have been accommodated for 11 weeks before his 18<sup>th</sup> birthday and would have acquired “qualifying young person” status under section 24 CA89.
86. That is because section 24 CA89 provides in material part:

***“24 Persons qualifying for advice and assistance.***

*(1) In this Part “a person qualifying for advice and assistance” means a person to whom subsection ... (1B) applies...*

*(1B) This subsection applies to a person to whom subsection (1A) does not apply, and who—*

*(a) is under twenty-one; and*

*(b) at any time after reaching the age of sixteen but while still a child was, but is no longer, looked after, accommodated or fostered.”*

87. Ms Rowlands did not take issue with this submission and I accept it.

88. However, the precise consequences of this finding in terms of any services to be provided to BC by SCC as a result will require to be agreed between the parties or in default of agreement the matter will have to be brought back before the court for proper argument and determination. That stated, the court observes that in the light of its factual findings, those consequences ought to be readily capable of agreement between the parties.

*(iv) Should SCC have exercised its discretion to treat BC as being owed leaving care duties as if he had been looked after?*

89. As I have already explained, this issue only arises if the Court answers issues (2) and (3) in the negative. Since I have answered those two questions in the affirmative (in favour of BC), this issue does not arise.

*(v) Should permission to bring a claim for judicial review be refused by reason of delay in bringing the claim?*

90. Finally, SCC contends that this claim should be dismissed, with permission refused, on grounds of delay. Ms Rowlands observes that the events upon which BC relies took place in the period up to September 2019. The claim should therefore have been brought, she submits, by the end of 2019. It was not brought until August 2022. It is, she contends, “manifestly outside the three month period and was not brought promptly in any event”.

91. Ms Luh takes issue with this and contends that (a) SCC’s failures are an ongoing breach and (b) in any event, there is a good reason for any delay.

*(a) Ongoing breach?*

92. Ms Luh submits that the effect of the decisions in *R (M) v Hammersmith and Fulham* (supra) and *R (G) v Southwark LBC* (supra) is that, first, there are cases in which the local

authority will have acted under section 20 even though purporting to act on a different basis and, second, in such cases, the young person can seek by way of judicial review confirmation that he or she was section 20 accommodated and entitled to the statutory benefits and protections which flow from that. It is frequently the case that such challenges are brought a long time after the events took place which the Claimant contends gave rise to him/her being accommodated under section 20 but in many cases the Court has expressly recognised that the issue concerned an ongoing breach.

93. In particular, in *R (L) v Nottinghamshire CC* [2007] EWHC 2364 (Admin), the court was concerned with whether the accommodation provided to the child in need in September 2005 was provided under section 20. The claim was not, however, brought until 2007. The defendant argued that the delay should lead to the court refusing the relief sought. Burton J held at [48] that the question of delay “*does not, and should not, bar the relief that I otherwise grant. This is a child in need. The duty has been an ongoing duty ever since 2005 and, as of now, this claimant is in very severe circumstances*”.
94. In *R (Collins) v Knowsley MBC* [2008] EWHC 2551 (Admin), the relevant events concerning the child in need took place in 2003. Proceedings were only instituted in 2007. Michael Supperstone QC (sitting as a deputy judge of the High Court) held at [27] that whilst there had been delay by the claimant’s solicitors at various points between 2005 and 2007, this was not a bar to the claim for two reasons. First, because “*if the Defendant acted unlawfully in failing to treat the Claimant as a “looked after child”, that state of affairs is continuing*” and second, because the Claimant’s carer and solicitors had been in correspondence with the Defendant in an attempt to persuade it to reconsider its decision. There was no prejudice to the Defendant caused by the delay.
95. In *SA v Kent CC* [2010] EWHC 848, the relevant circumstances arose by no later than 2005 but proceedings were not instituted until 2009. There were long unexplained gaps in the child in need’s attempts to obtain relief since that time. Black J held at [77] that there was no question of refusing relief in its entirety on the grounds of delay: “*The decision that A is not a looked after child is a continuing decision and will have a material effect on A for the rest of her minority*”. However, to avoid significant financial prejudice to the Defendant, retrospective relief was only granted to a date 3 months before the date of issue of the proceedings.

96. In *R (T) v Hertfordshire CC* [2015] EWHC 1936 (Admin), the relevant events took place in October 2012. The claim was only issued in September 2014. The defendant argued “*that the claim in substance challenges the decision of the Council on 17 October 2012 not to treat R as a child in need requiring accommodation; and it is therefore well out of time*”. This was rejected by Hickinbottom J at [31]: “*Leaving aside the apparent lack of prejudice to the Council that any delay might have caused, if the Council acted unlawfully in failing to treat R as a looked after child, then that is a continuing state of affairs and a continuing breach of their obligations under section 20*”. Any delay might bear upon relief but did not bar the claim entirely.
97. I consider that this court should take the same approach in the present case. SCC acted unlawfully in failing to treat BC as a looked after child, and that is a continuing state of affairs and a continuing breach of its obligations under section 20 in respect of which it owes BC ongoing duties under the CA89, now by reason of his being a qualifying young person.
98. I also accept the submission of Ms Luh that by their very nature, these cases arise from the local authority mischaracterising the nature of its actions. The young person cannot be expected to know at the time that he has been misadvised and therefore the claim will frequently only be brought years later, when the young person receives legal advice. See *M v Hammersmith* per Lady Hale at [73]: “*It is self-evident that most troubled 16 and 17 year old children will be unaware of the services available to assist them, and it is equally self-evident that the onus is not on children in need to identify and request the services they require.*”
99. In any event even if, contrary to the foregoing, there has been some delay on the part of BC, I consider that there is good reason to grant him an extension of time for the bringing of the claim.
100. I accept BC’s explanation in his second witness statement at [43]-[51] concerning why he was unable to seek legal advice until 2021. At the time of events in 2019, he did not know that SCC had acted unlawfully or that he could challenge the way he had been treated. He was, he said, simply “*trying to survive*”. In the period between 2019-2021, he was mostly sleeping rough, depressed, self-harming and struggling with alcohol use: see his first witness statement at [44]-[53]. He was abused by his sister’s boyfriend. He



also struggled with the mental and physical consequences of the brain tumour he suffered from as a child (ibid, [5]-[19]). He only received legal advice after his psychologist referred him to his solicitors in July 2021 (see his second witness statement at [51]).

101. Once instructed, his solicitors, Lawstop, sought to resolve the dispute between July 2021 and August 2022. However, Lawstop encountered significant difficulties in obtaining disclosure of the contemporaneous documents evidencing the internal actions and decisions taken by SCC which I consider excuse any delay in BC bringing proceedings. SCC unhelpfully refused to provide disclosure in pre-action correspondence, insisting that BC make a Subject Access Request (“SAR”) under the Data Protection Act 2018 (“DPA”). A series of time-consuming complaints had to be made to obtain disclosure through the SAR/DPA (see the witness statement of Bethany Baggaley at [18]-[33] and of Claire Porter at [9]-[65]).
102. I accept that it was only in February 2022 that sufficient disclosure (albeit heavily redacted) was obtained to make a request to SCC to recognise and comply with its CA89 duties. SCC’s refusal, dated 12 May 2022 was challenged in time. SCC refused to account for its redactions until 11 July 2023, being the morning of a specific disclosure hearing and nearly a year after this claim was issued.
103. This further unredacted disclosure, provided on 27 July 2023, was significant. It revealed the fact that SCC was aware (i) on 13 September 2019 that BC’s mother “*appear[s] to have abdicated her responsibility for him*” and (ii) on 18 September 2019 that BC’s mother refused to accommodate him at her home. Furthermore, despite SCC having asserted in its Summary Grounds of Defence at [11] that following the closure of BC’s case in September 2018 “*there was then a period of a year with no issues being raised in relation to BC*”, the unredacted disclosure showed this to be false. In this period (as is discussed earlier in this judgment) BCC was referred to SCC on no fewer than three occasions by the police and concerned members of the public.
104. Finally, no prejudice has been caused to SCC as a result of any delay. No retrospective relief, financial or otherwise, is sought. In contrast, BC would be significantly prejudiced if delay is a bar to his claim, since as a qualifying young person, he is still owed a number of duties by SCC in order to assist him with his transition into adulthood and independence (see paragraphs 85-87 above).

## **F. Conclusion**

105. In the circumstances I grant BC permission to bring this claim and to the extent set out in this judgment I allow this claim. BC is entitled to the following declarations:

- (1) By 18 September 2019 SCC owed BC a duty under section 20 CA89 to provide him with accommodation; and
- (2) The arrangements that SCC made for BC to stay with his friend's mother on and after 17 October 2019 were arrangements made by SCC pursuant to section 20 CA89; and
- (3) BC has thereby acquired the status of "a person qualifying for advice and assistance" under section 24 CA89.