

Neutral Citation Number: [2010] EWHC 49 (Admin)

Case No: CO/12350/2009

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 January 2010

Before :

MR CHRISTOPHER SYMONS Q.C.
Sitting as a Deputy Judge of the High Court

Between :

THE QUEEN
On the Application of
FL (A Child)
By her Litigation Friend the Official Solicitor

Claimant

- and -

LONDON BOROUGH OF LAMBETH

Defendant

Ms Caoilfhionn Gallagher (instructed by Messrs Fisher Meredith) for the Claimant
Mr Hilton Harrop-Griffiths (instructed by Lambeth Borough Council Legal Dept.) for the Defendant

Hearing dates: 9th and 10th December 2009

Judgment

Mr Christopher Symons QC :

INTRODUCTION

1. The Claimant, FL, is a child now aged 17 having been born on the 5th November 1992. She appears before me by her litigation friend the Official Solicitor and is represented by Ms Gallagher. It is alleged on her behalf that there has been an unlawful failure on the part of the Defendant, Lambeth Borough Council (Lambeth), to assess her needs under section 17 of the Children Act 1989, a failure to accommodate her under section 20 of that Act and a failure to carry out an inquiry under section 47. Underpinning these grounds are alleged failures of Lambeth to have proper regard for their welfare duties to the Claimant under section 11 of the Children Act 2004 and breaches of Articles 2, 3, and/or 8 of the European Convention on Human Rights.
2. The real dispute in this case is largely a factual one as to whether the Claimant is able to live with her mother in the Stockwell/Brixton area or whether, as the Claimant alleges, she is unable to live there as her physical safety, mental well-being and possibly her life are at risk there. It is Lambeth's case that her mother's accommodation is suitable and it is not accepted that it is unsafe.
3. There is also an issue as to what the correct approach of the court should be where such a dispute arises. Lambeth argue that the issue of whether a child needs accommodation is a matter for their decision and that since this is largely a factual dispute the Court should not interfere unless the decision of the Council is in some way irrational or *Wednesbury* unreasonable. The Claimant on the other hand submits that the Council's actions have throughout been unlawful. They have failed to carry out a timely or appropriate assessment under section 17 of the Children Act and have unlawfully failed to accommodate the Claimant under section 20 of that Act and failed to conduct an inquiry under section 47. Ms Gallagher on FL's behalf seeks first of all permission to apply for Judicial Review¹ and if granted declaratory relief and mandatory orders to ensure that Lambeth carry out its statutory duty.
4. I shall set out the facts first of all and then turn to the law. I will then attempt to summarise the parties' submissions before setting out my conclusions.

The Facts

5. In about 2000 the Claimant's mother moved to her current address in the Stockwell/Brixton area. She works as a registered nurse and works long hours doing shift work. As a result she does not spend a lot of time at home. The Claimant's father is living in Ireland and supporting the family and although husband and wife lived apart they were still at the outset a couple. He travelled over from Ireland from time to time and FL had a good relationship with him.
6. In December 2007 the Claimant went to visit her sister in Ireland who had recently had a baby. During the time that her sister was picking her mother up from the airport and while the Claimant and her grandmother had care of the baby, the baby died. The Claimant tried unsuccessfully to resuscitate the child but to no avail.

¹ This is a rolled-up hearing.

7. The loss of the baby while in her care had a detrimental effect on the Claimant and when she returned from Ireland she did not attend classes at her school preferring to work in the library. She was offered some counselling but did not take that up.
8. In about August 2008 the Claimant's parents split up. Although they had not been living together this was unexpected and upset the Claimant. Shortly after this the Claimant says that her mother started a relationship with another man which had a detrimental effect on her relationship with her mother.
9. In September 2008 the Claimant and her mother went to Ireland for a wedding and the Claimant went to visit her father which caused further tension with her mother. The two of them did not speak for a while. On return to England the Claimant left home and went to stay with one of her teachers from the Lillian Bayliss school, a Ms Grace Spencer. Ms Spencer and the Claimant have a good relationship and she stayed for some two weeks before returning home to her mother.
10. In about November 2008 the Claimant heard from her mother that her father was not her biological father. Initially the Claimant did not believe this but her mother confirmed it was the case. The Claimant felt very betrayed by this and has not really spoken of it since.
11. Meanwhile in September 2008 a cousin of the Claimant, to whom she was very close, was arrested on firearm charges and was given a custodial sentence. The Claimant knew a number of her cousin's friends in Stockwell and two boys in particular started to talk to her. One of those asked her to go and see him a number of times but she declined his advances. However in March 2009 after a house party she agreed to take some food to this boy's home on her way home. When she went to leave she was sexually assaulted and raped.
12. The Claimant did not report the rape to the police. She knew the boy was part of a gang and was scared of what would happen if she reported it. She was concerned for her own safety and that of her family. The brother of the boy who had raped her was a friend of hers and he initially refused to believe the Claimant when she told him what had happened.
13. It appears that on the 23rd February 2009, that is before the rape, the Claimant had referred herself to an organisation called Kids Company which is a children's charity which offers therapeutic and social work services both through schools and at two street level centres and a therapy house.
14. The week after the rape the Claimant took an overdose of co-dydramol tablets. Having taken the overdose she went outside and collapsed in the street. She woke up at St Thomas's hospital. She was admitted to a Mental Health Unit in Kent and stayed for a few days. She was thereafter assessed by Lambeth's Children and Adolescent Mental Health Service (CAMHS).
15. On the 1st or 2nd April 2009 the Claimant was referred to Lambeth Social Services by Kids Company. She went back to live with her mother and returned to school shortly after the Easter break. Also in April 2009 one of the Claimant's close friends was murdered in a gang attack in Larkhall Park, Lambeth. During April the Claimant's mother went on holiday to Nigeria returning on the 24th April. It appears that the

Claimant's half-sister who is about 30 years of age looked after her while her mother was away.

16. There is a note on the Lambeth file dated 27th April 2009. It is headed "Record of Supervision Discussion: case note". It stated:

"Kids Company, referral that FL had taken an overdose and was admitted on 22/3/09 at Cynet Hospital in Kent. On the 31/3/09, FL made a disclosure that she was raped on 13/3/09 on her way home from her cousin's party at 3am when this occurred. FL informed that the perpetrator is a 19 year old male who is a family friend.

ACTION

Case allocated for Core assessment

Complete IA (Initial Assessment) by the 29/04/09

Arrange home visit to meet with mother and child

Explore the referral with FL, what is her view is her explanation consistent or does it suggest further concerns

Explore FL feeling of self

Explore previous experience of abuse

Explore issues of drugs, alcohol and mental health

Explore the relationship within the home between mother and child and any significant adult.

Explore mothers understanding of the FL needs.

Identify unmet need. Support required to enable FL to reach their full potential. Ensure you assessment explore the likely outcome for her without additional support

Speak to other professional involved in the family.

In your assessment you will need to be clear about risk, what are the risks to child and evidence your findings if no risk identified.

Your analysis should cover the strengths and positive factors about the care of the child, evidence your findings. In thinking about outcomes consider and evidence how child's safety can be maintained and what other resources can contribute and promote likely change."

17. On 30th April 2009 Lambeth Social services went to the Claimant's home and met with the Claimant's mother and received the information later set out in the Core Assessment of 21st September 2009. Her mother was not keen for the Claimant to be troubled by Social Services immediately prior to her GCSEs and asked that she be seen at a later date. That meeting eventually took place on 4th August 2009. It is submitted by Ms Gallagher that this was not a sufficient reason to delay the assessment and in any event the delay was too long.
18. In fact an appointment was made by the social worker allocated to her case, whom I shall refer to as YW, to see the Claimant on 5th May 2009 but due to an urgent child protection matter that meeting was cancelled by YW. The following week on 13th May Kids Company telephoned YW to see when the appointment was going to be rearranged and asked to be informed. There is no sign of any other action by Lambeth until June 2nd when there was a supervision meeting between YW and her supervisor which appears to have been written up in the notes in July following further contact from Kids Company.
19. In May and June the Claimant sat her GCSE exams. Her results which came through in August were excellent, including 6 As and 3 Bs and it is quite apparent that the Claimant is an intelligent and able student.
20. Also in May the Claimant's cousin was released from prison and lived with the Claimant and her mother for a short time before moving to a hostel provided by the Council round the corner from her mother's house.
21. In June the Claimant's mother split up with her previous boyfriend and started seeing a new man and the Claimant has said that before she even met him they were engaged. This had the effect, according to the Claimant, of her mother giving all her attention to her new partner and none to her.
22. On the 2nd July Kids Company telephoned Lambeth to say that they had seen FL who had told them that she was not getting on with her mother and was pursuing alternative accommodation. FL informed Kids Company that her mother was getting married and she was worried as she does not know her stepfather very well.
23. As stated above on the 4th August 2009 the Claimant was interviewed by YW of Lambeth at her home. Her notes state:

“FL presented with low self esteem. She said she had considered suicide about four times since late last week.

I advised that I would make a referral to Lambeth CAMHS and Lambeth Community Mental Health Team (CMHT). FL had not disclosed the rape to the police and I advised that I had a duty to report the incident to the police...”
24. On 7th August 2009 YW's supervisor entered in the notes:

“Core Assessment completed, concerns remain around FL's mental health. She appears to have little support within her

family unit. The recent rape incident provide additional concerns around her well being.

The Core Assessment could have focussed more on this young person's needs, the rape incident, what she is currently feeling, there appears to be an absence of explanation.

ACTION

Complete referral to Sapphire Team and follow up with telephone call

Write to the GP for network checks, request they refer FL to CAMHS

Please complete the above by the 21/08/09.”

25. The entry above suggests at this time the Core Assessment was complete although it had not been signed off at that time nor had its “completion” been made known to FL. It is critical of the Core Assessment but suggests matters should move on.
26. In August 2009 the Claimant began going out with the brother of the boy who had raped her. She had become close to him following the incident but this relationship did not last very long.
27. On 13th August 2009 YW met with FL and made notes of their meeting. Among the comments recorded was FL's view that:

“her mother spends too much time thinking about herself. She spends a lot of time working, sleeping with her fiancé and not enough with she, FL. FL said she was lonely and she was looking after herself.

FL's demeanour changed when I asked her about the rape ... she cannot talk about the incident because she was fearful that bad things would happen to her as a result...

FL said she wants to forget about the incident and she will not talk to the police², social workers or other professional about the incident... FL said she did not want a referral to Lambeth CAMHS and she will not keep appointment offered to her. FL agreed to seek support from Kids Company.”
28. On 2nd September 2009 Lambeth CAMHS wrote to FL having had her referred by YW of Lambeth Social Services. They offered her an appointment but they were not sure if she wanted involvement from their team at that moment.
29. In early September, probably the 2nd, the Claimant's cousin phoned her and she could hear people in background. She asked the Claimant about the rape. Then the rapist

² It is apparent that the police did call on FL and her mother on 14th and 15th August 2009 and they refused to give a statement to them.

took the phone and threatened her and was abusive when she accused him of rape. The Claimant felt very fearful and felt betrayed by her cousin. On the 3rd September the Claimant again referred herself to Kids Company. In a letter the following day, Kids Company wrote to YW. The letter is important because it contained an account of what the Claimant had said the day before. So far as pertinent it said:

“FL was first assessed by Kids Company having self referred on 23/2/09. Yesterday she attended the Kids Company drop in centre and made some disclosures regarding her current situation and state of mind.

FL stated that she was the victim of a serious sexual assault in March and that the police were contacted by yourself regarding this. She mentioned her stay within a mental institution after a suicide attempt, a situation which she stated you are also aware of.

However yesterday she stated that her attacker made threats to her life on 2/9/09 and she is fearful for her safety.

She also stated that the situation with her mother had deteriorated and she needs to leave the family residence but that her mother is not prepared to write a letter confirming that she has been asked to leave.

She informed me that within the past few days she was attacked by her boyfriend who was physically abusive towards her following an argument.

Yesterday she disclosed that she was having suicidal thoughts and expressed a wish to die.

I am extremely concerned for her welfare and although FL is reluctant to contact the police, I feel this is a necessary action to take to safeguard her. I have strongly recommended she do so herself, however she is too fearful, therefore I stated that I would pass this information onto you.”

30. The letter ended by giving telephone numbers to be called if further information was needed. It was on the 4th September 2009 that FL left her home and went to stay with Ms Spencer. Ms Spencer took her to see Lambeth Social Services. YW could not see her immediately and so they went to Kids Company and saw a Ms Hannah Rowe. Later in the day there was a meeting with YW. FL explained her fear as a result of the threats. She said she felt suicidal. The later Lambeth notes record FL as saying she was threatened by the perpetrator saying “when he sees her she will be sorry”. FL explained she wanted to move out of the area where her mother lives.

31. On 9th September YW of Lambeth wrote to the Claimant:

“Following a referral from Kids Company and discussions with you and your mother I write to inform that your case has now

been transferred to Lambeth Multi-Agency Rapid response Team (MAART).”

32. The letter ended by supplying contact details for her to call. On 7th September 2009 Ms Rowe of Kids Club spoke to YW. YW said that FL needed a crime reference number if she wanted to be re-housed as a young person. She also said that she would refer FL to a GP for a psychiatric assessment and the Rapid Response team would start working with FL in 2 to 3 weeks. This was followed by a further call from Ms Rowe to YW on 15th September 2009 who told her that “family workers” will contact FL soon.
33. On 17th September 2009 the Claimant went to see Mr Oliver Studdert of Fisher Meredith, her solicitors in this action. The following day she received the letter dated 9.9.09 referred to at paragraph 31 above stating that the matter had been transferred to MAART.
34. A letter was then written by Mr Studdert dated 18th September 2009. It is important to note that although Lambeth had “ended” their Core Assessment of the Claimant on 4th August 2009 at the time the letter before action was written that Core Assessment had still not been signed off nor shown to FL or her representatives. It was signed by YW on 21st September and by her supervisor the same day.
35. The letter from Fisher Meredith stated

“FL is unable to live with her mother as a result of a number of threats that have been made to her following her having been raped in March 2009.”

The letter then set out the history of the matter and then pointed out to Lambeth that FL was a child in need and that an assessment of those needs was required. Due to the threats being made to her by people in the vicinity of her mother’s house and the danger to her if she returned to live there Fisher Meredith said that the Social Services department had a duty to provide her with accommodation under section 20 of the Children Act 1989. They referred Lambeth to the case of *R(G) v. London Borough of Southwark* [2009] 1 WLR 1299 at paragraph 28 where a series of judgments at paragraph 75 of the judgment of Ward L.J. in the case of *R(A) v. London Borough of Croydon* [2008] EWCA Civ. 1445 were referred to. They then went through those judgments and stated it was clear there was a duty to accommodate the Claimant. They ended their letter with the hope that the matter could be resolved without Court proceedings.

36. Meanwhile the Claimant started attending Merton College for Business National Diploma Level 3 which is a 2 year course; if successful this will lead to University. The Claimant was still living with Ms Spencer at this time but on the 23rd September she went to the family home to pick up some of her belongings.
37. The letter from Fisher Meredith prompted some action from Lambeth. The Core Assessment was signed off. A new and more senior social worker was allocated to the case, whom I shall refer to as YH, and her manager, VL, on reviewing the case stated that a “further assessment of FL and her circumstances was needed”. YH was, according to her statement, allocated this case on 23rd September 2009.

38. A “briefing note” was prepared following a “Supervision discussion” between YH and her supervisor VL. Some concern was expressed about the relationship between the Claimant and her teacher Ms Spencer as to whether that was undermining the relationship with her mother. While it was accepted that the rape had taken place and that FL was fearful the view was expressed that there was:

“no evidence that she cannot return (to her mother) with support in place or that she could not be placed with family outside of London and still achieve her desired academic outcomes.

There is no evidence in the core assessment that mum has not met her needs – in fact mum has presented as willing to co-operate, but dealing with a young woman who wants independence, has identified she does not like the boundaries at home and wishes to live independently. Despite FL’s wishes and feelings of not wanting to return home, there appear to be family members who are willing to support her, therefore in accordance with the CA 89, section 20 is not the best option for this young woman, as she can remain with her family, which will be the best option for her. There is no evidence significant significant harm and it could be said that it testament testament to FL’s caregivers that she achieved such good exam results, despite experiences of seeing a baby die and being raped.” (The repetitions appear in the text of the note).

39. In my judgment this is an important entry in Lambeth’s notes because it reflects the view that was, and is, maintained, namely that although FL had clearly had some very bad experiences and was fearful it was still better to remain with her family than for Lambeth to accommodate her away from the family.
40. A response to the Fisher Meredith letter was sent by Lambeth dated 25th September 2009. It enclosed the Core Assessment. Lambeth agreed to carry out a “Child in need assessment”. They said they hoped to see the Claimant at the “home of her teacher” the following week. (There had been a telephone conversation between YH and FL on the 24th September 2009 during which FL had declined to come to Lambeth’s premises at International House in Brixton as it was not safe for her). Lambeth informed the solicitors that the new social worker was YH.
41. The Core Assessment stated that it was prepared following meetings with FL on the 4th August 2009 and her mother on the 30th April 2009. It stated that the reason for the Core Assessment was the referral received from Kids Company on the 1st April 2009. It stated that the Core Assessment had been started on 30th April 2009 and ended on 4th August 2009. Under the heading “Education – Parental capacity” it said:
- “Parent ensures that FL attended school regularly, punctually and that homework was completed on time.”
42. Under “Education – Social worker’s summary” it said

“FL appears to be achieving her full potential and there are no concerns around her education. Parent support FL to identify and develop her educational aspirations”.

43. Under “Emotional, behavioural development – Development needs” it said

“FL presents as having low self esteem and she appears to lack confidence in her abilities”. (It then set out details of the rape.)

...

FL spends a great deal of time on her own and she said that she is lonely. FL said that her mother is absent from the home about 98% of the time because she works days and nights. FL said that when at home her mother spends the time sleeping.”

...

FL has attempted suicide on one occasion. She took more than 5 co-dy-dramol (very strong pain relief) before she went to meet her friends. She collapsed whilst with her friends and she was taken to St Thomas Hospital by ambulance for treatment. FL was transferred ... to Cygnet Hospital in Kent for psychiatric treatment.”

44. Under “Emotional, behavioural development – Parental capacity” it said

“FL disclosed that she had taken an overdose because a boy heard about the rape and he told her he is going to spread the information. FL got upset and took an overdose.

FL said she received appropriate support from her mother after she had attempted suicide.”

...

FL has seen a counsellor from Lambeth CAMHS, however, she did not keep all her appointments and CAMHS closed her case.

...

FL said that she is generally well behaved, however, she has arguments with her mother over more flexible boundaries.”

45. Under “Emotional, behavioural – Social worker’s summary” it said

“FL appears to behave in an age appropriate manner. The concerns surrounds her suicidal thoughts which seem to be accompanied by a low mood. FL is not currently planning to harm herself. However she has taken an overdose of pain killers in March 2009 and she is at risk of further incident.”

46. Under “Family and social relationships – development needs” it said:

“FL describes her relationship with her mother as “Up and down” FL could not remember what was good about her relationship with her mother. FL said she feels left out as her mother mostly cared about herself.

FL says she feels betrayed by her parents. She said in November 2008 she discovered that the man who raised her and whom she identified as her father was not her biological father. She found this out after her parents had split up. Her step father now resides in Ireland and she does not see him often. Her step father sends money for her upkeep and he does not know that she was raped. FL said she cannot confide in him because she has lost trust in her step father. FL does not know who her real father is or where he resides.

47. Under “Family and social relationships – Parental capacity” it said:

“(Her mother) said that she loves FL but like all young people, FL is pushing boundaries. She said that FL come(s) home late, she does not call to say that she would be late home and she does not know where FL is most of the time. (Her mother) said that (She) tells FL off and FL gets upset about it. (Her mother) also said that FL get(s) upset if she does not buy FL what she wants, such a new mobile phone. FL had told her that she was going to leave home at least four weeks before she took the overdose.

(Her mother) confirms that FL had left home and went to stay with friends for five days on one occasion. FL returned home voluntarily and she apologised for her behaviour.

...

FL spends a great deal of time alone without adult supervision. Her mother is a registered nurse and she works full time shift hours. FL said her mother is away from home 98% of the time.”

48. “Under Family and Social relationships – Social Worker’s summary” it said

“FL appears to have an ambivalent relationship with her mother. She appears to be distressed by the long periods of time her mother spends at work and she does not seem to feel reassured or comforted when her mother returns home. FL perceives her relationship with her mother to be distant and this upsets her.

FL has considered two options to end her distress. She has thought of attempting suicide again but she has no plans to

carry it through³. She has also thought of leaving home and living independently with her friends. However FL may not be emotionally ready to live independently and she is dependent on financial support from her parents.”

49. Under “Social presentation – Young person’s developmental needs” it said:

“FL has asked the social worker to provide someone for her to talk to. FL accessed Kids Company when she was at Lilian Bayliss School. FL would like to be able to access a similar service and she would like a female worker.”

50. Finally under “Decisions” it said:

“The plan is for FL to receive support services from the following agencies:-

- A referral to be made to Lambeth CMHT
- A referral to Lambeth CAMHS
- A referral to the police
- A referral to Kids Company
- Referral to MAART
- Case transfer to Child Protection and Family Support team

51. It is not clear whether the Core Assessment was all, or mostly, prepared in late September or was prepared in early August when it was said to be complete. Whichever was the case the Assessment did not deal with recent events.

52. There was what was described as an “open space” meeting between YH and FL on the 29th September 2009. This was a meeting where others were present making a private conversation difficult.

53. On the 30th September FL again visited the family home to pick up further belongings.

54. On 12th October 2009 Fisher Meredith wrote a Pre-action protocol letter. They had previously (their letter of 6th October) asked for a copy of the Initial Assessment which they suggested should have been prepared following their letter of 18th September 2009. They had also sought a copy of any existing joint protocol between Lambeth Social Services and Lambeth Housing Department. In the Pre-Action protocol letter Judicial Review proceedings were threatened if no response was received by 4pm on 16th October 2009. The action which Fisher Meredith required Lambeth to take was:

³ Later in the document it says FL has considered suicide on at least 4 occasions within the last week but she does not have a current plan.”

- i) Provide a copy of the section 17 initial assessment forthwith.
 - ii) Provide FL with suitable accommodation under section 20 the Children Act 1989 forthwith.
 - iii) Ensure that social services have regard to FL's wishes and feelings in accordance with section 20(6) the Children Act 1989 in identifying suitable accommodation.
 - iv) Provide FL with the necessary support, including financial support forthwith.
 - v) Undertake a new core assessment of FL's needs as soon as possible.
55. Lambeth responded on 13th October 2009 and told Fisher Meredith that the Core Assessment was being updated. They anticipated that would be concluded by 30th October 2009.
56. On 14th October 2009 FL's solicitors wrote to explain FL could no longer stay at Ms Spencer's. She was sleeping on the sofa and had no financial support. They complained that Lambeth had not dealt with their client's immediate need for suitable accommodation or the immediate need for support, including financial support. They again sought an urgent response.
57. On the 21st October 2009 there was a threat by the rapist to a friend of FL's at college that if he or the gang see her in their area she would be beaten up.
58. Judicial Review proceedings were commenced on 22nd October 2009 and on the same day the Claimant sought and obtained interim relief from Silber J., requiring Lambeth to provide suitable accommodation and reasonable subsistence for the Claimant until the permission hearing.
59. A foster placement was found by Lambeth the following day. FL was taken to Thamesmead in Bexley which was about 19 miles from Merton College. FL complained that it was dirty and there was a youth living on the premises. She declined to stay there and made her own way back to south London. She took her belongings back to mother's house and on the way met the rapist. FL alleges that he was aggressive and that she was assaulted. Further threats were made. FL spent the night at her mother's house and her mother reported the incident to police. The following day the Claimant went to spend the week-end at a friend's house in Enfield.
60. FL was seen by YH on the 26th October 2009. In spite of suggestions from FL that she had been struck in the face by the rapist on 23rd October 2009 YH saw no injuries. FL explained that she did not like the foster placement. It was apparent that she had two objections. The first related to the particular place that was found for her and the second was an objection to being placed in a foster home at all. She made it clear to YH that she wants a flat, hostel or supported accommodation. It was FL's stated view that if she had not got social services involved she would have had her flat a long time ago. YH entered on her file, for the attention of the Emergency Duty Team, that they were not to place FL in semi-independent accommodation and that she was vulnerable and should be placed with a foster carer.

61. On 29th October 2009 FL attended International in Brixton House at the request of Lambeth and saw YH and received some financial support. YH explained that she felt that FL was emotionally fragile and hence the best placement was a foster placement. FL stated that she wanted a flat or hostel and stated her cousin had presented herself at “housing”, she was put in a hostel for 6 months and was then given a flat. FL became abusive and said her problem was “housing”.
62. There was a further hearing in Court on 30th October 2009 before Wyn Williams J. and an order was made that Lambeth provide suitable accommodation to the Claimant and pay her subsistence payments which do not require her to go to the Brixton or Stockwell area.
63. Later that day FL was taken to a new foster carer in Catford. YH spoke to the carer on 2nd November and was told that all was going well and that FL had been doing her homework over the weekend and later went out with the carer’s daughter.
64. Attempts were made by Lambeth to meet up with the Claimant prior to completing their updated Core Assessment. This did not prove to be possible partly because FL’s 17th birthday intervened. Eventually YH and FL met on the afternoon of 6th November and again on 9th November.
65. In the meantime Lambeth completed their Core Assessment which was signed off by both YH and her Manager VL on 6th November 2009. It is a very lengthy document occupying some 46 pages. Ms Gallagher on behalf of FL, before me, was very critical of the decisions which were the conclusions of the Assessment and described it as falling “woefully short”.
66. The Assessment recorded that interviews had taken place with FL on 29th September 2009 and with her mother on 30th September and 22nd October 2009. It stated that:

“This core assessment is being completed following a request submitted by FL’s solicitors on the 18th September 2009 for her to be accommodated under section 20 CA 1989.”
67. The history was set out at some length. Under “Health – Social worker’s summary” it said:

“The evidence gathered indicates that (FL’s mother) was both physically and emotionally available when FL took the overdose. She ensured that she was in contact with FL as well as liaising with professionals due to her concern regarding FL’s mental state. I have no concerns regarding FL’s mother’s ability to meet FL’s health needs, including her ability to respond to FL’s mental health needs.”
68. Later in the assessment it was said:

“FL’s educational achievement to date is a testament of (her mother’s) commitment and ability to meet her daughter’s needs...”

69. Under “Emotional behavioural development – Development needs” it was said:

“The previous core assessment indicated that FL presents as having low self-esteem and lack of confidence. I did not note that FL presented as having low self esteem, she maintained good eye contact, was able to express her wishes and feelings very articulately, she presented as confident within herself and was able to speak to me with a level of confidence. .. FL presents as a well behaved girl who interacts appropriately with adults and her peers. However she can be rude on occasions especially if she does not get her own way. I have experienced FL being rude following my informing her that my assessment is that she should not live alone and again when foster care was suggested.

Despite her life experiences, she presents as an intelligent and polite young girl, who maintains a positive relationship with her mother and her father and has made positive strides with regard to her education. FL was able to express her view that her mother has been available to her emotionally and physically, especially following her overdose.”

70. The Assessment dealt with FL’s mother’s absence in Nigeria in August 2009 when she had intended to take FL with her but once FL decided to remain her mother organised for a good friend to supervise her. YH’s conclusion was that there was no evidence to suggest that her mother had not prioritised FL’s needs. YH’s view was that FL was not “emotionally ready to live independently without the constant guidance of her mother”. She said that she “would be concerned at FL’s response to life experiences were she to live alone or indeed in a semi independent unit, given her response to the family guidance that is in place.” She pointed out that FL seemed content with her support from Kids Company.

71. At the end of her summary on “Emotional, behavioural development” YH said:

“Furthermore, FL allegedly leaving the family home is not as a result of the breakdown in the relationship between her and her mother, but it is as a result of an alleged threat from the young man who is stated as raping her. FL indicated to her mother that she was unwilling to access family support at the time of the alleged threat, but wished to move and live independently. The development of autonomy during the adolescent stage quite often results in conflicts with parents, but does not indicate that parents are not able to meet their children’s emotional needs.”

72. Under “Self-Care skills” YH wrote:

“FL is vulnerable and there are concerns regarding FL putting herself at further risk. FL does not present as having an understanding of the risks she can expose herself to and does not have an understanding of her immature identity as a young woman and the risks this poses to her.

FL's perception of her perceived experiences are that her living independently will resolve the issues she has identified, such as being safe from the perpetrator, which I disagree with.

It is my view that FL appears to be going through the transition from childhood to young adulthood and appears to be developing her independence. She is of the view that she can live independently in the community on her own. Even though FL has acquired age appropriate self-care skills, my assessment is she is still emotionally fragile and has taken impulsive action, by overdosing, as a means of dealing with stressful situations. FL does not present an awareness of the vulnerable situations she had placed herself in or the abusive relationship she has formed. Clearly this indicates that FL has not acquired the skills to live independently, as she has not been able to speak to trusted adults when she is feeling emotionally fragile. I would be concerned that without the ongoing support of her family FL would deal with emotional situations by self harming or overdosing. She will require ongoing support and guidance with clear and consistent boundaries considering her vulnerabilities.”

73. FL consistently said that she was fearful due to the gang situation in Brixton and Stockwell and that was one of the reasons why she was loath to go to the police and why when threats were made to her she was particularly concerned. In the Core Assessment YH said:

“FL has alleged that she received a threat from the boy who allegedly raped her. FL does not want to report it to the police for fear of reprisals as she has alleged that boy is in a gang.

There is no evidence that FL's immediate surroundings are unsafe – FL attends her mother's home and has stated that she is aware of the roads to travel on to keep herself safe. FL frequents the Brixton area, indeed Ms Spencer's home is in Brixton, FL refused to allow a social worker to meet her on Ms Spencer's road when attempts were made to place her on the 23/10, instead she chose to walk through Brixton in the evening.

FL has been in Brixton when I have spoken to her on the telephone and she left her foster placement on the 5th November, her birthday, to stay with a friend in the Stockwell area.

These actions are not indicative of a person fearing for their safety in Brixton or Stockwell.”

74. At the meeting on 9th November FL explained to YH that the ABM gang are in the main Stockwell area and that her mother lives in West Stockwell where the OTRAY gang is based. FL said that the perpetrator belongs to the ABM gang and so he cannot

come round to her mother's address as the "gang" in the area where her mother lives is the OTRAY gang. She also said that the alleged perpetrator did not know her mother's address. (This is repeated in YH's witness statement in paragraph 10.)

75. In her conclusions YH said:

"My assessment concludes that FL does not meet the criteria for being accommodated under section 20 of the Children Act as her mother is willing and able to provide care to her and there is no evidence that FL is at risk from the locality. She remains vulnerable, due to her immature and impulsive behaviour and still requires boundaries and emotional warmth from her family, which her mother can continue to activate. FL has evidenced that she is unwilling to accept boundaries from the Local Authority and will potentially place herself at risk.

The Local Authority via its social work team, cannot duplicate, (n)or will this be accepted, the support and boundaries that FL receives from her family. Careful consideration needs to be given to FL's wishes and balanced with the idea that children are not the best judges of what is in their best interests."

76. The decision reached by Lambeth was that there should be provision of services pursuant to section 17 of the Children Act. They recommended that FL make a statement to the police; that a Family Group Conference be convened; that she be referred to the Lambeth CYPS Risky Behaviour Panel, which included youth offending services, CAMHS, Police, Housing, to look at a possible plan of support for FL in the community. Consideration was also to be given to referring FL to victim support and to access support groups.

77. As FL had not been seen again prior to finalising the report she was asked for comments on it at the 2 meetings I have referred to above on the 6th and the 9th November. FL's reaction to the recommendation that she should go to live with her mother was that the recommendation was "crap" although she did give some feedback on the assessment.

78. On the 11th November 2009 Sarah Jane Fenton Chief Operating Officer of Kids Company wrote a letter that is exhibited to Mr Studdert's 3rd witness statement. It reiterated some of the matters contained in the Kids Company letter of 3rd September 2009 which I have dealt with above. It went into a little detail in relation to the gangs operating in Stockwell and said:

"It is possible that if threats have been made that FL is in extreme danger as there is a code of conduct within gangs that they operate for their own protection and the protection of the other members. We would not find it difficult to believe that if FL has a "bounty" or there is some reward for her killing that she is in danger...

In telling the staff at Kids Company about her situation, not once but twice both in a school setting and at the drop in centre,

FL knew that this information would be passed on for her protection and ongoing safety and so we feel that she did try and come forward. FL has had the courage to speak up about her circumstances.”

79. I have also had put before me some evidence from Professor Pitts about gangs in London and there is no doubt that such gangs exist and that they are very detrimental to the safety and well-being of law abiding citizens. They are territorial and quite capable of carrying out the threats that they make. FL, through Mr Studdert’s 5th Witness statement, says that although her mother is willing to have her return to live with her, she is unable to provide safe accommodation because of the threats. Neither Professor Pitts nor Kids Company has provided any evidence of a threat to FL personally from these gangs.
80. YH explained in her witness statement that Lambeth was a statutory safeguarding service and can obtain information in respect of risk from the police who receive intelligence on risks to young people even though it is a code of conduct for the gang-members that they do not talk to them. The authority can then take protective action accordingly. She stated that “to date we have not been provided with any information that there is a risk to her” (see paragraphs 11 and 12 of YH’s witness statement).
81. Lambeth have themselves an awareness of gang activity in the borough sometimes involving life-threatening incidents which have sometimes necessitated a safeguarding response. YH said in paragraph 22 and 23 of her witness statement that Lambeth had developed an excellent knowledge and understanding of gangs and that Lambeth and the police work together with other agencies to ensure that risk is minimised to the community from gang activity.
82. YH also pointed out that FL told her that she was not going to engage with the CYPS as she has not been given what she wants, i.e. a flat or semi-independent accommodation. This she describes as a typical example of FL wanting to have her own way as confirmation of what her mother said, that she gets upset if she does not get her own way. In YH’s professional opinion FL has not demonstrated through her behaviour that she is fearful of returning home. In YH’s opinion there is no evidence to show that FL cannot return to her mother’s care and be supported by Lambeth and other agencies experienced in managing any risk she believes there to be. (See paragraph 28 of her statement)
83. On 12th November 2009 Davis J. ordered this rolled up hearing. He also invited the parties to see whether any agreements could be reached in this case. On the following day Fisher Meredith wrote to Lambeth asking whether they would be willing to revisit its conclusions in the Core Assessment. However nothing came of that.

The Law

84. Section 17 of the Children Act 1989 provides:

“(1) It shall be the duty of every local authority ... –

- (a) To safeguard and promote the welfare of children 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

....

(4A) 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 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.

...

(6) 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 *exceptional circumstances*, in cash.

...

(10) 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 have the opportunity of achieving or maintaining a reasonable standard of health or development without the provision for him or 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, ...

(11) For the purposes of this Part, a child is disabled if he ... suffers from mental disorder of any kind ...”

85. There is no dispute in this case that FL is a child in need within the provisions set out above. In the case of *R(G) v. Barnet LBC* [2004] 2 AC 208 Lord Nicholls said of section 17:

“The first step towards safeguarding and promoting the welfare of a child in need by providing services for him and his family is to identify the child’s need for those services. It is implicit in section 17(1) that a local authority will take reasonable steps to assess for the purposes of the Act, the needs of any child in its area who appears to be in need. Failure to carry out this duty may attract a mandatory order in an appropriate case, as occurred in *R (AB and SB) v. Nottinghamshire County Council* (2001) 4 CCLR 295. Richards J. ordered a local authority to carry out a full assessment of a child’s needs in accordance with the guidance given by the Secretary of State in Framework for the Assessment of Children in Need and their Families (March 2000).

86. I will come to the guidance referred to below but it is convenient before I turn to that to set out part of the terms of section 47 of the Children Act:

“47 (1) Where a local authority –

(a) Are informed that a child who lives, or is found, in their area –

(i) is the subject of an emergency protection order; or

(ii) is in police protection; or

(b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm,

the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take action to safeguard or promote the child’s welfare.”

87. The guidance referred to was issued under section 7 of the Local Authority Social Services Act 1970. The social services are bound to follow the guidance unless there is good reason not to: *R v. Islington LBC ex parte Rixon* [1997] 1 CCLR 119 per Sedley L.J. at p. 123. Section 3 of the document provides guidance in relation to initial and core assessments of children and since it is an important part of the Claimant’s case I will set it out:

“3.7 Time ... is critical in a child’s life. A timely response to responding to a child’s needs means that the process of assessment cannot continue unchecked over a prolonged period without analysis being made of what is happening and what action is needed, however difficult or complex the child’s circumstances...

3.8 There is an expectation that **within one working day** of a referral being received or new information coming to or from within a social services department about an open case, there

will be a decision about what response is required. A referral is defined as a request or services to be provided by the social services department. The response may include no action, but that is itself a decision and should be made promptly and recorded. The referrer should be informed of the decision and its rationale, as well as the parents or caregivers and the child, if appropriate.

3.9 A decision to gather more information constitutes an initial assessment. An initial assessment is defined as a brief assessment of each child referred to social services with a request for services to be provided. This should be undertaken **within a maximum of 7 working days** but could be very brief depending on the child's circumstances. It should address the dimensions of the Assessment Framework, determining whether the child is in need, the nature of any services required, from where and within what timescales, and whether a future, more detailed core assessment should be undertaken. An initial assessment is deemed to have commenced at the point of referral to the social services department or when new information on an open case indicates an initial assessment should be prepared. All staff responding on referrals and undertaking initial assessments should address the dimensions which constitute the Assessment Framework...

3.10 Depending on the child's circumstances, an initial assessment may include some or all of the following:

- interview with child and family members, as appropriate;
- involvement of other agencies in gathering and providing information, as appropriate;
- consultation with supervisor/manager;
- record of initial analysis
- decision on further action/no action;
- record of decisions/rationale with family/agencies;
- informing other agencies of the decisions;
- statement to the family of decisions made and, if a child is in need, the plan for providing support.

As part of any initial assessment, the child should be seen. This includes observation and talking with the child in an age appropriate manner. ..

3.11 **A core assessment** is defined as an in-depth assessment which addresses the central or most important aspects of the needs of a child and the capacity of his or her parents or caregivers to respond appropriately to these needs within the wider family and community context. While this assessment is led by social services, it will invariably involve other agencies or independent professionals, who will either provide information they hold about the child or parents, contribute specialist knowledge or advice to social services or undertake specialist assessments. ... At the conclusion of this phase of the assessment, there should be an analysis of the findings which will provide an understanding of the child's circumstances and inform planning, case objectives and the nature of the service provision. The timescale for completion of this core assessment is **a maximum of 35 working days**. A core assessment is deemed to have commenced at the point the initial assessment ended, or a strategy discussion decided to initiate enquiries under s. 47, or new information obtained on an open case indicates a core assessment should be undertaken. Where specialist assessments have been commissioned by social services from other agencies or independent professional, it is recognised that they will not necessarily be completed within the 35 working day period. Appropriate services should be provided whilst awaiting the completion of the specialist assessment.

...

S47 and CORE ASSESSMENT

3.15 At any stage, should there be suspicions or allegations about child maltreatment and concern that the child may be or is likely to suffer significant harm, there must be strategy discussions and inter-agency action in accordance with the guidance in *Working Together to Safeguard Children* (1999). Assessment of what is happening to a child in these circumstances is not a separate or different activity but continues the same process, although the pace and scope of assessment may well have changed ... A key part of the assessment will be to establish whether there is reasonable cause to suspect that his child is suffering or is likely to suffer significant harm and whether any emergency action is required to secure the safety of the child".

88. There is a Flowchart set out in the Guidance document to assist social services departments to work their way through the actions for safeguarding the children in their care.
89. Section 20 of the Children Act 1989 provides:

“(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) 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.

(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his 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.”

90. It is to be noted that in this section it is for the local authority to provide accommodation where it appears to them that it is required for the reasons set out in the section. This will necessarily involve them in making an evaluative judgment⁴.
91. Ms Gallagher drew my attention to *R(G) v. Barnet LBC* where Lord Nicholls at paragraphs 23 and 24 said:

⁴ NB in *R(G) v. Southwark* [2009] 1 WLR 1299 at paragraph 31 Baroness Hale made the point that it was an evaluative judgment on some matters but not a discretion.

23. "Section 17 covers a wide range of services. Section 20 is focussed more narrowly. It is concerned specifically with the accommodation needs of children in need..."

24. "Prevented ... for whatever reason" in paragraph (c) (of paragraph 1) 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."

92. Once a child is accommodated under section 20 she becomes a "looked after" child, as defined in section 22(1) (as amended by section 107(1) of and paragraph 19 of Schedule 5 to the Local Government Act 2000, section 2(1)(2) of the Children (Leaving Care) Act 2000 and section 116(2) of the 2000 Act):

"In this Act, any reference to a child who is looked after by a local authority is a reference to a child who is – (a) in their care; or (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions within the meaning of the Local Authority Social Services Act 1970, apart from functions under sections 17, 23B and 24B."

93. In this case that is important because if the Claimant has been "looked after" (here meaning accommodated under section 20) by Lambeth for 13 weeks then on attaining the age of 18 she will become a "former relevant child" by virtue of section 23(c) of the 1989 Act. If that is the case then a considerable number of obligations towards her must be undertaken by Lambeth even after the age of 18.

94. Finally in relation to section 20 Ward L.J. in *R(A) v. Croydon London Borough Council* [2009] LGR 24 at paragraph 75 set out a series of judgments that arise under section 20. These were adopted by Baroness Hale in *R(G) v. Southwark LBC* [2009] 1 WLR 1299 at paragraph 28. Those judgements are:

- i) (1) Is the applicant a child? There is no dispute that she is in this case
- ii) (2) Is the applicant a child in need? Again no issue in this case, she is.
- iii) (3) Is she within the local authority's area? Again no dispute in this case, she is.
- iv) (4) Does she appear to the local authority to require accommodation? That is in issue.
- v) (5) Is that need the result of: ... (c) the person caring for them being prevented from providing her with suitable accommodation or care? That is in issue.
- vi) (6) What are the child's wishes and feelings regarding the provision of accommodation for her? There is little if any dispute the Claimant wants to be accommodated independently from her mother in semi-independent accommodation or similar and does not want to be placed in foster care.

- vii) (7)What consideration (having regard to her age and understanding) is duly to be given to those wishes? That is in issue.
- viii) (8)Does any person with parental responsibility who is willing to provide accommodation for her object to the local authority intervention? Her mother does not object while being content to have her home.
- ix) (9)If there is objection does the person in whose favour a residence order is in force agree to the child being looked after by the local authority? This is not applicable.

95. Section 11 of the Children Act 2004 imposes a duty on certain bodies including Lambeth in this case to safeguard and promote the welfare of children. Subsection 11(2) provides:

“(2) Each person and body to whom this section applies must make arrangements for ensuring that –

(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and

(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

...

(4) Each person and body to whom this section applies must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State.”

96. Statutory Guidance on the section 11 duty was issued in July 2005 and updated in March 2007 (Statutory Guidance on Making Arrangements to Safeguard and Promote the Welfare of Children under Section 11 of the Children Act 2004, DfES).

97. The guidance defines “safeguarding and promoting the welfare of children” as including:

“...preventing impairment of children’s health or development; and ensuring that children are growing up in circumstances consistent with the provisions of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully ... These aspects of safeguarding and promoting welfare are cumulative and all contribute to the five outcomes for improving the well-being of children set out in s. 10(2) of the Children’s Act 2004 namely:

- Physical and mental health and emotional well-being;
- Protection from harm and neglect;

- Education, training, and recreation;
- Making a positive contribution to society; and
- Social and economic well-being.”

The Submissions of the Parties

For FL

98. Ms Gallagher for FL relies on the Framework Guidance under section 7 of the Local Authority Social Services Act 1970 and submits that Lambeth in this case failed to provide an initial assessment within 7 working days and failed to complete a core assessment within 35 days. Further Lambeth failed to comply with its duties to FL as a child in need.
99. The first core assessment took until 25th September 2009. While an excuse was provided, namely that her mother requested that there be a delay until after FL took her GCSEs, that was inappropriate particularly having regard to FL’s attempted suicide. In any event, it is submitted, that does not excuse the delay until September since the exams finished in mid-June.
100. Further it was submitted that the Core Assessment was significantly out of date when it was produced and did not deal with recent events. It was alleged it failed to deal with the crucial issue of accommodation. It was argued that it was plain from the document that the section 20(1)(c) test was made out yet no action was taken.
101. When approached on 4th September 2009 there should have been an urgent initial assessment by Lambeth at worst within 7 working days.
102. On the section 20 duty it is alleged there has been a failure to accommodate the Claimant even on an interim basis without the Court’s intervention which was a breach of section 20(1)(c). It is alleged that the Claimant is unable to live with her mother in the family home as a result of the gang-related threats made to her following her rape. It is argued that FL’s mother is prevented from providing her with suitable accommodation or care. This is due to the threats being made against FL as well as the fact that her mother’s conduct indicates her inability to look after FL. Points were made about the mother’s trips to Nigeria despite the Claimant’s fragile state.
103. It was alleged that Lambeth’s refusal to accommodate the Claimant was unlawful. The Claimant alleges that she is unable to live in the Stockwell/Brixton area as her physical safety, mental well-being and possibly her life are at risk. She points to various matters including her rape, threats made to her, her mental state, that she is in fear and that she lived away from home with Miss Spencer. She alleges that Lambeth insisted unreasonably and unlawfully on FL obtaining a crime reference number before they would house her even though FL had said she was frightened to go to the police because of the ramifications. It was alleged that FL had to resort to staying with Ms Spencer due to her fear of returning home to her mother. At the least Lambeth should have accommodated her on a temporary basis while the Core Assessment was being prepared.

104. So far as the non-reporting to the police of the rape I was shown evidence which suggests, and I accept, that it is not unusual for young persons not to report crimes to police for fear of reprisals. Indeed such was accepted by YH in paragraph 10 of her statement. Ms Gallagher alleged that there was nothing to suggest that Lambeth had considered the specific threat or operational pattern of the ABM gang which is the gang to which the rapist belongs. Neither have Lambeth taken into account the evidence from Kids Company that she may be in “extreme danger”.
105. Further it was alleged Lambeth were in breach of their welfare duty under section 11 of the Children Act 2004 in that they have failed to safeguard and promote FL’s welfare. Ms Gallagher pointed to the guidance given under the section and the failure of Lambeth to prevent impairment of FL’s mental health and emotional well-being and to protect her from harm.
106. A section 47 inquiry should have been carried out but, unlawfully, was not in spite of the Claimant asserting that she was at risk of significant harm. It was not clear from Lambeth’s case at what date they considered that there was not a need to carry out a section 47 inquiry. There was a need to carry out such an inquiry between April and early September and particularly on receipt of the referral from Kids Company on 4th September 2009. There is a difference between a section 47 inquiry and a core assessment, the former requiring an in depth inquiry possibly involving the police.
107. While a new Core Assessment was completed it is alleged that there is nothing to indicate that the Defendant has properly investigated the nature of the risks, nor to indicate that it has taken into account the threats the Claimant has received, and her assault on 23rd October 2009. It is alleged that the 6th November Core Assessment falls far below the standard required by the Framework Guidance and the case law. In that regard it is said it is largely a descriptive document with little proper analysis of needs and no apparent understanding of her mental health problems, the risk she faces from herself and no proper plan regarding future services. In addition there are inconsistencies and contradictions of Lambeth’s stance concerning FL’s mother.
108. The Claimant is critical of Lambeth’s view namely that the Court should be deferential to the expert view of the social worker in this case. Further inquiries should have been made and more should have been done. I was referred to Munby J.’s Judgment in *R(J) v Caerphilly CBC* [2005] 2 FLR 860 who in relation to a pathway plan said that it “must spell out who does what, where and when”. Richards J. In *R(AB and SB) v. Nottingham City Council* [2001] EWHC Admin 235 criticised a document, which was not in fact an assessment but which was relied on as being analogous thereto, as being a descriptive document rather than an assessment. “There was no clear identification of needs, or what was to be done about them, by whom and by when.”
109. As to the suitability of the accommodation provided namely foster care it is alleged that Lambeth has ruled out any alternative and has failed to have proper regard to FL’s wishes. Instead they have applied a blanket policy of foster care only. It was pointed out that despite judicial comment Lambeth had still got no Joint Protocol between their social services and housing departments.
110. It was also submitted that underlying all these complaints was the local authority’s obligations under the Human Rights Act 1998 and it was alleged that as the Claimant

was subjected to distress and anxiety, and risk of violence and continued to be without accommodation or support there was a breach of the ECHR. Reference was made to Articles 2, 3 and 8 and while these breaches were not argued as a stand-alone challenge declaratory relief was sought.

111. Ms Gallagher urged me to take a modern approach to this judicial review case and in particular to note that it was now well established that the standard or intensity of review must vary according to the subject-matter and the gravity of what is at stake. I was invited to reject the arguments advanced for Lambeth that it was *Wednesbury* unreasonableness or nothing.

For Lambeth

112. Mr Harrop-Griffiths for Lambeth's main submission was that this is an attempt to dress up a factual dispute as a public law challenge. Lambeth does not accept that FL was, and is, too scared to go home. On behalf of Lambeth he submitted the case should be decided on traditional judicial review lines and he referred me to the case of *Lambeth v. Ireneschild* [2007] EWCA Civ. 234. In that case the applicant sought judicial review of a number of decisions taken by Lambeth concerning the applicant's care and accommodation needs. Relief was granted at first instance and the matter went to the Court of Appeal. The main judgement was given by Hallett LJ with whom Sir Peter Gibson and Dyson LJ agreed. At paragraph 44 she quoted from the judgment of Lord Brightman in *Puhlhofer v Hillingdon LBC* [1986] AC 484, 518B-E. I shall not set out the whole passage relied on but in part he said:

“My Lords, I am troubled at the prolific use of judicial review for the purposes of challenging performance by local authorities of their function under the Act of 1977. Parliament intended the local authority to be the judge of fact. The Act abounds with the formula when, or if, the housing authority are satisfied as to this, or that, or have reason to believe this, or that. Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act or abused their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed by judicial review... it is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case.”

(The learned Law Lord made reference to procedural irregularity and *Wednesbury* unreasonableness and continued)

“Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is

obvious that the public body, consciously or unconsciously, are acting perversely.”

113. Hallett L.J. said following that citation:

“Those remarks may have been directed at a different statutory function in a different era, but, to my mind, they are as pertinent today as they were in the 1980s.”

114. Mr Harrop-Griffiths referred me to further remarks in that case where Hallett LJ said at paragraph 57:

“Again, one must always bear in mind the context of an assessment of this kind. It is an assessment prepared by a social worker for his or her employers. It is not a final determination of a legal dispute by a lawyer which may be subjected to over zealous textual analysis. Courts must be wary, in my view, of expecting so much of hard pressed social workers that we risk taking them away, unnecessarily, from their front line duties.”

115. Unlike, for example, in the case *R(L) v. Nottinghamshire County Council* [2007] EWHC 2364, there was in this case a core assessment where Lambeth reached their conclusions based on the facts. There is a detailed assessment and the conclusion is that FL does not appear to the local authority to require accommodation; that is question 4 of Ward L.Js list above. It was submitted that unless that decision can be challenged on traditional judicial review grounds that is an end of the matter and the challenge fails.

116. It was submitted it is not for the Court to determine whether the Defendant is under a duty to accommodate the Claimant but to determine whether its decision has been lawfully made.

117. On the welfare duty under section 11 of the Children Act 2004 it was submitted that the section provides, materially, that certain public bodies, including children’s services authorities, must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. This does not add to the specific functions under the Children Act 1989 that relate to this case.

118. Various discrepancies in the information provided by the Claimant were pointed out but in my judgment nothing turns on those and I do not deal with them further.

119. It was pointed out that the Claimant made frequent visits to the Stockwell/Brixton area after the first time she said she was fearful. She visited her mother on the 23rd and 30th September and stayed there for the night of the 23rd October. She stayed with friends in the area between 5th and 9th November. These were all taken into account by YH in reaching a conclusion as to whether FL was too frightened to live at home and her decision was not irrational as there remain good reasons not to accept FL’s account.

120. In relation to section 47 it was denied that there was any reasonable cause to believe that FL was at risk of serious harm and in any event it was submitted that there was nothing to be gained now from such an inquiry since no more would be discovered. Lambeth moved straight to their own inquiries and saw both FL and her mother. While there was information from Kids Company of gangs that was generic information rather than specific to the Claimant.
121. So far as the allegation made by FL that her mother is not able to look after her as demonstrated by her two trips to Nigeria it was submitted that on each occasion supervision was organised. On the first occasion in April 2009 FL's older sister was at home with her and in August 2009 arrangements were made with a family friend to supervise her.
122. As Lambeth had not been allowed to visit the premises occupied by Ms Spencer and had not been able to speak to her they had not been able to verify when FL had been staying with her. On this point it is clear to me that she was staying with Ms Spencer for at least part of the time alleged as that is apparent from the papers before me.
123. FL's health needs were carefully considered and analysed including her mental health needs and appropriate recommendations were made by YH.
124. As for FL's current education the information available to Lambeth indicated it was going well. Her foster carer had described her as diligent.
125. On the question of the timing of the various assessments Lambeth submitted that no timing issue affected the decision in this case. It was submitted that this was an open case and throughout there was updating going on for the Core Assessment. It was reasonable for the Core Assessment to be updated in the light of the allegation that her mother was not able to look after her.
126. The referral came from Kids Company on 1st April 2009. An initial assessment was completed, not within days but by 22nd April and a decision was made to carry out a core assessment. That started on 30th April and was completed on 4th August although not delivered until 25th September. This delay appears to have occurred due to the manager not signing off. The delay was reasonably caused by the request by FL's mother not to disturb her during her run up to her GCSEs.
127. The case was then allocated to YH a senior social worker. The core assessment went over 35 days but with good reason as is apparent from the notes. Even if it was late and unlawful if the assessment has been properly completed then no relief should follow because the issue becomes one of procedure rather than one of substance. Once YH took over the matter was proceeded with appropriately.
128. It was submitted that by the time YH came to prepare her care plan under the heading "Decisions" in the Core Assessment FL was already in foster care following the order of Silber J. and it has to be read in that context. No criticisms should be made of the recommendations which can be made into a plan. There was no inadequate assessment and it is not an inadequate care plan.
129. So far as a lack of a Joint Protocol was concerned it was accepted there was not one but a point was taken that this was not pleaded although it had been raised, in

particular before Davis J. It was submitted that this matter should not be aired at this late stage. Mr Harrop-Griffiths told me that a Joint Protocol was being considered at the highest level within Lambeth and the Local Authority had to take into account very recent court decisions.

130. On the issue of relief it was submitted for Lambeth that if the Core Assessment was lawful then the decisions of Lambeth had always been lawful and therefore there has been no accommodation need such as would trigger the 13 week qualifying period and, on her attaining the age of 18, duties under section 23(c) of the Act.
131. It was submitted that there was no information from anyone else to the effect that FL was at risk thus no information had been received from the police, Kids Company or any other organisation.

Discussion and Conclusions

132. FL is an intelligent hard-working and motivated young person. While she is still legally a child she is making the transition into young adulthood. Her intelligence has been demonstrated by her excellent results in her GCSE exams. In spite of going through a number of extremely traumatic incidents she still managed to obtain these results and that is a considerable credit to her. In saying that I do not in any way belittle those incidents which include her witnessing the death of a baby, being raped, taking an overdose, losing a close friend who was murdered, being assaulted and threatened and discovering that her father was not her biological father, all of which were very difficult for a young person, or indeed any person, to deal with.
133. I say that she is hard-working and motivated because not only did she pass her GCSEs with distinction but she has since found a place at college and is continuing to attend with a view to getting a Business Diploma on a 2 year course which if successful will lead to University. Inquiries made of FL's current foster carer suggest that she is continuing to work hard and is attending her classes. Insofar as there is evidence to the contrary I prefer the evidence provided through Lambeth from the carer.
134. FL has some very firm ideas about what sort of accommodation she would like and about her mother. She has reached that stage of life where she feels it is time to become more independent and she would ideally like her own flat. If not her own flat she would at least like to be in semi-independent accommodation. Relations with her mother are at times strained and it is clear to me that she resents the fact that her mother is out of the house so much. She also resents the fact that when she is around she tends to spend time on her own relationships. These thoughts, in my judgment, have much more to do with FL's motivation to be accommodated by Lambeth than any fear of living in her mother's house.
135. FL has, like many young people of her age, pushed the boundaries set by her mother. She has stayed out late at night, not kept her mother informed and if I may say so, behaved very much like a normal teenage person.
136. FL's mother is a registered nurse. She clearly works hard and is on shifts which keep her out of the house for long hours and this also means that when she is in she often needs to sleep. The fact that her mother is a hard working professional may well, consciously or subconsciously, have something to do with FL's attitude to her work.

Since her mother split up with her husband she has quite naturally, during the period we are concerned with, seen other men and, as I understand it, formed a close relationship with another man.

137. Her mother has never at any stage even suggested that FL cannot live with her. Indeed when FL sought to persuade her to write a letter to that effect she very properly refused. In my judgment FL's mother has always been supportive and sympathetic. After FL took her overdose it is clear that her mother was very supportive and she liaised appropriately with the professionals working with FL at that time. She is willing and, in my judgment, able to look after FL at her home.
138. Lambeth, through YH, concluded that there was no evidence that the immediate surroundings of her mother's house were unsafe. In my judgment that conclusion was not just one that they were entitled to reach but was also the correct conclusion. There are a series of gangs operating in the Stockwell/Brixton area all of whom are territorial. There are, sadly, other parts of the United Kingdom within the cities where gangs operate. However the evidence in this case shows that the rapist belongs to a gang that does not operate in the area where FL's mother lives. That area is the territory of the OTRAY gang. In addition FL has explained that the rapist does not know her mother's address.
139. On several occasions FL has returned to her mother's house to pick up possessions and has also stayed the night there. FL has also stayed in other parts of the general area both with Ms Spencer and with friends. This does not suggest to me someone who is in fear of returning.
140. But there is an additional point here. It seems to me that the problem lies not with her mother's house but with the threat from this young man who lives and/or operates some way remote from the house. It cannot in my judgment make sense to accommodate FL away from her mother merely because there is a young man in the Stockwell/Brixton area who neither knows where her mother lives nor comes to the area near her house. If FL needs some protection from this young man then that should be managed as part of her needs by Lambeth with such other authorities as are appropriate. It is clear to me from what FL told YH that she knows where not to go and as she said "she is aware of the roads to travel on to keep her safe".
141. FL complained of being assaulted on a number of occasions, including once shortly before her visit to Kids Company in early September and again in October when she told YH she had been struck in the face. While these incidents were clearly distressing there is no evidence that FL was seriously hurt. Certainly neither Kids Company nor YH refer to any visible injuries. I do not suggest that these assaults were inconsequential but there is no evidence that FL came to any serious physical harm.
142. In this case FL's mother is ready and willing to accommodate her. In my judgment it is clearly desirable that a child should live with her parents or parent if that is possible. A parent can provide the love and care to their own child which no amount of assistance or professionalism from social services can replicate. The words of Baroness Hale in *R(M) v. Hammersmith and Fulham LBC* are apt:

“...any parent of teenagers aged 16 and 17 knows how difficult they can be. But they also know that, however much those

teenagers are struggling to discover their own identities and lead independent lives, they also depend upon the love and the support of their parents.”

143. There is no dispute that FL is a child in need under section 17 of the Children Act 1989. She needs, and will continue to need, the help of Lambeth social services. This need is there because FL is emotionally fragile and needs the support available from Lambeth. She has expressed the clear wish to be accommodated away from her mother and to be more independent. That wish must be given due consideration but I am quite satisfied that proper consideration has been given in this case. Sometimes a child, even one who is approaching adulthood, will have aspirations beyond their age. While the desire to be independent is both natural and healthy in this case I am quite satisfied that Lambeth were both entitled, and right, not to follow FL’s wishes.
144. The issue under section 20 of the Children Act 1989 is whether FL’s mother is prevented from looking after her for any reason. The argument that she is so prevented because she lives in the Stockwell/Brixton area, in my judgment, and for the reasons given above, fails. Looking at the various judgments to be considered in Ward L.J’s list from *R(A) v. Croydon* the answer to the question; “Does she appear to the local authority to require accommodation?” is “no”. In relation to that matter the local authority is obliged to make a value judgment taking into account the child, her mother, the accommodation and all the relevant surrounding circumstances. In this case their judgment is that she can live with her mother who is not prevented from providing her with suitable accommodation. As I have indicated not only is that a judgment they were entitled to reach but in my view it was the correct judgment. Having reached that judgment that is the end of the section 20 consideration.
145. In these circumstances it is not critical to my decision whether Mr Harrop-Griffiths is right in his submission that it is only if Lambeth have acted in a *Wednesbury* unreasonable way that the Court can interfere in a case such as this. However in my judgment that is the correct approach. If in making their value judgments they act reasonably, take into account those matters that are relevant and put on one said those matters that are irrelevant then it seems to me this Court should not interfere. The social workers in this case have clearly considered matters with great care and have reached their conclusions in an appropriate way.
146. Since I have reached the conclusion that Lambeth were not obliged to provide FL with accommodation there is no 13 week qualifying period to consider under section 23C of the 1989 Act.
147. Lambeth were obliged to follow the guidance given under section 7 of the Local Authority Social Services Act 1970 unless there was good reason not to. There is no doubt that when FL was first referred to Lambeth in early April insufficient was done either by way of initial assessment or at all. However that occurred some 6 months before these proceedings commenced and is now largely historic. At the end of April matters were taken forward appropriately and FL’s mother was seen. At this time FL had been raped and taken an overdose. She was clearly vulnerable. Her mother asked that her daughter should not be seen as she was concerned it would upset her immediately before her GCSEs. This was a difficult decision for any social worker to take and was a matter of professional judgment. YW had seen the mother and was best placed to form a view as to whether it was safe and sensible to put matters on

hold at this time. She decided to follow the mother's wishes. There is clearly a considerable work ethic in the family and no doubt the point was made forcefully that these exams were important. It seems to me quite impossible to say that the decision by Lambeth was unlawful. As it happens her judgment was probably correct in that FL clearly worked hard and efficiently at her exams and was able to do so in spite of her emotional state.

148. Ms Gallagher rightly complains thereafter of the further delay that occurred up to early August. The first core assessment was finished in early August but then nothing was done for a further a month by which time Fisher Meredith had written their letter of 18th September. The core assessment was then signed off but without bringing matters up to date. That was unsatisfactory and a failure on the part of Lambeth to fulfil their statutory obligations.
149. It is apparent to me that Lambeth were well aware of their shortcomings at this stage and for that reason a more senior member of staff was allocated to the task. To the extent that Lambeth failed to follow the Guidance provided to them their actions, and inactions, were at that time unlawful. However those events are now historic. A further more detailed assessment has since been done. That assessment brings matters right up to date. It seems to me that no purpose is served by giving any relief to FL in relation to this period up to the latter part of September. I will hear counsel in relation to that matter when this judgment is handed down.
150. As I have taken the view that Lambeth were entitled not to accommodate FL I am not satisfied that there was any later unlawfulness in their conduct. It is always difficult for a local authority to go about its responsibilities while at the same time fighting a legal action. It might be said Lambeth could have done more to put in place support to enable FL to return to her mother's but in the light of FL's refusal to return home I am not persuaded such criticism would be justified.
151. The proposals put forward at the end of the updated Core Assessment were criticised but as was pointed out at the moment FL is placed with a foster carer and the plan needs to be read in that context. While there is a need to complete the assessment the assistance that FL needs, and will need, will change and Lambeth are obliged to work with the other agencies to ensure her needs are met. I do not think the criticisms made are justified. In addition looking at the Core Assessment as a whole it seems to me to be a careful and comprehensive document.
152. I do not consider there has been any breach by Lambeth of their welfare duties under section 11 of the Children Act 2004. While there were the short-comings in completing the assessments I have referred to above it seems to me that Lambeth have had proper regard to FL's welfare. They have reached the conclusion, rightly in my view, that FL is best looked after within the family home.
153. It was alleged that Lambeth should have carried out a section 47 inquiry. The section refers to having reasonable cause to suspect a child is "likely" to suffer significant harm. The guidance refers to a need for strategic discussions if there are "suspicions or allegations" about child maltreatment and concern that the child may be or is likely to suffer significant harm. This was not a case where a child was in danger of maltreatment in the home but in early September FL reported that threats had been

made to her life and she had gone to live at Ms Spencer's house. At that time Lambeth were still completing the first core assessment.

154. I am not prepared to find that Lambeth acted unlawfully in this matter. It is noteworthy that the call from Kids Company on the 7th September was more concerned with accommodation than any immediate fears of FL. I appreciate that it is FL's case that the two are really one and the same thing and that the only reason for wanting accommodation was because of her fear but I do not accept that. While no doubt some local authorities would have instigated a section 47 inquiry in early September I do not consider one was essential on the facts of this case.
155. In any event I am not convinced that the outcome and decision in this case would have been any different and even if I had been of the opinion that Lambeth had acted unlawfully, because that was again something in the past and not causative of anything that followed, I would not have been prepared to grant any relief in any event.
156. Lambeth were also criticised for putting FL in foster care rather than providing her with some semi-independent accommodation. It seems to me that this was a matter entirely for Lambeth to decide. This was a decision that was open for them to take as was the related decision which was apparent on the face of the notes on 26th October 2009 that FL was not to be placed in semi-independent accommodation.
157. In my judgment while I have had regard in considering this matter to FL's rights under the ECHR those rights do not add anything to the reasons and conclusions I have reached.
158. It is clear to me that Lambeth ought to have in place a Joint Protocol between their social services and housing department. Lambeth appreciate that and are doing something about it. That is now a matter of urgency. It does not seem to me that the absence of such a protocol had any effect on the outcome of this case.
159. In conclusion I am not persuaded in relation to the key issue in this case namely the question under section 20, that Lambeth have acted unlawfully. I am conscious that in this already lengthy judgment I have not dealt with every argument of counsel but I have had regard to those arguments in reaching my conclusions. In relation to those matters where I have been critical of Lambeth, subject to hearing counsel, I do not consider that any relief is appropriate. It is appropriate to grant permission in this case but, again subject to any further submissions, for the reasons I have given, the application for judicial review fails.