



A PLACE TO CALL HOME

A REPORT INTO THE STANDARD OF HOUSING PROVIDED TO CHILDREN IN NEED IN LONDON

This report was written by Charlotte Threipland, an independent consultant commissioned by the Hackney Community Law Centre and Hackney Migrant Centre.

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FOREWORD

Childhood is a precious time when the experiences we have and the lessons we learn all help to shape the adults we become. At Shelter we know all too well that the environment in which children live has a crucial impact on how they flourish and develop at this important time of their lives. Growing up in bad housing has been found to have a lasting effect on children's health and well-being, with damaging effects on their education and their future life chances.¹

This report considers the standards of accommodation and the degree of support provided to children whose families are in need of assistance provided by social services. In particular, it looks at those families who need to resolve their immigration status or who are subject to a 'no recourse to public funds' restriction. It finds that almost two thirds of the properties provided to these destitute families are having a negative impact on the children's health, safety and development. Such families are victims of the wider housing crisis, and too often are to be found in the worst, most substandard accommodation. Children are being housed in unfit and overcrowded properties that are in a state of disrepair, often having to share kitchens and bathrooms with strangers. Some families are required to share one small room, where the children have no space to play or do their homework. Sometimes they are being placed in accommodation far away from the area they know, so that the children have to change schools and leave behind the security of friends and familiar surroundings.

The Children Acts 1989 and 2004 require authorities to 'safeguard and promote' the welfare of all children in their area, which includes, when necessary, the provision of suitable accommodation and basic subsistence as a protective safety net in times of extreme hardship. This report makes clear that many children in the UK are missing out on this protection and as a result are suffering deprivation and misery. At Shelter, we frequently see children struggling to cope in unacceptable living conditions who are in need of the support that the safety net ought to provide. Every child should have a suitable place to live and no child should go hungry.

We welcome this important piece of research and we are indebted to Hackney Community Law Centre and Hackney Migrant Centre for undertaking it. It is especially timely in view of the proposed nationwide implementation of the 'right to rent' under the Immigration Act 2014, and the further proposals in the Immigration Bill 2015, which will increase still further the number of children in need. The findings in this report are an indictment of a system which claims to promote and safeguard the welfare of children, but which too often fails them when they are lacking the basic necessities of life. Its recommendations for policy change and guidance deserve urgent consideration if some of the most vulnerable children in our society are to be protected.



John Gallagher
Principal Solicitor, Shelter

GLOSSARY

B&B or B&B-style accommodation

Used to refer to bed and breakfasts, hostels and hotels. 'Bed and breakfast accommodation' is accommodation that is not in separate and self-contained premises and one of the amenities of a toilet, personal washing facilities or cooking facilities, is shared by more than one household.ⁱⁱ

Category 1 and 2 hazards

Hazards identified using the HHSRS. A 'hazard' is a risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling, or in building or land in the vicinity. The most serious hazards are Category 1; Category 2 comprises less serious hazards.

Disclosure and Barring Service ('DBS')

Formerly the Criminal Records Bureau ('CRB'). The body responsible for processing requests for criminal records checks in the UK.

Destitute

A person who either a) does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or b) has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.ⁱⁱⁱ

Freedom of Information requests

Requests for information made under the Freedom of Information Act 2000.

Gatekeeping

A word colloquially used amongst advisers to homeless applicants or migrant families to describe a practice of employing tactics to deliberately reduce the number of families to whom a local authority must provide support.

HHSRS

Housing Health and Safety Rating System. Introduced under the Housing Act 2004 this is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings.

House in Multiple Occupation ('HMO')

A House in Multiple Occupation is a building or a part of a building that consists of one or more units

of living accommodation (not self-contained flats) which are occupied by more than one household, sharing one or more of toilet, washing or cooking facilities, or the accommodation lacks one or more of those amenities. A self-contained flat, occupied in this fashion, can also be a HMO. A building which has been partly converted into self-contained flats, but also contains living accommodation that is not self-contained, will be a HMO if the living accommodation is occupied by three or more people who do not form a single household.^{iv}

Inadequate properties

Properties that formed part of this study and which were stated to be unsuitable to meet the needs of the children 'in need'.

No recourse to public funds ('NRPF')

Individuals may be granted leave to remain in the UK with a 'no recourse to public funds' ('NRPF') condition meaning that although they can work, they cannot access public funds. 'Public funds' are defined by paragraph 6 of the Immigration Rules and include mainstream benefits such as Income Support, Housing Benefit, Job Seekers Allowance, housing provided by local authorities, and, usually, tax credits.

Section 17 families

Families with children who are 'in need' according to section 17 of the Children Act 1989 and who are excluded from mainstream support systems, including welfare benefits and asylum support.

Section 17 support

Accommodation or financial subsistence provided under section 17 the Children Act 1989. This provision requires local authorities to safeguard and promote the welfare of children 'in need', within their families. A child is 'in need' if she or he is unlikely to achieve or maintain a reasonable standard of health or physical, intellectual, emotional, social or behavioural development, or is disabled.

Temporary accommodation

Accommodation provided on an emergency, short-term basis to prevent homelessness. Term is normally used in relation to homelessness duties contained in the Housing Act 1996.



EXECUTIVE SUMMARY

Section 17 of the Children Act 1989 ('section 17' throughout this report) is a statutory provision that provides a lifeline for thousands of otherwise destitute children every year. This safety net provision ensures that children living in the UK, irrespective of their immigration status or background, have their basic needs provided for. Predominantly, the need is for accommodation but there can also be a need for financial assistance to pay for food and other essential living expenses.

Support under this provision comes from the Children's Services of local authorities. Children's Services are under a duty to 'safeguard and promote the welfare' of children within their area who are 'in need'. The duty applies to any child, regardless of their immigration status. The support is not focussed solely on children in migrant families. However, migrant families are especially vulnerable to being destitute and having no access to any financial support or accommodation. British families will be entitled to welfare benefits and social housing and support under homelessness duties. Although the children in migrant families may be British, they cannot claim benefits on their own behalf until they are at least 16 years old.

The section 17 duty should be seen in the context of a raft of child protection legislation and guidance which has developed in the UK over the past 200 years in response to, or influenced by, the tragic deaths of children.

Housing is a key issue in child protection and poor housing and homelessness have featured in a significant number of Serious Case Reviews, undertaken when a child has died or suffered serious harm.^v Evidence collected in the course of this study suggests that almost two thirds (64 per cent) of the properties provided to children in need are unsuitable and fall short of meeting the practical and emotional needs of the children and their principal carers, usually mothers. This

is contrary to a local authority's domestic and international legal obligations.

Some of the key issues around housing and the likely or possible consequences explored in this report are:

1. No provision for, or restricted access to, cooking facilities leading to children going hungry or receiving an inadequate diet;
2. Accommodation located away from the family's previous environment impacting on a child's social and educational development;
3. Severe overcrowding, infestations of vermin or insects, damp or mouldy conditions resulting in psychological problems and in the onset or exacerbation of respiratory problems such as asthma or wheezing;
4. Frequent moves, uncertainty and the lack of a stable home resulting in stress, anxiety or depression; and
5. Being accommodated in bed and breakfast accommodation or other shared accommodation with a high turnover of guests is detrimental to child welfare, especially where, some of the guests could pose a serious danger to the family.

Psychiatrist Dr Roger Kennedy stated that these problems can result in a child suffering from physical neglect at the hands of the state. In the worst cases this neglect could result in tragedies, which are precisely what child protection measures are intended to prevent. Dr Kennedy stated:

'the usual definition of physical neglect occurs when there is a failure to provide for the development and needs of the child and this is likely to cause impairments to the child's physical and mental, moral and social health and development.'^{vi}

**Almost two thirds
of the properties
provided to families
failed to meet the
practical and emotional
needs of the children.**



Figure 1 is a word cloud illustrating common problems with inadequate housing. The size of the words reflect how common the problems may be.

The study found that while accommodation provided can fall short of UK housing law standards, local authorities do not use the powers and expertise available to them – either to compel landlords to rectify problems, or to ensure basic standards are met in the first instance. Social services departments must work closely with housing departments to ensure that their duties to promote the welfare of children under section 17 are met. Problems could also be avoided if there was robust guidance around the provision of accommodation under section 17. While there is statutory guidance in comparable situations (for example homelessness and asylum support) there is none for section 17. It is entirely inappropriate that local authority housing duties in the areas of homelessness and section 17 are not working to the same processes and standards. The aim should be for consistency in standards and practice across the board so that no family is disadvantaged over another.

Three further points should be noted about the negative impact of poor housing conditions on the children in this study. First, an estimated 40 per cent of families had remained in their accommodation for more than six months – a period long enough to allow for unsuitable housing conditions to have a profound and sustained impact on a child’s life.^{vii} Second, the consequences of poor housing must be understood against the backdrop of poverty in which these families live. Problems may be intensified because the family cannot readily escape or rectify their situation due to a lack of financial resources. Third, although each housing issue and possible impact is explored individually, most families experienced more than one issue so the impact on the children will be compounded.

It is hoped that this report is considered by the Local Government Association, Greater London Authority, the Chartered Institute of Environmental Health, the No Recourse to Public Funds Network, the Association of Directors of Children’s Services, and the British Association of Social Workers, who are encouraged to issue guidance and recommendations to their members.

Local authorities do not use the powers and expertise available to them – either to compel landlords to rectify problems, or to ensure basic standards are met in the first instance.

As this report makes clear, a review is urgently required into the provision of subsistence and accommodation support to section 17 families. The guiding principle must be to follow what is in the best interests of children in need.

INTRODUCTION

A message from the Hackney Community Law Centre and Hackney Migrant Centre

This study was commissioned by the Hackney Community Law Centre ('HCLC') and Hackney Migrant Centre ('HMC').

The HCLC provides legal advice and representation on matters such as housing, homelessness, and community care obligations, and on immigration and asylum to people living and working in the Hackney area. HMC provides free advice to asylum seekers, refugees and migrants through weekly drop-in sessions in partnership with organisations including the HCLC.

Over the past four years, we have encountered an alarming increase in the number of destitute families with children who are not able to access public funds and are urgently in need of accommodation and financial support from the London Borough of Hackney and from other local authorities. The families are most often single mothers who have overcome enormous obstacles to raise their children without access to public funds.

We are regularly required to advocate on a family's behalf when a local authority has refused to undertake an assessment of the child's needs or provide support even where a family is destitute, or about to become destitute. While we are often successful in doing this, our work doesn't stop there. Once a local authority has agreed to provide support the accommodation offered can sometimes be so unsuitable that we must further intervene to try and have the family moved.

After noticing this problem, we successfully applied for funding from the Strategic Legal Fund for Vulnerable Young Migrants for research to be carried out on the adequacy of accommodation for use in strategic litigation. We are very grateful to the Fund for the grant.

This report demonstrates that poor housing conditions for section 17 families is an urgent humanitarian issue and needs to be addressed by local and central government.

Sadly, we are often forced to turn away families in need of legal assistance to help them obtain section 17 housing and support because the demand for our services far outweighs our resources and capacity.

This is, in part, a result of the current government's practice of refusing families who live in poverty, and who have a legal right to remain the UK, access to public funds. Families that feature in this report are, in a sense, the fortunate ones as they have received help. There will be many others who have not been so lucky and are living without any support at all, or in terrible conditions where they do not have someone to advocate on their behalf.



Helen Hibberd,
Centre Manager, Hackney Migrant Centre



Wendy Pettifer,
Senior Solicitor, Hackney Community Law Centre



“I cannot take on the cases of everyone I see that needs help. For every family where I persuade Children’s Services that they must provide accommodation, there are many more I cannot help and who, most likely, cannot find help elsewhere either.”

- Wendy Pettifer, Senior Solicitor, Hackney Community Law Centre

Who are the families that are the focus of this report?

This report concerns children who are ‘in need’ because their families are excluded from accessing mainstream support systems, including welfare benefits and asylum support. The term ‘section 17 families’ is used throughout this report to refer to these families.

Although the children may in fact be British citizens, their parent(s) or main care givers are unable to access benefits on the child’s behalf because of their own immigration status. Although the term ‘migrant’ is used in this report, it will not technically apply to a child who is British.

Section 17 is a provision which aims to ensure that children who are ‘in need’ receive the support necessary to meet those needs. Section 17 imposes a duty on a local authority to ‘safeguard and promote’ a child’s welfare.

There are no additional conditions such as that members of the family must be British citizens or habitually resident in the UK. Moreover, section 17 support does not constitute public funds, which include mainstream welfare benefits such as income support, jobseekers’ allowance, housing benefit or tax credits.^{viii} So where a child is not eligible to receive public funds due to being subject to immigration control, local authorities may provide the child and his or her family with support in order to prevent destitution.

Section 17 is a final safety net. The families that feature in this study are beneficiaries of this safety net. Some are in the UK awaiting the outcome of an immigration application which, if granted, will mean that they will be entitled to work and claim mainstream welfare benefits, and so will no longer be destitute. Others have been granted leave to remain but with a condition prohibiting them from having recourse to public funds, so they cannot claim mainstream welfare benefits. There is more information about the immigration status of these families in the [Legal Background](#) section of the report below.

A family may have survived without state assistance for some time - usually through an informal support network of friends, family, church or other religious community, as well as their wider community. For various reasons their trusted support network can become no longer viable. In these circumstances their need for support may force them into dangerous or exploitative situations, such as remaining in violent relationships or engaging in informal employment such as sex work.^{ix} Or they may spend periods of time destitute and possibly

sleeping rough.^x These examples illustrate the vulnerable state that families might be in at the point of referral to a local authority.

The duty to provide section 17 support arises where a child’s needs are not being otherwise met. The needs of the children who are the subject of this report are simple and immediate – a place to live and enough money to feed and clothe themselves and their families. Section 17 support is a lifeline for families who would otherwise have nothing.

So what’s the problem?

While section 17 support is a crucial safety net for thousands of children in the UK, there are problems with the way in which it is administered. The problems may centre around three broad factors which, when combined, have led to a system described by one study as ‘dysfunctional’^{xi}:

- There is little guidance concerning the processes that local authorities should adopt in assessing eligibility and what level of support to provide. This is left largely to the discretion of the local authority;

Their need for support may force them into dangerous or exploitative situations, such as remaining in violent relationships or engaging in informal employment such as sex work.

- Local government cuts by central government of 40 per cent in 2014 mean that local authorities are under enormous financial pressure and housing, particularly in London, is expensive; and
- The migrant families requiring support under section 17 are not British citizens (although some of the children supported are) and many have overstayed a visa. Although many of them are now legally entitled to remain in the country, an underlying perception of them being ‘undeserving’ may influence the approach of local authorities.^{xiii}

Some of the practical problems that have occurred, in part as a result of the above points, are:

- The adoption of ‘gatekeeping’ practices - particularly a reluctance on the part of relevant officials to carry out a Child in Need assessment;

- The provision of poor quality accommodation and very low levels of financial support (sometimes as little as £1 per day, per person),^{xiv} and
- An irregularity in the way section 17 support is administered - both within, and between, local authorities.^{xv}

Therefore while some families are being lifted out of destitution by section 17 support, there is little doubt that most are living in extreme poverty. In some cases, their needs, at a very basic level, are being met, but in others, they are not. The number of people affected by this issue is significant. Following a Freedom of Information request, six London local authorities stated that they supported 1,570 families or children between them during the last six months of 2014.

The numbers of families requiring support under section 17 increased by 19 per cent between 2012 and 2013.^{xvi} A number of factors suggest this trend may continue. First, the continued use by the Home Office of the No Recourse to Public Funds condition exacerbates this situation.^{xvii} Second, rules contained in the Immigration Act 2014 to limit rented accommodation to those migrants who have the 'right to rent'^{xviii} may make even more migrant families homeless meaning that those with children are likely to be turning to Children's Services for section 17 support. Finally, if passed, the Home Office's proposed cuts to asylum support contained in the Immigration Bill 2015 will even further increase the numbers of children who are unsupported by other means and are reliant on section 17 to prevent destitution.

Why focus on accommodation problems?

An increasing number of people were approaching services like the HCLC and HMC regarding problems with the accommodation they were being offered under section 17.

Problems included the location of the accommodation, which may sometimes be miles outside of London, away from their support network; overcrowding; and the physical state of the accommodation. While having to endure such issues may generally be preferable to having no home at all, or having no food, the fundamental importance of a safe and suitable home for children must not be underestimated.

The evidence of the harmful effect of poor housing conditions on children is overwhelming. The importance of an adequate home is recognised by the UN Convention on the Rights of a Child ('UNCRC'). Article 27 of the UNCRC provides that

every child has the right to a '*standard of living adequate to the child's physical, mental, spiritual, moral and social development*'.^{xix} Whilst recognising the responsibilities that parents have for this, the UNCRC requires that governments must take appropriate measures to provide assistance to families so that children's essential needs are met, in particular with regard to nutrition, clothing and housing.^{xx}

While some families are being lifted out of destitution there is little doubt that most are living in extreme poverty.

UK law recognises the harmful effects of unsuitable accommodation in a raft of legislation, case law and guidance that set housing standards in both public and private sector housing. This report will explore these standards - both those that apply to section 17 families and those that do not, with the latter serving as a useful comparator.

In light of all of the above, **are local authorities complying with their legal duty to safeguard and promote the welfare of children?** The answer will sometimes be 'yes'. This report explores the extent to which the answer is 'no' and what, in practical terms, that means for the families involved.

The research questions

To gain a clearer understanding of these issues information was obtained on 64 properties. The following issues were explored:

1. The frequency with which local authorities provide accommodation that is inadequate to meet the needs of families receiving section 17 support;
2. The main factors that make properties inadequate and the extent of the problem; and
3. The impact that accommodation issues have on the children and their principal care givers.

To answer these questions, a mixed method approach was adopted in which qualitative and quantitative information was collected via surveys and interviews. Research focussed mainly on families placed in accommodation by local authorities in London, since both the HCLC and HMC operate in London.

A full description of the methodology is set out at [Appendix I](#).

Certain categories of problems were identified (physical suitability, overcrowding, location and instability) which themselves divided into sub-categories. [Appendix II](#) sets out the definitions used to identify the categories.

Structure of this report

The analysis of the results incorporate a literature review as well as a brief look at the law surrounding those issues. [Part 1](#) explores problems around physical suitability, including access, or lack of access, to cooking, washing or toilet facilities, rodent and vermin infestations, adjustments for health issues, poor hygiene and disrepair. [Parts 2 and 3](#) explore issues around overcrowding and location, respectively. [Part 4](#) explores the way

housing is administered and how that can affect the psychological stability of families. Finally, [Parts 5 and 6](#) explore the issues of gatekeeping and how local authorities source private sector accommodation. The conclusion contains an analysis of the results and the relevant literature, followed by a list of policy recommendations.

Every child has the right to a standard of living adequate to the child's physical, mental, spiritual, moral and social development.



LEGAL BACKGROUND

A family which includes minor children can turn to children's services for support and accommodation under section 17 if it has no resources. This support and accommodation is not indefinite. If the family has no basis to remain in the UK, the starting-point for children's services will be to assist the family to return to its country of origin.^{xxi}

Immigration status of the families

The families that are the focus of this report are from outside the European Economic Area ('EEA'). They are also subject to immigration control, meaning they do not have access to mainstream welfare benefits and the adults are usually prohibited from working.

Generally, they will fall into one of the following three categories:

1. Those who have an outstanding immigration application for leave to remain in the UK pending at the Home Office. While awaiting the outcome of this application, they have a lawful right to be in the country but cannot work or claim mainstream welfare benefits;
2. Those who have been granted leave to remain in the UK but the Home Office has added a 'no recourse to public funds', (commonly known as 'NRPF') condition to their leave, meaning that although they can work, they cannot access the public purse. 'Public funds' are defined by paragraph 6 of the Immigration Rules and include mainstream benefits such as Income Support, Housing Benefit, Job Seekers Allowance, housing provided by local authorities, and, usually, tax credits;^{xxii} and
3. Those known as '*Zambrano*' carers. A '*Zambrano*' carer – the name comes from a case decided by the Court of Justice of the European Union^{xxiii} – is an adult who is neither a British citizen nor a citizen of another EU country and who is the primary carer of a child who is a British citizen. Most commonly, a '*Zambrano*' carer will be the single mother of a child, with the child having British citizenship because his or her father is or was a British citizen. A '*Zambrano*' carer has the right in European Union law to reside in the UK for as long as the British citizen child needs primary care from that adult.^{xxiv}

'*Zambrano*' carers are permitted to work and to claim contributory benefits. However, they are not entitled to claim non-contributory benefits such as income-based jobseekers allowance, universal credit, housing benefit or homelessness assistance. If the '*Zambrano*' carer is unable to work, either because she is caring for a small child or because no work is available, she cannot apply for welfare benefits to support herself and her child. Unless she has a private source of financial support, she and the child are likely to be destitute.

The migrant families that are the subject of this report are not, on the whole, asylum-seekers. More detailed information on the immigration status of section 17 supported families can be found in a recent [report](#) by Ceri Sutton and Sue Lukes.^{xxv}

What obligations arise under Section 17?

Section 17(1) imposes a duty on local authorities to safeguard and promote the welfare of children (people under the age of 18) within their area who are '*in need*'^{xxvi}.

'*In need*' is given a broad definition. A child will be '*in need*' when:

- a. The child is '*unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority*'; or
- b. The child's '*health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services*'; or
- c. The child is disabled.^{xxvii}

A child who is destitute is very likely to fall within this definition – it would be difficult to argue that his or her health or development would not be negatively affected by destitution. Case law has confirmed that a child without accommodation will be '*in need*'.^{xxviii}

The local authority is obliged to follow the statutory guidance [Working Together to Safeguard Children](#) ('the Guidance') unless exceptional circumstances arise.^{xxix}

The Guidance defines the duty of ‘safeguarding and promoting the welfare of children’ as:

- **Protecting** children from maltreatment;
- **Preventing impairment** of children’s health or development;
- Ensuring that children grow up in circumstances consistent with the provision of **safe and effective care**; and
- Taking action to enable all children to have **the best outcomes**.^{xxx} (emphasis added)

The Guidance also contains advice on how children’s services should assess whether or not children are in need, and the types of services that can be provided in order to meet any assessed need. Public authorities (central and local government) must comply with Article 3 of the UNCRC by treating the child’s best interests as a primary consideration.^{xxxii}

Which local authority is responsible?

The test at section 17(1) is a very broad one: the local authority is under a duty ‘to safeguard and promote the welfare of children within their area who are in need’. ‘Within their area’ has been held by the Courts to mean physically present.^{xxxiii} A child might be physically present in more than one location.^{xxxiii}

Who can benefit from section 17 support?

As long as it is not contrary to the welfare of the child, a local authority should promote the upbringing of children in need ‘by their families’.^{xxxiv} Indeed, local authorities have the power to support the entire family.^{xxxv} Therefore, in practice, the duty towards the children will normally extend to the parents or any other principal carers of the children in need.

The ‘Child in Need’ assessment

Unless there is no realistic prospect that, on assessment, the child will be found to be ‘in need’, the local authority must carry out an assessment.^{xxxvi}

The Guidance stipulates that the assessment must be carried out by a social worker. It must be, amongst other things: timely,^{xxxvii} child-centred, rigorous, holistic, transparent and open to challenge.^{xxxviii} See the [discussion](#) of the need for holistic assessments contained in Part 1.

The purpose of the section 17 assessment is to:

1. Gather important information about a child and family;

2. Analyse the child’s needs and/or the nature and level of any risk and harm being suffered by the child;
3. Decide whether the child is a child in need; and
4. Provide support to address the child’s needs, improve their outcome and make them safe.^{xxxix}

The following diagram, taken from the Guidance, illustrates the framework an assessment should take. It also serves as a useful illustration of what factors are considered central to the needs and welfare of a child.^{xi}



Figure 2 illustrates the framework to be used in Child in Need assessments.

What support can the local authority provide under Section 17?

A local authority will decide what type and level of services should be provided to a family under section 17. The authority should give due regard to a child’s wishes when determining what services to provide.^{xii} It has wide powers to provide services, including accommodation and financial subsistence.^{xiii}

Aside from the general Guidance mentioned above, there is little other regulation over the services that a local authority provides under section 17. This makes it very difficult for families to challenge the level or quality of support provided, or the way it which it is delivered.

How long will the support last?

The length of the period of support depends on the circumstances of the family.

Where there is an outstanding immigration application, the support provided is not intended to be for the long term, but for the period when the Home Office is considering the parent's application for leave to remain (unfortunately, in practice, this process can take months or years). Once leave is granted, the adults in the family should become eligible for mainstream welfare benefits and will be entitled to work, so that they will be able to provide for the children's needs without section 17 assistance unless the family's leave to remain is subject to a NRPF condition in which case the support may be for a longer period.

Exclusions from section 17

Section 54 and Schedule 3 Nationality Immigration and Asylum Act 2002 exclude certain adults, including those unlawfully in the UK, from receiving financial assistance and accommodation under section 17. This applies where the adult is seeking to obtain financial assistance and accommodation for the child and the adult(s) together.

Crucially, this exclusion will not apply where a refusal to provide the support would result in a breach of that person's rights under the European Convention on Human Rights ('ECHR') or EU law:

- Where a refusal to provide support will result in destitution, this is likely to constitute a breach of Article 3 of the ECHR,^{xliii}
- The local authority must consider whether destitution could be avoided by returning the person to his or her country of origin. If that is the case, and the only impediment to the person's return is a practical one, such as the lack of funds to travel, the local authority may provide the necessary travel assistance;^{xliv} and
- If the individual has made an application (that is not hopeless or abusive) for leave to remain in the UK, on human rights grounds, then a return to their country of origin before the application is determined would constitute a breach of human rights.^{xlv}

Further, section 122(5) Immigration and Asylum Act 1999 prohibits a local authority from providing accommodation and financial subsistence to adults who are supported by, or may reasonably be expected to make a successful application for, asylum support under sections 94 or 95 Immigration and Asylum Act 1999 (the asylum support scheme).^{xlvi}

If an adult is an asylum-seeker and is entitled to Home Office support under the Immigration and Asylum Act 1999, subsistence and accommodation

should be provided by the Home Office and not by a local authority. This is the mechanism by which destitute asylum-seekers, who may apply to a local authority, are referred to the Home Office for support.

Case law regarding section 17

The wide discretion afforded to local authorities as to how they will provide services under section 17 make legal challenges to potential failures difficult. Moreover, the statutory guidance is limited. Nevertheless, the courts have made some progress in defining the section 17 duties and have considered:

1. Which local authority should be providing services under section 17;^{xlvii}
2. The local authority's decision-making process and how a local authority should decide whether a family is destitute and needs support;^{xlviii}
3. The scope of the restriction at s.54 and Schedule 3 Nationality Immigration and Asylum Act 2002;^{xlix}
4. The extent of the support available;^l and
5. The adequacy of the support and the location of the accommodation provided under section 17.^{li}

A summary of the case law can be found at Appendix III. For more detailed information on section 17 please refer to the Public Law Project's helpful guidance: *Social Services Support for Destitute Migrant Families*.^{lii}



“Safe living conditions are a basic requirement for family life and if those are not provided then a child is suffering from physical neglect.”

- Dr. Roger Kennedy

PATRICIA'S STORY

Patricia has two children – Esther, seven and Emmanuel, five. She has been living in the UK since 2006 when she began a relationship with her children's father. He became very abusive towards her including inflicting sexual violence - this is how Patricia's son Emmanuel was conceived. With nowhere to go, Patricia stayed with him until after Emmanuel was born when it became unbearable. In June 2013, a local authority agreed to accommodate Patricia and her family in order to meet the needs of her children under Section 17. Patricia has an outstanding appeal to remain in the UK. Pending this, she cannot work or claim benefits.

Overcrowding and Disrepair

In April 2014 the family were moved to new accommodation where they lived for six months. It was overcrowded and in an extremely poor state of repair. The house was split into five 'flats' with multiple bedrooms; each bedroom was occupied by a different household. Patricia's lawyer said that there were likely at least 50 people living the building. In Patricia's 'flat' were 3 bedrooms, a small kitchen and bathroom. She shared the flat with a family of six and a single man called David. David would leave the bathroom in an extremely unhygienic state, would scream in the corridors, including at night, and bang the walls. To make sure that the children could use a clean and safe bathroom before school Patricia would have to wake them up at 4am. The toilet in the bathroom was often blocked. When this happened the family were forced to urinate in a potty and defecate in a plastic bag – they once had to do this for over a month. The room was very damp. When it rained, water leaked through the roof into their room. There was mould on the walls surrounding the beds. Both children suffered from asthma, exacerbated by the mould.

In April 2015, an independent Environmental Health Officer who inspected the room found that it was a crowding and space hazard, was so prejudicial to health as to amount to a statutory nuisance, and that conditions were below basic 'bedrock' public health and housing standards. He noted that overcrowding has been linked to a number of health problems such as psychological distress and mental disorders which can affect childhood development¹.

Moving location and disruption to education

When the family were initially accommodated Esther had to move to a new school. Esther had previously been settled at school, but when she moved her mother described her as *"really in her shell, hardly want[ed] to talk."* Esther's teachers say that she has made a lot of progress since then. However, in May 2015 the family were given new accommodation, but their school is now a long journey across London and the children are exhausted. Their teachers are concerned that moving schools again may affect her performance. Patricia now faces the difficult choice between moving them to a third school and disrupting their education or keeping them where they are despite the long journeys.

It is unacceptable that these children were housed for six months in unsafe conditions. Although they were eventually moved to better accommodation the location was compromised meaning education may be affected by moving schools. The local authority should ensure that children in need are housed in accommodation which meets basic public health and housing standards at a reasonable distance from their school.

1 A redacted version of his report is at [Appendix VI](#)

PART 1:

PHYSICAL SUITABILITY

At a glance...

◦ Nearly two thirds (64%) of survey properties were found to be inadequate and nearly three quarters (74%) of inadequate properties were physically unsuitable. This was the most common reason that properties failed to meet the needs of a family. The worst problems were:

- no or limited access to basic facilities for cooking, heating or washing leading to hunger and cold;
- general disrepair, leading to damp and mould as well as stress; and
- lack of adjustments for people with disabilities or other specific health needs.

◦ The impact of physically inappropriate property can range from low level exposure to a range of health hazards, to a disregard of some of the most fundamental necessities of human life such as food, shelter and basic hygiene.

Poor quality housing is widely reported to have a negative impact on the health of occupiers. It has been the subject of various reports including an extensive one by the World Health Organization ('WHO') which found clear evidence of the consequences to health of inadequate housing.^{liii} Accommodation problems which are linked with an increased risk of illness include damp, mould, excess cold and structural defects that increase the risk of an accident. Associated health risks include cardiovascular diseases, respiratory diseases and depression and anxiety.

As a result, there are statutory minimum standards of accommodation which must be met in the provision of both private sector and social housing. These are summarised below. Some of these standards apply to properties used to accommodate families under section 17 support, for example:

1. Implied terms in any tenancy or licence that the landlord should keep aspects of the property in repair;^{liv}
2. The health and safety standards for rented homes (Housing Health and Safety Rating System - 'HHSRS');^{lv} and
3. Standards to ensure that the home does not constitute a 'statutory nuisance'.^{lvi}

This study shows that section 17 properties often fall short of these standards. The following discussion will include references, where relevant, to the HHSRS.

Almost three quarters (74 per cent) of the inadequate properties in the study were physically unsuitable. In order of severity, the reasons for this were as follows:

1. No access or very limited access to basic facilities such as kitchens, bathrooms or heating;
2. Exposure to damp and mould;
3. Infestation of vermin or insects;
4. Lack of provision for specific health or disability needs; and
5. Disrepair and poor hygiene at the property.

Access to basic facilities

One third of families placed in inadequate accommodation had no access to one or more basic facilities. This group included a mother and two children who were placed in a homeless shelter with no bed, and had to sleep on the bare floor. After their representatives advocated on their behalf, they were eventually provided with a mattress.

In *Patricia's case*, her access to the bathroom was restricted because it had to be shared with 10 other residents. This meant that in order to get the children bathed and ready for school on time, she had to wake them at 4am, as the bathroom would be occupied after that.

Although they went back to sleep for a short period after bathing and getting dressed, the children were usually exhausted with a likely negative impact on their energy and performance levels at school.

Mainly, the problems were inadequate access to kitchen or cooking facilities and no heating or hot water. In some cases, these facilities were not provided at all (for example see [Amrita's story](#)) and in others the overcrowded conditions or the state of disrepair meant that the family's access was restricted. Such conditions are likely to cause unnecessary expense, inadequate diet and exposure to cold.

Hunger and inadequate diet

Access to cooking facilities can be exceptionally important to section 17 supported families who cannot normally afford ready-made meals and many of whom rely on food banks.

[Chantelle](#) shared a kitchen, containing only one functioning hob, with residents occupying 50 other rooms.^{lvii} It was therefore almost impossible for her to use the kitchen facilities and she spent the little money she had to purchase a kettle and a microwave which she kept in her room. She was restricted to cooking mainly eggs (which she cooked in the kettle) or heating up readymade meals, widely known to be less healthy and nutritious, and far more expensive, for her and her 11 year old son.

Chantelle shared just one kitchen with residents occupying 50 other rooms.

There were at least three cases where there were no kitchen or cooking facilities provided at all. In one of these cases, the practitioner noted that the family, relied on food banks which mainly provided raw ingredients that required cooking. A family struggling to feed itself will be in a state of '*food insecurity*' if children are hungry some or all of the time.^{lviii}

Research has demonstrated a link between hungry children and social dysfunction, fighting and aggressive behaviour, problems at school both academically and socially, as well as family stress that negatively affects parenting behaviour and children's reactions to their parents. At a more extreme level, a child could experience malnutrition which could have an extremely severe effect on mental and physical health, including on brain development.^{lix}

Cold

One of the four requirements for a '*decent home*',

as provided for by the UK government, is that it '*provides a reasonable degree of thermal comfort*' which includes a warm and weather proof home.^{lx}

Cold is also listed as a hazard by the government in its health and safety rating system.^{lxi} Our results showed that there were at least four properties where heating was an issue, either because there was no heating at all or because the heating installations did not work. In Patricia's story and in at least two of the survey cases, the windows were in disrepair and did not fully shut. Clearly, this will not create a warm or weather-proof environment, particularly in winter months.

In one of the survey cases, the practitioner stated that the cold temperatures in the property had caused the local authority to move out other families who were being accommodated there but as this particular family was only being accommodated on a '*temporary basis*', it was not moved. As explored in [Part 4](#) - although section 17 accommodation is, in theory, a temporary measure, the reality is often very different.

The health consequences of exposure to cold temperatures are widely reported. Studies show that cold homes are linked to an increased risk of cardiovascular, respiratory and rheumatoid diseases, as well as hypothermia, poorer mental health and excess winter deaths.^{lxii} Cold temperatures also decrease resistance to respiratory infections, which can be caused by damp and mould growth in the home.^{lxiii}

Exposure to damp and mould

Nearly one in five (18 per cent) of families placed in inadequate accommodation were affected by damp and mould. In reality, this figure is likely to be higher because many of the families were faced with more visible or shocking problems, such as infestations of pests or vermin, which occupants may consider a priority over damp and mould. This was the case for [Eva](#), who reported problems of disrepair and infestations. It was not until she was interviewed in more detail, that her property was also discovered to have severe damp and mould problems. She described using paint over black mould in her bathroom but said it quickly re-appeared.

Damp and mould is a health hazard under the HHSRS and children of 14 and under are the most vulnerable age group.^{lxiv} It is also considered one of the most common hazards in the home, affecting over a third of rented properties in the UK.^{lxv}



Photograph 1 showing mould behind the bed in Patricia's property.

Both case study properties inspected by an Environmental Health Officer were found to contain mould and damp, probably resulting from condensation.^{lxvi} In Patricia's case it was due to a lack of ventilation in the bathroom.

In three survey cases the practitioner specifically mentioned that the damp and / or mould was exacerbating a child's allergies or asthma. Chantelle stated that her son started coughing because of the damp and mould in their basement flat. Damp and mould not only exacerbate pre-existing asthma problems but can also be the cause of new-onset asthma, especially in children.^{lxvii} Children living in damp homes are more prone to coughing and wheezing which impacts on their daily lives, potentially causing loss of sleep, restricting a child's ability to carry out daily activities and causing absences from school. Those effects, in turn, have long-term implications for a child's personal development and life chances.^{lxviii}

The WHO guidance emphasises the importance of timely maintenance of properties, in order to tackle problems of damp and mould, including responses to flooding or plumbing problems, as well as use of effective ventilation.^{lxix}

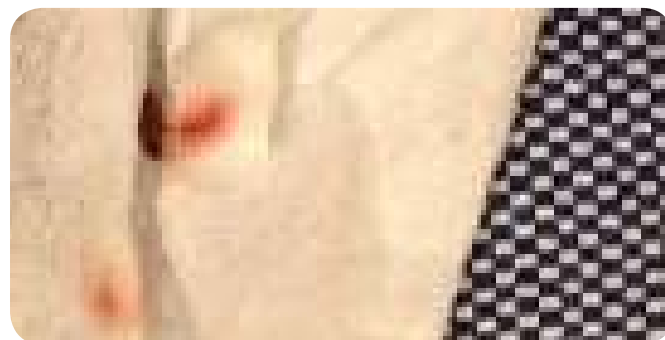
Vermin or pest infestations

23 per cent of the inadequate properties had infestations of pests or vermin, including mice, rats, cockroaches, bed bugs and mosquitoes. For most, this was reported as a problem when the family moved in.

Eva described a severe mouse infestation for almost a year of living in her accommodation. She would find mouse droppings 'everywhere' - including in the kitchen, in cupboards, on the cooker, on the fridge and even on top of the bed. She would regularly see mice running across the floor. The infestation

subsided when the landlord tried to block holes in the walls, but she could still hear them scratching behind the walls. Eva found this infestation the most stressful aspect of living in a property with many other hygiene and disrepair problems. She described herself turning into a 'clean freak' so her children would not be exposed to mice droppings.

Government HHSRS guidance includes an analysis of the potential health risks associated with mice, rats and insects such as cockroaches.^{lxx} It is well known that mice, rats and cockroaches can carry disease that can be passed on to humans through contaminating food and surfaces with urine, droppings and hairs. Spoiled or contaminated food has to be thrown away and this may be a particular problem for section 17 families who have very little money. Rats can pass on leptospirosis which can lead to the potentially fatal Weil's disease. Cockroaches can cause allergic reactions and other skin and respiratory infections.^{lxxi}



Photograph 2 showing bed bug in a survey family's property.

Although bed bugs and mosquitoes are not considered a health hazard (at least in the UK) and are not included in the HHSRS, they can nevertheless cause distress, discomfort and a lack of sleep.^{lxxii} This was the case for at least two surveyed families – one infested with bedbugs and another with mosquitoes. They reported discomfort, lack of sleep and stress associated with the infestations.

Lack of provision for specific disabilities or health needs

Almost a third (28 per cent) of inadequate properties were unsuitable because there was a lack of provision for specific disabilities or health needs. Mainly, this was because people with disabilities or other mobility problems were placed in upstairs accommodation without a lift, or families with babies being placed in accommodation that lacked appropriate facilities, such as cots (see [Adesuwa's](#) and [Mary's](#) stories respectively). In a survey case, a wheelchair-user and her family were given an upstairs flat, so she had to be carried up and could not leave.

The bathroom in the flat was also down a few steps, making it dangerous and difficult for her to use. A person's dignity is undermined if forced to live in a home where the bathroom or toilet cannot be readily accessed.

Lack of adjustments or adaptations may amount to discrimination.

In *Adesuwa's* property the bathroom was up a large flight of stairs. *Adesuwa* suffered from problems with her knees and every time she had to use the bathroom it was painful and slow to get there. She described her embarrassment at other tenants having to help her up the stairs.

Lack of appropriate adaptations to take account of residents' disabilities can constitute a safety risk, can exacerbate existing health problems and can also cause pain, distress and embarrassment and impact on the sole's carer's ability to care for the child. A lack of adjustments or adaptations to a property may amount to discrimination against a person with a disability or other mobility problems.^{lxxiii} Indeed the violation to that person's dignity may be so significant that it could constitute a breach of human rights law, although case law is conflicting on this point.^{lxxiv}

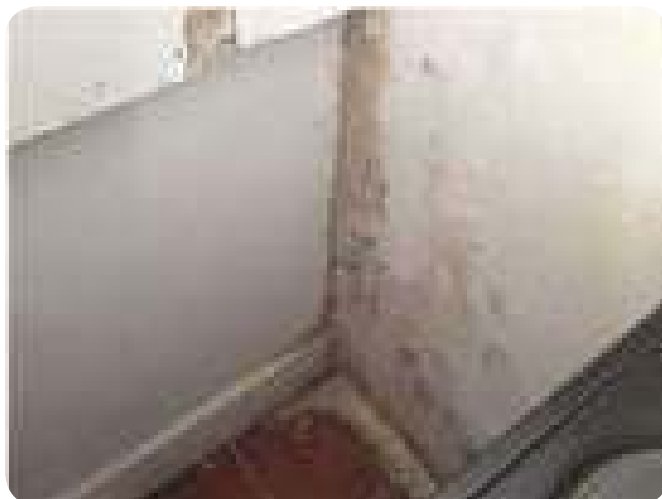
In the properties where no cot was provided for a baby, the mother would normally share a bed with her baby. For example, *Mary* shared a bed with her two babies aged three months and 18 months. The NHS recommends against adults sharing a bed with a baby because studies show that there is an increased risk of sudden infant death.^{lxxv}

Disrepair and poor hygiene at the property

28 per cent of inadequate properties needed repairs. 26 per cent of inadequate properties were in a very unhygienic state and the owner had not taken steps to make sure that they were clean.

In a similar way to damp and mould, these figures probably underestimate the extent of the problem. Poor standards of hygiene may be under-reported compared to more obvious or shocking conditions.

For example, it was not until a health inspector assessed *Patricia's* accommodation that the hygiene issues became apparent.^{lxxvi}



Photograph 3 showing disrepair in *Eva's* kitchen which made it difficult for her to keep her home clean.

Link between disrepair and hygiene

70 per cent of properties that were unhygienic were also in a state of disrepair. There is a clear link between these issues as disrepair can make it difficult to keep premises clean. In *Patricia's case*, the unhygienic conditions were in part due to dilapidated kitchen units as occupants found it hard to keep the kitchen clean.^{lxxvii}



Photograph 4 showing worm in shower tray in *Eva's* property.

Eva reported that general disrepair in her property made it impossible for her to keep it clean. For example the shower tray had been placed on a dilapidated surface and worms would frequently crawl out from underneath it and into the shower. This was witnessed and photographed by researchers on the home visit. Thin wooden boards had been erected in the kitchen at floor level disguising disrepair, and insects crawled out from behind. *Eva* said that as a result, however much she tried, she was never able to make it clean, which caused her extreme stress.

Problems may arise where cooking facilities are in such a poor state of repair or hygiene, that they are unsuitable for use.

This was the case in Patricia's property, where the environmental health inspector found that although a cooker was provided, it had two inoperative hob rings and the oven was too greasy, encrusted and unhygienic for use.^{lxxviii} Disrepair and hygiene problems can result in a family having no access to basic cooking or other facilities.



Photograph 5 showing oven in Patricia's property that was too unhygienic for use.

Health risks

As well as general hygiene problems, Patricia experienced a very serious issue when, as a result of plumbing problems to the toilet, she and her children were forced to urinate in a potty and defecate in a plastic bag which they discarded in the outside rubbish.

This occurred several times, on one occasion lasting as long as a month, because the landlord or owner failed to fix the plumbing problem. This not only posed a health risk but it was extremely humiliating and degrading for all the family. In Adesuwa's property, there was a plumbing problem which caused leaks of dirty water into her bedroom. Her daughter was taken to hospital in an ambulance when she got ill from eating food contaminated by the leaking water. In one survey case, a mother and her two children were placed in a homeless hostel where vomit and blood was frequently found in the bathrooms. This restricted their ability to use the bathroom, posed a serious health risk due to potential spread of infection and disease, as well as being very distressing.

HHRS guidance states the health effects of unhygienic domestic conditions can include:

'gastro-intestinal disease (from spread of infection), asthma and other allergic reactions (from allergens), stress (because of difficulties in keeping the home clean and from accumulations of refuse) food

spoilage from insect infestation (e.g. cockroaches), infections (spread by insects and rats and mice) and nuisance.^{lxxix}

The guidance also shows that disrepair is likely to contribute to a number of hazards including: cold, the likelihood of falls, fire, damp and mould growth, electrical hazards, entry by intruders, and structural failure. In Mary's property, the environmental health officer noted broken plastic with sharp edges which had not been repaired and was accessible to a crawling child. The case studies and survey results show that inadequate management of cleaning and maintenance of section 17 accommodation can create dangerous environments for children and their families.

B&B-style accommodation and physical suitability

Where families were placed in **bed and breakfast accommodation** ('B&B'),^{lxxx} they were more likely to experience problems with the physical state of the property. 78 per cent of properties known to be B&Bs were physically unsuitable. A study by Shelter on temporary accommodation found a similar correlation: the hygiene of cooking facilities were significantly more likely to be an issue in B&B accommodation than in a flat or house:

'People living in bedsits, bed and breakfast, hotels and hostels were more likely to be concerned about the cooking facilities in their accommodation. Some of the most negative descriptions of accommodation came from people living in hotel and hostel accommodation.'^{lxxxi}

Compounded problems and the need for 'holistic' assessments

Issues that constitute physically unsuitable properties are linked. One problem can create or exacerbate another, compounding the potential impact on families. For example, where plumbing defects have not been repaired, damp can arise; where windows are draughty, the room becomes colder. In both cases, mould is more likely to grow. Hygiene problems can mean that basic cooking, washing or toilet facilities are simply not usable.

Most of these issues will be exacerbated where the family is not given adequate financial assistance (see Part 5). For example a family may rely on food from food banks but be given a hostel without cooking facilities, so that it cannot cook the raw or tinned food it has been given. This illustrates why a local authority cannot properly understand a child's needs without looking at a family's situation as a whole – every aspect of the accommodation, as well as their financial circumstances.

Although the Guidance provides that child in need assessments are to be 'holistic',^{lxxxii} results show that local authorities do not always carry this through.

Environmental Health Reports

As part of this study, an environmental health officer was instructed to inspect the properties provided to two of case study families – Patricia and Mary. These reports are contained at Appendices V and VI. In both cases, the properties were found to be well below standard. Patricia's property was found to be 'unsatisfactory and unsuitable accommodation for this household'.^{lxxxiii} On Mary's property the expert concluded that:

'In my opinion this accommodation falls far short of acceptable provision for this household. I am very concerned for the health, safety and wellbeing of the occupiers in such a situation and urgent re-housing is recommended.'^{lxxxiv}

Both properties were found to contain hazards that posed a severe threat to the health and safety of the families ('Category 1 hazards'^{lxxxv}). Local housing authorities have a duty to take action against a landlord for Category 1 hazards.^{lxxxvi} The properties also contained other levels of hazards which the local authority had the power to take enforcement action against. Yet it does not appear that the local authorities involved had even inspected the properties despite frequent complaints from Patricia and Mary. Contrary to their duty to do so, they did not take enforcement action against the landlords during the period in which Patricia and Mary were living there.

What can a family do about disrepair problems?

It is very hard for a family itself to use legal remedies against the landlord or owner. Often the legal status of their occupation agreement is uncertain, or the identity of the landlord or owner is unknown. The better solution is for a local authority always to ensure that accommodation offered to families under the section 17 duty complies with legal standards.

Negotiating with the landlord or local authority

A family experiencing problems with the physical state of the accommodation could approach the landlord, or, more usually their agent, and try

and resolve the problem with him or her directly. Alternatively, it might approach the local authority and ask it to approach them on their behalf. However, families can experience difficulty in resolving these issues via the landlord or local authority. During research interviews, a senior family support worker described a case where a woman in section 17 accommodation was bathing her children when a large chunk of the bedroom roof fell in. The landlord would not do anything and she had great difficulty in contacting the local authority either by phone or in person. She and the children had to live amongst rubble and dust for days before they were eventually moved. Similarly, Patricia's toilet was out of order for months before the landlord fixed it.

Actions by a local authority

The Housing Act 2004 gives local authorities a power to compel a landlord to resolve poor housing conditions. Local authorities can do this if there is a hazard which is a risk to the health or safety of

The children had to live amongst rubble and dust for days before they were eventually moved.

the occupants, following an assessment under the HHSRS. Where a building contains Category 1 hazards, the local housing authority is under a duty to take enforcement action. Where there are only Category 2 hazards, there is a power, but not a duty, to take enforcement action.^{lxxxvii}

Appendix IV provides a summary of the enforcement powers available to local authorities with regards to the condition of a property. When local housing authorities place homeless applicants in private rented sector accommodation, there is a checklist of ten factors relating to the standard of the accommodation, and the suitability of the prospective landlord, that have to be satisfied before the private rented sector offer can be considered suitable: Article 3 Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601. There is no equivalent checklist for accommodation provided to section 17 families.

Bringing legal action for disrepair of a property

If it has not been possible to resolve repair problems with the landlord and the local authority has not taken action to compel a remedy, it may be possible for the family to bring a claim against the landlord and compel him or her to remedy the situation and / or pay compensation. Local authorities and legal advisors should make families aware that legal proceedings can be lengthy and so early and informed negotiation with the landlord on issues of disrepair is vital. Clients should be encouraged to record and report repair issues.

Appendix IV provides a summary of the remedies that may be available to families regarding the condition of a property.

Claims may be brought for breach of repairing obligations.^{lxxxviii} A claim may also be brought in tort or the landlord can be prosecuted for causing a statutory nuisance. Families may be able to obtain legal aid for housing disrepair claims where there is medical evidence to show a serious risk of harm to the health and safety of an individual occupying the property.^{lxxxix} This report indicates that section 17 families are at a significant risk of developing or suffering from medical problems caused by disrepair.

The first step in bringing legal action is to ascertain who the parties to any contract might be. In some cases, the landlord or owner of the accommodation would grant a tenancy or a licence to the adult occupier directly, in which case the occupier would have a claim for breach of contract against the landlord or owner. A tenancy or licence need not be in writing, although they are often written. The essential elements of a tenancy are where the landlord grants exclusive possession of premises (which may be a room with shared use of facilities) for a term to an occupier for rent or similar consideration.^{xc}

Alternatively, the local authority may have contracted directly with the landlord or owner and may have been granted a tenancy or licence to use the accommodation for families owed duties under section 17. In those circumstances, there will be no direct legal relationship between a family occupying the accommodation, or part of it, and the landlord or owner. In this case, any legal action would have to be brought by the local authority. To gain an understanding of the types of contracts that are usual for section 17 accommodation, information was requested on the contractual arrangements used by five local authorities.

Contracts used for section 17 accommodation

Three local authorities provided example contracts: LA 3, 4 and 5. Generally, the contracts were between the landlord or owner of the accommodation and the local authority itself.

Two of these contracts did not include detailed express terms relating to the maintenance, repair and hygiene of the property which reflect housing law standards. For example, one contract stated that the landlord is required to keep the property in a '*habitable condition*'. Another required the managing agent to '*ensure the rooms are ready for letting*' and to '*provide maintenance and repairs*'. This failure to include detailed repair provisions (like

those included in a standard tenancy agreement) is likely to weaken the local authority's position in discussions with private landlords about repairs.

Two of the local authorities have no existing contracts with private landlords and rely on short-term contracts or spot purchasing. See Part 4 for more information on this. Even where repairing obligations are included, they normally need to be enforced by the tenant - often the local authority. The contract provided by LA 4 did include a provision which allowed it (the tenant) to carry out repairs and seek reimbursement from the landlord in certain circumstances.

Local authorities are failing to use their powers to ensure the safety of children.

Survey results show that families are still experiencing serious problems with disrepair in LA 4, which suggests that either this contractual provision is not being included in all contracts with private landlords or the local authority is not exercising its contractual right to carry out the repairs itself, leaving vulnerable children in housing which could be damaging for their health.

Conclusion

The impact of physically inappropriate property can be wide ranging – from low level exposure to a range of health hazards, to a disregard of some of the most fundamental necessities of human life such as food, shelter and basic hygiene. Some of these issues affect children more than adults, for example, inadequate food or damp and mould affect a child's development.

Many of the issues are likely to have a collateral impact on psychological health - for example, the behavioural impact on children that are hungry, the stress on parents who are unable to keep their home clean or free from vermin, or the erosion of the dignity of those struggling to take themselves to the toilet as a result of a disability.

The psychological stresses on parents are very likely to have an impact on their children and may affect their development.^{xcii} Many of the properties occupied by section 17 families present serious health hazards, some of which would be Category 1 hazards.

This was confirmed in the Environmental Health reports where it was concluded, in both cases, that the properties presented a number of threats to the health and safety of the families.

Although local housing authorities have a duty to take action against a landlord for Category 1 hazards, and a power to take action against a landlord for Category 2 hazards, they are failing to do so. Recommendations to address these issues are contained at [Part 7](#).



CHANTELLE'S STORY

Chantelle has been in the UK for 16 years with her son Michael, who is 11. She has an outstanding immigration application. They lived with Michael's dad until 2013 when he became physically abusive. On one occasion, Michael witnessed his dad beating his mother so badly that he called the police. Chantelle and Michael left him and went to Children's Services for help, but were turned away insisting that Michael could live with his father. After a children's charity advocated on their behalf, explaining that this was dangerous, Children's Services agreed to accommodate them.

Chantelle and Michael were first given a room in a B&B. The room was infested with mosquitoes. For the four months that they lived there, Michael's arms and legs were covered with bites: he was unable to sleep and had to receive medical treatment. The room contained a small-double bed which Michael and Chantelle had no option but to share. At 11 years old, this was distressing for Michael, who needed privacy and space. Chantelle read his journal, where he described his feelings at sleeping in bed with his mum. It said *"I am suffocating, I feel as though I am going to die"*. After four months in this B&B, following interventions from their caseworker, Chantelle and Michael were moved to a hotel nearby. They were told this would be a temporary arrangement until something more suitable was found.

"I am suffocating. I feel as though I am going to die."

Again, their new room contained only one bed for Chantelle and Michael to share. They shared one kitchen with around 50 other residents. There was only one working hob. Chantelle had to buy a microwave for her room and used that, alongside an electric kettle for cooking. In order to access the shared bathroom Chantelle and Michael would shower in the night or very early morning.

The room was in the basement and was extremely damp with mould on the walls next to the bed. They couldn't move the bed away from the walls because the room was too small. Michael started coughing because of the mould. If they opened the windows, there was a strong smell of sewage and drain water from right outside the window. Following an inspection by an Environmental Health Officer, Chantelle and Michael were moved to an upstairs room in the same hotel. Michael and Chantelle remained in this 'temporary' accommodation for over a year.

Impact

Michael has been identified as having special needs and receives extra support at school as well as one-to-one counseling. Michael experienced traumatic events during the period that he and his mother became homeless and his uncertain and unpleasant housing arrangements exacerbated those issues. The way that Children's Services dealt with Michael may have been a contributing factor to his problems. At first, Michael did not want to receive school counselling as he thought it was somehow connected to the Children's Services. His mother said: *"As soon as you say children's services [to my son] he just shuts down... they would play him off against me and his father and call him a liar"*.

Thanks to legal intervention, Chantelle and Michael succeeded, after almost a year and a half, to secure accommodation where they had separate beds. But for all that time, they lived in conditions that were overcrowded and constituted a criminal offence. It is particularly concerning in light of Michael's vulnerability and special needs. Government guidance states that a child's needs must be paramount but Chantelle and Michael struggled to make their voices heard, even with the support of specialist advisors.

PART 2:

SPACE AND OVERCROWDING

At a glance...

- Over half (56 %) of inadequate survey properties were found to be overcrowded or have insufficient space.
- Seven families featured in this study were living in **statutorily overcrowded conditions**. This means the landlord or person responsible had committed a criminal offence. In some cases, families were being placed in these conditions over and over again.
- Psychological health and educational prospects are affected by the lack of privacy and space. Physical health and family relationships can also be affected.
- There were three main types of overcrowded conditions:
 1. Overcrowded and inappropriate sleeping arrangements: for example a mother having to share a bed with her son who is over 11 years old (this is also statutory overcrowding); a father sharing a bed with his 7 and 8 year old sons; or a mother sharing a bed with her baby and her toddler. This applied to almost half of the families that experienced overcrowding;
 2. Overcrowded shared facilities so there was a serious restriction on their use: for example 50 residents or more using one kitchen or eight families sharing one kitchen or one bathroom. Local authorities generally require one set of kitchen facilities for every five occupiers; and
 3. Lack of space & privacy: for example a family of five having to live in one bedroom

meaning no privacy and no space to play or do homework.

Over half (54 per cent) of inadequate properties were overcrowded or had insufficient space for the family. The detrimental health effects of overcrowded conditions have been widely known for a long time and have been acknowledged as a serious issue by several UK Governments.^{xcii} The detrimental effects extend to physical and mental health, education and social development. Those who spend the most time at home, for example the very young, are the most vulnerable to these effects.

Psychological problems that can result from overcrowding include mental health disorders (particularly those associated with lack of privacy and childhood development), distress, and reduced ability to concentrate. Physical health problems include increased heart rate and perspiration, increased hygiene risks, an increased risk of accidents, and spread of contagious disease.^{xciii} Overcrowding can even slow childhood growth and cause child mortality.^{xciv} Educational prospects are affected because a child will have little space to study, will be more prone to infections (and therefore absences from school) and a deterioration of psychological health.^{xcv}

Many of these cases will have constituted a 'crowding and space' hazard under the government's health and safety system - HHSRS. For example, in Mary's story the Environmental Health Officer found the property that she shared with her three small children to be 'severely overcrowded' under the HHSRS.^{xcvii}

Personal space and privacy needs are important. The HHSRS guidance notes that space should be sufficient to provide for social interaction between members of the household, while allowing for private time away. The guidance notes that small children need at least as much space as an adult. In terms of privacy, the guidance states that the need for privacy begins to develop from the age of eight years old and will be fully formed during puberty.^{xcviii}

Patricia's story serves as an illustration of the consequences of a general lack of space and overcrowded conditions. For six months, she and her two children shared a three bedroom flat with two other households. Patricia's family shared a small kitchen and small bathroom with 10 people (the other two rooms were occupied by a family of six and a single male). There was no outside space or communal living area so they spent most of the time in their bedroom. They did their homework on the bed. The two children shared one bed, while Patricia slept in the other. As the little boy received specialist treatment for nocturnal enuresis, or bed-wetting, this created frequent disturbance for his sister.

“Overcrowded housing conditions add significant pressure to the lives of residents. Certain health issues are intensified by cramped living, children’s development and life opportunities are blighted, and the ability to maintain healthy relationships is stifled”

- Hackney Borough Council^{xcvi}

Shared facilities

In Chantelle's story, she and her 11 year old son Michael lived in one room where they had to share a bed – this constituted a criminal offence as it was ‘overcrowded’ under the [statutory definition](#). They shared one kitchen (containing one just working hob) with all of the other residents of the hostel – which consisted of 50 rooms. As described in [Part 1](#) their access to shared facilities was severely restricted which likely led to her son having an inadequate diet and may have led to food insecurity or hunger (with impacts on the physical health and development of the child). This may also have been so in some survey cases - for example, where there were 13 people to one kitchen or eight families sharing one kitchen and one bathroom.

Local authorities vary slightly in their requirements for sharing facilities but in general guidance states that there must be at least one bathroom and one 6m² sized kitchen for every four or five occupiers.^{xciii} Clearly, this standard is not always met for section 17 supported families. As a result, more than a third of families reported problems with overcrowding.

OVERCROWDING AS A CRIMINAL OFFENCE

Five survey cases and two case studies were living in statutorily overcrowded conditions, as defined by the ‘*room standard*’ in the Housing Act 1985.^{xcix} In short, this law requires that two people over the age of 10, who are of the opposite sex, and who are not in a relationship, should be given separate bedrooms. If this law is breached, the landlord or person responsible has committed a criminal offence by allowing people to live in such bad conditions.^c In the seven properties that were statutory overcrowded, the local authority failed to bring any prosecutions.

Amrita and her 12 year old son Dev have been moved around a number of different properties over a period of two years. In every property they were required to share a room and they often had to share a bed. **This local authority was therefore, as a matter of course, placing families in conditions that are overcrowded by law.**

Yet statutory tests for overcrowding have been widely criticised for being too weak. The previous Labour Government accepted that the statutory standard was ‘*no longer defensible in a modern society*’^{ci} and various reforms have been proposed but not yet implemented.^{xcii}

The statutory tests say nothing about the overcrowding of shared facilities yet some cases showed excessive numbers of people sharing just one kitchen or bathroom. Moreover, there are circumstances where a family is, by any reasonable standard, sleeping in overcrowded conditions but which are not caught by the statutory tests. For example, there were at least five cases where a parent was sharing a bed with two or three children who were aged under 10. In light of the fact that the sharing was not normally for just one or two nights but weeks, months or years at a time, it is difficult to see how anyone could argue that these examples do not constitute ‘*overcrowding*’.

Psychological health and educational prospects

Chantelle's son found the situation very distressing. Chantelle recalls reading his journal in which he had written *'I am suffocating, I feel as though I am going to die'*. He was identified as having special needs and receives extra support at school as well as one-to-one counselling. Michael has experienced other traumatic events in his life and his housing conditions are likely to have exacerbated any pre-existing mental health or development problems.

“A reasonable amount of privacy is an essential aspect of normal family life.”

- Dr. Roger Kennedy

Similarly, it appears that Adesuwa's older two children, aged nine and eight, were affected by a lack of space. They both experienced problems with their behaviour and performance at school. From Adesuwa's description, it appears that the daughter, the elder of the two who had just reached puberty, was the most severely affected by the lack of privacy. She started to cry herself to sleep every night and was referred to the school counsellor. Her school report stated that she had been having anger problems for the previous four months.

Amrita and her 12 year old son Dev were required to share a bedroom, and usually a bed, over a period of two years and over a number of different properties. Dev's school described him as a *'lovely boy'* but were sufficiently concerned about him to refer him to an education psychologist. The psychologist described an incident where Dev broke down crying because of his housing situation.

In each of these cases, it appears the children may have been suffering from psychological distress and / or mental disorders associated with lack of privacy and that this also affected their education prospects.

Family relationships

In addition to the impact on health and education, family relationships are also thought to suffer in overcrowded conditions. In a study of 500 families carried out by Shelter, 77 per cent strongly agreed that overcrowding harmed family relationships and 81 per cent that overcrowding caused fighting and arguing among their children.^{civ} The latter

point was reflected in Eva's story where she felt that her three children were fighting much more since they all moved into a room together (the younger twins also shared a bed with Eva).

Hackney Borough Council acknowledges the social and developmental impact of overcrowding: *'children's development and life opportunities are blighted, and the ability to maintain healthy relationships is stifled'*.^{cv}

Possible resolution: Actions by local authorities

A lack of adequate space for living and sleeping is considered a hazard under the HHSRS.^{cvii} The physical housing conditions – and whether or not they amount to hazards – are for the local housing authority to identify on inspection using the HHSRS. Local housing authorities have extensive powers where residential accommodation breaches these standards.

Conclusion

Given the potentially disastrous effect that overcrowding can have on the lives of children, local authorities are failing to fulfil their section 17 duties when they place families in overcrowded conditions. In several cases, it appeared that a child's psychological health and educational prospects were affected by the lack of privacy and space. Physical health and family relationships can also be affected.

It is particularly shocking that local authorities place families in conditions that are, statutorily, overcrowded. In these cases, the local authorities not only failed to bring criminal prosecutions against the landlords responsible, but some of them appeared to be consistently placing families in these conditions. Finally, and more frequently, local authorities are placing families in properties that constitute a crowding and space hazard under the HHSRS. Recommendations for addressing these issues are contained at end of the report.



ADESUWA'S STORY

Adesuwa has three children: a girl of nine and two boys of eight and three. She has an outstanding appeal for leave to remain in the UK and is not allowed to work or claim welfare benefits. Adesuwa previously lived with the father of her children, who was physically and emotionally abusive to her and the children. When the relationship broke down Adesuwa and the children had nowhere to go. The local authority found that Adesuwa's children were "in need" and provided them and Adesuwa with section 17 support, in line with their duty to safeguard and promote the children's welfare. In April 2014, they were given one room in a privately-run hostel.

The Hostel

The hostel was cramped and in a dangerous state of disrepair. There was terrible damp and mould on the walls, mice and cockroach infestations, and for a while there was dirty water leaking through the walls. The family shared one toilet, kitchen and bathroom with the other hostel residents. Her caseworker was informed that other families who had been housed in the same hostel were being moved out as it was known by the authorities to be unsuitable for families. They said Adesuwa's family were "not top priority". Adesuwa received little support from her social worker who rarely visited the property to check on them.

"If you don't have this [immigration status] you are nobody. But I am somebody because I have my kids and they have needs."

After the other families were moved out, the new residents were mostly single men, some of whom smoked, drank and took drugs. At night they were noisy and would bang on the family's bedroom window, which faces onto the street, and would leave the front door wide open. Adesuwa was frightened for her children's safety and bathed the children together because she did not want to leave any of the children alone.

The children's welfare

Adesuwa's daughter had recently been through puberty and was desperate for some privacy. In the hostel she cried herself to sleep every night and started seeing the school counsellor. Because of the distance between the hostel and the children's school, the children had to travel for around three hours each day and would arrive at school exhausted. The distance also meant that children missed out on vital extra support, which teachers said they needed, because they couldn't get to school early, couldn't stay late and were too tired to participate in extra-curricular activities like homework club. The children's head teacher said that the pressures of living in the hostel and the travelling time to school affected the children's performance at school.

A counsellor who Adesuwa was referred to by a family support group told us that Adesuwa's housing issues had a negative impact on her mental health: she experienced isolation and deep feelings of loneliness. As their caregiver, Adesuwa's mental health is vital to her children's welfare.

Adesuwa and the children remained in the hostel for almost one year. But spending so long in dangerous conditions a long way from school has clearly had a detrimental impact on the family. The disruption to their schooling may have long-term consequences. The local authority failed in their duty to safeguard and promote the children's welfare and put their physical and mental health at risk. The local authority should have housed the children a reasonable travelling distance from their school and worked with the landlord to ensure that the family's living conditions were safe.

ONA'S STORY

Ona has been living in London since 2010. She has an outstanding appeal to allow her legal leave to remain in the UK. She has two small children – Tayo, a boy of two, and Rita, a baby of 10 months. In December 2013, as she became pregnant with Rita, she and infant Tayo were made homeless. A local church allowed them to stay on a short-term basis. They slept on the floor and washed in a washing up bowl. The space was unheated. They relied on a food bank for food. In May 2014, building works began at the church. Ona approached her local Children's Services for support but they said she was not eligible because she could rely on her existing network. She went back to the church for a few more months, living amongst the building works. In August, Ona and Tayo had to leave the church and sleep on night buses for 3 nights until, after advocacy from Shelter and Hackney Community Law Centre, the local authority agreed they had a duty towards the family under section 17.

“You only have to be friends with one other mum, who can help look after your kids when you're ill or running late. Being moved away to a place where you know no one at all has a massive impact.” - Senior Family Practitioner at a children's centre

The local authority moved the family to a B&B in Southend. Ona had to travel back to London for a prenatal check-up. The doctors found that her baby wasn't moving or breathing properly in the womb and performed an

emergency caesarian section. Complications meant that Ona lost the circulation in her right leg. When she was discharged 3 days later she still couldn't walk properly. She arrived back at the B&B at 10pm that evening with her tiny, premature baby Rita and Tayo, leaving behind her support network at the time she needed it most. She felt extremely isolated and vulnerable.

The family were given a room that was too small for the baby's cot so they all slept in the same bed. The room was on the first floor and Ona's mobility issues made it difficult for her to use the stairs. As a result, she was only able to go downstairs once a day, where they ate toast and eggs provided for breakfast. The rest of the day they stayed in the room, living on cereal and milk provided by the B&B. After a few days, they were moved to the ground floor so they could leave the B&B and go to the foodbank. However, Ona was not always able to use the kitchen as it was used by the landlady to cook for up to 30 guests. This meant she could not always cook the food she had been given.

There was no free childcare available in Southend and while Ona was recovering from her operation, Tayo and Ona hardly left the B&B. Tayo's development appeared to regress. In London, he had started talking but he then stopped. He was also potty-trained at the time of the move but soon after he had to go back into nappies. At a visit to the GP in March 2015, Ona was told that Tayo had made almost no progress over the past year and referred him for speech and language therapy. A senior practitioner at a Children's Centre who had worked with Tayo in London, explained that this could have a long-term impact on Tayo's education as he will go to school at a disadvantage.

Thankfully, after legal intervention, the family were moved to more suitable accommodation in London. But Ona, a new mother, should never have been dispersed to B&B accommodation so far from her support network, particularly with post-natal complications. Tayo's developmental regression is a good illustration of the impact this can have. The local authority failed to act in Tayo and Rita's best interests.

PART 3:

LOCATION

At a glance...

- More than half (51%) of all the families featured in this study were placed outside of the placing authority's borough, at an average of 17 miles away.
- It was only the London boroughs that placed families outside of their districts. One London borough consistently did so (LA 1).
- Location was a problem in relation to more than half (51%) of properties featured in this study. The biggest issue was lack of proximity to a child's school.
- While the majority of families housed outside their district were placed in Greater London, one was placed in Manchester and two were placed in Southend.
- Only 13% of families were consulted about their location while only 10% were offered an alternative.
- Placement out of borough can cause severe disruption to a child's education and have a negative impact on their life chances.

Just over half of families (51 per cent) were placed out of borough. However, even when families were located within the same borough, 25 per cent still reported problems with the location due to long distances to school.

Some journeys to school took between one and two hours. In a severe case, despite the family having been placed within the local authority's area, transport links were so poor that the child had to stop going to school altogether.^{cvi} Of the families that were placed outside their previous borough,

a third were placed 10 miles or more from where they had previously been living. Two of these cases involved single mothers, who were supported by local authorities around the time when they were giving birth. They were placed by London local authorities in Southend (see [Ona's story](#)).

The most common problem was a lack of proximity to a child's school, with the consequence that the child's education could be disrupted sometimes severely - through absences from school, sudden or frequent changing of schools or long journeys affecting concentration and performance. Removal from existing support networks was also a big concern, particularly for new mothers or pregnant women.

Financial subsistence and location

Almost two thirds (61 per cent) of families placed away from their support networks and schools were left without any additional financial support to allow them to make longer journeys. In one survey case, their accommodation was so far from school that the older child could not attend at all (see [absences from school](#)). When families can afford to travel, they are usually unable to afford faster methods of transport so inadequate finances can exacerbate problems associated with location.

It appears that this local authority is prioritising its pre-existing commercial relationships over the needs of the children.

The difficulties experienced by a family that has been placed away from its existing area, and with a low level of financial support, is illustrated by the case of *R (Hunt) v Hackney LBC*.^{cvi}

The applicant and her baby had been accommodated by Hackney Borough Council in bed and breakfast accommodation in Southend. The Administrative Court judge gave permission for judicial review because it was arguable that Hackney had failed to address the relevant question of the suitability of Southend as a geographical location in the light of the claimant's particular circumstances, which included that her subsistence allowance was £30 per week. The Judge said: *'[t]he geography together with the level of allowance, in my judgment, give rise to a package of isolation which is arguably contrary to law.'*

Local authority practices

According to the survey results, one local authority placed 100 per cent of its families outside of borough (LA 1). Two local authorities placed at least 70 per cent of families outside of borough (LA 7 and LA 5).

Seven London local authorities were asked, via Freedom of Information requests, where they house section 17 families. LA 7 stated that it always attempts to secure accommodation within its borough, or as near as possible to its boundaries, but does accommodate families in South East London, Kent and Greater Manchester.

The same authority stated that it has an on-going relationship with a property company that provides short-term public sector accommodation in London, the South East and Greater Manchester. The possibility arises that the local authority might simply accept the vacant units of accommodation offered by that property company, wherever the accommodation might be situated, rather than assess the consequences for the families placed outside of borough. LA 5 stated that it housed families across London and in Kent, Birmingham and Rochdale.

Changing schools

Our results showed that re-location is a common theme for section 17 families and consequently so is the issue of changing schools. As decisions about accommodation can be made suddenly (particularly where the family is in short-term [B&B-style](#) accommodation), a school transfer may take place mid-way through a term or year. Shelter reports that studies on homeless families revealed that almost a third of children moving into or between temporary accommodation had to change schools.^{cix}

In Eva's case, she had been told that she would remain in her property for a short period until something became available closer to the children's

school. Relying on this advice, she travelled the long distances to get to and from the school rather than requesting a move. However, she stayed in the property for almost a year and eventually made a successful request to transfer to a local school. Only two months after the children had changed school, the local authority re-located the family again - and they were once again too far to travel to their school. They were therefore forced to change schools once more which meant caused them disruption twice in the space of only two months. Both changes occurred mid-term.

Studies on homeless families revealed that almost a third of children in temporary accommodation had to change schools.

Patricia's children had to move schools mid-year when they began to be supported under section 17. When the local authority threatened to place the family out of borough the children's teacher wrote a letter expressing her concern about the welfare of the eldest child, Esther:

'[Esther] has important SATs Tests in the next two months and moving her at this stage will be detrimental to her ability to achieve the levels that she is showing in class. She has made progress since September once she settled into the year group which took her the first term to do.'

Changing schools can be particularly problematic where the child is accessing special services from the original school. In one survey case, the child was severely autistic and in the process of receiving specific services from his school when he and his family were placed out of borough. The local authority should have taken his special needs into account before deciding to place the family away from the school area.

[Adesuwa's](#) children also had special needs and their head teacher expressed concerns about their moving schools.

'In my professional judgment another move of school would be very dislocating for the older children who are receiving extra support for social and emotional reasons and for educational reasons to address areas of underachievement.'

As a result of the head teacher's concerns, Adesuwa decided to keep the children at that school despite the very long travelling times that were exhausting for the children. Adesuwa's case is one example of the difficult decisions that section 17 families are often forced to make with regards to the welfare of their children.

Eva's children had to change schools twice in the space of only 2 months.

A research study by the Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA) found that achievement is lower for students who move schools mid-year:

'Compared to their peers, the attainment of pupils who make in-year moves is markedly lower, particularly at Key Stage 4. Furthermore, attainment is lower still among pupils who make multiple in-year moves. Only 27 per cent of pupils who move schools three times or more during their secondary school career achieve five A to C grade GCSEs, compared to the national average of 60 per cent.'*^{cx}

The study also found that one of the greatest concerns associated with children moving school was that there were often prolonged absences from education as a result – ranging from between two and five terms.^{cx1}

In addition to the impact on a child's education, moving schools will also have an effect on his or her social relationships and general sense of stability. Psychiatrist Dr Kennedy stated:

'It is well known that leaving school and having to adapt to a new school can be challenging even for children from ordinary backgrounds. They have to come into a class where peer relationships are already well established and it can be very difficult for any child, particularly a migrant child, to have to fit in to a new situation.'^{cxii}

Absences from school

In one survey case a woman and her two children were placed in a Travel Lodge hotel adjacent to a motorway service station. The Travel Lodge was so far from the school that the mother could not afford to take the child at all. This case is an example of the link between [financial resources and location](#). Her lawyer noted that it was:

'impossible to get the older child to school – the bus being irregular and only taking them half way. The child was not being taken to school as a result. In any event, she had no [financial] subsistence to pay for the fares.'

The children in Eva's family spent one year arriving late to school due to a travel time of around an hour and a half each way. She made the difficult decision that her children were so tired that waking them slightly later (at 6:30am) so that they had enough sleep, was more important than punctuality. This is another example of the difficult decisions that the carers of section 17 children are forced to make regarding their children's welfare. When Eva's family were eventually moved from their unsuitable property, they were again placed outside the district of the local authority. The children remained absent from school for over one month because the move happened so quickly that her application to transfer schools had not yet been processed. Although the family wished to move properties due to poor conditions in the initial flat, the subsequent impact on the children's schooling was unacceptable.

The mother was placed in a Travel Lodge next to a motorway. She could not afford to take her older child to school at all.

There can be little doubt that absence from school, whether for long periods or just parts of the day, will have a detrimental impact on the children's education and therefore on the future opportunities that will be available to them. This is confirmed by a study carried out for the Department for Education in 2012. The study shows that there is a clear link between poor attendance at school and lower academic achievement. It found that, of the pupils who miss more than 50 per cent of school, only three per cent manage to achieve five or more GCSEs at grades A*-C, whereas 73 per cent of pupils who have over 95 per cent attendance achieve five or more GCSEs at grades A*-C.^{cxiii}

Energy and performance levels

Although [Adesuwa's](#) property was four miles from the school, due to poor transport links, the travelling time was longer than would be expected, taking between an hour and an hour and a half each way. The head teacher wrote:

'I believe that the pressures of living in their current accommodation and the attendance travelling time are also having an impact on their performance in school.'

Patricia was moved out of borough in the middle of the children's school term in 2015. Physically, the new property is an improvement as the family now have adequate space. However, it is approximately 20 miles from the children's school and takes an hour and a half to get there. They have to leave the house at 7am which means they must wake up at 5am. This is very exhausting for the children. Although the local authority is currently providing Patricia with additional financial support so she can pay for the journey, they have stated they do not want to continue to do this. They are consequently putting pressure on Patricia to move schools. Patricia is having to make the choice between maintaining her children's stability by keeping them at their current school or changing schools, disrupting their school-life but ensuring shorter travel distances. It is impossible for her to know which, in the long-term, will have a worse impact on the children.

Placement of pregnant women and new mothers out of borough

The National Institute for Health and Clinical Excellence ('NICE') has recognised, in its maternity care policies, that refugees and asylum seekers are an especially vulnerable group.^{cxiv} Yet no policies or guidelines apply to pregnant women or new mothers supported under section 17. Ona was placed by a London local authority in a B&B miles from London just four days before she was due to give birth. She travelled back to the hospital in London (where she had received all her maternity care) for the birth and was returned, with medical complications, to the B&B three days after her baby Rita was born. She said she could not stop crying. She found it especially difficult to look after Tayo, her elder child. While she had a strong support network in London, with childcare for Tayo and friends around, she felt extremely isolated in the B&B with no one to turn to for support.

New mothers and babies can be very vulnerable – both physically and mentally. Physically, they need post-natal care and medical support. Pregnant women can at any time face risk of miscarriage, obstetric emergency or preterm birth so stable medical care is crucial. On a psychological level,

being isolated from your support network at this time can be extremely difficult, as shown by Ona's description of not being able to stop crying.

The Senior Family Practitioner of a London Children's Centre commented: *'You only have to be friends with one other mum, who can help look after your kids when you're ill or running late. Being moved away to a place where you know no one at all has a massive impact'*. She also noted the practical difficulties that accompany relocation: *'When you're overwhelmed, registering for a GP, getting a health visitor to see the children, going to a new place...[it] is the last thing you can manage to do on your own. [Ona] was really overwhelmed.'*^{cxv}

“The pressures of living in their current accommodation are having an impact on their performance in school.”

- Head teacher of Adesuwa's children's school

Psychiatrist Dr Kennedy explained the potential problems that can occur from being moved away from an existing support network, even without the added complication of pregnancy or having just given birth: *'An absence of an effective support network may well tip a family, who was just about hanging on in terms of their functioning, into significant dysfunction with a severe impact on the mental health and physical health of the children.'*^{cxvi}

The Refugee Council and Maternity Action carried out a joint study on the dispersal of pregnant asylum seekers by the Home Office.^{cxvii} They found that over half of the women they interviewed suffered from mental health conditions such as depression, anxiety, flashbacks, and high levels of stress. Women were also dispersed against medical advice, and too close to their due date and were moved multiple times during pregnancy.^{cxviii} Endangering the health of the mother has a direct effect on the health and wellbeing of the baby and any other children she cares for. Although section 17 families are not subject to the same dispersal regime as those on asylum support, their experiences are akin given the frequency with which they are relocated, and the long distances away from their previous location. This is evidenced by Ona's story.

Comparative law and guidance

Homelessness law: Part 7 Housing Act 1996

Local housing authorities who are under duties to accommodate homeless households under Part 7 Housing Act 1996 are required to secure accommodation in their own district *'so far as is reasonably practicable'*.^{cxix}

They must always assess the suitability of the location of accommodation offered, and consider in particular any disruption that may be caused to the employment, caring responsibilities or education of people in the household, as well as the proximity and accessibility of the accommodation to medical facilities and other support.^{cxix}

“An absence of an effective support network may well tip a family, who was just about hanging on in terms of their functioning, into significant dysfunction with a severe impact on the mental health and physical health of the children.”

- Dr. Roger Kennedy

The Supreme Court found that Westminster City Council had been unable to show compliance with this provision when it offered a homeless family temporary accommodation in Bletchley, near Milton Keynes, a considerable distance from Westminster. There were no inquiries made to see whether school places would be available in Bletchley or what the applicant's particular medical conditions required. Nor was there any evidence that Westminster had tried to find accommodation in or nearer to its borough.^{cxix}

Home Office Guidance on the dispersal of asylum seekers who are pregnant women or newly delivered mothers

Although criticised as failing to protect the most vulnerable, there are Home Office guidelines on the dispersal of asylum seekers, in receipt of asylum support, who are pregnant or have just given birth.^{cxix} They include:

- Dispersal should be deferred during a protected period normally running from four weeks before the estimated date of delivery until four weeks after the birth;
- Following a normal delivery with no complications, dispersal can usually take place four weeks after delivery;
- The notice period for dispersal of women in late stages of pregnancy and newly delivered mothers should normally be 10 calendar days; and
- If a health professional has concerns relating to abnormal bleeding, or post-natal problems (e.g.

abdominal pain or bleeding post-caesarean section) and submits evidence to this effect, caseworkers should consider further delaying dispersal.^{cxix}

An analysis of these guidelines show that most of these standards would have been breached in Ona's case.

Conclusion

Missing school, moving schools and long travel times all have a detrimental impact on a child's education and performance, which will affect his or her life chances (factors relating to their current and future well-being). While the children of homeless families have some protection against the consequences that arise from being placed out of borough, the children of section 17 families have none. Similarly, the mental and physical health of women who are pregnant or newly delivered mothers can be endangered by frequent moving and location away from medical support.

While asylum seeking women in receipt of Home Office support are given some protection from dispersal, there is no equivalent for women supported by section 17. There are no guidelines issued under the Children Act 1989 requiring local authorities to assess the impact of location of the accommodation on the family.

In many cases where local authorities place section 17 families outside of their boroughs, they may be failing to comply with their obligations to promote the welfare of children in need. To prevent this from continuing, and to be in line with law and guidance in comparable areas of law, standards are urgently required on the location of accommodation provided to families supported under section 17. Recommendations for addressing these issues are contained at end of the report.



“You only have to be friends with one other mum, who can help look after your kids when you’re ill or running late. Being moved away to a place where you know no one at all has a massive impact.”

- Senior Practitioner at a Children’s Centre

AMRITA'S STORY

Amrita was granted leave to remain in the UK in December 2013, a status which allows her to work but means that she cannot claim benefits. Dev, her 13 year old son, is British. Amrita suffers depression, anaemia, type two diabetes and high blood pressure. Dev has been identified as a 'child in need' and he and Amrita, his caregiver, have been given accommodation by their local authority under section 17 since September 2011. Amrita's childcare duties, health problems and the fact that she is illiterate and speaks almost no English mean it has been extremely difficult for her to find a job.

"It is common knowledge that uncertainty about children's futures is damaging and that uncertainty has to be minimised... These principles need to be applied when dealing with migrant families and yet do not seem to be so."

- Dr. Roger Kennedy

B&Bs in three months. All of the B&Bs were a considerable distance from Dev's school and they were never in one place for long enough for Dev to change schools. As a result they had long journeys to school - sometimes over an hour involving multiple buses each way. Children's Services have been due to 'review' Amrita and Dev's situation since April 2014 but this has not taken place, leaving them in a perpetual state of uncertainty about the future.

Overcrowding and hygiene

Amrita and Dev have had to share a bedroom in all the different properties provided by the local authority. This is inappropriate due to Dev's age. When he turned 10, sharing a room became a criminal offence because it constitutes 'statutory overcrowding'¹. The first two B&Bs did not have any cooking facilities forcing Amrita and Dev to rely on expensive takeaway food. One of the B&Bs had an insect infestation and Dev and his mum were moved after a community group intervened to advocate on their behalf.

Impact on Dev

Amrita has been receiving support from the same community group. Their caseworker receives distressed text messages from Dev, one said "my mother is crying I don't know what to do. We can't wash here." Another text was written just after a move from one unsuitable B&B to another: "we're sleeping in the hotel, the room is quite small, no shower, no toilet, no kitchen, no breakfast, just one room with lots of stuff, this is harder than last time. Everything social worker fault, they make things more harder for us. My mum is getting weak".

In November 2014, Dev found a letter written by the local authority stating that if Amrita didn't find accommodation, he'd be taken into care. He was very scared by this and Amrita reported that he was having nightmares and wetting the bed for some weeks. Dev's school say that he's a "lovely boy" but they are concerned about him and, in January 2015, referred him to an educational psychologist. The local authority is under an ongoing duty to safeguard and promote Dev's welfare. Frequent moves to sub-standard accommodation is having a negative impact on Dev's health and is affecting his education. The local authority should minimise uncertainty as far as possible and safeguard Dev's welfare by ensuring that he has safe, long-term accommodation.

MARY'S STORY

Mary has three daughters: an eight and half year old, and two younger children who are 16 months and three months old. In January 2015 Mary was granted leave to remain in the UK for two and half years with a no recourse to public funds condition. In January 2015 she started having serious problems with her private landlord. He assaulted her and she had to involve the police. She looked for other places to live but couldn't find anywhere that she could afford. The father of her two eldest children was in prison so couldn't help them financially. Mary went to the local authority to ask for help. Since February 2015 she and her children have been living in a hotel provided by the local authority under their duty to provide section 17 support to children 'in need'.

“Don't know if it's because of my immigration, I'm just a migrant, I don't know, I try not to be negative, in the end everyone's just a human.”

The family all live in one hotel room sharing two beds. The eight year old sleeps in a single bed while Mary and the two younger children share a double. Sharing a bed increases the risk of sudden infant death syndrome and the NHS advises against it but no cot has been provided for the baby. The furniture in the room is broken

with dangerous sharp edges. The room is damp and there are patches of mould. Mary is very worried about the effect of the damp on her children's health. When they first moved in her 14 month-old was sick and found it difficult to sleep. Mary has started leaving the door open for ventilation and this has helped a little. In June 2015 an independent Environmental Health Officer visited the hotel room and agreed there was a serious problem with damp and mould. At the time of writing the family had no hot water and the shower had been broken for two months.

Mary is also worried about the other residents in the hotel. In June 2015 she had to call the police because a drunk man walked into the room she shares with her small children and was verbally abusive to her. The consultant who inspected the accommodation noted that the hotel room has a lightweight door that could easily be forced. The kitchen is in a separate building and Mary is afraid to leave the children in the room by themselves when she goes to cook or get drinking water.

Their hotel has been reviewed by paying guests on a travel website. Reviews in May and June 2015 stated that the corridors and rooms were damp and the furniture was in a state of severe disrepair. The environmental health consultant concluded that *“this accommodation falls far short of acceptable provision for this household. I am very concerned for the health, safety and wellbeing of the occupiers in such a situation and urgent re-housing is recommended.”* He also noted that fire safety was well below an acceptable standard. The local authority had a duty to safeguard and protect the welfare of Mary's children but nevertheless housed them in dangerous conditions sharing essential facilities with single men who abused alcohol and other hotel residents for over six months.

In July 2015 the no recourse to public funds restriction on Mary's immigration status was lifted and the local authority are now helping Mary to find permanent housing.

PART 4:

INSTABILITY AND B&Bs

At a glance...

- It is estimated that 84% of surveyed families remained in their properties for more than 1 month:
 - 42% for between one and six months;
 - A quarter (25%) for between six months and a year; and
 - 17% for over a year.
- It is estimated that half of the surveyed families were placed in B&B accommodation.
- Of the B&B properties, only one was said to meet the needs of the family.
- Families in B&B accommodation were a third more likely to experience overcrowding of shared facilities.

Section 17 support is, in theory, a temporary measure. In practice, however, some families can spend years supported under the provision. An estimated 42 per cent of surveyed families were accommodated for a period between one and six months, a quarter were accommodated for between six months and one year and 17 per cent for over one year.^{cxxxiv} Another study found that one third of families were supported for between one and three years.^{cxxxv}

In the case of families with an outstanding immigration application, the Home Office can take many months or years to decide a case and, during that time, updates on progress are not readily provided.^{cxxxvi} Where a family has permission to reside in the UK with an NRPF condition attached (so that adults may work but are prevented from claiming benefits), the likelihood of finding employment sufficiently well paid to afford private sector rents and provide for the family is slim (see for example [Amrita's story](#)). These individuals may apply to the Home Office to have the NRPF condition lifted on

the grounds of destitution or other exceptional circumstances^{cxxxvii} but the threshold is high and the family will need free legal advice which is difficult to find for immigration matters since it is no longer covered by legal aid.^{cxxxviii}

Local authority practices and the expense of B&Bs

Nevertheless, local authorities appear to deal with families as though the support were only temporary. An estimated 50 per cent^{cxxxix} of families were housed in B&B-style accommodation which is generally considered to be a form of temporary accommodation. In homelessness law, B&Bs should only be used in emergency situations for a maximum of 6 weeks where urgent housing needs are to be met.^{cxxx} This is because it is unsuitable for long term needs. It is also more expensive.

Through Freedom of Information requests, two local authorities confirmed their reliance on B&Bs or, in their words, '*spot purchasing*'. LA 6 and LA 7 have no existing contracts with private landlords and rely wholly on short-term contracts or spot purchasing. Only one local authority (LA 1) confirmed that it has a framework agreement with a number of providers.

Some local authorities rely on this expensive form of accommodation – harming their budget, the tax payer and most importantly the children.

Mary's hotel room - which an environmental health officer found to be completely unsuitable for the family – cost the local authority £75 a night. Over six months this adds up to a total cost of over £13,000. The national media reported in 2012 that 'in the first seven months of [2012], Croydon spent more than £1.5m on one B&B provider.'^{cxxxxi}

This is concerning in light of potential problems with the adequacy of this provider's accommodation (see [Part 6](#)). This expensive form of accommodation therefore has a negative impact on the budgets of local authorities, the tax payer and most importantly the children of section 17 families.

The harmful impact of living in B&Bs

Our results show that most B&B-style accommodation is inappropriate. Not only does it frequently fail to adequately meet the needs of the family but, in some situations, it can pose a positive danger. In only one out of 18 cases was B&B accommodation adequate. Problems with physical suitability, and overcrowding discussed in [Parts 1](#) and [2](#) were more common in for B&B-style accommodation. In addition, families in B&Bs experienced particular problems of insecurity and uncertainty, as well as potentially very serious problems related to other tenants or guests with whom they share their accommodation.

The use of temporary accommodation for homeless families was the subject of a revealing study by Shelter in 2004 which analysed the results of more than 400 surveys. The study showed that families housed in temporary accommodation were likely to suffer from poor physical and psychological health. The most striking finding was the high levels of depression in homeless families living in temporary accommodation. It was further found that the longer they remained in temporary accommodation, the worse the impact on the health of individual family members:

'Most households in our survey (78 per cent) reported a specific health problem, such as depression, eczema or asthma. Almost half (49 per cent) of households said that their health had suffered due to living in temporary accommodation. More than half (56 per cent) said that they were suffering from depression.'
cxxxii

It was also found that children missed an average of 55 days from school due to the disruption of moving into and between temporary accommodation; and more generally they experienced problems at school. Finally, the study found that local authorities paid higher rents for temporary accommodation.cxxxiii The undesirability of using temporary accommodation is recognised in law. Under homelessness law B&Bs should never be used for families with children or pregnant women, except in emergency situations and even then for no more than a total period of six weeks.cxxxiv

Overcrowding in B&B accommodation

A family in a B&B will not be in a self-contained unit and will share kitchen and/or bathroom facilities.

This study found that families were a third more likely to experience problems with overcrowding of shared facilities when housed in B&B-style accommodation. Chantelle shared a kitchen with residents occupying up to 50 bedrooms in her hostel. Overcrowding of shared facilities can have serious consequences such as an inability to store food safely, or an inadequate diet. B&Bs were also more likely to be cramped, with a lack of space for children to play or do their homework.

The well-reported consequences of overcrowding (given in more detail at [Part 2](#)) include psychological distress, mental disorders, respiratory problems and increased risk of the spread of disease.

“I don't know why the council is paying £75 a night for this. I was supposed to be here for a week. I've been here for 6 months.”

- Mary

Other tenants and guests

Seven surveyed families (15% of the inadequate properties) had problems with other tenants. It was also a cause for concern for three case studies - Adesuwa, Patricia and Mary. The four main issues were as follows:

1. Substance abuse or smoking in communal areas (applied to nine of the 10 cases);
2. Intimidation or harassment (applied to six of the 10 cases);
3. Behavioural or mental health problems (applied to four of the 10 cases); and
4. Unease at changing population (applied to four of the 10 cases).

[Adesuwa](#) and [Mary](#) were placed in B&B-style accommodation where the other residents were a frequently changing population of guests paying budget rates for short-term accommodation. Most were single men, some of whom smoked, drank and / or took drugs.

[Adesuwa](#) stated that at night the residents in her hostel were noisy and would frequently bang on the family's bedroom window, which faced onto the street.

They sometimes left the shared front door wide open. Mary described an incident in June 2015 where she called the police after an extremely intoxicated hotel resident walked into Mary's room and was verbally abusive to her. Mary was frightened of allowing her eight year-old daughter to leave their room to use the shared bathroom.

Their neighbour was a man with alcoholism who regularly left their shared bathroom in a very unhygienic state including with vomit and blood in it.

Patricia was placed in a House in Multiple Occupation ('HMO'), consisting of a three-bedroom flat, with each bedroom occupied by a separate household.^{cxxxv} Patricia and her family shared a bathroom and kitchen with a single man who appeared to have serious mental health problems. He would regularly shout and scream in the corridors (this was witnessed by researchers when visiting the HMO). He would bang the walls of the flat and smoke in the communal areas. His disturbance would often take place at night and wake up Patricia and her children.

The family would avoid him as much as possible. They would leave the television on a low level at night to distract from the sounds of his shouting. This had a huge impact on the family's life as they were in a constant state of unease and their sleep was disrupted. A survey family lived, like Patricia, in an HMO, sharing facilities with other residents. There was no supervision or management in the property. One of the occupants was a man with behavioural problems who would repeatedly go out and leave his food cooking on the stove. The man also swore at the children and frightened them. They did not like being around him and would avoid using the shared facilities at the same time as him. Other occupants of the building smoke, drank and / or took drugs, so their behaviour in the communal areas could be frightening.

A mother and four children were placed in a room in a homeless hostel. Their neighbour was a man with alcoholism who regularly left their shared bathroom with vomit and blood in it. Finally, there were at least three separate reports of assault, including sexual assault, being committed by residents against families.

Freedom of Information responses on checks carried out by local authorities

Following these concerning results, information was sought via Freedom of Information requests to seven local authorities on what checks they carry out against 1) private landlords and 2) tenants sharing facilities in HMOs.

Background checks on private landlords

Although landlords often have unrestricted access to the rooms provided to families, they are not required to have a DBS check carried out against their name.^{cxxxvi} This was confirmed by all seven local authorities asked and is in line with current legislation and guidance.^{cxxxvii}

Government proposals to introduce banning orders on landlords convicted of certain offences (including violent, sexual and drug offences) or who have been found guilty on two or more occasions of a relevant housing offense would be a welcome change.^{cxxxviii(b)}

Background checks on residents in HMOs

Similarly, none of the local authorities that responded to the information requests carried out DBS checks against residents in HMOs. Residents sharing accommodation with children in need are not currently subject to a criminal records check by the DBS under existing guidance and legislation. Again, this could be rectified by amending relevant legislation and guidance to require checks to be made against residents of shared housing which accommodates section 17 families.^{cxxxviii}

There were at least three separate reports of assault, including sexual assault, being committed by residents against families

The only local authority to carry out any checks at all was LA 5. This authority stated that when families are housed in accommodation let on a nightly basis (like B&Bs) and required to share facilities with other households, risk assessments of homeless applicants would 'normally' be carried out in line with Multi-Agency Public Protection Arrangements ('MAPPA').

MAPPA are in place to ensure that convicted violent and sexual offenders are not a risk to the wider public.

Only 1 local authority said that it carried out any checks at all against HMO residents.

Where a risk is identified LA 5 stated they would place the family in self-contained accommodation instead. It is unclear why MAPPA are used in the case of homeless applicants, not other types of residents. This authority further stated *'In the case of placements by other Social Services the normal social work checks will be in place. Where other residents either access the property directly or through other Voluntary Agencies then this Council has no control over such placements and no authority to make enquiries'*. It is also unclear what *'normal social work checks'* consist of. LA 6 stated it did not house families in HMOs.

However, results showed that this authority housed one family in a B&B for a period of nine months and one family in a hostel for the homeless with residents who exhibited very problematic behaviour. LA 4 stated that Children's Services work with the housing department to reduce the risk that another resident might pose to a family or a child in HMOs. However, survey results show that at least one family housed by this local authority was placed in a hostel with residents who had carried out sexual assault and may have had mental health problems.

Uncertainty

Lack of stability and security is a recurring theme in the lives of children who are in need. Prior to being supported by the local authority, many families experienced the uncertainty of not knowing where they would get their next meal from, how long they would be able to stay in a particular property, or where they would go once they had to leave a property.

Results suggest that upon receiving section 17 support, families do not always gain an increased sense of stability. In some cases, families experienced what seemed to be an unnecessary degree of uncertainty, over and above what may be expected for individuals in their situation. Families were moved several times; placed in accommodation for long periods of time having been told they would stay there for a very short period; or simply not

given basic information needed to organise their lives. One of the most shocking results from the Shelter study on temporary accommodation in homeless families was the high rates of depression associated with factors such as enforced frequent moves, not knowing the length of their stay in temporary accommodation, previous traumatic experiences and uncertainty about their future.^{cxvix} The impact on children is likely to be more profound than that on adults.

Since they were first accommodated, [Amrita and Dev](#) were moved through a number of properties in a variety of London boroughs. Many of these properties were B&Bs. They left a shared house at the end of 2014 and, in the following three months, moved between three different B&Bs. This was very unsettling for them, particularly Dev. All of the B&Bs were a considerable distance from his school and it would not have made sense for him to change schools as they were never in one place for long enough. As a result they had long journeys to school and a constant sense of displacement.

Although Children's Services had been due to review Amrita and Dev's situation since April 2014. Almost a year later this had still not taken place. The problem of being moved frequently was cited in three cases. One survey family found that the local authority would only verify its hostel accommodation on a day-to-day basis. The parent in question was a single mother who had to move all her belongings and children every day in and out of the hostel. This was stressful and destabilising for the whole family. Fortunately, the arrangement only lasted a few days following a challenge by the solicitor. Threats of legal action should not be required to ensure an authority finds suitable accommodation for a child in need. Legal challenges would be neither necessary nor successful if families were placed in suitable accommodation in the first instance.

5 of the 9 families that suffered from a severe state of uncertainty were housed in B&B-style accommodation.

Other families cited an opposite problem. Rather than being moved too often, three families (all of whom were accommodated in B&Bs) found that despite the local authorities having informed them that their accommodation was short-term, no effort was made to move them.

In one survey case, a pregnant mother and her children were housed in B&B accommodation above a noisy pub within a reasonable distance from a named hospital where she was to deliver her child. The local authority said that they would be moved after the birth to something more permanent and appropriate. At the time of writing, they had been living above the pub for more than six months. Some months ago, the local authority informed their solicitor that they were looking into housing and school places in Manchester, but no further information was provided, despite requests from the family and its advocate. The family were living in a constant state of uncertainty.

A similar situation was experienced by [Eva](#) and her children who did not put down roots in an area on the basis of assurances by the local authority that the accommodation was only temporary until something closer to the children's school was found. Eva remained with the GP in her old borough and did not consider moving her children to another school. However, long journeys and related absences from school became increasingly difficult for her and the children. After one year, Eva decided she and the children could no longer manage, and she successfully applied for the children to move schools. Then, about two months later, she was finally moved, meaning they had to move schools for a second time. She feels very frustrated that the local authority did not communicate with her properly. If she had known that she would remain in the original property for an extended period of time, she would have changed the children's schools and settled into the area sooner.

In the context of family law, decisions about a child's care must be made *'without delay'* and, in any event, within 26 weeks.^{cxli} In this way, the law acknowledges that leaving a child in a state of uncertainty is unacceptable and detrimental to his or her welfare. Psychiatrist Dr Kennedy stated *'it is both surprising and worrying that the same principles are not being used when it comes to making decisions about very disadvantaged families'*.^{cxlii} He also noted the profound impact that uncertainty can have on the psychological welfare of a family, explaining that it can cause significant trauma which can lead to anxiety and insecurity. This can have a particular impact on section 17 supported families, many of whom have already endured traumatic experiences.

^{cxlii}

In addition to the psychological impact, Eva's story demonstrates the practical difficulties that living in accommodation for an uncertain duration can cause. This is also stated in government guidance on homeless families living in temporary accommodation. The guidance notes, in particular, the impact on those who have a lack of certainty

over how long they will be there:

'This can cause disruption to their lives, make it hard for them to put roots down in the community or to access important services. For example, they may face real difficulties in gaining access to a local GP or in enrolling their children in a local school. Many may already have faced disruption and become disconnected or moved away from existing services and support networks as a result of homelessness.'^{cxliii}

“I felt [the move] could be any day – only to realise that they weren't doing anything at all.”

- Eva

Unlicensed HMOs

Landlords have a legal duty to obtain a licence before renting out large houses in multiple occupation.^{cxliv} An HMO can include a bed and breakfast, hostel or hotel.^{cxlv} A licence will not be granted unless the local authority is satisfied that the manager is a *'fit and proper person'* and it is satisfied about the standard of the accommodation.^{cxlvi} Operating an unlicensed large HMO is a criminal offence punishable by a fine of up to £20,000.^{cxlvii} Several local authorities state on their website that they *'actively'* pursue landlords that fail to comply and will *'prosecute where there are no reasonable grounds for excuse or mitigation'*.^{cxlviii}

Yet there were at least three cases of families living in what appeared to be unlicensed HMO accommodation – Patricia's property, Eva's property and a survey family. The environmental health officer who inspected [Patricia's](#) accommodation found that it was a HMO. Yet it failed to meet the requisite standards of a licensed HMO and it was not listed on the council's register of licensed HMOs. The environmental health officer stated:

'4.01 The accommodation is an HMO (house in multiple occupation) for the purposes of the Housing Act 2004. Flats that are in multiple occupation fall to be designated as an HMO (s254(3)). Without access to other parts of the building, it is not possible to know if - as seems likely - the whole property falls to be designated as an HMO under s254 or 255 of the 2004 Act.'

If so, it would appear to require mandatory licensing under Part 2 of the Act. The Local Authority should be asked to clarify the status of the property and provide details of any licence or management conditions attaching to the licence.'

4.02 Irrespective of the possible licensing issues, a number of the defects represent breaches of the management of HMO Regulations 2006 which require (amongst other issues), maintenance of the common parts and fire safety in living accommodation.^{cxlix}

In *Eva's* case, her lawyer stated that her property (which was in a separate building from, but which was operated by, a hotel) was a large HMO. According to the local authority's register, *Eva's* property was licensed as a HMO but only in May 2015 - more than

is also government statutory guidance advising that it is not suitable for young people who are aged 16 or 17 years old.^{ciii}

It is well known that this provision is unfortunately not always complied with, particularly by London local housing authorities, in respect of homeless families and young people. Government statistics showed 2,570 families in England were accommodated in bed and breakfast accommodation under homelessness duties at 31 March 2015, and 920 of those households had been in bed and breakfast accommodation for longer than six weeks.^{cliii} The Local Government Ombudsman issued a special bulletin on the subject.^{cliv}

Conclusion

In some limited circumstances, a local authority may reasonably decide that the family will only need accommodation for a short period of time, and so it can be accommodated in property which is suitable for temporary housing needs. This may be where 1) the support is being provided on an interim basis pending a full needs assessment, or 2) the local authority is aware of facts that make it highly likely that a pending immigration application will be resolved in the short-term so the family's situation will change, or 3) the local authority had to accommodate the family as a matter of urgency but had not yet identified suitable, long-term accommodation and are actively seeking it. However, and contrary to what appears to be current practice, it is not appropriate for local authorities to rely on B&B-style accommodation as a form of long-term housing. This type of accommodation almost always fails to meet the needs of a family and is very expensive. The main problems are around poor conditions, overcrowding, access to kitchen facilities and sharing with other tenants - all of which can be detrimental to the welfare of the children.

Most concerning is the fact that families (predominantly, but not exclusively, those placed in B&B-style accommodation) are being placed in high-risk situations that could easily become dangerous, and even life threatening. Families with young children are forced to share accommodation (including intimate spaces such as kitchens and bathrooms) with people who might be taking drugs or abusing alcohol, people with mental health problems and behavioural issues and people that are intimidating or aggressive.

There are no procedures in place to prevent a family sharing their home with a person with a violent criminal record. This is a tragedy waiting to happen. Local authorities must act immediately and defensively to ensure those for whom they are responsible are duly protected.

HMO licensing standards are safeguards to protect potentially vulnerable occupants from being housed in poor and dangerous conditions. *Eva*, *Patricia*, and their children were not afforded such protections.

a year after *Eva* moved in - and only for two months. Finally, in one survey case, the lawyer found that her client's room had been unlawfully converted into a bedroom and that the property, which fell within the definition of a HMO and was required to be licensed, was not in fact licensed.

These are examples of the landlord committing a criminal offence in which the local authority was complicit by allowing the families to live there. The HMO licensing standards are safeguards to protect potentially vulnerable occupants from being housed in very poor and dangerous conditions. *Eva*, *Patricia*, and their children were not afforded such protections and this is evidenced in the descriptions of the poor conditions in which they lived.

Comparative law and guidance

Homelessness duties: Part 7 Housing Act 1996

In homelessness law, bed and breakfast accommodation is not suitable accommodation for applicants with dependent children or pregnant women.^{cl}

There is an exception if there is no suitable accommodation available but even then it should be used only up to a maximum of six weeks.^{cli} There

Some families are living in a perpetual state of uncertainty and instability which may be having a profound effect on the psychological health of the children. Some of the factors contributing to this could be easily avoided - for example, by finding more stable and suitable accommodation at the outset. Local authorities should regularly communicate with section 17 families and give realistic estimates as to the likely duration of occupation of emergency accommodation. Recommendations for addressing these issues are contained at end of the report.

It is a tragedy waiting to happen. Local authorities must act immediately and defensively to ensure an incident does not happen.





“If a child is left in an uncertain situation, albeit with their own family, then this can cause significant trauma leading to increased anxiety and insecurity. This is particularly magnified with destitute migrant families, many of whom have had traumatic past (and / or present) experiences.”

- Dr. Roger Kennedy

EVA'S STORY

Eva has permission to live in the UK with a NRPF condition: she is permitted to work but cannot claim benefits. Eva's three children, boy twins of six and a girl of eight, have lived here their whole lives. She separated from their father and was unable to find employment due to demanding childcare duties. In April 2014, Eva had nowhere to go and no support. At first the local authority said they could take the children into care but they would not support her. She refused to let her children be taken from her. Eva contacted a housing lawyer and, after legal intervention, Children's Services agreed they had a duty under section 17 to support the family together. She was moved to a different borough as there was nothing closer available. Children's Services said the accommodation was temporary while they found somewhere closer to the children's school. They stayed for over a year.

Uncertainty and lack of communication

As the local authority had told her that the accommodation was temporary, Eva did not settle or make roots in her new area and did not start the process of moving her children to another school. The journey to and from school involved two buses and took three hours a day. The children would arrive 40 minutes late every day. Although the school were unhappy with their being late, she couldn't wake the children earlier because they were already exhausted. Children's Services didn't talk to Eva about what was going on and Eva felt *"[the move] could be any day – only to realise that they weren't doing anything at all."* After doing this for a year, Eva decided she couldn't take it anymore and successfully applied for the children to move schools. Two months later, the family were rehoused in a completely new borough and had to move schools again. Delays in their transfer meant the children were absent from school for over a month.

Disrepair and rodent infestation

The family lived in a self-contained unit adjoined to a hotel. They lived in one room. Eva shared a small double bed with the twin boys (who slept top to tail) while the girl had her own bed. There was nowhere for the children to play or do their homework. Water regularly leaked down the electric light in the centre of the kitchen, cutting off the electricity. Hot water frequently failed and electric heating was, at first, non-existent. The property had a severe mouse infestation. Eva would find mouse droppings everywhere - in cupboards, on the cooker, even on the beds. She would often see mice running across the floor. The accommodation was very dirty. Eva kept it as clean as possible but could not address the underlying repair problems which kept it in a constantly dirty state. Insects would crawl out from behind the wall in the kitchen and worms were frequently found in the shower tray. Eva felt as though she was fighting a losing battle with keeping their home clean and the long journeys to and from school. Her daughter told her teacher that she was *"worried about mummy"* and the teacher expressed concern about the daughter.

Eva's lawyer reported the property to the council's Environmental Health Department who assessed the space in September 2014, after the family had lived there for six months. The local authority refused to provide the report to Eva's lawyers but were candid on the phone that the property was found to be a health hazard, unfit for habitation and that they proposed to prosecute the landlord. No prosecution was made during the time Eva lived there. They eventually moved Eva and other families out of the building but this took, in Eva's case, more than one year. This is a classic example of the effect of placing families in unsuitable short-term accommodation for long periods of time and failing to communicate with them. The effect of moving schools, the absences from school and the physical state of the property will undoubtedly have had a negative impact on the children's education and their life chances.

PART 5:

BARRIERS TO ACCESSING SUPPORT

Barriers to accessing section 17 support was not a focus of this study but it had been an issue for many of the families involved.

At a glance...

- **One third of families were not provided with the necessary levels of financial support to meet their basic needs.**
- **Policies and practices at the eligibility stage can vary considerably between local authorities indicating that some children may be prevented from accessing the services they need.**
- **Some local authorities might be involved in 'gatekeeping' practices to reduce the number of families they have to support.**

Financial support

Although all of the families in this study were at some point provided with accommodation under section 17, at least a third were either given no financial support, or insufficient levels to meet their basic needs. This is a worrying and unacceptable state of affairs which was raised by a number of practitioners as being relevant to their client's already inadequate housing situation.^{clv}

Gatekeeping and the lottery of finding a lawyer

In three case studies the local authority initially refused to provide section 17 support to the destitute family. For example:

- In Ona's case, while she was heavily pregnant, she and her infant child lived on a floor of a church and slept on night buses because the local authority held that Tayo and his mother could rely on their existing support network – the church community

who let them sleep on the floor.

- In Chantelle's case, the local authority initially refused to provide support to the family because it said that Chantelle's 11 year old son, Michael, could live with his father who had been extremely violent and abusive.

- In Eva's case the local authority initially refused to accommodate the family together – stating that they could take the children into care but could not accommodate Eva.

In all of these examples the local authority was not complying with its duty to safeguard the children in need by providing accommodation under section 17. The families were only able to obtain support with the help of advocates acting on their behalf. These examples indicate that some local authorities either do not understand their section 17 duties or may be employing 'gatekeeping' practices. 'Gatekeeping' is a word used colloquially by advisers to homeless applicants or migrant families to describe a practice of employing tactics to deliberately reduce the number of families to whom a local authority must provide support.

Once an advocate intervenes in an unlawful refusal to assess a child or provide support, the family is likely to be successful in challenging that decision.^{clvi} Initially they may make representations on the family's behalf and if this fails then lawyer may be instructed to initiate judicial review proceedings - the only legal mechanism available to the family.^{clvii} This can be an expensive and complex procedure which a section 17 family will not be able to initiate without legal assistance. However, many families are unable to find lawyers or caseworkers to assist them.

Firstly, they may not know where to look; secondly, advice and support services in the migrant sector have been shrinking since 2010 and the organisations that can assist often lack the capacity to take on cases that are referred to them.^{clviii} It is a lottery as to whether children will be able to obtain the protection they need.^{clix} A local authority should not require threats of legal action, from an advocate or a lawyer, before it complies with its statutory obligations.

Variable practices between local authorities

Seven local authorities were asked, via Freedom of Information requests, about the section 17 support that they had given to families in the six-month period from 1 June to 31 November 2014.

These figures suggest a disparity between the policies and practices of local authorities when dealing with referrals for section 17 support. As an example, the following analysis looks at the differences between LA 2 and LA 3. LA 2 only gave an assessment to one third of their referrals (29

per cent) which is in stark contrast with LA 3 who assessed almost three times as many (90 per cent). Why the discrepancy? Case law states that local authorities must assess any child that is or may be in need.^{clxvii} It would seem unlikely that the cross-section of families that approached LA 3 should vary so widely in terms of their eligibility prospects from those that approached LA 2. It may be that LA 2 was using criteria designed to filter families without having to undertake a full assessment (using a form of 'initial screening'). These practices are employed by some local authorities, including LA 5, who explicitly confirmed this in their response.

Figure 4 sets out the responses in full, with analysis in red.

Local Authority	No. of referrals ^{clx}	No. of Child in Need assessments ^{clxi}	% of referrals assessed ^{clxii}	No. deemed eligible	% of assessments deemed eligible	% of referrals deemed eligible
LA 1	4,413 children	1,853 children	42%	N/A ^{clxiii}	NA	N/A
LA 2	1,756 families	512 families	29%	234 families	46%	13%
LA 3	1,427 children	1,292 children	91%	437 children received a further service	34%	31%
LA 4	10,515 contacts This figure has not been included in analysis ^{clxiv}	2,253 families	21%	225	10%	2%
LA 5	181 families	Unclear ^{clxv}	Unclear	35 ^{clxvi}	19%	19%
LA 6	3,661 families	1,437 families	39%	419 families	29%	11%
LA 7	1,564 families	6,23 families	40 %	220 families	35%	14%

Assuming that the cross-section of families that approach each local authority is roughly the same and that LA 2 employed a fair and robust initial screening, one would expect that LA 2 should have provided support to roughly three times as many of their assessed families as LA 3 (they would have already filtered out two thirds of ineligible families). In other words, the large disparity in practice at the assessment stage should be reconciled when providing support further down the line. However, this was not the case. Although LA 2 provided support to the highest proportion of assessed families (46 per cent), it was only 12 per cent more than LA 3 (who provided support to 34 per cent).

These figures suggest that although a family will be almost three times as likely to receive an assessment from LA 3 as from LA 2, once they have been assessed, they will be only marginally more likely to receive support from LA 3 than LA 2. In short, a family will be much better off approaching LA 3. This leads to the conclusion that whatever process LA 2 are employing to filter families at the assessment stage might in fact be preventing eligible children from accessing section 17 services. It could be evidence of unlawful gatekeeping practices on the part of LA 2. Indeed, it may be difficult to envisage what kind of criteria could be employed at this early stage to determine the needs of a child without reviewing their circumstances thoroughly.

The other local authorities appeared to be more consistent in the numbers of referrals they provide an assessment to – ranging from 39 to 42 per cent. However, LA 5 found that only 11 per cent of referrals were entitled to support, which is three times lower than LA 3. Again, assuming the pool of referrals are roughly the same as between these local authorities, these figures may be indicative of gatekeeping practices – this time at the post-assessment stage.

Conclusion

Although every child is entitled to the same level of protection regardless of what local authority they approach, in reality they are treated quite differently. Examples in the case studies show that local authorities sometimes refuse support even when it is clearly needed. Statistics indicate that policies and practices employed by local authorities can vary considerably meaning that a child is far more likely to receive the help that they need from one authority over another.

Evidence suggests that unlawful local authority practices may be preventing children from accessing support they need. Although intervention by a lawyer or caseworker can remedy these situations, it can be difficult for a family to find the legal help they need. In this way, it may be a lottery as to whether a child in need will in fact receive the services they need.



PART 6:

SOURCING ACCOMMODATION AND PROBLEMATIC PROVIDERS

At a glance...

- There are very few safeguards in place to ensure the quality and suitability of housing providers.
- There is no reliable centralised system where enforcement are recorded, even in London.
- At least two of the housing providers used by local authorities were exposed by national media as having provided accommodation in appalling condition.

Arrangements for sourcing accommodation

Information was obtained, via Freedom of Information requests, from seven local authorities about how they source the accommodation that they provide to section 17 families. Local authorities take a variety of approaches to try to ensure that they have accommodation available to meet their duty to house vulnerable children and adults. There was no consistency in the way that local authorities source and secure section 17 accommodation and few safeguards to ensure that landlords who have rented out sub-standard property in the past are discouraged from doing so again.

Three out of the seven local authorities (LA 2, 3 and 6) reported they conduct enquiries to find out whether the private landlord is, or has been, the subject of enforcement proceedings. Their enquiries consist of internal checks with other council departments; LA3 also checks with the Land Registry (though it is unclear what useful information they might provide). Internal enquiries will be limited because they are unlikely to give information on enforcement actions taken by other local authorities. Although the Ministry of Justice ('MOJ') holds information on all housing enforcement proceedings, no local authorities stated that they made enquiries with the MOJ. Moreover, there is no reliable centralised system where historical or current enforcement

actions taken against housing providers are recorded.^{clxviii} Although one organisation obtained and published information on 'rogue landlords' via Freedom of Information requests made to the MOJ, it is incomplete.^{clxix} The Housing and Planning Bill introduced in parliament on 13 October includes proposals to introduce a database of rogue landlords^{clxix(b)}. This would be a welcome change. Local authorities should be obliged to check the database when deciding whether to appoint a housing provider.

Two local authorities (LAs 1 and 3) ask the provider to complete a questionnaire which covers 'health and safety' or 'environmental health'. LA 1 also stated that private housing providers are 'required to submit confirmation of their workforce having the necessary experience and clearance to perform their role'.^{clxx} LA 1 did not explicitly state whether or not they carried out enquiries into enforcement actions but said that if such actions had been necessary they would decide whether to use the agent on a case by case basis.

Two local authorities (LAs 6 and 4) require landlords to be part of the London Landlord Accreditation Scheme ('LLAS') or equivalent.^{clxxi} The LLAS is a voluntary scheme partnership of London boroughs, landlord organisations and educational organisations to recognise good practice and improve conditions in the private rented sector. It asks that landlords comply with a code of conduct and fulfil a fit and proper person requirement. The 'fit and proper person' requirement is simply a self-declaration by landlords that they are fit and proper. There is no additional investigation.

Failures to conduct proper background checks means that landlords who have been the subject of enforcement proceedings could still be awarded a contract with the local authority to house children in need and their families.

Problematic private housing providers

Desk-based research was carried out into known providers of section 17 accommodation. The names of these providers were provided in Freedom of Information Act responses.

Problems associated with two providers listed by local authorities were reported in the national media. One of the providers used by LA 1 was accused by private renters of failing to help them after the ceiling in their flat collapsed.^{clxxii} The family say that the landlord put a plastic sheet over the hole and did not take proper steps to fix the damage or move the family. The Director of another housing providing company, which is used by LA 7, was reported to have been involved in a number of scandals regarding sub-standard accommodation. In September 2014 it was reported that housing inspectors had found six hundred asylum seekers living in the 98 bedroom hotel: one room had nine people in it, and most had four.

Another of the hotels owned by this company was visited by an independent environmental health inspector on behalf of Newsnight. He found overcrowding, evidence of rodents, fire risks, and a Category 1 statutory hazard - a damaged

ground floor window through which intruders had been able to enter the house months before. The inspector stated:

'We've looked at the electrics, we've looked at the heating; we've looked at the fire precautions; we've looked at the facilities that these people have and they are totally inadequate. There are issues here which are in breach of the law and the sad part about it is that the local authority are putting people into property which potentially is dangerous. The building was home to six households, each housed in one room, with a total of 17 people who shared one kitchen, three toilets and two baths.'^{clxxiii}

It appears that the checks and safeguards used by some local authorities to ensure the quality and safety of the housing providers used to provide section 17 accommodation are inadequate. Almost two thirds of the properties investigated by this study were found to be inadequate.



CONCLUSION

This study explores the provision of accommodation to destitute migrant families under section 17 Children Act 1989. Primarily, the focus has been on the suitability of accommodation offered and the impact of unsuitable accommodation. Through a mixed method approach, information was obtained on 64 properties provided to vulnerable children and their families.

The conclusion is straightforward: **Children's Services are failing children by regularly providing accommodation that has a detrimental impact on their physical, psychological and personal development, with long term effects on their life chances.** In this way, they are in breach of their duties under the Children Act 1989 and their international obligations enshrined in the UN Convention on the Rights of a Child.

Results show that the problems with accommodation relate mainly to the physical suitability of the property, overcrowding, location and the inappropriate use of temporary accommodation. It is also concerning that families are being housed alongside individuals whose backgrounds and criminal histories are unknown. There are no systems in place to safeguard against the obvious dangers that this poses.

Some properties provided to section 17 families breached basic housing law standards provided by the Housing Act 2004 and administered using the UK government's standard for rented homes under the HHSRS. Environmental health reports on the properties of two case study families found that the conditions posed a severe threat to the health and safety of the families. In these situations, local authorities have a duty to take enforcement action against the landlords. This had not been done and neither, it seems, had the properties been inspected despite numerous complaints from the occupants. Therefore, local authorities are not using the powers and expertise available to them – either to compel landlords to rectify problems, or to ensure basic standards are met in the first instance. Children's services should work closely with housing departments to ensure that their duties to promote the welfare of children under section 17 are met. While there is statutory guidance in comparable situations (for example homelessness)

there is none for section 17. It is inappropriate that local authority housing duties in the areas of homelessness and section 17 are not working to the same processes and standards. Children of section 17 families are being disadvantaged as a result of the immigration status of their parents.

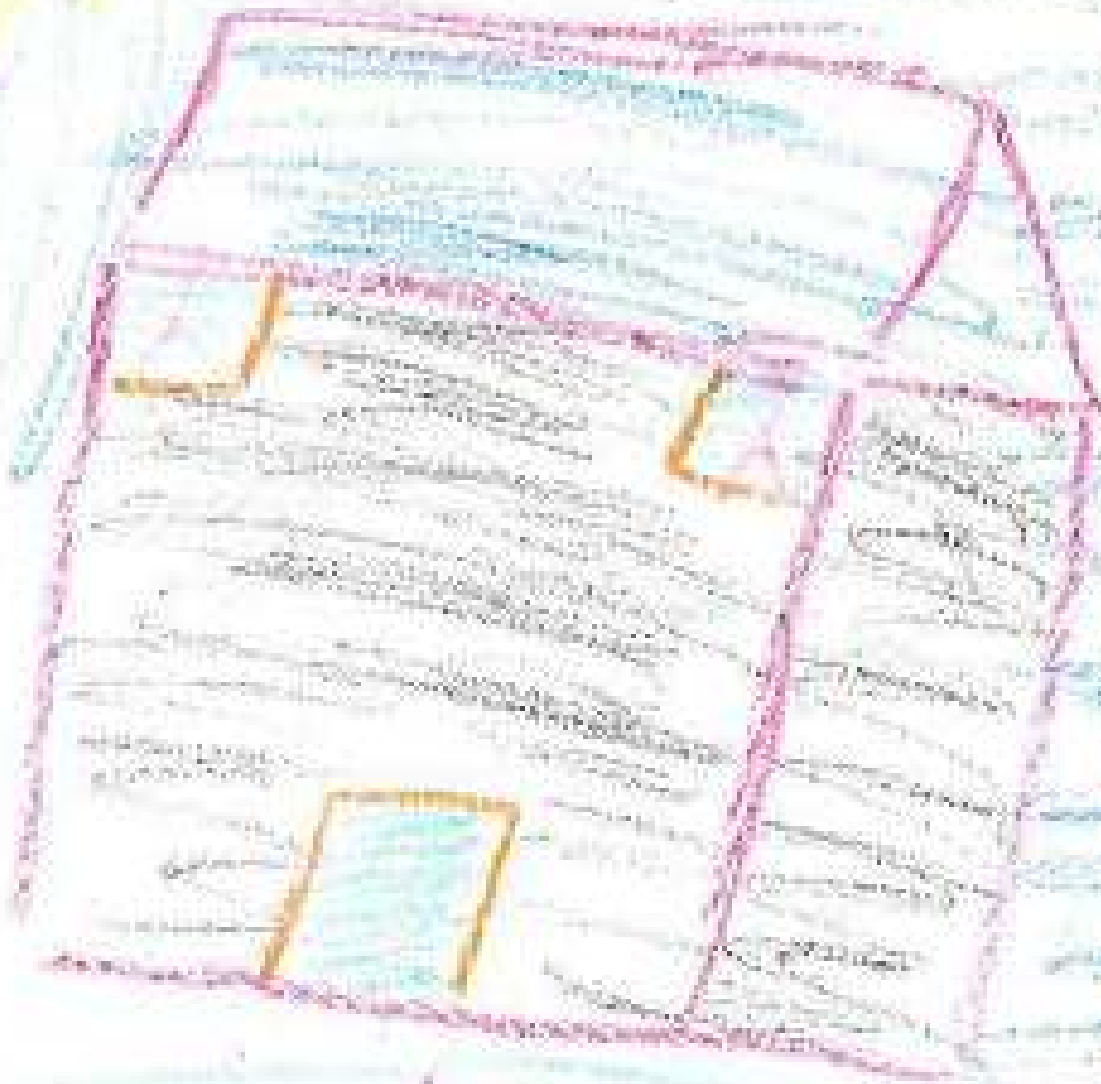
It is concerning that there are a number of families being housed out of the district of the original local authority to which they had applied, given insufficient financial support to help them travel to the original local authority, and left in a period of uncertainty as to whether, and how, they should change schools and doctors.

There is no consistency between the local authorities in the way that they source and secure section 17 accommodation and few safeguards to ensure that the chosen housing providers are safe and reputable.

Children of section 17 families are being disadvantaged as a result of the immigration status of their parents.

Two housing providers used by local authorities who responded to the information requests were reported in national media as adopting poor, sometimes unlawful, practices. Evidence suggests that some local authorities may be engaged in gatekeeping practices meaning that support may not be reaching the children who are in need.

It appears there are thousands of children affected by these practices every year and that this number is set to increase. A review of the provision of welfare to this distinct group of children is urgently required. In its current form, it is a tragedy waiting to happen.



My Dream
house

A drawing by a child who featured in this study.

RECOMMENDATIONS

All of these recommendations apply to the provision of support under section 17 to families with children who are “in need” according to that provision and who are excluded from mainstream support systems, including welfare benefits and asylum support. The term ‘section 17 families’ refers to these families.

Overarching recommendation

1. A fundamental review is required into the provision of subsistence and accommodation support to section 17 families. The guiding principle for any review must be to follow what is in the best interests of children in need.

Recommendation to professional bodies and local government associations

2. The contents of this report should be considered by the Local Government Association, Greater London Authority, the Chartered Institute of Environmental Health, the Association of Directors of Children’s Services, the No Recourse to Public Funds Network and the British Association of Social Workers, who are encouraged to issue guidance and recommendations to their members.

Recommendations to central government

3. Central government should consult on and publish statutory guidance setting out minimum standards for accommodation provided under section 17. The guidance should aim to encompass each of the recommendations of this report.

4. Sufficient funding should be provided from central to local government to ensure that local government bodies are able to comply with their duties under section 17, and that the recommendations of this report are financially viable.

5. The statutory definition of ‘overcrowding’ should be reformed and updated and should include a provision regulating overcrowded shared spaces and facilities.

6. We welcome the proposals at sections 22 and 23 of the Housing and Planning Bill (introduced in Parliament on 13 October 2015) for a database of

‘rogue landlords and letting agents’, and for the introduction of banning orders. Local authorities should be obliged to check this database when deciding whether to appoint a housing provider.

Recommendations to local authorities

7. The standard and location of accommodation provided to children should be considered from a safeguarding point of view, particularly taking into consideration any child protection issues.

8. Local authorities should review whether they are complying with their duty to assess a child’s needs holistically in the context of their duty to safeguard and promote the welfare of the child. The review should be conducted at a senior level, reporting to Cabinet and involving Directors of housing and children’s services.

9. Adequate subsistence support should be provided. The subsistence allowance should be sufficient to cover travel costs and any other costs incurred as a result of the standard or location of the accommodation.

10. Local authorities should work proactively with section 17 families to assist them to gain access to mainstream welfare benefits and / or regularise their immigration status. In particular, local authorities should provide practical support to families applying to have the No Recourse to Public Funds condition removed from the leave to remain.

Physical suitability and overcrowding

11. Local authorities should be required to apply the checklist at Article 3 Homelessness (Suitability of Accommodation) (England) Order 2012 to the accommodation provided for section 17 families.

12. Local authorities should fulfil their temporary accommodation needs by using professional providers as letting agents who are members of ARLA (the Association of Rental Residential Letting Agents) and only using properties from accredited landlords. The providers should comply with the relevant parts of the Private Rented Sector Code of Practice.

13. Prior to placing a family in accommodation, an Environmental Health Officer should inspect the premises on behalf of the local authority to ensure that families are being placed in accommodation which:

a. Meets standards provided under the Housing Act 2004, implemented using the Health and Housing Standards Rating System. In particular, it should not present Category 1 or 2 hazards; and

b. Is not overcrowded as per the definition in the Housing Act 1985.

14. In reaching contractual agreements with landlords, local authorities should include express terms relating to the maintenance, repair and hygiene of the property which reflect the standards set out under the Housing Act 2004. Compliance should be periodically assessed and action taken against landlords who fail to comply. It will be for a local authority, not a family, to take such action against landlords who are in breach of contractual agreements.

15. When a local authority places a family in a House in Multiple Occupation (HMO) - licensable or otherwise - or in a B&B, hostel or hotel - the premises should comply with the guidance which that local authority has issued on licensable HMOs.

16. Local authorities should ensure that where a family must share facilities such as kitchens and bathrooms, the facilities adequately provide for the number of people using them according to the guidance that each local authority issues on licensable HMOs.

17. Local authorities should implement a complaints procedure whereby a complaint about repair triggers a visit by an Environmental Health Officer.

18. Children's services and / or safeguarding teams should be trained to spot and implement or refer issues around housing standards.

Location

19. Wherever it is located, accommodation provided to children and their families should meet the needs of the children and should safeguard and promote their welfare.

20. Local authorities should be required to provide accommodation locally if reasonably practicable and, if out of borough, to go through a checklist similar to that at Article 2 Homelessness (Suitability of Accommodation) (England) Order 2012.

21. Local authorities should ensure the family has

the financial means to travel to existing schools within a reasonable travelling distance from their accommodation. This should apply whether the family is accommodated in borough or out of borough.

22. Local authorities should avoid moving a family when it is likely to result in a child having absences from school or having to change schools. If a change of school is necessary then the local authority should:

a. Mitigate against disrupting the child's education by ensuring, as far as possible, that it does not occur mid-term;

b. Provide the family with active support in identifying and enrolling in new schools; and

c. Make further financial assistance available to a family that incurs extra costs as a result of the change of school, including extra travel costs.

23. There should be a presumption against housing pregnant women and new mothers out of district. Where re-location is necessary, this should be carried out, as a minimum, in accordance with the UKVI guidance regarding the dispersal of asylum-seekers: Healthcare Needs and Pregnancy Dispersal Guidance. This guidance should be treated by local authorities as representing minimum standards.

Instability

24. There should be a presumption that a family supported under section 17 will have long-term housing needs. Unless that presumption is rebutted, local authorities should provide accommodation appropriate to long-term needs.

25. Local authorities should not accommodate families in B&Bs, hostels or hotels unless absolutely necessary and in any case for no more than a total period of 6 weeks. Generally, families should be accommodated in self-contained units. When it is absolutely necessary to place a family in a B&B, hostel or hotel, particular consideration should be given to the other occupants in the property, particularly whether they could pose any threat or other safeguarding issues. If any safeguarding issues arise, there should be an immediate review of the family's placement.

26. Local authorities should try to mitigate the instability in the lives of families to whom they owe housing duties. In particular by:

a. Ensuring families are placed in accommodation which is, at the outset, suitable (thereby reducing the likelihood that they will later be moved regularly); and

b. Implementing procedures designed to improve communication with families. Under such procedures, families should:

b (i) be made aware of how long they are likely to remain in a particular property;

b (ii) be given as much advance warning as possible if they are to be moved;

b(iii) should receive an appropriate response within a reasonable period of time following a complaint about the provision of support they are receiving; and

c. Termination of support (including accommodation) should be made in writing, on reasonable notice, following a child in need assessment. Reasonable notice should not normally be less than 4 weeks.



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ENDNOTES

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- ii. Defined by Article 2 Homelessness (Suitability of Accommodation) (England) Order 2003, SI 2003/3326.
- iii. Defined by Section 95 Immigration and Asylum Act 1999
- iv. Defined by sections 254 - 259 Housing Act 2004
- v. Shelter, *Good practice briefing: The role of Housing Services in safeguarding children*, November 2011, https://england.shelter.org.uk/__data/assets/pdf_file/0006/399192/Good_practice_briefing_The_role_of_Housing_Services_in_safeguarding_children.pdf [last accessed on 23 July 2015]
- vi. Paragraph 4.3, Dr Roger Kennedy Psychiatric Report, Appendix VII
- vii. This is an estimation based on 24 survey cases on which information regarding the length of time spent in accommodation is available.
- viii. Immigration Rules, page 4, para. 6, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434528/20150424_immigration_rules_introduction.pdf [last accessed on 22 July 2015]
- ix. Housing Justice, Models of accommodation and support for migrants with no recourse to public funds (NRPF), April 2015, page 8, http://www.housingjustice.org.uk/data/__resources/648/Models-of-accommodation-and-support-for-migrants-with-NRPF.pdf [last accessed on 22 July 2015]; COMPAS, *Safeguarding Children from Destitution: Local Authority responses to families with 'no recourse to public funds'*, June 2015, page 12 https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/PR-2015-No_Recourse_Public_Funds_LAs.pdf [last accessed on 22 July 2015]
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- xiv. Ibid., p. 44
- xv. Ibid., pp. 44, 46
- xvi. Ibid., p. 25

- xvii. Steven Kennedy, House of Commons Library, *Measures to limit migrants' access to benefits*, 17 June 2015, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SNO6889> [last accessed on 22 July 2015]
- xviii. Part 3 Immigration Act 2014; Department for Communities and Local Government, *Tackling Rogue Landlords and improving the private rented sector DCLG*, August 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450862/Discussion_paper_FINAL.pdf [last accessed on 15 September 2015]
- xix. For the full text, see Article 27 UN Convention on the Rights of a Child, available on the website of the Office of the UN High Commissioner for Human Rights, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [last accessed on 2 August 2015]
- xx. The UNCRC is not directly applicable in English and Welsh domestic law, but can be relevant to any issue of whether or not a public authority has complied with the Human Rights Act 1998, see *R (JS) v SSWP* [2015] UKSC 16, [2015] 1 WLR 1449, SC, per Lord Reid at [86] – [88].
- xxi. NRPF Network, *Practice Guidance for Local Authorities Assessing and Supporting Children & Families and Former Looked-after Children who have No Recourse to Public Funds (NRPF) for Support from Local Authorities under the Children Act 1989*, December 2011, http://www.nrpfnetwork.org.uk/guidance/Documents/children_families_nrpf_guidance.pdf [last accessed on 22 July 2015]
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- xxvi. See Appendix VIII for the full text of section 17 Children Act 1989
- xxvii. Section 17(10) Children Act 1989. Section 17(11) defines when a child is 'disabled'.
- xxviii. *R(G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, HL
- xxix. HM Government, *Working Together to Safeguard Children*, 26 March 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf [last accessed on 22 July 2015]
- xxx. *Ibid.*, p. 5
- xxxi. Borders, Citizenship and Immigration Act 2009, s 55, considered by the Supreme Court in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, HL. Children Act 2004, s 11 [for local authorities in England] and s 28 [for local authorities in Wales] see *Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] 2 All ER 942, SC.
- xxxii. *R (Stewart) v Wandsworth LBC, Hammersmith and Fulham LBC and Lambeth LBC* [2001] EWHC 709 (Admin), (2001) 4 CCLR 446, Admin Ct.
- xxxiii. *Ibid.*, the children had been placed in accommodation under homelessness duties by Hammersmith & Fulham LBC. They lived in that accommodation in Lambeth and attended school in Wandsworth. They were physically present in both of those local authorities. They were not physically present in Hammersmith & Fulham LBC's district. See also *R (AM) v Havering LBC* [2015] EWHC 1004

(Admin)

xxxiv. Section 17(1)(b) Children Act 1989

xxxv. Section 17(3) Children Act 1989

xxxvi. *R(G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, HL

xxxvii. Within one working day of a referral being received, a local authority should make a decision about the type of response required and acknowledge receipt to the referrer. 45 days is the maximum timeframe for assessment completion though sometimes a quicker assessment may be required - this is likely to apply in the case of a destitute family. See HM Government, *Working Together to Safeguard Children*, 26 March 2015, page 26, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf [last accessed on 22 July 2015]

xxxviii. *Ibid.*, pp. 18,19

xxxix. *Ibid.*, pp. 19

xl. *Ibid.*, p. 22

xli. *Ibid.*, p. 10

xlii. Section 17(6) Children Act 1989

xliii. Leaving a family destitute in circumstances where they have no other means of accessing support may be contrary to Article 3 of the European Convention on Human Rights ('ECHR') which prohibits inhuman or degrading treatment. See *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66, [2006] 1 AC 396, HL

xliv. *R (Clue) v Birmingham County Council* [2010] EWCA Civ 460, [2011] 1 WLR 99, CA.

xlv. *Ibid.*, The individual's application for leave to remain in the UK would be automatically forfeited if the individual was not in the UK. So the individual would suffer a breach of his or her human rights because he or she would be denied the opportunity to pursue the application for leave to remain.

xlvi. Sections 94 and 95 Immigration and Asylum Act 1999. For detailed analysis and explanation, see the Asylum Support Appeals Project's factsheets and briefing notes, contained on their website: <http://www.asaproject.org/> [last accessed on 22 July 2015]

xlvii. *R (Stewart) v Wandsworth LBC*, Lambeth LBC and Hammersmith & Fulham LBC [2001] EWHC 709 (Admin), [2001] 4 CCLR 446, Admin Ct; *R (M) v Barking & Dagenham LBC & Westminster CC* [2002] EWHC 2663 (Admin), (2003) 6 CCLR 87, Admin Ct; *R (J) v Worcestershire County Council* [2014] EWCA Civ 1518, [2015] 1 WLR 2825, CA; and *R (AM) v Tower Hamlets LBC & Havering LBC* [2015] EWHC 1004 (Admin)

xlviii. *R (A) v Croydon LBC* [2009] UKSC 8, [2009] 1 WLR 2557, SC; *R (VC) v Newcastle City Council* [2011] EWHC 2673 (Admin), [2012] 2 All ER 227, Admin Ct; *R (MN) v Hackney LBC* [2013] EWHC 1205 (Admin); *R(N) v Newham LBC* [2013] EWHC 2475 (Admin); *R (PK) v Harrow LBC* [2014] EWHC 584 (Admin)

xlix. *R (M) v Islington LBC* [2004] EWCA Civ 235, [2005] 1 WLR 884, CA; *R (Clue) v Birmingham City Council* [2010] EWCA Civ 460, [2011] 1 WLR 99, CA; and *R (KA) v Essex County Council* [2013] EWHC 43 (Admin), the council's subsequent appeal was dismissed on the grounds that it had become academic: [2013] EWCA Civ 1261, [2013] 1 WLR 2882, CA

i. *R (MK) v Barking & Dagenham LBC* [2013] EWHC 3486 (Admin)

ii. *R (PO) v Newham LBC* [2014] EWHC 2561 (Admin); *R (Mensah) v Salford City Council* [2014] EWHC 3537 (Admin); and *R (C) v Southwark LBC* [2014] EWHC 3983 (Admin)

- lii. Public Law Project, *Social Services Support for Destitute Migrant Families*, August 2013, <http://www.publiclawproject.org.uk/resources/121/a-guide-to-support-under-section-17-children-act-1989> [last accessed on 3 August 2015]
- liii. World Health Organization, *Environmental burden of disease associated with inadequate housing*, 2011, http://www.euro.who.int/__data/assets/pdf_file/0003/142077/e95004.pdf [last accessed on 22 July 2015]
- liv. Section 11 Landlord & Tenant Act 1985; Section 4 Defective Premises Act 1972
- lv. Regulated by the Housing Act 2004
- lvi. Regulated by the Environmental Protection Act 1990
- lvii. This information was confirmed in a telephone call to the hostel on 19 June 2015.
- lviii. This is defined as a limited or uncertain availability of nutritionally adequate and safe food. See Dr Kate Harvey, University of Reading, *Children and Parents' Experiences of Food Insecurity in a South London Population*, October 2014, page 5
- lix. Dr Kate Harvey, University of Reading, *Children and Parents' Experiences of Food Insecurity in a South London Population*, October 2014, pages 5 and 6
- lx. Department for Communities and Local Government, *A Decent Home: definition and guidance for implementation*, June 2006, page 12, para. 4.6, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7812/138355.pdf [last accessed on 22 July 2015]
- lxi. See HHSRS in glossary
- lxii. Parliamentary Office of Science and Technology, *Housing and Health*, number 271, January 2011, page 1 http://www.parliament.uk/documents/post/postpn_371-housing_health_h.pdf [last accessed on 22 July 2015]
- lxiii. Shelter, *Chance of a Lifetime: the impact of bad housing on children's lives*, September 2006, page 13, http://england.shelter.org.uk/__data/assets/pdf_file/0016/39202/Chance_of_a_Lifetime.pdf [last accessed on 22 July 2015]
- lxiv. Office of the Deputy Prime Minister, *HHSRS Operating Guidance*, February 2006, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf [last accessed on 22 July 2015]
- lxv. Shelter, *Renters' health at risk*, 14 May 2013, http://england.shelter.org.uk/news/may_2013/renters_health_at_risk [last accessed on 22 July 2015]
- lxvi. Paragraph 3.03, Environmental Health Officer's Report on Mary's Property, Appendix V; Paragraph 3.06, Environmental Health Officer's Report on Patricia's Property, Appendix VI
- lxvii. World Health Organization, *Environmental burden of disease associated with inadequate housing*, 2011, page 5 http://www.euro.who.int/__data/assets/pdf_file/0003/142077/e95004.pdf [last accessed on July 2015]
- lxviii. Shelter, *Chance of a Lifetime: the impact of bad housing on children's lives*, September 2006, page 13, http://england.shelter.org.uk/__data/assets/pdf_file/0016/39202/Chance_of_a_Lifetime.pdf [last accessed on July 2015]
- lix. World Health Organization, Summary Report: *Environmental burden of disease associated with inadequate housing*, 2011, page 3, http://www.euro.who.int/__data/assets/pdf_file/0017/145511/e95004sum.pdf?ua=1 [last accessed on July 2015]

- lxx. Office of the Deputy Prime Minister, *HHSRS Operating Guidance*, February 2006, pages 106 - 111 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf [last accessed on 22 July 2015]
- lxxi. *Ibid.*, p. 107
- lxxii. NHS, *Bedbugs*, 11 December 2014, <http://www.nhs.uk/conditions/bed-bugs/Pages/Introduction.aspx> [last accessed on 22 July 2015]
- lxxiii. Sections 15, 20 and 36 Equality Act 2010
- lxxiv. See discussion below on the law and particularly on the Human Rights Act 1998 - *R (Bernard) v Enfield LBC* [2002] EWHC 2282, [2003] HLR 354, Admin Ct, where a breach of Article 8 was found and *R (Anufrijeva) v Southwark LBC* [2003] EWCA Civ 1406, [2004] 2 WLR 603, CA, where it was found that there was no breach
- lxxv. NHS, *Sharing a bed with your baby ups risk of cot death*, 21 May 2014, <http://www.nhs.uk/news/2013/05May/Pages/Sharing-a-bed-with-your-baby-ups-risk-of-cot-death.aspx> [last accessed on 22 July 2015]
- lxxvi. Paragraph 4.08, Environmental Health Officer's Report on Patricia's Property, Appendix VI
- lxxvii. *Ibid.*, para 3.04
- lxxviii. *Ibid.*, para 2.17
- lxxix. Department for Communities and Local Government, *Housing Health and Safety Rating System Guidance for Landlords and Property Related Professionals*, May 2006, page 37, Appendix 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf [last accessed on 22 July 2015]
- lxxx. Bed and breakfast accommodation is defined in law as accommodation which is not separate and self-contained premises and where any one of the amenities of a toilet, personal washing facilities or cooking facilities is shared by more than one household: Article 2 Homelessness (Suitability of Accommodation) (England) Order 2003, SI 2003/3326. There is a similar definition in Wales. The provision of breakfast is irrelevant to the definition. See Part 4 for a more detailed discussion.
- lxxxi. Shelter, *Living in Limbo: Survey of homeless households living in temporary accommodation*, June 2004, page 20 https://england.shelter.org.uk/_data/assets/pdf_file/0020/66404/Living_in_limbo.pdf [last accessed on 22 July 2015]
- lxxxii. HM Government, *Working Together to Safeguard Children*, 26 March 2015, page 21, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf [last accessed on 22 July 2015]
- lxxxiii. Paragraph 3.08, Environmental Health Officer's Report on Patricia's Property, Appendix VI
- lxxxiv. Paragraph 4.01, Environmental Health Officer's Report on Mary's Property, Appendix V
- lxxxv. Section 2, Part 1 Housing Act 2004. In Mary's property there was a Category 1 fire hazard. In Patricia's property there was Category 1 overcrowding.
- lxxxvi. Section 5 Housing Act 2004
- lxxxvii. Parts 1 – 4 Housing Act 2004
- lxxxviii. Those repairing obligations may be express terms, which appear in a written contract, or implied into the contract by statute, generally by section 11 Landlord & Tenant Act 1985

- lxxxix. Para 35, Schedule 1, Legal Aid Sentencing and Punishment of Offenders Act 2012
- xc. *Street v Mountford* [1985] 1 AC 809, HL
- xci. Ilan Katz, Judy Corlyon, Vincent La Placa and Sarah Hunter, Joseph Rowntree Foundation, *The relationship between parenting and poverty*, 2007, page 13 <http://www.jrf.org.uk/sites/files/jrf/parenting-poverty.pdf> [accessed on 22 July 2015]
- xcii. The previous Labour Government published *Tackling Overcrowding in England: an action plan* (December 2007). It had previously legislated so that the overcrowding standard can be amended by secondary legislation (section 216 Housing Act 2004). That secondary legislation has not been introduced. The Coalition Government (2010 – 2015) announced that its reform to the system of allocation of social housing (Part 6 Housing Act 1996) would assist in the reduction of overcrowding.
- xciii. Office of the Deputy Prime Minister, *HHSRS Operating Guidance*, pages 91 to 94, <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9> [last accessed on 22 July 2015]
- xciv. Shelter, *Chance of a Lifetime: the impact of bad housing on children's live, September 2006, pages 16 to 17*, http://england.shelter.org.uk/_data/assets/pdf_file/0016/39202/Chance_of_a_Lifetime.pdf [last accessed on July 2015]
- xcv. *No Space at Home: Overcrowding in London*, page 3 <http://www.childrenswales.org.uk/UserFiles/resources/no-space-at-home.pdf> [last accessed on 22 July 2015]
- xcvi. Hackney, *Report of Living in Hackney Scrutiny Commission*, 23 September 2009, para 2.1, <http://www.hackney.gov.uk/Assets/Documents/housing-overcrowding-review08-09.pdf> [last accessed on 22 July 2015]
- xcvii. Paragraph 3.02, Environmental Health Officer's Report on Patricia's Property, Appendix VI
- xcviii. Office of the Deputy Prime Minister, *HHSRS Operating Guidance*, page 92, <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9> [last accessed on 22 July 2015]
- xcix. Section 325 Housing Act 1985
- c. A landlord that commits this offence is liable to a fine of up to £500 and another £50
- ci. per day for every day that the offence continues after conviction. See section 331 Housing Act 1985.
- cii. Department for Communities and Local Government, *Tackling Overcrowding in England: a discussion paper*, July 2006, para 2.22, http://webarchive.nationalarchives.gov.uk/20060715135132/http://communities.gov.uk/pub/589/TacklingOvercrowdinginEnglandADiscussionPaper_id1501589.pdf [last accessed on 3 August 2015]
- ciii. Wendy Wilson, House of Commons Library, *Overcrowded Housing (England)*, 22 April 2014, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SNO1013#fullreport> [last accessed on 22 July 2015]
- civ. Enfield Borough Council *Amenity Guidance for Houses in Multiple Occupation*, pages 8 and 24 <http://www.londonpropertylicensing.co.uk/sites/default/files/pdfs/Enfield%20HMO%20amenity%20standards%2025.02.2015.pdf>; Lewisham Borough Council, *Standards for Licensable HMOs*, 2012, pages 1-4 <https://www.lewisham.gov.uk/myservices/housing/landlords/Documents/StandardsforLicensableHousesinMultipleOccupation.pdf>; London Borough of Camden, *Minimum HMO and Hostel Standards*, undated, pages 5 and 10, https://camden.gov.uk/ccm/cms-service/stream/asset/Appendix%206%20-%20Minimum%20HMO%20and%20hostel%20standards.pdf?asset_id=3328873 [all webpages last accessed on 16 August 2015]
- cv. Shelter, *Full house? How overcrowded housing affects families*, 2005, page 8, <https://england.shelter.org.uk/publications/Full-house-How-overcrowded-housing-affects-families>

org.uk/___data/assets/pdf_file/0004/39532/Full_house_overcrowding_effects.pdf [last accessed on 23 July 2015]

cvi. Hackney, *Report of Living in Hackney Scrutiny Commission*, 23 September 2009, para 2.1, <http://www.hackney.gov.uk/Assets/Documents/housing-overcrowding-review08-09.pdf> [last accessed on 23 July 2015]

cvii. Para 11, Schedule 1, Housing Health and Safety Rating System (England) Regulations 2005/3208; Office of the Deputy Prime Minister, *HHSRS Operating Guidance*, Chapter 11, Annex D, <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9> [last accessed on 22 July 2015]

cviii. This was a survey case explained in more detail in the section entitled 'absences from school'.

cix. [2014] EWHC 3510 (Admin) - a decision by an Administrative Court Judge to grant permission to the claimant to bring judicial review proceedings

cx. Shelter, *Homelessness Factsheet*, updated October 2007, page 13, footnote 29, available at https://england.shelter.org.uk/___data/assets/pdf_file/0004/66379/Homelessness_factsheet.pdf [last accessed on 23 July 2015]

cx. RSA, Action and Research Centre, *Between the cracks Exploring in-year admissions in schools in England*, July 2013, page 23, http://cdn.basw.co.uk/upload/basw_105550-4.pdf [last accessed on 23 July 2015]

cxii. *Ibid.*, p. 26

cxiii. Dr Roger Kennedy Psychiatric Report, Paragraph 4.4d, Appendix VII

cxiv. C. Taylor, *The Government's Expert Adviser on Behaviour, Improving attendance at school*, Department of Education, 2012, page 4, para 2, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180772/DFE-00036-2012_improving_attendance_at_school.pdf [last accessed on 23 July 2015]

cxv. NICE, *Pregnancy and complex social factors A model for service provision for pregnant women with complex social factors*, September 2010, pages 16 to 18, <http://www.nice.org.uk/guidance/cg110/resources/guidance-pregnancy-and-complex-social-factors-pdf> [last accessed on 23 July 2015]; The Refugee Council and Maternity Action, *When maternity doesn't matter Dispersing pregnant women seeking asylum*, February 2013, page 3, http://www.refugeecouncil.org.uk/assets/0002/6402/When_Maternity_Doesn_t_Matter_-_Ref_Council__Maternity_Action_report_Feb2013.pdf <http://www.refugeecouncil.org.uk/maternity>

cxvi. Extract from interview with Senior Family Practitioner at a London Children's Centre, 11 March 2015

cxvii. Dr Roger Kennedy Psychiatric Report, Paragraph 4.4d, Appendix VII

cxviii. Under the duties and powers at Part 6 Immigration and Asylum Act 1999 (support for asylum seekers).

cxix. The Refugee Council and Maternity Action, *When maternity doesn't matter. Dispersing pregnant women seeking asylum*, February 2013, page 4, http://www.refugeecouncil.org.uk/assets/0002/6402/When_Maternity_Doesn_t_Matter_-_Ref_Council__Maternity_Action_report_Feb2013.pdf

cxx. Section 208 Housing Act 1996

cxxi. Article 2 Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601

cxxii. *Nzolameso v City of Westminster Council* [2015] UKSC 22, [2015] 2 All ER 942, SC

cxxiii. UK Visas and Immigration, *Healthcare Needs and Pregnancy Dispersal Guidance*, August 2012. For

criticisms, see the Home Affairs Committee, Written evidence submitted by the Refugee Council, April 2013, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71we-11.htm> [last accessed on 23 July 2015]

cxix. UKVI, *Healthcare Needs and Pregnancy Dispersal Guidance for Home Office staff*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303832/Healthcare_Needs_Pregnancy_Dispersal_Guidance_v2_o.docx [last accessed on 23 July 2015]

cxv. Estimations are based on the 24 survey cases for which information about the length of time spent in accommodation is available. Therefore these figures are based on a pool that is smaller than the whole study.

cxvi. COMPAS, *Safeguarding Children from Destitution: Local Authority responses to families with 'no recourse to public funds'*, June 2015, page 51, https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/PR-2015-No_Recourse_Public_Funds_LAs.pdf [last accessed on 2nd July 2015]

cxvii. There is evidence to suggest a systemic problem in the way immigration applications are managed at the Home Office. See COMPAS, *Safeguarding Children from Destitution: Local Authority responses to families with 'no recourse to public funds'*, June 2015, pages 53 to 55, https://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/PR-2015-No_Recourse_Public_Funds_LAs.pdf [last accessed on 23 July 2015]

cxviii(b) Section 23, Housing and Planning Bill, (HC Bill 75), http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0075/cbill_2015-20160075_en_1.htm [last accessed on 18 November 2016]

cxviii. Home Office, *Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0b Family Life (as a Partner or Parent) and Private Life: 10-Year Routes*, pages 66 to 67, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421057/PP10b.pdf [last accessed on 23 July 2015]

cxix. Section 9 Legal Aid, Sentencing and Punishment of Offenders Act 2012

cxv. Estimation is based on the fact that of the cases on which information is available, 18 were in B&B accommodation and 18 were not.

cxvi. Homelessness (Suitability of Accommodation) (England) Order 2003, SI 2003/3326 and paras 17.24 – 17.38 Homelessness Code of Guidance for Local Authorities (DCLG, July 2006)

cxvii. BBC, *Councils leaving homeless families in B&Bs too long*, 2 October 2012, <http://www.bbc.co.uk/news/uk-19813291> [last accessed on 23 July 2015]. This was in relation to Croydon housing applicants for homelessness assistance under its homelessness duties, rather than under section 17 duties. See also Focus report, Local Government Ombudsman, *No Place like home: Councils' use of unsuitable bed and breakfast accommodation for homeless families and young people*, October 2013

cxviii. Shelter, *Living in Limbo: Survey of homeless households living in temporary accommodation*, June 2004, page 22 https://england.shelter.org.uk/_data/assets/pdf_file/0020/66404/Living_in_limbo.pdf [last accessed on 23 July 2015]

cxix. *Ibid.*, pp. 9-10

cxv. Homelessness (Suitability of Accommodation) (England) Order 2003, SI 2003/3326

cxvi. See glossary for definition of Houses in Multiple Occupation

cxvii. Disclosure and Barring Service check, formerly the Criminal Records Bureau (CRB)

cxviii. Schedule 4, Part 1, paragraph 4(1) Safeguarding Vulnerable Groups Act 2006 and the Working Together to Safeguard Children guidance.

- cxviii. Schedule 4, Part 1, Section 3(1) of the Safeguarding Vulnerable Groups Act 2006
- cxl. Shelter, *Living in Limbo: Survey of homeless households living in temporary accommodation*, June 2004, pages 22 to 24, https://england.shelter.org.uk/__data/assets/pdf_file/0020/66404/Living_in_limbo.pdf [last accessed on 23 July 2015]
- cxli. Section 14(2) Children and Families Act 2014 amending section 32(1)(a) Children Act 1989
- cxlii. Dr Roger Kennedy Psychiatric Report, Paragraph 4.1, Appendix VII
- cxliii. *Ibid.*, para 4.4b, Appendix VII
- cxliv. Department for Communities and Local Government, *Homelessness Code of Guidance for Local Authorities*, July 2006, para 3.4, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7841/152056.pdf [last accessed on 23 July 2015]
- cxlv. Part 2 Housing Act 2004
- cxlvi. Only if it is used for residential purposes and falls within the definition of a HMO. Sections 254 – 259 Housing Act 2004
- cxlvii. Section 64 Housing Act 2004
- cxlviii. Section 72 Housing Act 2004. In addition, a tribunal can make a rent repayment order: section 73 Housing Act 2004
- cxlix. For example: Lewisham Borough Council, *Private Sector Housing Enforcement*, November 2006, page 9, <https://www.lewisham.gov.uk/myservices/housing/landlords/Documents/PolicyForTheRegulationOfHousingStandards.pdf>; Swindon Borough Council, *Private Sector Housing Enforcement*, updated September 2008, page 9, <http://www.swindon.gov.uk/hs/Housing%20Document%20Library/Information%20-%20Private%20Sector%20Housing%20Enforcement.pdf>; Newcastle-Under-Lyme Borough Council, *Housing Standards and Public Health Enforcement Policy 2006-2010*, page 13, <http://www.newcastle-staffs.gov.uk/Documents/Housing/Housing%20Standards%20%20Public%20Health%20Enforcement%20Policy%202006-.pdf> [all webpages last accessed on 3 August 2015]
- cl. Paragraph 4.01, Environmental Health Officer's Report on Patricia's Property, Appendix VI
- cli. Homelessness (Suitability of Accommodation) (England) Order 2003, SI 2003/3326
- clii. *Ibid.*, Article 4
- cliii. Department for Communities and Local Government, *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require Accommodation*, April 2010, <https://www.gov.uk/government/publications/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation> [last accessed on 3 August 2015]
- cliv. Department for Communities and Local Government, *Statutory Homelessness in England: January to March 2015, 24 June 2015*, <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-january-to-march-2015> [last accessed on 3 August 2015]
- clv. Local Government Ombudsman, *No Place like home: Councils' use of unsuitable bed and breakfast accommodation for homeless families and young people*, October 2013, <http://www.lgo.org.uk/downloads/special%20reports/1885-FR-No-place-like-home-FINAL-11.10.2013.pdf> [last accessed on 3 August 2015].
- clvi. For more information on the levels of financial subsistence provided under section 17, look out for research currently being undertaken by both Coram Children's Legal Centre and Project 17.
- clvii. This is anecdotal evidence provided by the lawyers and caseworkers that form the steering group of this study. However, it could be an important issue for further research.

- clviii. Judicial Review is a procedure where the judge will look at the local authority's decision and decide if it is lawful or not. If it is unlawful, they may require the authority to reconsider that decision lawfully. In emergency situations (which section 17 cases normally are) the court may also direct the local authority to provide interim support pending the outcome of the proceedings. Proceedings are initiated in the Administrative Court - a branch of the High Court.
- clix. This is anecdotal evidence provided by the lawyers and caseworkers that form the steering group of this study. However, it could be an important issue for further research.
- clx. Some local authorities responded to the request by stating the numbers of families that had requested support, while others responded stating the number of children. The unit was used by each authority is given.
- clxi. Statutory guidance requires that local authorities complete an assessment to determine whether or not a child is 'in need' as defined in the Children's Act 1989.
- clxii. All percentages in this table are rounded up to the nearest percentage point.
- clxiii. Response not provided (exemption cited).
- clxiv. This figure is being treated as an anomaly given how large it is in comparison with figures from other local authorities. The anomaly could be as a result of different recording practices used by that authority. It has not been included in analysis or total figures.
- clxv. *'All families receive an initial assessment, whether this proceeds to a full Child in Need assessment depends on the outcome of the initial screening.'* Extract from FOIA response from LA 5, 9 June 2015
- clxvi. Ongoing support is currently being provided to 8 applicants, of which 4 have been moved to 'more settled' accommodation. An additional 2 cases have been closed following resolution of their claims. Temporary support has been provided to an additional 25 applicants, of which 8 have been closed following completion of our investigation. 3 cases have also been given the right to claim benefits.' Extract from FOIA response from LA 5, 9 June 2015
- clxvii. *R(G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, HL
- clxviii. An Environmental Health Officer, who regularly provides advice/recommendations on leased accommodation to a Temporary Accommodation Housing Team in one London borough, stated in interview on 23 July 2015, that a number of similar schemes have been tried but have failed
- clxix. Environmental Health News, *The Rogue Landlords Files*, 23 July 2015, <http://www.ehn-online.com/news/article.aspx?id=14486> [last accessed on 23 July 2015]
- clxix(b) Section 23, Housing and Planning Bill, (HC Bill 75), http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0075/cbill_2015-20160075_en_1.htm [last accessed on 18 November 2016]
- clxx. Extract from FOIA response from LA 1, 17 April 2015
- clxxi. LLAS website: <http://www.londonlandlords.org.uk/>
- clxxii. Guardian (Walthamstow), *My sons could have been killed by ceiling collapse*, 3 March 2015, http://www.guardian-series.co.uk/news/11829829._My_sons_could_have_been_killed_by_ceiling_collapse/ [last accessed on 23 July 2015]
- clxxiii. BBC, *Councils leaving homeless families in B&Bs too long*, 4 October 2012, <http://www.bbc.co.uk/news/uk-19813291> [last accessed on 22 July 2015]
- clxxiv. Of the surveys that were just samples, 25 percent of families were provided with housing that the practitioner found to be adequate to meet the family's needs.
- clxxv. National Statistics, *Living in Britain, Results from the 2002 General Household Survey*, page 90,

APPENDIX I

Methodology

In this study a mixed-method approach was used. Qualitative and quantitative information was collected using a combination of surveys, interviews, expert opinions, literature reviews and requests under the Freedom of Information Act 2012. A steering group provided guidance throughout the project.

Research questions

1. The frequency with local authorities were providing accommodation that was inadequate to meet the needs of section 17 supported families;
2. The main factors that made properties inadequate and the extent of the problem; and
3. The impact that accommodation issues had on the children and their principal care givers.

Surveys

Surveys were sent to 27 individuals that advocate on behalf of section 17 supported families ('practitioners'). These included two lawyers from the Hackney Community Law Centre ('HCLC') and the Director of Hackney Migrant Centre ('HMC').

Each practitioner was asked to return one survey for each section 17 family they had represented and who had been accommodated under section 17 within the six month period between 1 June 2014 and 30 November 2014 ('the relevant period'). These families are referred to as 'survey families'. Practitioners were asked to state whether the surveys they were completing constituted all of their relevant cases, or were a sample of their cases. Six practitioners provided samples (in total representing 16 families) and nine practitioners provided the full range of relevant cases (in total representing 35 cases).^{clxxiv}

The survey began by asking closed questions relating to the basic details of the case – which local authority was housing the family, the location in which they were housed and the proximity of their accommodation to their support network. It then asked the practitioner to assess whether the accommodation provided was adequate, and included an open question allowing a description of the reasons why they reached that conclusion.

In total, surveys were received from 21 practitioners who provided information about 61 properties provided to 57 families. These families were housed by 21 different local authorities: 17 were in the Greater London area, and four were outside of London.

The tables below provide a summary of the job titles of the individuals that responded to the surveys and the types of organisations that they represented.

Figure 2 shows the categories of practitioners that completed surveys

Type of practitioner	How many surveys completed
Solicitor	10
Director level caseworker	2
Caseworker	4
Legal adviser	3
Trainee solicitor	1

Figure 3 shows the types of organisations that returned surveys

Type of organisation	How many surveys completed
Charity	9
Private law firm	5
Law centre	2

Research question 1- frequency of inadequate housing

The professional judgment of the practitioners was relied on as to what constituted 'inadequate' and 'adequate' housing.

In the surveys, the practitioner was asked to comment on whether, in their opinion, the property adequately met the needs of the family. In answering this question, the practitioner was asked to consider all issues including 1) location; 2) state of repair; 3) overcrowding; 4) adjustments for disabilities; 5) access to amenities / facilities and 6) length of time spent in temporary accommodation.

If the practitioner stated that the property was inadequate, they were asked to specify what particular issues led them to that conclusion.

Research question 2- the factors that made properties inadequate

In the descriptive information provided by the practitioners to explain the reasons why a property was deemed 'inadequate', patterns were observed. These fell into the following groups:

1. Physical suitability
2. Overcrowding
3. Location
4. Instability or uncertainty

Within each of these groups sub-categories were identified. To ensure consistency, 'category definitions' were used to determine whether a case into a particular category. These definitions are located at Appendix II.

Interviews with families

Seven 'case study families' were selected from a pool. The pool consisted of families identified and referred by their practitioners that had been provided with accommodation under section 17 that was inadequate to meet their needs. Four of the seven selected families were also survey families. The remaining three were not because they were housed outside of the relevant period.

Semi-structured interviews were carried out focussing mainly on the impact that the accommodation had on the family. Site-visits were also carried out where possible. Interviews were not carried out with children.

The qualitative information obtained formed the case studies featured in this report. Names and other minor details were changed to preserve confidentiality.

Other Interviews

To develop and substantiate information provided by case study families regarding the impact that inadequate housing had on their family, where possible consent was obtained to speak with professionals associated with that family. These included two teachers, two children's centres and two family support workers. These were unstructured interviews focused around the issues specific to that family.

Environmental Health Reports

To address research question (2), an independent Environmental Health Consultant, Mr M Cairns MCIEH, was instructed to inspect and report on the properties of two case study families – Patricia and Mary. Mr Cairns was instructed to assess and prepare a report on the following:

1. The physical state of the properties, including shared facilities and any defects or deficiencies;
2. The extent to which provision of shared facilities were sufficient to the needs and number of people using them;
3. Any environmental hazards such as damp or mould which were prejudicial to the health of the occupants (as per section 79 of the Environmental Protection Act 1990);
4. The suitability of the properties with regards to the health and safety of the occupants and their children;
5. The status of the properties with regards to multiple occupancy/B&B and whether it meets the requirements for such properties;
6. Whether the properties were “overcrowded” as defined by ss.325 and 326 Housing Act 1985; and
7. Whether properties met the standards required by the Housing Act 2010, under the HHSRS.

Mr Cairns’ reports can be found at Appendix V and VI.

Psychiatric expert

Early on in this study it appeared that inadequate housing was in some cases having an impact on the psychological health of children and their families. A consultant child and adolescent psychiatrist, Dr Roger Kennedy BSc, MB, BS, FRC Psych, was therefore asked for his generic opinion.

With his instructions, Dr Kennedy was provided with 1) Government Guidance: Working Together to Safeguard Children, March 2015; 2) Draft (and anonymised) case studies of Adesuwa (including photographs of her accommodation), Patricia, Ona and Chantelle; and 3) Notes from interviews with two children’s centres.

Dr Kennedy was instructed to prepare a report commenting on the following questions:

1. What role, if any, does the “home” or living environment play in the general development, health and wellbeing of a person between the ages of 0 to 18 years old?
2. Does the role in (1) change as the child grows older and, if so, how?
3. Is it likely that the role in (1) would change in the context of a destitute, migrant family and / or a family that is particularly vulnerable and, if so, how?

Dr Kennedy was then asked to state his opinion on how specific accommodation issues (including overcrowding, disrepair and uncertainty) would impact the health, development and welfare of a child and whether a child facing those issues would be likely to achieve or maintain a reasonable standard of health or development. Dr Kennedy’s report can be found at Appendix VII of this report.

Requests under the Freedom of Information Act 2012 (‘FOIA’)

FOIA requests were made to the seven local authorities that housed the survey families. The information received is provided in the relevant sections of the report and has been anonymised.

Responses were received from all of the local authorities although in some cases the authority refused to provide the information requested, citing a statutory exemption.

Information was sought on matters including:

1. The numbers of children referred for Child in Need assessments in the relevant period; the numbers of assessments that took place in that period and the number of families deemed eligible for section 17 support in that period.
2. The processes (if any) that are in place for reviewing the suitability of the housing providers used to provide accommodation to section 17 families.

3. The contractual arrangements that are adopted between local authorities and the housing providers used for section 17 accommodation.

Literature review

A review was conducted of pre-existing research on the impact that poor housing conditions has on the health and welfare of occupants. This was in relation to research question (3).

A legal literature review was also conducted on the law around section 17 and comparative housing law.

Steering Group Meetings

A steering group was formed at the conception of the project consisting of practitioners specialising in housing, community care and children's rights. Meetings were held on four occasions where they were consulted on both the preliminary stages of the project as well as the content, direction and findings of the report. The members of the group are listed in the acknowledgments.

Potential Limitations

1. In total, information was obtained on 64 families (61 survey families and 3 additional case study families). Although this provided us with a wealth of qualitative information, the numbers were not high enough to draw conclusive statistics. The statistics we cite in this report are therefore intended as a very general guide.

2. Some of the information gathered has rested on reports given by the families. There are two possible problems with this:

- Firstly, anecdotal evidence from steering group members who have worked with a number of families supported under section 17, suggests that families are sometimes reluctant to raise the fact that there are problems with their accommodation. This maybe because they have had to endure stressful and difficult processes in accessing that support in the first place. Therefore, it is possible that there were families unwilling to disclose their housing problems. To this extent, it may not have been possible to assess the true numbers of families placed in inadequate accommodation in the relevant period.

- Secondly, although there is evidence to suggest that self-reported data is reliable,^{clxxv} it was not always possible to verify the accuracy of self-reporting by families. The risk to accuracy was mitigated as far as possible by interviewing professionals that worked with the family, by instructing an environmental health officer to inspect the two of the properties and, in relation to psychological impact, by obtaining the view of a psychiatric expert.

APPENDIX II

Category Definitions

During this study, we collected descriptive information regarding a number of properties using surveys. When processing this information, we sought to determine why certain properties were deemed 'inadequate'. In doing so, we observed patterns of issues that frequently arose. These fell into four categories (physical suitability, overcrowding, location and instability). Within each category we identified certain sub-categories. This document sets out the definitions that we used to identify which cases fell into which category(s) and sub-category(s). The categories and sub-categories are mostly taken from relevant statutory provisions and/or the ('HHSRS') Operating Guidance.¹

Physical Stability

A property was deemed "*physically unsuitable*" when it contained any of the issues in the following table:

Issue	Description
Unable to access basic facilities	<p>Any of the following either have not been provided, or do not function:</p> <ul style="list-style-type: none"> • Electricity, • Effective heating (central or otherwise), • Hot water, • Kitchen containing a fridge and the provision for making home cooked meals²; • Toilet; • Washing facilities (shower or bath); or • Bed(s). <p>Note that sometimes families have restricted access to basic facilities only due to overcrowding or the behaviour of other tenants. To avoid duplication, we have not included those cases.</p>
Disrepair	Damage to property – including fixtures and fittings. Examples include windows not shutting and leaking roof.
Lack of adjustments	The property is unsuitable for the specific circumstances or health needs of the family inhabiting it - for example, a cot has not been provided for a baby, or a family is placed on an upper floor, with no lift, despite mobility problems.
Infestation	The presence of rodents and / or vermin
Damp and mould	The presence of damp and / or mould.
Poor hygiene	The practitioner has stated cleanliness to be an issue. Examples include blood and sick from other tenants preventing access to the bathroom.

¹ Housing Health and Safety Rating System Operating Guidance (Office of the Deputy Prime Minister, 2006) issued under s.9 Housing Act 2004.

² A microwave does not count as there are staples such as pasta which cannot be cooked in a microwave.

Overcrowding

Issue	Description
Overcrowded sleeping arrangements	<p>Properties where either:</p> <p>1) Two persons of opposite sexes who are not living together as husband and wife must sleep in the same room. Children under 10 are not counted and a living room is counted as a bedroom (i.e. the statutory “room standard” test is met³). For example, a mother and her 11 year old son must share one bed.</p> <p>OR:</p> <p>2) Where the room standard test is not met but the sleeping arrangements nevertheless constituted overcrowding - not by statute but by common sense. Examples included:</p> <ul style="list-style-type: none"> • A father and his seven and eight year sons must share one bed; • A mother and her two children (toddler and primary school child must share one bed; • A mother and two children (one school age and the other a few months old) must share one bed; • A mother, baby and two year old child must share one bed; • A mother must share a bed with her two sons (see Eva’s story).
Overcrowded shared facilities	<p>Overcrowding of shared facilities to the extent that there was a serious restriction on their use. There is not a statutory standard for overcrowding of shared facilities. Examples included:</p> <ul style="list-style-type: none"> • 13 people to one kitchen; • 8 families sharing one kitchen and one bathroom. <p>NB: To avoid duplication of categories, we have not included cases where 1) there were no facilities provided at all (see ‘physical suitability’), and 2) where access to shared facilities was hampered as a result of other tenants (see ‘other tenants’).</p>
Space	<p>General problems with space in the accommodation - used when 1) the practitioner stated that space was an issue, 2) when it was clear from the facts, or 3) when ‘sleeping arrangements’ was an issue. For example, a family of five that had to live in one bedroom⁴.</p>

Location

Issue	Description
Location as a problem	The practitioner has stated the family experienced problems with the location of their accommodation.

3 Section 325 of the Housing Act 1985

4 5E

Placed outside of borough	<p>A family was housed outside of the borough in which it had been living prior to being supported by section 17.</p> <p>In the cases where we did not have specific information on where families had been living prior to being accommodated by section 17, we assumed that they were living in the same borough as the borough that is supporting them. This will normally be the case because section 17(1) Children Act 1989 states that the local authority is under a duty ‘to safeguard and promote the welfare of children within their area who are in need’ (emphasis added). “Within their area” has been held by the Courts to mean physically present.⁵</p>
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Instability and temporary accommodation

Issue	Description
Bed and Breakfasts, hostels and hotels	<p>Accommodation that is not separate and self-contained premises and where more than one household shares one of a toilet, personal washing facilities or cooking facilities. This is the definition of B&Bs given in Article 2 Homelessness (Suitability of Accommodation) (England) Order 2003.⁶</p> <p>For the purposes of our study, we have extended this definition to hostels and hotels. In the report, we use the terms “B&B” or “B&B-style accommodation” to refer to bed and breakfasts, hostels and hotels.</p>
Uncertainty	<p>The family has faced circumstances where there has been some bad practice by the local authority which has engendered a situation of relatively extreme uncertainty.</p> <p>This issue goes to the communication of the local authority and the way in which it has dealt with the subject family. For example, did it give as much warning of an impending move as possible? Did it give as much information as possible? Did it do everything it could to keep the family informed?</p> <p>This included families that were told they would only be in a property for a short period of time but actually remained there for much longer, and families that were frequently moved around from property to property.</p>
Problems with other tenants	<p>The family co-habited a property with tenant(s) who either 1) abused substances or smoked in communal areas, 2) had behavioural or mental health problems, and / or 3) harassed or were intimidating towards the family.</p>

5 See R (Stewart) v Wandsworth LBC, Lambeth; LBC, Hammersmith & Fulham LBC [2001] EWHC 709 (Admin),(2001) 4 CCLR 446, Admin Ct; and R (AM) v Havering LBC [2015] EWHC 1004 (Admin).

6 SI 2003/3326

APPENDIX III

A summary of the case law around section 17

Children Act 1989

Section 17(1) imposes a duty on children’s services of local authorities to “safeguard and promote the welfare of children within their area who are in need; and 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”.

Who is a child in need?

There is no doubt that a child lacking accommodation will be a child in need: *R v Northavon District Council ex parte Smith*¹ and *R (G) v Barnet London Borough Council*.²

What services can be provided?

Section 17(6) states that the services provided “may include providing accommodation and giving assistance in kind, or, in cash”.

Recent litigation

The issues before the courts in recent years have been disputes over:

1. Which local authority should be providing services under s.17?
2. What should the local authority’s decision-making process be and what does it take for a local authority to decide that a family is destitute and needs supporting?
3. What is the scope of the restriction at section 54 and Schedule 3 Nationality Immigration and Asylum Act 2002?
4. What is the extent of the support available?
5. Is the support adequate?
6. Location of the support provided?

Each area of dispute will be briefly reviewed. It should be noted that the cases described underneath are brought in judicial review, whereby the claimant alleges an error of law in the local authority’s decision-making process. The Administrative Court does not determine any disputes of fact between the claimant and the local authority, simply whether or not the local authority understood and applied the law correctly.

1. Which local authority?

The test at s.17(1) Children Act 1989 is a very broad one: the local authority is under a duty ‘to safeguard and promote the welfare of children within their area who are *in need*’³. “Within their area” has been held by the Courts to mean physically present: *R (Stewart) v Wandsworth LBC*, *Lambeth LBC*, *Hammersmith & Fulham LBC*⁴; and *R (M) v Barking & Dagenham LBC & Westminster City Council*⁵. In Stewart, the children had been placed in accommodation under homelessness duties by Hammersmith & Fulham LBC. They lived in that accommodation in Lambeth and attended school in Wandsworth. They were physically present in both of those local authorities. They were not physically present in Hammersmith & Fulham LBC’s district.

If there is any doubt as to whether a child is ‘within the area’ of one or more local authorities, the local authorities should co-operate, rather than pass the child ‘from pillar to post’ whilst the authorities argue about where the

1 [1994] 2 AC 402, HL

2 [2003] UKHL 57, [2004] 2 AC 208, HL

3 Emphasis added.

4 [2001] EWHC 709 (Admin), (2001) 4 CCLR 446, Admin Ct.

5 [2002] EWHC 2427 (Admin), (2003) 6 CCLR 87, Admin Ct.

child comes from: *R (AM) v Havering LBC and Tower Hamlets LBC*⁶. Needs should be met first and a redistribution of resources should, if necessary, take place afterwards: *R (M) v Barking & Dagenham LBC & Westminster City Council*⁷. By s.11 Children Act 2004, local authorities should co-operate with each other and with other statutory agencies to safeguard and promote children's welfare. Once a child has been assessed as needing services, those services can be provided by the local authority which assessed him or her even if the child has moved out of the area: *R (J) v Worcestershire County Council*.⁸

2. What should the local authority's decision-making process be and how should a local authority assess whether a child is in need?

The first issue for the local authority is whether the child is 'in need' (s.17(1)). As already set out above, a child could be 'in need' of accommodation, or of financial support or a reasonable standard of health or development. The identification of a child in need engages a number of different value judgments, to be determined by the local authority asking a range of questions. The Courts have been clear that these evaluative questions are for the local authority to ask: *R (A) v Croydon LBC*⁹ see analysis by Cobb J in *R (AM) v Havering LBC and Tower Hamlets LBC*¹⁰. As noted in the main body of this report, there is comprehensive guidance as to the contents of an assessment published by HM Government: Working Together to safeguard children.¹¹

In the case of *R (MN) v Hackney LBC*¹², the Administrative Court found that Hackney's decision-making did not contain any errors of law when it had decided that a family who claimed to be destitute were not in fact destitute and so the children were not in need. The family had been present in the UK, without permission to reside in the UK, or claim welfare benefits, or work, for about ten years. During that time they had lived with various relatives or friends who had provided support, sometimes for help with child-care or other domestic help. The father had worked on a street stall from time to time. They lived in overcrowded accommodation, which they were being asked to leave. The parents failed to respond to requests for details of the individuals who had helped them in the past. The local authority concluded that the failure to respond to those requests meant that it could not conclude that the family was destitute. In *R (N) v Newham LBC*¹³, a similar decision was held not to contain any errors of law by the Administrative Court.

When the local authority is considering whether or not a child is 'in need', it cannot take into account that support under s.4 Immigration and Asylum Act 1999 might be available to the family: *R (VC) v Newcastle City Council*¹⁴. However, if the family falls within the definition of 'asylum-seekers' at s 94 Immigration & Asylum Act 1999, and is destitute, it will be entitled to support under Part 6 Immigration & Asylum Act 1999 and can be referred to the Home Office for that support.

Practitioners report that local authorities will sometimes respond to requests for s.17 assistance by indicating that their powers to provide voluntary care to the child alone, under s.20 Children Act 1989, are available. In *R (PK) v Harrow LBC*¹⁵, the Administrative Court held that a decision to offer accommodation to two children, and not to their single parent mother, had failed to take into account the children's rights under Article 8 and was unlawful.

3. What is the scope of the restriction at section 54 and Schedule 3 Nationality Immigration and Asylum Act 2002?

By s.54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002, there is a restriction on providing s.17 support to adults who are one of:

- A national of another EEA state;
- A refugee given refugee status by another EEA state;
- Asylum-seekers whose claims for asylum have failed and who have failed to co-operate with removal directions;
- Persons who are not asylum-seekers and are unlawfully present in the UK; and
- Failed asylum-seekers with dependent children where those families have been certified by the Secretary of State as not having taken reasonable steps to leave the UK.

6 [2015] EWHC 1004 (Admin)
 7 [2002] EWHC 2427 (Admin), (2003) 6 CCLR 87, Admin Ct.
 8 [2014] EWCA Civ 1518, [2015] 1 WLR 2825, CA
 9 [2009] UKSC 8, [2009] 1 WLR 2557, SC
 10 [2015] EWHC 1004 (Admin)
 11 HM Government, March 2015
 12 [2013] EWHC 1205 (Admin)
 13 [2013] EWHC 2475 (Admin), [2014] 1 FCR 1, Admin Ct.
 14 [2011] EWHC 2673 (Admin), [2012] 2 All ER 227, Admin Ct.
 15 [2014] EWHC 584 (Admin)

People in the third and fifth categories will be referred to the Home Office which can make arrangements for them to receive support under s.4 Immigration and Asylum Act 1999 pending removal from the UK.

Adults in the first, second or fourth categories who have dependent children (as they always will, if they are applying for s.17 assistance) should only receive support limited to temporary accommodation and financial assistance to travel to their countries of origin. However, full support must be provided if a refusal of support, or limited support, would interfere with rights under the European Convention of Human Rights (ECHR) or under European Union law. One form of interference with human rights would be if the result of a child being assisted to travel to, and live in, another country meant that she would no longer have contact with her father, because the father would remain in the UK: *R (M) v Islington LBC* (breach of the child's right to respect for her family life, Article 8 ECHR)¹⁶.

Another form of interference with human rights would occur where an adult has an outstanding application with the Home Office for leave to remain in the UK, and that application would have to be abandoned if the adult had to return to his or her country of origin: *R (Clue) v Birmingham City Council*¹⁷. If there is such an outstanding application, and provided the application is not hopeless or abusive, then the family should be supported under s.17 until determination of the application. If the application is successful, the adult will be entitled to work and claim mainstream welfare benefits, and so the child will no longer be in need of s.17 assistance. In *R (KA) v Essex County Council*¹⁸, the same analysis was applied to a family whose applications for leave had been refused, but were waiting for removal directions and intended to appeal against those removal directions. There was a procedural right to bring that appeal, and that route of appeal would not be available if the family had returned to its country of origin. It follows that most foreign nationals assisted under s.17 Children Act 1989 have outstanding applications for leave to remain, which have not yet been determined.

4. What is the extent of the support available?

By s.17(1)(b), the local authority's duty is "to promote the upbringing of such children by their families" so far as is consistent with the duty to safeguard and promote the welfare of children in need. In other words, support and accommodation should be provided for the child and also for his or her family, so that the child can be brought up by and in his or her family rather than in the local authority's care. Generally, this means that the support and accommodation is also provided to the child's parents. An attempt by a young adult to argue that the welfare of her two minor cousins required that she be provided with support was unsuccessful: *R (MK) v Barking & Dagenham LBC*¹⁹. There remains an unanswered question: whether the welfare of the minor child requires that any adult siblings (who are not in a position of caring for the minor child) also be supported under s.17, so as not to interfere with the minor child's right to respect for his or her family life (Article 8).

5. Is the support adequate?

This is the current developing area of litigation. Different forms of subsistence support generally available to people in the UK who are unable to support themselves financially are as follows:

1. Mainstream welfare benefits: Income Support or other means-tested benefits, plus Housing Benefit and Child Benefit. The total of the support might be subject to the benefit cap. In April 2015, a couple with two children would receive around £300 per week plus housing benefit.
2. Support provided by the Home Office under Part 6 Immigration & Asylum Act 1999 to asylum-seekers for 'essential living needs': housing provided rent-free plus set rates for parents, children and additional amounts for any pregnant mothers, babies and children under three years old. A couple with two children (aged between 4 and 16 years old) would receive housing plus £174.78 per week.
3. Support provided under s.17 to people who cannot claim mainstream welfare benefits and are not asylum-seekers but have children in need: no published rates or guidance.

Asylum support: related litigation

In relation to the support provided to asylum-seekers, the Administrative Court held in *R (Refugee Action) v Secretary of State for the Home Department*²⁰ that the levels of support for 2013/2014 had failed to take into account that essential living needs for a family included:

16 [2004] EWCA Civ 235, [2005] 1 WLR 884, CA

17 [2010] EWCA Civ 460, [2011] 1 WLR 99, CA

18 [2013] EWHC 43 (Admin), [2013] 1 WLR 1163, Admin Ct. The local authority's subsequent appeal to the Court of Appeal was dismissed as the issue had become academic: [2013] EWCA Civ 1261, [2013] 1 WLR 2882, CA

19 [2013] EWHC 3486 (Admin)

20 [2014] EWHC 1033 (Admin)

- (a) essential household goods such as washing powder, cleaning materials and disinfectant;
- (b) nappies, formula milk and other special requirements of new mothers, babies and very young children;
- (c) non-prescription medication;
- (d) the opportunity to maintain inter-personal relationships and a minimum level of participation in social, cultural and religious life.

The Secretary of State was also required to consider whether other categories constituted essential living needs, those categories being:

- (a) travel by public transport to attend appointments with legal advisors where it was not covered by legal aid;
- (b) telephone calls to maintain contact with families and legal representatives and for necessary communication to progress asylum claims;
- (c) writing materials where necessary for communication and for the education of children.

The amount of section 17 support

The issue was first considered by the Administrative Court in *R (PO) v Newham LBC*²¹. The council was supporting a family consisting of a single mother and three children aged 12, seven and three years' old. The council paid for the accommodation and utilities, £50 a week subsistence and an oyster card with credit for the bus journeys to and from school. The £50 a week was described as coming from "set rates" that the council had decided should be paid to families who had no access to mainstream welfare benefits (and it produced a table showing the different set rates paid for different families). In evidence, the council justified those "set rates" as based on child benefit levels. The Administrative Court decided that it was appropriate to have set rates, but that payment of amount equivalent to child benefit on its own was not lawful. Child benefit is a non-means tested benefit paid in addition to a parent's earnings, or means-tested welfare benefits. It is not designed to be the sole means of meeting a child's subsistence needs. The Court noted that the Secretary of State's payments to asylum-seekers, to cover essential living needs only, were substantially higher than the "set rates" paid by Newham under s.17. In addition, the council's obligation under s.17 was to ensure that the adults of the family did not starve, yet there was no rational explanation for the amount in the set rates that seemed to be allocated for the adults to live off. The Court noted that it was not appropriate to compare the rates directly with those payable under income support, since there were certain payments (such as furniture or utilities) that were met by the council under s.17 but would be paid by the claimant receiving income support. It was appropriate to have a policy, rather than assess each family individually. The council was required to reconsider what standard rates would provide an appropriate level of financial support to meet the normal subsistence needs of destitute families.

In *R (Mensah) v Salford City Council*²², the judicial review claim was brought by two "Zambrano" carers who were each single parents, supported with their children under s.17. The council paid for accommodation, utility bills and council tax and provided subsistence based on the Secretary of State's rates for s.4 Immigration & Asylum Act 1999 support. The policy had some flexibility, for example for the cost of purchasing school uniforms. There was no error of law in the council's approach.

6. Location of accommodation provided?

In *R (C) v Southwark LBC*²³, the Administrative Court held that the council had not acted unlawfully in relation to the standard and location of the accommodation provided under s.17. The claimant was a single mother with four children, supported under s.17. The accommodation first provided was bed and breakfast accommodation, which the family had occupied for eight months. Over the next two years, they had been moved to various addresses, the last of which was in Rochdale, Lancashire. The mother challenged the amount previously paid for subsistence, arguing that the amounts had been substantially increased which suggested that the earlier amounts were inadequate and unlawful. She also argued that there should have been an assessment of the children's needs before the accommodation was provided in Rochdale and that eight months' occupation of bed and breakfast accommodation was unlawful. The Court decided that there was no error of law. The process of considering what amounts would meet the family's need for subsistence had not contained errors, and the recent increase was explained by changes in circumstances. Placing the family in bed and breakfast for eight months was regrettable, but not unlawful. The move to Rochdale did not require a separate assessment of the children's needs, since the mother had consented to it.

²¹ [2014] EWHC 2561 (Admin)

²² [2014] EWHC 3537 (Admin)

²³ [2014] EWHC 3983 (Admin)

APPENDIX IV

Enforcement powers and remedies regarding the condition of property

Remedies available to individuals

- Claims for damages for any personal injury can be brought under Occupiers' Liability Act 1957 and/or Defective Premises Act 1972.
- Claims for breach of contract (if there is a contractual relationship between the occupier and the owner) can be brought in respect of any express repairing obligations in the tenancy or licence and the repairing term implied by section 11 Landlord & Tenant Act 1985.
- If a local authority has a contractual relationship with the owner of the property, the contract should include repairing obligations and the local authority could bring a claim if there were breach.

Remedies available to local authorities (in area in which accommodation is located)

- Criminal prosecution of a landlord if premises constitute a statutory nuisance - sections 79 – 82 Environmental Protection Act 1990.
- Compelling a landlord to resolve poor housing conditions where the state of the premises incorporates Category 1 or 2 hazards (as assessed under the Housing Health and Safety Rating System) - Housing Act 2004.
- Hazard awareness notices, improvement notices, prohibition orders and demolition orders. Where a property constitutes an immediate risk, the local authority can enter the premises and/or serve an emergency prohibition order on the owner. Failure to comply with any of these notices constitutes a criminal offence.
- Criminal prosecution of landlord and / or rent repayment orders if a "large"¹ houses in multiple occupation are not licensed - Housing Act 2004. Local authorities are permitted to require licenses in selected areas.
- Criminal prosecution of a landlord permitting statutory overcrowding as defined in sections 325 – 326 Housing Act 1985: section 331 Housing Act 1985

¹ Defined as properties of three storeys or more occupied by five or more people who comprise more than one household, and where households share bathroom, toilet or cooking facilities

APPENDIX V

IN THE MATTER OF
IN COUNTY COURT

Case No:

Between

[Claimant]

and

[Defendant]

INSPECTION REPORT

ADDRESS OF PREMISES:

[REDACTED] Hotel B&B,
[REDACTED]

TENANT:

[REDACTED]

LANDLORD:

Placement by London Borough of [REDACTED].

DATE OF INSPECTION:

[REDACTED].

WEATHER CONDITIONS:

Dry / Warm.

OCCUPANCY:

[REDACTED]

(FM: 8 yoa; 15 Months; 8 Weeks).

COMMENCEMENT OF TENANCY:

[REDACTED]

DESCRIPTION OF PROPERTY

The hotel has been formed by the lateral interconnection of 4 No. Victorian two-storey properties (see Photograph 1). Windows are sealed double glazed units. External walls are solid brickwork with painted render finish. Room 30 is at ground floor front with an adjacent shared bathroom and two other lettings.

Accommodation Comprises:

1 Room for exclusive use,
Shared use of bathroom and kitchen facilities.

Report Prepared By:
M Cairns MCIEH
Environmental Health Consultant

Instructed by:
H. M. C.
c/o Hackney Law Centre
8 Lower Clapton Road
LONDON E5 0PD

My Ref: [REDACTED]

Sols Ref: [REDACTED]

Section One
IN THE MATTER OF
IN COUNTY COURT

Case No:

Between

[Claimant]

and

[Defendant]

1.00 GENERAL

1.01 INSTRUCTIONS

I am instructed by H.M.C. acting on behalf of [REDACTED]. I was asked to inspect and to produce a conditions report assessing conditions against basic public health and housing standards. Defects and deficiencies found are set out in Section 2 and these are discussed and assessed in Comments and Conclusions in Sections 3 and 4. Photographs taken on this visit are attached in Section 5.

1.02 DISCLOSURE OF INTERESTS / DUTIES TO THE COURT etc

I have no personal or professional connection with other parties, witnesses or advisers, nor actual or potential interests that might adversely or potentially affect my independence. I understand that my overriding duty is to the Court and not to any of the parties in the case and I believe I have complied with that duty. I am aware of the requirements of Part 35 and practice direction 35. The CJC protocol on instruction of experts and the practice direction on pre-action conduct.

1.03 LIMITATIONS OF INSPECTION

This was not a full structural survey but a detailed inspection of all reasonably accessible parts of the property. Furniture and personal belongings prevented a detailed inspection of all elements within the building. No destructive surveying techniques were used. A hand held electronic moisture meter (Protimeter) was used for taking damp readings where appropriate. Unless otherwise stated, no specialist tests were applied to flues, drains or to plumbing services or to gas, heating or electrical installations.

1.04 TERMS USED

Unless otherwise stated, references to the left and right externally are taken from the outside of the building facing the relevant external elevation. Inside the dwelling references to left and right are taken from the inside facing the relevant structure or main external elevation as appropriate. Measurements are approximate. The abbreviation WME refers 'wood moisture equivalent' which is a reading between 0-100 on the Protimeter and relates dampness in other materials to % moisture in wood.

Report Prepared By:
M Cairns MCIEH
Environmental Health Consultant

Instructed by:
H. M. C.
c/o Hackney Law Centre
8 Lower Clapton Road
LONDON E5 0PD

My Ref: [REDACTED]

Sols Ref: [REDACTED]

Section One

IN THE MATTER OF
IN COUNTY COURT

Case No:

Between

[Claimant]

and

[Defendant]

1.05 QUALIFICATIONS AND EXPERIENCE

I am a member of the Chartered Institute of Environmental Health. I entered the profession in 1967 and qualified in 1971 and I have specialised in the field of housing since that date. I have worked for Local and Central Government agencies and in the voluntary sector. Since 1986 I have been engaged as an Environmental Health Consultant. I am currently the Chairman [REDACTED]

I have written and lectured extensively on housing issues. I am also involved in related teaching and research. I also qualified as a National Home Energy Rating Surveyor. In addition I am a certified trainer for the DCLG 'Housing Health & Safety Rating System'.

I have been engaged as a consultant by various Local Authorities and Housing Associations Central Government Agencies and a range of non-statutory housing organisations and legal/advice agencies. I am an experienced litigation expert. I have also attended training courses on the new rules for experts and the role and responsibilities of the single joint expert.

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IN THE MATTER OF
IN COUNTY COURT

Case No:

Between

[Claimant]

and

[Defendant]

Section Two

INSPECTION NOTES

ROOM 30 [REDACTED] HOTEL, [REDACTED]

2.00 INSPECTION NOTES

ROOM 30 (FRONT ROOM – GROUND FLOOR)

Fixtures & Fittings:

- 1 No. Double bed.
- 1 No. Single bed (no Cot).
- Two-drawer chest of drawers.
- Freestanding wardrobe.
- 2 No. Bedside tables.
- 2 No. radiators.
- Trickle vent (ajar).
- 2 No. double electric sockets.

- 2.01 No automatic fire detector provision.
- 2.02 Damp to skirtings and wall over at the front left hand side corner of the bay window unit – wallpaper detaching in this area. This appears to be due to penetrating or rising damp.
- 2.03 There is a patch of mould growth over the skirting at the front right hand side corner, with further spotting of mould growth to the window cill. Appears to be condensation induced.
- 2.04 There is broken plastic to electric trunking to the edge of the floor at the right hand side of the bay with sharp edges accessible to a crawling infant.
- 2.05 Plain glazed transom over the room door (inadequate fire compartmentalisation).
- 2.06 Lightweight room door. The door lacks a self-closer and smoke seals (fire safety compromised).
- 2.07 Dilapidated condition of bedside tables.

Note (i) *The tenant reports regularly finding ants in the room (not evident at the time of inspection).*

(ii) *The tenant is not aware of any childrens play space inside or outside the hotel.*

Cont/d...

IN COUNTY COURT

Between

[Claimant]

and

[Defendant]

INTERNAL BATHROOM (No Window)

Facilities: Bath with electric shower over.
Wash hand basin with hot and cold water supplies.
WC and low level cistern.
Radiator.
Extractor fan.

- 2.09 Inoperative extractor fan – no other ventilation possibilities.
- 2.10 Inoperative shower.
- 2.11 Scaled WC bowl.
- 2.12 No cold water available at the wash hand basin cold tap.
- 2.13 Dated amenities – below ‘Decent Homes Standard’.
- 2.14 No bath plug – the bath is therefore not readily usable.
- 2.15 The light fitting is not vapour sealed.

**COMMON PARTS
LOBBY**

- 2.16 The fire door was wedged open.
- 2.17 No smoke seals to the lobby door.
- 2.18 No automatic fire detector provision.

MAIN HALL

- 2.19 No automatic fire detector provision.
- 2.20 A Yale lock only to the front entrance door (security deficiency).

KITCHEN

Note: *The kitchen is in an adjoining building and requires [REDACTED] and her children to leave their accommodation, and the building in which it is situated, to use the kitchen facilities. [REDACTED] estimates the kitchen is used by approximately 13 or 14 lettings, plus staff. Lettings may have multiple occupiers.*

Cont/d...

Facilities: 4-Ring gas hob.
Stainless steel sink with hot and cold water supplies.

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[Claimant]

and

[Defendant]

*1 No. microwave oven.
Electric kettle.
Freestanding electric cooker with 4 No. hot plates.
Fridge / Freezer.
4 No. single wall cupboards and 5 No. base units.
Approximately 2.5 metres of worktop.
Eating area in an adjoining room.*

- 2.21 The electric cooker lacks an abutting worktop (safety hazard).
- 2.22 An extension lead connection is hanging from the plug to the microwave.
- 2.23 The rear exit door to the rear yard is part rotted at the base and lacks a weatherboard.
- 2.24 No fire blanket provision. There is a small fire extinguisher (not on a fixing bracket) being used to prop open the rear door.
- 2.25 Flaking paintwork to the base of the end wall (no skirting fitted).

Section Three

3.00 COMMENTS

- 3.01 This is highly unsatisfactory provision for this household. The inspection has revealed a number of serious shortcomings plus disrepair items and maintenance deficiencies. As a result of these defects and deficiencies the occupiers are exposed to a number of serious risks to their health and safety. Living conditions will also be a source of major inconvenience, stress and discomfort.
- 3.02 The single room available for exclusive use is severely overcrowded with 4 No. occupiers. Provision lacks a cot for the newborn child. Drinking water supplies are in the kitchen of the next building. (The fact that accessing the kitchen involves going outside in all weathers to an adjoining building is itself a major shortcoming).
- 3.03 The room has significant problems of dampness and mould growth, including examples of rising or penetrating damp and condensation. The latter I attribute to the overcrowding of the room, and cold / uninsulated solid brick external walls.
- 3.04 The room lacks a suitable fire-resisting door and has a glazed transom over, which does not provide fire compartmentalization. There is no fire detector in the room and provision in the other lettings is presumed likely to be unsatisfactory. There are sharp edges to broken electric conduit trunking and bedside tables are dilapidated. There is insufficient storage space for the tenant's possessions.

(**Note:** Use of a recessed area off has apparently been denied to this household—probably because a borrowed light glazing panel in that area is in the communal bathroom's partition wall).

**IN THE MATTER OF
IN COUNTY COURT**

Case No:

Between

[Claimant]

and

[Defendant]

-
- 3.05 [REDACTED] described the difficulty the arrangements present for her care of her children. Two other lettings off the same lobby are apparently occupied by 4 No, adult males. She feels understandable anxiety at leaving any children in the room – e.g. to use the bathroom or kitchen. Generally she expresses feeling unease at the changing population of strangers in the property and the security of her daughters. The room door is also of lightweight construction and could be readily forced.
- 3.06 The shared bathroom has serious defects and deficiencies and also represents inadequate provision for 7 No. occupiers (the usual maximum ratio of shared facilities allowed by Local Authorities is 1 bathroom for 5 persons). The shower is inoperative, the bath cannot be used, the cold water supply to the wash hand basin is inoperative. The suite of amenities is very dated and the WC is scaled. The only ventilation provision to this internal room does not work.
- 3.07 The kitchen in the adjoining building is seriously inadequate for the numbers using it. Again Local Authorities usually require 1 No. set of kitchen facilities for every 5 No. occupiers. Here numbers appear to be massively in excess of that number. In addition the electric cooker stands isolated and lacks an abutting worktop, increasing the risk of scald and burn accidents. A microwave oven is plugged into a temporary extension lead and the weight may cause disconnection of wiring.
- 3.08 Fire safety arrangements here generally appear to be well below an acceptable standard and the Fire Authority should be asked to inspect to check for compliance with statutory Hotel, Bed & breakfast and House in Multiple Occupation standards.

Section Four

4.00 CONCLUSIONS

- 4.01 In my opinion this accommodation falls far short of acceptable provision for this household. I am very concerned for the health, safety and wellbeing of the occupiers in such a situation and urgent re-housing is recommended. The room letting is seriously overcrowded and the common bathroom and kitchen facilities wholly inadequate for the numbers using them. These shortcomings are compounded by the disrepair items and maintenance deficiencies described in Section Two. The security arrangements are seriously unsatisfactory.

Cont/d...

- 4.02 **HOUSING HEALTH & SAFETY RATING SYSTEM (HHSRS) –
PART 1 HOUSING ACT 2004**

IN THE MATTER OF
IN COUNTY COURT

Case No:

Between

[Claimant]

and

[Defendant]

In my opinion the schedule includes matters which constitute an increased threat to occupiers' health and/or safety and which would therefore be actionable by the Local Authority under the HHSRS. In particular the hazards of:-

- Crowding & space.
- Fire (Category 1).
- Dampness and mould growth.
- Personal hygiene, sanitation and drainage.
- Food safety.
- Flames and hot surfaces.
- Security against intruders.

4.03 **STATUTORY NUISANCE**

It appears likely that without repair the damp and mould growth problems may well constitute conditions prejudicial to health and so a statutory nuisance in winter months. Similarly, blocked drains would also come within the ambit of a statutory nuisance.

4.04 **MULTI OCCUPANCY**

The property falls well below an acceptable standard for multi-occupation with inadequate personal washing, toilet and kitchen facilities, poor standards of maintenance and fire safety shortcomings. (The Local Authority should be asked if the Hotel has the necessary fire safety arrangements for Hotel and Bed & Breakfast use and whether it recognises any part of the building as non-hotel, house in multiple occupation status and if so which parts). (**Note:** I have attached a copy of [REDACTED] HMO Standards for information purposes).

STATEMENT OF TRUTH

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on matters to which they refer.

Signed.....
M CAIRNS MCIEH

Date: 22nd June 2015

Section Five

[REDACTED]

[REDACTED]

**IN THE MATTER OF
IN COUNTY COURT**

Case No:

Between

[Claimant]

and

[Defendant]

APPENDIX I



Ref: CT

Section One

1.00 GENERAL

1.01 INSTRUCTIONS

I am instructed by Hackney Migrant Centre, on behalf of [REDACTED]. I was asked to inspect and to produce a conditions report assessing conditions against basic public health and housing standards. Defects and deficiencies found are set out in Section 2 and these are discussed and assessed in Comments and Conclusions in Sections 3 and 4. Photographs taken on this visit are attached in Section 5.

DISCLOSURE OF INTERESTS / DUTIES TO THE COURT etc.

1.02

I have no personal or professional connection with other parties, witnesses or advisers, nor actual or potential interests that might adversely or potentially affect my independence. I understand that my overriding duty is to the Court and not to any of the parties in the case and I believe I have complied with that duty. I am aware of the requirements of Part 35 and practice direction 35. The CJC protocol on instruction of experts and the practice direction on pre-action conduct.

LIMITATIONS OF INSPECTION

1.03

This was not a full structural survey but a detailed inspection of all reasonably accessible parts of the property. Furniture and personal belongings prevented a detailed inspection of all elements within the building. No destructive surveying techniques were used. A hand held electronic moisture meter (Protimeter) was used for taking damp readings where appropriate. Unless otherwise stated, no specialist tests were applied to flues, drains or to plumbing services or to gas, heating or electrical installations.

TERMS USED

1.04

Unless otherwise stated, references to the left and right externally are taken from the outside of the building facing the relevant external elevation. Inside the dwelling references to left and right are taken from the inside facing the relevant structure or main external elevation as appropriate. Measurements are approximate. The abbreviation WME refers 'wood moisture equivalent' which is a reading between 0-100 on the Protimeter and relates dampness in other materials to % moisture in wood.

QUALIFICATIONS AND EXPERIENCE

1.05

I am a member of the Chartered Institute of Environmental Health. I entered the profession in 1967 and qualified in 1971 and I have specialised in the field of housing since that date. I have worked for Local and Central Government agencies and in the voluntary sector. Since 1986 I have been engaged as an Environmental Health Consultant. I am currently the Chairman [REDACTED]

IN THE MATTER OF
IN THE COUNTY COURT
BETWEEN

CASE No.

[CLAIMANT]

AND

[DEFENDANT]

[REDACTED]

I have written and lectured extensively on housing issues. I am also involved in related teaching and research. I also qualified as a National Home Energy Rating Surveyor. In addition I am a certified trainer for the DCLG 'Housing Health & Safety Rating System'.

I have been engaged as a consultant by various Local Authorities and Housing Associations Central Government Agencies and a range of non-statutory housing organisations and legal/advice agencies. I am an experienced litigation expert. I have also attended training courses on the new rules for experts and the role and responsibilities of the single joint expert.

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I am also involved in the preparation of related schedules of remedial and improvement work and/or other policy documents. From time to time I have been involved in the investigation of deaths and injuries to occupiers caused by housing defects.

Section Two

INSPECTION NOTES

Address: [REDACTED]

2.00 INSPECTION NOTES

ROOM 2

GENERAL

Note: [REDACTED] advised me that Room 1 is currently void but had been occupied until very recently. Room 3 is apparently occupied by a single man whom she described as difficult and 'scary', claiming he is prone to shouting, banging doors and leaving the bathroom in a filthy state. She is concerned about his mental health and has anxieties over his behaviour. None of these details could be verified.

ROOM 2

DESCRIPTION

- 2.01 The room is rectangular plan and is approximately 121 sq. ft. (11.241 sq. m) in area. It has been formed in the roof space with sloping ceilings at both ends of the room, reducing the usable space by about 5 ft. (1.5m) to approx. 21 sq. ft. (2m²). Stored goods restricted access for detailed assessment,
- 2.02 The room is dominated by two beds, 1 double and a large single. Other furniture includes a large fridge freezer, a dining table a chest of drawers, a small wardrobe and miscellaneous storage.
- 2.03 The room is provided with an automatic fire detector although the system was not tested and the maintenance history is not known.

DEFECTS AND DEFICIENCIES

- 2.04 The room's fire door is missing smoke seals and a working self-closer.
- 2.05 Damp and mould affected plasterwork to the flank wall behind the beds and storage - appears to be condensation induced. Approx. 2m² affected.
- 2.06 The side hung window's catch is loose and does not engage. The tenant has secured it with a rope as it would otherwise fall fully open. As the sill is at the children's bed height, this constitutes a serious safety hazard. A fall out of this window would be onto the back addition roof slope with a two storey fall to the ground from the edge of that roof.
- 2.07 The adjacent second window's opening element is a top hung casement in the top section. It is not fitted with a child safety restrictor to limit initial opening position to a maximum of 100 mm. Again, because the abutting bed is just below cill height, this window too poses an actual child safety hazard.
- 2.08 There is a patch of penetrating damp (rain ingress) staining to the sloping ceiling at the flank end of the room. This tested dry but should be monitored after rain. (The patch is approx. 450mm in diameter).
- 2.09 Time worn and dilapidated provided double bed and mattress. The mattress is stained and split. The bed base slats are loose. The smaller bed's mattress is also dated and time worn.
- 2.10 Collision hazard from intruding sloping ceilings near the room doorway.

Note: [REDACTED] advised me that she had bought carpeting as the room had had bare floors on letting. I gather she has also provided other furniture in the room (except the beds).

(ii) *The space and water heating is described as unreliable. The boiler in the kitchen is also accessible by others but was working at the time of inspection.*

(iii) *The children have no play room or secure external area for their use.*

BATHROOM

Facilities: Bath with hot and cold water supplies.

Wash hand basin with mixer tap.

WC and low level cistern.

Extractor fan.

Note: *Internal room - no window.*

2.11 Inoperative extractor fan. As an internal room there are no other alternative ventilation possibilities. (Condensation damp risk factor).

2.12 Inadequate clearance to the sloping ceiling over the WC positioned against the flank wall - approx. 90cm only. (Collision hazard).

2.13 Dirty floor to the rear of the WC and the wash hand basin pedestal.

2.14 1 cracked ceramic floor tile (laceration hazard).

2.15 Vertical crack in the ceiling plasterwork.

Note: *The tenant advised that the bathroom is often left in a filthy condition by the occupant of Room 3.*

KITCHEN

Facilities:

1 x stainless steel sink with hot and cold water supplies.

1 x fridge freezer

1 x electric kettle

1 x microwave oven.

1 x electric hob and oven.

1 x Velux window.

Automatic fire detector fitted (although the system was not tested and the maintenance history is not known).

'Valliant' gas boiler (appears dated - specialist report recommended).

Defects and Deficiencies

2.16 Dirty and stained boarded timber floor. The floor lacks an impervious/readily cleansable finish.

2.17

2 inoperative hob rings and inoperative oven. (The oven is too greasy encrusted and unhygienic for use).

2.18

Dilapidated sink base. Loose door and missing kick plate to the same.

2.19

Dirty condition of the fridge freezer.

2.20

Fire door wedged open.

2.21

Poor ventilation arrangements - inoperative cooker hood and no extract ventilation. (Condensation risk factor).

2.22

Failed seal to the Velux window - mould growth to the inner glazing.

2.23

No fire blanket provision.

2.24

No CO₂ fire extinguisher provision.

2.25

Note:

No washing machine provision.

Provision is inadequate for more than 5 persons (up to 14 persons are said to have shared until recently).

LANDING

2.26

Dislodged automatic fire detector. The unit has been sealed with a plastic bag. (Fire safety compromised).

COMMON PARTS

2.27

Missing plunger to the delayed action light switch on the stairway.

2.28

A bicycle and a buggy obstruct the means of escape at ground floor.

2.29

No landing or stair carpeting. (Noise disturbance likely).

2.30

Damp stained ceiling plasterwork to the ground floor hall.

OTHER

2.31

No CP12 seen (statutory annual gas safety report).

2.32

I recommend that test and maintenance records for the fire alarm system are checked.

2.33

No call buzzer to Room 2.

Section Three

3.00 **COMMENTS**

- 3.01 Although the exterior envelope of the building appears sound and well maintained and the interior appears to have been refurbished in the fairly recent past, there are significant problems with the accommodation. The inspection has revealed a range of disrepair items, maintenance deficiencies and design shortcomings.
- 3.02 All the family members have just one room for their exclusive use, and shared use of cooking, personal and washing and toilet facilities. The room is crowded with provisions and furniture with little useable space. [REDACTED] HMO standards for room sizes in Appendix 1 describe provision only in terms of 'single' and 'double' bedrooms - no three person bedrooms are described. Using the [REDACTED] standards, it appears to me that provision here is 'bedsit' type accommodation which describes the minimum acceptable double room size as 15m² - much larger than the usable space in this room. Even under the heading of 'Hostels', the [REDACTED] standards would require floor areas of 18.5m² for 'triple bedrooms'. (NB. I saw nothing in the property suggesting that the provision here was a hotel or bed and breakfast, or was anything other than a house in multiple occupation. In addition, the [REDACTED] Schedule defines hostel type accommodation as "Generally, (but not exclusively), these will be for temporary accommodation purposes". I query whether a year is such crowded conditions constitutes acceptable temporary accommodation). The room also has restricted head room in parts due to sloping ceilings. There is also no suitable alternative space for the children to safely play in the house or the outside areas.
- 3.03 I was concerned to be advised that, until very recently, the common kitchen and bathroom were shared by up to 14 individuals. The size of those rooms and the number of amenities and fittings and storage are wholly inadequate for such a number. Typical requirements of Local Authority Environmental Health Departments would not consider the facilities could be shared by more than 5 persons. (See again the [REDACTED] Standards in Appendix 1). Compounding the discomfort and impracticality of such under provision are the serious defects and deficiencies with both of those rooms.
- 3.04 The kitchen is in an unhygienic condition with dirty and stained timber floors and dilapidated fitted units, compromising maintenance of hygiene. The lack of suitable ventilation will make the room humid and uncomfortable in use - particularly during colder and wet weather when the only openable window is a Velux in the ceiling. The only cooking provision is in disrepair with two failed hobs, and the other is in an extremely unhygienic condition. There is no washing machine or clothes drying provision - a major shortcoming in family housing.

- 3.05 Fire safety is compromised by the lack of a self-closer and smoke seals on the Room 2 door, and the loose and sealed automatic fire detector on the landing. Other room doors should also be checked. The cramped, poorly ventilated kitchen has resulted in users wedging open the kitchen door for ventilation. Fire safety arrangements in the other flats too have a bearing on the safety of Flat 5's residents and should be checked.
- 3.06 The bathroom's only ventilation possibility, a ceiling mounted extractor fan, is inoperative. All steam will thus migrate to other rooms to raise humidities there and where it may form as condensation. Condensation mould growth is badly affecting the external wall of Room 2.
- 3.07 I am very concerned about the disrepair to the room's window and the lack of restrictors to both opening sashes. The crowding of the room means that beds below windows make both windows readily accessible by children. With little floor space, children can be expected to play on the beds.
- 3.08 [REDACTED] raises concerns and anxiety about the occupier of Room 3 and the Local Authority should be asked to urgently investigate this complaint. The reported behaviour of that occupier would, if confirmed, add considerably to the stress of this already highly unsatisfactory and unsuitable accommodation. Similarly, any new user of Room 1 should be limited to a maximum of 1 person to maintain the maximum ratio of persons to amenities.
- 3.09 Given the defects and deficiencies found in this 'flat', it would be prudent to inspect all other rooms and areas in the building. Of particular concern would be the adequacy of fire safety arrangements and in particular the maintainance and adequacy of the means of escape and fire alarm systems. Disrepair and overcrowding are also risk factors for fire safety.
- 3.10 Generally there appears to be inadequate management of cleaning and maintenance. The provided beds in Room 2 require replacement. The initial furnishing of the room seems to have been inadequate.

Section Four

4.00 CONCLUSIONS

- 4.01 This is unsatisfactory and unsuitable accommodation for this household. The reasons for this assessment are best discussed under various standards. The accommodation is an HMO (house in multiple occupation) for the purposes of the Housing Act 2004. Flats that are in multiple occupation fall to be designated as an HMO (s254(3)). Without access to

other parts of the building, it is not possible to know if - as seems likely - the whole property falls to be designated as an HMO under s254 or 255 of the 2004 Act. If so, it would appear to require mandatory licensing under Part 2 of the Act. The Local Authority should be asked to clarify the status of the property and provide details of any licence or management conditions attaching to the licence.

- 4.02 Irrespective of the possible licensing issues, a number of the defects represent breaches of the management of HMO Regulations 2006 which require (amongst other issues), maintenance of the common parts and fire safety in living accommodation. (I have attached a copy of [REDACTED] Guidance on Local HMO standards).
- 4.03 The room is in my view also much too small for this household - particularly since there is restricted headroom to both ends of the room. Also important in this regard is the fact that there is no suitable indoor or outdoor space for children to play. In my opinion, two rooms are appropriate when such long term occupation is involved.
- 4.04 Even if the common parts were in good repair, it is my opinion that the provision of kitchen, personal washing and WC provisions within Flat 5 would not be suitable for more than 5 persons. This tenant has apparently endured almost a year of double that population sharing the amenities. .
- 4.05 Statutory overcrowding under Part X of the Housing Act 1985 regards children under 10 years as half a person, and has nothing to say about other facilities and amenities. It is also silent on the need for separate living room space as well as bed space. For all those reasons, it is a widely criticised standard, and local authorities instead adopt a bedroom standard for their accommodation which does not count living rooms as bedrooms. Whilst not statutorily overcrowded, this provision clearly fails any concept of a bedroom standard. In addition, it is my opinion that the situation here does constitute a serious 'crowding and space' hazard under the Housing Health and Safety Rating System (see below). The Operating Guidance to the HHSRS includes the following the following advice on this hazard:-

"Health Effects

(i) Lack of space and overcrowded conditions have been linked to a number of health outcomes, including psychological distress and mental disorders, especially those associated with a lack of privacy and childhood development. Crowding can result in an increase in heart rate, increased perspiration, reduction of tolerance and a reduction of the ability to concentrate. Crowded conditions are also linked with increased hygiene risks, an increased risk of accidents, and spread of contagious disease.

(ii) There appears to be no particular age group which is more vulnerable than others. However, those most vulnerable will be those who spend most time at home, typically the elderly, the very young, the mobility impaired and their carers.

(iii) There should be sufficient space to provide for social interaction between members of the household, while allowing for private time away from other household members. However, too much space may lead to a sense of physical and social isolation, particularly for single persons.

(iv) Personal space and privacy needs are important for the individual members of the same household as well as for individuals or households sharing rooms and/or facilities. These needs vary, reflecting both individual and cultural perceptions. Adolescents may need more space than the elderly. Small children need at least as much space as an adult. The need for privacy begins to develop from the age of eight and will be fully formed during puberty.”

Other statutory standards are also relevant:-

4.06 **DISREPAIR**

There are repair and maintenance defects and/or deficiencies which appear relevant to the Landlord’s repairing obligations under s11 Landlord and Tenant Act 1985. [See also any express repairing obligations]. [See also the associated duty of care under s4 Defective Premises Act].

4.07 **STATUTORY NUISANCE**

The condition of the dwelling is such that I am satisfied that it is prejudicial to health, and therefore a Statutory Nuisance as identified by Section 79(1) of the Environmental Protection Act 1990.

4.08 **HOUSING HEALTH & SAFETY RATING SYSTEM (HHSRS) Part 1 Housing Act 2004**

In my opinion, the schedule includes matters which constitute an increased threat to occupiers’ health and safety and which would therefore be actionable by the Local Authority under the HHSRS. In particular

- Crowding and space (Category 1)
- Fire (Assessment requires access to all rooms and areas)
- Food safety
- Damp and mould growth
- Personal hygiene, sanitation etc.

- Falls between levels

Category 1 hazards require mandatory action by the Local Authority.

4.09 **HOMELESSNESS (Suitability of Accommodation) ORDER 2012**

In relation to the requirements in the Order dealing with living conditions, it is my opinion that the accommodation is not suitable for this household under the Order. It will be clear from the notes in Section Two and the assessments above that it is my opinion that conditions here pose threats to the health, safety and wellbeing of occupiers and are below basic 'bedrock' public health and housing standards. In relation to s3 of the order, it is considered unsatisfactory. In relation to sub sections 3(a) and 3(c). 3(f) and 3(g) these may apply if confirmed by the Local Authority. I am not in a position to comment on requirements of 3(h) - 3(j) and those points should be clarified. The fact that the household has been in occupation for 12 months compounds the discomfort and inconvenience of such sub standard conditions - perhaps particularly when all the rooms in the flat were occupied and crowding was still more severe. The complaints about the occupier of Room 3 should also be investigated as, if confirmed, this would greatly exacerbate the discomfort and stress of the situation

STATEMENT OF TRUTH

I understand that my duty is owed to the Court and I have complied with that duty and will continue to comply with it. I am aware of the requirements of CPR Part 35, Practice Direction 35, the Protocol for the instruction of experts to give evidence in civil claims, and the Practice Direction on pre-action conduct. I confirm that I have made clear which facts and matters referred to in this report are within my knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed:

██████████

Date: ██████████

Section Five

PORTFOLIO OF PHOTOGRAPHS

Address: Room 2, Flat 5, 29 Catford Hill, London SE6 6NW

1. Front Elevation
2. Flank
3. Adjacent Properties
4. 6 call buzzers at main entrance
5. Room 2 - towards flank wall from room doorway
6. Room 2 - towards rear RHS corner
7. Room 2 - towards front RHS corner
8. Room 2 - towards front LHS corner (note room door not self-closing)
9. Room 2 - sloping ceiling intruding into room
10. Room 2 - damp and mould growth staining to flank wall behind bed head

11. Room 2 - side hung casement (note catch tied with string)
12. Room 2 - second window - top hung casement
13. Bathroom - general view from doorway
14. Bathroom - failed extractor fan and cracked ceiling
15. Bathroom - dirty floor behind wash hand basin
16. Bathroom - dirty floor behind WC
17. Kitchen - cooker and surrounds
18. Kitchen - towards front (note sloping ceiling)
19. Kitchen - stained flooring

20. Kitchen - dilapidated sink base unit
21. Kitchen - oven interior
22. Landing - loose and sealed automatic fire detector
23. Landing - kitchen door wedged open
24. Landing - towards bathroom (Room 2 doorway at RHS). Room 1 at LHS
25. Landing - Room 3 off rear mezzanine landing
26. Worn and split mattress
27. Loose slats to double bed
28. Common Parts - defective light switch on stairway
29. Common Parts - first floor landing (Flat 5 at LHS)
30. Common Parts - view down into entrance hall
31. Common Parts - flat off at ground floor rear
32. Common Parts - damp stained ceiling in ground floor hall

IN THE MATTER OF
IN THE COUNTY COURT
BETWEEN

CASE No.

[CLAIMANT]

AND

[DEFENDANT]

APPENDIX 1

LEWISHAM'S HMO STANDARDS

APPENDIX VII

60 Bloomsbury Street
London WC1B 3QU

Telephone: 020 7637 7697
Fax: 020 7637 7675

Referrals: 0208 892 1148
Mob: 07738 082236
(Registered by the Care Quality
Commission, cert. No: 1-340941114)



DR. ROGER KENNEDY, BSc, MB, BS, FRC Psych

Consultant Child and Adolescent Psychiatrist,
Adult Medical Psychotherapist and Psychoanalyst

Confidential

Independent Expert Report

Report prepared by Dr Kennedy

For

**Charlotte Threipland
Hackney Migrant Centre**

Date: 14 April 2015

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5.0 Interview	5-8

1.0 Introduction

- 1.1 I have been asked to prepare an opinion on the importance of the home environment for the health and development of children. In order to give this opinion, I have been provided with Government Guidance on Working Together to Safeguard Children, March 2013 and four draft case studies as well as notes from a meeting with a family support centre, located in Stoke Newington, London.
- 1.2 The background for the opinion is the research project undertaken by Hackney Migrant Centre on the quality of accommodation provided to destitute migrant families under section 17 of the Children Act 1989.
- 1.3 I have been asked for my opinion as a child psychiatrist with extensive experience of assessing and treating problem families from a wide variety of backgrounds, including those who have been homeless, destitute, migrant and dysfunctional families, for a wide variety of reasons. I was also Consultant to the Families Unit at the Cassel Hospital for nearly thirty years. The unit provided assessment and treatment of disordered families from a wide variety of backgrounds. The families lived in the hospital for an initial assessment period and a significant number went on to have several months of intensive treatment before being rehabilitated back to their homes. I have also written on the nature of significance of home in our lives in my book "The Psychic Home", Routledge, 2014.

2.0 Instructions

2.1 I have been asked to provide a general opinion on the following points.

1. What role, if any, does the “home” or living environment play in the general development, health and wellbeing of a person between the ages of 0 to 18 years old?

2. Does the role in (1) change as the child grows older and, if so, how?

3. Is it likely that the role in (1) would change in the context of a destitute, migrant family and/or a family that is particularly vulnerable and, if so, how?

4. How do you think that following accommodation issues would impact the health, development and welfare of a child?

For each issue, please specifically address whether you think a child facing that situation is likely to achieve or maintain a reasonable standard of health or development and/or if their health or development is likely to be significantly impaired as a result of it.

a) Overcrowding – for example a family living in one small room and with no outside space;

b) Uncertainty surrounding accommodation – for example accommodation given on a temporary basis with no indication as to when they will be moved;

c) Being placed in temporary housing, such as a hotel or Bed and Breakfast, and sharing with paying members of the public who are staying for very short periods of time. Please address the possibility that the other residents include single men who are out until late at night, who are noisy and who drink and/or take drugs in the premises;

d) Dispersal of the family home away from their previous areas of residence. This may mean that the children are forced to move schools, sometimes midway through term and/or the family no longer have easy access to other support networks such as friends or family, their normal medical care or family support workers;

e) Disrepair of room and/or fixtures;

f) The presence of mould or damp;

g) Dirty premises – for example shared facilities such as kitchens and toilets kept in an unhygienic state, possibly due to other residents.

h) Lack of adjustments for health needs – for example access to room being via flights of stairs notwithstanding mobility issues of parents; and lack of facilities for new born babies, such as a cot;

i) Infestation of pests – for example rats, cockroaches or mice; and

j) Inappropriate sleeping arrangements – for example a boy over the age of 8 years old sharing a bed with his mother.

3.0 General Background

3.1 From the documents provided it is clear that the families being studied are in a precarious situation. At the time of writing this report, the final results are yet to be confirmed, but as a draft figure, approximately 67% of the families accommodated under section 17 are provided with housing that is, in the opinion of lawyers and caseworkers assessing the families, inadequate to meet their needs. I understand that, quite apart from their housing situation, many of these families have been through, or are facing, other challenging circumstances such as single parenthood, time spent in street homelessness or time spent living with an abusive (ex)-partner. The families may have entered the country unlawfully or overstayed their visa or they may have leave to remain in the UK but the Home Office has added a condition to their leave preventing them from having recourse to public funds. An application to the Home Office to change this situation can take a considerable amount of time. Meanwhile, the parent would be prohibited from working and also from claiming welfare benefits.

3.2 Thus, there is little doubt, with regard to the children, that they are in a very difficult situation where they are subjected to multiple risk factors, including poor housing, uncertainty in their future, sometimes being exposed to various amounts of child abuse, for example, from an abusive parent, as well as the general effects of poverty and severe disadvantage. In addition, one must say that it is likely that a number of children, particularly those who are born outside the UK, have been directly traumatised as a result of past experiences, being uprooted from their homes, sometimes for traumatic reasons, and then coming to a new country where they are not provided with an adequate and safe home environment is doubly traumatic for them.

- 3.3 These children are subjected to a number of potential general *risk factors*. This will include individual experiences. Females are more likely to have been victims of sexual assault, and there are family factors including separation from their family, parental psychological distress and family conflict. In addition, there will be social factors, including uncertainty regarding their immigration application and legal status, financial hardships, parental unemployment, high mobility and poor housing, social isolation, hostility and discrimination in the UK.
- 3.4 One must also look at *protective factors* in making an assessment of an individual family and their circumstances, and then seeing how far they may affect the level of risk. For example, if there has been low-level exposure to severely traumatic events, this may increase resilience. Cultural and religious influence may help as protective factors. If there is greater family cohesion and parental fluency of English and appropriate family expectations of resettlement here, as well as greater social support including links with the same ethnic and/or language group, these are also protective factors.
- 3.5 With regard to the likelihood of psychological disturbance in the children, there is significant research evidence that poverty, homelessness, social isolation, financial hardship, uncertainty about status in this country, poor housing, separation from their family of origin and proximity to violent events has significant impact on children's development. Emotional difficulties, including Post-Traumatic Stress Disorder, are significantly associated with these factors (research summarised by M Hodes 2008 in Rutter's Child and Adolescent Psychiatry pages 474 to 486). In terms of the traumatic effect of losing a home, psychological work with migrants is summarised, for example, in

“Therapeutic Care for Refugees: No Place Like Home” edited by R Papadopoulos, 2002 Karnac, London.

3.6 The overwhelming theme of many of the studies is the trauma of loss of home in the first place. If that was then matched by a failure to provide a secure home base in the UK then the children will feel a double trauma. This will have significant effects on their attachments. Although many of these families have made a choice about leaving their country rather than being compelled to do so, one can still learn from the studies about how families manage their loss of home, as summarized in the following paragraph.

3.7 An acute sense of dislocation or disorientation with a high level of post-traumatic symptoms is a common finding in refugees, but also other families who have lost their homes in traumatic circumstances. Specific risk factors for mental disorder include having been involved in a war zone, being a child soldier, experiencing of traumatic loss of family, continuing uncertainty about the future and psychiatric disorder in their parents. Common findings are that children not only produced post-traumatic stress disorder symptoms but symptoms of chronic anxiety. It is more common in boys to show increasing signs of behavioural disturbance. Some of these problems are linked to poverty and homelessness but there are specific issues with regard to migrant families who have had to deal with the loss of their original home, and to families who have lost their homes for individual reasons in the UK such as being the victims of domestic violence, or because they find themselves without the resources to afford permanent accommodation. Temporary homes only repeat the sense of dislocation and uncertainty about the future. The loss of home is the common traumatic factor in many of these families.

3.8 In terms of the case histories I have been provided with (where names were changed for confidentiality reasons) typical is Adesuwa, living with her three children, a girl of 9 and two boys of 8 and 3, who has been in the UK since 2004. Currently, she has an outstanding appeal for leave to remain in the UK but while this is pending she is prohibited from working or claiming welfare benefits. She lived with a partner, the father of her children, but he was physically and emotionally abusive to her and the children. They came to the attention of Hackney Children's Services who agreed to accommodate the mother and the children in April 2014. They were placed in a privately owned hostel. There was damp and mould on the walls, mice and cockroach infestations and dirty water leaking through the walls. This was clearly not an environment for the three children to grow up in and the daughter got very sick from consuming food contaminated by leaking toilet water and went to hospital in an ambulance.

3.9 The situation in the hostel was that other families supported by Children's Services, were gradually moved out of the building and other residents, mostly single men, some of whom smoked, drank and took drugs, came in, which, of course, not surprisingly, made the family feel very unsafe.

3.10 The children had to move schools mid term to be nearer their accommodation. Both the mother and the children were suffering. There were problems at school. The mother sounded as if, from the description, she was becoming increasingly depressed. She was showing signs of anxiety, lack of confidence, not only because of the current circumstances but also because of the fact that she had been a victim of abuse. The family were reasonably fortunate in

having the family support group to offer them help. Families do not always have access to such support. Eventually the family were finally moved by Hackney Children's Services in March 2015

3.11 The case of Chantelle was an over stayer from Jamaica for the last sixteen years with an 11 year old son, who was born in London. The mother was a victim of domestic violence, witnessed by the son who needed one to one counselling at school. There is significant evidence that children exposed to domestic violence have significantly increased incidence of mental health problems. Eventually, Hounslow accommodated them in a hotel but there was only one bed. It was extremely damp, had mould on the walls and attracted mosquitos. They shared the kitchen with around fifty other hostel residents.

3.12 Ona has two small children, Tayo who is now 2 and Rita who is 10 months old, living in the UK since 2010 with an outstanding appeal to allow her legal leave to remain in the UK. She had been living with her sister for three years until she could not accommodate them and she was made homeless when pregnant with Rita and the relationship with the children's father ended. She was living in a local church in Hackney, where she was a practising member of that church. The church began building works and then Hackney Children's Services said she was not eligible for section 17 support because she could rely on her existing network. She returned to the church and lived among the building works for several months. They had help from the charity Shelter and Tayo attended a children's centre five days a week where he benefited from playing with other children and he was chatty, beginning to talk. Then they were asked to leave the church. Hackney provided accommodation but it was a Bed and Breakfast in Southend, fifty miles from their support network. She unfortunately had complications as a result of a difficult emergency caesarean

been significant impact on the children's welfare, wellbeing and mental health, such as Tao's regression. Adesuwa's older children were showing anger and behavioural problems at school and were unsettled there and their work was slipping. Chantelle's son needed counselling for being exposed to domestic violence. Anna's son is showing nocturnal enuresis and both her children are having their asthma exacerbated. Asthma, of course, is a potentially life threatening condition.

3.15 The interview with the family's support group in Hackney on 26 March 2015 confirms similar concerns about the effect on the children of how the more disadvantaged migrant families are treated. The main problems include staying in hostels with strange men, poorly equipped places with mould and bed bugs, moving schools midway through term, which damages relationships and, I would say, social relationships and attachments. The problem is that the children cannot trust in a place and cannot build up a sense of security, which is basic to secure attachments. Interestingly, the support group noted that a number of the children can do well at school as they see education as a way out, that is as in part a / factor.

3.16 The case histories they give are very similar to the ones I have already mentioned. In addition, there seems to be a punitive attitude of the Local Authority to some of the families as they are considered to be underserving because they are sometimes over stayers and they feel they should go back to their country. Whether or not they should go back is immaterial with regard to the children. Clearly, the children are cannot be responsible for whatever decisions the parents have made. However, the children, as a result of the frequent attitude described here, end up suffering. Ultimately, of course, they

will have increased physical and mental health problems, which will add to the burden of UK services.

4.0 Response to Instructions

4.1 *1. What role, if any, does the “home” or living environment play in the general development, health and wellbeing of a person between the ages of 0 to 18 years old?*

Having a home implies both having a physical entity, the physical structure of the house, but also something that goes beyond the building blocks, something psychological. Having an idea of home is just as vital for a person as having a physical shelter. It is one of the most basic human needs. We need to feel at home in the world. It makes us feel secure. It provides the base from which we can explore. Loss of a sense of home is deeply traumatic as is, of course, the loss of a house. The sense of home is so basic that for those of us who have one can take it for granted unless the continuity provided by a stable home is undermined. The lack of a clear home can drastically affect a child's stability. This is seen in children who are involved in social work cases, going to court, who are not migrants. Even when children settle well into foster placements, it is rare not to see how confused and troubled children become until the final decision is made about their future. It is common knowledge that uncertainty about children's futures is damaging and that uncertainty has to be minimised. It is standard practice in the court proceedings with such families that one has to make decisions about long term futures as soon as possible and within the child's timescales. These principles need to be applied when dealing with migrant families and yet do not seem to be so.

Attachment theory emphasises the importance of the child's future secure attachments of having a secure base from which to explore. The quality of the primary attachment or home base affects the quality of the child's subsequent development and sense of security. While attachment to the primary carer is the vital element, if the physical home is undermined, then the attachments can be also undermined. People need a sense of what one could call a – 'Psychic Home' as the basis for their sense of security, identity and well-being. The physical home provides the framework for the psychic home, but the latter is a psychological construct, which matches what people feel about where they live. Loss of the home is usually the case with destitute families with a wide variety of backgrounds, and, thus is potentially deeply traumatic for them. Having already lost their homes, they come to a situation where there is a lack of entitlement to a new home. This can be deeply destabilising. A home base usually provides an organising structure for the sense of self and identity. The physical structure of the home has an important part to play in providing an overall containing structure. With the absence of a secure, firm, physical structure for the home there is then a lack of a stable physical base, and hence an unstable psychic home. It is as if for the children of these families are in a permanent state of not knowing where they are going to live. While, in family law, it is recognised that this is a situation that is unacceptable for children, and for which reason courts now insist on making decisions within twenty six weeks in order to establish children's long term future placements. It is both surprising and worrying that the same principles are not being used when it comes to making decisions about very disadvantaged families. The home continues to provide an important function for children as they develop, although the role of the home can shift. As children become adolescents, they become independent and they want to leave home, to some extent. However,

they need the security of being able to return to the home base in order to be able to develop a secure sense of identity through the adolescent process.

Thus, overall, it is clear the home, both in the physical sense but also in the psychological sense as a secure home base, has a vital function in family life.

4.2 ***2. Does the role in (1) change as the child grows older and, if so, how?***

I have already answered this question.

4.3 ***3. Is it likely that the role in (1) would change in the context of a destitute, migrant family and/or a family that is particularly vulnerable and, if so, how?***

One can see, with dysfunctional families, how they have difficulties in attending to ordinary everyday life, what I have called the work of the day (Kennedy, 2007). Ordinary family life is normally focused around basic essential activities such as eating, sleeping and working. Such events ritualise the structure to a varied extent providing emotional context that drives practical life. Normally, one performs the activities of the day without thinking about the basic structure. But, in dysfunctional families, things most people do without thinking, such as sleeping, washing, eating, eating meals with others, as well as more interpersonal functions such as cooking, cleaning, caring for others, receiving care and being involved in social activities, are charged with emotional conflict to the degree that there is a breakdown of continuity and consistency of daily life. The life of the day is not held together, as it were. Similarly, in families who are not provided with the basic structures of everyday life that normal families, and even dysfunctional families take for granted, such as reasonable housing, are likely to find this particularly traumatic and difficult to deal with. I note that the usual definition of physical neglect occurs when there is a failure to provide for the development and

needs of the child and this is likely to cause impairments to the child's physical and mental, moral and social health and development. This includes all aspects of life, health, education, development, nutrition, shelter and safe living conditions in the context of resources reasonably available to the family or caretakers. In other words, it is taken for granted that a child should have available all the basic aspects of ordinary daily life and safe living conditions as one of the essential aspects. Children who are not able to have such ordinary safe living conditions are often seen to be suffering from physical neglect.

The consequences of neglect are significant. Studies have identified that children who have suffered such neglect are at increased risk of interpersonal problems, including insecure and disorganised attachments, peer relationship difficulties and problems forming intimate relationships, cognitive and academic impairments, aggression and delinquency in some cases, as well as psychiatric disorders with an increased incidence of depression and anxiety disorders including Post-Traumatic Stress Disorder, conduct disorders and various kinds of risk taking including self-harm and suicidal behaviour.

4.4 ***4. How do you think that following accommodation issues would impact the health, development and welfare of a child?***

For each issue, please specifically address whether you think a child facing that situation is likely to achieve or maintain a reasonable standard of health or development and/or if their health or development is likely to be significantly impaired as a result of it.

4.4a ***a) Overcrowding – for example a family living in one small room and with no outside space;***

Children need to have a reasonable living space, particularly as they grow older. Obviously, a reasonable amount of privacy is an essential aspect of normal family life. For a family living in one small room with no outside space this is clearly not possible. It becomes increasingly difficult, as children move towards adolescence, where the necessity of having some private living space of their own is an absolute requirement.

4.4b ***b) Uncertainty surrounding accommodation – for example accommodation given on a temporary basis with no indication as to when they will be moved;***

As I have already indicated previously, the uncertainty surrounding accommodation is a major risk factor for children. Practice in family law accepts that uncertainty for children with regard to their accommodation is not acceptable and decision making takes place as soon as possible so children do not have to wait too long to have their future determined. If a child is left in an uncertain situation, albeit with their own family, then this can cause significant trauma leading to increased anxiety and insecurity. This is particularly magnified with destitute migrant families, many of whom have had traumatic past (and / or present) experiences.

4.4c ***c) Being placed in temporary housing, such as a hotel or Bed and Breakfast, and sharing with paying members of the public who are staying for very short periods of time. Please address the possibility (which is often the case) that the other residents include single men who***

are out until late at night, who are noisy and who drink and/or take drugs in the premises;

Being placed in temporary accommodation, particularly with noisy residents of this kind, is obviously unacceptable, not only because of the disruption to ordinary patterns of life, including sleep, but because of the significant risk to the children. There is the risk of being exposed to anti-social and abnormal behaviour, severe mental health disturbance, drug abuse and there would be a risk, in some cases, of sexual assault. It is worth saying that if a child were exposed to adult mental health disturbance of the kind that sometimes these children are subjected to, it would be a matter of significant concern to the authorities, for example, if this took place at a mental health setting, which did not provide a safe and appropriate waiting area for children.

4.4d ***d) Dispersal of the family home away from their previous areas of residence. This may mean that the children are forced to move schools, sometimes midway through term and/or the family no longer have easy access to other support networks such as friends or family, their normal medical care or family support workers;***

Dispersal of the family away from their previous area of residence can be particularly disruptive to children when they have to move from schools. The evidence is that a number of these children find school the one area of stability in their lives where they can have some normality. It is well known that leaving school and having to adapt to a new school can be challenging even for children from ordinary backgrounds. They have to come into a class where peer relationships are already well established and it can be very difficult for any child, particularly a migrant child, to have to fit in to a new situation. In addition, moving away from previous areas may mean, in some cases, like the two examples in the case histories where support networks, which have just

about helped the family to survive, are no longer available. An absence of an effective support network may well tip a family, who was just about hanging on in terms of their functioning, into significant dysfunction with a severe impact on the mental health and physical health of the children.

4.4e ***e) Disrepair of room and/or fixtures;***

4.4f ***f) The presence of mould or damp;***

4.4g ***g) Dirty premises – for example shared facilities such as kitchens and toilets kept in an unhygienic state, possibly due to other residents.***

These elements of disrepair, of the room fixtures, the presence of mould or damp and dirty premises have direct impact on the physical health of children. For example, children with asthma are more likely to have their asthma exacerbated by the presence of mould or damp. It must be emphasised that asthma is a potentially life threatening condition in children. Dirty premises can increase the risk of infection. All together, these elements build up a picture of neglect. As I have indicated, safe living conditions are a basic requirement for family life and if those are not provided then a child is suffering from physical neglect. In this case, due to what is provided rather than what the family, themselves, are creating.

4.4h ***h) Lack of adjustments for health needs – for example access to room being via flights of stairs notwithstanding mobility issues of parents; and lack of facilities for new born babies, such as a cot;***

If a parent has mobility issues or, for example, is disabled, obviously it would be inappropriate to not have facilities that would give them appropriate access. Ideally, mothers, for their new born babies, do need some privacy and, at the very least, some kind of cot. An absence of appropriate facilities has to be put in the context of all the other aspects of the accommodation in

these circumstances that goes along with this, which includes disrepair, the presence of mould, dirt and exposure to disordered adults.

4.4i ***i) Infestation of pests – for example rats, cockroaches or mice; and***

It goes without saying that no child or family should be exposed to infestation of pests.

4.4j ***j) Inappropriate sleeping arrangements – for example a boy over the age of 8 years old sharing a bed with his mother.***

It is wholly inappropriate for a boy of 8 to be sharing a bed with their mother, except under unusual conditions, for example, at times of illness. It is also true of all children. If a child was brought to a child clinic still sleeping with their parent from the age of 8 onwards would be seen as a sign of abnormality in the family. There may even be circumstances where a child at risk conference would need to be held. Thus, there seems to be one standard for families seen in the clinic and another standard for disadvantaged families. This is yet another example of how often there seems to be a failure to apply ordinary family expectations to these families.

4.5 The Government's own policy "Working Together to Safeguard Children" March 2013, provides clear guidelines for children's welfare and safeguarding. This is to ensure that children are protected from maltreatment, that they have normal health and development, to ensure that they grow up in circumstances consistent with the provision of safe and effective care and to take action to enable all children to have the best outcomes.

4.6 It is noted that the child's needs are paramount which is also the cardinal principle in family law. There needs to be a child centred approach. It does

seem that the problem with the attitude towards many of the diasvantaged families is that the children are seen as a side effect of their parents' issues rather than to be seen in their own right as having to have their needs prioritised. Section 17 of The Children Act provides for appropriate assessments for children. Specialist assessments may be required and need to be coordinated. I would like to see evidence that this is taking place with these particular families. I say it because the relationships with the parents are often reasonably good and do not come within the parameters where social workers are concerned about children's safety; so that there may then be a tendency to minimise the risk to the children and, therefore, not provide them with a full comprehensive assessment, which, otherwise, would be the case.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Kennedy', with a stylized flourish at the end.

Dr Roger Kennedy
BSc MB BS FRC Psych
Consultant Child & Adolescent Psychiatrist and Medical Psychotherapist

APPENDIX VIII

Section 17 Children Act 1989

17.— Provision of services for children in need, their families and others.

(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, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) The appropriate national authority may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.

(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 regarding the provision of those services; and

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

(5) Every local authority—

(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B; and

(b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

(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 [...] 13 in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

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

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt [of universal credit (except in such circumstances as may be prescribed),] of income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker's allowance or of an income-related employment and support allowance.

(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.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

“*development*” means physical, intellectual, emotional, social or behavioural development; and

“*health*” means physical or mental health.

(12) The Treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.