Neutral Citation Number: [2018] EWHC 587 (Admin)

Case No: CO/5870/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2018

Before:
HER HONOUR JUDGE KAREN WALDEN-SMITH
(Sitting as a Judge of the High Court)

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Between :

THE QUEEN ON THE APPLICATION OF **(1) KS** **(2) AM** **(a child by her mother and litigation friend KS)**	**Claimants**
- and –	
LONDON BOROUGH OF HARINGEY	**Defendant**

- -
- -

Mr Ian Wise QC (instructed by HOPKIN MURRAY BESKINE SOLICITORS) for the **Claimants**
Mr Hilton Harrop-Griffiths (instructed by HARINGEY LEGAL SERVICES) for the **Defendant**

Hearing date: 28 February 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HER HONOUR JUDGE WALDEN-SMITH

HHJ KAREN WALDEN-SMITH:

1. The Claimants, KS and AM, are mother and daughter. They contend that the defendant, through its Children and Young People's Service ("CYPS"), has acted irrationally and unlawfully by failing to formulate a plan and take steps to meet the unaddressed risks to the claimants. It is further contended on behalf of the claimants that the housing department has failed to act in accordance with the provisions of section 17 of the Children Act 1989 and section 11 of the Children Act 2004 and that the housing department has failed to comply with a request by CYPS to provide suitable accommodation pursuant to the provisions of section 27 of the Children Act 1989.

2. Permission to bring these judicial review proceedings was granted by Morris J. on 22 January 2018 with the hearing to be expedited. An order for anonymisation was sought in the application made on 20 December 2017 and granted by Yip J.

3. Additionally, I was asked at the beginning of the hearing to allow for the amendments to the grounds and for additional evidence to be adduced from both KS and her solicitor in order to deal with matters raised on behalf of the London Borough of Haringey. The defendant did not object to either the amended grounds or the new evidence being adduced and I allowed the applications in order that the hearing could deal with all the matters that have been raised in an efficient manner.

The Factual Background and Statutory Framework

4. KS is the 32 year old mother of two children, AM (born on 27 February 2012) who is now 6 and JM (born on 20 October 2006) who is now 11. KS has, herself considerable mental and physical health difficulties. The health assessment form completed upon KS indicates that she has prolapsed discs in her back, a very painful shoulder condition in both shoulders, susceptibility to chest infections as a consequence of an earlier bout of pneumonia, and that she suffers anxiety and panic attacks. She cares for both AM and JM almost single-handedly as the children's father lives with his disabled parents for whom he is their full-time carer.

5. AM was diagnosed at an early age as suffering from autism. In a doctor's report dated 7 January 2015, confirmation was given that AM had been diagnosed with autistic spectrum disorder and that *"… There are difficulties with sleep where she can wake up to 4 times during the night. In addition to this she has social communication and interaction difficulties, coupled with behavioural difficulties and sensory issues."* On 5 July 2016 she was recorded as having extremely low adaptive functioning skills for her age. On 8 August 2016, Great Ormond Street Hospital ("GOSH") referred to her as suffering from autism spectrum disorder, language disorder and significant difficulties with adaptive function. KS describes AM's autism as affecting *"every single aspect of her life and mine"*. She says that AM's difficulties became apparent from her being 6 months old, that loud noises would cause intense tantrums and that as she got older it had become increasingly more difficult to control her and keep her safe. According to KS's evidence AM has significant sensory issues, behavioural issues, problems with sleep and self-harming. The report from the Mental Health team of Barnet, Enfield and Haringey NHS Trust includes reference to her self-harming by banging her head and that she *"can feel as if the world has fallen apart when a plan is changed or she cannot access something she is very interested in…"*.

AM has difficulties with going to the toilet (she still wears nappies), diet (in that she will only eat certain foods) and speech. Most significantly she has no sense of danger, she does not understand risk and does not know how to keep herself safe and enjoys running and climbing. She is aggressive and violent towards other children, including her brother JM. It has also been noted, including by the Multi-Agency Safeguarding Hub (MASH) of Haringey Education Services that AM has "absences" which can last for up to 5 minutes where she will not respond to her name being called or hands being waved in front of her.

6. JM also suffers medical difficulties in that he has a heart condition known as pulmonary regurgitation. He acts as a young carer for both KS and AM which includes assisting with AM's feeding and changing her nappy.

7. Both AM and JM are recognised as being children in need pursuant to the provisions of section 17 of the Children Act 1989 which provides that it shall be the general duty of every local authority *"(1)(a) to safeguard and promote the welfare of children within their area who are in need."*

8. KS, AM and JM live together in a two-bedroomed council property on the first floor of a block of flats in the London Borough of Haringey. KS moved into the flat when she only had her son JM. She refers in her witness statement to having many years of happiness in the property before the difficulties with AM became apparent. AM was not born until 2012. It is contended on behalf of the claimants that the property is not only unsuitable but is positively dangerous for AM. Currently JM sleeps in the same room as his mother as he cannot sleep in the other room as a consequence of the very disturbed sleep that AM has which (despite high doses of Melatonin) means she is up many times during the night which, in turn, disturbs JM.

9. The claimants contend that the property is dangerous because of the physical features of the flat. While entry to the flat is via an internal staircase, the flat has two outside balconies, one at the front and one at the back from which there is a drop of about 4 or 5 metres. The windows in the communal parts of the building have been secured by window restrictors. With respect to the balconies to the flat, KS keeps the balcony doors locked, but the safety of AM is reliant upon her always remembering to do so and hiding the key in a place which cannot be found by AM. There was an occasion when KS forgot to take the key out of the lock and within minutes AM had got onto the balcony and had climbed onto a table looking over into the play area outside, putting herself at immediate risk. It seems clear that the difficulties with controlling AM are going to increase as she gets older, taller and stronger. Even in August 2016, when she was only four, it was noted by GOSH that she was quite physical with her mother.

10. An application for alternative housing was made to the London Borough of Haringey on 21 October 2016 and on 5 December 2016 the solicitors who are currently acting for KS wrote to Haringey Legal Services, Haringey Community Housing Services and Haringey Children's Services setting out the various medical difficulties suffered by KS, AM and JM, including that AM had autistic spectrum disorder and setting out the need for ground floor accommodation, an outside play area, appropriate bathing and toilet facilities, and three bedrooms in order for JM's sleep not to be disturbed.

11. The Child and Family Assessment, dated 9 February 2017 and signed off as authorised by a manager on the same day, provides that the social worker is *"very concerned that the home is firstly a safety risk, due to [AM] being able to climb the windows and on to both balconies which has to be closed at all times, also more importantly when she does become older her needs and behaviour is more than likely to increase, which again will increase her [risk to?] safety within the current accommodation. Should the event of her managing to get access to the windows and both balconies in case if they have been forgotten to be locked, and not been supervised, as [KS]has anxiety and depression, she may likely to become stressed and overwhelmed, she would more than likely to happen if not supervised. This would be a sudden loss to the immediate family members which could be avoided if suitable accommodation was located which can meet the children's needs."* AM not having any sense of danger was described as "evident" in the Child and Family Assessment when there was a home visit on 22 December 2016.

12. It was also recognised in the Assessment that the living arrangements are having an impact on the entire family and the second contention made on behalf of the claimants is that, as the property only has two bedrooms, there is an unsatisfactory arrangement with JM sharing with his mother as AM's behaviour is disruptive of JM's sleep which affects his schoolwork adversely.

13. The Assessment dated 9 February 2017 provides that JM has a health condition and needs his own room in order to enable him to have the quality of rest which he needs without being interrupted by AM's erratic sleep patterns and erratic behaviour.

14. The view of the social worker set out in the Assessment, and authorised by the manager, is that the family are in need of a three bedroomed low ground accommodation with a garden and that the current accommodation does not meet the individual needs of AM and JM:

> *"… the team manager has already informed the housing department and forwarded all necessary documents for AM and JM under section 27 of the Children Act 1989 that impose a duty on other local authorities, local authority housing services and health bodies to cooperate with a local authority in the exercise of that local authority's duties under part 3 of the Act which relate to local authority support for children and families."*

15. Section 27 of the Children Act 1989 provides that there is to be co-operation between authorities:

> *"(1) Where it appears to a local authority that any authority mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority, specifying the action in question.*
>
> *(2)An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other*

> *duties and obligations and does not unduly prejudice the discharge of any of their functions.*
>
> *(3)The authorities are*
>
> *(c) any local housing authority."*

16. By the Assessment dated 9 February 2017, Haringey CYPS made a request to Haringey Housing Services for assistance under section 27 of the Children Act 1989. The Assessment provides that both AM and JM are children in need but that there were no immediate safeguarding concerns as the children were well cared for and the parents *"are taking every step to meet their children's needs by keeping them safe."* The reference to safeguarding within that document is plainly not a reference to the housing needs. However, saying that there are no "safeguarding" concerns is not the same as saying that the children are safe from other risks.

17. The Child in Need plan dated 27 February 2017 identified as a risk the concern that AM *"can climb the window and can open the balcony doors which is a health [and] safety issue".* The action to be taken was for an occupational therapist to identify the necessary equipment and make adaptations in order for the home to be secure. It is further identified in the plan that the parents had made an application to the housing department in order that housing needs could be re-assessed. The action to be taken was that the social worker was to send the Child and Family Assessment. It was set out that what was needed to be achieved was for the family to be reassessed and *"to be provided with appropriate accommodation."* It appears that information was forwarded to the housing team by, at the latest, 28 April 2017. Despite the contention raised on behalf of Haringey to the contrary, the need was for "appropriate accommodation" not merely for a reassessment. On 10 May 2017, the case was closed to Children's Services as there were no safeguarding concerns as far as they were concerned.

18. An assessment was undertaken by Homes for Haringey on behalf of Haringey Council and on 18 July 2017 a decision letter was produced which set out that the medical information had been assessed by an Independent Medical Advisor but that the consequences were that the assessment made no difference. That was not the intention of CYPS in making a request for appropriate accommodation to be provided. The family had formerly been in Band C and they remained in Housing Needs Band C. The addition of AM to the family and her difficulties did not alter the categorisation of Band C.

19. A pre-action protocol (PAP) letter was sent on 5 October 2017 which included reference to the February Assessment where the social worker said:

> *"It is in my professional view that the current accommodation is not adequate and does not meet the children's individual needs especially [AM's]. It is important that the housing issue is looked into by a multi-agency approach that includes housing, OT and social care department. As is mentioned in this assessment the team manager has already informed the housing department and forwarded all the necessary documents for [AM] and [JM]. The assessment makes clear*

> *that the family need re-housing because of the danger to [AM] in the current unsuitable accommodation, and the impact on both children of the lack of appropriate accommodation."*

20. The solicitors set out in the PAP letter that they were demanding that Haringey housing ensure that the family is provided with safe and suitable housing, on the basis that it is not reasonable for the family to continue to occupy the current accommodation, giving rise to duties under part 7 of the Housing Act 1996, the Children Act 1989 and the Children Act 2004.

21. The response to the PAP letter makes it clear that the housing register will not itself resolve the family's housing situation as KS has been placed in Band C and the short supply of Council and Housing Association properties means that almost all the available properties will be offered in Band A and Band B and that as KS's application is in Band C *"it is highly unlikely that she will ever have sufficient priority to bid successfully for social housing [and] she may therefore wish to consider other housing options available to resolve her and her family's housing situation."* That response to the PAP letter does not deal with the fact that the request made to Housing by Children's services for assistance pursuant to the provisions of section 27 of the Children Act 1989 in the form of appropriate accommodation being provided had not been dealt with.

22. In the Social Worker's Assessment of Parent Carer dated 19 October 2017, the social worker set out that as the family are residing in two bedroom 1st Floor accommodation which is not suitable and that both the parents and the local authority are concerned for the safety of AM *"as she has no awareness of danger."* Children's Services does not have any major safeguarding concerns and once the housing situation is resolved, the family will have a better quality of life. This is a clear recognition that the social workers did not consider the family home to be suitable.

23. The occupational therapy housing report sets out the various difficulties that AM has to deal with including that she is on the autistic spectrum and that she requires support for carrying out everyday tasks such as dressing and tidying up; and that she had difficulties recognising and responding to others' emotions and that she had reduced verbal comprehension and ability to express a reduced safety awareness.

24. In a further PAP letter dated 14 November 2017, the solicitors for the claimants set out that in order to deal with the needs of the family it was necessary to consider eligibility for placement in Band A. In response, by letter dated 24 November 2017, the Legal Services of Haringey set out that, contrary to the allegations being made, CYPS considered that all the recommendations made in the Assessment of 2017 had been complied with. However, given the Child and Family Assessment in February 2017 setting out the concerns that the property is a safety risk, in addition to the overcrowding issue, and the section 27 request having been made, it is difficult to see the basis upon which all the recommendations in the Assessment have been actioned and progressed as asserted by Haringey. The recommendations in the Assessment had not been dealt with as the reassessment by housing had left the family in Band C which, given the very real constraints on the housing supply, meant that they were highly unlikely to be offered alternative accommodation.

25. While the decisions panel set out that the security of the balcony door and communal windows and internal windows could be mitigated by the addition of window restrictors and securing outside netting, major reliance is placed upon "normal" parental controls being able to keep AM safe. It is contended on behalf of the claimants that it is not an answer to the issue of the unsuitability of the property in this case. While KS can lock the door and hide the key, that fails to take into account the difficulties that KS faces, depression, stress and exhaustion from looking after AM, but also the very real challenges faced in looking after AM. While supervising a 6 year old child is part of normal parenting, this is a child whose behaviour does not fall within the confines of the extent and level of control that normal parenting would require. AM has very disturbed sleeping patterns and wakes 4 to 5 times a night, she has a desire to explore and climb, and she has behavioural difficulties which includes self-harming and having "meltdowns". She is not easy to "control".

26. A report was obtained from "NowMedical" dated 24 November 2017. Dr Keen, who provides the report, did not either examine AM or visit the property. He concludes that the property is "less than ideal" but that as AM is five (she is now six) the need for an exclusive bedroom is not yet urgent and that there is not a serious medical need to relocate. He agrees that a ground floor property would be optimum but that *"given a fall from a first floor is unlikely to be fatal, and that availability of ground floor properties may be so scarce as to potentially delay a relocation, then I think that a first floor property is an acceptable alternative."* He does not, in his report, appear to take into account the fact that AM's sleeping behaviour is such that it is not possible for her to share with another which means that JM, currently 11, is having to share with his mother. He also does not appear to take into account the real risk to AM of her being able to access the outside balconies, climb up and fall save to dismiss any fall from a first floor balcony as being "*unlikely to be fatal".* It is not clear on which medical basis he comes to that conclusion, or indeed what injuries he considers it likely that a 6 year old child might sustain falling from a first floor flat four to five metres above ground level and what level of injuries he considers to be an acceptable risk. It seems implicit in Dr Keen's report, and it is self-apparent, that the older AM becomes the greater the risks to her – her strength will increase and her ability to find out where a key might be hidden also increases. There is nothing to indicate, given her autism, that she will have an increased awareness of danger or risk.

27. The Housing Decisions Panel met on 12 December 2017. The chair of the Panel asked Homes for Haringey to explore the possibility of the balcony doors being permanently locked or fixed. However, the evidence of Angelier Miller-Moore on behalf of Homes for Haringey has stated that the placing of a lock or latch to the top of the balcony has been deemed a severe risk to impede egress permanently so that it is a fire risk. It seems to me that is a crucial change in circumstances as the lack of a permanent, or semi-permanent, solution to the issue by keeping the balcony doors locked means that the decision that the claimants can continue to live safely in this property relies entirely upon the never-ceasing vigilance of KS in keeping the doors locked and AM away from any means of accessing the balconies.

28. The decision letter of 15 December 2017 sets out that the claimants' request for rehousing has been made on the dual grounds of, first, the risk to AM of falling from one of the balconies and, secondly, because the property is too small, being limited to two bedrooms when three are needed and because there is insufficient space in the

toilet to enable AM to be changed and washed. AM still has difficulties with her toilet and still requires a nappy. It is acknowledged that both Social Services and the Occupational Therapist consider that the claimants require rehousing. The three bed need is acknowledged by Haringey. The letter sets out the constraints on the housing stock and the very scarce availability of three-bed lets. The view was taken by the Housing Panel that the risks to AM *"could be significantly reduced by practical measures"*, that window restrictors had been fitted inside the accommodation and in the communal areas and that *"in addition to this the two balconies to the property can be kept locked to mitigate risks of [AM] accessing the balcony."* Having considered the Children and Family Assessment dated 15 February 2017 and been advised by two social workers, the panel came to the conclusion that *"the level of risk to [AM] and the extent to which the family's welfare is being affected by the current housing situation is not so serious or critical as to warrant Band A or Band B priority."*

29. The important conclusion is set out in the final three paragraphs:

> *"Taking all matters and information into consideration and the practical measures that have been employed and those suggested, the panel decided that the level of risk to [AM] and the extent to which the family's welfare is being affected by the current housing situation is not so serious or critical as to warrant Band A or Band B priority.*
>
> *Band C priority was therefore awarded to acknowledge that there is a welfare need and a safeguarding concern relating to the first floor accommodation, but that welfare need is moderate and manageable, not serious or critical. The risk to safety and safeguarding concerns are moderate and you do not need to move urgently because of serious safeguarding circumstances.*
>
> *A direct offer was not considered appropriate because there isn't a critical medical/welfare needs or serious safeguarding concern."*

30. There was a separate medical review of banding and the determination was set out in the letter dated 3 January 2018. Within that letter it was set out that it was not unreasonable that the balcony doors continued to be locked in order to ensure that AM does not go onto the balcony where she may be at risk and that if that is done then the accommodation on the first floor can be considered reasonable to continue to occupy. With respect to the communal areas, limiters were being placed on the windows and that it was reasonable to expect a parent of a young child to ensure that the child is supervised if walking alongside an adult. Suggestions were made with respect to alternative housing options, including Home Finder UK and Home Swapper.

31. In her statement, provided on 14 February 2018, the head of housing needs for Homes for Haringey, Beverley Faulkner, set out the very tight constraints that the London Borough of Haringey has to operate within. Between April 2016 and 8 February 2018, Homes for Haringey had let a total of 157 three-bedroomed properties of which only 9 were on the ground floor. What she says is that *"There are hundreds of families in Band C who are in very similar circumstances to Ms Sears i.e. lacking one*

bedroom and with a household member who has medical/welfare need, but the reality is that unfortunately there are many hundreds of other households with an even greater need in Bands A and B" and that *"Due to the disparity between supply and demand for social housing, households who have little realistic chance of moving in the foreseeable future are advised of other options for a move from their current accommodation."*

32. The central issue for the court is whether, having considered all the evidence available, Haringey acted unlawfully and irrationally in failing to formulate a plan or address the needs of the claimants and whether Haringey failed to fulfil its statutory obligations under the Children Act.

The Alleged Errors

33. The claimants' contentions, as set out in detail in the amended grounds, can be usefully summarised as follows. It is the claimants' case that the London Borough of Haringey ("Haringey") has erred in law by failing to meet the family's needs by the decisions contained in the letters dated 13 December 2017 and 3 January 2018 in the following ways:

    i) That Haringey has acted irrationally and unlawfully by both CYPS and the housing authority relying entirely upon their allocations policy and failing to either formulate a plan or to take steps to meet the unaddressed risks and unmet needs of the claimants through a multi-agency approach;

    ii) That Haringey has acted irrationally and unlawfully by relying entirely upon their allocations policy and not considering their other statutory powers to provide services to safeguard and promote the welfare of children in need, including the specific power to provide accommodation pursuant to the provisions of section 17(6) of the Children Act 1989;

    iii) That Haringey has misdirected itself by considering the Housing decision on allocation to be determinative without consideration of its overriding duty pursuant to the provisions of section 11 of the Children Act 2004;

    iv) That Haringey has acted unlawfully by failing to comply with the request made under section 27 of the Children Act 1989.

34. In the course of submissions, Mr Wise QC on behalf of the claimants, relied upon section 1 of the Localism Act 2011 and the local authority's general power of competence. This was something raised in the detailed Ground but was not something that the claimants relied upon in the extensive pre action correspondence. It does not assist me in my consideration of this matter as there are more directed statutory provisions that the claimants can rely upon.

The Law and Discussion

35. It is not for a court to assume that a local authority or housing authority has carried out its functions in a conscientious manner (see *R(E) v London Borough of Islington* [2017] EWHC 1440). What the court is required to do is scrutinise with care what the local authority or housing authority has done, always ensuring that the court does not

take over the role of decision maker. In a case such as this where there is a risk to a child, the court is required to exercise intense security. There needs to be an objective and evidence based analysis.

36. Haringey's Housing Allocations Policy 2015 provides that Housing Needs Band A is for those applicants who, amongst other things, need to move urgently because of a critical medical or welfare need, including emergencies or need to move urgently because there are critical safeguarding circumstances whereas Band B is for those applicants who, at the discretion of Haringey, need to move urgently because there are serious safeguarding circumstances.

37. It is apparent that housing authorities, particularly within London, face great difficulties in finding accommodation to fulfil their requirements to provide housing to those who are assessed to be in priority need. As was said by Briggs LJ in *Hackney LBC v Haque* [2017] PTSR 769, *"The allocation of scarce resources among those in need of it calls for tough and, on occasion, heartbreaking decision-making, but having to say no to those deserving of sympathy by no means betokens a failure to comply …".* It is not suggested that the Allocations Policy is in itself unlawful. In fact, paragraph 15.28 includes a discretionary power which provides that:

> "The Allocations Policy cannot cover every eventuality. The exceptions or panel (decision panel) has discretionary power to award additional priority and approve offers of housing."

38. As a consequence, the failure of the claimants to come within Band A or B does not in itself mean that the London Borough of Haringey is prohibited from awarding additional priority and/or approving an offer of housing to the claimants.

39. In this case, in addition to the evidence from KS (as mother to AM) the court has the evidence from the social workers who have seen AM in her home environment and the support worker who spent considerable time with AM (approximately 25 hours a week when she has been at school). All of this evidence makes clear that very severe difficulties are being created by AM's autism. Dr Keen, whose evidence is heavily relied upon by Haringey, has neither seen AM or KS nor has he visited the property.

40. Ms Laura Clements in her letter dated 21 February 2018 has set out that, as a result of her being diagnosed with autistic spectrum condition, significant language delay and language disorder, significant difficulties with adaptive functioning, sensory needs and behavioural difficulties, AM *"often becomes anxious and frustrated which leads to significant behavioural difficulties, which are often self-harming in nature. [AM] often has meltdowns which are emotionally draining for her and can take up to an hour for her to calm down from. She also experiences "absences" during which time she does not respond to her name being called or to touch, which prove distressing for her when she moves out of the "absence" phase."*

41. It is a principal thread through Haringey's case that the risks to AM being in the first floor accommodation can be managed by KS taking steps to lock the balcony doors and hiding the key. It is acknowledged that KS herself suffers from depression, is worn out by looking after AM and has, at least once in the past, forgotten to lock the balcony door so that AM managed to get onto the balcony and immediately put herself in danger. I do not consider that it can be realistically suggested that a young

child falling from a first floor balcony is not going to cause, at the very least serious injury, and possibly death (despite what is said in Dr Keen's report) and that the first floor balconies do therefore pose a very real risk to AM's well-being. The photograph of the view from the first floor balcony entirely undermines Dr Keen's view of the limited damage that could be caused. One of the ways being suggested to prevent that risk was to introduce locks at the top of the door in order to create a permanent barrier, but that has now been rejected as a result of the negative fire assessment.

42. The level of parental supervision required for AM is not the level of parental supervision that a parent would normally be expected to undertake of a young child. The evidence of her behaviour, as described by both KS and Laura Clements and the social worker who carried out the Assessment in February 2017, indicates that AM is someone who will require constant supervision in order to ensure that she could not get on to the balcony. Because of her erratic sleeping patterns the night does not provide any respite and KS would need to be vigilant the entire time. That is not a realistic burden and the prospects of AM being able to find a hidden key to the balcony must be increasing as she is getting older. Haringey contend that CYPS accept a need to ensure the protection of the family.

43. The statutory guidance issued in March 2015, entitled "*Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children"* sets out that under the Children Act 1989 and the Children Act 2004 local authorities have a responsibility for safeguarding and promoting the welfare of all children and young people in their area which includes prevention of impairment of the children's health, ensuring that they grow up in circumstances consistent with the provision of safe and effective care and taking action to enable all children to have best outcomes. Section 11(4) of the Children Act 2004 itself provides that the local authority must have regard to the guidance given to them by the Secretary of State and the guidance provides that it must be complied with unless exceptional circumstances arise.

44. The guidance provides that an assessment is to gather important information about a child in need and the family in order to provide support and to address needs to improve a child's outcomes and to make them safe. Having been assessed as a child in need and diagnosed at a very early stage as being on the autistic spectrum, the Child and Family Assessment in February 2017 complies with the guidance and identifies the home as a safety risk and sets out why parental supervision, in these particular circumstances, is not sufficient. It also deals with the overcrowding issue which is created, not because there is a five (now six) year old girl and eleven year old boy together with their mother in a two-bedroomed property, but because there is a five (now six) year old girl who has to have her own room because of her condition and the level of disturbance that she creates, including overnight. This has a negative impact upon her eleven year old brother JM and means that he is having to share a room with their mother. Those two matters are critical to the conclusion that the *"current accommodation is not adequate and does not meet the children's individual needs especially [AM's]".* The reasons as to why the home is a safety risk has not minimised, if anything as AM gets older the safety concerns increase. Similarly, the view that parental supervision is not sufficient holds good now.

45. It is these conclusions which led to a request being made under section 27 of the Children Act 1989. That request has not, for the reasons I will set out, been fulfilled. The consequence is that the claimants have fallen between Children's Services and the housing authority at Haringey without any prospect of being rehoused.

46. Haringey's Children's Services closed their file on the claimants in May 2017, as there were no safeguarding concerns raised. It is correct that there were no safeguarding concerns with respect to the parental care of the children, however that does not bring to an end the concerns that had been expressed in the Assessment with respect to the accommodation not being adequate or the "Child In Need" Plan dated 20 February 2017 which provides that "The family is to be reassessed and to be provided with appropriate accommodation."

47. It was not sufficient for CYPS to refer the matter to housing and then close the file. It has been said by Haringey that the file has been reopened and that CYPS are still engaged with respect to the accommodation issues. I have not seen evidence to support that assertion, and I am told that KS has not had a visit from an assigned social worker to deal with the issue of the risks to AM of remaining in the property. The obligation of CYPS is an ongoing one, which is underpinned by the statutory duties imposed by section 17 of the Children Act 1989 and section 11 of the Children Act 2004 to safeguard and promote the welfare of a child in need. It is irrational and unlawful for CYPS not to have continued with their involvement with the provision of measures to ensure the safety and welfare of both AM and JM. I do not accept that it was the intention of the CYPS simply to pass responsibility to housing when forwarding the Assessment and the section 27 request, but the consequence of closing the file in May 2017 has been that CYPS have failed in their duties to the claimants. The obligation of CYPS is ongoing and it is not consistent for CYPS to be safeguarding and promoting the welfare of a child in need while not addressing the risks to that child.

48. At the same time as CYPS were closing their file, the housing authority has looked at the position of the family again and has concluded that there is a risk, but it is only moderate and not critical. On that basis, housing have concluded that the correct categorisation is to place the claimants into Band C which means that there is no realistic prospect of rehousing.

49. That conclusion to keep the claimants within Band C, without exercising the discretionary power within the allocation guidance or finding an alternative way to provide accommodation which is suitable, is irrational in light of the Assessment made in February 2017. It is this gap between what CYPS clearly identified as a need that required addressing and the failure of both CYPS and the housing authority to address that identified risk that leads me to find that Haringey have acted irrationally and unlawfully. It was not sufficient for the housing authority simply to reassess the family as against the allocations policy and for CYPS to close their file on the basis that there were no safeguarding issues, in light of the existing safety concerns. Haringey were obliged to give proper weight to the findings of CYPS and the expressed need that this family needed rehousing. The consequence of not doing so means that the claimants have fallen between CYPS and housing rather than the two departments working in co-operation with each other, operating a multi-agency approach.

50. What Haringey housing did in this case was to consider the family within the allocation policy and, while there can be no criticism of the housing policy itself, in my judgment the housing authority failed to give any, or any sufficient, weight to the information being provided by the social worker as to the very real difficulties that AM poses to her own safety and how, in the circumstances of this case, parental supervision could not be sufficient to prevent AM from getting on to the balconies and harming herself.

51. Once the suggestion of permanently locking the balcony doors, with a latch or lock at the top of the doors, was quashed by reason of the fire assessment, Haringey's determination that the risk is only moderate becomes unsustainable as it relies entirely upon KS having the ability to be vigilant at all times throughout the day and night. That is plainly unrealistic. The personal situation of KS and the children's father is that he does not live in the family home with KS and the children. Instead, he lives with his parents for whom he has caring responsibilities. For a time JM was staying with his father at his paternal grandparents' property but that became unworkable and I am told that JM is now back at the property living with his mother and sharing her room with her.

52. The children's father has mental health issues himself and KS has her own issues, including anxiety, depression and obsessive compulsive disorder. KS describes how her own parents are not physically capable of assisting with the care of the children and that she has, entirely understandably, become increasingly isolated and without a network of friends, as she devotes herself to the care of her children. The photographs of the property included in the bundle show that it is immaculately kept and the social worker's report supports the fact that both children are well cared for. KS has expressed an anxiety that she is not giving JM sufficient time as she has to concentrate upon KM and her well-being. For the housing authority to rely entirely on the constant, and never wavering, vigilance of KS to ensure AM's safety is irrational. This is not the ordinary vigilance expected of a parent with a young child. Given the difficulties AM has, KS would be on duty day and night. That would not be possible for any parent on their own and it is that much more difficult for KS given her own issues.

53. In my judgment, the risks from the housing situation of the claimants have not been adequately assessed or dealt with by the housing authority. Haringey, as housing authority, failed to formulate a plan as to how to deal with the very real risks of AM harming herself and the very real and immediate harm to the welfare of both AM and her brother JM by reason of the overcrowding in the property.

54. The failure to take into account and act on the information provided by CYPS in the Assessment and the failure to formulate a plan to deal with the risks and unmet needs of AM and JM is both unlawful and irrational.

55. The claimants also rely upon section 17 of the Children Act 1989. Section 17 places the local authority under a general duty to safeguard and promote the welfare of children in need within their area. Section 17(6) of the Children Act 1989 provides that, in exercising the duty to safeguard and promote the welfare of children who are in need, may include providing accommodation and giving assistance in kind. The claimants do not rely upon the express provision to provide accommodation as contained in section 17(6) but rely upon the general duty imposed by section 17(1).

56. In *R(G) v Barnet LBC* [2003] UKHL 27, Lord Hope set out that the correct analysis of section 17(1) is that it *"sets out duties of a general character which are intended to be for the benefit of children in need in the local social services authority's area in general… Local authorities are not expected to meet every individual need, but they are asked to identify the extent of need and then make decisions on the priorities for service provision in their area in the context of that information and their statutory duties."*

57. *R(G) v Barnet* LBC makes it clear that section 17(1) does not provide a specific duty on the local social services authority to meet every need of every child in need within their local area. However, there is a requirement to identify that need and to provide for that need within the priorities for service provision in their area.

58. Haringey contend that they have complied with that section 17 obligation by virtue of the decisions set out in the letters dated 12 December 2017 and 3 January 2018 in that consideration has been given to the needs and an assessment made in accordance with the local authority priorities. The difficulty with that position is that it does not in fact deal with the unaddressed risks, and the obligations of CYPS continue. There was reference at the hearing before me that a social worker had been reassigned in November 2017 but there is no evidence of social services continuing involvement with respect to the inadequacy or inappropriateness of the current accommodation. If the support is in fact in place with respect to the family's needs with respect to housing then that is as it should be, but there is a clear conflict of fact (which I am in no position to resolve) as to whether such support is in fact in place.

59. Section 11 of the Children Act 2004 provides that a local authority must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. Section 11(2) of the Children Act 2004 requires each person or body to whom the section applies (which includes a local housing authority) to make arrangements for ensuring:

> *"(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need"*

60. The duties imposed by section 11 mean that the local authority has a duty to safeguard and to promote the well-being of the children in its area who are in need, such as AM. Baroness Hale has referred this as being a requirement of "active promotion" [see *R(HC) v SOS for Work and Pensions* [2017] UKSC 73].

61. At paragraph 24 of *Nzolameso v Westminster City Council* [2015] UKSC 22, Baroness Hale set out that "section 11 applies, not only to the formulation of general policies and practices, but also to their application in an individual case". Section 11 applies to the formulation of general policies and practices, and also applies to an individual case, but it does not require that the children's welfare is the paramount or even a primary consideration. However, the safeguarding and promotion of children's welfare must be a consideration in carrying out the local authority's functions both generally and with respect to the individual. In *R(HC) v Work and Pensions Secretary* [2017] UKSC 73, Baroness Hale said at paragraph 46:

> *"…Safeguarding is not enough: their [the children's] welfare has to be actively promoted."*

62. In order to promote actively the well-being of AM, in particular, but also JM, the local authority and housing authority needed to identify the principal needs of the children and then have regard to the real risks to AM's safety and JM's well-being. The decisions reached and set out in the letters dated 15 December 2017 and 3 January 2018 fail to comply with Haringey's section 11 obligations. The reference by Angelia Miller-Moore in her statement to being aware of the section 11 duty to have regard to the need to safeguard and to promote the welfare of children as a primary consideration and that *"Regard was given to this duty in coming to a decision in the case"* does not in fact provide any evidence that such consideration was given and the court has an obligation to scrutinise the process of the local authority with some rigour. Reference to the allocations policy was not in itself sufficient. The local authority has the power under the allocations policy to award additional priority and approve offers of housing. The reality in this case is that, by placing the claimants into Band C in applying the allocations policy without more, there is no realistic prospect of them being rehoused now or in the near future. It is not sufficient simply to say that regard was given to the risks to AM and JM. By relying on KS to be able to manage the risks to AM being in the first floor flat, Haringey have failed to take into account the evidence before them, including evidence from their own social workers, that the behaviour of AM is such that it cannot realistically be managed only by parental supervision. The decision letters, particularly the letter of 3 January 2018 does not appear to appreciate the very real difficulties faced by AM and created by AM. In this way, Haringey have in fact failed to have regard to the risks contrary to the section 11 duties.

63. Section 11 is a process duty but it still requires the local authority to promote actively safeguarding and welfare of children in need.

64. The claimants further contend that Haringey has acted unlawfully by reason of the housing authority failing to comply with a request made in the Assessment under section 27 of the Children Act 1989 to assist with the provision of a low ground three-bedroomed property. By section 27 of the Children Act 1989, Parliament recognised the need for public bodies to work together. Section 27 provides that where a local authority makes a request of another authority to take "any specified action" it must comply with that request unless to do so would not be compatible with its statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions. In *R (M) and R(A) v Islington LBC* [2016] EWHC 332, Collins J held that section 27 is concerned with imposing a duty on two different local authorities to co-operate with each other and that it is not concerned with two departments within the same authority, as is the case here. However, he also held that *"within a unitary authority different departments must act in the same way as would be required if s.27 did apply."*

65. Haringey do not seek to deny that a section 27 request had been made to the housing authority. What is contended on Haringey's behalf is that the request was not to request rehousing but was a request for reassessment, which is what has happened.

66. In my judgment the section 27 request is not as clear-cut as either the claimants or the defendant are contending. There was undoubtedly a request for co-operation. CYPS

were not in fact making a request that housing immediately provide a three-bedroomed low ground property with outside space. To make such a request so that housing had to comply with it would mean that CYPS were taking over the housing function but with CYPS having a different agenda. I do not accept Haringey's argument that the request was limited to just being a mere request for a reassessment of housing needs. The social worker, who has been to the property and seen AM in the property is very clear as to the unsuitability of the property. Her opinion is backed by her manager signing the Assessment. The social worker is clearly stating that the current accommodation is, in particular, putting AM at risk with respect to her own safety, leaving aside the issues of overcrowding. By simply looking at the family's situation again and assessing that they remain where they are is not fulfilling the section 27 request and is unlawful. What the housing authority were obliged to do, in light of the section 27 request, was to make a decision based upon the safety risk and the overcrowding issue that the social worker highlights in her assessment. While the housing authority has an obligation to consider its duties under housing legislation and has to consider whether complying with the request made by CYPS would unduly prejudice the discharge of the housing duties by giving greater priority than was warranted, it also has an obligation to comply with a section 27 request. There is no evidence provided that a decision to rehouse would unduly prejudice the discharge of the housing duties and the discretionary power contained within the allocation policy establishes that there is a flexibility.

67. The decision made by the housing authority that the claimants remain in Band C, which effectively means that they will not be rehoused, either means that the conclusions of the social worker as to risk and overcrowding were not taken into account or they were taken into account but not given sufficient weight. The housing authority had more than an obligation to reconsider, it had an obligation to rehouse suitably.

68. It may be that the only property that the housing authority could offer, in order to comply with the section 27 request, is a three bedroomed ground floor property but it is for them to consider how to satisfy the section 27 request on the basis that the current property is a safety risk, there is overcrowding and that the property *"is not adequate and does not meet the children's individual needs"*. Additionally, it is now known that the permanent locking of the balcony doors is not possible due to the fire risk. By reaching the conclusion that no change is required, the housing authority has failed to comply with the section 27 request.

Conclusion

69. Haringey acted unlawfully by failing to create a plan or to take steps to meet the claimants' unaddressed needs and by failing to comply with the obligations of section 11 of the Children Act 2004. Haringey housing further acted unlawfully by failing to comply with the section 27 request made to them by CYPS.

70. The claimants are entitled to declaratory relief quashing the decision letters of 15 December 2017 and 3 January 2018 and mandatory orders that a plan is put in place to meet the unaddressed needs of the claimants in compliance with the obligations of section 11 of the Children Act 2004 and that Haringey housing reassess and reconsider the need to rehouse in accordance with the request made by CYPS, taking into account those matters now known and referred to in the assessment. The family

is to be reassessed for the purpose of providing appropriate accommodation. The precise form of wording of the order is something to be agreed between the parties if possible.