Neutral Citation Number: [2018] EWHC 61 (Admin)

Case No: CO/772/2017

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

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 24 January 2018

Before:

MR JUSTICE JEREMY BAKER

- -

Between:

R (on the application of Michael Stewart) **Cla**

- and -

Birmingham City Council **Defe**

- -

- -

Ms Rowena Moffatt (instructed by **Bhatia Best Ltd**) for the **Claimant**

Miss Peggy Etiebet (instructed by **Birmingham City Council Legal Services Department**) for the **Defendant**

Hearing date: 24 October 2017,

followed by written submissions dated 30 October and 7 November 2017

- -

Judgment Approved

Mr Justice Jeremy Baker:

Introduction

1.
This is a claim for judicial review concerning the decision of a local authority that a child was not a "child in need" for the purposes of section 17 of the Children Act 1989, and the consequential refusal to provide the child and her parents with accommodation. It is claimed that the decision was unlawful, in particular due to the failure by the local authority to take into account a relevant consideration, namely the effect of the "Right to rent" scheme provided by Part 3 of the Immigration Act 2014.

Background facts

2.
Michael Stewart ("the claimant") is 45 years of age, (DOB 30.10.72), as is his partner Sandra Smith, (DOB 3.8.72). They were both born in Jamaica, and entered the UK on visitor visas in 2002. Both of them overstayed, and met each other in the UK in 2005. They have remained living as a couple in the

UK since that time, and on 13 October 2008 Ms Smith gave birth to Deirdre Stewart-Brooks, who is 9 years of age.

3.
Initially both the claimant and Ms Smith had employment in the UK, and lived in their own rented accommodation. However, in 2011 both the claimant and Ms Smith ceased employment, as the claimant made an application for indefinite leave to remain in the UK on 30 March 2011. By then the claimant, Ms Smith and their daughter had moved in to live with Ms Smith's cousin, Jermaine Campbell. However, when he was no longer prepared to accommodate them free of charge, the claimant and Ms Smith approached Birmingham City Council, ("the defendant"), who assessed that Deirdre was a child in need under section 17 of the Children Act 1989, ("the 1989 Act"), and agreed to provide them with financial support and accommodation, in which they continue to reside.

4.
On 18 June 2014, the claimant submitted a further application for leave to remain in the UK on human rights grounds. Although this was refused in December 2016, the claimant has an outstanding in-country right of appeal.

5.
On 15 September 2016, the defendant's social services manager who was responsible for Deirdre's case, decided that a review of her current situation should take place, in order to assess whether she was still a child in need.

Review of Deirdre Stewart-Brooks (60557798) Case recordings

6.
Following the defendant's social services manager's decision to review Deirdre's current situation on 15 September 2016, the defendant undertook three home visits, interspersed with telephone conversations and two office visits. The first home visit took place on 5 October 2016, when it was noted that,

"The house was kept immaculately clean, the house was furnished to a very high speck, (sic) there was a flat screen TV in every room, there was a very large flat screen TV in the front living room with a lot of nice ornaments."

7.
At the second home visit, on 25 October 2016, it was noted that,

"Both parents shared information with me but they gave me the impression that they were not totally open and honest……..I also noticed that the property have had lots of high value items (2 massive flat TVs, 2 desktop computers, a printer which was the latest model, an aquarium, Sky TV, 3 bracelet watches) and that at the time of the visit Mrs Sandra was checking on the internet as to buy a sofa cover which was costing £90…."

8.
In Supervision Notes dated 3 November 2016, it was stated that,

"we are very concerned the family seem to have a lifestyle their (sic) far outstrips the notion of destitution……The family is supported by the NRPF since 2011 but I am concerned that they are not truthful about their financial circumstances……"

9.

At the third home visit, on 5 December 2016, it was noted that,

"….Yolanda did a genogram with the parents. Both parents appeared to be reluctant to share information about their family and supportive network or even provide us with their names. However, the parents stated that they have very good friends who provide them emotional and practical support……..I discussed with the parents about the items of high value in the property and they replied that they had some of them prior to be (sic) supported by from Children Services, some other have been gifted from their friends and one of the desktops has been given by a charity. However, I noticed that the family has the latest sky box and smartphones too and when I questioned them about them, they confirmed that they pay £32 per month for Sky TV and around £24 for Ms Sandra's phone contract. Miss Sandra also stated that they do not have a bank account and that her phone contract is on a friend's name and she pays for it (at the first place she had stated it was gifted from her friend). The couple stated that they pay the phone contract and the Sky TV on the post office. As the visit was going on, Ms Sandra was reluctant to answer our questions regarding the items of high value……. We explained to parents that we are not there to judge their lifestyle but it's reasonable to make some questions especially when they are requesting s17 support. We also explained that we will need some documents in order to justify their claims such as phone bill and a sky TV bill and proof that they are paid at the post office, document from the charity that the desktop has been gifted etc. Mr Stewart confirmed he will try to find the documents requested and I explained I will call him back as to let him know in details what information we need……..However, based on family's lifestyle and high value items in the property (2 TVs, 2 desktops, 2 smartphones, 1 aquarium, 1 new printer, the amount of clothing parents have and perfumes which are top brands) I find it very hard to believe that the destitution is genuine……."

10.
The genogram produced by the social worker stated that,

"Important information: Both parents stated that they have friends and family members in the UK but they refused to share their details."

11.
It was noted that during a telephone conversation with Ms Smith on 6 December 2016,

"….I explained I need the phone bill and Sky tv bill and proof its (sic) paid at the post office and a proof that the desktop was given by the charity. Miss Sandra appeared to be annoyed by this and she requested for a meeting with my manager…."

12.
During a further phone conversation with Ms Smith a few days later on 9 December 2016, it was noted that,

"….Ms Sandra said to me "you can do nothing to us because we are homeless and we have a solicitor……."

13.
On 13 December 2016, the claimant attended the defendant's office, when it was noted that,

"Mr Michael attended New Aston house today as to get his payment and provide me with the documents requested. Mr Michael stated he could not find copies of the Sky TV bill and the phone bill because they hadn't kept them and he will be able to do so next month where (sic) he will receive the next ones. Mr Stewart gave me a receipt from the post office which stated that a deposit of £30 had

been submitted to a prepaid card. Mr Michael also showed me the card which is a gold Cashplus prepaid card with his name on it …….. I asked Mr Stewart if he has access to his bank statements and transaction history for this card and he replied he doesn't because it's not a proper account, it's a prepaid card……."

14.
On the following day, 14 December 2016, it was noted that an email had been received from UCanDoIT confirming that the charity had donated a personal computer to the claimant in 2014.

15.
In the Designated Manager's Comments on the same day, it was noted that,

"……The refusal to share bank statements we are very clear exist due to the nature of the cash card and bank account held, the evidence of a home full of luxuries and the admission of outgoings for contract phones and sky accounts – leads the local authority to determine with a level of assurance and probability that the family are not on (sic) fact destitute, therefore Deirdre is not to be deemed a child in need in our area. These have eventually been offered and have evidenced that Deirdre is not living a destitute lifestyle neither are her parents, that Sec 17 money is being used to fund non-essential luxury contracts for TV, mobiles, broadband, cataloges (sic) and credit cards……The evidence of the child's life, home, environment and family financial circumstances have not determined that Deirdre is a child in need. Parents have several times throughout case day to day work been given ample of opportunities to respond to challenges, queries and provide explanations and further evidence, these have led to more evidence to contradict their lifestyle. Please share the assessment with outcome with parents……."

16.
On the following day, 15 December 2016, the claimant visited the defendant's office and was informed that his Cashplus prepaid card account did entitle him to statements, a matter about which he stated he was unaware, but would seek to obtain for the defendant. These statements were obtained by the claimant, three of which were provided to the defendant on 22 December 2016, with a fourth on 6 January 2017.

17.
It was noted that,

"….it shows as of the 1 December 2016 an account that got (sic) credit is being paid and ran responsibly. Credit available is £173.85……."

18.
It was noted that it also showed that there were a number of regular payments into the account, and several outgoing payments, including subscriptions to Virgin and Sky, regular mail order payments to Very.com and a Vanquis Bank credit card transaction.

19.
Later on 22 December 2016, the claimant spoke with the defendant, and his explanation about the payments into the account being related to different post office addresses was checked and found to be correct. He also explained that they had previously had a Virgin TV subscription, but then changed it to one with Sky TV. During this conversation it was noted that,

"……Mr Stewart was helpful and polite and didn't appear to be withholding information……."

20.
Following the conclusion of the defendant's assessment, on 16 January 2017 the claimant was informed of the defendant's decision that Deirdre was no longer a child in need, and that the provision of both the financial support and accommodation which they had been receiving until then would cease.

The Decision

21.
In its written decision, the defendant stated that,

"….The purpose of this assessment is to explore the family's dynamics, any needs and or risks for Deirdre and to determine if Deirdre is to be deemed a child in need in our area as per the Children Act 1989, therefore requiring on-going support from the local authority as per their duty and responsibilities.

……

Social work planning and time frame for this work to be undertaken

……

5) Family finances and accommodation to be assessed to determine whether the family are destitute now or at risk of destitution and or rooflessness.

……

….The onus is on family's (sic) to be open, honest and engage honestly in the process.

……

The property is a 2 bedroom house and the social worker observed it being clean, tidy and well stocked with food. Deirdre has her own room which has a very large flat screen TV and toys available as to stimulate her. The social worker observed that the property has many items of high value (2 TVs, 2 desktops, latest Sky box, 1 printer, 1 aquarium), and that both parents have smartphones, recent models, many pairs of shoes and branded perfumes displayed. The social worker discussed with the parents how they can afford items of such a high value and they stated that they have had both TVs and 1 of the desktops before Children Services started supporting them and that the aquarium, one of the smartphones and the printer have been gifted from friends. They also stated that the second desktop has been given by a charity "ucandoit" which supports people with chronic diseases (confirmation from the charity has been provided

Parents stated that they pay £32 per month for Sky TV and Miss Sandra has a contract for her smartphone under a friend's name but she pays the bill at the post office which is around £24 per month. The social worker requested copy the Sky bill and the smartphone contract and a proof that they are paid at the post office. The parents were not able to provide copies of the bills stating that they haven't kept them and that they could do so next month.

Mr Michael also brought a receipt from the post office which states that a deposit of £30 has been put in a prepaid card (a gold Cashplus mastercard prepaid card with Mr Stewart's name on it was seen by the social worker). The social worker asked Mr Stewart if he has access to online bank statements for this account and he replied that he doesn't. However, according to bank's official website every holder of a similar card access to a variety of benefits including online statements and bank history. On the

15/12/2016, this was discussed with Mr Michael and both the social worker and the NRPF manager explained to him that its (sic) necessary to bring the bank statements so a decision to (sic) be made as to if (sic) financial support needs to keep being provided. It was also explained to him that if he will fail to bring the documents requested which showed several other key facts (family are paying for virgin subscription, a sky subscription, a Vanquis Bank credit card transaction, Very.com mail order regular payments) and it looked more likely through evidence collation that the family might not actually be destitute any more and are supplementing their income with Sec 17 funds. It was pointed out to Mr Stewart that he has a credit card for (sic) which he hasn't informed us about or given statements. Mr Stewart replied he didn't think we needed these and that its now cancelled but it was explained to him that all financial streams and incomes were requested for the last 6 months and that a credit card is a bank in effect and we need to view the last 6 months statements and closure letter. Mr Stewart posted to NRPF manager Sharon Woodcock copies of the credit card account which showed as of the 1 Dec 2016 an account that got credit, is being paid and ran responsibly. Credit available is £173.85.

.....

Analysis and professional judgement

.....

The family had been previously supported by wider family members and friends. Since 2011, the No Recourse to Public Funds Team has provided accommodation and subsistence as it has been identified that the family could not continue to stay with the maternal uncle. However, during the process of this assessment, parents shared with two social workers that they have very supportive friends who also gift them items of high value. It should also be noted that parents were reluctant to share information about their wider family/supportive network in the UK and they stated that they don't want to request support from them because it's not in their culture to do so. Although I do respect parents' cultural background, this is something I find hard to believe as according to the family history, parents had previously had continuous support from their supportive network.

The purpose of this assessment was to ensure that Deirdre is safe and well and to determine if the family will be destitute without the support by the local authority. However, based on family's lifestyle (i.e. spending £32 p/m for Sky Box and around £24 for Miss Sandra's smartphone) and bank statements I find it very hard to believe that they do not have access to support from other sources. Furthermore, the fact that Mr Stewart firstly denied he has access to bank statements and history of transactions for his prepaid card and did not make us aware about his other credit card, makes me believe that parents deliberately did not share information in an open and honest manner to prevent Children's services viewing the full extend (sic) of their banking transactions. It should also be noted that during the process of this assessment, Miss Sandra was reluctant to provide me with the documents requested in order to be able to justify the claims for destitution and she said to me "you can do nothing to us because we are homeless and we have a solicitor".

Based on the information gathered, Deirdre is not deemed a child in need in our area as she is not living or likely to suffer destitution.

.....

Managers decision

I believe the assessing social worker has re-assessed Deirdre focusing on the Children Act 1989 to determine whether Deirdre continues to be assessed as a child in need in our area. The social worker has tried in a determined way to engage and encourage and challenge parents on facts they have presented to certain correct factual information that could assist in defining need. The refusal to share bank statements we are very clear exist due to the nature of the cash card and bank account held, the evidence of a home full of luxuries and the admission of outgoings for contract phones and sky accounts – leads the local authority to determine with a level of assurance and probability that the family are not in fact destitute, therefore Deirdre is not to be deemed a child in need in our area. These have eventually been offered and have evidenced that Deirdre is not living a destitute lifestyle neither are her parents, that Sec 17 money is being used to fund non-essential luxury contracts for TV, mobiles, broadband, cataloges (sic) and credit cards.

.....

The evidence of the child's life, home, environment and family financial circumstances have not determined that Deirdre is a child in need. Parents have several times throughout case day to day work been given ample opportunities to respond to challenges, queries and provide explanations and further evidence, these have led to more evidence to contradict their lifestyle.

....."

22.
The claimant sought to challenge that decision, and applied both for permission to judicially review the decision, and for interim relief to require the defendant to continue the provision of financial support and accommodation. Initially both applications were refused. However, since that time the application for interim relief, limited to the provision of accommodation, has been granted, as has the application for permission for judicial review. The latter decision was made at a hearing before Garnham J on 16 June 2017, by which time the main focus of the claimant's attack upon the lawfulness of the decision was the alleged failure by the defendant to take into account the right to rent scheme. It was in these circumstances, that Garnham J also granted permission for the defendant, if so advised, to file at court and serve on the claimant a further assessment.

23.
On 7 July 2017, the defendant filed and served a written document which took into account section 21 of the 2014 Act, and concluded that,

"The Local Authority has reconsidered the points raised by the Claimant and has decided not to change the recommendation made within the family assessment dated 16/7/17...."

Legal framework

Child in Need under the Children Act 1989

24.
Section 17 of the 1989 Act provides,

"(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this part) –

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, it is provided with a view to safeguarding and promoting the child's welfare.

.....

(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 cash.

.....

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child and of each of its parents.

.....

(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 to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

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

(c) he is disabled.

and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

.....

Schedule 2 Part 1

1(1) Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.

....."

25.
As section 17 of the 1989 Act makes clear, it is the duty of every local authority to safeguard and promote the welfare of children within their area. In order to fulfil this duty a local authority must first take reasonable steps to identify the extent to which there are children in need within their area. The criteria for determining whether a child is in need are set out in section 17(10), and any determination must take into account the means of the child and his parents (section 17(8)), together with the statutory guidance set out in "Working together to safeguard children, March 2015". The local authority is then given the power to provide services, including cash and accommodation, to a child who is considered to be in need. Moreover, those services may be provided to the child's family if it is provided with a view to safeguarding and promoting the welfare of the child (section 17(3)).

26.
In this regard, a child whose parents are homeless and/or unable to support the child, may be a child in need, (R(Giwa) v LB Lewisham [2015] EWHC 1934 (Admin)). Moreover, the fact that by reason of paragraph 1 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002, a parent has no recourse to public funds because of his/her immigration status, as in the present case, does not preclude a local authority from providing services to them under section 17(3), provided that a failure to do so would breach the rights of the family under the European Convention on Human Rights, (Paragraph 3(a) of Schedule 3 to the Act 2002).

27.
However, the responsibility for making these determinations lies with the relevant local authority, and is only susceptible to challenge on normal public law principles (per Lady Hale in R(A) v Croydon LBC [2009] I WLR 2557, at paragraph 26).

28.
In this regard, Helen Mountfield QC (sitting as a Deputy Judge of the High Court) in R(O) v LB Lambeth [2016] EWHC 937 (Admin) provided a helpful summary of some of the matters which may be relevant to this exercise,

“16. The duty to make reasonable enquiry is a duty to make those enquiries which are either suggested by the applicant or which no reasonable authority could fail to undertake in the circumstances.

17. Whether or not a child is ‘in need’ for these purposes is a question for the judgment and discretion of the local authority, and appropriate respect should be given to the judgments of social workers, who have a difficult job. In the current climate, they are making difficult decisions in financially straightened circumstances, against a background of ever greater competing demands on their ever diminishing financial resources. So where reports set out social workers’ conclusions on questions of judgment of this kind, they should be construed in a practical way, with the aim of seeking to discover their true meaning (see Lord Dyson in McDonald v Royal Borough of Kensington & Chelsea [2011] UKSC 33 at [53]). The way they articulate those judgments should be judged as those of social care experts, and not of lawyers. Nonetheless, the decisions social workers make in such cases are of huge importance to the lives of vulnerable children with whose interests they are concerned. So it behoves courts to satisfy themselves that there has been sufficiently diligent enquiry before those conclusions are reached, and that if they are based on rejection of the credibility of an applicant, some basis other than ‘feel’ had been articulated for that is so.

18. The converse is also true. An applicant parent who is seeking to persuade a local authority that they and their child are destitute or homeless, so as to trigger the local authority’s duties of consideration under section 17 Children Act 1989 is seeking a publicly funded benefit, to which they would not otherwise be entitled, which diverts those scare funds from other Claimants. Even the process of assessment is a call on scarce public funds. It therefore behoves such an applicant to give as much information as possible to assist the decision-maker in forming a conclusion on whether or not they are destitute.

19. If the evidence is that a family has been in this country, without recourse to public funds and without destitution for a number of years, reliant on either work or the goodwill and kindness of friends and family, then the local authority is entitled and indeed rationally ought to enquire why and to what extent those other sources of support have suddenly dried up. In order to make those enquiries, the local authority needs information. If the applicant for assistance does not provide

adequate contact details of family and friends who have provided assistance in the past, or cannot provide a satisfactory explanation as to why the sources of support which existed in the past have ceased to exist, the local authority may reasonably conclude that it is not satisfied that the family is homeless or destitute, so that no power to provide arises.

20. Fairness of course demands that any concerns as to this are put to the applicant so that she has a chance to make observations before any adverse inferences are drawn from gaps in the evidence, but otherwise, the local authority is entitled to draw inferences of 'non-destitution' from the combination of (a) evidence that sources of support have existed in the past and (b) lack of satisfactory or convincing explanation as to why they will cease in the future.

21. In other words, if sufficient enquiries have been made by the local authority and if as a result of those enquiries an applicant fails to provide information to explain a situation which prima facie appears to require some explanation, then the failure by an applicant to give sufficient information may be a proper consideration for the local authority in drawing the conclusion that the applicant is not destitute: see per Mr Justice Leggatt in R(MN) v London Borough of Hackney [2013] EWHC 1205 (Admin) at [44]. But that does not absolve the local authority of its duty of proper enquiry.

22. I also not what was said by Leggatt J in the Hackney case at [26] as to the approach which the court should take to evidence in determining whether there has been such enquiry. He said that little or no weight should be given to witness statements prepared months after a decision had been taken for the purpose of litigation, with the obvious dangers of ex post facto rationalisation; and more fundamentally:

'What a public authority decided should in principle be ascertained objectively by considering how the document communicating the decision would reasonably be understood, and not by enquiring into what the author of the document meant to say or what was privately in his mind at the time when he wrote the document.'"

Right to Rent Scheme under the Immigration Act 2014

29.
Section 20 of the Immigration Act 2014 Act ("the 2014 Act") provides,

"(1)This section applies for the purposes of this Chapter.

(2) "Residential tenancy agreement" means a tenancy which—

(a) grants a right of occupation of premises for residential use,

(b) provides for payment of rent (whether or not a market rent), and

(c) is not an excluded agreement

(3) In subsection (2), "tenancy" includes—

(a) any lease, licence, sub-lease or sub-tenancy, and

(b) an agreement for any of those things,

and in this Chapter references to "landlord" and "tenant", and references to premises being "leased", are to be read accordingly.

(4) For the purposes of subsection (2)(a), an agreement grants a right of occupation of premises "for residential use" if, under the agreement, one or more adults have the right to occupy the premises as their only or main residence (whether or not the premises may also be used for other purposes).

(5) In subsection (2)(b) "rent" includes any sum paid in the nature of rent.

(6) In subsection (2)(c) "excluded agreement" means any agreement of a description for the time being specified in Schedule 3.

(7) The Secretary of State may by order amend Schedule 3 so as to—

a) add a new description of excluded agreement,

(b) remove any description, or

(c) amend any description."

30.
Section 21 of the Act 2014 provides,

"(1) For the purposes of this Chapter, a person ("P") is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement if –

(a) P is not a relevant national, and

(b) P does not have a right to rent in relation to premises.

(2) P does not have a "right to rent" in relation to premises if –

(a) P requires leave to enter or remain in the United Kingdom but does not have it, or

(b) P's leave to enter or remain in the United Kingdom is subject to a condition preventing P from occupying the premises.

(3) But P is to be treated as having a right to rent in relation to premises (in spite of subsection (2)) if the Secretary of State has granted P permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement.

.....

(5) In this section "relevant national" means –

(a) a British Citizen,

(b) a national of an EEA State other than the United Kingdom, or

(c) a national of Switzerland."

31.
Section 22 of the 2014 Act provides,

"(1) A landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.

(2) A landlord is to be taken to "authorise" an adult to occupy premises in the circumstances mentioned in subsection (1) if (and only if) there is a contravention of this section.

(3) There is a contravention of this section in either of the following cases.

(4) The first case is where a residential tenancy agreement is entered into that, at the time of entry, grants a right to occupy premises to –

(a) a tenant who is disqualified as a result of their immigration status,

(b) another adult named in the agreement who is disqualified as a result of their immigration status, or

(c) another adult not named in the agreement who is disqualified as a result of their immigration status (subject to subsection (6)).

…….

(6) There is a contravention as a result of subsection 4(c) only if –

(a) reasonable enquiries were not made of the tenant before entering into the agreement as to the relevant occupiers, or

(b) reasonable enquiries were so made and it was, or should have been, apparent from the enquiries that the adult in question was likely to be a relevant occupier.

……"

32.
Section 23 of the 2014 Act provides for penalties to be imposed upon landlords who let premises in contravention of Part 3, and in certain circumstances, set out in section 33A – C, landlords are at risk of criminal prosecution.

33.
There is provision for statutory guidance to be issued in relation to the scheme, and the current code includes the "Right to Rent Code of Practice, Scheme for landlords and their agents (applicable as of 1st February 2016)". The Home Office has also published guidance for Home Office staff, the "Right to rent: landlords' penalties, Version 5.0", published on 1 December.

34.
The latter guidance states that,

"**Considering who should be granted permission to rent**

This page tells Immigration Enforcement officers how to consider and grant permission to rent to a migrant.

…..

Permission to rent criteria

Permission to rent will normally be granted where any of the following criteria apply:

…..

individuals who have an appeal outstanding which cannot be pursued from abroad

…..

Migrant enquiries if they have permission to rent

This page tells Immigration Enforcement officers what to do when a migrant, without a right to rent, enquires if they have permission to rent.

A migrant without leave can enquire whether they have permission to rent through their established contact channels with the Home Office.

.....

If it is obvious that the migrant should have permission to rent (see: Considering who should be granted permission to rent) then you must confirm this at the initial contact.

....."

Grounds and opposition

35.
In his original grounds, dated 13 February 2017, the claimant submitted that the defendant had failed to conduct proper enquiries before reaching its decision that the family were not destitute, that the defendant had acted irrationally, and that the decision was procedurally defective, as the claimant was not given adequate opportunity to respond to the adverse inference drawn against him.

36.
In relation to the first of these grounds, it was asserted that although the defendant had concluded that money appeared to be available to the claimant for non-essential luxury items, due to support being accessed from other sources, the defendant had failed to consider the extent of that support, and in particular whether alternative accommodation was available to the family. It was denied that the claimant had been reluctant to share information about their wider family/supportive network. In any event, it was asserted that this did not absolve the defendant from conducting proper enquiries, and that information from a family friend, a Mrs Gray, and their church made it clear that the continuation of such support could not be guaranteed. In particular, it did not include the provision of accommodation. Furthermore, it was asserted that even if the defendant had been entitled to conclude that the claimant had the necessary funds to support the family, the defendant had failed to consider the effect of section 21 of the 2014 Act, which precludes the claimant and Ms Smith from renting accommodation.

37.
In relation to the second of these grounds, the claimant asserted that there was no rational basis for the defendant's conclusion that Deirdre's needs would be met, and in particular her need for accommodation, in the absence of section 17 support. It was asserted that the claimant had provided explanations for the presence of the various "non-essential" items, which had either been purchased prior to the commencement of the provision of section 17 support, or had been gifted to them. It was asserted that, due to the ability of the family to pay for other non-essential services and items, although it might be reasonable to conclude that the family did not need the same level of financial support, it would not entitle the defendant to conclude that the family could afford to pay for accommodation. Likewise, it was asserted that, due to the alleged non-disclosure by the claimant as to the wider family/supportive network, (which was denied), although it might be reasonable to conclude that the family did not need the same level of financial support, it would not entitle the defendant to conclude that the family either could afford or would be provided with alternative accommodation.

38.
In its original grounds of opposition dated 20 February 2017, the defendant asserted that, under section 17 of the 1989 Act, its duty was limited to determining whether it was satisfied that Deirdre was a child in need. It was asserted that, due to the claimant's refusal to provide information about their supportive friends in the context of a lifestyle that was more luxurious than that afforded by the defendant's financial support, the defendant was entitled to conclude that Deirdre was not a child in need. In these circumstances, it was denied that the defendant had failed to make proper enquiries before reaching its decision that the family was not destitute, and in particular, it was not under a duty to prove that Deirdre would be accommodated in the absence of accommodation provided under section 17.

39.
In relation to the second of the claimant's grounds, it was pointed out that due to the public nature of the funds involved in section 17 provision, the claimant was under a duty to provide full disclosure as to the family's sources of income/assistance, (R(O) v LB Lambeth (supra)), and that the claimant's failure to do so in this case, in the context of a lifestyle that was more luxurious than that afforded by the defendant's financial support, entitled the defendant to conclude that Deirdre was not a child in need.

40.
In relation to the third of the claimant's grounds, it was denied that the defendant had not given the claimant adequate opportunity to respond to the adverse inference drawn against him. On the contrary, the evidence was that the claimant had ample opportunity, but had failed to do so.

41.
Following UTJ Markus QC's refusal to permit the claimant to apply for judicial review, the claimant provided further written grounds, dated 31 May 2017, which were limited to the continuation of the claim under the first ground, and in particular upon the defendant's asserted failure to have regard to a relevant consideration, namely the effect of section 21 of the 2014 Act upon the claimant's ability to secure alternative accommodation.

42.
In relation to this latter point, it was asserted that even if, which was denied, the defendant was entitled to conclude that the claimant had access to financial provision, beyond that provided under section 17, as the claimant and Ms Smith were precluded from renting alternative accommodation under section 21 of the 2014 Act, the defendant's failure to consider the effect of this statutory prohibition amounted to an unlawful failure by the defendant to take into account a relevant consideration.

43.
In relation to the defendant's failure to conduct proper enquiries before reaching its decision that the family were not destitute, the claimant appeared to concede that section 21 of the 2014 Act would not be a relevant consideration to the provision of alternative accommodation by third parties, such as family or friends. However, he asserted that the original decision made no mention of how, in the absence of accommodation being provided under section 17, the family would be accommodated. Moreover, that unlike the situation envisaged in R(O) v LB Lambeth (supra), where a family had been in this country without recourse to public funds and without destitution for a number of years, reliant on either work or the goodwill or kindness of friends and family, such that the local authority would be entitled to an explanation as to why and to what extent those other sources of support had suddenly

dried up, in the present case the claimant's family have been provided with section 17 support since 2011.

44.
It was averred that such information as was available from Mrs Gray and the claimant's church, did not support a conclusion that such alternative accommodation would be available to the claimant. In these circumstances, even if the defendant was entitled to conclude that the claimant was not in need of financial support under section 17, which was denied, there was no proper basis for any conclusion, if one was made, that the claimant was not in need of accommodation under section 17 of the 1989 Act.

45.
By the time that the renewed application for permission came before Garnham J the defendant had responded in writing in a skeleton argument dated 13 June 2017. In relation to section 21 of the 2014 Act, it was averred that because the claimant has an outstanding in-country right of appeal against the refusal of his application for leave to remain in the UK, he was entitled to rent accommodation, subject to verification by the Home Office. Therefore the defendant had not failed to take into account a relevant consideration when reaching its decision.

46.
In any event, it was averred that the defendant's original decision was not based solely on financial matters, and that in view of the history of the matter, and in particular an established pattern of self-support in the past so far as housing was concerned, the defendant was entitled to consider that the family would find alternative accommodation with family or friends.

47.
In his written response, dated 15 June 2017, the claimant averred that under section 21 of the 2014 Act, he had no entitlement to rent accommodation, subject to verification by the Home Office. On the contrary he was precluded from renting accommodation, subject to the Secretary of State granting him permission to do so, under section 21(3). It was averred that the defendant never suggested to the claimant that he could approach the Secretary of State for permission to rent alternative accommodation, and that there was no mention of this in the original decision. Moreover, the granting of permission to rent is discretionary and it is unknown whether the Secretary of State would grant permission to the claimant.

48.
In relation to the assertion that the claimant could reside with family or friends, it was averred that this was not a matter which was considered by the defendant in its original decision. Moreover, the previous implicit concession that section 21 would not be relevant to the claimant being accommodated with family and friends, was withdrawn, and it was averred that the claimant would also be precluded from staying with family or friends under section 21 of the 2014 Act.

49.
On 7 July 2017, following the granting of permission to the claimant to judicially review the original decision, the defendant filed and served a further document which confirmed the former decision.

Further decision

50.
This document, which was signed by one of the defendant's senior social workers, stated that,

“The Local Authority has reconsidered the points raised by the Claimant and has decided not to change the recommendation made within the family assessment, dated 16/1/17. The reasons for this decision are below:

1. Since the preparation of my assessment I have reconsidered the provision of accommodation in the light of the Claimant’s argument that there is no legal way for him to secure accommodation. I am aware that s21 of the Immigration Act 2014 may prohibit the Claimant from renting a property as a result of his immigration status. I have taken that into consideration and therefore have not suggested that he secure alternative accommodation in this manner. I am also aware that s21 allows a person who would be otherwise prohibited from renting to ask the Secretary of State for permission to occupy premises under a residential tenancy agreement. I would be willing to support the Claimant to obtain this permission if necessary. I do consider that it would be lawful to stay with family or friends and this is an option that must be considered by the Claimant. He has already identified that he has a number of supportive friends and family members.

2. During the assessment it was clear to me that the Claimant and Mrs Smith have a supportive network. I made many attempts to obtain information about the supportive network from the Claimant and Mrs Smith. However, they were reluctant to provide the information requested. For example, On 16/01/17 during a meeting where Ms Woodcock (previous NRPF manager) and I shared the outcome of the assessment with the claimant, we gave 30 day’s (sic) notice to the family to vacate the property, in order to give them enough time to find alternative accommodation from their supportive network and come back to us with their plan. Following conversations with the Claimant on the 23/01/17 and the 02/02/17, it was clear that the Claimant was not willing to consider this. I consider that the Claimant has a significant support network from whom he would be able to secure help. I do not accept that he would be street homeless if the support of the Local Authority was withdrawn.

3. The Claimant was not open and honest during my original enquiries. After the assessment was completed the Claimant referred to a friend named Mrs Gray who was able to confirm that she offers sporadic support, however this information was not forthcoming during the assessment. Claimant failed to mention that he and Mrs Gray attended at New Aston House on the 23/01/17 and after completion of the assessment (please refer to point 9 from the statement of facts I had previously submitted) and that Mrs Gray had never been mentioned before that date as a supportive network. It should be noted that Mrs Gray claimed that she was unable to support the family with accommodation; however, this does not mean that the other people identified in the genogram could not.

4. The Claimant referred to a letter dated 10/02/17 provided by Handsworth Seventh-Day Adventist Church, which states that the church members have also provided sporadic support to the family. Pastor Mr Richard Jackson mentioned in the letter that he had been informed by the family that I had told them that the church would look after them. This is not correct. During the assessment I attempted to explore the Claimant’s supportive network and work out what support they were getting. However I did not inform the Claimant that the church would look after them. During the process of this assessment, both the Claimant and his wife were adamant that the level of support they are receiving from their supportive network was mostly emotional and only occasionally had been gifted items. They also stated that they have not received financial support from their friends (please refer to pints (sic) 4 and 5 from the statements of facts). It should also be noted that the Claimant and his wife had only mentioned that they attend the church and not that they were supported by the church.

5. The Claimant has had numerous opportunities to discuss with me and the previous NRPF manager and raise any questions or points not only during the process of assessment but also after it (please refer to the chronology of case records).

6. .....

7. Both the Claimant and Mrs Smith appeared to have withheld information and in my opinion have been dishonest with Ms Woodcock and me. I have concluded to this based on the following facts:

a. According to family's lifestyle and finances, they did not present to be destitute. They were also unable to explain how they could afford this type of lifestyle as during the assessment process they were adamant they were not working or having financial support from their supportive network. It should also be noted that this conflicts with their statements that they were receiving sporadic support from their friends and their church. Furthermore, it should be taken into consideration that the Claimant did not initially share that he has 2 credit cards even when he was asked about all his financial streams.

b. The Claimant and his wife had stated that they have family and friends in the UK who are very supportive. However, in every attempt to gather information and contact details for them, they were refusing to provide me with them saying that they do not wish to do so, that their friends cannot support them and that it's not in their culture to rely on other people. Both the Claimant and his wife continued refusing to provide me with the contact details even when I explained to them that it is vital to be open, honest and forthcoming. It should also be noted that in a further attempt to gather information, Mrs Smith threatened me by saying "you can do nothing to us because we are homeless and we have a solicitor". In my professional view, both the Claimant and Ms Smith appeared to have taken for granted s17 support and have deliberately decided to withhold important information in an attempt to continue receiving it.

8. I therefore stand by the conclusions of my original assessment. I do not consider that the family will be destitute if support from the Local Authority ceases. It is clear from their lifestyle that they have access to income and support from other sources. I do not consider that Deirdre Stewart is a child in need and she is therefore not eligible for support from the Local Authority under s17 of the Children Act 1989."

51.
It is of note that on 21 June 2017, prior to the written reconsideration, the defendant's acting senior solicitor had written to the Secretary of State for the Home Department, requesting urgent clarification of the effect of section 21 of the 2014 Act. The request enquired, inter alia: as to whether an individual who is precluded from renting under section 21, but had an obvious income stream, would be likely to be granted permission to rent by the Secretary of State, and; whether an individual who was precluded from renting under section 21, could lawfully live with family or friends provided no rent was paid for the accommodation.

Home Office letter

52.
It would appear that the defendant did not wait for the Home Office response to that request, prior to reconsidering the matter, as the response was dated 14 July 2017. It stated,

".....

Permission to rent criteria

In accordance with section 21(2) of the 2014 Act a person who requires leave to enter or remain in the United Kingdom and does not have such leave will not have a right to rent. Such a person may, however, be treated as having a right to rent if the Secretary of State has granted that person permission to occupy premises under a residential tenancy agreement. Whether or not the Secretary of State will grant permission to rent is a case by case assessment to be made taking account all the particular circumstances but, in accordance with the Secretary of State's permission to rent criteria (which can be found via the following link and in the short guide at page 9 https://www.gov.uk/government/collections/landlords-immigration-right-to-rent-checks), a person with an outstanding appeal which cannot be pursued from abroad will normally be granted permission to rent. We understand this to be the position of the Claimant, who has an in-country appeal pending before the First Tier Tribunal. The restriction on access to public funds and presence or otherwise of a private source of income is not relevant to the determination of whether permission to rent would be granted. It would be open to a prospective landlord to approach the landlord Checking Service for confirmation of the prospective occupant's status.

Whether a disqualified person is precluded from living with a friend or family member

In light of the above, I do not think it is necessary to provide a response to your question as to whether a person who is disqualified from occupying premises in England is precluded from living with a friend or family member.

However, in the interests of providing a full response in the event that it proves necessary to assist you or the Court, it might be helpful if I clarify that a person without a right to rent (or permission to rent) is disqualified from occupying premises under a residential tenancy agreement (emphasis added). A residential tenancy agreement is defined to mean a tenancy which (a) grants a right of occupation of premises for residential use, (b) provides for payment of rent (whether or not a market rent), and (c) is not an excluded agreement (see section 20(2) of the 2014 Act). If no rent (or any financial transaction in the nature of rent) exchanges hands between the disqualified person and the family member or friend then it is unlikely that such an arrangement would fall within the definition of a residential tenancy agreement and the person could stay without the family member/friend becoming liable to a civil penalty under section 23 of the 2014 Act or committing a criminal offence under section 33A of the 2014 Act. It may, however, be the case that the disqualified person is not able to stay with a friend or family member because of the basis on which the family member/friend is occupying the premises. That is because the disqualified person may constitute a relevant occupier in relation to any residential tenancy agreement entered into by the family member/friend and a third party landlord. It would not matter that the disqualified person did not themselves contribute to the rent in these circumstances; the key is that they would be occupying premises under an agreement pursuant to which rent exchanges hands. Even where the disqualified person is not named in the tenancy agreement, if it ought to have been apparent to the prospective landlord that the disqualified person was likely to be a relevant occupier at the time the agreement was entered into, then the landlord is likely to be liable to a civil penalty. If the landlord knew or had reasonable cause to believe that the premises were being occupied by a disqualified person the landlord would also be committing a criminal offence.

……."

53.

On 21 July 2017, the defendant provided detailed grounds for defending the claim, which were largely based upon its previous written submissions. However, in relation to the potential relevance of section 21 of the 2014 Act, the submissions reflected the views which had been expressed by the defendant in its further assessment. In particular, it was averred that the claimant would not be precluded from living with family or friends, provided he did not pay rent for the provision of such accommodation.

54.
On 30 July 2017, following the defendant's reconsideration and the letter from the Home Office, the claimant filed and served an amended statement of facts and grounds; permission to rely upon them being granted on 15 August 2017. In essence, these grounds focused on the potential relevance of section 21 of the 2014 Act.

55.
At an early stage of the proceedings, the claimant had provided a witness statement dated 13 February 2017, exhibited to which was a letter from the Pastor of the Seventh-Day Adventist Church. Subsequently, the claimant provided a further witness statement dated 31 July 2017, and a witness statement from Maureen Gray dated 13 June 2017. More recently still, the claimant provided witnesses statements from a number of other individuals dated October 2017. The effect of this evidence is that whilst some of these individuals, in particular Mrs Gray provided some significant material support to the claimant, none of them state that they would be able to provide any alternative accommodation to him or his family.

56.
In preparation for the substantive hearing of the application for judicial review, both the claimant and the defendant provided skeleton arguments, dated respectively, 10 October 2017 and 19 October 2017.

57.
The claimant's skeleton argument clarified that the submissions centred upon the alleged failure by the defendant to conduct sufficient enquiries and/or adequately consider whether the claimant and his family would be rendered homeless by the withdrawal of section 17 support, and/or failed to have any or any proper regard to the implications of section 21 of the 2014 Act.

58.
The claimant averred that the defendant's further assessment was not a fresh assessment, but only an ex post facto rationalisation of the original decision, and in any event the defendant had failed to re-interview the claimant before the further decision had been made. The claimant averred that the defendant's reconsideration had not identified any family or friends with whom the claimant might be able to reside, and any reluctance by him to disclose their contact details without first obtaining their consent was reasonable.

59.
It was averred that even if he had sufficient funds to allow him to rent alternative accommodation, which he denied, section 21 of the 2014 Act meant that he had no entitlement to rent such accommodation, and that the Secretary of State was not obliged to permit him to do so. Moreover, even if he were able to be accommodated by family or friends, which he denied, the effect of section 22 of the 2014 Act meant that if the premises within which he stayed were rented, there was a real possibility that the landlord of those premises would not consent to the claimant being accommodated within them.

60.
The claimant's skeleton argument was supplemented by a speaking note on the right to rent, dated 23 October 2017. It was submitted that although normally the Secretary of State may grant an individual in the claimant's circumstances a right to rent, this cannot be guaranteed, and can only be applied for by the landlord. Moreover, in practice, a report from the Joint Council for the Welfare of Immigrants: "Passport Please: The Impact of the Right to Rent checks on migrants and ethnic minorities in England", February 2017, showed that there may be a reluctance by some landlords to let premises to such individuals.

61.
In its skeleton argument, the defendant pointed out that the decision under challenge is its decision that Deirdre was no longer a child in need, rather than the consequential effect of that decision to cease to provide Deirdre and her family with financial support and accommodation. It was pointed out that the defendant has not provided financial support since February 2017, and only continued to provide accommodation as a result of a court order obliging it to do so on an interim basis.

62.
It is pointed out that there was no evidence that the claimant provided the names of his supportive network of family and friends. In relation to the recent witness statements provided on behalf of the claimant, the defendant pointed out that there has been no application for these to be relied upon, and that as this is a public law challenge, the court should resist becoming involved in resolving disputes of fact.

63.
The defendant averred that although the claimant does not have the right to rent, under section 21 of the 2014 Act, the available evidence is to the effect that the Secretary of State will normally grant the right to an individual in similar circumstances to that of the claimant. Moreover, the scheme provided for by the Secretary of State allows such an individual to obtain confirmation as to whether the Secretary of State will grant him permission to rent.

64.
In relation to the defendant's alleged failure to make adequate enquiries about Deirdre's needs under section 17, it was submitted that the court should not intervene merely because it considered further enquires would have been desirable, but should only do so where no reasonable local authority would have failed to make such enquires, (e.g. R v Kensington and Chelsea RLBC Ex p. Bayani [1990] 22 HLR 406). Moreover, the primary responsibility for making such decisions lies with the local authority, R(MN) v Hackney LBC [2013] EWHC 1205 (Admin). In the present case, it was averred that there was no failure by the defendant to make adequate enquires. On the contrary, there had been a failure by the claimant to provide adequate information about his sources of financial support.

65.
Furthermore, in relation to section 21 of the 2014 Act, it was averred that if the type of accommodation which would be available to the claimant required him to be granted a right to rent by the Secretary of State, then the evidence is that the Secretary of State is likely to grant it to him, such that this was not a matter which would have made any difference to the defendant's decision. Moreover, as such an assessment is required to be read in a straightforward, non-legalistic manner, the lack of specific mention of either the alternative provision of accommodation or section 21 of the 2014 Act, in the original decision should not vitiate it.

66.

Following the substantive hearing, the claimant and the defendant provided post-hearing submissions in writing, dated respectively 30 October 2017 and 7 November 2017.

67.
On behalf of the claimant it is averred that in the first of the defendant's decisions, there is no express consideration given to the question of accommodation, and it is submitted that this alone renders the decision unlawful in the context of close scrutiny being required to be applied to decisions which may result in the homelessness of children (R(KM) v Cambridgeshire CC [2012] PTSR 1189 and R(S and J) [2016] EWHC 2692).

68.
In relation to the defendant's reconsideration, the claimant submitted that this was simply a further explanation for the earlier decision, and little weight should be given to it due to the dangers inherent in ex post facto rationalisation, (R(MN) v LB Hackney [2013] EWHC 1205). However, if the defendant had made a further assessment of Deirdre's needs, it is pointed out that, due to its understanding of section 21 of the 2014 Act, rightly or wrongly, the defendant excluded consideration of the claimant privately renting alternative accommodation, and instead focused upon accommodation being provided by family and/or friends. However, such evidence as was available from the further witness statement of the claimant and Mrs Gray militated against this view; one upon which the defendant had not sought clarification by way a further meeting with the claimant, (R(on the application of CO and KO) v LB Lewisham [2017] EWHC (Admin) 1676).

69.
In its post-hearing submissions, the defendant submitted that it took accommodation into account in its original decision, pointing out that it expressly recorded the need to look into both finances and accommodation. It conceded that it did not provide precise details of the alternative accommodation which was available to the claimant, but submitted that this was because it was unable to do so due to the claimant's refusal to disclose the identity of their supportive family and/or friends. In these circumstances, and in the context of a lifestyle where the family was spending more than the financial support being provided under section 17, the defendant was entitled to conclude that Deirdre was not a child in need.

70.
In relation to its reconsideration, the defendant submitted that there had been no application to challenge it either prior to or at the substantive hearing. In any event, the reconsideration made it clear that the issue of alternative accommodation had been taken into account.

Discussion

71.
The importance of recognising that it is expert social workers who are responsible both for making the difficult decisions which local authorities face under section 17 of the 1989 Act, and for providing the written explanation for those decisions, is that not only is it to be anticipated that, in the absence of any indication to the contrary, these individuals are likely to be well versed in the matters which are required to be taken into account in reaching these decisions, but also the written explanations should be interpreted so as to seek to understand the true intentions of the decision-maker. As Lord Dyson stated in relation to the construction of local authority assessments and care plans, in McDonald v Royal Borough of Kensington & Chelsea [2011] UKSC 33,

“They are not drafted by lawyers, nor should they be. They should be construed in a practical way against the factual background in which they are written and with the aim of seeking to discover the substance of their true meaning.”

72.
In September 2016, after having provided section 17 financial support and accommodation to Deirdre and her family for the previous 5 years, the defendant set itself the task of reassessing whether these services were still required to be provided to Deirdre in order to avoid her destitution; in other words whether Deirdre was still a child in need. In doing so, it is apparent from the social work plan set out in the written decision that not only were the financial aspects of the family’s circumstances to be taken into account, but also whether they would be able to provide themselves with alternative accommodation, in that it was expressly stated that,

“Family finances and accommodation to be assessed to determine whether the family are destitute now or at risk of destitution and or rooflessness.”

73.
Therefore, it is clear that from the outset of the reassessment process, the defendant had well in mind that in addition to the family’s finances, not only was the provision of accommodation an essential factor to take into account, but also whether, absent the current provision of section 17 support, the family would be at risk of destitution, including homelessness.

74.
Thereafter, over the period of the next two months, between October – December 2016, the defendant’s social work team visited the family home on three occasions. It is apparent that the team had no concerns about Deirdre’s welfare, and it is to the parents’ credit, that they have provided her with a good standard of care. However, what the team also discovered was that the family had been able to provide itself with a significant amount of non-essential goods and services, which was incompatible with a family who were reliant upon section 17 support in order to avoid destitution.

75.
In these circumstances, the defendant was clearly entitled to conclude that, in addition to the services that it was providing under section 17, the family had access to other means of support which enabled this level of incompatible expenditure.

76.
It is clear, both from the Case recordings and the written decision, that this issue was raised with the parents on a number of occasions, with a view to enabling the defendant to understand the family’s true circumstances, so as to be able to make a proper assessment of whether it was still necessary for section 17 services to be provided to Deirdre. It is apparent that there was a reluctance by the parents to provide full disclosure of their financial circumstances, and there was at least one example of untruthfulness from Ms Smith regarding the funding of her phone contract, and at least one item of non-disclosure by the claimant concerning one of his credit cards. Therefore it is not surprising that the social worker gained the belief that the parents had neither been open nor honest in the assessment process.

77.
However, at the heart of what the defendant required to understand was the true nature and extent of the alternative source of support which the family were receiving, and which enabled this level of incompatible expenditure. This essential information was in the gift of the parents, who denied that it

came from employment, rather they asserted that they had very supportive friends. However, instead of being open about this aspect of their circumstances, it is apparent that the parents declined to disclose information about their wider family and supportive network of friends.

78.
As was noted in the genogram,

“Important information: Both parents stated they have friends and family members in the UK but they refused to share their details.”

79.
It is suggested by the claimant that he was reluctant to disclose the identity and contact details of these third-parties without first gaining their permission. Even if this had been a valid excuse initially, there is no evidence that any steps were taken by the claimant to do so. Moreover, it is clear that the assessment process extended over a three-month period, such that there had been ample time to provide this information to the defendant.

80.
The real question which arises is whether, as a result of what has justifiably been described on behalf of the defendant as a “wall of silence” on this issue, the defendant was entitled to conclude that Deirdre was no longer a child in need.

81.
In considering the significance of this refusal by the parents to disclose the details of their wider family and supportive network, it is necessary to bear in mind that a combination of the statutory constraints imposed upon those who do not have leave to enter or remain in the UK under sections 15 – 26 of the Immigration, Asylum and Nationality Act 2006, (prohibition from employment), and Schedule 3 to the Nationality, Immigration and Asylum Act 2002, (ineligibility for support) together with the time which immigration procedures take to be resolved, means that where children are present, section 17 of the 1989 Act may cast heavy financial burdens upon local authorities. In these circumstances, and as the expenditure of public money is involved, it is not only right that local authorities ensure that section 17 services are only provided to children who are in need, but also those applying for such assistance should provide all relevant information as to their financial and other circumstances, including their ability to access assistance from third-parties.

82.
In my judgment, given the context in which this refusal to disclose information about their wider family and supportive network of friends took place, the defendant was entitled to consider that Deirdre was no longer a child in need. There was clear evidence of incompatible expenditure on non-essential items within the household; the extent of which gave rise to the justifiable view that this equated with a significant level of otherwise unexplained support from a source or sources beyond the section 17 assistance being provided by the defendant. The parents had been reluctant to provide details of their financial circumstances, and there was some evidence of lack of disclosure and dishonesty. In these circumstances, and given the importance of the need for full disclosure where public funds are being sought, it seems to me that it was open to the defendant to draw the inference that in the absence of section 17 support, the family would be able to access sufficient third-party support, including alternative accommodation, to enable the family to avoid destitution.

83.

Moreover, I am satisfied that this was the determination which the defendant reached in this case. Although there was no express mention of the provision of alternative accommodation within the written decision, beyond that set out in the social work planning section, it is clear from this section that the social worker was expressly required to consider this issue. In my judgment, given both the expertise of the social worker and the availability of accommodation being such a fundamental part of a section 17 assessment, the omission of an express reference to it reflected these factors, rather than an omission to consider the issue as part of the section 17 determination.

84.
To the extent that it is suggested that the parents were unaware that the defendant was enquiring, both about the source of their incompatible expenditure and the assistance, including the provision of alternative accommodation, which was available from their supportive network of family and/or friends, it is apparent from the regrettable attitude displayed by Ms Smith in her telephone conversation with the social worker on 9 December 2016, that she was only too well aware of it. However, despite this, the parents maintained their refusal to disclose the details of their family and/or friends, such that the defendant was unable to investigate their assertions, including the claim of homelessness. In these circumstances, and given the justifiable concerns which the defendant had in relation to the parents' other explanations, I consider that the defendant was entitled to conclude that the assistance which was available to the family from their supportive network of family and/or friends included access to alternative accommodation.

85.
It is correct that there is no mention of section 21 of the 2014 Act in the written decision; a matter which it was apparent from the pleadings, and during the substantive hearing, has become the main focus of the claimant's attack upon the lawfulness of the defendant's determination. However, in order to decide whether this rendered the original decision unlawful, it is necessary to consider the effect of the right to rent provisions of the 2014 Act.

86.
It is clear that section 21(1) of the 2014 Act disqualifies an individual in the claimant's position from occupying premises under a residential tenancy agreement, in other words he does not have a "right to rent". However, under section 21(3) he is to be treated as though he has a right to rent, if the Secretary of State grants him permission to do so. Whilst I accept that such permission cannot be guaranteed, and will no doubt be considered on a case by case basis, the letter from the Home Office makes clear, in line with the Home Office's own guidance "Right to rent: landlord's penalties", that permission will normally be granted to individuals such as the claimant who have an outstanding in-country right of appeal. Moreover, although it appears from the report from the Joint Council for the Welfare of Immigrants, that there may be a reluctance by some landlords to let premises to such individuals, in the absence of knowledge of particular difficulties facing an applicant, I do not consider that this factor would be sufficient to prevent a local authority considering that alternative accommodation was available to him.

87.
In these circumstances, I consider that where a local authority has made a lawful determination that, in the absence of section 17 support, an individual in the claimant's position has the financial means to rent accommodation, then in the absence of knowledge of particular difficulties to the contrary, it would not prevent the local authority from determining that the individual would have alternative accommodation available to him and his family. Moreover, the Home Office's "Right to rent: landlords' penalties" guidance, makes it clear that the facility for checking whether the Secretary of State will

grant a right to rent is not limited to landlords, but extends to individuals in the position of the claimant as well, in that they may enquire whether they have permission to rent through their established contact channels with the Home Office. Therefore, an individual in the position of the claimant would be able to clarify the matter at an early stage of any enquiry, and be in a position to notify the local authority of any abnormal refusal by the Secretary of State to grant him the right to rent.

88.
In so far as the ability of an individual without a right to rent being able to stay with family and/or friends is concerned, if rent or its equivalent is paid, then this will amount to a residential tenancy, and the family and/or friends will be caught by the prohibition in section 22(1) of the 2014 Act. On the other hand, if no rent or its equivalent is paid, then the family or friends will not be caught by the prohibition. It is correct, as the Home Office letter points out, that in the latter situation, if the premises in which the accommodation is provided has been rented by the family or friends, then the landlord may be caught by the prohibition, as a result of the definition of a "residential tenancy agreement" in section 20 of the 2014 Act. Albeit, in the absence of the individual being named on the tenancy agreement, this only appears to be the case if the landlord either knew or it ought to have been apparent to the landlord that the individual was likely to be a relevant occupier at the time the agreement was entered into.

89.
However, once again, the disqualification for an individual having the right to rent is subject to the Secretary of State granting permission to an individual to occupy premises under a residential tenancy agreement. Therefore, as the Secretary of State will normally grant a right to rent to individuals in similar circumstances to that of the claimant, if a local authority makes a lawful determination that an individual in the claimant's position has alternative available accommodation with family and/or friends, then in the absence of knowledge of particular difficulties facing the individual, it would not prevent the local authority from determining that the individual had alternative accommodation available to him and his family.

90.
In these circumstances, although the defendant did not expressly mention the provisions of section 21 of the 2014 Act in its original decision, as the defendant, in the absence of any evidence to the contrary, was entitled to conclude that alternative accommodation was available to him, I do not consider that any such omission rendered its original decision unlawful.

91.
In any event, following the granting of permission by Garnham J, the defendant made a further determination, which expressly took into account the right to rent scheme. In doing so, it would appear that the defendant took an unnecessarily pessimistic view as to the ability of the claimant to be able to rent alternative accommodation, as opposed to it being directly provided by third-parties, because in both of these situations the defendant was entitled to consider that, absent special circumstances, section 21 would not have precluded the availability of such alternative accommodation.

92.
As I have already noted, prior to the hearing there was no application to further amend the grounds so as to challenge the second decision, and there was no application to do so at the substantive

hearing. In these circumstances, its lawfulness or otherwise does not fall to be determined. In any event, it is apparent that for the reasons I have already set out, this too was a lawful decision.

93.
However, to the extent that it is submitted that the defendant did not properly take into account the evidence of Mrs Gray or the pastor of their church, it is apparent that this was expressly considered at paragraphs 3 and 4 of the further decision. In that regard, not only was the defendant entitled to conclude that some of the information which they provided was incompatible with that previously provided by the parents, but as was pointed out the apparent limitation on the support provided from these sources, did not mean that others within their supportive network would not be able to provide the family with accommodation.

94.
Furthermore, there is no reason to believe that any further discussion with the claimant or Ms Smith would have gained relevant information which would have led the defendant to alter its decision at that time. In this regard, I note that none of the statements of the parents' family and friends were provided until shortly before the substantive hearing in this case in October 2017, and there is no explanation as to why this information could not have been supplied to the defendant at a much earlier stage of the assessment process. Moreover, the claimant's further statement was only provided after the second decision had been made, and given the lack of candour exhibited by the claimant hitherto, there is no reason to believe that the information it contains would have been forthcoming at an earlier stage.

Conclusion

95.
Accordingly, I consider that given the context in which the determinations were made by the defendant, the parents' refusal to provide full disclosure about their supportive network of family and/or friends entitled the defendant to decide that Deirdre was no longer a child in need in this case. Moreover, given the permissive regime operated by the Secretary of State under section 21(3) of the 2014 Act, the right to rent scheme did not affect the lawfulness of the decision.

96.
In these circumstances, the claimant's application for judicial review of the defendant's decision is dismissed.

97.
I would just add that hitherto the recent witness statements from the parents' family and friends have not been a matter which the defendant has had to take into account, and there was no application for these to be admitted as part of the evidence to be considered in the course of the substantive hearing, which due to their timing would have been refused. However, now that events have moved on and these statements have come to the defendant's attention, it will be a matter for the defendant to decide whether it will now have to make a further determination under section 17, taking these statements into account. If it does so, then the claimant and Ms Smith can be under no misapprehension as to the importance for them to provide all relevant information as to their financial and other circumstances, including their ability to access assistance from third-parties.