Neutral Citation Number: [2010] EWHC 907 (QB)

Case No: CO/1598/2010

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/04/2010

Before :

Mr Justice McCombe

- -

Between :

The Queen (on the application of TG)	**Claimant**
- and -	
London Borough of LAMBETH	**Defendant**

- -
- -

James Presland (instructed by **Steel & Shamash**) for the Claimant
Hilton Harrop-Griffiths (instructed by **Lambeth Legal Services**) for the Defendant

Hearing dates: 16 and 19 April 2010

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Judgment

Mr Justice McCombe:

(A) Introduction

1. This is a claim for judicial review of "the refusal of the Defendant to deal with the Claimant as a "former relevant child" for the purposes of leaving care support": see Section C of the Claim Form. The phrase "former relevant child" is an expression derived from section 23C(1) of the Children Act 1989 ("CA 1989"). If the Claimant, who will become 21 years old on 30 April 2010, is a "former relevant child" he may be entitled to additional services, principally described in the ensuing subsections of section 23C, from the Defendant, up to the age of 24. Whether he is such a child or not depends on whether he was at any relevant time a "looked after child" within the meaning of section 22 of CA 1989. This in turn depends crucially upon the functions that the Defendant was exercising when it provided the Claimant with accommodation at 21 Effra Road, London SW2 in March 2006 when he was 16 years old.

2. The relevant area of CA 1989 has been the subject of two recent decisions of the House of Lords in 2008 and 2009. Those decisions were in the cases of *R (M) v Hammersmith and Fulham LBC* [2008] 1 WLR 535 ("*M*") and *R (G) v Southwark LBC* [2009] 1 WLR 1299 ("*G*"). As it seems to me this case turns on whether it is more of an "*M* type case" than a "*G* type case" or vice versa.

(B) Background

3. The Claimant was born on 30 April 1989. He was initially brought up by his father in Jamaica until about the age of 6 when he came into the care of his mother in this country. His father died in violent circumstances in Jamaica in January 2004. Until March 2006, the Claimant lived with his mother. However, he had fallen by then into criminal habits and cannabis abuse. He came, therefore, to the attention of the Youth Offending Team ("YOT") of the Defendant. On 6 April 2005 he was sentenced to a supervision order with an intensive supervision surveillance plan and remained the subject of the attention of the YOT. The "Case Diary" relating to him between February 2004 and April 2007 has been before the court. During that time he saw some eight social workers attached to the YOT.

4. Because of his continued offending, the Claimant's relationship with his mother became strained. From the Case Diary it seems that from about August 2005, the Claimant was looking for ways in which he might be housed somewhere away from his mother. On 17 August 2005 there is recorded a contact by the YOT with an organisation dealing with substance abuse stating that the Claimant was homeless and asking for a letter from the YOT for him to take to the Defendant's homeless persons unit ("HPU") in its housing department. The subject was taken up with the Claimant at a meeting between his responsible YOT officer, a Ms Redmond, when the Claimant told the officer that his mother wanted him to leave home. It appeared that this was contrary to what his mother herself had said at an earlier review meeting. He was invited to get his mother to write stating her wishes and that it might be that he would be re-housed if she refused to have him back. By 5 September it appears that the Claimant had changed his mind about wanting re-housing. However, for 22 September there is a note of Ms Redmond being contacted by a representative of a charitable support organisation, called "Home and Away", to whom the Claimant had again been saying that he was homeless and had been staying with friends for the past few weeks. Ms Redmond told her contact that the Claimant should provide a letter from his mother stating that she wanted him to leave and that Ms Redmond would then contact the mother about it. Ms Redmond notes that she contacted the mother that day and was told that she (the mother) had not thrown him out and that he had been sleeping at home every night. On 23 September, it seems that the Claimant again told Ms Redmond that his mother would be writing to say that she wanted him to leave her house. Ms Redmond told him that on receipt of such a letter she would assist him.

5. For 26 September 2005, the diary records that the Claimant had telephoned to say that he had a letter from his mother. He had said that he was bringing it to Ms Redmond. The diary then records a telephone conversation with the Claimant's mother who said that she had written a letter to say that he was staying with a friend; she was not "kicking him out" and he was "giving her alot [sic] of stress to write the letter" and that she had done what he had asked "under pressure" under coaching from a "project worker" whose name she did not know. It is then recorded that the Claimant arrived with the letter. The letter (which survives) is in the following terms:

> "To whom it may concern:
>
> Dear Sir/Madam,

> This letter is to confirm that [T]…[G] is not living at home with me from the 8th of August. He is being staying with a friend.
>
> Due to [T] behaviour and always getting in trouble with the police our relationship has been deteorated [sic], and [T] has move out. … "

He said to Ms Redmond that he was living with a friend. The note records the claimant being told to return the following day to discuss his housing situation further.

6. There is no note on the case diary thereafter until 6 October 2005. In that note housing is not mentioned. Nothing further is said on the subject until 24 November when it seems that the Claimant was again asking for a letter of support from the YOT to take to the HPU.

7. In December 2005 Ms Redmond was replaced by a Ms Gladys Acquah as the social worker on the YOT responsible for the Claimant's case. On 6 January 2006 Ms Acquah reported that the Claimant was saying that all was well and that he had an appointment with the HPU on 17 January; it seems he had with him a letter from his mother, but this letter has not been produced in these proceedings. On 17 February there is a further note of contact with Ms Acquah stating that she had been told by the Claimant that he needed to leave home "as he was not getting along with his mother. This seems to be his main focus. Said he needed vulnerability assessment to be completed so he could take [it] to HPU". Ms Acquah noted that she had informed the Claimant about the procedures at the HPU and that she would speak to his mother.

8. Nothing then is recorded until 2 March 2006 when it seems that the Claimant came in again to see Ms Acquah who noted this time that the Claimant said that he was going to the HPU "tomorrow" and therefore required the assessment letter. It is noted that the Claimant was told that contact was yet to be made with his mother and that he should "attend the YOT tomorrow morning to collect the letter".

9. The next day is an important one in the case. Ms Acquah did then complete a "Homelessness and Social Vulnerability Report" ("the Report") on the Claimant. The diary note for that day records this:

> "[T] came in
>
> - T/C to his mother
> - She indicated that [T] has been forcing her to give him a letter to the HPU
> - That she did not particularly wish him to leave home but since he is insisting, he can leave but there will be no return
> - She wanted this to be explained to him
> - That they had a big argument last night all because of the writing of this letter
> - His mother seems to be at the end of her tether

> - GA spoke with [T] and explained his mother's feelings to him
>
> - He did not seem to take it on board but he soon will
>
> - He was given the letter to take to the HPU
>
> - Next appointment is 10.3.06 @ 2 pm "

The "letter" there referred to seems to have been the Report, which is dated that day.

10. The Report is headed "Homelessness and Social Vulnerability Report. To be completed by the Youth Justice Team". The first section is entitled "Reason for homelessness and accommodation history"; it reads as follows:

> "I understand that the relationship between [T] and his mother has broken down to the point that it is not advisable that they both live in the same household.
>
> [T] has been living with his mother since the age of 9. His mother emigrated from Jamaica when [T] was quite young and was looked cared for [sic] by his father.
>
> The relationship between his parents has since broken down. However, his father passed away sometime ago."

The next section headed "Details of any periods in Care/Looked After"; this states "No". Details of family contacts are given and a brief summary of the Claimant's contacts with the YOT. Towards the end of the three page document it is said that the Claimant was able to fend for himself, but in the final section before the signature, under the heading "Other information", it is said that, "This young person is in desperate need of housing and would hope that his housing need is met as he fulfils the Child in Need criteria…".

11. In a draft witness statement of Ms Acquah produced at the hearing, the following appears in respect of her intervention on 3 March 2006:

> "I wrote a referral to Housing for him on the 3rd March and the Homelessness & Social Vulnerability Report. I had concerns about making the referral, however, given what I had been told by his mother. She was clear that the argument the previous night, the pressure being brought to bear on her by the Claimant and the effect on the other siblings in the house was becoming intolerable. I considered the emotional wellbeing of the whole family and that they would be at risk if he stayed in the house. It was not ideal to refer him for alternative housing but he was adamant that this was what he wanted at the time.
>
> I am quite clear that the Claimant did not present as vulnerable in the terms of being at risk of harm from others or at risk of self-harm but he was at risk of further offending. Had I thought he was vulnerable and in need of other services then I would

> have made a referral to CYPS if there were any safeguarding issues. I well recall this case and I am certain that there were no safeguarding issues at the time.
>
> I am well aware of the requirement to refer children to CYPS if they are classified as a 'child in need' requiring the intervention of additional services and I have certainly done so in other cases. In this case it was not necessary and I did not do so."

This statement was not finalised because Ms Acquah was unfortunately taken ill shortly before the hearing. I indicated at the close of submissions that I would admit the statement as hearsay evidence under the Civil Evidence Act if it could not be finalised before the time came for delivery of judgment. I must note, however, that I find the last sentence of the passage from Ms Acquah's draft statement (quoted above) hard to reconcile with what she wrote at the time in March 2006.

12. On 21 March 2006 the Claimant was registered onto the Defendant's "Housing Integrated Computer System" which stated for that day "Authorisation for TA [viz. Temporary Accommodation] PENDING SNAP INTERVIEW ON 28/3/06". ("SNAP" is a reference to the housing department's "Support Needs Assessment and Placement" team.) By 31 March the YOT case diary records the Claimant reporting that he had been accommodated at 21 Effra Road. It is not controversial that he remained in that accommodation, provided by the defendant through the HPU, until he was about 17 ½ years old in late October 2006 when he was granted an assured shorthold tenancy by the South London YMCA. He remained there until 7 October 2009 when he was evicted under a possession order made on 23 September 2009 on the grounds of anti-social behaviour.

13. By virtue of that history, Mr Presland on the Claimant's behalf, contends that the defendant was under a duty to provide accommodation to the Claimant under section 20 of CA 1989 and either did so, because of the intervention of the defendant's YOT social workers, particularly by what was done on 3 March 2006, or was in breach of that duty and must nonetheless be treated as having done so for the purposes of determining the Claimant's entitlements for the future under section 23C of CA 1989.

14. Before turning to the main provisions of the law in this area, it is necessary to say something about the role of the YOT and its position in the Defendant's organisation.

15. Under section 39 of the Crime and Disorder Act 1998 each local authority is under a duty to "establish for their area one or more youth offending teams". Section 39(5) contains provisions as to the membership of the teams and states,

> "A youth offending team shall include at least one of each of the following, namely-…
>
> (aa) where the local authority is in England, a person with experience of social work in relation to children, nominated by the director of children's services appointed by the local authority under section 18 of the Children Act 2004…".

16. The primary responsibility of the YOT is to formulate and to implement for each year a youth justice plan relating to the provision of "youth justice services" and the functions which the YOT is to carry out: see section 40(1) of the 1998 Act. Mr Presland also points out that section 40(3) provides that,

> "The functions assigned to a youth offending team under subsection 1(b) above may include, in particular, functions under paragraph 7(b) of Schedule 2 to the [CA 1989] (local authority's duty to take reasonable steps designed to encourage children and young persons not to commit offences)."

However, it is not shown in this case whether any such functions were formally so assigned.

17. Beneath that broad statutory description of the YOT's functions, it appears that its work "on the ground" is as described in Ms Acquah's draft statement:

> "The purpose of the team is to provide community intervention for young persons sentenced by the court. All the work comes directly from the court. We do not receive referrals from any other source. The court may ask for pre-sentence reports or for us to make recommendations. We are not like the CYPS [sc. "Children and Young People's Services"] where others can make referrals to us. The Court Team see any young persons picked up overnight, prepare bail packages for them and can make suggestions to the Bench. I am part of the next stage after the Court has made a community sentence. My team supervise the young person in the community, providing information and reparation, i.e. paid or unpaid work, group work and addressing specific issues about offending behaviour. Depending on the severity of the young person's offence, he might be on an Intensive Supervision Sentencing Programme ("ISSP") which the Claimant was on at one point, when on 6 April 2005, he was made the subject of a Supervision Order for 12 months and placed on such a programme."

Of course, as the draft statement itself makes clear, the YOT is now a part of one of the "Divisions" within CYPS: see immediately below, paragraph 19.

18. The statutory YOT within the Defendant's organisation is now known as the "Youth Offending Service". Its staff includes social workers, police officers, probation and health officials. It appears from the Defendant's draft evidence that no one has been formally nominated to fulfil the role provided for by section 39(5)(aa) of the 1998 Act, since the Defendant takes the view that it has a number of social workers assigned to the team "so that the requirement is met. The reality is that if social work expertise is required this is sought from the management team": paragraph 4 of Ms Acquah's draft statement.

19. By section 18 of the Children Act 2004 the Defendant was required to appoint a Director of Children's Services ("DCS"). Such an official was appointed by the Defendant in October 2005. The YOT, which had until that time been a part of the

Defendant's Education Department, was then assigned to the Children and Young People's Services department under the responsibility of the DCS. Within that service it is allocated to the "Community Learning Division". In addition there is a "Children and Families Division" dealing with other social services matters affecting children. It appears that social services functions, in the usual sense, were assigned exclusively to the latter Division: see paragraph 26 of the Summary Grounds of Defence.

20. It is stated in the Detailed Grounds of Claim (and not contested) that the Defendant's Youth Justice Plan for 2006-7 included the following passage,

> "Lambeth Youth Offending Team now has a high profile within the Children and Young People's Service and will be key service in the delivery of outcomes for children with the Every Child Matters framework. It will ensure as many young people as possible involved in offending will change direction and reach their true potential."

The plan also stated that the YOT "sits within the Community Learning Division of the Children and Young People's Department". On behalf of the Claimant it is also pointed out that a guide emanating from the central government Department of Education and Skills, entitled *Working Together to Safeguard Children* stated at paragraph 2.116 the following:

> "Given their inter-agency membership, Yots are well placed to identify those children and young people known to relevant organisations as being most at risk of offending, and to undertake work to prevent them offending. A number of the children who are supervised by the Yots will also be children in need, and some of their needs will require safeguarding. It is necessary, therefore, for there to be clear links between youth justice and LA children's social care, both at a strategic level and at a child-specific operational level. "

21. From these (and other) materials, Mr Presland submits that when Ms Acquah, a qualified social worker within the YOT, reported as she did to the HPU in the Report she was exercising a social services function, identifying the Claimant as a "Child in Need" (section 17 of CA 1989) and as being in "desperate need of accommodation". She was, submits Mr Presland, recognising a duty on the Defendant's behalf to accommodate the Claimant under section 20 of CA 1989. That duty, he says, was accordingly fulfilled when the Claimant was accommodated by the Defendant at Effra Road. If it was not so fulfilled, the Defendant cannot benefit from its breach of duty so as to be entitled to refuse future services to the Claimant as a "former relevant child".

(C) The Law

22. As stated above, the Claimant claims to be a "former relevant child" within the meaning of section 23C(1) of CA 1989 and to be entitled accordingly to the continuing functions of the defendant under that section. Section 23C(1) provides as follows:

> "Each local authority shall have the duties provided for in this section towards-
>
> (a) a person who has been a relevant child for the purposes of section 23A (and would be one if he were under eighteen), and in relation to whom they were the last responsible authority; and
>
> (b) a person who was being looked after by them when they attained the age of eighteen, and immediately before ceasing to be looked after was an eligible child,
>
> And in this section such a person is referred to as a "former relevant child"."

23. This throws one back, therefore, to the definition of "relevant child" in section 23A. Section 23A (1) and (2) provides this:

> "(1) The responsible local authority shall have the functions set out in section 23B in respect of a relevant child.
>
> (2) In subsection (1) "relevant child" means (subject to subsection (3)) a child who-
>
> (a) is not being looked after by any local authority;
>
> (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2; and
>
> (c) is aged sixteen or seventeen."

For the purposes of these provisions, section 23A(4) states that,

> "In subsection (1) the "responsible local authority" is the one which last looked after the child."

So it is necessary to find out whether the Claimant was at any stage "looked after" by the Defendant and, if so, was before ceasing to be "looked after" by it, an "eligible child for the purposes of paragraph 19B of Schedule 2" to CA 1989.

24. Paragraph 19B(1) and (2) of Schedule 2 state as follows:

> "(1) A local authority shall have the following additional functions in relation to an eligible child whom they are looking after.
>
> (2) In sub-paragraph (1) "eligible child" means, subject to sub-paragraph (3), a child who-
>
> (a) is aged sixteen or seventeen; and

> (b) has been looked after by a local authority for a prescribed period, which began after he reached a prescribed age and ended after he reached the age of sixteen."

25. The term "looked after" is explained by section 22. Section 22(1) and (2) are in the following terms:

> "(1) In this Act, 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 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."

The prescribed period and prescribed age for the purposes of paragraph 19B(2)(b) are (respectively) 13 weeks and 14 years old: see Children (Leaving Care)(England) Regulations 2001 (SI/2001/2874), regulation 3.

26. It is common ground that the Claimant was never formally in the Defendant's care and was never, therefore, "looked after" by it by virtue of section 22(1)(a). The question is whether nonetheless he was "looked after" by the Defendant by reason of having been "provided with accommodation by it in exercise of any of the functions (in particular those under [CA 1989]) which are social services functions within the meaning of the Local Authority Social Services Act 1970,…" ("LASSA 1970") "…apart from functions under sections 17, 23B and 24B" of CA 1989 for a period of 13 weeks which began after he reached 14 and ended after he was 16.

27. The relevant provision of accommodation would be in exercise of the duty under section 20 of CA 1989 which provides:

> "(1) Every local authority shall provide accommodation for any child in need within their area who appear to them to require accommodation as a result of –
>
> (a) there being no person who has parental responsibility for him;
>
> (b) his being lost or having been abandoned; or
>
> (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care…"

28. It may well be that Ms Acquah decided that the Claimant was a "Child in Need". It appeared to her that he required accommodation and that it was not advisable for him to continue to live with his mother in the same household. It may, therefore, have been her view that "the person who has been caring for him [was] prevented…from providing him with suitable accommodation or care…": section 20(1)(c).

29. He was provided with accommodation by the Defendant at the Effra Road property for a period of more than 13 weeks which began after he reached 14 and ended after he reached 16. The remaining question, therefore, is whether he was so provided with that accommodation by the Defendant in exercise of any functions which are social services functions within the meaning of LASSA 1970, i.e. for these purposes under section 20..

30. LASSA 1970 provides this in section 1A:

> "For the purposes of this Act the social services functions of a local authority are-
>
> (a) their functions under the enactments specified in the first column of Schedule 1 to this Act (being the functions which are described in general terms in the second column of that Schedule), and
>
> (b) such other of their functions as the Secretary of State may designate by order made under this section."

31. The functions in Schedule 1 identified by Mr Presland as potentially relevant for these purposes are (set out as in the Schedule):

"Children Act 1989 The whole Act, in so far as it confers functions on a local authority within the meaning of that Act.	…..Functions under Part III of the Act (local authority support for children and families)";
Children Act 2004, sections 9A, 13 to 16 and 31 to 34	Functions relating to targets for safeguarding and promoting the welfare of children and to Local Safeguarding Children Boards."

32. Mr Harrop-Griffiths for the Defendant submits that the Claimant was only ever provided with accommodation by the Defendant pursuant to its functions under the Housing Act 1996 section 188 and that, therefore, the Claimant was never a "looked after" child within the meaning of section 22 of CA 1989.

33. I turn to the two important decisions in *M* and *G*.

34. In *M*, the facts were in many ways very similar to those of the present case. The Claimant was a young offender whose relationship with her mother, with whom she had lived, had broken down. In February 2005, she went to the local authority's housing department with a letter from her mother stating that she could no longer live with her. No accommodation was provided at that stage. On 5 April she approached the same department, but again with no result. On 6 April she needed a bail address and her solicitor persuaded the housing department to give her temporary accommodation. In July she was moved to a hostel but was evicted for breaking the rules. She then went to live with her sister who evicted her later in the year. Interestingly, in the context of this case, it seems that in the autumn of 2005 the relevant YOT identified her needs but it seems to have been taken for granted that accommodation was a housing rather than a social services responsibility (see [2008] 1 WLR at p. 545 H, paragraph 32 of the speeches in the case). M was then given further accommodation by the housing department but was again evicted. In January 2006 she was sentenced to a custodial sentence. While serving that sentence she attained the age of 18. She brought proceedings for judicial review claiming against the authority that she was a "former relevant child" and was owed duties under sections 23C and 24B of CA 1989. Her claim failed at all stages.

35. In the crucial passage of her speech in the case in the House of Lords, Baroness Hale of Richmond (with whom four noble lords agreed) said this:

> "It is one thing to hold that the actions of a local children's services authority should be categorised according to what they should have done rather than what they may have thought, whether at the time or in retrospect, that they were doing. It is another thing entirely to hold the actions of a local housing authority should be categorised according to what the children's services authority should have done had the case been drawn to their attention at the time. In all of the above cases, the children's services authority did something as a result of which the child was provided with accommodation. The question was what they had done. In this case, there is no evidence that the children's services authority did anything at all. It is impossible to read the words
>
> > "a child who is … provided with accommodation by the authority in the exercise of any functions … which are social service functions within the meaning of the Local Authority Social Services Act 1970 …"
>
> to include a child who has not been drawn to the attention of the local social services authority or provided with any accommodation or other services by that authority."

A little earlier in her speech Baroness Hale had said this,

> "I am entirely sympathetic to the proposition that where a local children's services authority provide or arrange accommodation for a child, and the circumstances are such that they should have taken action under section 20 of the 1989 Act, they cannot

> side-step the further obligations which result from that duty by recording or arguing that they were in fact acting under section 17 or some other legislation. The label which they choose to put upon what they have done cannot be the end of the matter."

36. In *G* a 17 year old had fallen out with his mother and had been excluded from her home. He initially approached the local authority's housing department and they attempted mediation between the young man and his mother. That was not successful. He then looked to friends for a place to live. In the end he consulted solicitors. They advised him to go to the children's services department and armed him with a letter asking for an immediate assessment of his needs under section 17 of CA 1989 and immediate accommodation under section 20. After an initial rebuff and a further demarche from the solicitors, he was referred to a social worker for assessment and was given overnight accommodation. The authority's preliminary assessment was that he was "not prohibited from receiving temporary accommodation through the housing department" and they declined to accommodate him under section 20. An initial formal assessment was completed. The conclusion was:

> "Therefore the primary needs identified here for A relate to housing and education. Having examined the information available, I see [sic] or have not been made aware [of] any additional needs or vulnerabilities that would suggest the need for longer term accommodation being provided by social services. A is 17 years of age and not in full-time education at this point in time, therefore I feel that accommodation provided by Southwark HPU [homeless persons unit] and referrals to other support agencies … will be sufficient at this time to work on addressing the social, emotional and practical issues identified in this assessment. "

There was a list of recommended referrals including to the authority's HPU and to the children's authority's family support team for "social work support". However, in a letter to the solicitors the authority declined to provide accommodation under section 20 and stated,

> "… his needs can be satisfactorily met through provision of housing and referrals to other support agencies … Our client department has fulfilled its duty to assess your client and reached the decision that he is not in need of section 20 accommodation; he simply requires 'help with accommodation'."

He continued to be accommodated as before.

37. G began judicial review proceedings contending that as the duty to accommodate him under Section 20 had arisen, he was in fact accommodated under that section. The claim was dismissed by the judge and in the Court of Appeal (Rix LJ dissenting). The Court of Appeal's conclusion was that G only required "help with accommodation" under section 17 and not accommodation under s.20: see [2009] 1 WLR at p. 1305F-G. The appeal to the House of Lords succeeded. Again, Baroness Hale gave the lead speech. En route to her conclusions, in commenting on earlier cases, she said,

> "The message of those cases is that if the section 20 duty has arisen and the children's authority have provided accommodation for the child they cannot "sidestep" the issue by claiming to have acted under some other power".

38. Baroness Hale proceeded to assess G's case by reference to the list of questions arising under section 20 identified by Ward LJ in *R (A) v Croydon LBC* [2009] LGR 24, at paragraph 25. She held that G satisfied all those criteria and thus the authority owed him a duty to provide him with accommodation under section 20. While the authority could ask other authorities to help in discharging that duty it could not avoid its responsibility by referring the child to another authority to use other statutory powers to provide the necessary accommodation.

39. The debate arising in this case as to the functions being exercised by the authority for the purposes of section 22 of CA 1989 was not called for. There was no doubt that the children's services arm of the council was engaged. There too, however, it was the housing department who fulfilled the needs of G whatever the statutory duty may have been.

(D) Discussion

40. The crucial question in the present case is what functions the Defendant was exercising when Ms Acquah wrote the Report on 3 March 2006 and when the Defendant's housing department provided the Claimant with accommodation shortly thereafter.

41. I do not consider that one is greatly helped in this exercise by the definition of "social services functions" in LASSA 1970. It is clear that functions under CA 1989, except for those under sections 17, 23B and 24B are within the definition. If the authority was acting under section 20 it was providing accommodation in exercise of social services functions. The question is whether it was doing that or, as the Defendant contends, it was acting under the Housing Act 1996.

42. Nor do I think that the provisions of the Children Act 2004, identified by Mr Presland, help. He concentrated upon section 10(6)(a). Section 10(1) imposes a duty upon children's services authorities to make arrangements to promote co-operation between the authority and relevant partners with a view to improving the well-being of children (subsection (2)). For these purposes a YOT is a "relevant partner". Section 10(6)(a) goes on to state that,

> "A children's services authority in England and any of their relevant partners may for the purposes of arrangements under this section –
>
> (a) provide staff, goods, services, accommodation or other resources…"

43. Mr Presland was inclined to argue that this conferred upon the YOT a function in providing accommodation for persons such as the Claimant. I do not think that it does so. It seems to be to be directed to the provision of accommodation for the purposes of the necessary co-operation arrangements between "relevant partners" and no more.

It is not, I think, enacting an independent function for the identified partners to provide accommodation for children. However, it is not necessary to decide that point. Even if my impression is not correct, this function does not fall within the definition of social services functions under LASSA 1970 which identifies only sections 9A, 13 to 16 and 31 to 34 of the 2004 Act as being within the definition. A function under section 10 of that Act is not therefore a relevant function for the purposes of section 22 of CA 1989.

44. The answer to the outstanding question seems to me to be capable of determination only from the facts of the case, rather than from any determinative answer being derived from the statutory provisions alone.

45. Mr Presland submits that Miss Acquah was a trained social worker working within the Children and Young People's department of the local authority and under the direct responsibility of the Defendant's DCS. Her function in the YOT was no doubt directed principally to the reduction of offending by young people in general and by this Claimant in particular. However, the "multi-agency" character of a YOT is well recognised in the official guidance referred to above, as are the necessary links between youth justice and children's services generally. No doubt, he submits, it was those links that made this local authority bring its YOT under the umbrella of the DCS.

46. Mr Presland submits that it was in this context, Ms Acquah wrote her report of 3 March 2006 which reached a conclusion in terms indicating that she clearly had the "children in need" provisions of CA 1989 in mind. She was inviting assistance from the housing department in the light of her written conclusion that the Claimant was a "Child in Need" and requiring accommodation as such.

47. Mr Harrop-Griffiths points out that the Claimant had made his own approaches to the housing department and was looking for Ms Acquah's support for his own attempt to get accommodation in that quarter; he was not looking for accommodation from any other source. Equally, unlike the claimant in *G*, he had not stated a clear wish for action under section 20. Section 20(6) requires the wishes of the child to be ascertained and due consideration to be given to them. Further, as Baroness Hale said in *G* it is unlikely that local authorities should be able to oblige a competent 16 or 17 year old to accept a service which he does not want: paragraph 28(6) of her speech, [2009] 1 WLR 1309 G-H. Mr Harrop-Griffiths says that the Claimant's wish (in March 2006) for accommodation under section 20, with all that it entails, should not be assumed.

48. It is clear from section 22 of CA 1989 and the decision in *M* that a child only becomes a "looked after child" once accommodated by a local authority in exercise of its social services functions and that there is a limit to the cases in which it will be held to have so acted. The question is how widely the net is to be cast. Clearly, I would have thought, if perchance a qualified social worker in fact working in a local authority housing department thought that a child ought to be housed under section 20 and wrote a file note to that effect then that would not suffice for the purposes of the definition. Equally, if a police member of the YOT (who happened by chance to be similarly qualified), made such a note, that would not trigger the duty: see and compare the involvement of the YOT in *M*'s case. Is the position different if a social worker member of the YOT so acts?

49. I think that it is not. In my judgment, the essence of the decision in *M* is that the duty arises when the relevant factors come to the attention of those charged within the local authority with children's *social* services. While the supervising officer of the YOT is the DCS the functions of the YOT remain those assigned by the CDA 1998 which are described in practical terms in the draft witness statement of Ms Acquah. Those functions are directed to the working with offenders sentenced by the courts and working through the process of those sentences; they would not ordinarily be considered as part of the social services functions of the authority as that term is commonly understood. As in *M*, the official in the YOT looked to the Housing Department to meet the need and those charged with social services provision were never engaged.

50. Given that it has been decided in *M* that a firm line has to be drawn in resolving when a local authority is exercising its social services functions, it seems to me that the line has to be drawn by saying that the duty is not triggered until the child comes to the attention of the division of the local authority responsible for those functions in the ordinary course. The peripheral attention of a duly qualified official of a different team will not do.

51. That is a rational and workable distinction because it is the children's social services team that is properly equipped to make the initial judgment that the child is or is not "in need" within the meaning of section 17(10). For example, it is that team that is properly able to judge whether the provision of services by the authority under Part III of CA 1989 are likely to be necessary for him to achieve or maintain a reasonable standard of health or development (s.17(10)(a)) or to prevent the likelihood of his health or development being impaired (s.17(10)(b)). It will fall to the children's services department to provide those services. The necessary judgments are hardly the task of a member of the YOT, whatever his or her social work qualifications.

52. Just as in *M*, with the benefit of hindsight, the Housing Department or the YOT should probably (as a matter of good practice) have referred the Claimant here to the team in charge of children's social services: see paragraphs 25 to 33 of the speeches in *M*. However, as in *M*, the claim here is that the court should treat what ought to have happened as if it had actually happened. The claim is for the extra help and support available to former relevant children. Also as in *M* the logical argument is that the local authority were in fact acting under section 20 of CA 1989 when it thought it was acting under section 188 of the 1996 Act (even though the Claimant's skeleton argument conceded that the Claimant was not in fact accommodated under section 20: see paragraph 3). However, as Baroness Hale pointed out in *M*, having considered Article 3 of the Homelessness (Priority Need for Accommodation) (England) Order 2002,

> "A local authority could not be satisfied that a 16 or 17 year old was in priority need for the purposes of section 193(1) of the 1996 Act if they were satisfied that the local children's authority owed a duty to accommodate that young person under the 1989 Act. But the interim duty in section 188 might arise where the housing authority had "reason to believe" that a 16 or 17 year old was in priority need and did not yet know whether or not the Children Act duties were owed".

53. It seems clear that the Housing Department here considered that it was entitled to act under section 188 of the 1996 Act. Again, the parallel with *M*'s case can be drawn. At paragraph 35 of the speeches in that case Baroness Hale said,

> "In the Court of Appeal it was accepted in argument that in order for M to succeed it had to be shown that the decision to accommodate her under section 188 of the 1996 Act on 6 April 2005 was unlawful. If that decision was unlawful, given that the Council did accommodate her on that date, they must have been acting under section 20 of the 1989 Act. The Court of Appeal rejected that argument and rightly so. The duty in section 188 arises when the local housing authority "have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need". By no means all 16 and 17 year olds will be entitled to accommodation under section 20 or section 23B of the 1989 Act and thus excluded from the categories of those in priority need under the 1996 Act. In my view, the 2006 Homelessness Code is correct to advise that, once it appears to the housing department of a local authority that a 16 or 17 year old may be homeless, that authority should accommodate her under section 188 pending clarification of whether the local children's services authority owe a duty to provide her with accommodation under section 20."

54. No such clarification was ever achieved here. The children's social services team of the Defendant never had the Claimant's needs drawn to their attention Thus, I conclude that this is an "*M* type of case" and not a "*G* type of case". The claimant is not a "former relevant child" and this claim for judicial review must fail.