Neutral Citation Number: [2025] EWCA Civ 719

Case No: CA-2024-000088
CA-2024-000088-C

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION (ADMINISTRATIVE COURT)
Mr Justice Calver
[2023] EWHC 3209 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 June 2025

Before:

LORD JUSTICE COULSON
LORD JUSTICE BAKER
and
LADY JUSTICE WHIPPLE

- -

Between:

Surrey County Council	**Appellant**
- and -	
The King (on the application of BC)	**Respondent**

- -
- -

Catherine Rowlands (instructed by **Surrey County Council Legal & Democratic Services**) for the **Appellant**
Shu Shin Luh and Daniel Clarke (instructed by **JHB Law (t/a LAWSTOP)**) for the **Respondent**

Hearing Dates: 18-19 March 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE COULSON, LORD JUSTICE BAKER AND LADY JUSTICE WHIPPLE:

1. Introduction

1. This appeal is brought by Surrey County Council ("SCC") against the order of Calver J ("the judge") dated 15 December 2023, in which he allowed the claim of the respondent/claimant ("BC") for judicial review. The judicial review claim asserted that SCC owed to BC, a young person with a troubled background, who had presented to the local housing authority as homeless in September 2019, a duty to support him and provide accommodation under s.20 of the Children Act 1989 ("CA89").

2. The judge's judgment is at [2023] EWHC 3209 (Admin). In his consequential order dated the same day and stamped on 20 December 2023, the judge granted the following declarations:

> "1. By 18 September 2019 the Defendant owed the Claimant a duty under section 20 of the Children Act 1989 to provide him with accommodation; and
>
> 2. The arrangements that the Defendant made for the Claimant to stay with his friend's mother on and after 17 October 2019 were arrangements made by the Defendant pursuant to section 20 of the Children Act 1989; and
>
> 3. The Claimant has thereby acquired the status of "a person qualifying for advice and assistance" under section 24 of the Children Act 1989 and is eligible for consideration by the Defendant for assistance under section 24B of the Children Act 1989."

The judge granted permission to apply for judicial review and allowed the claim to the extent set out in his judgment.

3. Permission to appeal against the order on most, but not all, of the proposed grounds was granted by Lewison LJ on 11 March 2024. One of the issues on which permission was granted was the judge's ruling that the claim had been brought in time and/or that BC was entitled to an extension of time up to the date of service of the claim on 9 August 2022.

4. The structure of this judgment is as follows. In Section 2, we set out the outline facts but do not, at that stage, set out all of the contemporaneous documents in detail. In Section 3, we address the question of delay and whether or not the judge was right to find that the claim had been brought in time. In Section 4, we deal with the substantive issue arising on the appeal, in the following subsections: (1) legal framework; (2) the contemporaneous records and other documents; (3) the judgment; (4) the appeal and cross-appeal – grounds and submissions, and (5) discussion and conclusion. Finally, in Section 5, we consider the question of whether or not it can be said that, as of August 2022, SCC owed BC what was called by the judge "a continuing duty" under s.20. There is a short summary of our conclusions in Section 9.

2. The Outline Facts

5. BC was born on 25 December 2001. He is now 23. When he was about nine years old, he suffered from a benign brain tumour which was removed, but left him with long-

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

6. BC's family has a traveller background. He lived with his family in a caravan with his older and younger siblings, and his parents. By 2017, he had come to the attention of SCC's social services. There was intermittent contact between BC's family and SCC's social services from 2017 onwards. In April and then August 2019, anonymous callers raised safeguarding concerns in respect of BC and his younger siblings. On both occasions BC's mother denied the allegations of neglect and drugs/alcohol use on the property. SCC recommended consideration of the referral by MAPE (a "Multi-Agency Partnership Enquiry") which would have involved a number of different agencies, including the police. However, it was recorded that the concerns raised by the anonymous referral "had not been substantiated and advice has been given to the parents".

7. On 13 September 2019, BC approached the local housing authority, Runnymede Borough Council, presenting as homeless. The housing office emailed SCC with an urgent referral for social services intervention. The referral noted that BC's mother had asked him to leave about three weeks ago and since then he had been living with his friend K and his mother. K's mother was then reported as saying that she did not want BC to stay any longer and he was unable to stay that night. There were concerns over BC's drug dealing. He was deemed vulnerable.

8. On 18 September, SCC spoke to BC's mother, who referred to his drug use and his threat of violence. She said that her partner's parents had another caravan that they no longer needed and had offered it to her. She had told BC that they could put that next to their caravan and that BC could use it, if he got a job and paid half of the site rental of £80. In addition he would be fed and would have his washing done. She repeated that BC was selling cannabis for a drug dealer and she could not put her younger daughters at risk. She said that BC's claim that he could no longer stay at K's mother's house "was a story".

9. On 20 September 2019, SCC informed BC that they would refer him for education support only (i.e. they would not be providing accommodation). It appears that, by then, BC had gone back to live with K and his mother.

10. There was some further contact between SCC and BC and his family over the next month. However, on 16 October 2019, BC was threatening to throw himself in front of a train. He was sectioned at Farnham Road Hospital under s.136 of the Mental Health Act 1983. On admission, he told the mental health professional that he had been "kicked out" of K's house, although the following day he could not remember anything about either his state the night before, or his admission to hospital.

11. The youth worker, Ms Stubbs, was involved on the morning of 17 October 2019 when BC was released. K's mother agreed that BC could continue to stay with her but enquired about financial support. Ms Stubbs accompanied him to K's mother address. She also spoke to BC's mother who refused to have him back in their home and said that they were struggling financially. Ms Stubbs asked BC's mother to speak to K's mother but she was reluctant to do so, because she felt she would be "judged".

12. On 21 October, a meeting was arranged by SCC to discuss BC's living arrangements. Although BC's mother had said she would not attend and that she had washed her hands of BC because he was "continually upsetting her", the meeting did go ahead as planned. When K's mother asked for financial support, BC's mother agreed to make a contribution, although not immediately because she said she was unable to do so. It was decided that BC would be registered with Runnymede Borough Council for housing and that he would be referred to Catch 22 (a drugs support unit).

13. On 26 October, Surrey police contacted SCC to inform them that BC had engaged in anti-social behaviour with a group of youths, and he had told them that he was currently "sofa surfing". On 28 October 2019, SCC closed BC's case because BC was living with his friend K; a referral had been made to Catch 22; a further referral had been made to MIT for a training course/apprenticeship; K's mother and BC's mother had exchanged contact details; BC had been signposted to Runnymede Borough Council for his name to be added to the housing register; and a safety plan was in place. In November 2019, Catch 22 raised certain concerns but noted that "an agreement is in place with where he is staying".

14. It appears that the last contact that SCC had with BC was in November 2019. According to BC's first statement in these proceedings, "eventually" K's mother asked him to leave. The date he was asked to leave is unclear from the papers but according to the judgment it was "at the time BC was turning 18". After he left, he moved to London where he slept rough for a time and then stayed with his sister. In his statement, he described drinking to excess and making further suicide attempts. In 2020, he returned to Surrey and was helped to apply for supported accommodation provided by the local housing authority. The next time that SCC heard from BC was 12 August 2021, over 2 ½ years later. That elapse of time, and the subsequent delay between 12 August 2021 and the issue of proceedings on 9 August 2022 gives rise to the first issue, namely delay.

3. Delay

3.1 The Law

15. CPR 54.5 provides that, in respect of judicial review:

> "(1) The claim form must be filed –
> (a) promptly; and
> (b) in any event not later than 3 months after the grounds to make the claim first arose.
> (2) The time limits in this rule may not be extended by agreement between the parties."

16. The court has the general power to extend time for compliance with r.54.5 pursuant to r.3.1(2)(a). However, in a judicial review context, the central importance of acting promptly at all times has been repeatedly restated: see for example *R v Institute of Chartered Accountants in England and Wales Ex Parte Andreou* [1996] 8 Admin LR 557. More recently, the judgment of Carr LJ (as she then was) in *R (Good Law Project Limited) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355; [2022] 1 WLR 2339 ("*Good Law*") stressed at [39] the need for promptness: "Good public administration requires finality. Public authorities need to have certainty as to the validity of their decisions and actions".

17. If the applicant is unaware of the decision that he or she subsequently wishes to challenge, that may amount to a good reason for delay, but that is on the proviso that the applicant acts expeditiously once they become aware of the decision: see *R v Secretary of State for the Home Department Ex Parte Ruddock* [1987] 1 WLR 1482 ("*Ruddock*"). But errors by the applicant's lawyers will not generally amount to a good reason for delay: *R v Secretary of State for Health Ex Parte Furneaux* [1994] 2 All E.R. 652.

18. It is right to say that in recent times there has been a greater emphasis on the need to comply with the tight time limits in judicial review cases: the decision of this court in *Good Law* is a case in point. Although ultimately concerned with the subsequent service rather than the filing of a judicial review claim, the decision should make salutary reading for all those who need to comply with the short time limit imposed in judicial review cases.

19. Finally, there is the approach that this court must take to a decision of the judge below on all matters, including the issue of delay. In *R (Thornton Hall Hotel Limited) v Wirral Metropolitan Borough Council* [2019] EWCA Civ 737; [2019] PTSR 1794, this court was dealing with an appeal against a decision to extend time, and said at paragraph 21(8):

> "(8) It being a matter of judicial discretion, this court will not interfere with the first instance judge's decision unless it is flawed by a misdirection in law or by a failure to have regard to relevant considerations or the taking into account of considerations that are irrelevant, or the judge's conclusion is clearly wrong and beyond the scope of legitimate judgment (see Sales L.J. in *Gerber* [*Gerber v Wiltshire CC* [2016] 1 WLR 2593], at paragraphs 61 and 62). It may often be difficult to separate the exercise of discretion on remedy under section 31(6) from the considerations bearing on the discretion to extend time under, for example, CPR r.3.1(2)(a) (see Sales L.J. in *Gerber*, at paragraph 62). Care must be taken to distinguish in the authorities between cases where the court has exercised its discretion under section 31(6) and those where it has exercised its general discretion on remedy in a claim for judicial review (see, for example, Carnwath L.J. in *Tata Steel UK Ltd. v Newport City Council* [2010] EWCA Civ 1626, at paragraphs 7, 8, 15 and 16; and Sales L.J. in *Gerber*, at paragraph 64)."

3.2 The Relevant Events

20. As we have said, nothing happened in respect of this claim between mid-November 2019 and 12 August 2021. On that day, BC's solicitors, Lawstop, wrote an eight-page letter to Runnymede BC, albeit copying in SCC, pursuant to the judicial review pre-action protocol. It set out BC's claim against SCC, and said that, if no substantive response to the claim was received, they would instruct counsel to proceed with an application for judicial review. Although the letter, which was presumably based on BC's instructions, contained a number of false assertions (for example, it was based on the premise that BC had been "in care" which had never been the case), the essential claim was that SCC had failed in their various statutory duties towards him when he was a child. We note that, although various parts of the CA89 are referred to, there was no mention of s.20.

21. SCC replied on 23 August 2021 refuting the claims made. As to the further information that had been sought, SCC said that a formal Subject Access Request had to be made. There then followed what can only be described as desultory correspondence over a period of almost a year. Although Lawstop repeatedly threated to commence judicial review proceedings, they failed so to do. It is unnecessary to set out the correspondence in detail, and we note that the judge made no attempt to do so. However, the evolving timeline is important.

22. There was a further claim letter from Lawstop on 9 September 2021 which again sought a reply within a week, and again said that, if no substantive response was forthcoming, there would be an application for judicial review. That letter was mainly taken up with arguments on the facts although, for the first time, there was a reference to s.20 of the CA89. There was a response from SCC on 16 September 2021 denying the claim, a further letter from Lawstop on 11 October 2021 and another response from SCC on 12 October.

23. After that there was very little activity, save for Subject Access Requests for documents. In our experience, it is standard for a local authority to require such Requests to be made, particularly where, as here, there were confidentiality issues regarding (amongst other things) criminal allegations, and the references to BC's younger siblings. The redacted documents were provided on 14 February 2022. The judge said at [102] that by this date "sufficient disclosure (albeit heavily redacted) was obtained to make a request to SCC to recognise and comply with its [Children Act] duties." Although the judge does not refer to it, that request was not made until Lawstop's letter of 27 April 2022. Although that comprised another letter before claim, to which SCC responded on 12 May 2022, the principal parts of both these letters were concerned with arguments about the redactions in the documents provided by SCC on 14 February.

24. These proceedings were commenced on 9 August 2022.

3.3 The Judgment

25. Somewhat unconventionally perhaps, the judge dealt with the delay issue at the end of his judgment, between [90] and [104]. In our view, since a failure to comply with r.54(5) is a complete answer to a judicial review claim, it is usually best to deal with such a threshold issue at the outset. Certainly Ms Rowlands (on behalf of SCC) had addressed that issue first in her skeleton argument before the judge. His principal ground for rejecting SCC's case on delay was his conclusion that there was an ongoing breach by SCC and/or a "continuing state of affairs": see [92]-[98]. Although the judge does not explain how or why, it appears that he considered that to be a complete answer to SCC's case that BC failed to comply with r.54.5.

26. In the alternative, the judge considered that an extension of time was appropriate and his reasons for that were set out at [99]-[104]. He accepted at [100] BC's explanation as to why he was unable to seek legal advice until 2021. He said at [101] that the difficulties in obtaining documents from SCC "excuse any delay in BC bringing proceedings". At [102], he said that sufficient disclosure had been made to make a request to SCC to recognise and comply with its duties and that SCC's refusal of that request, dated 12 May 2022, "was challenged in time".

3.4 Jurisdiction/Appropriate Test

27. On behalf of BC, Ms Luh's first and fundamental objection in her skeleton argument was that, by reference to CPR 54.13, SCC "had no right to challenge the judge's decision to grant permission despite the alleged timing issues. SCC's arguments under Grounds 1 and 2 are an impermissible attempt to circumvent CPR 54.13." (see paragraph 15 of her skeleton argument). That submission was made after the citation of a number of cases which, it was said, were authority for the proposition that once an extension of time had been granted, it could not be reopened. This reflected Ms Luh's stance in her earlier respondent's statement under PD52C para 19, explaining why permission to appeal should be refused. Indeed, Lewison LJ expressly referred to the jurisdiction issue when granting permission to appeal, noting that, if Ms Luh was right, and "r.54.13 precludes an appeal on the ground that the judge was wrong to extend time…it may be that *Gerber v Wiltshire CC* [2016] 1 WLR 2593 is wrong". *Gerber* was a decision of this court where the grant of an extension of time by the judge below was the subject of a successful appeal.

28. Rule 54.13, upon which Ms Luh relied, is in these terms:

> "**54.13** Neither the defendant nor any other person served with the claim form may apply to set aside an order giving permission to proceed."

29. In our view, this rule has nothing whatsoever to do with appeals. It was introduced because, prior to the CPR, it was possible for a defendant to seek to set aside the grant of permission to bring judicial review proceedings. The rule is concerned with ensuring that if, for example, an extension of time was granted at the permission stage, the issue of whether the claim was brought in time cannot be revisited at the main hearing, although delay may still be potentially relevant to the relief granted. R.54.13 is not, and could not possibly be taken to be, a bar on a defendant appealing a judge's decision as to delay/extensions of time. If nothing else, such an interpretation of r.54.13 would mean that the rule was *ultra vires,* because s.16 of the Senior Courts Act 1981 allows any party to appeal an order of the High Court to the Court of Appeal. None of the authorities cited by Ms Luh supported her jurisdiction argument. On the contrary, the interplay between the rules was explained by Stanley Bunton LJ in *R* (*MD) (Afghanistan) v SSHD* [2012] EWCA Civ 194; [2012] 1 W.L.R. 2422 at [16] – [17], a case which was not referred to by Ms Luh or included in the bundle of authorities.

30. To be fair to her, by the time she came to make her oral submissions, Ms Luh appeared to accept that her case as to jurisdiction was wrong. When the point was put squarely to her, she expressly accepted that this court did have jurisdiction to consider the issue under r.54.5.

31. Ms Luh's skeleton argument also set out a fall-back position, again intended to knock out this aspect of the appeal without further ado. She said at paragraph 15 that "this is not a "rare" or "very plain" case where this court could exercise its inherent jurisdiction to set aside the judge's permission grant." She was asked where the quoted words "rare" and "very plain" came from, because they did not seem to tally with any of the authorities which had been cited. She said that those were not citations from authority, and that she had added the quotation marks herself for emphasis. Although that was her answer, we should in all fairness point out that our post-hearing researches revealed that these words may have come from the case of *R v Secretary of State for the Home Department ex parte Chinoy* [1992] 4 Admin.L.R. 457. That, however, was a case under the irrelevant and inapplicable provisions of r.54.13.

32. For the avoidance of doubt, therefore, we should emphasise that there is no authority in which any judge has said or suggested that an appeal against a decision in respect of r.54.5 could only succeed in a very plain case, or that a successful appeal on such a point would be rare. On the contrary, the test which this court must apply to the decision below involves neither labelling it a rare case or a very plain case for interference, but is instead the well-worn test identified at [21(8)] of *Thornton Hall* (as set out at paragraph 19 above).

3.5 'Promptly'/The Three Month Period

33. The first problem with the judgment on r.54.5 is that it is does not identify when the longstop period of three months started to run. Ms Luh submitted that it was clear that the judge had in mind that the cause of action against SCC crystalised on 18 September 2019. That was the date he expressly identified at [31], [32], [34], [35] and in particular [36]. At [39] he said:

> "39. It is plain in my judgment that as at 18 September 2019 it was or ought to have been clear to SCC on the facts as known to them that BC could not return home, and did not otherwise have stable, suitable accommodation. Instead it merely recommended a referral to its TYS [Targeted Youth Support]."

34. If that analysis is right, and the cause of action accrued on 18 September 2019, then the three month period under r.54.5 expired on 18 December 2019. If, in the alternative, the cause of action did not accrue until after BC's hospitalisation and return to K's mother, on 21 October 2019, then the cause of action expired on 21 January 2020. Either way, it meant that the judicial review proceedings were commenced more than 2 and a half years *after* the expiry of the longstop period provided by the CPR.

35. The judge did not address this issue at all. We consider that he should have done. Whenever a judge considers a submission that a claimant failed to comply with r.54.5, he or she needs to consider when the relevant longstop period started, and therefore when it stopped. In our view, it is not possible to identify properly how and why any extension of time might be justified until the relevant period of delay has first been identified. We note that even in the 'continuing duty' cases analysed in section 8 of this judgment below, the judges identified when the 3 month period started to run.

36. So it seems to us that the starting point for any consideration of SCC's submission that this judicial review claim was out of time is to note that: i) the time for bringing the claim expired in late 2019 or early 2020; and ii) the proceedings were commenced over 2 and a half years after the expiry of the longstop period in r.54.5. It seems to us that, in those circumstances, this claim was not on the face of it made promptly (because the rule envisages the 3 month period as a longstop, with the duty to act promptly giving rise to a potentially shorter period than that). On that basis, the judge should have found that a very long extension of time was required in order to avoid permission being refused.

37. Although it was not addressed to us in oral argument, and is contrary to the clear answer given by Ms Luh as to when the cause of action accrued, it appears that, at least before the judge, BC had an alternative case - first hinted at in his belated application for an extension to time made in August 2023 - that his claim did not crystalise until he had the documentation from SCC on 14 February 2022, and wrote thereafter to make a

claim based on that material. Since SCC responded to that claim on 12 May 2022, and the proceedings were issued just less than 3 months later, it was suggested that the proceedings were commenced in time, within the 3 month period. As we have already noted, there is an indication at [102] of the judgment that the judge accepted that submission.

38. In our view, to the extent that the judge did accept that submission, he was wrong to do so. There are a number of reasons for that.

39. First, on the facts, neither the judge's paragraph [102], nor BC's application for an extension of time, recorded that the disclosure which was relied on was given by SCC on 14 February 2022. Even on the assumption (which we do not accept) that the provision of these documents was the trigger for the judicial review claim, it was highly relevant to any consideration of an extension of time that there was a delay of 2 and a half months after the documents were provided, before Lawstop wrote their letter of 27 April 2022 reasserting the claim. That delay appears to be entirely the responsibility of Lawstop. It took up 2 and a half of the notional 3 months available by reference to the r.54.5 longstop. The reply by SCC of 12 May 2022 was prompt. Yet the proceedings were not brought thereafter for yet another 3 months.

40. On this basis, of the 6 month period between 14 February 2022 and 9 August 2022, SCC took up just over two weeks of it (between 27 April and 12 May) and the rest of the 5 and a half months was the responsibility of BC and his legal representatives. That comprised culpable delay on their part. The judge should have identified that: if he had done, he would have concluded that, even on the assumption that the claim could not have been brought until 14 February 2022, it was still not brought within the notional 3 month period.

41. Secondly, and for the same reasons, the judge should have analysed this delay against the requirement that BC was obliged to act promptly throughout. There was no evidence before the judge, or before this court, that this obligation was ever understood, much less acted on, by BC and his legal representatives. There is no justification in the documents, and no analysis in the judgment, as to why it took 2 and a half months after disclosure to write the letter of 27 April 2022, and why it took another 3 months after receipt of the letter of 12 May before they commenced proceedings. In our view, BC could not have been said to have acted promptly during this period, even on the assumption that the February documents were a legitimate trigger for the claim.

42. Thirdly, and in any event, we consider that the assumption as to the 14 February trigger is wrong in principle. An applicant in judicial review proceedings is not entitled to try and justify his or her delay on the basis that further information was or might be available from the respondent which would improve or affect their grounds of challenge. That is the complete antithesis of the judicial review regime, where the focus must be on the original, substantive decision, not some later ancillary event or decision: see for example *R (Fylde Coast Farms Limited) v Fylde BC* [2021] UKSC18; [2021] 1WLR 2794 at [36]-[41]. The original decision in this case was made on 18 September 2019.

43. Judicial review is not a regime where a claimant is entitled to wait, dotting every available 'i' and crossing every possible 't', before making a claim for judicial review. If documents are potentially important and outstanding, then one possibility is for a

claimant to issue proceedings, and then seek to delay the hearing of the permission application until after disclosure. What a claimant cannot do is to delay issuing proceedings in the hope that something might turn up on disclosure.

44. Accordingly, it seems to us that, however the matter is approached, this claim was not brought within three months and was not brought promptly. On that basis, the claim only survives if an extension of time is justified.

3.6 An Extension of Time

45. It appears that the judge granted an extension of time because he accepted that BC was unable to seek legal advice until 2021 [100]. From that period on, as we have seen, he said that the delays were due to SCC and the delay in the provision of documents.

46. In our view, when considering the claim for an extension, the judge failed to have regard to the overriding duty on the part of BC to act promptly throughout the 2 and a half years to which we have referred. At no time in his brief analysis does the judge ever have regard to that obligation, or the authorities on extensions of time. Accordingly, we consider that his analysis was wrong in principle. It is therefore necessary for us to redo that exercise.

47. As to the first period of delay, between November 2019 and August 2021, we acknowledge BC's personal difficulties. But we do not accept that he was unaware of the facts that founded his claim against SCC, and the judge did not find otherwise. This is not one of those cases, referred to in the White Book at paragraph 54.5.1 (such as *R v Secretary of State for the Home Department ex parte Ruddock* [1987] 1 W.L.R. 1482.), where the claimant did not know that a particular decision had been made which adversely affected his rights and which, having belatedly discovered it, he now wants to challenge. This is not a case in which BC was ignorant or kept in the dark about what had happened.

48. On the contrary, BC knew in September/October 2019 that he had not been provided with accommodation by Runnymede BC. He knew that the outcome of the events in September and October was that he was still staying with K's mother. He knew that SCC was providing him with social services support (in particular education and drugs advice) but had told him that they were not providing accommodation.

49. In those circumstances, we do not consider that this is a case where an extension of time was justified merely because BC did not take legal advice until July 2021.

50. However, if we are wrong about that, and BC was entitled to an extension of time up to August 2021 (when Lawstop wrote their first Pre-Action letter), it is then necessary to look in detail at what happened next. The judge did not do that. It is again necessary for us to redo that part of the exercise.

51. We have identified the relevant correspondence in section 3.2 above. We have analysed the delay in this period in section 3.5 above. That analysis makes plain that, in our view, Lawstop failed to act promptly from August 2021 onwards. For the reasons that we have there explained, the provision of documents by SCC could not in principle justify a delay and therefore an extension of time. In addition, the alleged absence of documents did not justify an extension of time on the facts. Lawstop had enough

information to start proceedings in August 2021; indeed they expressly said that they had in their letter of 12 August 2021.

52. And if we were wrong about that too, and the entitlement to an extension somehow limped on to February 2022 (when sufficient information had, even on the judge's findings, been provided by SCC), there was no justification for the further 6 months delay until August 2022: see paragraphs 40 - 42 above.

53. In summary, therefore, we consider that the judge erred in indicating that BC was entitled to an extension of time. He did not analyse the relevant period of delay and the events which occurred during that period; he did not have regard to BC's obligation to act promptly at all times; he wrongly reversed the burden onto SCC by way of the subsequent provision of documents; and he failed to have regard to the cause of the delay from February 2022 onwards.

54. For these reasons, we consider that no extension of time was justified and/or that any extension of time would have expired either in August/September 2021 once BC had taken legal advice and Lawstop had written their first pre-action protocol letter or, at the absolute latest, in around the middle of May 2022, three months after receipt of the documents on 14 February. The claim was, therefore, subject to the next point, out of time, and permission to bring a judicial review challenge should have been refused on that basis.

3.7 The Continuing Duty

55. As we have noted, the judge at [92] – [98] avoided many of the difficulties caused by BC's delay in issuing the proceedings by suggesting that SCC owed BC a continuing duty. The judge does not explain how this argument worked as a matter of law, or could allow BC to wait so long before bringing these proceedings. We consider these issues, but it makes sense to do so after we have decided whether or not SCC owed BC a duty at all. We therefore return to this issue in Section 8 below.

4 Substantive issue

4.1 Legal framework

4.1.1 The statute

56. Part III of the CA89 is headed "Support for Children and Families provided by Local Authorities in England". It imposes on local authorities a series of general and specific obligations to children, young people and their families. In broad terms, Part III covers voluntary arrangements for the provision of support. Part IV of the Act, with which this case is not concerned, contains provisions for the family court to make orders placing a child in the care of, or under the supervision of, a local authority.

57. The following provisions in Part III are relevant to this appeal.

58. S.17 is headed "Provision of services for children in need, their families and others". S.17(1) provides:

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

> (a) to safeguard and promote the welfare of children within their area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
>
> by providing a range and level of services appropriate to those children's needs."

59. S.17(4A) provides:

> "Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare,
>
> (a) ascertain the child's wishes and feelings regarding the provision of those services; and
>
> (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain."

60. A "child in need" is defined in s.17(10) in the following terms:

> "For the purposes of this Part a child shall be taken to be in need if—
>
> (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
>
> (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
>
> (c) he is disabled …."

Under s.17(11), "development" is defined as meaning "physical, emotional, social or behavioural development" and "health" as meaning "physical or mental health".

61. S.20 is headed "Provision of accommodation for children: general". The following provisions of s.20 are relevant to this appeal:

> "(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
>
> (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."

….

(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare

…

(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

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

(a) has parental responsibility for him; and

(b) is willing and able to—

(i) provide accommodation for him; or

(ii) arrange for accommodation to be provided for him,

objects."

62. S.22 is headed "General duty of local authority in relation to children looked after by them". Subsection (1) provides:

> "(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 [i.e. under a care order under Part IV]; or
>
> (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) ….
>
> (2) In subsection (1) 'accommodation' means accommodation which is provided for a continuous period of more than 24 hours."

63. S.22C of the Act makes provision for ways in which a looked after child, ("C"), is to be accommodated and maintained. S.22C(2) to (4) provide that a local authority must make arrangements for C to live with persons falling within certain categories (including parents and others with parental responsibility) unless such arrangements would not be consistent with their welfare or reasonably practicable. S.22C(5) provides that, if the local authority is unable to make such arrangements, they "must place C in the placement which is, in their opinion, the most appropriate placement available". S.22C(6) defines "placement" for the purposes of subsection (5) as covering a variety of placements including, under paragraph (a)

> "placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent".

A looked-after child may not be placed by the local authority with a relative, friend or other person connected with the child unless they have been approved as a local authority foster parent (or unless the circumstances come within the meaning of a "private fostering arrangement" under s.66 of the Act – not relevant to this case).

64. Subsequent sections of the Act make provision for services and support to be provided in certain circumstances to a young person after they cease to be a looked-after child.

65. Ss.23A and 23B impose functions on a local authority in respect of a "relevant child", defined in s.23A(2), so far as relevant to this appeal, as being a child who

> "(a) is not being looked after by any local authority in England…
>
> (b) was, before last ceasing to be looked after, an eligible child within the meaning of paragraph 19B of Schedule 2 [of the Act], and
>
> (c) is aged 16 or 17."

Schedule 2 paragraph 19B(2) defines an "eligible child" as a person who is aged 16 or 17 and has been looked after by a local authority for a prescribed period, or periods amounting in all to a prescribed period, which began after he reached a prescribed age and ended after he reached the age of 16. Under regulation 40 of the Care Planning,

Placement and Case Review (England) Regulations 2010, the prescribed period is 13 weeks and the prescribed age 14.

66. S.23C imposes continuing duties on a local authority in respect of a "former relevant child", defined in s.23C(1) as (a) a person who has been a relevant child for the purposes of s.23A (and would be one if he were under 18) and in relation to whom they were the last responsible authority and (b) a person who was being looked after by them when he attained the age of 18, and immediately before ceasing to be looked after was an eligible child. The duties set out in s.23C(2) to (5A) include, in certain circumstances, a duty to provide financial assistance. Under s.23C(6), those duties subsist until the former relevant child reaches the age of 21, but may extend beyond that in circumstances defined in subsequent sections in the statute.

67. S.24 provides (so far as relevant):

> "(1) In this Part 'a person qualifying for advice and assistance' means a person to whom subsection … (1B) applies.
>
> …
>
> (1B) This subsection applies to a person …who
>
> (a) is under twenty-one; and
>
> (b) at any time after reaching the age of sixteen but while still a child was, but is no longer, looked after, accommodated or fostered.
>
> (2) In subsection (1B)(b), 'looked after …' means
>
> (a) looked after by a local authority …."

68. S.24B provides (so far as relevant):

> "(1) The relevant local authority may give assistance to any person who qualifies for advice and assistance by virtue of **…**section 24(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.
>
> (2) The relevant local authority may give assistance to a person to whom subsection (3) applies by—
>
> (a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or
>
> (b) making a grant to enable him to meet expenses connected with his education or training.
>
> (3) This subsection applies to any person who—

> (a) is under twenty-five ; and
>
> (b) qualifies for advice and assistance by virtue of … section 24(2)(a), or would have done so if he were under twenty-one."

69. Pausing there, under this statutory framework, BC's case is that

(1) at 18 September 2019, he was a "child in need" within the meaning of s.17(10) of the CA89;

(2) at that date, SCC owed a duty to accommodate him under s.20 because his circumstances fell under s.20(1)(c);

(3) SCC complied with that duty by arranging for him to live with K's mother either as the judge found from 17 October 2019 or, as contended on the cross-appeal, from 20 September 2019;

(4) he was therefore a "looked-after child" within the meaning of s.22(1)(b);

(5) he is therefore, on the judge's finding, "a person qualifying for advice and assistance" under sections 24 and 24B or, as contended on the cross-appeal, a "former relevant child" under section 23C.

4.1.2 Guidance

70. Relevant statutory guidance is set out in "Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation" (Ministry of Housing, Communities and Local Government and Department for Education, 2018) ("the National Guidance"), issued under s.7 of the Local Authority Social Services Act 1970 and s.182 of the Housing Act 1996.

71. Paragraph 2.1 of the National Guidance states:

> "The Secretary of State for Housing, Communities and Local Government and the Secretary of State for Education consider that, generally, it will be in the best interests of most young people to live in the family home, or, where this is not safe or appropriate, with responsible adults in their wider family and friends' network. When a 16 or 17 year old is seeking support because they are homeless or threatened with homelessness, housing services and children's services responses should explicitly recognise this and work pro-actively with young people and their families to identify and resolve the issues which have led to the homelessness crisis."

72. Paragraphs 3.1 and 3.2 state:

> "3.1 Where a 16 or 17 year old seeks help from local authority children's services, or is referred to children's services by some other person or agency as appearing to be homeless or threatened with homelessness, children's services must carry out

> an assessment of what duties, if any, are owed to them. This applies to all young people, including 17 year olds who are approaching their 18th birthday, and young people who are pregnant or have children in their care. Where the duty in section 20 of the 1989 Act is triggered the local authority are under a duty to accommodate the child.
>
> 3.2 If the young person is at risk of becoming homeless in the future, for example because of conflict within the family home, it will be for children's services to determine what support is required depending on the circumstances and the needs of the young person and their family. Where there is no immediate threat of homelessness intervention may be more appropriately led by early help services, whereas if there is an imminent threat of homelessness or if the young person is actually homeless, a child in need assessment must be carried out and the child accommodated under section 20.
>
> …
>
> 3.4 Where a 16 or 17 year old seeks help or is referred, and it appears that they have nowhere safe to stay that night, then children's services must secure suitable emergency accommodation for them under section 20 of the 1989 Act whilst their needs, including their need for continuing accommodation and support, are further assessed…."

73. The term "early help" is defined neither in statute nor in the National Guidance, but in other statutory guidance – *Working Together to Safeguard Children* (2023), ("*Working Together*"), in particular chapter 3 at footnote 40:

> "Early help is a system of support which aims to support children and families as soon as problems emerge. Some early help support is described as 'targeted early help' and is provided to children and families who are identified by practitioners to have multiple or complex needs requiring a specialist and/or multi-agency response but where statutory intervention is not needed."

74. Returning to the National Guidance, we were also referred to paragraphs 3.12 and 3.13, which state, so far as relevant:

> "3.12 Where a young person in need requires accommodation as a result of one of the factors set out in section 20(1) (a) to (c) or section 20(3) then that young person must be provided with accommodation. As a result of being accommodated by children's services for a continuous period of more than 24 hours the young person will become looked after, and the local authority will owe them the duties that are owed to all looked after children, and once they cease to be looked after, the duties that are owed to care leavers under that Act….

> 3.13 There are only two circumstances in which a local authority might find that a homeless young person should not be accommodated under Section 20, and may instead be owed duties under Housing Act 1996. These are where the young person is:
>
> a. not a child in need
>
> b. a 16 or 17 year old child in need who, having been properly and fully advised of the implications and having the capacity to reach a decision, has decided that they do not want to be accommodated under section 20."

75. Further on in the National Guidance, under the heading "Undertaking Assessments", the following provisions, though not cited to us in argument, have some relevance to the issues arising on this appeal:

> "3.16 Determining who is in need and the extent of any needs requires professional judgment by social workers, informed by consultation with other professionals familiar with the circumstances of the individual young person and their family. However, where a young person is excluded from home and is, for example, staying with various friends, or sleeping in a car, it is extremely likely that they will be a child in need.
>
> …
>
> 3.23 The most crucial issues to be determined in the first instance will be whether the young person is actually homeless, if the young person is a child in need (section 17) and/or is suffering, or likely to suffer, significant harm (section 47), and/or if the young person requires emergency accommodation. If this is the case, children's services must accommodate them immediately. The welfare of the child is paramount and a 16 or 17 year old must not be placed at risk whilst waiting for the completion of an assessment."

4.1.3 Case law

76. We were referred by counsel to several decisions of the House of Lords and Supreme Court in which the statutory provisions have been considered, including *R (G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208 ("the *Barnet* case") , *R (M) v Hammersmith & Fulham LBC* [2008] UKHL 14, [2008] 1 WLR 535 ("*Hammersmith and Fulham"*), *R (G) v Southwark LBC* [2009] UKHL 26, [2009] 1 WLR 1299 ("the *Southwark* case") and *A v Croydon LBC* [2009] UKSC 8 ("the *Croydon* case"). It is, however, sufficient to focus on the judgments in the *Southwark* case which was decided after the decision of this Court in the *Croydon* case (*A v Croydon LBC & M v Lambeth LBC* [2008] EWCA Civ 1445, [2009] PTSR 1011, see paragraph 76 in particular) but before the appeal to the Supreme Court in that case.

77. The question in the *Southwark* case was framed in the judgment of Baroness Hale of Richmond at paragraph 3:

> "If a child of 16 or 17 who has been thrown out of the family home presents himself to a local children's services authority and asks to be accommodated by them under section 20 of the Children Act 1989, is it open to that authority instead to arrange for him to be accommodated by the local housing authority under the homelessness provisions of Part VII of the Housing Act 1996?"

Those homelessness provisions had been amended by the Homelessness (Priority Need for Accommodation) (England) Order 2002 to include children aged 16 and 17, save for those to whom a children's authority owe a duty under section 20 and "relevant" children who have previously been looked after by a local authority.

78. In that case, the 17-year-old appellant, A, had been excluded from his home by his mother and was "sofa surfing", sleeping on friends' sofas or in cars. After consulting solicitors, however, he presented himself to the local authority's children's services seeking an assessment of his needs under s.17 of the CA89 and immediate accommodation under s.20. Initially the local authority declined to accommodate him under s.20 and placed him in temporary bed and breakfast accommodation, and this remained its position after completing a s.17 assessment. A claimed that, as a duty to accommodate him under s.20 had arisen, he was in fact accommodated under s.20 and that he therefore fell within the relevant provisions of s.23C under which he would be entitled to ongoing support. Judicial review proceedings failed at first instance and before this Court but his appeal to the Supreme Court was allowed.

79. At paragraph 28 of her judgment, Baroness Hale analysed s.20 in these terms:

"Section 20(1) entails a series of judgments, helpfully set out by Ward LJ in [the *Croydon* case]. I take that list and apply it to this case.

(1) Is the applicant a child? That was the issue in the *Croydon* case (in which leave to appeal has been granted) but it is not an issue in this.

(2) Is the applicant a child in need? This will often require careful assessment. In this case it is common ground that A is a child in need, essentially because he is homeless. It is, perhaps, possible to envisage circumstances in which a 16 or 17 year old who is temporarily without accommodation is nevertheless not in need within the meaning of section 17(10): perhaps a child whose home has been temporarily damaged by fire or flood who can well afford hotel accommodation while it is repaired…. But it cannot seriously be suggested that a child excluded from home who is "sofa surfing" in this way, more often sleeping in cars, snatching showers and washing his clothes when he can, is not in need….

(3) Is he within the local authority's area? This again is not contentious….

(4) Does he appear to the local authority to require accommodation? In this case it is quite obvious that a sofa surfing child requires accommodation. But there may be cases where the child does have a home to go to, whether on his own or with family

or friends, but needs help in getting there, or getting into it, or in having it made habitable or safe. This is the line between needing "help with accommodation" (not in itself a technical term) and needing "accommodation".

(5) Is that need the result of (a) there being no person who has parental responsibility for him … (b) his being lost or having been abandoned; or (c) the person who has been caring for him being prevented from providing him with suitable accommodation or care? As Lord Hope pointed out in the *Barnet* case, (c) has to be given a wide construction, if children are not to suffer for the shortcomings of their parents or carers. It is not disputed that this covers a child who has been excluded from home even though this is the deliberate decision of the parent. However, it is possible to envisage circumstances in which a 16 or 17 year old requires accommodation for reasons which do not fall within (a), (b) or (c) above. For example, he may have been living independently for some time, with a job and somewhere to live, and without anyone caring for him at all; he may then lose his accommodation and become homeless; such a child would not fall within section 20(1) and would therefore fall within the 2002 Order and be in priority need under the 1996 Act.

(6) What are the child's wishes and feelings regarding the provision of accommodation for him? This is a reference to the requirement in section 20(6) of the 1989 Act…. Some have taken the view that this refers only to the child's views about the sort of accommodation he should have, rather than about whether he should be accommodated at all: see *R (S) v Sutton London Borough Council* [2007] EWHC 1196 (Admin), [2007] 2 FLR 849 para 51. This is supported by the opening words, which are "before providing" rather than "before deciding whether to provide"; contrast the equivalent provision in section 17(4A), "before determining what (if any) service to provide . . ." On the other hand, as explained in *Hammersmith and Fulham*, it is unlikely that Parliament intended that local authorities should be able to oblige a competent 16 or 17 year old to accept a service which he does not want. This is supported by section 20(11), which provides that a child who has reached 16 may agree to be accommodated even if his parent objects or wishes to remove him. It is a service, not a coercive intervention. Whether one reaches the same result via a broader construction of section 20(6) or via the more direct route, that there is nothing in section 20 which allows the local authority to force their services upon older and competent children who do not want them, may not matter very much. It is not an issue in this case, because A wanted to be accommodated under section 20. But a homeless 16 or 17 year old who did not want to be accommodated under section 20 would be another example of a child in priority need under the 2002 Order.

(7) What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings? As Dyson LJ pointed out in *R (Liverpool City Council) v Hillingdon London Borough Council* [2009] EWCA Civ 43, [2009] P.T.S.R. 1067, para 32, "children are often not good judges of what is in their best interests". But that too should not be an issue here. A had been given legal advice as to which legal route to accommodation would be in his best interests. He needed help to get back into education and get his life on track towards responsible adult independence and away from whatever influence the gang culture was exerting over

him. That would be better provided for him if he were accommodated under section 20 and became an "eligible" child.

Items (8) and (9) on the list given by Ward LJ, referring to the position of people with parental responsibility, do not apply in this case because A had reached the age of 16 and agreed to being provided with accommodation under section 20. It follows, therefore, that every item in the list had been assessed in A's favour, that the duty had arisen, and that the authority were not entitled to "side-step" that duty by giving the accommodation a different label."

80. Items (8) and (9) on the list given by Ward LJ in the *Croydon* case also do not arise here. In that case, the issue was whether the young person, an asylum-seeker, was a "child". In the Supreme Court, Baroness Hale drew a distinction between the assessment of, on the one hand, whether a child was a child in need and, on the other hand, whether the person was a child at all:

> "26. …The 1989 Act draws a clear and sensible distinction between different kinds of question. The question whether a child is "in need" requires a number of different value judgments. What would be a reasonable standard of health or development for this particular child? How likely is he to achieve it? What services might bring that standard up to a reasonable level? What amounts to a significant impairment of health or development? How likely is that? What services might avoid it? Questions like this are sometimes decided by the courts in the course of care or other proceedings under the Act. Courts are quite used to deciding them upon the evidence for the purpose of deciding what order, if any, to make. But where the issue is not, what order should the court make, but what service should the local authority provide, it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the public authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and "Wednesbury reasonableness" there are no clear cut right or wrong answers.
>
> 27. But the question whether a person is a "child" is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision maker."

4.2 Contemporaneous documents and other evidence

81. The bundle of documents filed in connection with the appeal include various local authority computerised records, from Runnymede and SCC. The SCC documents were

not set out chronologically and in places they were heavily redacted. As a result, they were not always easy to decipher.

82. The SCC records showed that BC and his family had been involved with children's services at several points between 2015 and 2019. In March 2017, he was one of three boys reported to have been subjected to child sexual exploitation ("CSE") by an adult woman, who was subsequently convicted and imprisoned for offences arising out of this incident. In July 2017, he was found in possession of a knife after smashing glass whilst under the influence of alcohol, and placed under a local Youth Restorative Intervention programme ("YRI"). From July 2017 to September 2018, he was supported by the local authority's Early Help services.

83. At some point in 2018, BC moved to stay with his sister but returned home in early 2019. In April 2019, a member of the public contacted SCC raising concerns about the family, in particular BC's younger sister. In conversation with the social worker, BC's mother said that he was "smoking weed" and that she would "like him to have some help around this and a referral to Catch 22" (the local authority's substance abuse treatment service). The social worker's recommendation, accepted by her manager, was that BC be provided with "Level 2" Early Help support.

84. In August 2019, SCC received another anonymous referral reporting that BC was sleeping in the family caravan but with his belongings, including his clothes, being stored in another van. It was also reported that he was not being given food. The social worker telephoned BC's mother who said that the allegations were malicious and denied that her children were neglected. The social worker recorded that "it would be worrying if concerns raised are substantiated" and that the mother had agreed to a multi-agency partnership enquiry ("MAPE"). After conducting that enquiry, the social worker made the following record:

> "Based on concerns which were raised, further information gathered through MAPE and further discussion with [BC's mother], concerns raised have not been substantiated at this stage. Information and advice has been given to the parents. Surrey Children Service will not be taking further action at this stage."

85. On 13 September 2019, BC submitted an online housing application form to Runnymede Borough Council. In answer to a question "What is the reason for [your] loss of last settled home, or threat of loss of settled home?", he wrote "Family no longer willing or able to accommodate".

86. On the same day, a housing solutions officer at Runnymede sent to SCC via email a request for support on a SCC standard form. In response to a question on the form "Has the parent/carer specified that information should NOT be shared with a particular person/agency?" she wrote: "Spoke to Mum [name] on the phone and was happy for me to make referral to you". Under the heading "What are the child and family's needs?" she wrote:

> "Mum asked BC to leave about three weeks ago, since then he has been living with his friend K and his Mum. He stays there overnight and then goes home to shower and get clothes from his

> Mums. K's Mum has now said she doesn't want him to stay any longer and is unable to stay overnight. K and his family live in Chertsey.
>
> BC has been arguing [sic] for a while now regarding the drug issues. BC is just smoking weed and his mum is worried that the dealer will find out where they live.
>
> BC owes the drug dealer £190 and they have been pushing him for the money and have been making threats but he doesn't want to tell me what the threats are.
>
> Mum or dad doesn't support him financially but gives out £5 here and there when they have it."

In answer to the question: "What outcome are you seeking from this request – what support is needed from children's services?", the housing officer wrote: "Accommodation – BC doesn't have anywhere he can stay tonight".

87. On receiving the referral, a social worker in the reception team at SCC made an entry on the digital file, reciting the information from the housing office. A manager forwarded the referral to the local area team, with the following comment:

> "This referral is a level 4 threshold for an Assessment, due to him being homeless, have issues with drugs. His mother appears to have abdicated her responsibility for him. Therefore he is deemed vulnerable (Southwark judgment). BC has a history of children's services involvement, was a victim of CSE …. CA was previously subject to YRI."

It was not contended on behalf of BC at the appeal hearing, nor, so far as we are aware, before the judge, that this entry represented a social work assessment of BC's needs. It was a summary of the referral.

88. On 18 September 2019, a social worker at SCC, Vanessa Young, sent BC a text message saying:

> "Hi B, I doubt that you will remember me but we meet 2 years ago. Could you call me or text when I can call you about your living arrangements."

Ms Young then spoke to BC's mother on the telephone and made a record of the call in the digital file. BC's mother described arguments she had had with BC, including over drugs. She said that on one occasion, after an argument, his father had told him to move out and he had stayed with a friend but returned the next day. She said that her parents had offered a caravan for BC to occupy and that she had suggested parking it next to theirs on the basis that he would pay half the rent. The record of the call continued:

> "[BC's mother] confirmed that BC has not been told he has nowhere to live. She said 'he's chosen' not to be at home because he doesn't want to follow the rules.

> I asked [her] if she knows where BC is now. She said she believes he is staying with his friend K. I said that according to the referral received from housing suggested that K's mother has said he can no longer stay with her. [BC's mother] said 'I think that's a story'. She thinks he and his friends are not as comfortable hanging around at the park now the weather is changing and it could be somewhere they can drink and take drugs."

89. Later that day, Ms Young spoke to BC by telephone and made a record of the call in these terms:

> "BC told me that his mum doesn't want him at home. He said it's okay for him to go back for a shower and change of clothes. I said that I have spoken with his mum who told me they were going to put his paternal grandparents' caravan/trailer next to theirs for him to live in. BC said they have been saying that since December and he's been 'relying on it'. BC said 'when anything happens they say it to make me do stuff.'
>
> I asked BC if he is still staying with his friend K. He said he is. He told me he did not 'contact the social' but went to housing on Friday.
>
> I asked BC what his plans are until he is 18. He said he has 'no plans' and is 'confused'. BC told me he wants to go back to college. He told me he was doing a bricklaying course but after being 'kicked out' by his parents, when he stayed with his sister he couldn't get there. I asked if he had been there to see if he can and he said he hasn't because he doesn't know what to say. I asked him if he would accept some support. He said he had tried it in the past and wasn't sure if it helped. I suggested that if he is struggling with how to approach education it might be easier for him to have some support which he accepted."

90. The documents filed in the proceedings do not include any entry by Ms Young recording the outcome of her enquiries but on 20 September the social work manager made the following record, under the heading "Management Oversight – contact decision":

> "Upon review of the contact and enquiries undertaken since the receipt of the contact, I am in agreement with the social worker's analysis and recommendation for BC to be referred to Targeted Youth Support ["TYS"]. BC is not homeless as originally thought but there is clearly a poor relationship between him and his mum. He is current NEET [not in employment education or training] and using drugs. BCS has agreed for a referral to TYS. The focus of the work would be relationship reparation, supporting him back into education and supporting him with reducing his cannabis misuse. BC's mother is also in agreement with the referral to TYS."

On the same date, Ms Young sent an email to the housing officer at RBC informing her that BC was being referred to the TYS team.

91. The TYS records disclosed by SCC show that BC's case was allocated on 26 September to Jane Stubbs, a worker in the Early Help team. Pending completion of an Early Help assessment, she was asked to look at alternative friends and family placements, consider the possibility of mediation between BC and his mother, and gauge the extent of his drug involvement to determine whether there should be a Catch 22 referral. Ms Stubbs met BC on 1 October 2019 and her record of the conversation includes the following observations:

> "BC told me he has a job lined up labouring but is uncertain of the start date.
>
> BC told me he is currently living at K's address and they are happy to have him. He says he likes it there and is made to feel comfortable but is unable to provide any financial support in the home which is why he would like to work ….BC said he did not want to return home as he does not want to live in a caravan, he has lived in one for seven years and they are cold in winter. He said K's mum has agreed for him to live with them and both him and K are looking to pay K's mum £60 for their shared room, once they are both working. BC told me he has been hanging about with K for a few months and they are like brothers …."

In her summary under "Working well", Ms Stubbs included (amongst other factors):

> "B has been offered a job labouring. Start date not yet confirmed.
>
> B is living at K's address and K's mother is happy to accommodate him as long as he is working."

Under the heading of "Not working well", she included:

> "B says he 'hates his mum'. Relationship between them has broken down."

Under the heading "Next steps", she included:

> "Speak with K's mum to confirm he is able to continue living there.
>
> Support BC to put his name on housing register."

92. On the same date, in a record headed "Management oversight", the TYS manager, Oliver Fernandes, made a record of a telephone call with Ms Stubbs. He recorded that K's parents "are happy for BC to keep on living with [them] for the foreseeable future" and that he was "due to start work in the next week". He also noted that BC "will be 18 in approx. two months' time". Under the heading "next steps", he recorded:

> "- double check these arrangements with B's mother and the parents where he is staying

- complete the EHA by 9.10
- encourage him to register with local authority housing
- encourage B's mother and [K's parents] to communicate
- a behaviour contract to be drawn up by [K's parents]"

The manager's note concluded: "provided this situation remains the same in two weeks, the case can be closed".

93. On 16 October 2019, a Family Action Plan was completed by a member of the TYS team (the author is not identified). Amongst the factors included under the heading "What are we worried about?", it recorded "BC is currently staying at a friend's house (K, 16). If their relationship was to break down he is at risk of homelessness". Under the heading "What do we want to achieve?", it was recorded: "BC to be living in a secure and stable environment". Under the heading "Action: How will we get there?", it recorded: "Work with parents and BC to look at suitable housing options". Work was also identified to address BC's drug taking and need for training. No date was specified for any of this work to be completed.

94. Also on 16 October – it is unclear whether before or after the completion of the Family Action Plan – Ms Stubbs telephoned K's mother. The record of this call reads:

> "[K's mother] told me she was happy for [BC] to stay there but he would need to find a job as she was unable to financially support him indefinitely [She] asked if I could speak with BC's mother and see if she is able to offer some financial support….I have told her I will try and arrange a meeting with family to decide next steps."

95. That evening, BC was found by police at a rail station threatening to commit suicide. He was detained and taken to hospital under section 136 of the Mental Health Act 1983. A medical note made at the hospital shortly after midnight recorded "Recently kicked out from friend's place where he was staying and started expressing suicidal ideation …. Not currently fit for assessment as intoxicated and agitated".

96. On 17 October, while BC was in hospital, an assessment was completed by Mr Richard McGill, an approved mental health professional ("AMHP") in SCC's adult social care team. That assessment was disclosed in the proceedings, although it was not part of the children's services records. As part of the assessment, he spoke to Ms Stubbs. His record of the conversation includes the following:

> "She has been working with BC since he became homeless, to support him in finding appropriate accommodation, employment and addressing his alcohol and illicit drug use, she has seen him twice. She is aware of the difficulties the family have experienced with this drinking and illicit drug use. BC is unwilling to address his illicit drug use. She does not believe living with K is good for him as they both use illicit drugs and drink heavily."

At the hospital, the AMHP spoke to BC who told him he did not feel suicidal and that, "if he were given the choice, he would like to leave, go to his mates K's house, continue to try to find work and get on with his life." Asked why he had threatened to kill himself, he said he could not remember saying it but thought it may have been the alcohol which led him to say it. The AMHP's note continued:

> "He was asked whether there was anything else in his life that may have led him to feel this way. He said just life, not having a job, no money and nowhere to live. It was pointed out to him that these were things that would only change over time with the support from [Ms Stubbs], which he acknowledged."

97. Later that day, after hospital staff concluded that the incident had been related to alcohol and he was not suicidal, BC was discharged and taken back to K's house by Ms Stubbs. That afternoon, Ms Stubbs telephoned BC's mother and told her that she had taken him back to K's house. BC's mother said that she would not have BC back as he had been aggressive and abusive. Ms Stubbs said that K's mother was happy to accommodate BC but was asking if his family could provide some financial support for him. BC's mother replied that she was struggling financially as her partner was unable to work at present and that, although she gave BC money intermittently when he asked for it, they could not keep doing this. Ms Stubbs suggested giving money directly to K's mother "then she would know he had eaten" and asked if she was willing to give K's mother a call. BC's mother expressed reluctance but agreed when Ms Stubbs suggested arranging a meeting between the mothers.

98. At this point, the records are incomplete. It seems that on 21 October a meeting took place (described as a "TAF" –"Team around the Family" – meeting). Ms Stubbs' case record states "notes in documents" but so far as we can see they were not disclosed in the proceedings. On the next day, 22 October, however, a management oversight meeting took place, and the record of this latter meeting is in the bundle. It includes the following passage:

> "A TAF took place on 21 October – some of the action points include:
>
> In attendance were BC's older sister, his mother [redacted name – we infer K's mother]
>
> [K's mother] has agreed to have BC living at home with her and her son.
>
> A referral is being made to Catch 22
>
> Training options are being looked at …
>
> Finances – at present finances are tight with [BC's mother's] household though {BC's mother] has agreed to make a contribution to BC costs in a few weeks' time
>
> He will be given details of the mental health crisis line …
>
> BC will be registered with Runnymede Borough Council."

99. Also on 21 October, an "Update of Family Action Plan" was recorded. In addition to the entries included in the earlier version set out above, under the heading "How will we get there?", it was recorded that "[K's mother] has agreed BC can live at her home". Under the heading "When will this be done?", the date "25 October 2019" was entered. The same date was identified for completion of a referral to Catch 22 and for looking into training options. The update also recorded that "Family have agreed with outcomes of TAF meeting". A box marked "Early help episode completed" was ticked.

100. On 26 October, SCC received a call from the police who had come across BC in a group of youths engaging in anti-social behaviour. BC had described himself as "sofa surfing" and said he was staying with K's mother.

101. On 28 October 2019, Ms Stubbs completed a "episode closure record" in which she recorded that BC "is living with K (friend)". She also recorded that she made referrals to Catch 22 and for a training course or apprenticeship in construction. It was also recorded that he had been "signposted to RBC to add his name to the housing register".

102. The final entry in the SCC records disclosed in the proceedings was of a telephone call on 13 November 2019 to a member of the Early Help team from a worker at Catch 22 asking why children's services were closed to BC "given that he is sleeping on the sofa and is not getting any finances". The social worker explained that there was an agreement in place for BC to stay with K's mother. The record continues:

> "[The Catch 22 worker] was not happy that SCC was no longer involved and felt [they] should be. I explained that she could make a referral but at this moment in time it does not meet our threshold."

103. In addition to these contemporaneous records from SCC and Runnymede, and from the hospital relating to BC's admission on 16 October 2019, the papers before the judge included two statements from BC and a statement from Elaine Andrews, the service manager for SCC's North-West Looked After Children and Care Leavers Service. In her statement, Ms Andrews stated that from the records she had discovered that Runnymede had made the referral on 13 September 2019 to SCC's single of point of access. Ms Andrews stated that the case was then wrongly assigned to the children with disabilities team. In her statement, Ms Andrews described TYS in these terms:

> "19. Targeted Youth Support comes under the Local Authority's Early Help offer …. They work with vulnerable children and families whose needs are complex who often have various professionals involved and require a lead professional to ensure multi—agency input and support is coordinated ….The teams are made up of both qualified social workers and unqualified youth workers, who have a wealth of experience of working with adolescent difficulties.
>
> 20. Although an assessment of need was carried out under Early Help, it is acknowledged that a s.17 assessment could have been carried out at point of contact, in conjunction with the local housing authority (Runnymede) to assess BC's housing need. However, it is clear from the information later provided by BC,

> his family, his friend's mother, and his subsequent statement, that BC was not homeless prior to being an adult. He had various options open to him, he could have returned to live with his mother, he could have moved into the caravan she offered, and he could have moved to live with his friend K's mother, as actually happened. Therefore the local authority remains of the view that, even with a s.17 assessment, the outcome would not have been the provision of a looked after service. Other than his accommodation issues, there was no other reason to consider that he was a child in need."

104. In his first statement in these proceedings, dated 5 August 2022, BC set out details of his teenage years. He described his period staying with K's mother in these terms:

> "37. Throughout this period I continued staying with K and his mum. I felt that I was outstaying my welcome and was very nervous because of this.
>
> 38. Things got really bad for me in this period. K was a member of the gang that I used to be affiliated with. At the time I was sofa surfing at his home, I had no choice but to go out with him all the time, and to also take part in gang affiliated activities. There was no option for me to stay at K's house when he was not there, and if I told him I didn't want to go out then he would threaten to hurt me. I had no choice but to go."

In his second statement, dated 25 August 2023, BC added this:

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

4.3 Substantive issue: the judgment

105. In his summary of the background and of the contemporaneous documents, the judge made a number of observations anticipating his conclusions.

106. Having quoted the referral by RBC and the entry on SCC's digital file made on receipt of the referral on 13 September 2019, the judge said:

> "29. BC's case had, accordingly, been elevated by SCC from Level two to Level four over a two year period of its involvement in his case. Level four is the highest level of intervention in the case of a child/young person whose needs are complex such that more than one service is normally involved with a co-ordinated multi-agency approach. It applies in particular where the child has been rejected by a parent/cases of family breakdown, or has been accommodated by the local authority. In other words, it is reserved for cases where children are in serious need.
>
> 30. The reference to "[h]is mother appears to have abdicated her responsibility for him. Therefore is deemed vulnerable. (Southwark judgment)" is undoubtedly an intended reference to *R (G) v Southwark LBC* [2009] 1 WLR 1299 in which Baroness Hale explained in paragraph 28(2) of her speech that a child excluded from home who is sofa surfing is clearly "in need" within the meaning of section 20(1).
>
> 31. It follows that I reject the submission of Catherine Rowlands, who appeared for SCC, that SCC was being asked to make a "snap judgment" which it was unable to make, and instead it was entitled to take time to determine what enquiries were necessary to enable it to decide what action to take, before determining whether BC was a child in need of accommodation under section 20(1) CA89. BC was well known to SCC with his "history of children's services involvement", and SCC had already made considerable enquiries about his needs and welfare. His being prevented from residing at home was the culmination of the known progressive deterioration in his relationship with his parents. It was clearly the case that, in accordance with paragraph 3.4 of the Guidance, suitable emergency accommodation for BC under section 20 CA89 was required, whilst his full needs, including his need for continuing accommodation and support, were further assessed. Despite this, SCC inexplicably failed to provide BC with any accommodation and indeed failed to take any steps to assess his case at all until 18 September 2019, being 5 days later, which is highly regrettable. It seems likely, although the court does not know for sure, that BC managed to persuade K's mother to let him stay at her home during that period."

107. Having considered SCC's records for the period 18 to 20 September 2019 summarised above, the judge observed (paragraph 39):

> "It is plain in my judgment that as at 18 September 2019 it was or ought to have been clear to SCC on the facts as known to them that BC could not return home, and did not otherwise have stable, suitable accommodation. Instead it merely recommended a referral to its TYS."

108. The judge described as "surprising" Mr Fernandes' conclusion, recorded in the management oversight record dated 1 October 2019, that "provided this situation remains the same in two weeks the case can be closed". His assessment of the record of the telephone conversation between Ms Stubbs and K's mother on 16 October was that it was "accordingly clear … that K's mother could not continue to have BC living at her house unless she obtained financial help". His interpretation of the Family Action Plan dated 16 October 2019 was that it "carries with it the implication that the current housing is unsuitable". He found the evidence in BC's witness statements to be consistent with the picture he saw painted by SCC's contemporaneous records.

109. The judge cited further entries from the records, including those relating to BC's hospital admission on 16/17 October and subsequent conversations between the social worker and BC's mother and K's mother. He noted that when spoken to by the police on 26 October 2019, BC had said he was "currently sofa surfing". He observed (paragraph 56) that "despite this background, it is extraordinary that on 28 October 2019 SCC nonetheless closed BC's case". After quoting the reasons for this decision, set out above, he observed that "this surprising decision was called into question on 13 November 2019 by Catch 22 as is recorded in SCC's case note".

110. After summarising BC's history after turning 18 the judge observed:

> "There is no doubt that Ms Stubbs herself was a caring and diligent social/support worker. But it is clear that SCC as an organisation seriously failed BC. I do not accept the submission of SCC that no purpose would be served now in granting the relief sought by this claim and that "there is no apparent lacuna in the Claimant's life that [SCC] would be required to fill." The support he receives from his supported accommodation key worker is being stepped down over time, and is accommodation-based. BC's evidence, which I accept, is that he still requires but cannot access support to return to college, access vocational training, plan his future and manage his social anxiety, all practical challenges which he struggles with owing to the lasting effects of his childhood brain injury and his difficult childhood."

111. The judge then considered the issues as formulated by the parties, starting with the questions whether SCC owed BC a duty under s.20 to provide him with accommodation and, if so, from when. At counsel's suggestion, he adopted the structured approach proposed by Baroness Hale in the *Southwark* case. The parties agreed that BC was, in law, a "child" at the material time and that he was within SCC's area. They disagreed on the remaining issues – whether he was a child in need within the meaning of s.17, whether he appeared to the local authority to require accommodation within the meaning of s.20(1), and whether his mother was prevented from providing him with suitable accommodation within the meaning of s.20(1)(c).

112. On the first of those issues, the judge reached the following firm conclusion:

> "66. I consider that it is apparent from the contemporaneous documentary record set out above that BC was plainly a child in need by 18 September 2019 at the latest. His relationship with his parents had deteriorated over a period of time, until by this

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

113. On the second issue, the judge acknowledged that the test to be applied was *Wednesbury* unreasonableness and cited paragraph 26 of Baroness Hale's judgment in the *Croydon* case quoted above. He continued:

> "69. Ms Rowlands argued that the offer to bring the grandparents' caravan to the site or the arrangement with K's mother meant that he did not reasonably appear to SCC to require accommodation. I do not accept that submission. The grandparents' caravan was obviously not suitable accommodation and SCC could not reasonably have concluded that it was as at 18 September (or thereafter)….
>
> 70. Likewise, the suggestion that the accommodation offered by K's mother was suitable for BC is unsustainable by reason of its nature and precarious duration. Indeed, its duration was uncertain from day to day. Again, SCC took no steps to visit K's mother's house and assess the suitability of that accommodation either, and it made no substantive contact with K's mother until 16 October 2019. SCC could not reasonably have concluded as at 18 September that K's mother's house was suitable accommodation for BC.
>
> 71. Indeed, the lack of suitability of BC's accommodation is underscored by the fact that as early as 26 September 2019 Mr. Fernandes of SCC was urging the Social Services department to "look at alternative family and friends placements" instead of the temporary arrangement at K's mother's house.

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

114. On the third issue, having observed that "as Lord Hope explained in in the *Barnet* case the widest possible scope must be given to this provision", the judge said:

> "75. The precise cause or causes of BC being excluded from his home do not matter. It may well be that blame could be attributed to all parties. But on any view, BC's parents were plainly prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care and in my judgment no local authority could reasonably have concluded otherwise by 18 September 2019. Whilst it does not matter, it seems that SCC simply assumed that BC would be accommodated by Runnymede BC upon reaching 18 years old, which was only some three months away, and in the interim BC could be accommodated by K's mother.
>
> 76. BC also expressed a clear wish to be accommodated by SCC. I reject the submission of Ms Rowlands that he expressed a wish to live with K's mother. On the contrary, on 13 September he sought accommodation by the local authority (albeit that he mistakenly believed that Runnymede BC was the appropriate body to which he should apply) and by 18 September that remained the position. SCC, however, was content to encourage BC to continue to stay at K's mother's house for as long as she was willing to let him do so.
>
> 77. Furthermore, nobody objected to the local authority's intervention. K's mother did not; nor did BC's parents. Indeed, BC's mother agreed to TYS being provided by SCC."

115. On that basis, he concluded that by 18 September 2019 SCC owed BC a duty to provide accommodation under s.20.

116. The judge then considered whether the arrangements made by SCC for BC to stay with K's mother were made under s.20. He rejected the primary submission on BC's behalf that BC was so accommodated as early as 20 September, on the grounds that "by that stage, and despite its section 20 duty, SCC had played no role, let alone a major role, in BC's accommodation arrangement with K's mother." He observed, at paragraph 80:

> "Whilst there is no requirement that the local authority must provide the accommodation itself, a local authority must be shown to have facilitated the arrangements or "played a role" for the child to be accommodated: *Southwark LBC v D* [2007] EWCA Civ 182 at [49] per Smith LJ."

At paragraph 81, however, he found that

> "By 17 October 2019 the position had materially changed. By that date, SCC had indeed played a central or significant role in ensuring that BC had accommodation (at K's mother's house) throughout the remainder of his childhood."

In support of this conclusion, he highlighted various entries in the records from 20 September onwards, which he held clearly illustrated "SCC taking the central role in relation to BC's needs, including the provision of suitable accommodation for him". He emphasised that it had been Ms Stubbs who collected BC from hospital on 17 October and took him back to K's mother's house, describing this as "much more than just a friendly person giving BC a lift home". He also cited the role played by Ms Stubbs in convening the Team Around the Family meeting on 21 October at which BC's mother and K's mother discussed the issue of financial support.

117. On this point, the judge concluded (paragraph 82):

> "It follows that I reject Ms Rowlands' submission that "[SCC] had no hand in arranging the accommodation with [BC's] friend." Whilst SCC may not have had a hand in *originally* arranging the accommodation at K's mother's house, it thereafter played a central role in arranging for that accommodation to continue after K's mother had told BC on 13 September 2019 that he could no longer be accommodated there, at least without payment. The continued accommodation provided by K's mother came about as a result of SCC's intervention and not as a result of private discussions between K's mother and BC's mother. At no stage did SCC make clear to K's mother that this was a purely private arrangement between her and BC's mother."

118. The consequence of the judge's decision that BC was accommodated under s.20 from 17 October rather than 20 September was that the period during which he was "looked after" prior to his 18th birthday was less than three months. He therefore fell into the category of "a person qualifying for advice and assistance" under s.24 of the CA89 but was not a "former relevant child" within the meaning of s.23C.

4.4 Substantive issue: the appeal and cross-appeal – grounds and submissions

119. SCC has permission to appeal on the following grounds relating to the substantive decision, namely that the judge erred in

(a) finding that the s.20 duty arose immediately upon SCC becoming aware that BC had presented himself as homeless to Runnymede BC (ground 3, as redefined in the skeleton argument);

(b) substituting his own decision as to whether the BC met the criteria for s.20, and in applying too low a standard for such intervention (ground 4);

(c) finding that BC's parents were prevented from caring for him (ground 5);

(d) giving no weight to BC's wishes as he expressed them at the relevant time and concluding that making a homeless application to the local housing authority equated to an immediate need for accommodation (ground 7);

(e) finding that the fact that BC and his parents did not object to BC being provided with a lower level of support evidenced that he needed to be taken into care (ground 8);

(f) finding that SCC had arranged accommodation for BC (ground 9);

(g) relying too far on BC's witness statements (ground 10, as granted in part).

120. By a respondent's notice, BC sought permission to cross-appeal on two grounds:

(1) the judge erred in finding that SCC did not perform the duty under s.20 CA89 until 17 October 2019 with the consequence that BC was only a qualifying child and not a former relevant child;

(2) the judge erred in holding that, given his decision that BC was a qualifying child, the issue as to whether SCC unlawfully refused to exercise its discretion to treat him as a former relevant child did not arise. The issue remained relevant and the judge should have determined it.

121. Dealing first with the appeal, counsel framed the issues arising under the various grounds as three issues:

(1) Did the Judge err in finding that the duty under s.20 CA89 arose by 18 September 2019?

(2) Did the Judge err in finding that the Council made arrangements for BC to stay with K and his family from 17 October 2019?

(3) Did the Judge err in relying on BC's witness statement?

In the event, the focus of the argument was on the first two of these issues.

122. On the first issue, Ms Rowlands submitted on behalf of SCC that the judge's finding that the s.20 duty arose as soon as SCC were made aware that he had applied to Runnymede for housing assistance was wrong for several reasons. The judge wrongly equated an application for housing assistance to a different authority with a "clear wish to be accommodated by SCC". The statutory responsibility rested on SCC and its decision was a matter for professional evaluation. The judge effectively ruled out the possibility that they could lawfully make any inquiries into his case, including as to BC's own wishes and feelings. Aged nearly 18, BC's views carried a good deal of weight. He said he wanted to stay with K's mother where he was happy and comfortable.

123. On the second issue, Ms Rowlands emphasised that BC had started to live with K before he applied to Runnymede as homeless and that he continued to live there throughout the events concerned. It was BC's choice and he wanted to pay his way, he said. All SCC did was to facilitate the two mothers talking to each other about BC's choice of

accommodation, and on one occasion gave him a lift back to him accommodation. That was far from accepting the responsibility for arranging accommodation.

124. On the first issue, Ms Luh submitted that the judge had rightly held that SCC's decision that BC was not a child in need was *Wednesbury* unreasonable. He concluded on the basis of the available records that accommodation with K was only "temporary" and "unstable accommodation" which was "not suitable for a 17 year old child". He correctly directed himself that the question was whether BC "appeared to SCC" to require accommodation as a result of the person who had been caring for him being prevented from providing him with suitable accommodation or care. He was thus not substituting his own views but rather reviewing SCC's decision. He analysed the local authority's records and on the basis of his analysis concluded that it was plain that "as at 18 September 2019 it was or ought to have been clear to SCC on the facts as known to them that BC could not return home, and did not otherwise have stable, suitable accommodation". It had been no part of the local authority's case that there was no duty to accommodate under s.20 because BC did not wish to be accommodated. There is nothing in the records to indicate that BC objected to the referral by Runnymede to SCC and he fully co-operated with their enquiries after 18 September. Before SCC (and the Court) can come to a conclusion that BC did not wish to be accommodated under s.20 CA89, SCC would have been required to ensure that BC was "properly and fully advised of the implications" and had "the capacity to reach a decision" that he did not want to be accommodated under s.20 CA89: National Guidance paragraph 3.13, supra. There is no record to demonstrate that SCC did that. In the circumstances, the judge made a reasoned decision that the criterion under s.20(1)(c) was satisfied.

125. On the second issue, Ms Luh submitted that the judge's finding that SCC had taken a "major role" in ensuring that BC was accommodated for the foreseeable future at K's house by 17 October 2019 was based on the contemporaneous records. The fact that he was already living there did not mean that he was not subsequently accommodated there under s.20. In fact, on his cross-appeal, BC asserted that the accommodation at K's mother's house became a s.20 placement on 20 September, when (as the judge found) the duty to accommodate on that date arose. A local authority may be held to have provided accommodation even though the child was already living at the property before the duty arose. A contrary conclusion would reward the authority which performs the duty inadequately and would penalise children who are in need of accommodation but are not being supported as the law requires. A conclusion to this effect would permit a local authority to delay and / or avoid consequential duties to look after the child under its statutory duties.

4.5 Substantive issue: discussion and conclusion

126. There are several factors which justify looking carefully at the reasonableness of the local authority's decision in this case. First, BC had been known to SCC's children's services for a number of years and had previously been treated as a child in need. Secondly, he had a number of problems for which he needed help and support – conflict at home, drug taking, some involvement with criminal activities, and the fact that he was not in employment, education or training. Thirdly, on 13 September, he submitted a housing application online to Runnymede Borough Council who referred him to SCC saying he needed accommodation because he "doesn't have anywhere he can stay

tonight". Fourth, the initial comment recorded on SCC's digital file on 13 September was that he was "deemed vulnerable (Southwark judgment)". Fifth, it can fairly be said that the record of SCC's assessment in the following days is not as comprehensive as might be expected. The judge was right to be critical of the fact that, despite the urgency of the referral from Runnymede, BC's case was not considered for five days. Furthermore, no written record of Ms Young's analysis and recommendation has been disclosed in these proceedings. We have only seen the "manager oversight" entry dated 20 September recording the manager's "agreement with the social worker's analysis and recommendation for BC to be referred to Targeted Youth Support".

127. In our judgment, however, the magnetic factor in this case is that the series of evaluations that arise in these circumstances – whether a young person falls into the category of a child in need and, if so, whether they require accommodation as a result of one of the factors in s.20(1) – are matters of professional social work judgment. As stated in paragraph 3.16 of the National Guidance, "determining who is in need and the extent of any needs requires professional judgment by social workers, informed by consultation with other professionals familiar with the circumstances of the individual young person and their family". Where the professional evaluation is that the young person's needs can be met through the provision of the non-statutory early help services, as opposed to the statutory services under Part III of the CA89, that evaluation will only be open to challenge on *Wednesbury* principles. The requirement for a litigant arguing that such a judgment was so unreasonable that no reasonable social worker acting reasonably could have made it is a high hurdle. We are not satisfied that the judge had this high hurdle in clear view. In that respect he erred in law, and as a result his conclusion cannot stand.

128. We note, of course, that paragraph 3.16 of the National Guidance goes on to say that "where a young person is excluded from home and is, for example, staying with various friends, or sleeping in a car, it is extremely likely that they will be a child in need". But it does not follow that every young person who has fallen out with their parents and is staying with a friend will be a child in need. In this case, having spoken to BC, the SCC social worker established that he was still staying with K's mother. Her professional assessment was that accommodation was not an immediate issue and that the focus of social work intervention should be on repairing BC's relationship with his mother, helping him get back into education, and tackling his drug misuse. In her view, those issues could be properly addressed through a referral to TYS, a course with which his mother agreed. In those circumstances, the assessment of the SCC social worker, endorsed by her manager, was that BC was not a child in need and did not require accommodation under s.20. In our view that conclusion was one she was entitled to reach. It was not so unreasonable that no reasonable person acting reasonably could have made it.

129. We conclude that the judge erred in law in holding that it was "apparent from the contemporaneous documentary record set out above that BC was plainly a child in need by 18 September 2019 at the latest" or that "on any view, his health or development was likely to be significantly impaired, or further impaired, without the provision for him of accommodation by SCC". On any view, BC needed help and support. But not every young person in that position is a child in need under s.17. He only comes within that section if, under s.17(10), he is (in summary) likely to suffer an impairment of health or development without the provision for him of services under Part III of the

CA89. The structure of social services for children and families in England and Wales provides for different levels of support, as explained in paragraph 3.2 of the National Guidance. As described in *Working Together*, some young people will be "identified by practitioners to have multiple or complex needs requiring a specialist and/or multi-agency response but where statutory intervention is not needed". The assessment of the social workers in the present case in September 2019 was that BC fell into that category. The issues identified by the TYS team on referral in September 2019 were typical of the issues for which TYS services were intended – for a child whose "needs are complex, who often have various professionals involved and require a lead professional to ensure multi-agency input and support is coordinated".

130. We accept the local authority submission that it was not correct that BC expressed a clear wish to be accommodated by SCC and the judge was wrong to reject SCC's submission that he had expressed a wish to live with K's mother. The judge found (paragraph 76) that "on 13 September he sought accommodation by the local authority (albeit that he mistakenly believed that Runnymede BC was the appropriate body to which he should apply) and by 18 September that remained the position". It does not, however, follow from the fact that he applied to Runnymede for housing that he wanted to be accommodated under s.20. The contemporaneous papers disclosed from SCC's records do not include any record of BC's expressed wish at the time of SCC's initial assessment in September 2019, although they show that he had applied to the housing authority rather than "contact the social". On 1 October, however, he told Ms Stubbs that K's mother was "happy to have him", and that "he likes it there and is made to feel comfortable". We accept the local authority case that, in so far as BC had expressed views about the matter, he had not said that he wanted to be accommodated by the children's services department under s.20. His wish was to remain with K's mother for the time being and apply for accommodation by the housing department.

131. Ms Luh is of course correct to submit that a child's wishes are not determinative. But s.17(4A) requires a local authority to ascertain the child's wishes regarding the provision of services, and give due consideration to those wishes (having regard to his age and level of understanding), before determining what, if any services to provide. S.20(6) imposes the same obligation on a local authority before it provides accommodation under s.20. When the child is 17 years 9 months, the weight to be attached to his wishes is likely to be considerable.

132. The obligation on a local authority to accommodate a young person under s.20(1)(c) arises where "it appears to them" that he "require[s] accommodation as a result of …the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care". As Lord Nicholls of Birkenhead said at paragraph 24 of his judgment in the *Barnet* case (as cited by Baroness Hale in the *Southwark* case):

> "'Prevented … for whatever reason' in paragraph (c) is to be interpreted widely. It includes a case where the person caring for the child is intentionally homeless. A child is not to be visited with the shortcomings of his parents."

A young person aged 17 who has fallen out with their parents and been excluded home may therefore come within that wide interpretation. But it does not follow that every young person of that age who is a child in need and falls out with their parents and is

asked to leave requires accommodation under s.20. The obligation to accommodate under s.20 in those circumstances only arises where it appears to the local authority that he requires accommodation for that reason. This is again a matter for professional evaluation. In the present case, BC was living with K and his mother and his needs could be met through a reference to TYS. SCC concluded that in those circumstances he did not require accommodation under s.20. Again in our view that conclusion was one the local authority was entitled to reach. It was not so unreasonable that no reasonable person acting reasonably could have made it.

133. For those reasons, we accept the submission in support of appeal ground 4 that the judge substituted his own decision as to whether BC met the criteria for section 20, and in doing so applied too low a standard for such intervention

134. In a recent case, *R (TW) v Essex CC* [2025] EWCA Civ 4, (2025) 28 CCLR 81, this Court dismissed an appeal against a judge's decision that a local authority, when carrying out a child and family assessment, had not acted irrationally in failing to determine the appellant, then aged 16, to be a "child in need" within the meaning of s.17. At paragraph 64 of his judgment, with which the other members of the Court agreed, Baker LJ said:

> "The provision of services to prevent a child becoming a child in need is expressly prescribed in the National Guidance. It was plainly open to the local authority, following the Guidance and in particular paragraph 3.2, to conclude that TW fell into the category of a young person needing early help. Although he had a range of needs and specific vulnerabilities, there was no "imminent threat of homelessness". He needed support to "reduce the chance of a problem getting worse" and the local authority was able to coordinate early help services to meet those concerns. It was therefore entirely rational for the local authority to conclude that there was no requirement for services to be provided under Part III of the Act."

The judge should have reached the same conclusion in the present case.

135. Having concluded that no duty to accommodate arose under s.20, it is strictly unnecessary to address the second issue arising on the substantive appeal, as to whether SCC did in fact accommodate BC under s.20, or the issue under ground 1 of the cross-appeal as to the date on which he was so accommodated. The judge rejected the argument on behalf of BC that he had in fact been accommodated under s.20 from 18 September, but held that he had been so accommodated from 17 October when Ms Stubbs returned him to K's mother's house. In our view, Ms Stubbs's actions fell within the category identified by Baroness Hale at paragraph 26(4) of her judgment in the *Southwark* case where what the young person needed from the local authority was "help with accommodation", rather than the accommodation itself. BC had a home to go to. He had been staying there before the referral to SCC and continued to stay there throughout the relevant period, including on discharge from hospital on 17 October. In our view, nothing turns on the fact that Ms Stubbs took him back there from the hospital. He told her he was happy and comfortable there. The difficulty was that he was unable to pay for it. Ms Stubbs helped sort this problem by arranging the Team Around the Family meeting at which BC's mother and K's mother reached a private financial

arrangement. As we put it to counsel in the course of the hearing, she had a hand in resolving the problem but did not play a central or major role in arranging the accommodation.

136. For the reasons set out above, we have concluded that the judge was wrong to find that SCC was not acting reasonably in concluding that BC was not a child in need under s.17 or that he did not require accommodation under s.20. In addition, the judge was wrong to conclude that he was in fact accommodated under s.20. Rather, he never was a "looked after child" under s.22 and never qualified for advice and assistance under ss.24 and 24B.

137. We therefore allow the appeal on grounds 3, 4, 6 and 9 and set aside the three declarations made by the judge. The two grounds raised in the respondent's notice were contingent on the judge's finding that by 18 September 2019 SCC owed BC a duty to provide him with accommodation under section 20. As we are setting aside that finding aside, it follows that the cross-appeal should be dismissed (permission on the cross-appeal was granted by the order of Lewison LJ dated 24.05.24).

5. The Continuing Duty

138. Strictly speaking, we do not need to deal with this aspect of the case in any detail, because we have found that SCC owed BC no duty under s.20 arising out of the events in September/October 2019. In those circumstances, the continuing duty argument falls away in its entirety. On that basis, the last element of BC's defence to the delay argument also falls away, and the failure to comply with r.54.5 becomes another, separate reason why this appeal must be allowed.

139. However, we have reached the firm view that, even if SCC did owe a duty to BC under s.20, that duty could not, on the facts of this case, be described as a "continuing duty" such as to defeat the failure to comply with r.54.5. Accordingly, we consider that we should set out our reasons for that view.

140. The judge's judgment on ongoing breach starts at [92]. It is in these terms:

> "92. Ms Luh submits that the effect of the decisions in *R (M) v Hammersmith and Fulham* (supra) and *R (G) v Southwark LBC* (supra) is that, first, there are cases in which the local authority will have acted under section 20 even though purporting to act on a different basis and, second, in such cases, the young person can seek by way of judicial review confirmation that he or she was section 20 accommodated and entitled to the statutory benefits and protections which flow from that. It is frequently the case that such challenges are brought a long time after the events took place which the Claimant contends gave rise to him/her being accommodated under section 20 but in many cases the Court has expressly recognised that the issue concerned an ongoing breach."

That submission was not the subject of any comment by the judge. He impliedly accepted it because he went on at [93] – [96] to consider a number of first instance decisions which he said were in similar vein. That led him to conclude at [97] that this was a case where there was a "continuing state of affairs and a continuing breach".

141. The problem with this analysis is that the submission recorded at [92] of the judge's judgment, which was taken directly from paragraph 70 of Ms Luh's skeleton argument for the hearing before him, is incorrect. The two cases referred to, which are both decisions of the House of Lords and therefore binding on us, are not authority for the proposition identified. That was something which, in answer to questions from the court, Ms Luh properly accepted. Those authorities were not concerned with the question of continuing breach. That matters, because all the other cases cited in respect of the so-called continuing duty are first instance cases which turned on their own facts.

142. We turn therefore to the first instance cases referred to by the judge: *R (L) v Nottinghamshire CC* [2008] EWHC 2551 (Admin), [2009] 1 FLR 493; *R (Collins) v Knowsley MBC* [2008] EWHC 2551 (Admin); *SA v Kent CC* [2010] EWHC 848 (Admin), [2010] 2 FLR 1721; *R (T) v Hertfordshire CC* [2015] EWHC 1936 (Admin), (2015) 18 CCLR 632. He picked out some parts of the judgments in those cases that he said indicated that there was a 'continuing duty'. We note that they were precisely the same parts of the judgments which Ms Luh had identified in her written submissions to him.

143. There are a number of important points to be made about those cases. The first is that, although no mention is made of it in the judge's judgment, at the time that each of those cases fell to be considered by the court, the applicant was a child or had just turned 18. Thus:

(a) In *L v Nottinghamshire,* the claimant was under 18 when she brought her claim;

(b) In *Collins,* the claimant was under 18 at the time of the hearing;

(c) In *SA* the claimant was still 15. Even then, the delay was held against her, so that the relief she was granted was limited to the three month period before she lodged her claim;

(d) In *T* the claimant was a 4 year old child by the date of the hearing and her claim was therefore going to make a substantial difference to the rest of his life.

That situation is entirely different to the present case, where BC was 20 (and therefore not a child) when the proceedings were started, and is now 23.

144. Secondly, in each of these cases (with the possible exception of *Collins*, which is not very clear on the point) the focus was not on whether the claim was brought in time, so there was no discussion of r.54.5 and no application for or consideration of an extension of time. Instead, the cases were focused on whether the alleged delay affected the relief claimed. They were therefore very different cases to the present appeal.

145. Thirdly, as we have already noted at paragraph 43 above, in judicial reviews what matters is the challenge to a particular decision. It is not concerned with a general review of a local authority's statutory duty. The question each time is whether the particular decision was unlawful. In the present case, therefore, we are concerned only with the decision in September 2019.

146. Fourthly, we do not consider that any of these authorities sets out any relevant principle. As explained below, they were all concerned with their own particular facts.

147. So in *L v Nottinghamshire,* Burton J's judgment at [23] made it plain that the defendant did not dispute that, if the relevant events fell within s.20, the claimant was entitled to the relief claimed. The judge's discussion about delay at [46]-[48] was in the context that permission to bring the challenge had already been granted and that there was no need to consider a claim for an extension of time. It only arose in relation to the grant of relief. Burton J considered at [48] that it should not bar relief because L was a child in need.

148. Similarly, in *Collins* the claimant, who was under 18 at all times, was a looked-after child and therefore that state of affairs was continuing at the time of the hearing. Furthermore, there was a period of communication between the parties which also caused the judge to decide that he would not dismiss the proceedings on the grounds of delay.

149. In *SA,* the claimant was a child and Black J (as she then was) at [77] said that "past delay may well not be a sufficient reason for refusing to restrain further implementation of an unlawful policy or…decision about status". But she was clear that there would be substantial prejudice if financial relief was backdated, which was why the relief was limited to the 3 months prior to the issue of proceedings.

150. Finally, in relation to *T*, the delay point was not developed by the local authority in their oral submissions. Again, because the claimant remained a child, Hickinbottom J made plain that the delay would affect relief but would not bar the claim entirely. In any event in that case, relief was refused for other reasons.

151. We think that, in the present case, there was a certain amount of confusion between a continuing state of affairs, on the one hand, and accrued rights, on the other. There can be no doubt that, if BC had been owed the relevant s.20 duty, he would have accrued rights in consequence. If he had claimed in time, he could act on those accrued rights. But this was not a continuing state of affairs, much less a continuing duty: it was simply a situation in which BC claimed rights which had accrued to him as a result of events in the past.

152. Finally, on this topic, it appears that the judge considered that the "continuing duty" was an answer to the delay point in much the same way as a claimant in a nuisance case may be able to argue, in response to a limitation defence, that the nuisance is continuing, and therefore the cause of action is continuing. We profoundly disagree. There was no continuing cause of action. If there had been a s.20 duty, BC would have had a cause of action which arose because of SCC's decision in September 2019. If he was not owed a duty at that time, he is not owed a duty now.

153. Accordingly, we consider that it was wrong in principle for the judge to categorise this as a continuing duty or a continuing state of affairs, and wrong in principle for him to find that it justified BC's failure to act promptly arising from r.54.5.

9. Conclusions

154. For these reasons, we allow the appeal and set aside the judge's declarations.