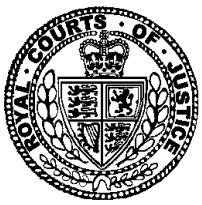

Neutral Citation Number: [2020] EWHC 1107 (Admin)

Case No: CO/4750/2019

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

Sitting by remote video conference

Date: 07/05/2020

**Before:**

**MR SAM GRODZINSKI QC** (sitting as a Deputy High Court Judge)

**BETWEEN :**

| | |
|---|---|
| **THE QUEEN**<br>**On the application of**<br>**(1) OA**<br>**(2) OPL (by his mother and litigation friend OA)**<br>**(3) OLL** | **Claimants** |
| **- and –** | |
| **LONDON BOROUGH OF BEXLEY** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -

**AZEEM SUTERWALLA** (instructed by **Matthew Gold & Co**) for the **Claimants**
**SIÂN DAVIES** (instructed by **London Borough of Bexley Legal Services**) for the **Defendant**

Hearing date: 28 April 2020

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

**MR SAM GRODZINSKI QC:**

## Introduction

1. This claim for judicial review concerns the extent of the Defendant local authority's duties under section 17 of the Children Act 1989 ("**the 1989 Act**").

2. In accordance with Practice Direction 51Y and the Civil Justice Protocol issued because of the current coronavirus pandemic, I conducted the hearing on 28 April 2020 by video conference. I note at the outset that the hearing worked well. Electronic bundles (containing helpful internal hyperlinks) were emailed to the Court in advance, both for the hearing documents and the legal authorities; the Skype for

Business platform was used; and all those who wished to attend the hearing remotely were able to do so. I am grateful to both Counsel, and to their solicitors and clients, for their co-operation in achieving this. I also should record that I received a request from a member of the press to attend the hearing, which I granted by ensuring that he was given access to the remote hearing. Although in the end the reporter did not join the remote hearing, I am satisfied that the hearing was conducted in public in accordance with paragraph 8 of the Civil Justice Protocol mentioned above.

3. The Claimants are a family of three. The First Claimant ("**C1"**) is the mother, the Second Claimant ("**C2"**) is her 16 year old son, and the Third Claimant ("**C3")** is her 19 year old son and C2's older brother.

4. The Claimants are all Nigerian nationals. None of them has immigration leave to remain in this country. As such, they have been excluded from mainstream benefits by Schedule 3 of the Nationality, Immigration and Asylum Act 2002 ("**NIAA 2002**"); generally referred to as having "no recourse to public funds" ("**NRPF**").

5. However in September 2019, in the circumstances which I summarise below, the Defendant accepted that it owed duties to C2 under section 17 of the 1989 Act, because C2 was a "child in need" within its area. In particular, the Defendant agreed to provide support for C2, and also for C1 as his mother and care giver, including accommodation in a two bedroom property; and financial support to purchase food and other essential items.

6. The Defendant also allowed C3 to live with his mother and younger brother. However this was not because the Defendant considered it had any legal obligation to do so. Rather, the Defendant simply did not take any active steps to ask C3 to live elsewhere, essentially because it was not costing the Defendant any more to allow him to stay. Indeed, the Defendant's view was that it should not provide additional support to C3 under s.17 of the 1989 Act.

7. This led to the Defendant's decision to provide financial support of £307.56 per month, based on the "standard rates" intended to cater for the essential needs of a lone parent and one child, contained in the Defendant's "*Policy for Families with No Recourse to Public Funds*", dated August 2018.

8. Although initially the position was not entirely clear, it emerged as common ground in the course of the hearing that this amount was never intended by the Defendant to take into account the food-related needs of C3.

9. This situation has therefore led to C1, as a mother of two sons, splitting the family's food allowance which was intended to be sufficient to feed only two people, between the three of them, with the result that C2 (as well as his mother and brother) is said to be going hungry. This is the Claimants' essential complaint.

10. As formulated in their Amended Grounds of Challenge and Skeleton Argument, there were three issues raised by the Claimants.

    i) Ground 1 was that the Defendant had not undertaken proper inquiries into the suffiency of the food which could be purchased on the monthly allowance, to enable it to arrive at a rational conclusion that additional financial support was

unnecessary. In particular, detailed criticisms were made about the thoroughness of the Defendant social workers' investigations into whether C2 was having to skip meals, eat small portions and/or otherwise regularly go hungry, in particular towards the end of each month when most of the allowance had been spent by C1.

ii) Ground 2 was that the Defendant had misdirected itself as to the proper interpretation of s.17 of the 1989 Act, in concluding that its duties under that provision did not extend to providing support which could take into account the position of C3.

iii) Ground 3 was that there had been an unlawful failure to consider whether providing additional support to C3 would safeguard or promote the welfare of C2; and avoid a breach of Convention (i.e. ECHR) rights. It particular, it was alleged that the Defendant had failed to undertake adequate inquiries as to the role that C3 played in relation to his brother.

11. As the arguments developed in the course of the hearing, it became clear that the first and key issue to be determined was that raised under Ground 2. Mr Suterwalla on behalf of the Claimants fairly accepted that if the Defendant was right in its interpretation of s.17, so that it could not and/or was not obliged to provide additional subsistence support, to take into account the food-related requirements of C3, then any shortcoming in its inquiries concerning the adequacy of the support (i.e. whether the support was leading to a shortfall in food) could not provide a basis to impugn the Defendant's decision. He accepted that the monthly allowance to which I have referred above would be sufficient for two people: the Claimants' real complaint was that it was insufficient for all three of them. In other words, put in public law terms, if the Defendant was correct on its approach to s.17, Mr Suterwalla accepted that it could not be said that its decision to provide support at this level for two people was irrational, nor was it the result of unlawfully insufficient inquiries.

12. Conversely, Ms Davies fairly accepted that if the Defendant did have a duty under s.17 to take into account the food-related requirements of C3, then the right outcome would be for the Court to quash its decision, and for the Defendant then to reconsider what level of support would be appropriate. Ms Davies accepted this, even though there were some passages in the documentary evidence which suggested that the Defendant's social workers had concluded that the current monthly payments were in fact proving adequate to purchase enough food for all three Claimants. In my judgment Ms Davies was right to make this concession, because as already mentioned, the monthly sum of £307.56 was based on standard rates intended to cater for the essential needs of a lone parent and one child, as contained in the Defendant's own policy. Thus if the Defendant were indeed required to take into account the position of C3, its own policy would (absent some exceptional circumstances, which are not suggested here) require the payment of a higher monthly sum. In other words, Ms Davies did not argue that it would be lawful for the Defendant to conclude that a sum sufficient to cater for the essential needs of two people (C1 and C2) would be sufficient to cater for three.

13. In these circumstances, I consider that the first and central issue to resolve concerns the proper interpretation and effect of s.17 of the 1989 Act, in particular in the context of cases where there is an exclusion from mainstream benefits, provided by Schedule

3 NIAA 2002, and in particular whether s.17 entitled and (if so) required the Defendant in this case to take into account the needs of C3.

## Factual and procedural background

14. As already mentioned, the Claimant family is from Nigeria. C1 arrived in the UK first. The date on which she entered this country is unclear, because she has given different dates, between 2003 and 2007, in various different immigration applications and in documents submitted to the Defendant. However nothing turns on this for present purposes. Some years later, likely to have been in 2011, C2 and C3 entered the UK to join their mother.

15. In any event, as I have said above, the Claimants do not have leave to remain in this country. Since arriving, C1 has made several applications for leave to the Home Office, in several different names, none of which has been successful. I understand that further applications for leave to remain are to be submitted by the Claimants' immigration solicitors but I am obviously not in a position to (nor need to) comment on the likely outcome of such applications.

16. Until 2018, the Claimants lived with C1's then husband, who was not the father of C2 and C3, but unfortunately the marriage broke down early in 2018.

17. Following a period of several months living with friends and then a night spent in Waterloo Station, C1 sought help from the Hackney Migrant Centre. On 31 July 2019, that centre provided the Claimants with a single night's accommodation at a hotel within the London Borough of Bexley, and the following day it referred the Claimants to the Defendant, who agreed to conduct an assessment of whether there was a child in need in its area, and agreed to provide accommodation for the family pending the completion of that assessment.

18. The Defendant also agreed to pay C1 the sum of £307.56 per month (excluding utility bills). This is the monthly sum it continues to provide (through a pre-paid card which allows it to monitor the expenditure) as well as having paid various one off sums for essential items such as C2's school uniform and winter clothing. As mentioned above, that monthly sum was based on the "standard rate" of £70.78 per week for a lone parent and one child, set out in the Defendant's "*Policy for Families with No Recourse to Public Funds*", dated August 2018.

19. On 18 September 2019, the Defendant completed its first section 17 assessment and informed C1 that the interim support it had been providing would come to an end on 1 October 2019. A number of the Defendant's officers were involved in this process, including Ms Adebola Sanyaolu, to whom I refer further below. The Defendant accepted that C2 was a child in need, because without assistance he would be destitute and homeless. However its view at the time was that the family was not connected to Bexley and that they should return to Ashford in Surrey, where the family had been living previously, and that they should seek support from Surrey County Council.

20. The Defendant's September 2019 assessment report also noted that "*There are no safeguarding concerns for [C1]. The only issue is that up till recently, [C2] commuted to school in Surrey from Bexley where the family reside; this is likely to impact on his physical wellbeing due to the stress of long travel."*

21. The overall thrust of the September 2019 report related to issues concerning C2's schooling, and to his mother's worry that he was at risk of joining a gang and getting into trouble as a result. There was no mention of concerns about the amount of food for C2 or the family generally.

22. In respect of C3, the September 2019 report recorded that he was "*a positive influence"* on C2; and that C3 helped C2 with his schoolwork.

23. On 26 September 2019, following pre-action correspondence from the Claimants' solicitors concerning the family's connection to the Defendant's area, the Defendant changed its position about that issue, and so agreed to continue supporting C1 and C2.

24. On 1 October 2019, a further pre-action letter was sent, this time challenging the level of subsistence support being provided to the Claimants. In other words, the focus had shifted from the question of whether support should be provided at all (depending on the issue of local connection) to the level of that support. On 14 October 2019, the Defendant responded stating that it would conduct a further assessment of need.

25. On 11 October 2019, another of the Defendant's social workers, Ms Serwah Palmer-Harris, visited the Claimants in their home. Most of the discussion was about C2's schooling, but at the end of the visit report it stated: "It was observed that there was enough food for the family".

26. On 28 October 2019, C1 and C2 attended the Defendant's office. Again, it is clear that the main focus of the discussion with Ms Palmer-Harris concerned obtaining a local school place for C2. There was a brief mention of food, including the following:

> "[C2] said he does not have breakfast generally but if he does he would have bread and jam and a cup of tea. He is able to have this before school if he wants. This will be part of the weekly shopping items.
>
> Lunch -he said he likes to eat a wrap for lunch. The social worker informed that she will ask the school if they can provide free lunches".

27. On 15 November 2019, the Claimants' solicitors provided the Defendant with witness statements setting out why the subsistence provided was not sufficient. These statements were lengthy and gave a significant amount of detail about a variety of issues, including but not limited to the sufficiency of food. In summary, it was said that the monthly allowance referred to above meant that the Claimants were not able to buy enough food to last the entire month, that they were having to skip meals and were often having to eat less than a normal portion.

28. C1's witness statement in particular explained that although earlier in the month the family was able to eat properly, as the month progressed there would be less money, so that in the last two weeks of each month, C2 and C3 were said to be regularly skipping breakfast, and C1 said she would also skip supper so that her sons could eat properly. C2's statement was broadly to the same effect, and also mentioned that he would get free school meals at lunchtime. He said that because he had to skip

breakfasts, usually in the latter part of the month, he would feel tired during lessons and found it hard to focus.

29. C2's statement also referred to his relationship with his brother. He said that C3 was a good brother; that they were close; that they liked spending time together; that he looked up to C3 and talked to him about his problems; and that C3 sometimes helped him with his school work, especially maths.

30. On 20 November 2019, the family all attended the Defendant's offices for a financial assessment. The report of Ms Palmer-Harris stated: "I met with [C1] to go through what she believes are her basic needs for shopping per week for both herself and her son" (NB this refers to son in the singular). The total food bill was stated as £294.84 per month, and although Mr Suterwalla said it wasn't possible to work out how this total had been arrived at, nothing turns on this because (as I have mentioned) it is not argued by the Defendant that £307.56 per month would be sufficient for all three Claimants' needs.

31. On 26 November 2019, Dawn Henry of the Defendant sent an email to C1, stating that the monthly subsistence amount would remain unchanged, although there would be an additional payment for the purchase of a winter coat, hat, gloves and school bag for C2. It is this email which was subsequently identified in the Claim Form as the decision being challenged.

32. In an email to the Claimants' solicitors dated 2 December 2019, the Defendant confirmed that it would not be increasing its support to the family, and that it did not accept it had a responsibility to provide for C3. It referred to the financial assessment which it had carried out on 20 November 2019 on the basis of the information provided by C1 which showed that C1's total monthly expenditure (not just for food) was £422. The email made clear however that this did not represent the Defendant's own analysis of the family's needs.

33. Two days later, on 4 December 2019, the Claimants issued this claim for judicial review challenging the Defendant's "refusal to increase subsistence support to Cs".

34. With their claim, the Claimants sought an interim order that their subsistence support be increased pending determination of the permission application.

35. On 9 December 2019, Clare Montgomery QC (sitting as a Deputy High Court Judge) listed the matter for 19 December to consider the application for interim relief.

36. On 18 December 2019, the Defendant produced a second s.17 assessment, which was completed by Ms Sanyaolu, who was described as "NRPF Social Care Team Manager"; with the involvement Ms Palmer-Harris, C2's allocated social worker The report included the following passages:

> "[C3] appears to be a positive influence on him; [C2] shared that he helps him with his school work.
>
> [C1] is [C2's] main (single) carer and there are no safeguarding concerns identified in the course of this and previous assessment…

> There is no indication of [C3] having any caring responsibilities towards [C2]. There has not been an opportunity to closely observe the siblings relationship; [C2] commented (as reported in the first assessment) that [C3] helps him with his homework. Apart from the first visit to the family on 23rd August when [C3] was spoken to, he has subsequently not being seen during the other home visits completed by the Social worker. Understandably, this may be because he attends college in Richmond and possibly returns home late. It is therefore unlikely that [C3] has caring responsibilities for [C2], whilst bearing in mind that [C1] is a full time mother who is unable to work as a result of her immigration restrictions.
>
> …
>
> Following [C1's] insistence that the subsistence amount paid to her family was not sufficient to meet their needs, a decision was taken by the local authority to complete a financial assessment with [C1] in order to assess her use of the monthly amount paid to her. The plan was for the social worker to complete a brief assessment to consider a breakdown of the family's spending whilst a comprehensive assessment would be completed by the Citizen's Advice Bureau. For this purpose, an appointment was arranged for [C1] for 5th December. However [C1] missed this appointment when she arrived later than the time slot given to her. A replacement appointment has been offered her at 9.30am on the 14th January 2020.
>
> The social worker completed the assessment with [C1] on 20th November during which she carefully went through the itemised list provided by [C1]. The decision following the assessment, which was communicated to [C1] by mail on the 26th November, was that the monthly subsistence amount payable to the family remains unchanged. However, the decision was taken to provide her with additional £80 to purchase a winter coat, hat, gloves and school bag for [C2]. The amount, which was agreed on a discretionary basis has already been credited to [C1's] account. [C1] was further informed in the mail that the monthly subsistence of £307.56 is the amount awarded for the family's **essential** living costs, whilst an additional monthly amount of £80.00 was agreed to cover their Gas & Utility costs. [C1] was also advised that if she required any advice on budgeting (how to reduce her current monthly costs), she should let the department know so that further support can be obtained for her within Bexley's Family Support services. As at date, she has not indicated a wish to take up the offer."

37. This second assessment in December 2019 did not refer to the Claimants' witness statements.

38. On 19 December 2019, the Claimants' application for interim relief came before Roger ter Haar QC (sitting as a Deputy High Court Judge). He granted limited interim relief (requiring payment of £172 forthwith to C1); adjourned the application for further interim relief, to be considered together with the application for permission; and directed that the Claimants have liberty to amend their grounds.

39. Following the filing and service of Amended Grounds and the Defendant's Summary Grounds of Opposition, permission was refused by Timothy Brennan QC (sitting as a Deputy High Court Judge) on 21 January 2020.

40. The Claimants then renewed their application for permission, which was granted by HHJ Graham Wood QC (sitting as a Deputy High Court Judge) at an oral hearing on 2 March 2020. The Court directed that the matter be expedited and heard on the first open date after 31 March 2020, and (no doubt in these circumstances) the Claimants did not pursue their application for interim relief at that hearing.

41. On 3 April 2020, the Defendant filed its Detailed Grounds of Defence together with a third witness statement of Ms Serwah Palmer-Harris. This witness statement included the following passages:

> "5….I have made checks and am satisfied that each time that I have visited the family home there has been sufficient food in the fridge, freezer and/or the cupboards. I have also visited the home at different times in the month, so it is not the case that I only see what food the family have available at the beginning of the month.
>
> 6. I have discussed this with [C2] and he has repeatedly said to me that he does not generally have breakfast before going to school. I did not understand him to be saying that he does not eat because there is nothing for him to eat, but that he just does not eat breakfast. However, his statements and those of the other Claimants assert that it is because they do not have any food, so I have made further inquiry, and when the freezer and cupboards have been checked there has been food available.
>
> 7. During my visits there is almost always a big pot of African stew on the hob or in containers in the fridge, which would last several days for three people. Sometimes this is eaten on its own or with rice or yams or other vegetables. This is a very healthy meal.
>
> 8. I have observed lots of frozen food and meals in the freezer each time I visit: see, for example, file notes dated 7 January 2020 and 18 February 2020. I am aware that [C2] has said that he will eat the stew at around 4pm and then if he is hungry he will get a steak bake or something similar from the freezer to eat.
>
> 9. I have offered [C1] support with balancing her budget to meet the needs of the family throughout the month, by referral

to CAB. A further offer of support was made on 18 February 2020 but [C1] refused this.

10. In addition to the support that Bexley provides for the family, we arranged for [C2] to receive free school meals when he is at school. I am of the view that his needs, in terms of adequate nutrition, are being met. I realise that the food he has may not be exactly what he would want, and that the family has a limited food budget, but I am satisfied that there is sufficient food in the home. I have asked [C2] about food at regular intervals as well as checking the kitchen.

…

15. Bexley is aware that the amount that it provides as subsistence to the family is intended to be sufficient for two people. However, it is provided to support [C2] and his mother and I have not seen evidence to suggest that [C2] is going hungry or does not have enough food or that his welfare is being undermined in any way. His welfare if anything has improved since Bexley began supporting, as he is settled at school (having switched some of his courses) and the file records indicate that he has made friends since September (he initially did not go out after school but more recently reported that he was meeting friends in Woolwich).

…

17. I have spoken to both [C2] and [C3] during my various visits to the family home to establish the role that [C3] plays within the family. My understanding is that there is a good sibling relationship which in my experience is typical of the relationship between a child and adult sibling. My opinion is that [C3] is not acting in any safeguarding role and does not in any way other than the normal incidents of family life promote [C2's] welfare. He is not essential to meeting [C2's] welfare. [C2's]s care needs are met by his primary care giver who is his mother. I have considered the witness statement filed in these proceedings and I note that there is no father within the home. I note that it is said that [C3] assumes this role. I note also that mother does not work and does not have any health issues that would impact on her ability to safeguard [C2] or to promote his welfare. She is a full time carer for her child, who is himself a healthy neuro-typical 16 year old. I take into account that [C2] has now made friends at school and is likely to derive some emotional support from his friends.

18. I have taken into account the practical and emotional support that is provided to [C2] by his brother. He is said to assist with homework. During my involvement with the family I have made inquiries of [C2's] school and they confirm that

> [sic] is achieving at expected levels and has no need for additional support. Some household support is to be expected of any family member - I do not see that this promotes [C2's] welfare as other household members are capable of performing cooking and cleaning tasks. In my professional experience a healthy 16 year old should be capable of such tasks himself. I take into account the emotional support [C2] receives from his brother. Clearly sibling support is beneficial, however I have no concerns as to mother's ability to meet her son's emotional needs. I am aware that the family has been known to other statutory bodies prior to their move to Bexley and none have expressed concerns about mother's ability to meet [C2's] emotional needs. When I have been in contact with his school they have confirmed that he is not identified by them as having needs in this area."

42. In accordance with the Order of HHJ Graham Wood QC, the Claimants applied for permission to rely upon three further witness statements in support of their claim, updating the Court as to the family's current circumstances and responding to points in Ms Palmer-Harris's third statement. This application was not opposed by the Defendant. The evidence disagreed with Ms Palmer-Harris's conclusions about the food situation and about the importance of the relationship between C2 and C3, and said that Ms Palmer-Harris had never discussed this relationship with C1 or C2.

43. Finally, on 9 April 2020, the Claimants served a Part 18 Request for Further Information, seeking (among other matters) various details about the inquiries that had been conducted by the Defendant. The Defendant responded on 17 April. Insofar as necessary, I refer to these responses further below.

## Legal Framework

44. Section 17 of the 1989 Act provides as follows:

> "(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—
>
> (a) to safeguard and promote the welfare of children within their area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.
>
> (2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
>
> (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided

> for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.
>
> (4) …
>
> (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.
>
> (7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).
>
> (8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.
>
> (9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt [ of universal credit (except in such circumstances as may be prescribed), of income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker's allowance or of an income-related employment and support allowance.
>
> (10) For the purposes of this Part a child shall be taken to be in need if—
>
> > (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
> >
> > (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
> >
> > (c) he is disabled…"

45. Paragraph 1 of Schedule 2 to the 1989 Act requires the local authority to take 'reasonable steps to identify' whether a child is in need.

46. Paragraph 10 of Schedule 2 provides:

> "Every local authority shall take such steps as are reasonably practicable, where any child within their area who is in need and whom they are not looking after is living apart from his family—

> (a) to enable him to live with his family; or
>
> (b) to promote contact between him and his family,
>
> if, in their opinion, it is necessary to do so in order to safeguard or promote his welfare"

47. The proper interpretation and effect of s.17 of the 1989 Act, in particular in the context of persons who, by reason of their immigration status, have no recourse to mainstream benefits, has been the subject of a significant amount of litigation and judicial guidance. I set out below what I consider to be the most relevant authorities in the context of this case.

48. In *R(G) v Barnet LBC* [2004] 2 AC 239, the House of Lords held that the section 17 scheme does not create a specific or mandatory duty owed to an individual child. It is a target duty which creates a discretion in a local authority to make a decision to meet an individual child's assessed need. Lord Hope at [91], with whom Lords Millett and Scott agreed, stated:

> "91 I think that the correct analysis of section 17(1) is that it sets out duties of a general character which are intended to be for the benefit of children in need in the local social services authority's area in general. The other duties and the specific duties which then follow must be performed in each individual case by reference to the general duties which section 17(1) sets out. What the subsection does is to set out the duties owed to a section of the public in general by which the authority must be guided in the performance of those other duties: see R v Barnet London Borough Council, Ex p B [1994] ELR 357."

49. In *R(MN & KN) v Hackney LBC* [2013] EWHC 1205 (Admin), Leggatt J (as he then was), considered the relationship between s.17 of the 1989 Act and Schedule 3 NIAA 2002, which provides for the withholding and withdrawal of support from certain categories of person. At [18] to [19] Leggatt J stated:

> "18. The inter-relationship between these provisions and s 17 of the Children Act 1989 is not straightforward. As a matter of construction, however, and as analysed in *R (M) v Islington LBC* [2004] EWCA Civ 235, [2004] 4 All ER 709, [2005] 1 WLR 884, the effect of Sch 3 of the 2002 Act as it applies in the present case appears to me to be as follows:
>
> (1) The Claimants and their parents are all in the United Kingdom in breach of immigration laws (and are not asylum-seekers). Paragraph 1 of Sch 3 therefore applies so as to make them all *prima facie* ineligible for support or assistance under s 17 (see para 7).
>
> (2) However, as the Claimants are children, para 1 does not prevent the provision of support or assistance to them (see para 2(1)(b)).

> (3) Nevertheless, para 1 does indirectly have this effect so long as the Claimants are living with their parents, because it prevents powers under s 17 from being exercised so as to provide support or assistance to the Claimants' parents (see para 1(2) and *R(M) v Islington LBC* at paras 17 – 19).
>
> (4) All this is subject to para 3, which allows a power under s 17 to be exercised if and to the extent that its exercise is necessary for the purpose of avoiding a breach of the Convention rights of any member of the Claimants' family.
>
> 19. The upshot is that, even if the Claimants are children "in need" for the purpose of s 17 of the 1989 Act, Hackney may only provide accommodation or other support to them and their parents as a family in the exercise of its powers under s 17 if and to the extent that to do so is necessary for the purpose of avoiding a breach of Convention rights."

50. The next case I should refer to is the decision of HHJ Bidder QC (sitting as a Deputy High Court Judge) in *R(MK) v Barking and Dagenham LBC* [2013] EWHC 3486 (Admin). This is a case on which Ms Davies placed significant reliance. In summary, MK was a young adult who, when she was still a child, had been living with her aunt and two younger cousins. Because of her immigration status (she was a Nigerian national with no leave to remain) she had no recourse to public funds. Her challenge was to the defendant local authority's refusal to provide her with accommodation and support. One of the arguments advanced on MK's behalf was that s.17(3) gave the defendant the power to provide accommodation and support, because the continued contact between MK and her two young cousins would promote their welfare. The defendant's evidence from one of its social workers, Ms Briggs, was that the welfare needs of the cousins were met entirely by their mother (MK's aunt). The social worker's view was also that MK was not an integral part of the family.

51. The Judge rejected the claim based on s.17 of the 1989 Act (and on various other grounds). Having referred to several authorities on s.17, the Judge stated as follows:

> "68. In my judgment, section 17(3) was not intended by Parliament to allow a local authority's children's services department to bypass a clear statutory scheme intended to exclude a Claimant such as this from a whole range of benefits including accommodation and cash support.
>
> 69. Section 17 (1) gives a clear indication of the purposes for which the powers in that part of the Children Act should be exercised. To utilise the section 17 (3) power either to house the claimant separately or even to accommodate her by granting her a licence to live at the flat in which her aunt and her cousins are housed would, in my judgment, be using the power for a collateral and improper purpose. I agree that to use the section in this way would be *ultra vires* the authority.

> 70. Alternatively, if the section 17 (3) power may be exercised in this way, the defendant's decision not to accommodate the claimant because that accommodation is not necessary to promote or safeguard the welfare of the two cousins is, I judge, a reasonable one having regard to the wide discretion the authority has under section 17 (1) to provide a range and level of services appropriate to those children's needs.
>
> 71. Mr Rutledge is quite right, in my judgment when he submits, looking not only at the most recent review by Ms Briggs, but at the 2 earlier core assessments, that Basit and Abdulkhalid have been found by the Defendant to be "children in need" simply because of their lack of accommodation, their other needs being wholly adequately met by their mother Mrs. Akinwunmi. Having assessed that it was not necessary to continue to accommodate the Claimant with Mrs Akinwunmi and the 2 boys in order to promote or safeguard the children's welfare, it is entirely rational for the Defendant to determine not to accommodate the Claimant under its section 17 (3) power. As Lady Hale said in *R(A) v London Borough of Croydon* [2009] 1 WLR 2557 at paragraph 26:
>
> > "... where the issue is not, what order should the court make, but what service should the local authority provided, it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the public authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and "Wednesbury reasonableness" there are no clear-cut right or wrong answers."
>
> 72. I have earlier in my judgment analysed Ms Briggs' review. I do not accept the criticisms made of it and it seems to me impossible to say that its conclusions are *Wednesbury* unreasonable. In any substantive sense the beneficiary of the use of the section 17(3) power would be the Claimant and not the children."

52. In *R(O) v London Borough of Lambeth* [2016] EWHC 937 (Admin), Helen Mountfield QC, sitting as a Deputy High Court Judge, gave the following helpful summary concerning the application of s.17, in particular in cases where the family has no immigration right to be in the UK.

> "6. That duty [under s.17(1)] does not impose an obligation upon a local authority to provide anything particular for any child. However, by virtue of section 17(3) Children Act 1989, a local authority has a wide discretion to provide a service for a particular child in need or any member of his family "if it is provided with a view to safeguarding or promoting the child's welfare". Such services may include accommodation or the

giving of assistance in kind or in cash: section 17(6) Children Act 1989.

7. A child whose parents are homeless and/or unable to support her is a child in need for the purposes of section 17 Children Act 1989, as explained by the court in *R(Giwa) v London Borough of Lewisham* [2015] EWHC 1934 (Admin) para [11].

8. Many applications for support under section 17 Children Act 1989 arise in cases where the reason a child's parent is homeless or unable to support her child because she herself is a person with no recourse to public funds (known as "NRPF") as a result of her immigration status.

9. That situation arises because schedule 3 of the Nationality, Immigration and Asylum Act 2002 provides that persons specified in paragraph 7 of that Schedule are not eligible for a range of benefits, including support or assistance under section 17 Children Act 1989 (Schedule 3 para 1(1)).

10. In this case, the Claimant's mother PO is a person specified in paragraph 7 of the Schedule because she is here in breach of the immigration laws and is not an asylum seeker.

11. That is not the end of the matter though, because paragraph 2(1)(b) of the Schedule to the NIAA 2002 provides that the exclusion in paragraph 1 does not prevent the provision of support or assistance to a child. Further, paragraph 3 of the Schedule provides that the paragraph 1 exclusion does not prevent the exercise of a power or performance of a duty if and to the extent that its purpose or performance is necessary for the purpose of avoiding a breach of the person's Convention rights.

12. In short, a local authority has power to provide services under section 17 to a child even if the child lacks immigration status; but it can only provide services to the child and her parent together (i.e. as a family) if and to the extent that failure to do so would breach the Convention rights of either the child or her mother: see *R(MN) v London Borough of Hackney* [2013] EWHC 1205 (Admin) at [19].

13. If a child, especially a young child, is here with a parent, and the family unit cannot be sent anywhere else, it will often constitute a breach of the child's rights to respect for her private and family life not to accommodate her with her family. If the local authority must assume that the family cannot be removed from the jurisdiction consistently with its human rights (as to which see paragraph 39 below), then the effect of section 17 Children Act 1989 and duties not to breach Convention rights

by reference to section 6 Human Rights Act 1998, read together with paragraphs 2 and 3 of schedule 3 of the Nationality Immigration and Asylum Act 2002, is consequently often to render the section 17 power to accommodate – in effect – a duty imposed on the local authority to act as provider of last resort in cases where a child and his or her family would otherwise be homeless or destitute.

14. That means that the threshold duty of enquiring whether the child of the family is a child 'in need' acquires a particular significance. The determination that the child is in need triggers powers which will come close to duties to make basic provision in cases where no other state support is available, and where therefore, in the absence of any private support, the consequence is destitution.

15. The duty of a local authority pursuant to paragraph 1 of schedule 2 to the Children Act 1989 is to take 'reasonable steps to identify' whether a child is in need. What those steps are is a matter for the local authority, subject to complying with public law requirements. Statutory guidance as to child in need assessments is set out in "Working Together to Safeguard Children", dated March 2015 [*now dated July 2018*], and departure from that guidance as to assessment without reasonable explanation would be a public law failing. However, that is not the suggestion in this case.

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

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

> of the credibility of an applicant, some basis other than 'feel' has been articulated for why that is so.
>
> …
>
> 39. At the time when PO first presented to Lambeth seeking support under the Children Act 1989, she said she had a pending application for leave to remain in the UK. The significance of that was that, in keeping with the decision of the Court of Appeal in *Clue v Birmingham CC* [2010] EWCA Civ 460, save in obviously hopeless or abusive cases, the local authority was not permitted to prejudge the outcome of that application. The first NRPF assessment was therefore limited to assessing the question of whether the family needed support to remain in the UK. That was also the case for the second NRPF assessment, at which Lambeth had no up to date information about the content of the immigration application. It was only once the local authority knew that there were no live immigration claims, which it established from information obtained from the Home Office after this application for judicial review was lodged, that the local authority was also permitted to consider whether the child's needs could be met and any breach of human rights avoided by assisting the family to return to its country of origin: see *R(Kimani) v London Borough of Lambeth* [2003] EWCA Civ 1150, [2004] 1 WLR 272."

53. A few months after the decision in *R(O) v London Borough of Lambeth*, the Court of Appeal gave judgment in the case of *R(C) v London Borough of Southwark* [2016] EWCA Civ 707. The Senior President of Tribunals, with whom Moore-Bick VP and Vos LJ agreed, stated as follows:

> "12. It is settled law that the section 17 scheme does not create a specific or mandatory duty owed to an individual child. It is a target duty which creates a discretion in a local authority to make a decision to meet an individual child's assessed need. The decision may be influenced by factors other than the individual child's welfare and may include the resources of the local authority, other provision that has been made for the child and the needs of other children (see, for example *R (G) v Barnet London Borough Council* [2003] UKHL 57, [2004] 2 AC 208 at [113] and [118]). Accordingly, although the adequacy of an assessment or the lawfulness of a decision may be the subject of a challenge to the exercise of a local authority's functions under section 17, it is not for the court to substitute its judgment for that of the local authority on the questions whether a child is in need and, if so, what that child's needs are, nor can the court dictate how the assessment is to be undertaken. Instead, the court should focus on the question

whether the information gathered by a local authority is adequate for the purpose of performing the statutory duty i.e. whether the local authority can demonstrate that due regard has been had to the dimensions of a child's best interests for the purposes of section 17 CA 1989 in the context of the duty in section 11 Children Act 2004 to have regard to the need to safeguard and promote the welfare of children. It is perhaps helpful to examine that question in a little more detail.

13. Where a person has no right of recourse to public funds (i.e. the person is ineligible as a matter of law to have recourse to public funds or to the payment of sums under the Immigration and Act 1999 ['IAA 1999'] see, for example section 54 and schedule 3 to the Nationality, Immigration and Asylum Act 2002 ['NIAA 2002'] and paragraph 6 of the Immigration Rules), that person remains eligible to receive support from a local authority in the exercise of its powers under section 17 CA 1989. That is because, by paragraphs 2 and 3 of Schedule 3 NIAA 2002, there is an exception to the ineligibility of persons who are prohibited from being provided with mainstream housing and welfare benefits where the ineligible person is a child or the provision of section 17 support is necessary for the purpose of avoiding a breach of a person's Convention rights (see, for example: *R (M) v Islington London Borough Council* [2004] EWCA Civ 235, [2005] 1 WLR 884 at [18] to [19] per Buxton LJ). The local authority is, however, prohibited from providing accommodation or assistance for such a family pursuant to the Housing Act 1996 ['HA 1996'].

15. Accordingly, although in this case the local authority provided accommodation and financial support, it did so under section 17 CA 1989 and not as a consequence of any other statutory scheme. In so doing, the local authority was not required to have regard to guidance issued under another statutory scheme, for example the Homelessness Code of Guidance issued under section 182 HA 1996. That said, the overarching obligation imposed on local authorities in England (and their specified partner agencies) by section 11 CA 2004 is to "make arrangements for ensuring that – (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need." That overarching obligation casts the evidential net rather wide so that a decision based on an assessment undertaken for the purposes of section 17 CA 1989 should identify how the local authority has had regard to the need to safeguard and promote the welfare of children both individually (i.e. the subject children as regards the claim) and collectively: see, for example *Nzolameso v Westminster City*

> *Council* [2015] UKSC 22, [2015] PTSR 549 at [24] to [27] per Baroness Hale of Richmond DPSC.
>
> 16. The Secretary of State has issued guidance to local authorities in accordance with section 7 of the Local Authority and Social Services Act 1970 about assessments of need for the purposes of section 17 CA 1989. That guidance is to be followed save in exceptional circumstances (following the principle explained by Sedley J in *R v Islington London Borough Council ex p Rixon* [1996] EWHC 399 (Admin), [1997] 1 CCLR 119 at 123J-K that a local authority has liberty to deviate from the Secretary of State's guidance only on admissible grounds for good reason but without the freedom to take a substantially different course). The relevant guidance was originally to be found in *Framework for the Assessment of Children in Need and their Families*, TSO, 2000, and from 15 April 2013 is to be found in *Working Together to Safeguard Children*, DfE, March 2015. In simple terms, an assessment of the needs of a relevant child is to be undertaken so as to satisfy the three domains and 20 dimensions which the common assessment framework is designed to address. There is no longer a prescribed form of assessment but it remains the case that for an assessment to be lawful, it must be compliant with the guidance having regard to the *Rixon* principle: *R (AB and SB) v Nottingham City Council* (2001) 4 CCLR 295 per Richards J at [41] and [43]. For example, in accordance with the guidance, local authorities are required to publish a local protocol for their assessments and a threshold document which describes the criteria for referral for assessment."

54. Finally, and as is clear from *R(C) v London Borough of Southwark*, ibid at [16], the Defendant was required to take into account the Secretary of State's Guidance "*Working Together to Safeguard Children*", the relevant version of which was published in July 2018. Ms Davies relied on the fact that various passages in this guidance referred to considering the position of the child's parents or carers to meet the child's needs (see e.g. paras 20 and 45) and not to the position of other family members. However Mr Suterwalla drew attention to para 52 of this guidance, which states:

> "52. Research has shown that taking a systematic approach to enquiries using a conceptual model is the best way to deliver a comprehensive assessment for all children. An example of such a model is set out in the diagram on the next page. It investigates three domains:
>
> • the child's developmental needs, including whether they are suffering or likely to suffer significant harm
>
> • the capacity of parents or carers (resident and non-resident) and any other adults living in the household to respond to those needs

> • the impact and influence of wider family and any other adults living in the household as well as community and environmental circumstances"

**Discussion**

55. As explained above, I consider that the first and central issue to be resolved concerns the proper interpretation and effect of s.17 of the 1989 Act, in particular where the exclusions from mainstream benefits provided by Schedule 3 NIAA 2002 apply, and whether s.17 entitled and, if so, required the Defendant in this case to take into account the food related requirements of C3.

56. The Claimants' case advanced by Mr Suterwalla is that s.17(3), on its plain meaning, permits provision of support not only to someone with parental or caring responsibilities for the child in need, but also to "the family" or "for any member of his family", if it is provided "with a view to safeguarding or promoting the child's welfare"; and that the words "with a view to" do not impose a test of necessity. In support of this submission, he refers to the definition of "family" in s.17(10) as including "any person who has parental responsibility for the child and any person with whom he has been living".

57. Mr Suterwalla argues that it follows that the Defendant was entitled to take into account C3's food related requirements when deciding on the level of support to be provided. He accepts that before exercising this power so as to provide additional support for C3, the Defendant would have to be satisfied that if it did not do so, that would lead to a breach of the Claimants' Convention rights, but he says that no inquiry into that question has yet been carried out by the Defendant.

58. The Defendant's overarching case advanced by Ms Davies, is that s.17(3) cannot be used to provide support to C3 in this case. In its Detailed Grounds of Defence and Skeleton Argument, the Defendant argued that it would be a "collateral and improper" use of the power in s.17(3) to provide support for C3, relying in particular on the decision in *R(MK) v Barking and Dagenham LBC*.

59. Further, Ms Davies submitted that the reference in s.17(8) to the local authority being required to have regard to the means of the child and each of his parents before giving any assistance, showed that support could not be provided to any other adult under s.17(3).

Relevant principles concerning s.17 of the 1989 Act

60. In my judgment, the position is as follows.

61. First, it is clear that in s.17 Parliament has, unsurprisingly, defined "the family" as being wider than just those persons with parental responsibility.

62. Second, s.17(1)(b) clearly contemplates that the "upbringing" of children in need may be done "by their families". I do not accept Ms Davies' submission that the "upbringing" of a child can only ever be done by a parent. If Parliament had intended to limit the position in this way in s.17(1)(b), it could have done so. Further, one can

easily imagine cases where a parent is absent, or is prevented in some way (for example because of a disability) from bringing up the relevant child in need.

63. Third, s.17(3) does not state that the relevant services can only be provided to the child or his parents, but rather states that the services may be provided "for the family… or for any member of the family…".

64. Fourth, however, it must be kept in mind that s.17(3) is only concerned with the services which may be provided "in the exercise of functions conferred on [an authority] by this section"; so that the power to provide a service under s.17(3) can only be exercised for the purposes of meeting the general duty under s.17(1): see *R(G) v Barnet LBC* [2004] 2 AC 239 at [91] per Lord Hope. In my judgment it follows, given the closing words of s.17(1), that the services must always be those that are appropriate to the "needs" of the relevant child. For this reason, I do not accept Mr Suterwalla's submission that s.17(3) gives rise to a test which is less strict than a "needs" based test.

65. Fifth, as explained by Leggatt J in *R(MN & KN) v Hackney LBC* [2013] EWHC 1205 (Admin) at [19] (following the Court of Appeal in *R (M) v Islington London Borough Council* [2005] 1 WLR 884 at [18] to [19]), even when there is a child "in need" for the purpose of s. 17, a local authority may - if the family has been excluded from mainstream benefits by Sched 3 NIAA 2002 - only provide accommodation or other support to them and their parents as a family, in the exercise of its powers under s. 17, if and to the extent that to do so is necessary for the purpose of avoiding a breach of Convention rights. It is obvious that the position can be no less strict for any other adult member of the child's family who is excluded from mainstream benefits, including an older adult sibling such as C3.

66. Sixth, I do not consider that it follows from the decision in *R(MK) v Barking and Dagenham LBC* [2013] EWHC 3486 (Admin), that providing support to another adult family member of a child in need (i.e. other than a parent) will always be improper or *ultra vires*. I do not consider that HHJ Bidder QC's judgment at [68] to [69] goes this far, and if it did, I would respectfully disagree with it. As I have already mentioned, there could obviously be cases where another adult family member who was not the parent of the child in need, was the person bringing up the child, looking after him and safeguarding and promoting his welfare, and thereby meeting the child's needs. In such circumstances, in my judgment the local authority could provide accommodation and financial support to that adult family member under s.17(3), subject to the Convention rights test referred to above being satisfied.

Application in this case

67. In the present case, the Defendant decided that C2 was a child in need in its area, and that his needs should be met by providing accommodation and financial support for food and other essential items. It also decided that C2's welfare needs included the need to be cared for by his mother, C1, and thus that she should be accommodated with C2 and that she should also be provided with financial support for food and essential items. But it decided that it could not provide such support for C3.

68. The decision to this effect formally under challenge, identified in the Claim Form, is no more than an email which I have referred to above at paragraph 32, stating that the

monthly subsistence amount would remain unchanged from £307.56 per month. It did not state the legal basis for this decision.

69. Ms Palmer-Harris's third witness statement contained the following passage: "Bexley maintains that it can only provide support for [C2] under s.17 of the Children Act 1989 as he is a child and to [C1] as the care giver to [C2]. I consider [C1] support to be necessary to meet [C2's] needs as she has parental responsibility and is meeting [C2's] emotional and practical needs."

70. Thus while the Defendant's position in the documents and witness evidence produced by its social workers was, unsurprisingly, not articulated in precise legal terms reflecting the legislation and caselaw above, it appears clear that the Defendant considered that providing services to C1 would safeguard and promote C2's welfare, promote his upbringing, and thereby meet his needs. Further, even though it does not appear to have said so expressly, the Defendant must have accepted that accommodating and supporting C1 with C2, was also necessary to avoid a breach of the Convention rights of one or both of them; otherwise such support would not be permitted even to C1, because she has been excluded from mainstream benefits by Sched 3 NIAA 2002.

71. As to the position of C3: for the reasons I have already given, I do not consider that just because he was not C2's parent, he was necessarily excluded from the persons who could be given support under s.17. Nonetheless, in my judgment the Defendant could only lawfully provide support to C3 if it considered this was necessary to meet C2's welfare needs.

72. It is clear that the Defendant has formed the view that this was not the position, and that this was the basis for its decision not to provide additional financial support. In my judgment it is clear from the first and second assessment reports, and from Ms Palmer-Harris's third witness statement, quoted above, that the Defendant's social workers formed the view, having observed the family and spoken to them on several occasions, that all of C2's essential welfare needs could be met, and were being met, by his mother. This was their view, having taken into account the fact that the brothers had a good sibling relationship and that C3 provided beneficial emotional support to his younger brother, and that he helped him sometimes with homework and cooked him the occasional meal.

73. Unless this conclusion can be said to be *Wednesbury* irrational, or one that was reached after unlawfully insufficient inquiries, then the Defendant was right to conclude that it was not permitted to provide support to C3, as part of its obligations to C2 under s.17 of the 1989 Act.

74. Under Ground 3 of their Grounds of Challenge, the Claimants argue that this indeed the position. In this context, it is worth repeating the helpful guidance from Helen Mountfield QC (sitting as a Deputy High Court Judge) in *R(O) v London Borough of Lambeth* [2016] EWHC 937 (Admin) at [17] referred to above:

> "17. Whether or not a child is 'in need' for these purposes is a question for the judgement and discretion of the local authority, and appropriate respect should be given to the judgements of social workers, who have a difficult job. In the current climate,

> they are making difficult decisions in financially straitened circumstances, against a background of ever greater competing demands on their ever diminishing financial resources. So where reports set out social workers' conclusions on questions of judgement of this kind, they should be construed in a practical way, with the aim of seeking to discover their true meaning (see per Lord Dyson in *McDonald v Royal Borough of Kensington & Chelsea* [2011] UKSC 33 at [53]). The way they articulate those judgements should be judged as those of social care experts, and not of lawyers. Nonetheless, the decisions social workers make in such cases are of huge importance to the lives of the vulnerable children with whose interests they are concerned. So it behoves courts to satisfy themselves that there has been sufficiently diligent enquiry before those conclusions are reached, and that if they are based on rejection of the credibility of an applicant, some basis other than 'feel' has been articulated for why that is so"

75. To similar effect is the judgment in *R(S&J) v London Borough of Haringey* [2016] EWHC 2692 (Admin), where Neil Cameron QC (sitting as a Deputy High Court Judge) stated at [54]:

> "I accept Mr Suterwalla's submission that the decision under review in this case is such as to require close scrutiny. However, such close scrutiny should not focus on particular words used by a social worker in conducting his or her analysis but on the substance of the assessment and the reasons given."

76. In my judgment, on a close scrutiny of the evidence, and giving appropriate respect to the views of the social workers, the Defendant's decision that C2's welfare needs were all met by C1, and that supporting C3 financially was not necessary in order to meet the welfare needs of C2, was a rational one, and was reached after a "sufficiently diligent enquiry".

77. It is clear that between them, Ms Sanyaolu, the Defendant's Social Care Team Manager, and Ms Palmer-Harris, C2's allocated social worker (both from the Defendant's NRPF Team) had visited the home and spoken to C1 and C2 on several occasions about a wide range of issues, including the role played by C3 and his relationship with C2. This was not the only or even the main focus of their inquiries, which is unsurprising, since C1 herself had raised many issues over the course of the meetings, including those relating to C2's schooling, and financial support for food, clothes and other essential items.

78. In response to the Claimants' CPR Part 18 Request for Information, which among other matters asked about the detail of Ms Palmer-Harris's third witness statement at para 17, which had set out her evidence on the role played by C3, the Defendant confirmed that Ms Sanyalou had spoken to C2 about his relationship with C3; and that Ms Palmer-Harris had also done so, although not in detail.

79. In my judgment, the narrative description of the respective roles played by C3 and by C1, in relation to C2, as set out in the first and second assessment reports, together

with the evidence in Ms Palmer-Harris's third witness statement and the response to the RFI, indicate that a sufficiently detailed inquiry was made about the matters referred to above, and that a rational conclusion was reached. While I am required to give close scrutiny to the evidence, in order to decide whether there has been any public law error, I must also keep in mind that the primary evaluative function is made by the social workers (not the Court), who in this case have seen and spoken to the Claimants several times and whose views must be accorded due respect; and that I must assess the substance of the Defendant's evidence in a practical way.

80. The Claimants argue (see e.g. paragraph 82b of their Skeleton Argument) that Ms Sanyaolu only spoke to C2 about his relationship with C3 in the context of the first s.17 assessment in September 2019 which, they submit "preceded the issue of C3's role in the family". To some extent, there was indeed a moving picture, as the Claimants were raising and emphasising different concerns over the course of their involvement with the Defendant's NRPF team. In my judgment, however, whatever the timing of the conversations, it is clear that the Defendant's experienced social work employees did properly inquire into and consider the roles that C1 and C3 played in relation to C2, and rationally concluded that C2's welfare needs were met by his mother.

81. None of this is to diminish the role played by C3 as an older brother, nor the value of the sibling relationship. Older siblings will, in the course of ordinary family life, generally play an important role with their younger siblings, who will often look up to them and seek their companionship and help on a variety of issues, including emotional ones. That was clearly the position here, as the Claimants' evidence shows. And the role of an older brother may obviously be more important where, as here, there is no father in the household. However it does not necessarily follow from this, that C2's welfare needs, within the meaning of s.17, were being met by C3; and in my judgment the Defendant was rationally entitled to conclude that this was not the case here.

82. In those circumstances, the Defendant was in my judgement entitled to conclude, and indeed bound to conclude, that it had no power under s.17 of the 1989 Act to provide financial support for C3, in order to meet the welfare needs of C2.

83. That leaves finally the question raised under Ground 1, concerning the adequacy of the Defendant's inquiries into whether there was enough food for the Claimants, in particular towards the end of each month. However for the reasons already given, this ground of challenge must fail as well. As I have just explained, the Defendant was not entitled under s.17 to provide financial assistance sufficient to purchase food for all three Claimants; and Mr Suterwalla fairly accepted that it was lawful for the Defendant to conclude that the monthly allowance of £307.56 would indeed be enough for C1 and C2 alone.

84. In reaching these conclusions, I fully recognise the difficult position faced by the Claimants, and in particular by C1. It is obvious why, once both of her sons are living together with her, as they have been allowed to do, C1 has chosen to use the food which she purchases to feed both of her sons as well as herself, and has not simply provided food for herself and C2. But that entirely understandable human choice by a mother cannot create a legal duty on the Defendant to provide financial

support for C3, through the powers conferred by s.17, when otherwise it would not be obliged to do so.

## Conclusion

85. For all these reasons, I dismiss this claim for judicial review.