R v Tower Hamlets LBC ex p Bradford (Anita, Raymond and Simon)

Queen's Bench Division
Kay J
13 January 1997

Where the development of a child in need is likely to be affected by inadequate housing, an assessment of the child's needs under Children Act 1989 s17 must include an assessment of his/her housing needs. It was not sufficient for the local authority to demonstrate that it had assessed the child's housing needs, along with the needs of the rest of his/her family, in the course of assessments under housing or other legislation, because different considerations might well apply to such assessments.

Facts

Simon Bradford was an 11-year-old boy. He had special educational needs and difficulties interacting with other children. Simon and his father looked after Simon's mother, who was severely disabled. The family was subjected to severe harassment by neighbours and others. Their home was frequently attacked, while Simon himself was bullied and taunted when he went outside. On the grant of leave to apply for judicial review, on 8 January 1995, the respondent authority undertook, *inter alia*, to assess Simon's needs under Children Act 1989 (CA) s17. The respondent authority carried out a number of assessments of the family's needs, under, *inter alia*, the Housing Act 1985 and National Assistance Act 1948 Part III. In the course of such assessments, the respondent authority considered the family's rehousing needs and Simon's needs in terms of housing. The respondent authority carried out one assessment of Simon, specifically under CA 1989 s17. That assessment, however, concerned itself solely with Simon's needs in relation to school and did not address any need he might have as a 'child in need' for rehousing. The respondent authority declined to make any service provision decision in favour of the family as a result of any of the assessments carried out. Furthermore, it invited the family to discontinue the judicial review proceedings in favour of its complaints machinery. Shortly before the substantive hearing the respondent authority explicitly conceded that its powers under CA 1989 s17 extended to providing suitable accommodation for Simon and his family.

Held:

1 The respondent authority's assessment of Simon's needs as a child in need for the purposes of CA 1989 focused exclusively on the need to improve his attendance at school. The only reasonable view at that time was that there was another important factor that was likely to affect Simon's development in the sense defined by CA 1989 s17(11) and that was his housing. An assessment of those needs was clearly called for but had not been carried out.

2 The respondent authority contended that Simon's housing needs had been considered along with the needs of his family in the course of other assessments, but different considerations might well apply in the case of an assessment of the whole family, under another statute, as opposed to an assessment which looks at the situation solely from the point of view of the child in need. It might, for example, be reasonable for a family to stay where it is if the parents are taking an unreasonably restrictive view of the area to which it should move. However, an assessment from the point of view of the child in

need would necessarily consider what effect a prolonged stay in the family's home would have on his/her development even if it resulted from his/her parents' unreasonable attitude.

3 The reason for the failure to assess Simon's housing needs as a child in need was that, until the concession made shortly before the substantive hearing, the respondent authority had fundamentally failed to understand that its powers under CA 1989 did enable it to rehouse a child in need and his/her family.

4 Had a proper assessment been carried out, so that the sole remaining issue had been over a resulting service provision decision, then the court might well have regarded the respondent authority's statutory complaints procedure as an alternative remedy sufficient for relief to be refused as a matter of discretion. However, the court found that the respondent authority had failed to comply with its undertaking to carry out a lawful assessment of Simon under CA 1989. The court should ensure that such assessment now took place. Further, failure to grant relief would result in unacceptable delay from the point of view of the child in need.

5 The proper exercise of duty under CA 1989 s17 requires a two-step approach: an assessment of need followed by a service provision decision.

Cases referred to in judgment:
None.

Legislation/guidance referred to in judgment:
Children Act 1989 s17 – Chronically Sick and Disabled Persons Act 1970 s2 – Local Authority Social Services Act 1970 s7B – National Health Service and Community Care Act 1990 s47.

This case also reported at:
(1997) 29 HLR 756.

Representation
Richard Gordon QC and Stephen Knafler (instructed by TV Edwards) appeared on behalf of the applicants.
Richard Drabble QC and Robin Powell (instructed by the Legal Department, Tower Hamlets London Borough Council) appeared on behalf of the respondents.

Judgment
MR JUSTICE KAY: Simon Bradford is 11 years old. He lives in a two bedroomed flat in the London Borough of Tower Hamlets with his parents Raymond and Anita Bradford. The family have lived in this home since November 1993.

Mrs Bradford is severely disabled suffering from epilepsy and arthritis. Her epilepsy results in her suffering 4 or 5 epileptic fits a day and 2 or 3 grand mal fits a week resulting in double incontinence. Her arthritis is severe and frequently she is unable to wear boots or shoes. The care of Mrs Bradford is undertaken by Mr Bradford assisted by Simon. Simon, himself, has special educational needs and experiences difficulty in interacting with other children.

As a family they are the subject of very considerable harassment in the area in which they live. Mrs Bradford has been mugged on three occasions. Simon has been bullied and taunted, particularly on his way to and from school. The family has been harassed within the home by abusive and hoax telephone calls. This campaign of hatred has culminated in attempted arson on their home and the daubing of phlegm and faeces over the door of their flat and their car.

In the Summer of 1995, Mr and Mrs Bradford applied to be rehoused and Mr Bradford orally requested assessments for community care services. On 11 December 1995, their solicitors wrote to the Respondent requesting comprehensive assessment of the family's needs under the National Health Service and Community Care Act 1990, the Chronically Sick and Disabled Persons Act 1970 and the Children Act 1989.

On 21 December 1995, an application was made to this Court on behalf of each of the three members of the family for leave to apply for Judicial Review of the failure and/or refusal of the Respondent authority to make a service provision decision in 'respect of each of the Applicants under (as appropriate) the National Health Service and Community Care Act 1990, s.47 and/or the Chronically Sick and Disabled Persons Act 1970, s.2 and/or the Children Act 1989, s.17 and to provide such services pursuant to such decision or by way of emergency provision'.

On 8 January 1995, the matter came before Mr Justice Morrison, ex parte on notice. The Respondent was present and opposed the grant of leave. Having heard argument, Mr Justice Morrison granted leave and indicated that in his view urgent relief was required, particularly expressing his concern as to Simon. The Respondent agreed to give and did give an undertaking 'to make a statutory assessment of each of the Applicants as soon as is practically possible'. A number of assessments of one kind or another were made pursuant to the undertaking between January and August 1996.

The matter now comes back before the Court on a limited basis pursuant to the grant of leave. The only matter that the Court has been asked to consider is Simon's application. The relief sought has been amended to add, after the words 'to make a service provision decision' in the alleged failure and/or refusal to make a decision, the further words 'including the completion of a lawful assessment'. In broad terms the challenge is now directed to the allegation that the Respondent has not made an assessment of Simon's needs in relation to rehousing.

Prior to the hearing, the Applicants' net was cast wide over a number of the statutory provisions referred to in the Application but in the light of a concession which it is suggested was made for the first time by the Respondent in an affidavit shortly before the hearing, Mr Gordon Q.C. on behalf of the Applicants has been content to argue the matter solely on the basis of an assessment of Simon's housing needs pursuant to s.17 of the Children Act 1989 and it is on that one basis that this matter falls to be decided.

It has been agreed that if I reach decisions of principle, the parties will endeavour to give effect to my findings by agreeing the appropriate form of relief and so at this stage I shall not address any such issues.

Since the case is now confined to Simon's housing needs, it is perhaps helpful to set out exactly what has happened since the family made its application for an urgent housing transfer on 6 July 1995. That application was supported by medical evidence particularly suggesting a need for a transfer to a ground floor property. On 12 July 1995 the Respondent replied that the family had been assessed as having no points for medical priority and that they had been placed on the General Housing list.

This remained the position until after the hearing of the application for leave before Mr Justice Morrison. On 24 January 1996, an occupational therapist, Rachel Fisher, reported to the Respondent on the family's application to be rehoused 'on the grounds of Mrs Bradford's disability as a result of her epilepsy'. She set out Mrs Bradford's complaints and they included;

Her son cannot play out safely and she cannot get down to watch him.

In the assessment, it was recorded that it had been possible to ask Simon if he had anything he would like to say about the request to move whilst the family were being seen together. Under the heading 'Problems with this Accommodation', Ms Fisher recorded:

> *Simon is the constant butt of taunts and bullying. In addition he has limited discrimination and judgment to choose how to conduct himself in those situations.*

The inter-relationship of Simon's problems with those of his family were illustrated by reference to the nature of the taunts at school when he was bullied. 'Your mother wets her knickers!' was given as an example.

The report concluded;

> *During the interview no specific problems related to disabled daily living problems to support rehousing were made apparent.*
>
> *It is obvious that Mrs Bradford has some significant difficulties in her daily life, which she attributes to her home and neighbourhood, but these are unlikely to be eased by a move to a different property.*

A 'Child In Need' assessment in respect of Simon was carried out between 22 and 29 January 1996 resulting in a report from Kwesi Olatunji, a Social Worker, dated 29 January. The report records at the outset the 'Current Issues' in the following terms:

> *Although the family has previously been known to social services concerning child protection issues, the current concerns are around Simon's non-school attendance and the reasons for this.*

Under 'Family Profile', the report includes:

> *The family appear to be quite isolated in their community and talk of feeling threatened and unable to go out of their home.*

Under 'Social Development', there is recorded:

> *Outside the school Simon spends most of his time in the home because his parents are afraid that he will be bullied if he goes out. When interviewed Simon identified one friend who comes to play with him at home. Simon's head teacher (Sally Carr) describes him as 'a sad little boy'.*

The whole tenor of this report is, however, as was to be anticipated from the stated 'Current Issues', confined to the question of school attendance. Nowhere does it address any need that Simon may have as a 'child in need' for rehousing.

On 19 February 1996, Kevin Colling, the Respondent's care manager, made a report pursuant to the undertaking given to the court. The 'Reasons for the Referral' revealed the extent of the assessment being made:

> *My intention was to assess the needs of Anita Bradford as a potential service user, and Raymond and Simon Bradford's needs as her carers.*

In referring to the home situation, Mr Colling recorded:

> *They also report having experienced harassment from local people, that Anita Bradford has been attacked on at least three occasions, and that they are concerned to let Simon Bradford out on his own, for fear of harassment or bullying.*

Under 'Mobility', Mr Colling said:

A *Raymond and Simon Bradford are both independently mobile. It is reported, however, by Anita and Raymond Bradford, that Simon cannot go out of the home alone as he is vulnerable to bullying and harassment, and that he has little 'road sense'.*

B The needs as perceived by the family included:

(1) To move house, preferably out of Tower Hamlets.
(2) To ensure Simon is able to attend school more regularly.

Mr Colling's Summary included:

C *In the light of an Occupational Therapy assessment which could not support their application for a medical priority it is unlikely that a transfer will be forthcoming. Consequently I have tried to focus the assessment on ways of which we can support this family in their current home, to enable them to live safely and independently as possible.*

D The recommendations included:

It is possible that Housing are not aware of the psychological impact the family's current housing situation has on Anita Bradford. It is my view that the current situation is fostering feelings of anxiety and hopelessness and I would be happy E *to support their rehousing application on these grounds.*

On 13 March 1996, the Respondents wrote to the Applicants' solicitor inviting the withdrawal of the application as the relief sought had been achieved by the undertaking given to the court. The letter claimed:

F *The assessments have been completed and the service provision decisions made as sought in your application. No purpose would be served by a substantive hearing. If your client is in any way dissatisfied with the assessment of the service provision decision they may make a complaint through the statutory complaints procedure, a copy of which is enclosed.*

G During the Summer of 1996, correspondence continued between the parties. A fresh application was made relating solely to the provisions for accompanying Simon to school. In due course, this was resolved and the Respondents agreed to provide an escort.

H The harassment from which the family were suffering continued and escalated and Mr Bradford handed in to the Respondents a log detailing the harassment in 1996. Because of the contents of the log, the Respondents' housing manager visited the family on 9 July 1996 and recommended an 'urgent management priority' on social grounds. This resulted in the family being awarded 300 points I thereby considerably improving their chances of re-housing. The only higher priority would be if they achieved an 'overriding management priority' but this would only be awarded if the family relinquished their tenancy. Such a priority is not a way of achieving ideal accommodation for the family but would simply provide a safe home at the earliest opportunity.

J As a result of a letter from the Applicants' solicitors dated 25 June 1996, Mr Colling was instructed to carry out a further assessment of the family's needs for accommodation. His report, dated 2 August 1996, is headed 'Re: Assessment Under Part III National Assistance Act 1948'. Its essential conclusion was:

K *I have reviewed the level of care and attention required by Mrs. Bradford and it is my view that it is not such as to justify the provision of residential care.*

The assessment was reviewed by the Respondents' Assistant Director, Community Care Commissioning, who reached the same conclusion.

On 26 September 1996, the Applicants' solicitor wrote to the Respondents:

Mr Colling's assessment provides no adequate or intelligible reasons as to why the family are in need of (warden supported) accommodation. Furthermore the conclusion reached in paragraph 4 of Mr Colling's assessment does not indicate that the family's needs as a whole have been taken into account, in particular relating to Mrs Bradford's psychological problems (referred to by Mr Colling in his previous assessment report) and also Simon Bradford's needs under Section 17 of the Children Act 1989.

The Respondents' response, dated 3 October 1996, was:

Mr Colling has completed an assessment and concludes that your clients do not require residential accommodation under Part III of the National Assistance Act 1948. This is the only accommodation the Authority has power to provide in this case.

Mr Colling's assessment of 19th February 1996 took into account all the needs of the family, including any psychological needs. He has further reviewed the level of care and attention required by Mrs Bradford, and stated that it does not justify the provision of residential care.

On 28 October 1996, the Applicants' solicitor wrote again:

We assume, therefore, that given the Council's position as set out in previous correspondence, Simon Bradford's needs as a 'child in need' under Section 17 of the Children Act 1989 for warden accommodation (or other accommodation) have not, and will not be assessed.

On 31 October 1996, the Respondents wrote again:

. . . I am somewhat puzzled that you have interpreted this as the Council stating that it has not and will not be assessing such needs. Given your assertions no doubt you will persist in your application.

On 5 November 1996, the Applicants' solicitor wrote once more and said in paragraph 4:

It is our view that the Council is empowered to provide accommodation, whether warden controlled, sheltered, or otherwise under the Children Act 1989, and we are assuming from your correspondence and from the child in need assessment report (which makes no mention of this) that Simon Bradford has not been assessed for needs for such accommodation.

We hope this clarifies the situation with regard to the forthcoming Court Hearing. We are keen to identify matters which are in issue in order to avoid incurring unnecessary costs and by wasting court time.

If an assessment of Simon's needs for rehousing pursuant to the Children Act 1989 had taken place, then this clearly was the moment for the Respondents to say so unequivocally. Instead they replied:

I refer to paragraph 4 of your letter:

– *The accommodation of children is dealt with in section 20 of the Children Act 1989. Section 20 imposes a duty on a local authority to provide accommodation for a child where there is no one who has parental responsibility, or he is lost or abandoned, or the person caring for him is prevented from providing*

him with suitable accommodation or care. None of these circumstances apply in this case.

At that point the Applicants' legal advisors concluded that the substantive issue in relation to section 17 was going to be whether the local authority had power to provide accommodation under this section. On the papers as they were originally placed before me I too anticipated that as the issue in the light of all the material I had then read.

There was, however, a further affidavit to come from Mr Drew, Assistant Director, Childcare, with the Respondents. Paragraphs 14 to 16 read:

Provision of Accommodation under the Children Act 1989.

14. It has been suggested by the Applicants' legal advisers that the Authority could exercise its powers under the Children Act to, if necessary, provide temporary accommodation to the family.

15. I am fully aware of the Authority's powers under Section 20 of the Children Act to accommodate a child in need. If the factual criteria of s.20 were satisfied the Authority would accept that it was under a duty to Simon to provide him with accommodation. However, it is not a realistic view of the present situation to maintain that the criteria are met. The relevant duty under s.20 would arise if the person caring for him is being prevented temporarily from providing suitable accommodation. In the present circumstances Simon is housed with his parents. The family's housing needs are being addressed through the housing allocations policy and as I have already indicated no complaint is made about the number of points allocated under that policy. The family are placing restrictions (on the choice of accommodation they will accept under the housing allocations policy) that will have the effect of restricting the possibility of an early offer of a transfer being made. If it becomes truly impossible to remain in the present accommodation the overriding management priority option would come into play, although the temporary accommodation the Authority would be able to offer in the circumstances would not be ideal. The family are now being offered considerable help in their home: and, as I indicated above, a care alarm could be installed in the present premises . . . In the circumstances I do not regard it as realistic to say that the circumstances of section 20 are met. The perspective set out in this paragraph underlies the comments regarding section 20 in the correspondence exhibited . . . .

16. I am also aware of the Authority's wide duty and discretion to Provide services under section 17 of the Children Act 1989. Section 17 allows the Authority to assess and meet the needs of Simon, including those of accommodation. In this instance my view is that his needs for accommodation can be met by the housing authority and therefore it is not necessary to safeguard the welfare of Simon by providing alternative accommodation for him and his family under section 17.

This acceptance that section 17 could be used to provide suitable accommodation for Simon and his family radically changed the nature of the case and is the concession to which I referred at the start of this judgment in the light of which Mr Gordon has confined his arguments to Section 17.

Mr Drew concluded:

The family's need for suitable accommodation will be met by the Housing Authority. Once the family is rehoused it appears likely that there will be no ongoing need for care and attention. Their accommodation may not be ideal but they are not without the basic necessities of life. In the interim their circumstances are not such that they are unable to remain resident at their current flat. I

will however ensure that his welfare continues to be monitored by social workers and educational staff and I will consider the provision of further services as the need arises.

This then is the factual basis and history upon which this matter falls to be considered. In summary form, Mr Gordon argues that the only conclusion that can be reached in the circumstances is that Simon's needs for rehousing have never been assessed under section 17 of the Children Act 1989. The Respondents, he argues, have limited such assessment as has been made by a fundamental misapprehension of its statutory powers under section 17. The resulting assessment is, therefore, not one that is in accordance with the law. Since the Respondents gave an undertaking to carry out such an assessment, the Court should compel them to honour that undertaking in the light of the now accepted position that Section 17 can be utilised to provide re-housing.

On behalf of the Respondents, Mr Drabble Q.C. advances three arguments:

(1) That the relief originally sought has been satisfied and that the relief now sought is wholly different from that for which leave was granted.
(2) That there has been a proper assessment under section 17.
(3) That in any event relief should not be granted because the Applicants have available to them the statutory complaints procedure under section 7B of the Local Authority Social Services Act 1970.

Thus it seems that the first question I have to resolve is whether the application is now so removed from the original application and the grant of leave that relief ought not to be considered. Mr Drabble argues that the Applicants' present application is in reality an attempt to achieve ideal rehousing through community or child care legislation bypassing normal housing allocation procedures in priority to other applicants.

I reject the suggestion that the application has so changed its character since the grant of leave that it ought not to be entertained. The application for leave clearly included the consideration of section 17 of the Children Act 1989. The proper exercise of the duty under the act requires a two step approach, an assessment of need followed by a service provision decision. The subsequent amendment specifically to refer to the assessment process was helpful, if not strictly necessary. The undertaking given was an undertaking that clearly included an assessment being made pursuant to section 17. Housing was then an issue for the whole family, and therefore for Simon. The relief sought may have been only a fraction of the whole when the matter commenced but it was in my judgment an integral part that can properly be pursued in these proceedings.

I do not consider that anything in the motivation of the Applicants disqualifies them from pursuing this application. In the light of the undertaking they were clearly entitled to an assessment of Simon's needs under section 17 of the Children Act 1989 and if it is right that they have not had an assessment that is not fundamentally flawed, then they are entitled to relief to remedy that situation. The consequences of such a decision would be the carrying out of a proper and lawful assessment of Simon's needs. That may or may not lead to re-housing but the family's motivation in taking this course cannot deprive them of a proper assessment, if there has not yet been one. It is, in my judgment, important that the court does not seek to pre-judge the results of any assessment, which in the first instance at least would be for others to decide.

The next issue is whether there has been a proper and lawful assessment of Simon's needs pursuant to Section 17 and the undertaking that was given. Mr

Drabble argues that it is clear from the affidavit of Mr Drew that section 17 has been considered and considered in the light of a correct interpretation of the powers available to the Respondents by way of re-housing under the section. He argues that taking the reports together it is clear that all aspects of the family's problems have been considered and that it is quite unreasonable to expect each reporter clearly to set out that he has considered every possible power and rejected it however remote a possibility the exercise might be. He said in terms:

> *If it shouted out at a local authority that there was a real prospect of a section 17 discretion being exercised notwithstanding the section 21 criteria were not met, that need ought to be specifically addressed.*

It is perhaps helpful to look at this stage at the relevant provisions of section 17. Section 17(1) provides:

> *It shall be the general duty of every local authority (in addition to the other duties imposed upon 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.*

Section 17(10) defines a child as being 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 . . .*

Section 17(11) defines 'development' as meaning 'physical, intellectual, emotional, social or behavioural development'.

Section 17(3) makes clear that the service 'may be provided for the family' of the child 'if it is provided with a view to safeguarding or promoting the child's welfare'. Section 17(6) provides that the services provided may be in kind, or exceptionally in cash.

The assessment specifically made upon Simon's needs as a Child in Need was that made by Kwesi Olatunji, dated 30 January 1996. As already recorded that focused exclusively on the need to improve his attendance at school. The only reasonable view at that time was that there was another important factor that was likely to affect his development in the sense defined by section 17(11) and that was his housing. The events of the Summer of 1996 only served to underline how acute a problem it was. An assessment of these needs was clearly called for.

It is said that the needs have been considered along with the needs of the whole family, but different considerations may well apply. It may be reasonable for the family as a whole to stay where they are for some time particularly if the parents are taking an unreasonably restrictive view of the area to which they will move. However, looked at from Simon's point of view as a Child in Need, it is necessary to consider what affect a prolonged stay in that flat will have on his development even if it results from the unreasonable attitude of his parents. All these are matters that need assessment, and I can detect nowhere any evidence that such an assessment has been made.

I believe that the reason for this failure is that suggested by Mr Gordon, namely that those responsible for the assessment approached it with a fundamental misunderstanding of their powers in relation to rehousing under the Children Act 1989. In so far as Mr Drew says otherwise, he merely makes clear his understanding of the situation without in any way asserting that those responsible for the assessments also understood the position. Even if such an assertion had been made I should have rejected it both because of the correspondence already set out and because of the absence of any reference to or hint of such considerations in any of the reports.

I, therefore, conclude that the assessment that was made was fundamentally flawed and that whilst I accept it was done without any deliberate or improper intent, the undertaking given to the Court to assess Simon's needs under section 17 has not been fully and properly complied with.

It remains to consider whether relief should be refused because the Applicants can avail themselves of the statutory complaints procedure. If a proper assessment had been made and the sole issue was the resulting service provision decision, I should be attracted by such an argument. However, on my findings, the Respondents have not properly complied with an undertaking given to this court and in such circumstances, I consider that the court should ensure that that is now done. Failure to grant any relief would in any event result in unacceptable delay in the next step in the process taking place, namely an assessment of Simon's needs in relation to re-housing looked at from the point of view of him as a Child in Need. For these reasons I would be minded to grant the necessary relief.

As indicated earlier, the translation of this decision into an effective order will in the first place be for the parties but in the unlikely event that they are able to agree the appropriate order I will consider the matter further.