Case No: CO/3532/2014

Neutral Citation Number: [2015] EWHC 1004 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 April 2015

Before :

MR JUSTICE COBB

- -

Between :

REGINA **(on the application of AM)**	**Claimant**
- and -	
(1)THE LONDON BOROUGH OF HAVERING **(2)THE LONDON BOROUGH OF TOWER HAMLETS**	**Defendants**

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- -

Mr Jan Luba QC & Mr Tim Baldwin (instructed by **Miles & Partners**) for the Claimant
Mr Stephen Knafler QC (instructed by **LB Havering Legal Services**) for the First Defendant
Mr Rhys Hadden (instructed by **LBTH Legal Services**) for the Second Defendant

Hearing dates: 17 and 18 March 2015

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Judgment

The Honourable Mr Justice Cobb:

1. The Claimant ("AM") is a married man with two young children; at the date of the issue of the claim (29 July 2014), his daughter was 2 years 11 months old, and his son was 12 weeks old. The family is, and at the time of the claim was, homeless. AM seeks relief against the First Defendant (hereafter "LB Havering"), the authority in which he and his family were actually living at the time of the issue of the claim, on the basis that it unlawfully:

    i) Failed to assess the needs of AM's two children, notwithstanding that the children were living temporarily "within their area" (*section 17 Children Act 1989 "CA 1989"*); and

    ii) Failed to provide suitable interim accommodation to AM, his wife and his two children pending the outcome of that assessment of need.

    He seeks relief against the Second Defendant (hereafter "LBTH"), the housing authority which had placed the family in the area of LB Havering, on the basis that it unlawfully:

    iii) Failed to make an effective, lawful and timely 'internal' referral (to its own children's services department) and/or 'out-of-area' referral to LB Havering under *section 213(1)* or *section 213A(2)/(3)* of the *HA 1996*; and

    iv) Failed to respond timeously to its own referral (*section 213A(3)* of the *HA 1996*), and/or secure that accommodation was available to AM and his family pending the assessment of the children's needs by LB Havering (under *section 190(2) HA 1996*).

2. Three specific issues arise for determination in this claim, which have social, legal, practical and financial implications for the parties concerned. They are as follows:

    i) Which children's services authority should be responsible for assessing the needs of dependent children from a homeless household, and for providing shelter for them pending the outcome of that assessment, and then meeting those needs, in circumstances in which the duties of a local housing authority (for convenience I shall refer to as the "originating authority") towards that homeless household are coming to an end (or have come to an end), and where that family has been placed in another authority's area (the "receiving authority")?

    ii) Where housing duties of the originating authority towards a homeless household containing dependent children have come to an end, and a different (receiving) authority is responsible for assessing the needs of those children (and for providing shelter), what is the significance (if any) of the originating housing authority having caused its own children's services authority to begin the process of assessment?

    iii) What obligation does the originating housing authority have to the children and/or to the receiving local authority in the arrangements it makes to refer those children's needs for the attention of that different authority?

3. I determine these issues as follows:

i) The duty of assessing the needs of homeless children falls primarily on the local authority (children's services authority) for the area in which the children are physically present (even if living there only temporarily) at the material time under *section 17* of the *CA 1989*. In this case, this was LB Havering;

ii) The duty to provide interim accommodation for the children pending the outcome of that assessment is primarily a housing duty and will fall on the local authority (housing department) for the area in which the children are living when the duty arises (*section 188* and *section 190(1)/(2)* of the *HA 1996*). The exercise of the local authority's functions in this respect is covered by *section 11(2)* of the *Children Act 2004* ("the *CA 2004*") which requires the housing authority to discharge its functions "having regard to the need to safeguard and promote the welfare of children";

iii) The housing duty will often fall on the same local authority which is assessing (by its children's services) the needs of the child(ren) under *section 17 CA 1989*; where the family has moved between authorities (as here) during a time when housing authority functions are being exercised, this is not necessarily so. Indeed, on these facts, the housing duty fell on LBTH;

iv) A local authority in whose area there is or appears to be a 'child in need' (i.e. on these facts, LB Havering) has a *power* (but no *duty* under *Part III* of the *CA 1989*) to provide accommodation for the child and his/her family (*section 17(3)/(6)* ibid.);

v) Where a housing authority has caused (under *section 213A(3) HA 1996*) its own children's services authority to commence the process of assessment of a family where it appears that a child in their area is in need (*Schedule 2, para.3 CA 1989*), in the absence of good reason this assessment, once it has been commenced, should be completed by that authority; in this case LBTH commenced an assessment and should have completed it in liaison with, or as agent for, LB Havering;

vi) There is a clear duty upon an originating local (housing) authority (reading *section 208* together with *section 213* and *section 213A* of the *HA 1996*) to give notice of an out-of-area placement to the receiving housing authority; this should be done "as quickly as possible" ('Homelessness Code of Guidance', para.13.5, see [30] below) and in any event within 14 days (*section 208(4)* of the *HA 1996*), giving relevant information about the family, so that the receiving authority can swiftly assess (and, where relevant, assume responsibility for) the child and/or family. There is a separate duty on the children's services authority of the receiving authority to formulate a timely response (i.e. within one working day) to any referral in relation to a child who appears to be in need (see *Working Together to Safeguard Children (March 2013)* at Chapter 1 §55: now (March 2015) §58). In this case, LBTH failed to make an effective or timely referral to LB Havering; LB Havering failed to formulate a timely response, and unreasonably concluded that these children did not appear to be 'in need'.

4. The facts of this claim, and the arguments marshalled by the parties, highlight a number of points to which I wish to give prominence:

   i) Even though it is contemplated, both in practice and under statute (*HA 1996*), that local housing authorities will perform their housing duties towards the homeless by providing accommodation in their own area (*section 208(1) HA 1996*, and see *Nzolameso v Westminster City Council* [2015] UKSC 22), given the shortage of housing stock in some regions (particularly some London boroughs) this is increasingly difficult to achieve, and problems of the kind which have arisen in this case are not uncommon. Each case will inevitably be determined on its own facts, and while I offer some commentary of general application in this judgment, it would be helpful if the London Child Protection Procedures guidance could be reviewed and/or statutory guidance (with draft policy protocols) prepared and made available to local housing and social services authorities in respect of the issues which have arisen here to promote greater clarity in practice;

   ii) The issue of who has a duty to assess and provide for children in need has wide ramifications for local authorities, as it does for the children themselves; often there is no easy answer to the question. Persistent and endemic failures on the part of neighbouring local authorities to co-operate with each other in resolving such issues in individual cases have regrettably resulted in vulnerable families (including potentially AM's family) being without support or services. It appears that some local authorities remain impervious to previous judgments of the Courts and cogent guidance offered by the Codes of Practice in this regard;

   iii) The local authorities involved here seemed unwilling to contemplate that statutory duties, and powers, in relation to a vulnerable family can be owed by two or more authorities simultaneously. Where this situation arises, there is a particular need for meaningful and effective co-operation between the authorities; it is unacceptable for the authorities simply to stonewall each other while attempting to offload their obligations;

   iv) Local authorities (particularly neighbouring London or other metropolitan councils where the movement of families by even short distances may lead to them being in different local authority areas) should proactively devise plans and contingencies to deal with the situation such as has arisen here, including provision for sharing the cost of funding, pending the resolution of such disputes as they arise.

Background facts

5. In order to set a proper context for my discussion of the applicable law, and my conclusions, it is necessary to summarise the relevant facts.

6. Until November 2011, AM, his wife and daughter resided in a one-bedroom housing association flat in Birmingham; AM worked in the city. In November 2011, AM's wife and daughter (then aged 3 months) moved to London (to LBTH) so that she could live with her sister. In early 2012, AM joined his wife; in May 2012, he gave up the Birmingham tenancy, moving full-time to LBTH to be with his family.

Shortly thereafter, AM and his wife were given notice to leave that property, and in October 2012, AM made his first application to LBTH for housing, as a homeless person. LBTH provided the family with temporary accommodation, within its borough, under *section 188(1)* of the *HA 1996* (see [24] below), pending the outcome of the application. In March 2013, LBTH considered the application, and concluded that AM was (a) homeless, (b) intentionally so, and (c) in 'priority need' (having a dependent child: *section 189(1)(b)* of the *1996 Act*). That decision was later reviewed by the authority, but remained unaltered; the provision of accommodation continued, albeit under *section 190(2)* of the *HA 1996* (see [25] below)).

7. At the same time as reaching its decision as to homelessness (i.e. in March 2013), the housing department made a referral to its own Children's Social Care department ("CSC") under *section 213A(3)* of the *HA 1996*, with a request for an assessment to determine whether the LBTH owed any duties towards the family under the *CA 1989*. In July 2013, the CSC replied indicating that it had "looked at the referral" from the housing department "and it is not considered that [AM's] case meets the Children's Social Care threshold for a Child in Need Assessment."

8. Later that year, in October 2013, AM's daughter who suffered encephalitis, and had been diagnosed with 'rolandic epilepsy', collapsed and was admitted to hospital, where for a number of days she was in intensive care. She remained in hospital for over two weeks, having contracted an infection there; while in hospital, nursing staff had concerns about the ability of AM and his wife to cope with the medical needs of their daughter, and about the stresses which they observed in the relationship between AM and his wife (who by then was four-months pregnant with their second child). The nursing staff made a referral to LBTH's CSC. When seen later by a social worker from LBTH's CSC, AM's wife disclosed that she had been the victim of multiple forms of domestic abuse, and had separated from AM. Not long after the separation, towards the end of that year, AM's wife indicated to CSC an intention to reconcile with AM; LBTH recorded in its social work records that "given the concerns relating to the alleged history of domestic abuse … an LBTH assessment should be considered." AM and his wife did reconcile. In February 2014, LBTH made a referral for the mother to a local children's centre "to help with her parenting".

9. In February 2014, LBTH sought and obtained an order for possession in relation to the property which it had allocated to AM and his family as temporary accommodation in October 2012. AM once again applied again to LBTH for housing, presenting as a homeless family. Once again, the family were allocated housing under *section 188(1) HA 1996* temporarily at an address which was out of the borough of LBTH (in LB Haringey), before being moved by LBTH on 2 May 2014 to a further address also out of borough, this time in Romford, in the area of LB Havering on a 'nightly-let' basis. In the meantime, in April 2014, AM's son had been born. AM relied upon his expanded family as evidence of a change of circumstances which he invited LBTH to consider in determining his renewed homelessness application. AM was not working, and was in receipt of benefits; in these proceedings he has deposed (and indeed disclosed to the relevant authorities at the material time) that he had had access to a sum of about £1,100 as a loan from his sister-in-law which he had hoped to be able to use as a deposit on privately rented accommodation, but his experience has been that private landlords were unwilling to let to tenants on housing benefits.

10. On 30 May 2014, LBTH once again decided that AM was intentionally homeless (the defining moment of homelessness being the point at which the family left the flat in Birmingham in May 2012), and gave notice of the withdrawal of temporary accommodation after 28 days (later confirmed for 3 July 2014). AM sought a review of that decision, which was not in fact completed until 31 October 2014.

11. On 2 June 2014, LBTH's housing department made a further referral (under *section 213A(3)* of the *HA 1996*) to its own CSC department. Pursuant to that referral, on 6 June 2014 a housing social worker from CSC (who I shall refer to as 'SW1') interviewed AM at its Shadwell Family Centre in the borough. SW1's file-note reads as follows:

> "[AM]'s daughter suffers from seizures and has been diagnosed with epilepsy which is currently under control. Wife has had two C-sections and she appeared to be very emotional and distant to the conversation. When I asked her about her views she did not say much and kept referring me to [AM] who had control of the full [conversation]. Mother appeared to be of low mood and seemed to [me] as though she may be suffering from post natal depression. She was advised to see her GP to discuss her feelings. I asked mother if she wanted to speak to me alone (taken into account the previous DV [domestic violence] disclosures) but she declined…".

12. On 11 June 2014, SW1 sent an e-mail to her managers in these terms:

> "I would recommend that this case is allocated for an assessment as there are concerns around previous DV disclosures and mother presented with low mood and may be suffering from post-natal depression after [giving] birth to her second child … Our last contact in December made recommendations that if mother is to reconcile with father than an assessment will be required. The child suffers from epilepsy…"

13. On the following day, SW1 sent an e-mail to LBTH's housing department requesting that temporary accommodation be kept open for the family pending assessment by CSC. The housing department's Senior Assessments Officer replied on the same day indicating that he would not 'halt the procedure' (i.e. the withdrawal of temporary accommodation). On 18 June, CSC, having accepted the recommendation of SW1, allocated the task of assessment to another social worker ('SW2'). SW2 immediately formulated a plan of assessment, by which it appears that she would (a) read the case history concerning AM and his family, (b) visit the family on 1 July, (c) consider how to meet AM's wife separately (given the allegations of domestic abuse) and (d) explore housing options. In fulfilment of this plan, SW2 conducted her home visit on 1 July 2014. It is notable that in spite of the imminent withdrawal of temporary accommodation, by now 29 days had passed since the housing authority had made the referral to CSC, and 25 days since SW1 had recommended the assessment. SW2 recorded:

> "Mum appeared very worried about their housing as they have been told to leave their temp accomm by Thursday 3rd July i.e. in two days time. She looked very tired and depressed and was tearful during the meeting….
>
> …. I called [interpreter] to speak with Mum as I was concerned about her. [Interpreter] advised me that mum feels very worried about their housing, she is not sleeping or eating and is very down…
>
> … I apologised to mum for not having an interpreter with me today, and explained that when we meet again I will have a Bengali speaker with me."

14. From the documents disclosed in these proceedings, it is possible (and revealing) to piece together the following important sequence of events which occurred on the next day, 2 July 2014:

    i) 11:33hs: LBTH sent an e-mail to AM's solicitor confirming that LBTH would not extend the temporary accommodation;

    ii) 12:50hs: SW2 (LBTH) telephoned the father: "…to explain we have had legal advice that Havering should undertake assessment not [LBTH]. I advised him now to go to CSC in Havering. I advised him I will send an e-mail to Havering now … to alert them to this family";

    iii) 14:02hs: AM's solicitor sent an e-mail to LBTH requesting that it grant an extension of the accommodation at least until reasons had been given for the decision not to extend the temporary accommodation;

    iv) [Time unknown]: Father telephoned the duty number at LB Havering informing them that he was to be evicted on the following day, 3 July, asking for assistance. The duty social worker ('SW3') referred the father to Family Mosaic (housing association). SW3's note concluded "if the homelessness became apparent consideration for an assessment to be carried out under section 17";

    v) 15:03hs: LBTH replied (to the 14:02hs e-mail: (iii) above) refusing to extend the accommodation, and indicated that it will not be responding in more detail;

    vi) 15:40hs: SW2 sent a faxed letter to LB Havering in these terms:

> "I am writing to advise that this family are currently living at the above address. This is temporary accommodation provided by [LBTH] however the booking is due to close tomorrow, 3 July. … I visited the family for the first time yesterday, as I was going to undertake an assessment of the children's needs. I have since been advised by our legal team that responsibility for undertaking an assessment lies with the borough in which the family reside, i.e. Havering. Therefore we will not undertake an assessment in [LBTH].

> … I have advised [AM] he should approach Havering CSC today in respect of their imminent homelessness. I understand that mum is finding it very difficult to cope, and is not sleeping or eating well…"

vii) 15:47: AM's solicitors sent a letter before action to LBTH (by e-mail) complaining that LBTH had not made the relevant referral to LB Havering under *section 213 HA 1996*;

viii) 16:20hs: LBTH indicated (by e-mail) that it had properly made the referral to its own children's services department under *section 213A HA 1996*.

ix) [Time unknown]: following the receipt of the letter from SW2, SW3 (LB Havering) telephoned LBTH and spoke to SW2's manager. The file-note reads:

> "She [i.e. SW2's manager] said that they [i.e. LBTH] had no previous involvement with the family and no assessment was carried [out]. They received a referral from Housing [at LBTH] on 11 June 2014 and they were advised about the family's homelessness. The case was only allocated to [SW2] this week who initiated the home visit but given the family/children are now living in Havering so they ceased the assessment (as per their legal advice)."

I interpolate here to observe that this was obviously misleading; LBTH had had involvement with AM and his family since October 2012. I return to this below.

15. This 'standoff' was confirmed on 3 July when both local authorities informed AM and/or his solicitor that they were not accepting responsibility for him and his family, and were 'closing the case' (LBTH) and 'taking no further action' (LB Havering). The lawyer for LB Havering wrote to AM's solicitors in these terms:

> "[LB Havering]'s position is that this is a clear case of attempting to dump responsibility for assessment and provision by transferring homeless clients out of the borough from which they originate. The family originate from [LBTH]…. As long as the family attend the [CSC] in [LBTH] upon eviction they will have physical presence in that Borough and there could be no doubt in those circumstances that [LBTH] will have responsibility for both assessment and provision."

Notwithstanding the position which LB Havering took later (see [17] below), the author of this letter appeared to recognise that the 'physical presence' of a family in its area would trigger relevant statutory duties. AM's solicitor replied confirming that the duty fell on LB Havering to assess the family given the physical presence of AM and his family in that borough at that time, "regardless of [LBTH]'s poor behaviour". Later that day, AM's solicitor sent a letter before action to LB Havering.

16. On 4 July, LB Havering wrote to LBTH requesting information about any child protection concerns; LB Havering indicated that a referral had been made relating to "potential safeguarding concerns", prompting a Multi-Agency Safeguarding Hub ("MASH") enquiry.

17. On 7 July 2014, senior managers of LB Havering met and concluded that "case responsibility remains with [LBTH]"; the reasoning for that conclusion appeared in the subsequent letter to AM's solicitors and to LBTH. To AM's solicitors they relied upon the family having its "ordinary residence" in the area of LBTH:

> "This family are from [LBTH]. They retain ordinary residence there, all their connections are there, and if they attended upon [LBTH], [LBTH] would have a responsibility to assess" (emphasis by underlining added)

In the letter of even date to LBTH, LB Havering made the better point (in my view) that LBTH had failed to inform LB Havering "in a timely manner" of the existence of this family in their area, but went on to say that:

> "Although we appreciate the family resides (temporarily) in our area, the responsibility remains with [LBTH CSC] to complete the assessment … the family remain 'Ordinarily Resident' in [LBTH]…" (emphasis by underlining added).

18. On 9 July, AM telephoned LB Havering CSC, and spoke to SW3; he informed SW3 that he and his young family were on the point of eviction: agents of the landlord had attended to change the locks. SW3 advised AM to speak to LBTH. AM phoned LBTH, who advised him to contact LB Havering CSC, and to obtain legal advice. On 11 July 2014, AM and his family were evicted, and were rendered street homeless. LB Havering placed the family in a hotel over the weekend.

19. On 14 July 2014, a different social worker from LB Havering ('SW4') became involved; she interviewed AM and his family. She concluded that the children were not 'children in need', because the family would be able to obtain accommodation through their own efforts (using the borrowed funds, see [9] above), and that in any event the responsibility for providing accommodation lay with LBTH. SW4 requested various information from AM, including bank statements and birth certificates. When AM returned to the office of LB Havering two days later with the information he was "advised to present at [LBTH CSC] to inform them of the outcome as they are case responsible". AM followed that advice; he went to the offices of LBTH to be told that temporary accommodation would not be provided by them.

20. On 21 July 2014, AM's solicitors wrote to LB Havering, requesting a child in need assessment of AM's children. LB Havering replied on the following day, stating that SW4 had not considered a 'child in need' assessment necessary, adding that "there are absolutely no concerns as to [AM and his wife's] parental capacity", adding: "[q]uite simply put, these children are not in need" and denying any duty towards the family.

21. On 29 July 2014 the Claim was issued. By order of Mrs Justice Andrews (same date), LB Havering were directed to provide suitable accommodation for AM and his family

until determination of this dispute, without prejudice to the respective claims of the Defendants. On 17 October 2014, James Goudie QC, sitting as a Deputy High Court Judge, granted permission to AM to apply for judicial review.

22. Finally, it should be noted that on 4 July 2014, LB Havering wrote to LBTH (marked 'Very Urgent') requesting information about the extent of CSC's involvement. LBTH did not reply to this letter until 12 August 2014, that is to say after the issue of this Claim, and the threat of a mandatory order requiring the disclosure of the data.

The law

23. I turn to the relevant statutory provisions, guidance, and case-law. The issue is primarily focused on the 'Homelessness' provisions of *Part VII* of the *HA 1996* (see [24]-[30] below) and the 'Local Authority Support for Children and Families' provisions of *Part III* of the *CA 1989* (see [31]-[33] below).

24. *Section 188* of the *HA 1996* sets out the 'Interim duty to accommodate in case of apparent priority need' as follows:

> (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
>
> (1A) …
>
> (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
>
> (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).
>
> The authority may secure that accommodation is available for the applicant's occupation pending a decision on a review.

'Priority need' is defined in *Section 189* of the *HA 1996* as including "a person with whom dependent children reside or might reasonably be expected to reside".

25. *Section 190* of the *HA 1996* deals with the duties to 'persons becoming homeless intentionally'; the definition of when that occurs is to be found in *Section 191* (ibid.), and deals with the situation where the person "deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy". *Section 190* provides:

(1) This section applies where the local housing authority are satisfied that an applicant is homeless and is eligible for assistance but are also satisfied that he became homeless intentionally.

(2) If the authority are satisfied that the applicant has a priority need, they shall—

(a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and

(b) provide him with [(or secure that he is provided with) advice and assistance] in any attempts he may make to secure that accommodation becomes available for his occupation.

(3) If they are not satisfied that he has a priority need, they shall provide him with [(or secure that he is provided with) advice and assistance] in any attempts he may make to secure that accommodation becomes available for his occupation.

(4) The applicant's housing needs shall be assessed before advice and assistance is provided under subsection (2)(b) or (3).

(5) The advice and assistance provided under subsection (2)(b) or (3) must include information about the likely availability in the authority's district of types of accommodation appropriate to the applicant's housing needs (including, in particular, the location and sources of such types of accommodation

26. *Section 208* of the *HA 1996* deals with the discharge of functions in relation to out-of-area placements, as follows:

(1) So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district.

(2) If they secure that accommodation is available for the occupation of the applicant outside their district, they shall give notice to the local housing authority in whose district the accommodation is situated.

(3) The notice shall state—

(a) the name of the applicant,

(b) the number and description of other persons who normally reside with him as a member of his family or might reasonably be expected to reside with him,

(c) the address of the accommodation,

(d) the date on which the accommodation was made available to him, and

(e) which function under this Part the authority was discharging in securing that the accommodation is available for his occupation.

(4) The notice must be in writing, and must be given before the end of the period of 14 days beginning with the day on which the accommodation was made available to the applicant.

27. *Section 213* of the *HA 1996* deals with co-operation between relevant housing authorities and bodies:

(1) Where a local housing authority—

(a) request another relevant housing authority or body, in England, Wales or Scotland, to assist them in the discharge of their functions under this Part, or

(b) request a social services authority, in England, Wales or Scotland, to exercise any of their functions in relation to a case which the local housing authority are dealing with under this Part,

the authority or body to whom the request is made shall co-operate in rendering such assistance in the discharge of the functions to which the request relates as is reasonable in the circumstances.

(2) In subsection (1)(a) "relevant housing authority or body" means—

(a) in relation to England and Wales, a local housing authority, a new town corporation, a registered social landlord or a housing action trust;

(b) in relation to Scotland, a local authority, a development corporation, a registered housing association or Scottish Homes.

Expressions used in paragraph (a) have the same meaning as in the Housing Act 1985; and expressions used in paragraph (b) have the same meaning as in the Housing (Scotland) Act 1987.

(3) …

28. *Section 213A* was inserted into the *HA 1996 Act* by the *Homelessness Act 2002* ("the *2002 Act*"), requiring housing authorities to have arrangements in place to ensure that

the relevant social services authorities are made aware of cases where the housing authority are dealing with an application from an applicant whose household includes a child under 18, and the authority have reason to believe that they may be homeless (or threatened with homelessness) intentionally. *Section 213A(5)* placed a new duty on the housing authority to provide advice and assistance to the social services authority, where the latter are aware of the situation of the intentionally homeless family

> "… and the social services authority ask for assistance in the exercise of their functions under *Part 3* of the *Children Act 1989*." (reference para.36 of the Explanatory Notes to the *2002 Act*).

Section 213A provides therefore the arrangements for co-operation in certain cases involving children:

> (1) This section applies where a local housing authority have reason to believe that an applicant with whom a person under the age of 18 normally resides, or might reasonably be expected to reside—
>
> > (a) …;
> >
> > (b) may be homeless and may have become so intentionally; or
> >
> > (c) may be threatened with homelessness intentionally.
>
> (2) A local housing authority shall make arrangements for ensuring that, where this section applies—
>
> > (a) the applicant is invited to consent to the referral of the essential facts of his case to the social services authority for the district of the housing authority (where that is a different authority); and
> >
> > (b) if the applicant has given that consent, the social services authority are made aware of those facts and of the subsequent decision of the housing authority in respect of his case.
>
> (3) Where the local housing authority and the social services authority for a district are the same authority (a "unitary authority"), that authority shall make arrangements for ensuring that, where this section applies—
>
> > (a) the applicant is invited to consent to the referral to the social services department of the essential facts of his case; and
> >
> > (b) if the applicant has given that consent, the social services department is made aware of those facts and of the subsequent decision of the authority in respect of his case.

(4) Nothing in subsection (2) or (3) affects any power apart from this section to disclose information relating to the applicant's case to the social services authority or to the social services department (as the case may be) without the consent of the applicant.

(5) Where a social services authority—

(a) are aware of a decision of a local housing authority that the applicant is ineligible for assistance, became homeless intentionally or became threatened with homelessness intentionally, and

(b) request the local housing authority to provide them with advice and assistance in the exercise of their social services functions under Part 3 of the Children Act 1989,

the local housing authority shall provide them with such advice and assistance as is reasonable in the circumstances.

(6) A unitary authority shall make arrangements for ensuring that, where they make a decision of a kind mentioned in subsection (5)(a), the housing department provide the social services department with such advice and assistance as the social services department may reasonably request.

(7) In this section, in relation to a unitary authority—

- "the housing department" means those persons responsible for the exercise of their housing functions; and
- "the social services department" means those persons responsible for the exercise of their social services functions under Part 3 of the Children Act 1989.

29. In *R(G) v London Borough of Barnet (& others)* [2003] UKHL 57, [2004] 2 AC 208 ("*R(G) v Barnet*"), Lord Hope described the effect of this provision (*section 213A HA 1996*) thus (at [44]):

> "… in these cases the local housing authority must ensure the local social services authority is made aware of the case, if the applicant agrees. Then, if the social services authority requests the housing authority to provide advice and assistance in exercise of its functions under *Part III* of the *Children Act 1989*, the housing authority is obliged to provide the social services authority 'with such advice and assistance as is reasonable in the circumstances'. In the case of a unitary authority the housing department must provide the social services department with such advice and assistance as the social services department may reasonably request".

30. The 'Homelessness Code of Guidance for Local Authorities', published in 2006 by the Department for Communities and Local Government, and to which the Defendants in this case were obliged to have regard when exercising their functions relating to homelessness and the prevention of homelessness (see *section 182* of the *HA 1996*) contains this guidance [5.13]:

> "*Section 213A* applies where the housing authority has reason to believe than an applicant with whom a person under the age of 18 resides, or might normally be expected to reside, may be ineligible for assistance, or homeless, or threatened with homelessness, intentionally. Housing authorities are required to have arrangements in place to ensure that all such applicants are invited to agree to the housing authority notifying the social services authority of the essential facts of their case. This will give social services the opportunity to consider the circumstances of the child(ren) and family and plan any response that may be deemed by them to be appropriate".

And [5.16]:

> "Children and young people should not be sent to and fro between different authorities (or between different departments within authorities). To provide an effective safety net for vulnerable young people who are homeless or at risk of homelessness, housing and social services will need to work together."

Further in relation to the person with a priority need who is found to be eligible but homeless intentionally and therefore caught by *section 190(2)* (see [25] above), [13.4] and [13.5] of the Guidance provides:

> "… there is a possibility that situations could arise where families may find themselves without accommodation and any prospect of further assistance from the housing authority. This could give rise to a situation in which the children of such families might become children in need, within the meaning of the term as set out in *s.17* of the *Children Act 1989***".**
>
> "In such cases, it is important that local authority children's services are alerted as quickly as possible because the family may wish to seek assistance under *Part 3* of the *Children Act 1989*, in circumstances in which they are owed no, or only limited, assistance under the homelessness legislation. This will give local authority children's services the opportunity to consider the circumstances of the child(ren) and family, and plan any response that may be deemed by them to be appropriate."

31. Turning now to the provisions of *Part III* of the *CA 1989*, the key provision for present purposes is *section 17*, the relevant parts of which are set out below:

> *Provision of services for children in need, their families and others.*
>
> (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; and
> >
> > (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
>
> by providing a range and level of services appropriate to those children's needs.
>
> (2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
>
> (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.
>
> (4) …
>
> (4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by 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 those services; 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.
>
> (5) Every local authority—
>
> > (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which "it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B and
> >
> > (b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

(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.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) …

(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,

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.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

- "development" means physical, intellectual, emotional, social or behavioural development; and
- "health" means physical or mental health.

32. *Section 17* is to be read with *Schedule 2, Part 1* which contains the following:

Para.1(1): "Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area…"

Para.3(1): "Where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at the same time as any assessment of his needs …"

> Para.4(2): "Where a local authority believe that a child who is at any time within their area – (a) is likely to suffer harm; but (b) lives or proposes to live in the area of another local authority they shall inform that other local authority."

33. The "spurious" clarity of *section 17* (see King LJ in *R(J) v Worcester County Council (Equality and Human Rights Commission Intervening)* ("*R(J) v Worcester*") [2014] EWCA Civ 1518, [2015] PTSR 127 @ [30]) has necessitated multiple attempts at its construction over the years. There are very many cases in which judges have had cause to consider this section. Among the relevant cases considered in argument in the presentation of this application are *Pulhofer v Hillingdon LBC* [1986] AC 484; *R v Northavon District Council, ex p Smith* [1994] 2 AC 402, [1994] 3 All ER 313, [1994] 3 WLR 403 ("*Northavon ex p Smith*"); *R (on the application of Stewart) v LB Wandsworth, LB Lambeth, LB Hammersmith & Fulham* [2001] EWHC Admin 709 ("*Stewart*"); *R(M) v LB Barking & Dagenham, Westminster Cty Council* [2002] EWHC 2663 (Admin) ("*R(M) v Barking & Dagenham*"); *R(G) v Barnet* (see above); *R(A) v LB Croydon (Secretary of State for the Home Department), R(M) v LB Lambeth* [2009] UKSC 8, [2009] 1 WLR 2557 ("*R(A) v Croydon*"); *R(G) v Southwark LBC* [2009] 1 WLR 1299 ("*R(G) v Southwark*"); *R(VC) v Newcastle City Council, R(K) v Newcastle City Council* [2011] EWHC 2673 (Admin) [2012] 2 All ER 227 ("*R(VC) v Newcastle*"); *R(HA) v LB Hillingdon & Others* [2012] EWHC 291 (Admin) (*"R(HA) v Hillingdon*); *R(MK) v LB Barking & Dagenham* [2013] EWHC 3486 (Admin), ("*R(MK) v LB Barking & Dagenham*"); *R(J) v Worcester* (see above), together with *R(Westech College) v Secretary of State for the Home Department* [2011] EWHC 1484 (Admin), and the *London Child Protection Procedures Guidance* (5th edition: 2015) (although it was the 2013 edition in force at the time of the events giving rise to this claim). While not intending to produce a complete review of relevant judicial analysis, it seems to me that the following key points emerge from the authorities:

The nature of the duties

i) *Section 17* imposes general and overriding duties on local authorities to maintain a level and range of services sufficient to enable the authority to discharge its functions under *Part III* of the *CA 89*: see *R(G) v Barnet* at [20-21]/[79-85]/[91]/[106];

ii) *Section 17* does not of itself generate a targeted, specific duty to an individual child: *R(G) v Barnet* at [113];

iii) *Section 17* and *Schedule 2, para.1* and *para.3* together create a duty on the authority to assess the needs of each child who is found to be in need in their area: *R(G) v Barnet* at [32]/[77]/[110]/117]; *R(VC) v Newcastle* at [21];

iv) *Section 17* does not impose a duty to provide services, or accommodation: *R(G) v Barnet* at [85]/[93]/[106]/[135]: "a child in need … is eligible for the provision of those services, but he has no absolute right to them" [85]; *R(VC) v Newcastle* at [21] and [27];

v) Any refusal to provide assessed services under *Part III* of the *CA 1989* is amenable to challenge by way of judicial review: *R(VC) v Newcastle* at [25];

in this respect, discretionary statutory powers must be exercised to promote the policy objectives of the statute: *Padfield V MAFF* [1968] 1 All ER 694 at 699, and *R(J) v Worcester* at [47]; where there is an assessed need for services, any decision not to provide services will be subject to "strict and … sceptical scrutiny": *R(VC) v Newcastle* at [26];

vi) In relation to the provision of housing/accommodation to a child in need, there is a specific and separate statutory code; although the local authority has the power to provide accommodation to a family under *section 17*, social services departments should not be converted into quasi-housing departments; *section 17* is primarily designed to accommodate homeless children, not homeless families; in short, *section 17* should not be construed in such a way as to "drive a coach and horses through the housing legislation": *R(G) v Barnet* at [45-47]/[93]/[138];

vii) *Section 1* of the *Localism Act 2011* ("a local authority has power to do anything that individuals generally may do") was not intended to be used to override a clear statutory scheme, including that set out in *Part III* of the *CA 1989* in relation to provision of services; it can however be used by local authorities to enter into contracts or leases: *R(MK) v LB Barking & Dagenham* at [84/85].

Who is a 'child in need'?

viii) The identification of a 'child in need' engages a number of different value judgments, to be determined by asking a range of questions such as "what would be a reasonable standard of health or development for this particular child? How likely is he to achieve it? What services might bring that standard up to a reasonable level?" etc: *R(A) v Croydon* at [26]; in the context of providing services, these evaluative questions are better determined by the public authority, subject to the control of the courts by way of judicial review (though see (ix) below); there are no right or wrong answers (ibid);

ix) Assessment of the facts (i.e. whether a child is 'in need') is not readily susceptible to judicial review; where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power: *Pulhofer v Hillingdon LBC* at p.518;

x) A child without accommodation is a child in need: *Northavon ex p Smith* at [p.406], *R(G) v Barnet* at [19];

xi) Where there is a dispute of fact (i.e. on the issue of whether a child is a child in need) in judicial review proceedings, in the absence of cross-examination, the facts in the defendants' evidence must be assumed to be correct (*Westech* at [27]).

On whom does the duty to assess arise?

xii) The duty is placed on the authority in which the 'child in need' is physically present; the key words of the operative section (*section 17(1)*) particularly when read with *paragraph 4(2)* of *Schedule 2* are "within their area": *Stewart* at [23]; *R(M) v Barking & Dagenham* at [15]; (although Bean J in *R(HA) v Hillingdon* contemplated something other than a "simple geographical test" in order to avoid the 'dumping' cases, he does not state what that is);

xiii) More than one local authority can owe a duty to assess under *section 17* to the same child in need who may be physically present in their area, at the same time: *Stewart* at [30] (in that case the children attended school in LB Wandsworth and resided in LB Lambeth; both were judged to owe a duty to assess); *R(J) v Worcester* at [13].

Co-operation between authorities

xiv) Where more than one local authority is involved in assessing a child in need or offering services, it is essential that they should co-operate with each other and share the burdens: *Stewart* at [28]; *R(M) v Barking & Dagenham* at [17];

xv) The basic principle that the duty is owed by the authority of the area in which the child is physically present will not generally operate unfairly against one particular authority; the 'traffic' is not all one way: *Stewart* at [30];

xvi) There should be no passing the child "from pillar to post" while the authorities argue about where he comes from: *R(G) v Southwark* at [28(3)]; needs should be met first and redistribution of resources should if necessary take place afterwards (*R(M) v Barking & Dagenham* [17]);

xvii) Specifically in London, local authorities are required under Guidance to "develop and support a culture of joint-responsibility and provision for all London children (rather than a culture of 'borough services for borough children')" (*London Child Protection* Procedures: 6.*1.2*)

On whom does the power to provide services fall?

xviii) There is a power in the local authority to provide services to a child in need who was physically present in its area at the time of the assessment, but who had moved outside its area at the time of provision: *R(J) v Worcester* at [31];

Where there is uncertainty, how should section 17 be construed?

xix) *Section 17* should be construed in a way which advances the core aims to promote the welfare and best interests of children in need: *R(J) v Worcester* at [47];

xx) *Part III* of the *CA 1989* was intended to reflect the obligation in *article 18(2)* of the *United Nations Convention on the Rights of the Child* to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of facilities and services for the care of children; see *R(G) v Barnet* at [68].

34. The expectation of co-operation (see [4](ii)/(iii) above) and the obligation on a local authority to discharge its functions in accordance with the core aims of the *CA 1989* is re-inforced by *section 10(1)/(2)* and *section 11(1)/(2)* of the *CA 2004* so that each children's social services authority and housing authority must make arrangements to ensure that their functions are discharged co-operatively having regard to the need to safeguard and promote the welfare of children in their area.

35. One further, non-statutory, legal principle is engaged on these facts, on which I have heard argument. It is trite law that once a public law duty has been engaged (i.e. such as a duty to assess), it is incumbent upon the authority on whom the duty is placed to act reasonably in discharging that duty; where the duty on the authority changes (by virtue for instance of a change of the law, or a change of specific circumstance - i.e. the family moves from one local authority area to another), the authority remains under a duty to act reasonably and rationally in discharging or relinquishing its duties (see *R v Secretary of State for the Environment ex parte Shelter* [1996] (Aug 23) (unreported), and *R v Newham LBC ex p Ojuri (No.5)* [1998] 31 H.L.R. 631 at 637). Therefore, where (as here) a local authority has commenced a child in need assessment, it is under a public law obligation in my judgment to act reasonably in deciding whether to complete it, where the legal obligation on that authority has changed (or is assessed to have changed). In such circumstances, the relevant local authorities in relation to whom the burden falls should liaise over who should complete the assessment, and how it should best be done, to avoid duplication of effort while ensuring that the child does not 'fall between two stools'. Quite apart from this public law duty to act reasonably, there is much to be said in terms of practicality and urgency for the first (originating) authority completing the assessment (see Crane J in *R(M) v Barking & Dagenham LBC* (above) at [18] and [21]). On the separate but linked point of the originating authority having the power to provide *services* to a child in a receiving authority after assessment, see *R(J) v Worcestershire CC* at [32].

The claims

36. The Claimant asserts that LB Havering was and is primarily responsible for assessing the children as 'children in need' under *section 17* of the *CA 1989* as the area in which the children are physically present. He further claims that the LB Havering failed in its duty to provide suitable interim accommodation pending the outcome of the assessment, and failed to provide a response to the need for assessment in a timely way (in accordance with the guidance in *Working Together (March 2013*)). He contends that the purpose of *section 213* and *section 213A* would be defeated if an authority to whom a referral is made had no duty then to assess.

37. In response, LB Havering essentially make three points:

    i) The children of AM did not appear to be 'children in need';

    ii) If, contrary to (i), they were children in need, they were the responsibility of LBTH, having been physically present in that area when the family travelled back to LBTH to be interviewed at the Shadwell Family Centre on the 6 June 2014 for the purposes of the first Child in Need assessment (see [11] above);

iii) *Section 213A* of the *HA 1996* (read together with *section 190 HA 1996* and *section 10 & 11* of the *CA 2004*) required LBTH housing to refer the family to LBTH CSC, who in turn had a duty to undertake the assessment and/or provide services. *Section 213A* has effectively overruled the effect of *Stewart*. This, they maintain, is consistent with the London Child Protection Procedures guidance (5th Edition: 2013).

38. In relation to LBTH, the Claimant contends that the CSC of LBTH:

i) Failed, timeously or properly, to engage with the referral made to it by its housing authority, under *section 213A* of the *HA 1996* in June 2014. As indicated above, nearly a month (2 June – 1 July 2014) went by before an assessment visit was made to the family by a CSC social worker;

ii) Unlawfully abandoned the assessment which had commenced on 1 July on the following day;

iii) Failed to extend the temporary accommodation for AM and his family under *section 190(2)* of the *HA 1996* while the dispute with LB Havering was resolved, having regard to its duties under *section 11* of the *Children Act 2004*;

iv) Failed to give notice (supported by basic information about AM's household) to LB Havering promptly when AM and his family moved to their area on 2 May 2014 (*section 208(2)/(3)* of the *HA 1996*).

39. LBTH, which has filed no evidence in this claim, describes the claim as "specious". It denies having acted unlawfully; it attempts to place the responsibility for the family squarely on LB Havering, under the provisions of *section 17* of the *CA 1989*.

Discussion

40. When intentionally homeless applicants fall within a priority-need category, the housing authority is under a duty to provide them with short-term accommodation, for as long as is necessary to afford them a reasonable opportunity to find accommodation of their own. The homelessness legislation often, as here, dovetails with the children in need legislation in respect of these families. Problems arise where, as here, the family crosses local authority boundaries while the duties are being discharged.

41. On these facts, in the period up to early 2014, the dual statutory responsibilities for housing (under the *Part VII HA 1996*) and assessment of need (under *Part III CA 1989*) fell on LBTH. For a brief period in early 2014, the duty under *CA 1989* passed to LB Haringey, when the family moved there. When AM's family moved home again on 2 May 2014, the duty to assess the family as a family with 'children in need' fell upon LB Havering, as this was the area "within" which the children were physically present. The law in my judgment is, in this respect, clear.

42. Simultaneously, and on the unusual facts of this case, a duty remained with LBTH after 1 July 2014 to assess the children as children in need; this arose for the reasons spelt out above (at [35]); a public law duty arose on LBTH by virtue of it having commenced an assessment of AM's children as 'children in need', to complete that

assessment. LB Havering did not, and does not, however, avoid its statutory responsibility because its neighbouring authority (LBTH) had owed a duty on which it had defaulted; in any event, after a period of time it almost certainly ceased to be 'practical' for LBTH to resume that assessment (per Crane J in *R(M) v Barking & Dagenham LBC*). I reject LB Havering's argument that the duty under *Part III* of the *CA 1989* remained solely with LBTH because LBTH had requested the family to return to its area on one occasion (i.e. to the Shadwell Family Centre on 6 June 2014) for the purposes of assessment, and had for that short period (of perhaps a few hours) the family had been "within the area" of LBTH. This argument is misconceived for two reasons:

i) The family were at that point living (albeit in temporary housing) 'within the area' of LB Havering; the decision in *Stewart* makes abundantly clear the possibility of two (or more) authorities having simultaneous *Part III CA 1989* responsibility for a child in need; and

ii) While the provision of education for a child in another area generates a duty on the authority where the school is located (the position of LB Wandsworth in *Stewart*) it would in my judgment cause considerable confusion if the duties imposed by *Part III* were deemed to hang on such a tenuous thread as a brief visit (even if by request) to attend an appointment in the area of the originating authority (which, on Mr. Knafler QC's submission may have even been for a purpose unconnected with assessment).

43. Nor was LB Havering entitled to avoid responsibility by claiming that the family had remained 'ordinarily resident' in the originating authority area (see 7 July 2014 letter: [17] above); in this respect, it appears to have confused *Part III CA 1989* responsibilities with those which arise, for instance, under *section 21* of the *National Assistance Act 1948*.

44. The statutory threshold, across which the obligation on a local authority to assess a child in need arises, is a relatively low one: i.e. "where it appears to a local authority that…" (*Schedule 2, para.3 CA 89*). While acknowledging the broad spectrum of discretion afforded to professionals exercising their judgment on the ground when assessing a child in need (ranging from the obvious to the debatable to the just conceivable: see [33](ix) above), LB Havering's conclusion on 22 July 2014 (see [19] and [20] above) that these children did not cross that threshold was in my judgment unsustainable given that (in combination):

i) A referral had been made to LB Havering CSC from LBTH (albeit appallingly late in the day); where referrals have been made to CSC, "the child should be regarded as potentially a child in need, and the referral should be evaluated on the day of receipt" (London Child Protection Procedures: 2.4.2);

ii) LB Havering acknowledged that "potential safeguarding concerns" arose in relation to the family, necessitating a MASH enquiry (4 July);

iii) Homelessness in itself is a cause for finding that a child is a child in need (see *Northavon ex p Smith* above);

iv) There were various characteristics of this family plainly pointing to a finding that these were children in need, which had been elicited in the separate introductory assessment sessions undertaken by SW1 and SW2 in LBTH; these included (but were not limited to) the mother's appearance of depression, the history of alleged domestic violence, the older child's history of encephalitis and epilepsy, the age of the younger child (see SW1's assessment on 2 June: [11] above); the fact that AM's wife was not finding it easy to cope, and was "not sleeping or eating well" should have been known to LB Havering as it was specifically referred to in the referral letter from LBTH of 2 July 2014 (see [14](vi) above);

v) LB Havering's own 'Inter-Agency' guidance identifies (among a number of relevant factors) in its 'Tier 3' category (identified as 'High or Complex': 'Threshold for Children in Need'), those children where (a) a 'Child has chronic health problems', (b) where there is a record of 'standard/medium' risk of domestic abuse where the child(ren) has/have been in the home at the time of the incident', and (c) where there is a 'homeless child in need of accommodation… / … family at risk of eviction having already received support from Housing Services'; even though these are given as "illustrative examples" only, it is not insignificant that this family's history corresponds with three different criteria;

vi) LB Havering's duty social worker (SW3)'s recorded view on 2 July 2014 was that if the homelessness "became apparent" (sic.) "consideration for an assessment to be carried out under *section 17*" (see [14](iv) above).

45. On the information available to LB Havering on 2 July it would surely have 'appeared' that AM's children were children in need. Even if that were not so, surely as soon as the additional information was available from LBTH (12 August 2014), this would in my judgment have put the question beyond doubt. SW4's second witness statement (filed in February 2015, i.e. well after 12 August 2014) does not acknowledge either possibility. The factors which I have outlined at [44] above are so stark that in reaching a different conclusion on what is, as I have said, a low threshold, LB Havering must have either "taken into account matters which they ought not to take into account" (I mention here that SW4's statement appears infused with the belief that the duty was only owed by LBTH not by them), or, conversely, "have refused to take into account or neglected to take into account matters which they ought to take into account" or otherwise have reached a conclusion which is unreasonable in a *Wednesbury* sense (*Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223) that is to say, "so unreasonable that no reasonable authority could ever have come to it" (per Lord Greene MR). It follows that LB Havering's conclusion that these children did not appear to be 'in need' cannot in my judgment stand.

46. The CSC of LBTH had assumed a duty to assess the family prior to the withdrawal of the temporary accommodation. SW2 had conducted a first assessment visit to the family on 1 July 2014; it is quite obvious that she planned to return to continue her assessment with an interpreter, having indeed explicitly told the family that she would do so. Even though there was no ongoing duty on LBTH to assess the family once it had left its area, it was nonetheless, in my judgment, an inexcusable failure of good social work practice to 'wash its hands' of the family in this way; continuity of social

work involvement and practice best meets the obligations under statute and is indeed the most cost-efficient. While it is clear that by this time no statutory obligation fell on LBTH to assess the family, by reference to the public law principles outlined in [35] (and mentioned again at [42]) above, it was only reasonable that the authority should continue and complete its assessment, or at the very least offer to LB Havering that it should do so, if necessary on LB Havering's behalf (see *ex parte Shelter* and *ex parte Ojuri No.5* above). The culpability of LBTH in failing to act reasonably in this regard was significantly aggravated in my judgment by:

i) Giving extremely late notice under *section 208(2)/(4)* and *section 213(2)* of the *HA 1996* to LB Havering of the existence of the family in its area (i.e. not within 14 days of the provision of the accommodation as required by statute, and in any event on the eve of the termination of the accommodation); this late notice was itself unlawful and contrary to the statutory objectives of *section 213* and *section 213A* of the *HA 1996*;

ii) Failing to give relevant documentation/information to LB Havering for many weeks after the initial request until 12 August 2014 (after these proceedings had been launched) as required of them by statute (*section 208(3)* of the *HA 96*);

and

iii) Giving obviously misleading information about its involvement with the family at the point of referral on 2 July 2014 (SW2's manager to SW3) (see [14](ix) above).

Had a true picture been given in good time, there is a real possibility that many of the problems encountered by AM and his family would have been avoided.

47. As the authorities reviewed above reveal, duties can fall under *section 17* of the *CA 1989* and under the *HA 1996* upon more than one authority at the same time (see *Stewart* at [28]). I do not accept Mr. Knafler's argument that *section 213A* has had the effect of overruling *Stewart*, creating a self-contained regime for the determination of responsibility towards intentionally homeless families (I note, incidentally, that no party in the case of *R(J) v Worcester* sought to challenge the long-standing *ratio* of *Stewart*). On the contrary, *section 213A* creates a regime for:

i) A housing authority to refer the family to a social services authority or CSC of the district of the housing authority (where that is different), or the social services authority of the same authority (if it is a unitary authority) (*section 213A(2)/(3)*);

And for:

ii) A housing authority to provide the social services authority 'with such advice and assistance as is reasonable in the circumstances' to enable that social services authority to fulfil its obligations under *Part III* of the *CA 1989.*

Section 213A does not abrogate, or in any other way detract from, the duties which are imposed on that authority, and powers exercisable by the authority, under *Part III* of

the *CA 1989*; it complements them. As the Homelessness Code of Guidance indicates at 5.13 (see [30] above) this gives social services the opportunity to consider the circumstances of the child(ren) and family and plan any response that may be deemed by them to be appropriate; para.13.8 of the Homelessness Code makes the additional crucial point that:

> "Where a family with one or more children has been found ineligible for assistance under Part 7 or homeless … intentionally and approaches the social services authority, that authority will need to decide whether the child is a 'child in need' under the terms of the *Children Act 1989*, by carrying out an assessment of their needs…".

48. As I have earlier indicated, numerous judges before me have called on local authorities to co-operate in their discharge of functions in respect of the vulnerable and needy; it appears that these exhortations continue in some quarters at least to fall on deaf ears. Judicial encouragement to good practice is underpinned by statutory expectation (see generally *section 11* of the *CA 2004*, and specifically in relation to the requirement for prompt notification: *section 208* and *section 213 HA 1996*). Regrettably the financial implications on receiving authorities of accepting responsibility for those with needs prove to be a significant deterrent to demonstrable good practice. Statutory duties have not been designed, or interpreted, to operate in insulated silos, nor should they be discharged in this way. Even though local authorities have wide powers to act in the best interests of children (see the *Localism Act 2011*, and the *section 11* of the *CA 2004*), they sometimes fail to do so. This is one such lamentable example, with the effect that the children were pushed from 'pillar to post' (see [33](xvi) above, and *R(G) v Southwark* at [28(3)]). Indeed, the strategy which each authority adopted on 2 July 2014 (rehearsed extensively at [14] above) to avoid responsibility for AM and his family was shameful.

49. Although I conclude that the primary responsibility for assessing the children as children in need fell on LB Havering, which also had the power to accommodate them, it seems to me that the primary duty to provide short-term housing for AM and his family continued to fall on LBTH under the provisions of *Part VII* of the *HA 1996*, notably *section 188* and/or *section 190(2)(a)* (ibid.). This conclusion is consistent with the provisions of the agreed (2013) *London Child Protection Procedures* which specifically provides for housing provision to remain the responsibility of the originating authority until it is resolved, even where the receiving authority may become responsible for other parts of service delivery (see para.6.1.5 and para.6.4.3, which is in complementary terms). As indicated above, neighbouring London or other metropolitan councils should take steps to devise plans and contingencies for such situations, which are said not to be uncommon and perhaps to share the cost of funding pending the resolution of such disputes as they arise (see *A v Leicester City Council & London Borough of Hillingdon* [2009] EWHC 2351 (Admin) at [51]).

Conclusion

50. I have set out my essential conclusions at [3] above.

51. For the reasons discussed above, I propose to declare that LB Havering's failure to assess the needs of AM's two children was unlawful; I shall further quash its refusal to assess the needs of the children.

52. I propose further to declare that LBTH breached its statutory duty by failing to give notice to LB Havering that the family had been placed in its area as required by *section 208* of the *1996 Act* and later by failing to make a lawful referral to LB Havering as a relevant children's services authority. LBTH further failed to secure that accommodation was available for AM and his family pending the assessment of needs by LB Havering.

53. I shall deal separately with the claims as between the Defendants as to re-imbursement for the cost of interim accommodation during the currency of these proceedings.

54. That is my judgment.