

From advocate to social services

Requesting Children Act 1989 assessment and section 17 accommodation because parent intentionally homeless and becoming street homeless

Children's Services Manager

[Address of social services authority]

By first class post & email to [email address]

[Date]

Dear Sir/Madam

Re: [Name and address of client]

Child[ren]: [Name(s)]

Children Act 1989, Part 3

Request for assessment, accommodation and support

We write on behalf of the above named [whom we are advising under the Legal Help Scheme].

We are instructed to request an assessment on behalf of our client and her [son/daughter/children] [Name of child(ren)], age [#].

Request

We write to ask the Council, exercising its functions as a social services authority, to:

1. Confirm whether [your housing department / the local housing authority] has referred our client's case to you, either under section 213A of the Housing Act 1996 or otherwise, and if so the date on which that referral was made.
2. Irrespective of whether such a request (in (1) above) has been received, conduct an assessment for the purpose of establishing [[Name of child]/the children]'s needs.
3. Secure accommodation for our client and her child[ren], pending a resolution of their homelessness, or otherwise provide such assistance to ensure our client can secure accommodation, pursuant to section 17 of the 1989 Act.
4. Forward to us in writing by 4 pm on [date]:
 - a. A copy of your initial assessment.
 - b. Details of the assistance being provided to meet the identified needs.
 - c. Details of the accommodation being made available to our client.
 - d. In the event that you refuse to secure that accommodation is available for the family, your reasons in full for not doing so, including your human rights assessment.

We suggest that the most appropriate course of action in the circumstances would be for the Council, under section 17 of the Children Act 1989, to:



5. Secure that the [current] accommodation at [address] continues to be made available, or failing this secure alternative temporary accommodation, pending a resolution of our client's homelessness, and
6. Approve the payment of a sum that is sufficient to enable [Name] to obtain suitable privately rented accommodation in the district, including money for a tenancy deposit and rent in advance.

Background

[Set out factual background. The following provides an illustrative example only]

[Name] applied to the Council's homelessness service for assistance on or around [date]. At that time she was residing at [address], but her landlord had requested possession of her home due to arrears of rent.

The rent arrears were caused by fluctuations in our client's wages, and delays by the Department of Work and Pensions (DWP) in assessing the amount of Universal Credit (UC) to which she was entitled, and thereafter deducting an overpayment to be recovered at [x] per cent of her entitlement. With our help [Name] has requested that the UC overpayment be repaid at a lower rate. She has yet to receive a response.

The housing authority secured interim accommodation at [[address]/the above address] from [date]. However, on [date] the Council decided that our client had become homeless intentionally. Consequently it was determined that she is not owed an ongoing housing duty under Part 7 of the Housing Act 1996. We enclose a copy of their decision letter dated [date].

You will see that the Council has decided to withdraw [Name]'s temporary accommodation. She [was excluded this morning / is required to vacate on [date]].

We have asked the Council to review its decision that the 'main housing duty' is not owed. However, a request for our client to be accommodated pending the outcome of that review has been refused. This despite our submissions concerning [Name]'s imminent street homelessness, the likely impact on the welfare of her child[ren] and the fact that the period for which accommodation was provided was insufficient to afford someone with her means a reasonable opportunity of securing alternative accommodation in this district.

(Upon deciding that a homeless applicant has become intentionally homeless the housing authority must, under section 190(2)(a) of the 1996 Act, secure that accommodation is available for a period they consider will give the applicant a reasonable opportunity of obtaining alternative accommodation, following the end of the initial 56-day homelessness 'relief' duty)).

Our client has no alternative accommodation and no means of securing the same. She lacks the money that would be necessary to secure a tenancy from a private landlord. Consequently she faces the real prospect of street homelessness.



When looking for privately rented accommodation in the district our client has been informed that a sum of around £[...] will most likely be required to secure a [#] bedroom property (consisting of a tenancy deposit of £[...] and rent in advance of £[...]).

Our client's income currently amounts to £[...] per calendar month, which consists of [details].

[Name of child] currently attends [name of school] at [address].

We are not aware of any concerns in relation to [[Name] / the children]'s welfare, arising from an inability or unwillingness on the part of our client to fulfill her parenting responsibilities. In short, there are no safeguarding issues.

Law

Under section 17(1) social services authorities are required to safeguard and promote the welfare of children in their area who are in need.

So far as consistent with that duty authorities must promote the upbringing of children by their families.

Child in Need

A child is a 'child in need' (so far as relevant in our client's case) under s.17(10), 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 [or]

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services..."

'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health (s.17(11)).

A child without accommodation will ordinarily be a child in need (*R (G) v Barnet LBC; R (W) v Lambeth LBC; R (A) v Lambeth LBC* [2003] UKHL 57 ("*G, W and A*"); *R (G) v Southwark LBC* [2009] UKHL 26).

Duty to assess

There is a duty to undertake an assessment as to whether a child is a "child in need" where it appears a child may be in need (*G, W and A*). This is a low threshold test (see *R (AM) v Havering LBC and Tower Hamlets LBC* [2015] EWHC 1004 (Admin) ("*AM*") at [44]).

There are no shortcuts in undertaking an assessment. A pre-assessment stage is no lawful substitute for a proper assessment (*AM*).

The guidance confirms, at paragraph 38, that the purpose of the assessment is to:

- Gather information about the child and family.
- Analyse their needs and the nature and level of any risk and harm being suffered by the child.



- Decide whether the child is a child in need (s.17) or is suffering or likely to suffer significant harm (s.47).
- Provide support to address those needs to improve the child's outcomes and welfare and where necessary to make them safe.

The assessment should be focused on outcomes, deciding which services and support to provide to deliver improved welfare for the child (Guidance, para 63).

Assessment timescale

Paragraph 71 of the statutory guidance states:

*“Within **one working day** of a referral being received, a local authority social worker should acknowledge receipt to the referrer and **make a decision** about next steps and the type of response required. This will include determining whether:*

- *the child requires immediate protection and urgent action is required*
- *the child is a in need and should be assessed under section 17 of the Children Act 1989...*
- *any services are required by the child and family and what type of services...”*
(Working Together to Safeguard Children, July 2018).

While the assessment should be completed and notified within 45 working days, paragraph 76 of the guidance confirms that:

“Whatever the timescale for assessment, where particular needs are identified at any stage of the assessment, social workers should not wait until the assessment reaches a conclusion before commissioning services to support the child and their family. In some cases, the needs of the child will mean that a quick assessment will be required.”

Provision of accommodation

Under section 17, the local authority must, having regard to the results of the assessment, determine what services should be provided to a child in need.

Section 17(6) provides:

“The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.”

A service may be provided for the family of a child in need, with a view to safeguarding or promoting the child's welfare (s.17(3)).

It is unlawful for an authority to adopt a general policy of only accommodating children under section 20 and refusing to exercise the power under section 17 to accommodate other members of the child's family. Authorities must consider each case on its merits (*G, W and A*).

In *R(G) v Southwark LBC* [2009] UKHL 26, Baroness Hale observed that children in need of accommodation will almost always need to be accommodated with their family.

Interests of child and human rights



Section 11 of the Children Act 2004 requires the authority to make arrangements for ensuring that their functions – including assessment and service provision - are discharged having regard to the need to safeguard and promote the welfare of children.

Article 3(1) of the United Nations Convention on the Rights of the Child (“UNCRC”) provides:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 3 has been applied by the UK courts (see for example, *ZH v Secretary of State for the Home Department* [2011] UKSC 4).

Local authorities must, under s.17(1)(b), promote the upbringing of children in need by their family.

The authority must have regard to the right to respect for family life under Article 8 of the European Convention on Human Rights (“ECHR”; “the Convention”) when undertaking its assessment.

A decision to accommodate a child but not to accommodate the parent(s) will, absent a proper human rights assessment, be unlawful (*R (PK) v Harrow LBC* [2014] EWHC 584 (Admin)). The onus is on the authority to justify any interference with Article 8 rights.

In *R(HH) v Westminster City Magistrates’ Court* [2012] UKSC 25, the Supreme Court confirmed that when considering Article 8 in any case in which the rights of a child are involved, the best interests of the child must be a primary consideration

If ECHR rights are engaged, they are to be interpreted and applied consistently with international human rights standards, including Article 3 of the UNCRC.

Submissions

We make the following submissions.

[Name of child] is clearly a child in need, because she [is / will imminently be] homeless and our client has insufficient funds to pay for housing and essential living costs.

The Council is obliged to consider, as a matter of urgency, what services will be provided under section 17.

The service that is required is the securing of suitable accommodation to alleviate the family’s homelessness, or providing such assistance to our client to enable her to obtain suitable accommodation.

If the authority seeks (as it should) to make inquiries into our client’s request to satisfy itself that no other appropriate option exist, the correct approach must be to secure temporary accommodation pending the outcome of the assessment.

In our client’s case the most relevant considerations are:

- (a) The fact that the imminent homelessness has been caused by impecuniosity and factors beyond [Name]’s control, rather than any failure on her part to perform her parental responsibilities.



- (b) The absence of child protection issues.
- (c) The fact that the absence of affordable accommodation is the only barrier to the safeguarding of **[[Child's name]/the children]**'s welfare and the only barrier to avoiding the adverse impacts that homelessness will have on their health and development.
- (d) The importance of keeping the family together, and enabling our client to continue to perform her parental responsibilities.
- (e) The fact that any family separation would have serious adverse effects on **[[Child's name]/the children]**'s welfare and be contrary to the statutory objectives outline above.

Without assistance from social services our client and her child**[ren]** will be destitute.

We contend that, in the above circumstances, no reasonable authority would decline to secure accommodation, or decide to secure accommodation for only **[Name of child]** under section 20 of the 1989 Act. Accordingly, this would not constitute a lawful means of performing the Council's statutory obligations, and we would be obliged to **[seek instructions on applying for judicial review / refer our client to a solicitor for the purpose of seeking judicial review]**.

[In view of the urgency of this matter, this letter serves the purpose of the Judicial Review Pre-Action Protocol.]

Contact

We understand you may need to contact our client. She is available to attend the Council's offices. Her mobile telephone number is **[...]**.

Please inform us if you experience any difficulties in contacting our client so that we may facilitate contact. **[Name of solicitor/advisor]** is dealing with the case. **[She/He]** can be contacted directly by telephone on **[number]** and by email at **[email address]**.

We look forward to hearing from you shortly.

Yours faithfully

[Name]

[Job title]

*Enc: Signed authority for **[name of firm/agency]** to act on **[client's name]**'s behalf
Letter from **[name of LHA & homeless team]** dated **[date]***

