



Neutral Citation Number: [2021] EWHC 301 (Admin)

Case No: CO/3577/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16th February 2021

Before:

HIS HONOUR JUDGE LICKLEY QC sitting as a Deputy Judge of the High Court

Between:

THE QUEEN
-on the Application of-

Claimant

AK, a child by her mother and litigation friend GK

- and -

The London Borough of Islington

First Defendant

-and-

North Central London Clinical Commissioning Group

**Second
Defendant**

Mr Armitage (instructed by **Hopkin Murray Beskine Solicitors**) for the **Claimant**
Mr Rutledge QC (instructed by **Community Services Solicitor Legal Services Islington**) for the **First
and Second Defendant**

Hearing dates: 19th, 20th January 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be Tuesday 16th February 2021 at 10:30am.

His Honour Judge Lickley QC sitting as a Deputy Judge of the High Court:

1. This matter concerns a claim by AK against the London Borough of Islington (Children Services Department) and the North Central London Clinical Commissioning Group alleging that the defendants failed to adequately assess and plan for her needs following her discharge from hospital pursuant to s.117 of the Mental Health Act 1983 (MHA 83). I shall refer to the Claimant as AK and her mother as GK in this judgement.
2. Leave was granted in relation to that claim however AK seeks permission to argue a secondary claim which I refer to as the S.17 Children Act 1989 (CA89) issue. For the purposes of the hearing it was agreed that that issue be argued as part of a 'rolled up hearing'. Another claim alleging a failure to produce a timely Education, Health and Care plan (EHCP) concerning a child's special educational provision pursuant to s.37(1) Children and Families Act 2014 has been abandoned and is not pursued.
3. I give permission for the parties to rely upon the additional witness statements of GK and Mr Mathison on behalf of the defendants.

Background

4. AK is now 16, suffers with autism and from a range of severe mental health issues including PTSD resulting from a serious sexual assault by a stranger. At the time the claim was issued on 6/10/20 AK had been resident and a patient at Simmons House a secure psychiatric hospital for some months. For a period of time she was detained by virtue of an order made pursuant to s.3 MHA 83 but was due for discharge to a specialist residential placement. The claim sought a mandatory order requiring the defendants to co-operate to carry out a full assessment of AK's needs for aftercare services under s.117 MHA 83 and to provide a care plan for meeting those needs. On 8/10/20 the defendants provided an updated Child and Family Assessment. By the time this case came before me for hearing things had moved on. AK was discharged from Simmons House on 16/11/20 and had commenced a placement at Stradbroke, an independent school provided by Tulip Care, where she currently resides. That provision has been funded and costs approximately £250,000 per year. On 19/11/20 further documentation was supplied including documents relating to the planning for AK's discharge from hospital going back to May 2020.
5. The case, in particular, concerns the adequacy and thoroughness of the s.117 MHA 83 assessment conducted for the purposes of discharge on the 16/11/20. The document a Discharge CPA & Summary (DCPA) is dated the 16/11/20. There is no dispute that there was an assessment however I am asked to consider whether that assessment was undertaken in accordance with the duties and responsibilities that both defendants owed to AK at the time in particular in relation to the applicable Code of practice namely the Mental Health Act 1983 Code of Practice (the Code).
6. AK alleges there are deficiencies in that assessment and planning for her ongoing care and that the defendants have failed to comply with the Code. The defendants contend that the assessment and planning conducted was appropriate and that there

has been no breach of duty towards to AK. A subsidiary but linked important issue has arisen in relation to the level of scrutiny that I should apply. There is some broad agreement between the parties that because this case concerns an extremely vulnerable young person under the age of 18 the level of scrutiny the court should apply is identical if not broadly similar to that applied by the courts when considering the adequacy and lawfulness of s.17 CA 89 assessments. A further short point concerns the extent to which the two defendants owe different duties to AK pursuant to the Code however, again, there is broad agreement that for practical purposes the Code and its provisions applied and were relevant statutory guidance at the time the assessment was conducted. Finally, to avoid what might be termed *rolling judicial review* the parties are agreed that the point at which I must consider the adequacy or otherwise of the assessment is the date of discharge namely the 16/11/20. I should add that there is no complaint made in these proceedings as to the adequacy or otherwise of the Stradbroke placement. There remains however an ongoing concern that the assessment conducted at the point of discharge remains inadequate to meet her needs and that remains the responsibility of the defendants despite the services provided at Stradbroke.

7. Before embarking upon my review of the assessment it is necessary to set out in summary form the background to this case. The history of the many challenges that AK faces are principally set out in the witness statements of her mother GK dated 23/9/20, 23/9/20 and a further updating statement dated 14/12/20 expressing ongoing concerns post AK's move to Stradbroke. It is not necessary for me to set out all of the historical background details given that there is no dispute that AK has suffered in the way described and continues to suffer as a result of her ongoing mental health issues and other challenges. Therefore, in summary only;
 - (i) AK was born on 2/2/05 and is therefore now 16 years of age. From a young age she witnessed serious domestic violence from her father towards GK.
 - (ii) AK was admitted to Simmons House an inpatient psychiatric unit for young people, which is part of the Whittington Hospital within the second defendant's area, in February 2019. She had been to that point unwell for some time receiving treatment in the community and is described as being anxious, tearful and unable to get to or to stay at school. At that time, she was washing and cleaning herself compulsively, was not eating and had lost a lot of weight. GK describes AK suffering from panic attacks, chest pains, bad nightmares and AK had started to hear voices and see visions. The admission to Simmons House was a planned admission because the situation was described as getting worse not better. The admission was therefore voluntary. In addition, AK had been diagnosed as suffering from PTSD as a result of suffering a serious sexual assault by a stranger when she was 13 years old.
 - (iii) GK described that while at Simmons House AK's health deteriorated and she started to self-harm and talk about suicide making a number of suicide attempts. As a result, there were periods when AK was detained under s.2 MHA 83 for assessment, under emergency detention pursuant to s.5(2) MHA 83 and finally under s.3 MHA 83 being detention for treatment beginning on 11/10/19. In November 2019 AK was diagnosed with an autistic spectrum condition which assisted her in understanding her own needs and GK

describes AK's mental health difficulties lessening and that she seemed to be making good progress.

- (iv) The s.3 MHA 83 detention was extended following a tribunal hearing on 22/5/20 until 13/7/20. At the end of that period and following a steady improvement in AK's mood and behaviour no further extension was sought and AK remained at Simmons House as a voluntary patient. At around this time it appears that the clinical team based at Simmons House had informed GK that AK was making progress sufficient to start planning for her discharge.
 - (v) Unfortunately, AK's health deteriorated significantly when she saw the perpetrator of the sexual assault near to her current home on 30/7/20 during a home visit. Following that GK describes a series of incidents involving AK including self-harm, running away from Simmons House and further attempts on her life.
 - (vi) 25/8/20 a meeting of the joint agency panel involving both defendants resulted in an agreement to fund a residential placement for AK at Stradbroke an independent special school in Woodford Green operated by the provider Tulip Care providing boarding facilities for girls aged between 8 to 16.
 - (vii) 17/9/20 the Central Family Court in London granted an application by the first defendants for an Interim Care Order (ICO) and a Deprivation of Liberty Order (DLO) in connection with AK's proposed discharge from Simmons House and the commencement of the residential placement at Stradbroke.
 - (viii) 23/9/20 AK's move to Stradbroke was paused as a result of relevant staff needing to self-isolate due to COVID-19 symptoms.
 - (ix) 1/10/20 the Central Family Court in London discharged the ICO there being no application to extend it but did extend the DLO for a further 15 weeks.
 - (x) 16/11/20 AK was discharged from Simmons House and moved to Stradbroke where she still resides.
8. The relevant documentation pertaining to the assessment of AK's needs leading up to and at the time of her move to Stradbroke require consideration. A helpful timeline has been prepared by Mr Rutledge QC setting out the chronology and cross-referencing that to the various documents in the papers before me. The reports, assessments and minutes of meetings go back to the time when the AK was admitted to Simmons House on 26/2/19. I will not refer to all of the meetings / documents herein however I need to refer to most namely;
- (i) 2/4/19, 4/6/19, 2/7/19, 3/9/19, 8/10/19: Tier 4 panel meetings took place. The first was attended by the Head of Children's Health Commissioning, the Senior Care Coordinator, the Service Manager for Children's Services, the Principal Educational Psychologist and a Consultant Psychiatrist from

Simmons House and others (I will not on each occasion set out who was present or absent at subsequent Tier 4 meetings). The meeting noted that a further assessment would be completed following the relatively short admission. AK would be reviewed at the next meeting. The second meeting noted that AK was appropriately placed and CPA was to be in July (the Care Plan Approach forms part of the community care plan set out within the Code). The July meeting noted that clarification was sought regarding a discharge plan and that social care would get an update. In September it was noted a possible discharge to home and that it was no longer useful for AK to be at Simmons House. In October discharge was aimed at for November 2019, a neuro-development assessment was being done and CPA 20/11/2019.

- (ii) 11/10/19 AK was detained under s.3 MHA 83. It is accepted by the parties that this is the date when discharge planning should commence for the purposes of the Code.
- (iii) 5/11/19, 3/11/19, 7/1/20: Tier 4 panel meetings noted that discharge was still an aim for that month, the neuro-development assessment was still to be done, the CPA was noted for the 20/11/19 with Simmons House being asked to ensure that the school attend the CPA. A meeting was to be set up concerning AK attending the Lodge school. In November the meeting noted a new projected discharge date of January 2020 with a CTR (Care and Treatment Review) meeting to take place prior to discharge, the neuro-development report was still awaited, GK was to be encouraged to engage in discharge, the school was to take more responsibility and attend the CTR meeting. In January delayed discharge by the end of January 2020 was noted, CTR meeting was to be on 13/1/20, an education meeting on 10/1/20 and Simmons House was to make a referral to social care.
- (iv) 13/1/20: The CTR review report and action plan. This document is said to include all concerns and issues identified including key concerns requiring urgent attention and barriers to discharge. It initially uses a red/amber/green rating to answer each key line of enquiry. The document in total runs to several pages. After that section there is a more detailed spreadsheet covering areas such as hospital, care, risk, autism, family and other matters and for each there is a column headed *what we found out, recommendations – what needs to happen? who will do it? And by when?* At this stage AK was said to be ready for discharge with the right package of care. The panel noted there were concerns about incidents of risk in recent weeks and the recommendations noted a need to ensure there was clear discharge planning and transition planning to manage risk factors at home. AK was noted as having complex care needs and it was noted there was a need for a clear plan shared with parents to manage ongoing risk. The panel noted that there were several CPA's since admission and *'the CPA document did not reflect clear shared understanding of the formulation and good evidence of productive discharge planning'*. A review of the CPA process was recommended to ensure adequate crisis planning post discharge in order to reduce delayed discharge and to enable solid decision making, formulation and diagnosis was to be included. The Panel also noted there was no clear crisis plan for transition discharge seen in the documentation. The recommendation was for the clinical

team to devise that with CAMHS to ensure that there was a complete and robust crisis plan along with social care support. The panel noted that although AK was getting overnight leave at home there had been significant risks reported and incidents in the last three weeks.

- (v) 4/2/20: Tier 4 panel meeting noted that AK was at high risk and that GK would struggle with her. A parental assessment was being conducted on GK by social care and educational problems were noted namely AK had learning difficulties, was not engaging with education and that more dialogue was necessary with the school. There was no discharge date at that time and Simmons House was to make a referral to social care.
- (vi) 2/3/20: A Professionals Meeting Took Place including the Assistant Head Teacher, Case manager and Family therapist from Simmons House, the Principal Educational Psychologist and Marc Mathison who is the Deputy Team Manager in the Disabled Children's Team (DCT) for the London Borough of Islington and a witness in this case. Mr Mathison explained the purpose of the meeting and he stated that he wanted to understand the work that had been done so far and how much GK had been able to pick up strategies to enable her to care for AK. There were concerns regarding GK's ability to cope with the care of AK at that moment when AK was at Simmons House. The DCT was carrying out an assessment to be able to establish AK's needs and support GK in the community when AK was discharged. The meeting noted a proposed date of discharge had been set for 28/3/20 although at another meeting it was said to be 28/2/20. Mr Mathison explained that the discharge date was not realistic given recent incidents and that as GK was not able to care for her at home another care option should be considered although that might take a long time to arrange. The meeting considered GK's mental and emotional health, AK's awareness of the situation, GK's expectations, educational provision, that support could be put in place and a plan for ongoing involvement and AK's needs. It was noted that care provision replicating that of Simmons House with specialist ASD (Autistic Spectrum Disorder) support and therapy would be hard to come by requiring consideration of the legal framework and consultation with senior management in social care. A discharge review meeting was noted for 28/3/20.
- (vii) 3/3/20, 7/4/20: Tier 4 panel meetings noted that AK's education was quite impaired as she was not engaging. A placement was to be sought as it was felt that GK would struggle to manage her. A discharge planning meeting was noted for the end of March with a discharge date '*estimated*' at 28/3/20. The April meeting noted that a JAP (Joint Agency Panel) meeting was to be convened. A s.20 CA 89 (provision of accommodation) agreement with GK was noted as being necessary. The meeting noted '*delayed discharge – not ready for discharge and assessment as required around future living arrangements*'.
- (viii) 8/4/2020: Professionals meeting. Mr Mathison was again present at this meeting along with other professionals. The meeting notes set out a chronology including references to self-harming in January and February 2020

at Simmons House noting that at that time AK was subject to s.3 MHA 83. The meeting noted that AK had a diagnosis of ASC and presented with a very high risk of self-harming behaviours which could be ‘*predictably unpredictable*’. Episodes of absconding were noted from hospital with and other areas of concern. At that stage, a s.17 CA 89 assessment had been completed identifying parenting capacity concerns resulting in other assessments and a strategy meeting was held on 24/3/20. Simmons House reported that AK could not be managed safely at home by GK and would require a therapeutic placement. A report written by Simmons House noted that AK would self-harm there and at home and identified triggers for such behaviour. The meeting noted that CAMHS had been supporting AK however the one hour meetings had normally only lasted for about 20 minutes. It was noted that AK had found it difficult to engage in education at Simmons House and had stopped attending the individual sessions with her teacher due to Covid-19 restrictions. It was thought likely that AK would need additional support in school to meet her educational needs. It was noted that she had limited attention and that her functional skills needed assessment. Specialist education provision was thought suitable or an on-site education provision in a residential placement setting. The meeting noted that in-house or foster care was unlikely to be able to meet AK’s needs as she needed 24-hour supervision due to the level of self-harming and absconding risks. Her impulsive behaviours would be difficult to manage in the community within a fostering placement. CAMHS reported that their community support was not enough to meet AK’s needs given that she did not engage in their sessions. Accordingly, a residential placement was regarded as better suited to manage the risk of AK absconding with on-site therapeutic support on AK’s discharge from Simmons House. A 52-week residential placement was necessary due to AK’s complex disability and other needs. A number of next steps and action points were listed in section 6 of the meeting notes.

- (ix) 5/5/20: Tier 4 panel meeting noted that AK was ready for discharge and that the Joint Agency Panel (JAP) placement decision was awaited accordingly discharge was delayed.
- (x) 5/5/20: the JAP met noting agreement that AK needed an integrated placement with therapeutic input for AK’s mental health needs. The social worker was to expedite an updated placement specification and contact the placement team. The notes refer to ‘*it has only now been agreed that an EHC assessment will be carried out*’.
- (xi) 15/5/20: the CPA (Care Programme Approach Community Care Plan) was prepared noting s.117 MHA 83 and that AK’s current status was pursuant to s.3 MHA 83. On page 1 a number areas of need were identified in the assessment together with risk behaviours including suicide or self-harm, severe self-neglect, risk from others, risk to intellectual/social development and indicating that a full risk assessment was marked as necessary or had had been completed. That risk assessment was not provided to me at the hearing of this matter. The plan noted that AK was to stay at Simmons House until a JAP placement was found for her, that funding had been agreed and AK was subject to s.20 CA 89. The expected outcome was for her to attend 52-week

placement suited to her complex care needs. It was noted that AK was at a high risk of unpredictable dangerous behaviours including running in front of cars, tying ligatures, trying to jump from high places, swallowing objects, overdose and self-harm by cutting.

- (xii) 2/6/20: Tier 4 panel meeting noted that AK would need support with boundaries and a structured routine. It was noted that the placement search was in process. It was also noted that AK had started to see GK again however she was '*not quite ready*' for discharge as her behaviours had escalated and that she required the right placement.
- (xiii) 10/6/20; Care and Treatment review noting that AK had gained weight, the sensory assessment had still not been completed despite it being offered to AK, that the placement team had been working closely with the hospital to identify a future placement, GK had not had a carer's assessment recently and that an EHCP have been submitted to the panel for consideration. Recommendations for each of the areas noted were set out with those responsible for implementation and all actions were to be completed by 30/6/20.
- (xiv) 7/7/20: Tier 4 panel meeting noted there had been no significant change in AK's mental health, the diagnosis of PTSD was confirmed and the visit to the proposed placement was noted with the possibility of the need for an alternative in the event that AK refused to go to the named setting.
- (xv) 28/7/20: JAP noted a placement at Vestige had been offered for AK and that an options proposal was needed. However, in August although funding was in place Vestige was ruled out due to concerns they would not be able to keep AK safe.
- (xvi) 25/8/20: JAP noted that the original placement was no longer possible with Stradbroke being an alternative with weekly fees of £4750 of which £1000 was for education. The meeting decided that JAP would pay a seven day retainer for the period 25th of August 2020 to 31st of August 2020. It was noted that GK had refused to sign the s.20 CA 89 agreement. On 28/8/20 AK and GK visited Stradbroke as part of the introduction and assessment to the placement.
- (xvii) 2/9/20 GK shared concerns with the family therapist including AK hiding her medication and leaving the family home without permission.
- (xviii) 4/9/20: A Transition meeting took place. GK did not attend and was not engaging with children services at that time. On 7/9/20 GK responded to the allocated social worker stating that she did not feel Stradbroke was suitable, that AK did not wish to attend and so GK did not wish to speak about it. The corresponding note states that the professional network felt that Stradbroke was suitable to meet AK's needs but GK's lack of agreement on the matter made it difficult to progress with any s.20 CA 89 agreement. Agreement was reached on the 18/9/20 with GK finally supporting the s.20 CA 89 order at the court hearing on 1/10/20.

- (xix) 8/9/20: Tier 4 panel meeting noted that AK and the GK were to visit Stradbroke and the transition plan was to be agreed. A discharge date was noted of 2/9/20.
- (xx) 18/9/20: A meeting took place at Simmons House. Mr Mathison was present together with GK. AK was present for the final 10 minutes. The plan was for AK going to stay overnight at Stradbroke on Monday, 21st September and that she would move there on Thursday the 24th September. AK was to be formally discharged from Simmons House care on Wednesday, 30th September. The local CAMHS team would meet AK within seven days of discharge and for up to 3 months post discharge. AK was noted as not taking her medication so the prescription would be stopped. Simmons House were to provide Stradbroke with all of AK's behaviour plans and strategies and to list the suggested sensory items to purchase for her bedroom. No overnight contact was proposed for the first two weeks from GK however she would visit AK twice weekly. The Local Authority noted that a 4-6 week settling in period would be more helpful to AK before reviewing and planning overnight homestays. One of the goals to support AK becoming more independent was to encourage her to chat to other young people or staff in between activities rather than ringing GK.
- (xxi) 22/9/20: JAP met noting that AK's EHCP had been drafted and that AK would be moving to Stradbroke on 24 September 2020. It was noted that '*The education provision requires improvement. There is an issue there*'.
- (xxii) 8/10/20: The Child and Family Assessment (C&F) was completed on 8/10/20 by the first defendant's Disabled Children's Team. It is a detailed report running to some nine pages including sections concerning significant life events, parent / carer assessment, relationships and caring for others, day-to-day responsibilities, health diagnoses and mental health, education, emotional and behavioural and social presentation, legal status and becoming looked after, self-care skills, the child's wishes and feelings and a child impact analysis. The recommendations requested Tulip care identify the date when they could safely accommodate AK and the placement team would prepare a parallel plan and seek alternative placements should Stradbroke not be used. A Discharge CPA meeting would take place once a transition date was confirmed. There was to be a meeting with GK and the professional network in the week commencing 12/10/20 to enable planning. When a transition date had been identified GK would sign a s.20 CA 89 agreement and the contact plan would be agreed as part of that.
- (xxiii) 16/10/20: a CIN (Child in Need) review was conducted and the minutes have been produced. GK was present together with Mr Mathison and other professionals. The meeting noted that the transition / outreach plan was due to start that day but it was not able to due to visit complications with the workers not being available and the timings were proving unpredictable due to Covid-19. The meeting considered AK's presentation, her views, the views of GK and other agencies. With decisions and actions being noted. AK was said to be struggling to concentrate in class and not stay for very long. However, AK

was said to have '*shown a real desire and determination to attend and engage with a tuition session.*' The challenge for Tulip care was said to be to maintain engagement in education beyond a '*honeymoon period*'.

- (xxiv) 26/10/20: a further CIN meeting took place with GK and Mr Mathison attending. The meeting was updated as to how AK's education needs were being met with AK engaging in GCSE level biology and maths work was being undertaken. The meeting noted the work done by the support worker's / psychologist, that the EHCP had been sent out, received by GK and there was a discussion about food.
- (xxv) 2/11/20: a CIN meeting took place noting AK's presentation that following a meeting with a member of staff at Stradbroke her mood was described as flat and quiet and that she had been tearful saying she felt frustrated. It was noted there was little update concerning education from the previous meeting although the maths and biology lessons had continued. AK had scored highly in a biology examination.
- (xxvi) 12/11/20: A joint CIN/CPA meeting was conducted with interested professionals from both Simmons House, Stradbroke and Mr Mathison. AK had stayed overnight at Stradbroke the day before and the meeting discussed ending the accommodation at Simmons House, education, a discharge meeting, mental health support, the local authority care plan and the reviewing process. Actions were again noted with 15th November being AK's last night at Simmons House.
- (xxvii) 16/11/20: AK moved to Stradbroke. The DCPA dated that day comprises 14 pages. I am invited by AK to scrutinise this document in order to determine whether the assessment of her needs and planning for her care within the new placement has been carried out appropriately and in accordance with the Code. The defendants contend that this is not a stand-alone document and it represented the culmination of months of work by a large team of professionals. It is said to be necessary to look at the complete picture leading up to this point in order to determine whether or not AK's case has any validity or not.
- (xxviii) 14/12/20: an updated LAC assessment was completed.
- (xxix) 15/12/20: a JAP meeting was held. Additional funding was discussed apparently for education. The meeting noted that if AK was not accessing education the placement cost should be reduced accordingly. It was said that if there was only one teacher the statutory duty set out in AK's EHCP was not being met.

9. Witness evidence.

- (i) Marc Mathison. In his witness statement of 19/11/20 he states that he is a qualified Social Worker and Deputy Team Manager in the Disabled Children's Team (DCT) of the London Borough of Islington. He supervised Janet Odame the social worker who had direct responsibility

for AK within the DCT. He said that the defendants were working together over many months to arrange and facilitate the move of AK to Stradbroke that took place on 16/11/20. The move would have taken place sooner but for the pandemic. He said that planning in relation to AK had been ongoing since the first half of 2020 as the documents show. The DCPA document dated 16/11/20 coincided with AK's move and it sets out a detailed plan going forward including a contingency plan in the event that at short notice a component of the care plan cannot be provided. The assessments (he included C and F assessments) reflect the multiagency work that had taken place with AK and GK. The CIN meetings that had taken place reflected the ongoing joint agency work taken place to support AK and after her package in order to prepare for discharge to Stradbroke. As AK is a looked after child he expected her first LAC review to take place within a month of her move with the 2nd to be held three months after that and thereafter at six monthly intervals. In the first two months following placement the social work team would visit fortnightly to support AK while she settles in.

There is no mention of the Code being considered, referenced or used as guidance when the DCPA was prepared dated 16/11/20. There is no noted reason for departing from it either. No evidence has been adduced from Dr Simon Lewis or Jo Levitt the signatories of the document.

In his witness statement of 12/1/21 he responded to what was said in GK's third witness statement about ongoing issues and concerns and I need not, for the purposes of this decision, set out in detail his responses.

- (ii) Jane Stephenson-Glynn. In her witness statement Ms Stephenson-Glynn confirms that she is employed by the second defendant as a Joint Children's Health Commissioning Manager for Children's Adolescent Mental Health Services (CAMHS) for the North Central London Clinical Commissioning Group (Islington Directorate) and Islington Borough Council. She said that she had been working for many months with leads for social care and education on the discharge of AK from Simmons House. She said that the case led to a decision to jointly fund a comprehensive residential placement for AK on 30/7/20 and as the case minutes show the case was reviewed at monthly panel meetings with representatives from health, social care, placement and education. She said she also worked collaboratively with the placement team to identify a suitable placement. She chaired the monthly Tier 4 inpatient panel meetings and AK's case had been presented on each occasion following her admission to Simmons House. In paragraph 5 she sets out the various agencies that were involved in those meetings. In her role she also represented both defendants at care education and treatment reviews which are designed to support discharge and after-care from inpatient services. She participated in the Children in Need meeting on 26/10/20 and was also involved in the preparation of the Care Programme Approach documents that Mr Mathison referred to. It is said that at each stage of transition to Stradbroke the defendants worked with each other as well as with AK and GK and with the wider network of health and social

care professionals as is evident from the documents. The care package for AK was carefully planned over the course of the year and has been implemented as the product of significant work by partners in health and social care. The care package for AK is more complex and highly resourced compared with most other care packages due to the need to provide on-site psychological treatment, care and education as well as access to community services. There is no mention of the Code in her statement.

- (iii) GK. I have taken into account what is said in the witness statements. In her recent witness statement she says that she was not involved in the preparation of the DCPA document, that she has not been invited to contribute to the care plan and had not been asked to sign it. She adds her daughter's input has not been incorporated into the care plan either. I have noted her ongoing concerns about AK's care.

The Law

10. The relevant statutory provisions are found within S.117 of the MHA 83. The section provides:

S. 117- After-care

(1) this section applies to persons who are detained under section 3 above... and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.

(2) it shall be the duty of the clinical commissioning group or local health board and of the local social services authority to provide or arrange for the provision of, in cooperation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the clinical commissioning group or local health board and the local social services authority are satisfied that the person concerned is no longer in need of such services...

(6) in this section "after-care services" , in relation to a person, means services which have both of the following purposes

(a) meeting a need arising from or related to the person's mental disorder; and

(b) reducing the risk of a deterioration of the person's mental condition (and accordingly reducing the risk of the person requiring admission to hospital again for treatment for mental disorder).

11. S.118 of the MHA 83 provided that the Secretary of State shall prepare and from time to time revise a Code of practice for the guidance of those concerned with the operation of the MHA 83 and provide *statutory guidance* for local authorities pursuant to s.7 of the Local Authority Social Services Act 1970. It is known as the Mental Health Act 1983: Code of Practice. The current version was published on the 15/1/15. Accordingly, local authorities must have regard to the Code and that persons who were required to apply it are to have training in order to do so. The Code states that that is necessary because departures from the Code may be subject to legal challenge. Any departure from the Code requires the reason for doing so to be recorded. In relation to commissioners of health services the Code is not statutory guidance and is described as being *beneficial* to them in carrying out their duties. The Code is therefore not statutory guidance in relation to both defendants. I

will return to this issue in due course given that the two defendants represent one organisation in the former category and one in the latter.

12. I do not propose setting out all of the sections of the Code that I have been referred to however I make it clear I have taken all of the relevant provisions into account. The main sections are:

- (i) 33.10: Although the duty to provide after-care begins when the patient leaves hospital, the planning of after-care needs to start as soon as the patient is admitted to hospital. In this case it is agreed that date was 11/10/19. CCGs and local authorities should take reasonable steps in consultation with the care programme approach care coordinator and other members of the multidisciplinary team to identify appropriate after-care services for patients in good time for their eventual discharge from hospital. (see also 34.17)
- (ii) 33.13: Before deciding to discharge or grant more than very short-term leave of absence to a patient or to place a patient onto a CTO, the responsible clinician should ensure that the patient's needs for after-care have been fully assessed, discussed with the patient (and their carers, where appropriate) and addressed in their care plan.
- (iii) 33.14: After-care for all patients admitted to hospital for treatment of mental disorder should be planned within the framework of the care programme approach (see chapter 34). This applies whether or not they are detained or will be entitled to receive after-care under section 117 of the act. Because of the specific statutory obligation it is important that all patients who are entitled to after-care under section 117 are identified and that records are kept of what is provided to them under that section.
- (iv) 33.16: The issues likely to be covered by a thorough assessment are set out in paragraph 34.19.
- (v) The care programme approach (CPA) is covered by chapter 34 of the Code. Chapter 34 sets out in detail what the CPA is, who is to be involved, the care plan and care planning. The section begins by stating that the chapter provides guidance on the key features of the CPA, when to use it, who should be involved and on care planning.
- (vi) 34.2: The CPA is an overarching system for co-ordinating the care of people with mental disorders. It requires close engagement with the service users and their carers and includes arrangements for assessing, planning and reviewing care.
- (vii) 34.3: Central to the CPA is the CPA care plan which aims to ensure a transparent, accountable and coordinated approach to meeting wide-ranging physical, psychological, emotional and social needs which are associated with a person's mental disorder. Included within the CPA care plan are:

- a treatment plan which details medical, nursing, psychological and other therapeutic support for the purpose of meeting individual needs promoting recovery and/or preventing deterioration.
 - Details regarding any prescribed medications
 - details of any actions to address physical health problems or reduce likelihood of health inequalities
 - details of how the person will be supported to achieve their personal goals
 - support provided in relation to social needs such as housing, occupation, finances et cetera
 - support provided to carers
 - actions to be taken in the event of deterioration a person's presentation, and
 - guidance on actions to be taken in the event of a crisis.
- (viii) 34.5: CPA plans should include details of any areas of need which are critical to preventing behavioural disturbance. These should be met through primary and secondary preventative strategies. Care plans should provide guidance on how staff and carers should respond if behavioural disturbance does arise (tertiary strategies).
- (ix) 34.7: the CPA should be used for individuals who are at high risk of suffering a deterioration in their mental condition and who need multiagency support, active engagement, intense intervention and/or support with dual diagnoses.
- (x) 34.8: This would include most people who are entitled to after-care under section 117 of the act.
- (xi) 34.13: The care plan to set out the practicalities of how the patient will receive treatment, care and support from day-to-day, and should not place undue reliance on the patient's carers.
- (xii) 34.15: The care plan should be regularly reviewed. It will be the responsibility of the care coordinator (or other officer responsible for its review) to arrange reviews of the plan until it is agreed between all parties, including the patient, that it is no longer necessary.
- (xiii) 34.18: Sets out a requirement for concerned professionals in discussion with patient to establish an agreed outline of the patient's needs and agree a timetable for the implementation of the various aspects of the plan.
- (xiv) 34.19: Care planning requires a thorough assessment of the patient's needs and wishes. A long list of matters that are likely to require consideration is then set out including continuing mental health care, psychological needs of the patient, physical healthcare, identified risk and safety issues, counselling and personal support, and contingency plans should the patient's mental health deteriorate and crisis contact details.

13. Application of the Code. Given the fact that this case involves two defendants the Code attributes responsibility for following the Code in different ways to each

defendant. Mr Armitage for AK submits that the Code is statutory guidance in relation to the first defendant and they were obliged to follow the Code absent reasons for not following it. In relation to the second defendant although the Code is not statutory guidance he submits that the second defendant was nevertheless also required to follow the Code absent cogent reasons for not doing so. This was an issue that emerged during the hearing. He submits that the Code is statutory guidance in relation to managers and the staff at hospitals and therefore he submits would be curious if the second defendant could defend itself from the charge of non-compliance with the Code on the basis that the staff at the hospital were obliged to follow the Code but the second defendant itself which, commissions the relevant mental health services in the area, was not. In addition, he says given that the Code does have statutory force in relation to the first defendant who owes the same duty under s.117 as the second defendant and given that the relevant assessment/planning process was carried out jointly the practical consequences are that both defendants were required to adhere to the Code absent cogent reasons for departing from it.

14. Mr Rutledge QC on behalf of the defendants raised this issue during argument. In his submissions to me he accepts that while clinical commissioning groups could have been included in the same category as local authorities for the purposes of the Code and there is a difference between the two defendants he realistically submits given the difficulties this could create for the reviewing court a pragmatic approach could be taken in the circumstances of this case. He submits that a reasonable approach for the court to take in the present case is to ask itself whether sufficiently diligent enquiries have been made by the defendants in performance of their duties under S.117.
15. In my judgement where two bodies are responsible for the welfare of an individual, and in particular in a case of a vulnerable child, and are working together for the purposes of s.117 MHA 83 responsibilities imposed on the relevant local authority in the form of statutory guidance must be the applicable standard. It would make no logical sense to either dilute or reduce the status of the Code or to reduce the overall obligation to apply the guidance in such cases.
16. Degree of scrutiny. A significant amount of time was taken up during oral argument in considering the level of scrutiny that I should apply in this case when assessing the lawfulness or otherwise of the s.117 MHA 83 assessment and the care plan in place at the time when AK moved to Stradbroke. As with the previous issue there has been some agreement between the parties although there is still a margin of disagreement.
17. The case law largely centres on s.17 CA 89 assessments / plans that are carried out in cases concerning vulnerable children. Mr Armitage on behalf of AK says it is appropriate in this case to adopt to same approach given that AK was such a person and that s.17 CA 89 assessments and plans were conducted in her case. He submitted therefore that there was an obvious overlap in this case hence the relevance of the Children Act 1989 and similar cases. He submitted that it would be illogical to apply a lesser standard of scrutiny in the case of a young person being considered pursuant to s.117 MHA 83 when that young person was also a vulnerable child.

18. Mr Rutledge QC was realistic enough to accept that proposition in the case of a vulnerable young person although he maintained that in the case of an adult normal public law principles apply when considering the lawfulness or otherwise of the s.117 MHA 83 assessment and the care plan implemented as a result. He said there was no reason in principle why the intensity of review in s.117 (2) cases should increase merely because the ex-patient is a child and he suggested anomalies could arise if such an approach were adopted. He accepted however that at the time AK moved to Stradbroke it was common ground that the first defendant owed AK throughout the transition process duties under s.17 CA 89 as a child ‘*in need*’ and therefore for practical, if not legal, purposes it was convenient to apply in relation to the first defendant a standard of review commensurate with the generality of the cases under the CA 89. He differed from Mr Armitage in relation to the need for ‘intense scrutiny’ referred to in one of the cases.

19. The result is that I must consider the various reported cases and the way in which that level of scrutiny has been described because, as will become clear, there are differences of emphasis in some of the cases. That said there appears to me to be a clear line of authority and reasoning as to the overall level of scrutiny that I should apply in determining if there has been compliance with the Code in the circumstances of this case. The following authorities are the most relevant;

(1) *R (Munjaz) v Mersey Care NHS trust* [2005] UKHL 58: The House of Lords considered the status of the Code introduced pursuant to S118 MHA 83. Lord Bingham said at 21 ‘*it is my view plain that the Code does not have the binding effect which a statutory provision or a statutory instrument would have. It is what it purports to be, guidance and not instruction. The matters relied upon by Mr Munjaz show that the guidance should be given great weight. It is not instruction, but is much more than mere advice which an addressee is free to follow or not as he chooses. It is guidance which any hospital should consider with great care, and from which it should depart only if it has cogent reasons for doing so. Where, which is not this case, the guidance address as a matter of covered by section 118 (2) any departure would call for even stronger reasons. In reviewing any challenge to a departure from the Code, the court should scrutinise the reasons given by the hospital for departure with the intensity which the importance and sensitivity of the subject matter requires*’.

Lord Hope at 69 said that he would go further than Lord Bingham and said of the Code ‘*They must give cogent reasons if in any respect they decide not to follow it. These reasons must be spelt out clearly, logically and convincingly. I would emphatically reject any suggestion that they have a discretion to depart from the Code as they see fit. Parliament by enacting section 118 (1) has made it clear that it expects that the persons to whom the Code is addressed will follow it, unless they can demonstrate that they have a cogent reason for not doing so*’.

(2) *R (AB and SB) v Nottingham City Council* [2001] EWHC 235: Richards J (as he then was) was concerned with a s.17 CA 89 case. In such cases a local authority is required to act under the general guidance issued by the Secretary of State. The claimant had argued that the defendant had failed first to carry out a proper

assessment of needs or to prepare a plan and provide the services to meet AB's needs. The court was assisted by independent reports that were said to show the kind of assessment that the defendant ought to have produced if the matter had been dealt with properly. Richards J found on the facts of that case although there was no specific requirement under the guidance to move to a formal core assessment he found that there had been no adequate assessment of need, there was no proper care plan and in those circumstances and there could not be any properly directed provision of services. He found it was incumbent on the defendant to do much more in order to complete the task begun during the child protection review procedure. He concluded that the assessment conducted was not adequate in terms of the guidance. He found at 43 *'it was essentially however a descriptive document rather than an assessment and in any event sufficient detail was still lacking both as regards the assessment itself and as regards the care plan and service provision. There was no clear identification of needs, or what was to be done about them by whom and by when'*.

- (3) *R (G) v Nottingham City Council and Nottingham University hospitals NHS trust [2008] EWHC 400 (Admin)*: Munby J (as he then was) considered alleged deficiencies in a pathway plan for child G. As part of that planning it was the duty of the local authority to carry out an assessment of the child's needs pursuant to schedule 2 Paragraph 19B(4) of the Children Act 1989. At 36 his Lordship said *'it will be noted that the local authority's duty during the assessment is not merely to identify the child's needs - though that is presumably part of the process of assessing them - it is to 'assess' the child's needs. Assessment goes beyond mere identification of needs; it involves analysis and evaluation of the nature, extent and severity of the child's needs, a process which must go far enough to enable a pathway plan to be prepared setting out in sufficiently precise detail the 'manner in which' those needs are to be met'*. And at 38 His Lordship set out the areas that he regarded as being of major concern. In summary, they were; that the process should have been embarked upon earlier, that it was far from apparent in that case that there had ever been a proper process of assessment, including a failure to produce documents which if the process had been properly undertaken would have been generated. His Lordship cited two examples to demonstrate the failings in the plan which revealed a lack of specificity in the pathway plan suggesting that the process of assessment, if it ever took place was not very rigorous. He said *'if there had been a proper process of assessment the pathway plan would surely be much less tentative and much more precise. Indeed in places the pathway plan reads more like a plan for further assessment of G's needs that a plan designed to meet her assessed needs.'*
- (4) *R (AC & SH) v London Borough of Lambeth Council [2017] EWHC 1796 (Admin)*: The court considered a s.17 CA 1989 child in need assessment that determined that two children were not in fact *'in need'*. Cheema-Grubb J stated at 40 that there were three stages which should inform the whole assessment process namely *'Identifying the needs of the child, producing a care plan which specifies how those needs are to met, and providing the services which the care plan has identified should be provided'*. At 44 Her Ladyship said *'although the adequacy of an assessment of need or the lawfulness of a decision may be challenged it is not for the court to substitute its judgement for that of the local authority on the questions whether a child is in need, what the needs are and nor can the court*

dictate how an assessment of need is to be done'. Her Ladyship continued 'there is no blueprint for a successful S.17 assessment although assessment must mean something other than a purely descriptive summary or statement of strategic objectives and the focus must be the children concerned. It must contain sufficient detail to demonstrate that the needs of the children have been assessed and where needs are identified action is planned to meet the needs and secure the child's welfare. Her Ladyship went on to acknowledge that the 'degree of detail and breadth of inquiry required would arise from the specific circumstances of the assessment including why it is being done'. She added that the defendant must take reasonable steps to carry out the assessment diligently. Finally, Her Ladyship said 'conclusions reached by social workers who have to make the best use of their resources (including time), to carry out the assessment process should be examined or construed in a practical way to determine whether sufficiently diligent inquiries have been done'.

- (5) *R (KS & AM) v London Borough of Haringey [2018] EWCA 587 (Admin):* The court was concerned with the adequacy of a plan formulated in relation to the risks to AK children. HHJ Walden-Smith, as part of her decision, also considered the level of scrutiny required to be adopted by the court when tasked with considering the adequacy of an assessment in such cases. The Judge said at 35 *'it is not for a court to assume that the local authority housing authorities carried out its functions in a conscientious manner (R (E) v London Borough of Islington [2017] EWHC 1440). What the court is required to do scrutinise with care what the local authority or housing authority has done, always ensuring that the court does not take over the role of decision-maker. In a case such as this where there is a risk to a child court is required to exercise intense scrutiny. There needs to be an objective and evidence-based analysis'*.
- (6) *R (J and L) v Hillingdon LBC [2017] EWHC 3411 (Admin)* Nicklin J was concerned with a refusal to provide housing and the needs of a disabled 8-year-old child. His Lordship accepted when considering the C & F assessment that the author, being a social worker, was not a lawyer and that he must not impose a standard that was too exacting. He noted that the plan failed to break down the individual risks that had been identified and in one instance a section requiring an answer to the question *'when will this be done?'* Was left blank. His Lordship considered that he was not *'nit – picking'* or making unrealistic expectations in criticising aspects of the plan. He found there were practical issues that should occur to any social worker. He stated that the s.17 assessment required an analysis of what (if anything) requires to be done, when and by whom. He went on to identify areas of concern regarding the C & F assessments compliance with the Working Together Guidance. He said at 63 (i) *"although the pro forma questions on the C & F plan are clearly designed to provide outcome focused answers, the outcome that was identified for the risks to L was to generalised to be of any practical value... Judged against paragraphs 52 to 55 of the working together guidance the outcomes did not adequately focus on what was needed, who would provide it and by when. There was no provision or mechanism for reviewing the progress in deciding whether it was sufficient 'to meet the child's needs and the level of risk faced by the child' "*.

20. With those principles in mind I turn to the specific areas of criticism identified by Mr Armitage in the DCPA dated 16/11/20. I remind myself that was the day when AK moved to Stradbroke and therefore this document had not been finalised in advance of discharge. I add I have not been provided with any expert guidance as to what or what is not an appropriate assessment and I have not been provided with other examples to compare good practice with bad.
21. Mr Armitage stressed the care programme approach and in particular sections of the Code 33.16, 34.3 and 34.19 concerning the issues likely to be covered by a '*thorough assessment*'. He highlighted the following areas of the DCPA as revealing that the assessment had not been completed and produced in accordance with the Code.
- (1) The document stated on page 1 '*Assessment: areas of need identified in the assessment and link to the appropriate intervention in the care plan*'. Of the available areas of need most had been marked and were therefore identified.
 - (2) The section headed '*Risk behaviour:*' noted issues namely of suicide or self-harm, severe self-neglect and risk from others. A '*full risk assessment been completed?*' box was crossed. That indicated that a full risk assessment had been completed. That document was not produced at the hearing of this matter despite the failure to produce it being discussed. It was open to the defendants to produce the document. I can therefore only conclude that there was no full risk assessment. That is a matter of concern.
 - (3) The section headed '*medication during admission and on discharge*' noted that AK had stopped taking two forms of medication against medical advice in September 2020. That highlights, one would have thought, an area of concern.
 - (4) No criticisms were made of the section headed '*admission progress, treatments and discharge summary*' which is a detailed history from February 2019 to October 2020 with multidisciplinary team reports within Simmons House.
 - (5) The section headed '*investigations and physical assessments including weight*' noted that AK had gained 30kg since admission and her BMI had increased from 20.6 to 34.0. It was noted that AK had refused to be weighed since June and that she had been reluctant to engage with the dietician. It was noted that the food care plan had been completed and that AK had attended the gym more recently. It was also noted that AK had been offered a repeat blood test to determine her prolactin level but she refused repeatedly. AK's vitamin D level was low in January 2020, had normalised by mid-May but recently AK had declined her supplements. No physical observations have been completed since 16th June 2020 (a period of five months) because AK had refused.
 - (6) The section headed '*diagnoses*' correctly stated that AK suffers from PTSD, childhood autism, vitamin D deficiency, problems related to alleged sexual abuse and self-harming. Under the heading '*intellectual level*' the comment was '*no concerns*'. That contrasts with the cognitive assessment completed in August 2019 (D.53 in the papers) which revealed AK was a young person with low average ability and her non-verbal abilities and cognitive proficiency fall within the low

average range. The report concluded that AK required support in learning, sufficient time to complete tasks and she needed to be taught strategies. She was described as having low cognitive efficiency. The report notes that it was sent to Dr Lewis and the lead teacher at Simmons House. As set out above problems with education were noted at times in the meetings held to discuss AK's case.

(7) The actions/interventions section:

- (i) Area of need (Management of physical illness, domiciliary support services). The section included a reference to AK's weight gain and referred to a need to continue to monitor AK's weight regularly and attempt to engage her in a healthy diet and exercise plan. Under the heading expected outcome it said, '*to ensure A's physical well-being in terms of weight management and a healthy lifestyle*'. By whom: referred to Stradbroke to work towards a healthy lifestyle with the review date of '*ongoing*'. Mr Armitage submits that there was no plan setting out the day-to-day practicalities as to how AK's weight reduction was to be achieved.
- (ii) Area of need (Education about illness/medication/treatment etc.) noted the need to support AK in managing her mental state including mood, anxiety, any suicidal ideation and/or self-harm or PTSD symptoms. The expected outcome was said '*to support A to have continued positive mood and engage in meaningful activity*'. The residential staff at Stradbroke and GK were referred to as '*to support A in attending her appointments with the in-house clinical psychologist, her new team at Redbridge CAMHS*' with an initial appointment on the '*18/11/20 at 2 pm via zoom*'. Mr Armitage submits that given AK's PTSD diagnosis and the background of serious mental health difficulties with self-endangering behaviours this section contains nothing resembling a '*treatment plan which details medical, nursing, psychological and therapeutic support*' as required by the Code at 34.3. He says the document sets out a broader aspiration to support AK in managing her mental state and refers to attending appointments. He says this section is inadequate with no assessment or detailed plan of day to day practicalities of AK's ongoing therapeutic support and is merely a statement of strategic objectives. There is nothing he adds, in relation to medication particularly bearing in mind that AK had stopped taking medication in September 2020.
- (iii) Area of need (Crisis team follow-up, management of risk behaviour) noted that Islington CAMHS were to have monthly contact with Stradbroke and visit AK six months into her placement with the expected outcome to be '*to continue to support A in her placement*'.
- (iv) Area of need 6 (Activities of daily living, daytime activity including education/leisure etc.) stated AK is establishing herself at Stradbroke school and the head teacher there is putting plans in place to support AK's learning tailored to her specific needs. The outcome is stated as being '*for A to be able to achieve as best she can in school*'. That was to be achieved with the support of Stradbroke, the social work team and Islington virtual school. Mr Armitage stressed that AK had missed a large amount of education in the past as a result of her mental health difficulties and this is

another example of the document essentially identifying an aspiration without any detailed plan for the day-to-day educational provision including remedial provision that AK will receive at the placement.

- (v) Area of need 7: Stated AK was to '*manage sensory overload and overstimulation to help her manage to concentrate and to avoid becoming overwhelmed, including managing/adapting the environment and using specific sensory aids such as sensory toys, weighted blanket etc*' and referred to a sensory assessment stating the outcome was '*For A to manage sensory overstimulation*' that was to be achieved by her with support from Stradbroke and if required the placement could obtain advice from Redbridge and Islington CAMHS. Mr Armitage submits this is another example where the document does not provide any detailed plan as to how the issue will be addressed on a day-to-day basis.
- (vi) Area of need 8: (Family/carer/child support). It was said that '*AK must have regular and safe family contact in placement and the community where and when appropriate AK will be able to have home leave and overnight stays in her family home*'. The expected outcome was '*To support AK and her family to maintain the relationship and support her cultural identity.*' and that was to be provided by GK, AK herself, the residential staff at Stradbroke and the Disabled Children Social Work Team with a meeting to be convened in the week commencing 30th November. Mr Armitage makes the same point that this plan provides no detail of how and when contact will be facilitated on a day-to-day basis.

22. In addition, I have considered other sections of the Discharge CPA & summary to provide balance as part of any critical review of the document. See for example;

- (i) Area of Need 1. This the section concerning management of physical illness and noted that AK needed a repeat prolactin blood test and that she had consistently refused '*with us*'. The expected outcome was '*to ensure AK's physical well-being and that her proactive levels return to normal*' was understandable however the person responsible for ensuring that simply referred to Stradbroke to make an appointment with her GP for a blood test in up to one month and for that to be arranged to be done for mid-December.
- (ii) Within the same section vitamin E creams were to be applied to reduce scarring from self-harming. The person to do that was simply referred to as Tulip care and for them '*to support AK with this as she wishes*'.

23. Mr Rutledge QC submits that '*intense scrutiny*' is not the correct approach. He prefers the approach adopted by Cheema-Grubb J in that the court should not dictate how and assessment of need is to be done and the decisions of social workers should be examined and construed in a practical way to determine whether sufficiently diligent enquires have been made. He reminds me that care plans are drafted by social workers and not lawyers.

24. He submits that the DCPA is not a stand-alone document and it represents the culmination of months of work by a large number of individuals and it should be read in conjunction with the October 2020 CIN assessment, the draft DHCP and the Directors Quote referral from Islington children's services to Islington Housing services and the concurrent family law proceedings. He says that the CIN reviews and updates in October and November 2020 reveal the level and extent of planning that went into AK's move to Stradbroke and evidence effective joint working of children services, health services, education services, Stradbroke itself and both AK and GK. He says the evidence shows joined up thinking with after-care services resulting in comprehensive and effective action planning. He added that the plan is a living document and will change and evolve over time, the plan is essentially a tool for the assistance of professionals and practitioners on the ground, the plan represents the exercise of professional judgement and also the allocation of resources which often involve a delicate balance to be struck. He says, in the absence of expert evidence the court is not equipped to gainsay the views of professionals on the ground, for example, whether AK should immediately start therapy or whether as the plan provides this should be assessed over a period of time. He says it is appropriate to look at the totality of services provided to AK and her family and I am reminded by him not to adopt a '*nit picking*' approach to the plan.
25. Mr Rutledge QC adds that it cannot be unlawful to delegate tasks to others because s.117 (2) was amended to include the words '*or arrange for the provision*' so as to make it clear that after-care authorities could lawfully commission services from third parties as recommended by the Law commission. He submits that the plan and the analysis in parts may be straightforward but it is analysis nonetheless and the plan does identify who is going to work with AK on, for example weight management and records that will be subject to ongoing review.
26. Accordingly, having distilled the principles applicable from the authorities, I ask myself the following questions to determine if the DCPA of the 16/11/20 is a lawful assessment and plan;
- (i) Is there a clear identification and focus of what was needed, what had to be done about the needs identified, by whom and by when? Is there an analysis and evaluation of the nature, extent and severity of AK's needs setting out in precise detail the manner in which those needs are to be met? Does the plan contain sufficient detail to demonstrate the needs of the child have been assessed and where needs are identified there is a plan to meet those needs and ensure the child's welfare?
 - (ii) Is the document a descriptive summary of strategic objectives amounting to a plan for further assessment rather than a plan designed to meet the assessed needs? Are the answers too general to be of any practical value?
 - (iii) The court is required to scrutinise with care ensuring that the court does not take over the role of decision-maker there being a need for objective and evidence-based analysis. Any analysis must not involve '*nit-picking*' or making unrealistic expectations in criticising aspects of the plan.

(iv) Has the Code been followed and applied as guidance?

27. In addition, I add the DCPA is an important document. It is by its nature a bridging document and plan provided by those who had or may continue to have responsibilities for a person under the MHA 83 and as in this case other responsibilities and duties because the person is a vulnerable child. As such it sets out what a person needs, how those needs are to be addressed and by whom. A person reading it be they a carer, the person themselves or a parent should be able to glean from it the key aspects of the plan going forward. There is no place for vagueness or lack of precision. It is a document that is, in effect, a reference guide to the person to whom it relates to be used to gain important information and guide care. In this case the professionals from Tulip care who were to take on the responsibility of caring for AK, managing her specific needs and providing support in the many ways that were needed or arranging for it to happen. Oversight would continue to be provided by the defendants working with the staff at Stradbroke. I agree with Mr Rutledge QC that it should be '*a tool for the assistance of professionals and practitioners on the ground*'. As with all tools the question is does it do the job it was designed to do?

28. I have taken into account all that has been said orally and in writing by counsel. I acknowledge the time and effort that has been committed to AK's case by a number of dedicated professionals as is demonstrated by the documents disclosed. AK's case was undoubtedly difficult to manage and progress and I note from GK's most recent statement still is. I note the significant public cost in providing provision for her at Stradbroke. In particular I note and, take into account, that the work in 2020 was done under quite extraordinary circumstances given the Covid-19 pandemic. Working practices have been disrupted to a significant degree and this case demonstrates the resilience and professionalism of those involved.

Decision

29. Discharge planning (Code 33.10). It is clear that AK's discharge was under discussion and as far back as September 2019 and was to be soon thereafter in November 2019. Things changed with the s.3 MHA 83 order. Even then discharge was noted for November that year. I find that discharge planning was considered if not fully undertaken before and after the 11/10/19 date of the S.3 MHA 83 admission. For a number of reasons the date moved and had to be changed. I do not find that there was any fundamental breach of the Code in this regard. Some flexibility must be necessary in the appropriate case.

30. The DCPA dated the 16/11/20; It was written or completed on the day of discharge given the date. In my judgement, this document does not adequately identify and thereby demonstrate by assessment the needs of AK, how to meet them and who is to do that. The statutory guidance set out in Code of Practice has not been followed and applied with sufficient rigour. In particular;

- (i) The document is dated the day of discharge and so cannot have been discussed and considered '*in good time*'.
- (ii) GK did not sign the DCPA indicating that she was not consulted and provided with a copy in advance.

- (iii) No witness statement has been produced from the signatories of that document and no other witness has referred to the Code being used as guidance as it should have been.
- (iv) Overall the plan does not set out in clear terms what was needed, what was to be done about the issues raised by whom and by when. There is some simplistic analysis and identification of the nature of AK's needs without the necessary precise, focussed and detailed manner in which those needs are to be met. There are broad aspirations without setting out in detail the practicalities for AK's day-to-day care and support. It is not thorough.
- (v) In many aspects, there is a lack of focus and detail. The document is non-specific in a number of key areas passing responsibility to Sandbroke in vague and unclear phrases. As examples,
 - (a) In relation to key aspects of AK's mental health and suicidal ideation the aim was '*to support AK to have a continued positive mood and engage in meaningful activity*'. This is wholly inadequate given AK's mental health history. There is no detail as to how this outcome is to be achieved. The same section refers to an initial appointment on the '*18/11/20 at 2pm by zoom*' and no more as a means to achieve the aim. There is no plan even in outline.
 - (b) The same applies in relation to managing AK's sensory overload apparently relating to her ASD with the aim of '*for AK to manage sensory over stimulation*' and to meet that '*if required the placement can obtain advice from Redbridge and Islington CAHMS*'. No detailed plan or proposal is set out as to how to achieve that important aim.
 - (c) Education. The aim was '*for AK to be able to achieve the best she can in school*'. That was to be achieved by Stradbroke, social care and the virtual school. There is a lack of detail and focus leaving support '*tailored to her specific needs*' to be planned in the future by Stradbroke. A plan for assessment and planning in other words.
- (vi) It is incorrect. The education reference to there being no concerns relating AK's intellectual level is contrary to the Cognitive assessment and as was noted at many meetings AK had numerous issues with learning. That is a concerning omission. The need for detailed planning in this regard was and remains a key aspect of AK's development and care. I accept that falls within the EHCP however I would have expected the issue to have been correctly noted in the DCPA.
- (vii) The document does not do as I described above namely provide a vital and important bridging link enabling the new care provider to gain a clear insight into the key aspects the plan going forward by informing them of

AK's specific needs, how to meet them and by whom. It is an unsuitable and defective tool for the job required.

- (viii) The guidance set out in the Code has not been followed. In particular 34.3, 34.13, 34.19. The care plan does not '*set out the practicalities of how the patient will receive treatment, care and support from day-to-day*'.
- (ix) No reason has been given for any departure from the Code.

31. Therefore, in my judgement, the DCPA dated 16/11/20 is unlawful. The Claimant is accordingly, entitled to a mandatory order requiring that a new assessment be conducted.

The s.17 Children Act 1989 claim.

32. This additional ground of claim was described in AK's statement of facts and grounds as being '*contrary to its obligations under s.17 CA 89 and s.11 of the CA 2004 the Council has also failed to assess, and formulate a plan in relation to, AK's broader needs, including in relation to her family's current housing situation, which (as a number of professionals agree) is having a detrimental effect on AK's mental health and welfare.*' The relief sought was a mandatory order requiring the council to carry out an up-to-date '*child in need*' assessment pursuant to s.17 of the CA 89. Permission was refused by Mr Michael Kent QC DHCJ on the 29/10/20 in relation to this part of the claim because an updated Child & Family assessment had been produced by the first defendant and therefore no purpose would be served in granting permission to AK to proceed with this ground. The judge made no comment as to whether this ground would be arguable otherwise.
33. Despite the appearance of this claim now being one demanding immediate re-housing for the family Mr Armitage sought to be more precise. In his skeleton argument for the hearing before me on the 19/1/21 Mr Armitage refined his case stating that because the first defendant owes AK duties under s.117 MHA 83 the court was only invited to rule on the Children Act claim in relation to the any of AK's needs that are not capable of being met through the provision of after-care services as defined by s.117 (6) of the MHA 83. In short, he says that the current family home is harmful to AK's mental health and that she, GK and her sibling need to move to a different property hence the Exceptional Housing Needs Referral dated 10/9/2020 contained within the case papers. That document prepared on behalf of Children's Services supported the family's move from their current two-bedroomed flat to a three-bedroomed property because of AK's needs. Specifically, because the sexual attack took place near to the current home causing AK to be scared to leave home in case she saw the perpetrator. That referral was accepted the same day by the Housing Options Manager who approved that the family were accepted for rehousing.
34. At the date of the hearing before me the family had not moved although it was quite clear that considerable effort had been made to locate a suitable alternative home. In his submissions to me Mr Armitage accepts that the ground as originally advanced concerning a failure to update the assessment of AK's needs need not be pursued given the major change of circumstances and the updated Child & Family assessment that was produced on 8/10/22 days after the claim was issued. As a

result, he narrowed the complaint and focuses solely on the first defendant's failure to produce a *plan* for addressing the current situation relating to the family's housing. He maintained this fell within the ambit of the s.17 CA 89 duty to AK and was a feature of the original ground of judicial review. Therefore, it cannot be said that is new or different from that originally advanced although the wider application is not pursued. He therefore only seeks an order requiring the first defendant to produce a proper plan to address the unaddressed welfare issues with the current housing situation. He submits that the overall duty under s.17 CA 89 and in particular s.17(6) CA89 requires a local authority to assess and plan for AK's needs in connection with the family's housing situation. For completeness, there is no dispute that AK is a child '*in need*' for the purposes of S 17 (10) CA89.

35. During argument it was pointed out to Mr Armitage that his claim was specifically directed towards the Children Services Division of the first defendant and not the Housing Department. He maintained that the claim was brought against the first defendant and that included the Housing Department. He submits there has been a failure on the part of the first defendant to produce an operational plan to assist AK and her family in relation to their housing needs.
36. The evidence in relation to this matter can be found within the witness statements of GK and Mr Mathison. Mr Mathison states that children's services have supported AK and GK in the application for rehousing and have made representations doing so. In his witness statement of 19/11/20 he confirmed that the family's housing situation was a matter under review and the Disabled Children's Team and Housing Services have been working to provide support for some time. He completed a Children's Services Exceptional Needs Application to assist GK in being awarded additional points under the Directors Quota. Housing services confirmed that GK was notified of her 352 points awarded and was given advice as to how she should bid for properties by letter of 10/9/20. At the date of that statement GK had made one bid for a first-floor property that was unsuccessful because the property was accepted by an applicant with a higher priority. On 8/10/20 GK's solicitor was notified that she would be made offers of suitable accommodation under the "*supported choices system*" provision in the allocation scheme because she had not been successful to date in bidding for a property. Only five ground-floor properties had been advertised from 10/9/20. He said that he continued to liaise with housing regularly to see if there were suitable properties available to be offered and had agreed with housing that a multi-agency meeting would be arranged to discuss the family's housing needs and explore what additional steps can be taken to rehouse them as soon as possible. He produced copies of emails in that regard.
37. At the time of the hearing before me the details of two properties have been provided to AK's solicitors and the suitability of those properties was being assessed. Mr Mathison points out that secure tenancies are granted by Islington Housing Services pursuant to their allocation scheme and in the event Children's Social Services have no housing stock. He states that the best solution is to continue to seek to secure accommodation for the family through Housing Services.
38. Mr Rutledge QC on behalf of the first defendant emphasises that s.117 MHA 83 does not require or even empower the provision of accommodation. Support with problems of accommodation was within the ambit of the section however the

authorities on this point and the recommendation of the Law commission make it clear that the provision of bare accommodation is excluded. I agree with his submission in this regard.

39. Mr Rutledge QC points out that only Islington Housing Services hold housing stock and as a matter of law housing cannot be allocated except in accordance with the published allocation scheme pursuant to S.166A(14) Housing Act 1996. A duty of co-operation exists between Islington Housing and Children's Services and there is a joint protocol in place governing referrals. That policy and practice guidance has been provided to me as part of this hearing. Finally, he says it would be wrong in principle for the court to grant declaratory relief unless it could identify a further step that would be both lawful and reasonable for the first defendant to take.
40. In my judgement, the focus of the original claim has drifted somewhat and has become an argument that lacks precision. There is no obvious targeted decision that can be said to be unlawful in a public law sense and it is a general complaint that more could be done to assist. There can be no doubt that the first defendants have assisted AK and her family and that according to the housing department allocation scheme properties are being offered to GK for consideration. It is difficult in the circumstances to see what more could be done. At the time of delivering this judgement it may well be that the family have been rehoused in which case this argument is academic. There is a '*plan*' to assist the family and it is in operation. A great deal of assistance and support has been provided consistent with the duty owed to AK under s.17 CA 89 and s.117 MHA 83
41. Given the facts as they appear to me I do not consider that this ground is arguable with realistic prospects of success and accordingly I refuse permission.
42. I will ask counsel to draft an appropriate order.