

BETWEEN:

THE QUEEN
On the application D
Acting by her Litigation Friend Claire Hughes **Claimant**

and

ESSEX COUNTY COUNCIL **Defendant**

CONSENT ORDER

BEFORE

UPON the Defendant setting out its position in an open letter annexed to this Order

AND UPON the Parties agreeing the Statement of Reasons annexed to this Order

AND UPON the Defendant accepting in respect of the Claimant that:

- (1) the Claimant met the criteria for accommodation under section 20 of the Children Act 1989 ('CA 89') and was so accommodated from 16 August 2017
- (2) the Claimant has been a "looked after" child since 17 August 2017 and is now an eligible child within the meaning of CA 1989 Schedule 2 Paragraph 19B; and consequentially
- (3) the Defendant has a duty to appoint a personal adviser, prepare a pathway plan for the Claimant and provide for the Claimant's needs to the extent that her welfare requires

AND UPON the Defendant agreeing in respect of the Claimant to:

- (1) appoint a personal adviser for the Claimant as soon as possible and in any event within 3 days of the date on which this order was signed by both parties;
- (2) prepare a pathway needs assessment and pathway plan for the Claimant by no later than 10 July 2019 when the Claimant turns 18, such needs assessment and plan to involve the Claimant and the personal adviser appointed to her;

- (3) convene a review with an independent review officer thereafter within 4 weeks of the finalised pathway needs assessment and pathway plan
- (4) continue to provide the Claimant with accommodation at her current placement at NACRO accommodation in Harwich at 50A Main Road CO12 3LP, pending her application for a social housing property, to the extent her welfare requires, and to fund the placement to the extent that the costs are not fully covered by any state benefits that the Claimant is eligible for and has obtained on turning 18 and subject to a financial assessment that takes account of any wages that she receives

AND UPON the Claimant agreeing to apply for all state benefits to which she is eligible for.

AND UPON the Defendant accepting that as a matter of law:

- (1) accommodation provided pursuant to ss20, 22A and 22C CA 89 is not confined to specified types of accommodation and can include supported living accommodation
- (2) Accommodation provided pursuant to ss 20, 22A and 22C must be appropriate to meet the child's needs and in accordance with Regulation 27 and Schedule 6 of the Care Planning Placement and Case review (England) Regulations (SI/2010/959);
- (3) decisions regarding the type of accommodation to be provided pursuant to s20 CA 89 to homeless children will no longer involve the Essex Young People's Partnership Gateway,

AND UPON the Defendant undertaking to provide training for its social workers to ensure that they are aware of:

- (1) the fact that various forms of accommodation, including supported living and semi-independent accommodation, can be provided pursuant to s20 CA 89;
- (2) the legal significance and the attendant rights and entitlement of a child being accommodated pursuant to s20 CA 89; and
- (3) the importance of explaining (1) and (2) above to young persons who are children in need.

IT IS ORDERED BY CONSENT THAT:

1. This claim is allowed.
2. The Defendant shall pay the Claimant's reasonable costs of this application for judicial review, to be subject to detailed assessment if not agreed.

3. Pursuant to CPR r.44.2(8), the Defendant shall pay on account 50% of the Claimant's costs within 14 days of service by the Claimant's solicitors of the Bill of Costs.
4. The Claimant's publicly funded costs shall be subject to a detailed assessment.

Dated 1st day of July 2019

For and on behalf of the Claimant:



Kelly Everett, Senior Solicitor

Dated 1st July 2019

For and on behalf of the Defendant:



Paul Turner Director Legal and Assurance Essex County Council

Dated 1st July 2019

STATEMENT OF REASONS

References to numbers in [] are to pages in the judicial review permission bundle

Introduction

1. This case concerns a challenge by the Claimant to:
 - 1.1. The Defendant's refusal to accept that the Claimant has met the criteria for accommodation under s.20 of the Children Act 1989 ('CA 89') since 11 August 2017 and that she has been accommodated on this basis since 16 August 2017;
 - 1.2. The Defendant's consequent failure to meet the Claimant's needs and comply with the care and planning duties owed under the CA 1989 and associated regulations and guidance; and
 - 1.3. The unlawful operation of the Defendant's Essex Young People's Partnership ("EYPP") gateway.

Summary of facts

2. The Claimant is a 17 year old girl (date of birth 12 July 2001).
3. After a number of temporary exclusions from the family home, she was asked to leave permanently on 15 July 2017. She went to stay with a friend's aunt, Emma Manning. She sought help from Teen Talk, an information and support service for young people in Harwich, which contacted the Defendant's social services on 17 July 2017 to inform them that the Claimant was homeless [E47].
4. The Defendant initially decided, without speaking to the Claimant, that she was not homeless [E52, 294-295]. It said that she should present herself to the local housing authority [E52].
5. Following a meeting at the local housing authority on 3 August 2017, the Defendant accepted that the Claimant could not return home. At meetings on 8, 11, and 16 August 2017, the Defendant advised the Claimant that she could be accommodated under s20 CA 89 but only in residential or foster care. If she wished to be accommodated in a supported living placement

this would not be under s20 CA 89 [E63, E65, E254]. The Defendant did not explain to the Claimant that she could be accommodated in a supporting living placement under s20 CA 89 or that being accommodated under s20 CA 89 brought with it consequential rights and entitlements. The Claimant asked to be placed in supported living accommodation.

6. On 16 August 2017, the Defendant spoke to Ms Manning and asked that the Claimant be allowed to remain there until a supported living placement was found, to which Ms Manning agreed [E253]. The Defendant thereafter referred the Claimant to the Essex Young People's Partnership (EYPP) for supporting living accommodation [E80-81]. On 18 September 2017, the Defendant completed a Child and Family Assessment which concluded that the Claimant was a child in need [E259-274]. On 6 December 2017, following the acceptance of the referral, the Claimant was moved to her current placement at NACRO.
7. In around April 2018, the Claimant learnt about the legal significance and entitlements under s20 CA 89. She was assisted to obtain advice and to make a request to the Defendant to confirm that her accommodation arrangements, made by the Defendant through the EYPP, were made under s20 CA 89. [D18]. The Defendant maintained its position that supported living accommodation could not be provided via the EYPP under s20 CA 89 and that if she was to be s20 accommodated, it would be in foster care [D19, E1-2]. This was recorded subsequently in a needs assessment dated 14 November 2018.
8. As pre-action correspondence [D1-129] could not resolve the dispute between the parties, a claim for judicial review was lodged on 27 November 2018.
9. In addition to a challenge to the Defendant's denial to the Claimant of a duty owed under s20 CA 89 and consequential care planning duties under ss22, 22A-C, paragraphs 19B and 19C Schedule 2 to the CA 89, the Claimant also challenged the operation of the Defendant's "Essex Young People's Partnership" ("EYPP") gateway as a measure to avoid assuming a duty under s20 CA 89 toward homeless children and young people who are provided with supported living placements (as opposed to foster care placements).
10. The Defendant did not file an Acknowledgment of Service or Summary Grounds of Defence.
11. On 11 April 2019, in this matter, Rowena Collins Rice sitting as a Deputy High Court Judge granted permission on all grounds.

This application establishes a clearly arguable case that the Defendant is failing to comply with its duties under section 20 of the CA 89 in relation to the Claimant. It

also, taken together with a number of other judicial review cases against the Defendant arising on similar facts over the last year, is strongly suggestive that the Defendant is operating a [sic] unlawful general policy in this area. That is potentially a matter which is properly of considerable concern to the public interest and the interests of justice.

12. The Defendant did not file Detailed Grounds of Defence. Instead, on 29 May 2019 the Defendant wrote an open letter to the Claimant's solicitors conceding the claim. This is included at the end of this Statement of Reasons.

Reasons for this Order

13. The reasons outlined below should be read with the parties' open correspondence dated 29th May 2019, 11th June 2019, 25th June 2019 and 26th June 2019, all annexed to this Statement of Reasons.
14. The test for determining whether or not the s20 CA 89 duty has arisen was confirmed in *R (G) v Southwark LBC* [2009] 1 WLR 1299 at [28]. The Defendant accepts that the relevant criteria were satisfied and that the s20 CA 89 duty arose as of 11 August 2017 when the Claimant was accepted by the Defendant's social services as being a homeless child.
15. The parties agree that the following consequences flow from this:
 - 15.1. The accommodation arranged by the Defendant for the Claimant from 16 August 2017, initially with Ms Manning and then from 6 December 2017 at NACRO, has been and continues to be accommodation provided under s20 CA 89;
 - 15.2. 24 hours after she was accommodated on 16 August 2017, that is by 17 August 2017, the Claimant became and continues to be a "looked after child" within the meaning of s22(1) CA 89;
 - 15.3. Since 16 November 2017 she has been an eligible child as defined by CA 89 Sch 2 Para 19B and regulation 40 of the Care Planning, Placement and Case Reviews Regulations 2010; and
 - 15.4. When the Claimant turns 18 on 12 July 2019, she will become a former relevant child.
16. The Defendant accepts that:
 - 16.1. Informing the Claimant that only foster care or residential care was available under s.20 CA 1989 was unlawful;

- 16.2. Its failure to inform the Claimant that she could be accommodated under s.20 CA 1989 in supported living accommodation was unlawful; and
 - 16.3. Its subsequent denial that her accommodation was provided under s.20 CA 1989 was unlawful.
17. The Defendant has apologised to the Claimant for the unlawful decisions and omissions made in her case.
 18. The Defendant also accepts that the Claimant's case is not the only case where the Council fell short of what is required under the CA 89, that its practice in relation to accommodation arrangements under s20 CA 89, in certain parts of its area, was flawed. As detailed in the 29 May 2019 open letter, the Council's practice has changed and decisions regarding the type of accommodation to be provided pursuant to section 20 will be taken by the Council's Access to Resources Team with no involvement of the Essex Young People's Partnership Gateway. In addition the Council have agreed to provide training of its social workers to avoid errors going forward.