Neutral Citation Number: [2025] EWHC 2140 (Admin)

Case No: AC-2025-BHM-000088

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
ADMINISTRATIVE COURT

Birmingham Civil Justice Centre
Bull Street,
Birmingham

Date: 14th August 2025

Before:

HIS HONOUR JUDGE TINDAL
(Sitting as a Judge of the High Court)

- -

Between:

THE KING (on the application of) GW
(a child by his mother and Litigation Friend RM)

Claimant

- and -

DUDLEY METROPOLITAN
BOROUGH COUNCIL

Defendant

- -

Mr Ranjiv Khubber and **Ms Serena K. Sekhon**
(instructed by **Central England Law Centre)** for the **Claimant**
Mr Richard Alomo (instructed by and) for the **Defendant**

Hearing date: 9th July 2025

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JUDGMENT

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HHJ TINDAL:

Introduction

1. This claim for judicial review concerns the meaning of 'child in need' under s.17 Children Act 1989 ('CA') for families who have 'no recourse to public funds' ('NRPF'). They have no access to the mainstream benefits and housing systems due to their restricted immigration status. Whilst asylum-seeking families can receive Asylum Support from the Home Office, other NRPF families are supported by local authorities. One of the main ways this is done is support for the children under s.17 CA, which can be by direct provision, accommodation, or financial support. But such s.17 support is only available for a child or children if they are 'in need'.

2. That is the key issue in this case, unlike some of the other cases to which I was referred (and decided) about *level* of s.17 support for children assessed as 'in need' in NRPF families. More relevant are three recent Court of Appeal cases about *when* a child is 'in need' under s.17: *R(DF) v Essex CC* [2025] PTSR 806, *R(TW) v Essex CC* [2025] EWCA Civ 4 and *R(BC) v Surrey CC* [2025] EWCA Civ 719. However, all these cases concerned British children. The present case therefore is an opportunity to examine the concept of a 'child in need' in s.17 with the assistance of that guidance, but in the rather different context of children in NRPF families.

3. Many people might think children in NRPF families are obviously 'in need'. Whilst the children have access to universal healthcare and can go to school, NRPF families are still some of the poorest families in our community, as shown by evidence in another case involving the same Counsel before me in 2024. In 2022, in the 'Cost of Living Crisis', the Joseph Rowntree Foundation estimated then-Asylum Support rates (which had been applied by the authority in that case as the rate of s.17 support) as significantly lower than the 'destitution threshold' based on the average weekly expenditure of the poorest 10% of society. In 2023, Asylum Matters found 80% of families on Asylum Support cannot buy the clothes they need and 45% cannot buy the food they need, so parents often go hungry to feed their children. Project 17 also discussed how such poverty affects children's physical and mental health.

4. However, despite all those practical and financial challenges, many parents in NRPF families do just about manage to meet their childrens' needs, albeit often at the expense of their own. It is a testimony to those parents' resilience, strength - and above all, their love for their children. Moreover, 'NRPF families' is an umbrella term encompassing a wide range of families with different immigration statuses, some of whom are in the UK lawfully and can work and rent their home privately.

5. That is true of the Claimant's family here. He is a 10-year old boy and has been granted anonymity (as 'GW') alongside his 8-year old brother ('XW'), baby sister born in October 2024 ('ZW'), father ('BW') and mother and Litigation Friend ('RM'). The family are Zimbabwean nationals but came to the UK in 2023 on RM's skilled work care visa, which authorised her (and BW) to work, but not to have any recourse to public funds. As I shall explain, RM alleged exploitation by her then-employer and in April 2024, the Home Office National Referral Mechanism ('NRM') accepted there were 'reasonable grounds' to believe that. Since then, RM has received financial support from the NRM which is *less* overall than the Asylum Support rate (as there is no element for BW who is authorised to work but does not).

6. The family were first referred to the Defendant in May 2024. On 5th July 2024, it concluded the Claimant and his brother were not 'in need', despite the exploitation of RM by her previous employers, problems with her new employer (whom I shall explain is linked to the family's landlord and RM's estranged sister) and BW's unfitness to work. In October 2024, just after ZW was born and RM started a period of maternity leave to care for her, RM brought on behalf of the Claimant a judicial review claim of that first assessment. Permission was given and the case was listed before HHJ Worster in Birmingham on 10th December 2024. However, at that hearing, the Claimant agreed to withdraw the claim on the basis the Defendant agreed to reassess the children (now including ZW) by 9th January 2025.

7. For reasons disputed between the parties, that assessment did not happen until 9th April 2025 ('the April assessment') - after RM had issued the Claimant's second judicial review claim alleging unlawful delay, pointing out the family's landlord in March 2025 gave notice seeking possession. On 14th April 2025, the Claimant issued additional grounds challenging that assessment. On 17th April 2025, HHJ Rawlings refused permission on the unlawful delay challenge as it was academic now the April assessment had been produced, but made procedural directions about the additional grounds of challenge to the April assessment. After the Summary Grounds of Defence ('SGD') to the additional grounds were filed in May 2025, I directed a hearing to consider permission on those additional grounds, the oral renewal of permission on the unlawful delay ground and the application for interim relief. At a hearing on 4th June 2025, I refused permission on the unlawful delay ground as academic for similar reasons as HHJ Rawlings had done, but I granted permission on the additional grounds of challenge and made new directions expediting the claim to a hearing on 9th July 2025, rather than ordering interim relief.

8. There are four live grounds of challenge to the April assessment - three for which I gave permission at the June hearing, supplemented by Ground 4, articulated orally then but now in writing, for which I gave permission at the July hearing:

   (1) Ground 1: '*Misdirection on the facts and in law when considering whether C is a child in need: need for additional provision to meet welfare needs'.* The nub of this ground is the allegation that the Defendant wrongly applied a 'destitution threshold' to its assessment of whether the Claimant was 'in need'.

   (2) Ground 2: *'Misdirection on the facts and in law when considering whether C is a child in need: availability of housing provision to avoid street homelessness'.* The nubs of this ground are the allegations that the Defendant (i) failed to take a 'forward-looking' to that issue given the precarity of the family's housing; (ii) wrongly relied on a suggested defence to a possession claim; and (iii) wrongly applied a 'homelessness threshold' for the Claimant being 'in need' .

   (3) Ground 3: '*Misdirection on the facts and in law when considering whether C is a child in need: availability of voluntary return to Zimbabwe'.* The nub of this ground is the allegation that the Defendant wrongly relied on its view that the family could return to Zimbabwe to improve its material situation, when that would have the effect of frustrating RM's claim to residence under the NRM.

   (4) Ground 4: *'Irrationality'*. The nub of this ground is: (i) if any of Grounds 1-3 succeed, the assessment was also irrational; or (ii) even if not, the cumulative effect of the factual issues in those Grounds show the assessment was irrational.

9. Given the rather convoluted entangling of the assessment process with the litigation, I will not separate out the factual background from the litigation history in this judgment. Instead, I first set out the factual and litigation background to the April 2025 assessment under challenge, then consider that assessment in detail and briefly the developments in the three months since, before analysing the legal framework and the issues of law arising, then finally turning to my conclusions on the four Grounds.

Background to the April 2025 Assessment

10. RM, BW and their children are Zimbabwean nationals (including ZW, who alone among the family was born here). Tragically, RM and BW had an older daughter who died aged only 13. This was why RM became a carer in Zimbabwe and ran a support service for families of disabled children. RMs' sister (whom I shall call 'MM') is the director and main shareholder of both: a property company which I shall call 'TG', currently RM's landlord; and (through a holding company) a domiciliary care company which I call 'Z', currently RM's employer. It is clear MM controls both companies; and due to her actions, RM is estranged from her.

11. RM came to the UK first in January 2023 on her visa to work for a care company which I shall abbreviate to 'PVC', which as far as I know is not owned or run by MM. A foreign national working in the UK care sector like RM must have a 'Sponsor', typically a British business licenced to employ them. This makes such 'sponsored workers' particularly reliant on their employer for their immigration status, not just their wages. Sadly, on occasion, this also means such workers are particularly vulnerable to exploitation by their sponsor, which RM alleges happened with PVC. In her initial witness statement in the first judicial review, she said that in the seven months she worked with PVC from January to August 2023, she was only paid around £20 in total and PVC also charged her several thousand pounds for the cost of RM's Certificate of Sponsorship ('CoS'). Whilst she was still working for PVC, RM borrowed the money to pay this from MM. But RM's job with PVC ended in August 2023, when PVC's sponsor licence was withdrawn.

12. Under RM's visa, her family is also allowed to live with her in the UK (and BW also to work). In August 2023, BW brought over the Claimant and XW from Zimbabwe to the UK. By this stage, RM had started work for her sister MM's company Z (because sponsored workers are allowed to work for up to 20 hours a week for another licenced sponsor company, which Z is) and to rent their present property in Dudley from MM's other company TG. However, technically RM's formal 'sponsoring employer' remained PVC and in February 2024, the Home Office told RM she would have to find a new sponsor employer by April 2024. So, in March 2024, Z became RM's formal sponsoring employer. By then, RM had complained to the Home Office NRM of exploitation by PVC in 2023 (not of exploitation by Z). On 3rd April 2024, NRM Officials decided there were 'reasonable grounds' to consider that RM was exploited by PVC, but they have yet to decide whether there are 'conclusive grounds'. Pending that decision, RM cannot be removed from the UK under s.61 Nationality and Borders Act 2022 ('NBA'). Also, until that Conclusive Grounds decision, as a 'Potential Victim of Trafficking' ('PVoT') under the Modern Slavery Victim Care Contract ('MSVCC'), RM is entitled weekly to £49.18 'essential living needs' for herself and her children (not

her husband BW) and a 'recovery rate' for herself. Between April 2024 and ZW's birth in October 2024, the total PVoT weekly payment RM received was £174.04.

13. However, whilst the PVoT payment doubtless helped, it did not solve the family's financial problems. In her statements for the first and second judicial review claims, RM contended that in combination, Z and TG deducted between them much of RM's wages. It was a condition of the tenancy from TG that RM repay Z the money MM had loaned RM to pay off PVC the cost of her CoS; and Z also deducted from RM's wages her monthly rent of £780 to pay to TG. The net result was that RM received very little in wages and by May 2024, the family were in arrears with TG, who told them by letter to move out by 7th August 2024. Since the controlling director of Z and TG was RM's sister MM, it seems very likely this was MM's own decision.

14. Following a referral to them, the Claimant's now-solicitors in May 2024 applied to the Defendant for assessment of the children's needs. The solicitors reported that:

> "The family is destitute, owing to labour exploitation. The mother, who is pregnant, is the sole wage earner under a zero-hour contract, there is an NRPF condition on their leave to remain. The family is struggling to meet rental payments, to buy food or pay its bills. The household exists on the poverty line and is subject to mounting debts….As a result of these circumstances, the children are in need and require assessment to confirm what support can be offered to the family, under Section 17 [CA]..."

This referral did prompt some additional support from the Defendant in June 2024: a referral to the school of the Claimant and his brother to provide free school uniform, meals and trips, two beds for the boys, a Baby Bank referral for clothes and other items for ZW when born, £200 of vouchers for winter heating and a food bank parcel. For reasons that will become clear, I will call this 'Early Help support'.

15. The first assessment was completed on the 5th July 2024, by a different social worker than the April 2025 assessment. In the 2024 assessment, the social worker did speak to the Claimant and his brother (of course their sister was not yet born), as well as RM (who was on sick leave from Z due to pregnancy complications) and BW (who produced a sick note from a GP stating that he was unfit to work due to a back problem). That assessment concluded the boys were not 'in need' because:

> "Your parents are doing all that they can to support you with your current circumstances and your mom has picked up a second job [i.e. with Z] to support you financially. Your school have now stated that they will provide support with free school meals, school uniforms and pay for school trips….Children you…are happy at home and love your school, there has been no safeguarding concerns [about] the care your parents give you.. It is my professional opinion that at this time there is no further role for Childrens services at this time. All of the appropriate referrals have been made in regard to your family and support is being provided by [Black Country Women's Aid which supports RM as a PVoT] which should continue. *Should the family become homeless*, Dudley Housing will have to provide the family with emergency accommodation however *due to the fact they are not destitute they will not provide this at this time*." (my italics)

I have italicised those words in this July 2024 assessment, since the social worker arguably *did* apply (as alleged against the April 2025 assessment under challenge) a 'homelessness threshold' and/or 'destitution threshold' for the children being 'in need' under s.17 CA. Certainly, these were essentially alleged, albeit in different terms, in the Grounds in the first judicial review claim issued on 8th October 2024.

16. Shortly before that claim, on 4th October 2024, ZW was born by C-section with some medical after-effects for RM. She had formally started her maternity leave in September 2024, which she is still on at the time of this judgment. RM alleges just before ZW's birth, MM and her adult son came to threaten her to get her to leave the property. In August and October 2024, despite the GP sick note, BW worked in a butcher's shop (which was not mentioned at the time), although RM says he has not worked since. In November 2024, due to ZW's birth, the family's weekly PVoT payment increased to £232.69. Nevertheless, the family still struggled to make ends meet and debts continued to climb: Council Tax owed to the Defendant (who had obtained a liability order of £1185 then an attachment of earnings order for £508.50), water bills to South Staffs Water and energy bills to the energy supplier. Indeed, in December 2024, TG changed energy supplier for the family's property without consulting RM, who now cannot pay arrears or get access to the account as it is in TG's name. Indeed, RM also alleges disrepair to the heating in the winter.

17. Speaking of the property, the rent arrears also continued to climb, but the picture is rather murky. On 29th January 2025, Z (i.e. RM's employer, not her landlord) emailed RM threatening possession proceedings for 'rental arrears' of £2,264.46. But the attached document of payments between January 2024 and January 2025 against a monthly liability of £780 (i.e. the monthly rent) showed payments as 'loan repayments' by an employee. Notably RM's 'repayments' dropped significantly in November 2024: to £538.26 that month and January 2025 and £521.70 in December 2024. Those figures were the same for those months as on RM's payslips for maternity pay, which said they were paid by bank transfer, but RM's bank statements show no payments received. All this confirms RM's belief that her all her maternity pay since November 2024 (and possibly much of her pay earlier) is being diverted by Z towards (but not totally covering) her rent to TG and that the two companies are so intertwined that Z (the employer) is threatening possession proceedings on behalf of TG (the landlord). MM seems to treat these two companies as interchangeable. Yet only a week after Z (not TG) claimed 'rental arrears' of £2,264.46, TG's own well-respected rental management agent, Connells, claimed the rent arrears were only one month's rent: £780. Yet in a notice seeking possession dated 3rd March 2025 to which I return in a moment, TG claimed that as at 20th February 2025 (less than a month later) the arrears were £2,506.20, suggesting that the 'rental arrears' claimed in the s.8 notice were in fact the 'loan repayment arrears' recorded on the January document plus a further month's arrears. In short, whilst TG are claiming *rent* arrears of £2,506.20 which seem to be based on Z's document it sent to RM in January 2025, Z recorded those arrears as a *debt* to itself. Therefore, it is unclear whether those 'arrears' are *rent* owed to TG, or a *debt* owed to Z, which obviously makes an important difference as to which company can sue for them.

18. As I noted, permission was granted on the first judicial review claim in October 2024 and it came on for hearing before HHJ Worster on 10th December 2024, but at that hearing the parties agreed that the Claimant would withdraw the claim in

return for a re-assessment by the Defendant by 9th January 2025. As I also said, the parties dispute why the assessment did not take place until 9th April 2025, three months later than required by HHJ Worster's order. But since I refused permission on the 'unlawful delay' claim at the June hearing because it was academic once the assessment had been produced (on the basis that the delay may be relevant to the remaining Grounds), I do not need to resolve that essentially factual dispute.

19. Having said that, the reality seems to be the Defendant's social worker Ms Benyon tried to arrange an appointment in January and early February, but this did not happen through miscommunication. It is not the only such miscommunication – when Ms Benyon did eventually meet RM and BW (but not the children) in late February, she understood RM to suggest the Claimant's solicitor had advised RM not to get a job as it would assist the claim. I accept that too was a misunderstanding and that the Claimant's well-respected and experienced solicitor would never have given such advice. In any event, in her own statement of 24th March 2025, RM said she was looking for work despite her health problems, although she was struggling to find any because sponsors insist on a driving licence, which she does not have in the UK. RM also said in that statement that BW was unable to work because he continues to have chronic back pain for which he is on medication. Yet, unlike for 2024 (when BW briefly worked anyway), there is not even one GP sick note in 2025 for BW. Whilst RM suggests that BW has not been able to get a GP appointment, this is rather surprising after several months if he has been trying. Unsurprisingly, in the April assessment, Ms Benyon concluded there was no evidence BW was unfit for work. That is true: for all RM's assertions, there is no objective supportive evidence.

20. Before turning to the assessment, in RM's March 2025 statement, she set out the family's situation, which I summarise in three categories: housing, financial and personal:

    a. The biggest change was in the housing situation. On 3rd March 2025 (after Ms Benyon had met RM and BW), TG served a s.8 notice, which as I said, claimed 'rent arrears' of £2,506.20 as at 20th February 2025 (despite TG's own agent Connells claiming they were only £780 a fortnight earlier). As I explained, the 'rental arrears' to TG may well be 'loan arrears' to Z. Be all that as it may, the s.8 Notice threatened possession proceedings at any time after 20th March 2025 (which were then issued on 28th April 2025).

    b. Moreover, the family's general financial situation continued to get worse. Even leaving aside 'rent'/'loan' arrears to TG/Z, the fact remains that RM was not receiving any pay from Z. By late March 2025, RM and BW owed South Staffs Water £474.27, the Defendant £1185 in Council Tax (which RM had emailed to explain she could not pay), the new energy supplier unknown arrears, as well as £374 to a friend. RM's weekly PvOT income of £232.69, plus vouchers from ZW's health visitor of £11.53 a month, did not cover the family's average weekly expenses of £244.26. RM also explained the family had used 'Uber' taxis mainly arranged for friends who repaid them, but a couple for the boys when school transport let them down. So, I am not sure Ms Benyon's 'Uber point' goes anywhere. In any event, it is hardly surprising things would be very tight given the PVoT payment does not include an element for BW, who as discussed, still does not work.

c. In her statement, RM reported the housing risk and financial squeeze is causing her and BW stress, particularly with the impact on the children. RM said she must economise on food, so the children are not getting nutritious meals and she and BW sometimes have to skip meals entirely. ZW is growing fast, although there is support from the Health Visitor. The boys have free uniform and meals from the school, but cannot afford the right shoes or to undertake activities after school or with friends. Plainly, this affects the boys who doubtless compare what they and their friends have.

The April 2025 Assessment and Developments Since

21. Rather unusually, Ms Benyon contained her needs assessment of 9th April 2025 which is under challlenge in a witness statement in these proceedings, rather than on the standard form like the July 2024 assessment. Mr Khubber for the Claimant accepted this was not in itself unlawful. After all, it is not typical for a parent to contribute to an assessment by witness statement either, as RM did on 24th March. The assessment was required by a Court Order, so it was done in statement form. But what matters is not form, but substance. Mr Khubber's point was more subtle: that social workers use standard forms to ensure that everything is covered, but because Ms Benyon did not do so, she did not cover everything relevant - in particular, she did not speak to the children as she might have been prompted to do by the form. (Indeed, the July assessment, rather unusually, was *addressed to* the children). Certainly, it is true that Ms Benyon did not record the views of the children in the April assessment. However, in April 2025, ZW was still a baby, XW was 7 years old (he has just turned 8) and the Claimant was nearly 10 years old. The boys' views were important, but perhaps not quite as crucial as if they were a few years older. In any event, the July 2024 assessment had recorded the boys' own views months earlier and in February 2025 Ms Benyon was told the boys' views by RM and BW.

22. Indeed, the boys' views aside, the April assessment covered all the issues one would expect. Over 20 pages, Ms Benyon set out the reasons for the assessment (i.e. the context of HHJ Worster's order) and the enquiries undertaken (including two home visits in February, checks with the school and the health visitor which was still awaited), documents from the parents and (it is accepted, though not mentioned until later in the April assessment) RM's statement. The assessment then set out the family's composition and history on both sides (on which I have drawn for the factual background above), including the difficult relationship between RM and her sister MM and the complexity that would pose RM back in Zimbabwe. Ms Benyon also discussed the health of both RM (who was at that stage unfit to work, but still looking for it) and BW, who reported an ongoing bad back, but did not have any medical note or other objective evidence. Turning to the children, Ms Benyon had no concerns with their mental and physical health, culture and identity, parenting, emotional warmth, basic care or stability, save the impact of finances on nutrition and uncertainty about the housing situation given the s.8 Notice (although proceedings had not yet started).

23. Indeed, on the family's housing situation, Ms Benyon recorded the family's living arrangements (the boys shared one room, ZW and the parents another), RM and BW's concerns about their landlord, disrepair problems and issues with the energy company (discussed above). Ms Benyon also investigated the possibility of

alternative housing by the NRM, which reported it had no family accommodation available. Ms Benyon noted RM and BW could not afford alternative private accommodation and whilst some of RM's family (other than MM) lived in the UK, they were unable to support her with housing, nor were either maternal nor paternal family in Zimbabwe. On local authority housing, Ms Benyon said at paras 72-74:

> "72. At present, the family are currently within the UK under a Health Care Visa Sponsored through the Company. This visa unfortunately does not allow for the family to access public funds. Therefore, the family are not eligible for homelessness accommodation provided through the Local Authority's Housing Team on a long-term basis.
>
> 73. I have made further enquiries with the Local Authority Housing Support Team and was informed that….until the family have received a Notice of Eviction from the Court, which gives a date of pending eviction from the home, the housing team would not provide any advice or support to the family, as the family would not be deemed as homeless until the time where this notice has been granted by a Court.
>
> 74. It is my understanding currently, that formal eviction proceedings have not started, and the family have not yet received any further paperwork at this time regarding the eviction."

24. Ms Benyon then considered the family's financial circumstances, arrears/debts and RM and BW's employment situation. She noted that the family 'report they are destitute and unable to manage the needs of their children on the current funding'. She reviewed the family's income, particularly the PVOT payment of £232.69 a week and support from the Health Visitor of £300 ASDA vouchers, £100 Argos vouchers, new bedding for the parents and ZW (I note the boys had new beds in 2024) and various other cleaning and hygiene products. Ms Benyon noted the boys' school was supporting them with uniform and free meals, but the boys could not join the after-school activities they wanted. (Ms Benyon also discussed the use of Ubers, but as explained, I need not dwell further on that). Turning to the family's arrears, Ms Benyon noted monthly expenses of rent of £780, Council Tax of £100 and prescriptions of £20, but also the 'rental arrears' of £780 and £2,261.46 (which overlap), a separate debt to MM of £3,000 (as discussed, I also suspect substantial overlap here) and arrears to the water company, electricity company (but they did not know how much) and to the Defendant for Council Tax (no figure was given, but it referred back to RM's March 2025 statement which did give one). On the issue of employment, Ms Benyon noted that BW was currently unemployed and he reported that he was unfit for work, but had worked during a period covered by the GP sick note in August 2024 and did not have a up-to-date sick note in 2025. Also, Ms Benyon summarised RM's experiences at work, that she was on maternity leave but struggling with her health, although she was still making job applications, but the lack of a driving licence was a real problem. Ms Benyon noted that RM had shown an ability to change employers and work but added at para.106:

> "[RM and BW] report that whilst [RM]'s employer is reporting they are paying her maternity pay, on her pay slips, deductions have been made which take up the entirety of her wage. Therefore, leaving [RM] not receiving any financial means from her employer."

25. Save on the housing issue with paragraphs 72-74, quoted above, the Claimant through Mr Khubber (and his junior Ms Sekhon) takes no significant issue with any of Ms Benyon's background detail in the April assessment, which she carefully collated from RM, BW, others and a range of documents. Instead, the challenge is essentially directed at Ms Benyon's analysis section (which indeed is said not to follow through and take proper account of her earlier background detail in various respects – underlining that the criticism is not directed to the background detail). I therefore quote Ms Benyon's analysis almost in full from paragraphs 107 – 128:

> "107. The Local Authority have been ordered by the Court to complete an up-to-date Child and Young Person's Assessment in respect of [the Claimant and XW]. This request has been made under [s.17 CA]
>
> 108. The initial referral into Children Services was due to [RM] and [BW] being destitute and [RM] being the victim of modern-day slavery. [RM] is currently in receipt of payments from Black Country Woman's Aid under the National Referral Mechanism. This is due to a Positive Reasonable Grounds decision that [RM] could be a victim of Modern-day slavery.
>
> 109. It is evident throughout this assessment the family are currently residing in the UK and experiencing financial struggles because of her employer not providing payment for the work that was previously completed by [RM]. This is in addition to the difficulties [RM] has faced in relation to the hours of work she was initially promised from her employer of 60 hours per week. [RM] reports that prior to her complications within pregnancy, some weeks she was only being offered up to 12 hours per week. Due to the arrears maternal aunt has stated [RM] owes the company for administration fees, flights, visa costs and rental arrears, [RM] does not receive any income from the work she was completing.
>
> 110. However, as reflected above, [RM] is trying to change the sponsor on her visa and is actively trying to find alternate employment, including joining a Pilot Scheme offered by the Home Office.
>
> 111. Further, the family are in receipt of extensive support, summarised as:
> o A monetary income of £232.69 per week.
> o The family receive support from the boys' primary schools for school dinners, trips, and clothing.
> o Additional food banks.
> o Vouchers for the heating.
> o Significant support as identified in the last assessment [i.e. in 2024]
> o Significant support from the health visitor [summarised above], including vouchers and household items.
>
> 112. [RM] and [BW] report not being to afford the necessities for the children and having to reply on charitable organisations. It is evident…that they are receiving extensive support at no extra cost to them as well as £232.69 per week from BCWA.
>
> 113. Further, there is no evidence of [BW] being unable to work, even part time to assist the family. His inability to work is self-reported. There is evidence he has worked previously and this was not disclosed to the local authority, and his sicknote covered only to months in the summer last year.

114. Despite the previous reports, I have not been able to evidence the poor conditions of the family's home. The family have noted issues within their property including the boiler, the sink and the hob not working effectively. However, the reports I have received from [RM] and [BW], these issues have now been resolved through the maintenance team at Connell's Estate agents who are currently overseeing the management of the property.

115. The family are currently in a period of instability due to the recent update regarding the letter of intent to evict the family from the home. This letter has been provided due to [RM] and [BW] being unable to afford the rent of the property and amassing significant rental arrears. [RM] and [BW] have reported they are unable to clear the rental arrears or pay towards the rent every month due to receiving no income from [RM]'s employer.

116. At the point of undertaking this assessment, no Court proceedings have been initiated.

117. However, it must be noted that if proceedings are issued by the landlord for possession of the home, [RM] will undoubtedly have a valid defence to the claim given that her alleged inability to pay her rent can be linked directly to her landlord/employer making unlawful deductions from her wages.

118. Further, if [RM] is correct in stating that she has been harassed or threatened by her landlord she would be entitled to counterclaim for damages for breach of the covenant relating to quiet enjoyment which can be set off against any rent due to the landlord.

119. Therefore, it is incorrect to claim that the claimant and his family are at risk of being street homeless imminently leading to the local authority having to provide housing.

120. The Local Authority have a duty to any child within their area under [s.17 CA] who may be in need. [s.17] defines what constitutes a child in need and…is a target duty which creates a discretion in a local authority to make a decision to meet a child's individually assessed needed.

121. However, caselaw defines this decision as being 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 needs of other children.

122. On balance, the family has housing, income and support with the possibility of improving their own situation as [RM] is actively searching for employment and there is no medical evidence suggesting [BW] could not work or contribute by caring for the children whilst [RM] works. The evidence suggests the children's needs being met through several sources of support and the family not being destitute.

123. Social Worker will liaise with the Health Visiting Team to establish if Food bank vouchers are still being provided to the family. The local authority can provide food bank vouchers to the family as and when requested until the case is closed. These can be accessed from the social worker or family hub that is closer to where the family resides.

> 124. When considering the Visa requirements and basis upon which the [family] entered the UK, the local authority is also bound to consider whether the family could return home with support from the local authority.
>
> 125. [RM] and [BW] did not flee an unsafe country. They report that returning to Zimbabwe is not a viable option at this time due to the poor quality of education within Zimbabwe, the fact [BW] and [RM] do not have any property their country of origin and the on-going issues with Maternal Family who do not understand the difficulties the family have faced whilst in the UK from maternal aunt. There is a safe passage to repatriate back to home country with the support of the International Migration Organisation.
>
> 126. Taking into consideration the issues and placing these issues upon a balancing act, with the information reported by [RM] and [BW], I do not believe that it would be unsafe for the family to return to Zimbabwe… ….[T]his could be support[ed] by the Local Authority under the International Migrant Scheme, which would allow for the family to receive support to return to their country of origin and be provided with a settlement fee, which would allow for them to set themselves up within the country.
>
> 127. The local authority would support and assist the family in this regard.
>
> 128. Should the family decide to decline the offer of repatriation through International Organisation for Migration (IOM, they will need to notify the Home Office about their change of circumstances, for their immigration status to be amended/ changed. The local authority requires them to accept the support of repatriation or to work with the Home Office to enable them to review their current immigration status."

26. Before turning to the legal framework and my conclusions on the challenge to this assessment, I shall briefly review developments in the three months since. I have already summarised the course of proceedings since, so repeat this very briefly. On 14th April 2025, the Claimant issued additional grounds challenging the April assessment: specifically contending: (i) misdirection in law and fact about the family's financial situation on whether the children were 'in need' under s.17 CA; (ii) misdirection in law and fact about the family's housing situation on whether the children were 'in need'; and (iii) misdirection in law and fact about the availability of voluntary return to Zimbabwe. On 17th April 2025, HHJ Rawlings refused permission on the previous 'unlawful delay' challenge as it was academic now the April assessment had been produced, but made procedural directions about the additional grounds of challenge to the April assessment. After the Summary Grounds of Defence ('SGD') to the additional grounds were filed in May 2025, I directed a hearing for consideration of permission on those additional grounds, the oral renewal of permission on the unlawful delay ground and the application for interim relief. At the hearing on 4th June 2025, I refused permission on the unlawful delay ground as academic for similar reasons as HHJ Rawlings had, but I granted permission on the additional grounds of challenge and made new directions expediting the claim to hearing on 9th July 2025, rather than ordering interim relief.

27. Statements from RM on 17th June and the Claimant's solicitor of 18th June provide an update on various issues. RM continues to have a visa to work in the UK for a sponsored employer in care until December 2025 which enables her and her family to stay – and in any event, as a PVoT, RM (and they) cannot be removed until the

end of 'the recovery period' under s.61 NBA 2022 (generally, until a 'Conclusive Grounds' decision is made). Even leaving aside Z/TG, other debts still rise for the family, including a new Council Tax debt of a further £1359.05. RM's health continues to be poor: an NHS letter showed she has been for an ultrasound scan and been diagnosed with a hernia which may require an operation, so she remains unfit to work. RM also explains that if she does work, BW is needed to care for the children (although that seems academic for as long as RM remains unfit to work, which is at least medically evidenced, unlike for him).

28. However, perhaps the most important updating information is the detail about the possession proceedings, which TG issued against RM and her family on 28th April on the basis of 'rent arrears' claimed in the March s.8 Notice (although, as discussed it is not clear those are *rent*, as opposed to *loan,* arrears). The County Court gave directions on 13th June 2025 for another directions hearing in September 2025. The pleadings in the possession claim – all produced after the April assessment – state:

    a. In RM's Defence and Counterclaim, she denies possession would be reasonable on health and financial grounds and whilst she admits rent arrears, she counterclaims against TG for (i) disrepair of various kinds (e.g. mould growth); (ii) harassment or breach of 'quiet enjoyment' by MM (as TG's director) in switching energy providers and threatening possession, including in person in September 2024; and (iii) breach of employment contract (as I said, TG's director MM is also director of Z) in making deductions from wages (towards rent and 'administrative costs' of RM's CoS); and not paying her maternity and holiday pay and the minimum wage.

    b. In TG's Reply and Defence to Counterclaim, it contends possession would be reasonable, especially given RM's difficult financial position. It denies harassment / breach of quiet enjoyment and disrepair. The 'breach of employment contract' counterclaim is said to be misconceived and liable to be struck out due to the separate corporate personality between TG and Z and lack of County Court jurisdiction for unlawful deduction from wages.

29. Whilst my colleagues in Dudley County Court are hearing the possession claim not me, as Mr Alomo for the Defendant before me points out, RM's 'employment' counterclaim is essentially similar to Ms Benyon's point in paragraph 117 of the April assessment. Wisely, at the hearing, Mr Khubber focussed on his submission that para.117 of the April assessment wrongly only addressed rent *arrears*, discussed below. But whilst this issue is a matter for the County Court, in my view, Ms Benyon's view was only over-stated, not necessarily legally wrong:

    a. Firstly, whilst the County Court does not have jurisdiction to determine 'unlawful deduction from wages' claims under the Employment Rights Act 1996, employees can bring in the County Court common law breach of employment contract claims (including for pay due under statute). So, *if an individual's landlord was the same legal entity as their employer*, they could allege 'breach of employment contract' as a counterclaim to possession. That is exactly what RM is doing in the 'failure to pay claims' (to which her 'unlawful deduction from wages' claims are corollary, adding nothing).

    b. Secondly, as County Court District Judges are well-aware from Family Financial Remedy claims, in *Prest v Petrodel* [2013] 3 WLR 1, the Supreme Court stressed Courts can 'pierce the corporate veil' if an individual uses

their company to evade or frustrate their existing legal liability or obligation. Even if the 'corporate veil' is not technically 'pierced', Courts can draw robust inferences about the use of companies by individuals who control them. Here, that may point not to Z and TG being the same legal entity, but potentially to MM using both in combination to breach obligations to RM.

c. Thirdly, there seems to me a much simpler way of putting Ms Benyon's basic point in para.117. In the possession claim, TG's own s.8 notice under Grounds 8, 10 and 11 requires TG to prove *rent arrears*. Yet as discussed, the 'arrears' relied on may well be a *loan* owed to Z, not *rent* owed to TG. If RM cannot equate TG with Z in its counterclaim, nor can TG equate itself with Z in its claim. Even if this point does not *extinguish* any true rent arrears, it may *reduce* them below the 'mandatory ground' of two months' arrears, especially as RM's maternity pay has been diverted to paying rent.

Legal Framework

30. I turn from (part of) the legal framework in the possession claim, which is not before me, to the essential legal framework in the judicial review claim, which is. I will do so in five stages: (i) s.17 CA itself; (ii) how s.17 fits in to support for NRPF families; (iii) how s.17 support inter-relates to support for Potential Victims of Trafficking ('PVoTs'); (iv) the Court's approach to assessments whether a child is 'in need'; and (v) a summary of the principles of s.17 needs assessments for NRPF children.

s.17 Children Act 1989 for NRPF families

31. s.17 CA provides, so far as material to this case:

> "(1) It shall be the general duty of every local authority… (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….
>
> (4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare (a) ascertain the child's wishes and feelings regarding the provision of those services; and (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain….
>
> (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash….

> (8) Before giving…assistance or imposing…conditions, a local authority shall have regard to the means of the child concerned and of…his parents…
>
> (10) For the purposes of this Part a child shall be taken to be in need if— (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part; (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or (c) he is disabled, and 'family', in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.
>
> (11)…'development' means physical, intellectual, emotional, social or behavioural development; and 'health' means physical or mental health."

32. The reference to 'services by a local authority under this Part' in s.17(10) CA is a reference to Part III CA, which includes not only s.17, but also carers assessments (ss.17ZA-F), Education and Health Care Plan services (ss.17ZG-I), direct payments for disabled children (s.17A), day-care / child-minding (ss.18-19), accommodation for children generally (s.20) or remand/secure accommodation (ss.21/25) and duties to current or former 'looked-after children'(ss.22-24D) (Collectively, 'Pt.III CA services'). But none of those are relevant to this case and nothing in this judgment relates to disabled or 'looked after' children. But Sch.2 CA does flesh-out s.17 CA:

> "1. Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.
>
> 3. Where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at the same time as any assessment of his needs…under..any other enactment.
>
> 8. Every local authority shall make such provision as they consider appropriate for the following services to be available with respect to children in need within their area while they are living with their families— (a) advice, guidance and counselling; (b) occupational, social, cultural or recreational activities; (c) home help (which may include laundry facilities) (d) facilities for…travelling to and from home [to access services]; (e) assistance to enable the child concerned and his family to have a holiday."

Para.7 also requires local authorities to take reasonable steps to reduce the need for care proceedings and para.10 requires reasonable steps to ensure children live with their family if consistent with their welfare. Part III CA is also now supplemented by s.11(2) Children Act 2004 ('CA 2004') which states that local authorities:

> "…must 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."

33. s.17 CA is a general provision which covers any 'child in need' in a local authority's area – whether British or not - over as wide a range of circumstances as there are children and families (with exceptions e.g. asylum-seekers discussed below). Most commonly, s.17 CA is the first (and hopefully, the last) stage in child protection as

an alternative to care proceedings – as explained in s.17(1)(b) and paras.7/10 Sch.2. s.17 CA can also apply to teenagers living apart from their family to support them into adulthood (as in the three recent Court of Appeal cases discussed below). Most relevantly here, it can also apply to NRPF families, for whom s.17 CA is often their main (or even their only) source of welfare support. Families who are 'subject to immigration control' under s.115(9) Immigration and Asylum Act 1999 ('IAA') in having restricted leave to remain in the UK have a condition on that leave of 'no recourse to public funds' ('NRPF'). That means they are excluded from mainstream welfare benefits by s.115 IAA, from mainstream homelessness support under s.185 Housing Act 1996 ('HA') and from allocation of public housing by s.160ZA HA. However, in *R(G) v Barnet LBC* [2004] 2 AC 208 (HL), the majority of the Lords held s.17 and p.1/3 Sch.2 CA imposed a duty on local authorities to *assess* need, but not a duty to *meet* that assessed need. Nor did it impose a *duty* on authorities to accommodate a family together like the HA, though it did *empower* them to do so.

34. So, Sir Ernest Ryder SPT said in *R(C) v Southwark LBC* [2016] HLR 36 (CA) [12]:

> "It is settled law that the s.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…*R(G)*…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 s.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 authority can demonstrate that due regard has been had to the dimensions of a child's best interests for the purposes of s. 17 CA.. in the context of the duty in s. 11 [CA 2004] to have regard to the need to safeguard and promote the welfare of children."

This was endorsed in *R(HC) v DWP* [2019] AC 845 (SC). Lady Hale added at [46]:

> "In carrying out [a] review, the local authority will no doubt bear in mind, not only their duties under s.17, but also their duty under s.11 of the Children Act 2004, to discharge all their functions having regard to the need to safeguard and promote the welfare of children and their duty, under s.75 of the Education Act 2002, to exercise their education functions with a view to safeguarding and promoting the welfare of children. Safeguarding is not enough: their welfare has to be actively promoted."

35. Therefore, if a child is assessed as *not in need*, that assessment itself could be challenged in the way described by Sir Ernest Ryder SPT in *R(C)* at [12], bearing in mind what Lady Hale said in *R(HC)*. That is what is alleged in this case. Likewise, if a child *is assessed as 'in need', the provision made* by the authority under s.17 CA can also be challenged, especially if provision assessed as needed is not provided. As Munby LJ said in *R(VC) v Newcastle CC* [2012] PTSR 546 (DC):

> "25 Any refusal to provide assessed services is… amenable to challenge by way of judicial review in accordance with recognised principles of public law, [e.g.] that discretionary statutory powers must be exercised to promote the policy and objects of the statute: *Padfield v MAFF* [1968] AC 997, 1030….As Dyson LJ remarked in *R(M) v Gateshead MBC* [2006] QB 650 at [42] the broad policy and objects of Part III of the Children Act 1989 are that local authorities should provide support for children and families. Moreover, in certain circumstances Article 8 or even Article 3 [ECHR] may be engaged: see…*R(Clue) v Birmingham City Council* [2010] PTSR 2051.
>
> 26 Furthermore, where the assessment is to the effect that there is a need for services, any decision not to provide the assessed services will no doubt, and not least because a child is involved, be subjected to strict and, it may be, sceptical scrutiny, particularly if there is no available argument based on lack of resources...*ZH(Tanzania) v SSHD* [2011] 2 AC 166 (SC) [33]…"

The 'Statutory Categories' of Support to NRPF Families

36. A series of cases have concerned not *assessment* of whether children are 'in need' (as here), but *the level of s.17 provision*, especially if 'benchmarked' to the rate for Asylum Support. That is provided by the Home Office to asylum-seekers and their families and is very different to s.17 CA. Indeed, s.122(5) and (7) IAA *exclude* s.17 support for children if their parents are receiving Asylum Support or 'if there are reasonable grounds for believing' the Home Office 'would be required' to provide it if they applied, though authorities should be wary of pre-empting or anticipating Home Office decisions: c.f. *R(Clue) v Birmingham CC* [2011] 1 WLR 99 (CA). s.122(6) defines Asylum Support 'assistance' as 'accommodation or…any essential living needs', but *R(JK Burundi) v SSHD* [2017] 1 WLR 4566 (CA) at [59] held the purpose of Asylum Support for families under s.122 was only to 'avert destitution'.

37. However, s.17 CA support is not limited to 'averting destitution' but is focussed on 'promoting welfare', as said in *R(HC)* and *R(C)*, where Sir Ernest Ryder SPT said:

> "[23] In so far as it was submitted that destitution as defined by s.95 IAA 1999, i.e. an inability to meet essential living needs or inadequate accommodation, or by s.4 IAA 1999, i.e. destitution in the context of accommodation, is relevant to s.17 CA 1989, the difference between the purposes of the two statutory schemes must be borne in mind. The latter scheme is to be applied to those persons who would otherwise be ineligible for recourse to public funds in order to avoid a breach of their Convention rights. Furthermore, the s.17 scheme, unlike the IAA schemes, is not the subject of regulations that make provision for the support which is to be made available to the defined group for a specific purpose.
>
> [21] Given that the legislative purpose of s. 17 CA 1989 in the context of s.11 of CA 2004 is different from that in ss.4 and 95 IAA 1999, it would be difficult for a local authority to demonstrate that it had paid due regard to the former by adopting a practice or internal guidance that described as its starting point either the child benefit rate or either of the IAA support rates. The starting point for a decision has to be an analysis of all appropriate evidential factors and any cross-checking that there may be must not constrain the decision maker's obligation to have regard to the impact on the individual child's welfare and the proportionality of the same."

38. Likewise, outside the s.122 IAA *exception* to s.17 CA, it is not *excluded* by other statutory schemes. In *R(VC)*, the Divisional Court reviewed what Munby LJ at [16] called the 'monstrous labyrinth' of statutory support schemes for NRPF families. He held that a local authority could not cease to provide s.17 CA support to children of a failed asylum-seeking family it had assessed as 'in need' merely because the family would be eligible for support under s.4 IAA. He explained at [86] that:

> "[I]n contrast to s.17 [CA], s.4 [IAA] is a residuary power and the mere fact ...support is or may be available under s.4 does not of itself exonerate a local authority from what would otherwise be its powers and duties under s. 17."

39. In *R(BCD) v Birmingham Children's Trust* [2023] PTSR 1277 (HC), I merely built upon what had been said in *R(C)* and tried to leave a thread through that 'monstrous labyrinth' by distilling the five main 'categories' of support for NRPF families, which I later summarised in *R(LR) v Coventry CC* [2025] EWHC (Admin) at [35]:

> "(i) *Category 1*: Unrestricted support under s.17 Children Act 1989 ('CA') for eligible NRPF families (typically those lawfully in the UK).
>
> (ii) *Category 2*: Asylum Support under ss.95-6 and s.122 IAA for asylum-seeking families.
>
> (iii) *Category 3*: s.17 CA support restricted by Sch.3 Nationality, Immigration and Asylum Act 2002 ('NIAA') to direct support to the child under s.17 under para.2 NIAA, and/or accommodation to the family under para.10 NIAA, and/or other support to the family to the extent necessary to avoid ECHR breach under para.3 Sch.3 NIAA.
>
> (iv) *Category 4*: Support to families within Sch.3 NIAA limited to that under para.10 and Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 ('WWSR');
>
> (v) *Category 5*: Support from the Home Office under s.4 IAA for refused or 'failed' asylum-seeking families….".

However, as I emphasised in *R(LR)* at [36], these are different categories of *support*, not different categories of *families.* So, as shown by *R(VC)*, 'failed asylum-seeking families' could either be in Category 5 if supported by the Home Office under s.4 IAA, or Category 1 if supported by a local authority under s.17 CA. *R(BCD)* also concerned 'Category 1' s.17 support for non-asylum-seeking NRPF families. But I made some *obiter* comments about 'Category 3' support and para.3 Sch.3 NIAA. Those were challenged in *R(LR)*, where I accepted that I could have been clearer in *R(BCD)* on the issue, but maintained my basic view that there was a key distinction between 'unrestricted' support in Category 1 and 'restricted' support in Category 3.

40. Happily (especially for Counsel, all of whom also appeared before me in *R(LR)*), there is no need to re-visit this issue once again, as this is a 'Category 1' case. But the Claimant relies on my observations in *R(BCD)* at [71]-[72] (merely reflecting those of Sir Ernest Ryder SPT in *R(C)* at [21] and [23]) differentiating between what I called the 'subsistence or destitution standard' of provision for Asylum Support in 'Category 2' and the 'welfare standard' of 'unrestricted' s.17 support in 'Category 1'. While the issue here is *assessment* not *provision*, 'need' in s.17(1) CA is defined in s.17(10), so clearly means the same; and 'development' in s.17(11) is widely drawn. So, leaving aside disabled children, just like what might be called 'supportable need' in s.17(1), the scope of what might be called 'eligible need'

within s.17(10)(a) is not limited to children who are 'destitute' or do not have their 'subsistence needs' met. In other words, neither are a threshold to eligibility under s.17(10)(a) CA. Indeed, that would restrict the scope of s.17(10) to the 'likelihood of *significant impairment* of health and development' under (b) and ignore that s.17(10)(a) is wider - covering a child 'unlikely to achieve or maintain':

> "a '*reasonable standard* of health or development without the provision for him of services by a local authority under this Part…" (my italics).

That said, in *R(VC)*, Munby LJ stressed an important limitation on s.17(10) CA:

> "29 The final words in sections 17(10)(a) and (b) are important. The duties of a local authority do not extend to all children who might be said to be 'in need'. Apart from a child who is 'disabled' in the statutory sense, they apply only to a child who 'without the provision for him of services by [the] local authority' will fall within one or other of the statutory criteria. As the Court of Appeal put it in *R(P) v SSHD* [2001] 1 WLR 2002 at [95] and [97]:
>
> > '95…[T]he distinguishing feature of a 'child in need' for this purpose is not that he has needs - all children have needs which others must supply until they are old enough to look after themselves - but that those needs will not be properly be met without the provision of local authority social services. [i.e. under s.17 or the rest of Part III CA].
> > 97… The…authority do not have the duty, or even the power, to make a global assessment of a child's needs, still less to determine what would be in the best interests of any individual child. The authority have the duty to assess the child's need for their own services."
>
> 30 It follows that a child who in the colloquial sense is in need may not be in need in the statutory sense if his relevant needs are being met by some third party, for example, by a family member, by a charitable or other third sector agency or by another statutory body."

s.17 CA Support and Potential Victims of Trafficking

41. I did not consider support for Potential Victims of Trafficking ('PVoTs') in *R(BCD)* or *R(LR)*. It will only apply to a subset of NRPF families (which may be why the NRM had no family accommodation for RM). Nevertheless, for child PVoTs, support can be implemented by s.17 CA: *R(AM) v SSHD* [2024] 4 WLR 5 (HC). It is unnecessary in this case to detail the statutory and non-statutory framework for PVoT support, which I can summarise from the skeleton arguments and *R(AM)*:

    a. The UK is signatory to the Council of Europe Convention on Action against Trafficking in Human Beings ('ECAT'). It is not directly incorporated in domestic law, but various obligations flowing from ECAT are enshrined in legislation, in particular in the Modern Slavery Act 2015 ('MSA').

    b. s.3 MSA defines 'exploitation' under the MSA in various ways, including securing services by force, threats or deception, or forced/compulsory labour. s.49 MSA mandates Home Office Guidance on trafficking, including 'arrangements for providing assistance and support to persons who there are reasonable grounds to believe may be victims under the MSA'

    c. The Modern Slavery Act Statutory Guidance (2025) (the 'MSA Guidance'), upon referral of a complaint of trafficking or exploitation, requires the

National Referral Mechanism ('NRM') to consider whether there are 'reasonable grounds' to believe someone is a victim of trafficking or exploitation. If so, that person becomes a 'PVoT' pending the NRM's further investigation and its 'conclusive grounds' decision either way.

d. Pending the 'conclusive grounds decision' (in 'the recovery period') s.61(2) NBA prohibits (save in limited circumstances) a PVoT being 'removed from or being required to leave the UK'. (I discuss this point further below).

e. Adult PVoTs receive support under the 'Modern Slavery Victim Care Contract' ('MSVCC'). It can include accommodation if there is no suitable alternative: MSA Guidance paras.15.3-35. The PVoT also receives weekly financial support under paras.15.48-61: (i) an 'Essential Living Rate' ('ELR') the same as Asylum Support, currently £49.18; (ii) a 'child dependent rate' ('CDR') at the same rate for dependent children, but not dependent adults like BW; and (iii) a 'Recovery Rate' ('RR') of £26.84 pw to assist the PVoT's psychological and physical recovery from exploitation.

42. Just as an authority would act unlawfully if it applied a 'destitution' or 'unmet subsistence need' *threshold* to whether a child is 'in need' under s.17 CA (*R(C)*), in my view it would also breach s.17 CA if it concluded a child was *excluded* from being 'in need' because their parent received PVoT support. There is no specific exclusion for this as there is in s.122(5) for Asylum Support, although like it, the ELR and CDT are merely 'subsistence support' (hence '*essential living* rate'). By contrast, the RR is intended to assist the parent PVoT's recovery from exploitation: *R(K) v SSHD* [2019] 4 WLR 92 (HC) (discussed in *R(AM)* at [149]), so it should not be seen by a local authority as available to meet their children's welfare needs.

43. Likewise, a local authority would act unlawfully if it concluded a child of an adult PVoT was *excluded* from s.17 CA support because the family could return to their home country (or only offered support for them to do so), *if that would force them to leave the UK*. That would be tantamount to 'requiring a PVoT to leave the UK' in breach of s.61 NBA, as explained in *R(AM)* at [234]. s.61 is even clearer than the principle that local authorities should not pre-empt pending arguable applications for leave to remain on ECHR grounds by refusing support if it would force an applicant to leave the UK, as Dyson LJ (as he was) stressed in *R(Clue)* at [66]:

> "[O]bviously hopeless or abusive cases apart…a local authority…faced with an application for assistance pending…an arguable application for leave to remain on Convention grounds, should not refuse assistance if that would have the effect of requiring the person to leave the UK…forfeiting his claim."

As by definition PVoTs have a 'reasonable grounds' decision, their application cannot be said to be 'obviously abusive or hopeless', which in any event, is a decision for the NRM's expertise, not one for the local authority: *R(Clue) / R(AM)*.

44. However, I italicise the words 'threshold' and 'excluded' as what is unlawful is a local authority superimposing a sharp-edged 'threshold' or 'exclusion' on the wide words of s.17(10)/(11) CA, which in *R(A) v Croydon LBC* [2009] 1 WLR 2557 (SC) at [26] (quoted below) were said to contain a series of broad 'evaluative questions to which there are no right or wrong answers'. But that does not prevent an authority - following a diligent, holistic and evaluative assessment of a child's welfare as well as subsistence needs, as explained in *R(C)* - refusing support to a child who is not

destitute, has subsistence needs met, or whose family receives other support. As Munby LJ said in *R(VC)* at [29]-[30], such a child's needs may be being fully met by a third party, or may require lesser support from the authority than under s.17 / Part III CA (such as 'Early Help' support discussed below). In short, receipt of PVoT support for a family neither *excludes* s.17 support for their child(ren), nor *mandates* it. More widely, not every NRPF family will have children 'in need' under s.17 CA.

45. But I stress again, there must be a holistic needs assessment as explained in *R(C)*. Indeed, in *R(AM)* at [185]-[188], Lane J held a local authority had breached s.17 CA by failing to assess a child PVoT and so to support him. As Lane J said at [93]:

> "As..pointed out…in *R(G)*…the fact s.17 is expressed as a general duty does not mean it is an empty one. On the contrary, it carries an implied duty to assess..[which] requires a 'diligent inquiry': *R (O) v Lambeth LBC* [2016] EWHC 937 (Admin) at [17]. The duty must be exercised having regard to relevant guidance in accordance with public law principles….[A] failure to assess or conduct a lawful assessment may be subject to judicial review."

Needs Assessments under s.17 CA Generally

46. That leads on to the Court's approach to s.17 assessments of whether a child is 'in need' under s.17(10) CA, which I partly repeat for convenience along with s.17(11):

> "(10)…[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….
>
> (11)…'development' means physical, intellectual, emotional, social or behavioural development; and 'health' means physical or mental health."

Mr Alomo relies on *R(A) v Croydon* (cited above), one of the many milestone judgments on the Children Act 1989 ('CA') by one of its main architects on the Law Commission in the late 1980s, Lady Hale, who said in *R(A)* at [26]-[27]:

> "26…The [CA] draws a clear and sensible distinction between different kinds of question. The question whether a child is 'in need' requires a number of different value judgments. What would be a reasonable standard of health or development for this particular child ? How likely is he to achieve it? What services might bring that standard up to a reasonable level ? What amounts to a significant impairment of health or development ? How likely is that? What services might avoid it ? Questions like this are sometimes decided by the courts in the course of care or other proceedings under the Act. Courts are quite used to deciding them upon the evidence for the purpose of deciding what order, if any, to make. But where the issue is not, what order should the court make, but what service should the local authority provide, 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.
>
> 27 But the question whether a person is a 'child' is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers."

Indeed, in *R(A)* itself, Lady Hale and the Court decided that a local authority 'age assessment' of whether an individual (often once again in an immigration context) seeking support under s.17 CA was a 'child' was challengeable not only on ordinary judicial review principles, but could be adjudicated objectively by a Court itself. However, as she explained, whether a child is 'in need' is not that sort of question.

47. Lady Hale's point in *R(A)* at [26] about needs assessments was recently quoted by Baker LJ in *R(TW) v Essex CC* (2025) 28 C.C.L.Rep 81 (CA). He also endorsed (as had Munby LJ in *R(VC)*) what Lloyd-Jones J (as he then was) had said about needs assessments in *R(K) v Manchester CC* [2006] EWHC 3164 (Admin) at [39]-[40]:

> "A lawful assessment under [s.17 CA] must necessarily examine not only the immediate, current circumstances of the child concerned but must also look to imminent changes in those circumstances …. these limbs in s.17(10) [i.e. in paragraphs (a) and (b)] necessarily look to the future. The question relates to the possibility of [the child] achieving or maintaining a reasonable standard of health or development without the provision of services. In order properly to consider that, the authority must have regard to imminent changes in the circumstances of the child concerned."

In *R(TW)* at [63] and [65], Baker LJ added on this subject that:

> "I accept the language of s.17(10) is 'forward-looking'. The assessment of what is likely or unlikely necessarily involves looking to the future….[But] I am doubtful whether there is anything to be gained from the proposition that the word 'unlikely' in s.17(10) should be interpreted by reference to the meaning of 'likelihood' applied by family courts when considering whether the threshold for intervention under s.31(2) [CA] is crossed. It would not be helpful to introduce a gloss into the clear statutory language of s.17(10) which social workers have to follow on a daily basis."

Therefore, in *R(TW)* itself, the Court held that a social worker had been entitled to conclude that a teenage child whose mother had died and who was currently 'sofa-surfing' with family was not 'in need' as he was eligible for accommodation under a scheme outside of s.17 / Part III CA (he was British so not NRPF). This was also not 'accommodation' under s.20 CA, so he was not a 'looked after child' under s.22 CA and so not a 'former relevant child' under s.23C CA when he became an adult.

48. The same result recently followed in *R(BC) v Surrey CC* [2025] EWCA Civ 719, where another sofa-surfing British teenager who had left home was held not to be 'in need', especially as he wanted to continue living with his friend's family (and a teenage child's wishes were especially important under s.17(4) CA)). Overturning the judge's finding to the contrary, the Court of Appeal emphasised at [127]:

> "[W]hether a young person falls into the category of a 'child in need' [under s.17 CA] and, if so, whether they 'require accommodation' [under s.20 CA] …. are matters of professional social work judgment…. Where the professional evaluation is that the young person's needs can be met through the provision of the non-statutory early help services, as opposed to the statutory services under Part III CA, that evaluation will only be open to challenge on *Wednesbury* principles. The requirement for a litigant arguing that such a judgment was so unreasonable that no reasonable social worker acting reasonably could have made it is a high hurdle."

49. In both *R(TW)* and *R(BC)* and the third recent Court of Appeal decision in this field, *R(DF) v Essex CC* [2025] PTSR 806, there was extensive discussion of statutory guidance for 16 and 17-year olds. In *R(DF)* at [38] and [41] Counsel contrasted what Wilson LJ (as he was) said in *R(G) v Lambeth LBC* [2012] PTSR 364 at [17]:

> "In the absence of a considered decision that there is good reason to deviate from [statutory guidance], it *must* be followed:…Sedley J in *R v Islington London Borough Council, Ex p Rixon* (1998) 1 CCL Rep 119, 123J–K."

with what was later said in *R(X) v Tower Hamlets LBC* [2013] 4 All ER 237 (CA) by Maurice Kay LJ at [38]:

> "[A] departure from [statutory] guidance may be justified by cogent reasons objectively established as such through litigation, even if they were not carefully considered at the time of departure."

Whilst Underhill LJ in *R(DF)* did not need to resolve what Counsel before him suggested was the tension in these observations (because the guidance point had not been taken below), I see no real tension in any event. The *Rixon* test – that cogent or good reasons are required to depart from statutory guidance – is well-established and correctly encourages *authorities* to consider carefully any departure *at the time*. However, if the authority fails to do so, then that is not necessarily unlawful, if *from the perspective of the Court later* there were in fact at the time good/cogent reasons.

50. Obviously, the statutory 'teenager guidance' in issue in *R(DF), R(TW)* and *R(BC)* is not relevant here, but all three cases also touched on statutory guidance which is: namely the *'Working Together to Safeguard Children'* Guidance (2023). That covers the full scope of powers under the CA, including child protection, so much of it is irrelevant to NRPF families (a good reason to depart from it in those cases). But on 'needs assessments' under s.17 CA, '*Working Together*' states at para.140:

> "[Under the s.17 duty, practitioners undertake assessments of the needs of individual children, giving due regard to a child's age and understanding when determining what, if any, services to provide. Every assessment must be informed by the views of the child as well as the family, and a child's wishes and feelings must be sought regarding the provision of services to be delivered. Where possible, children should be seen alone… When assessing children in need and providing services, specialist assessments may be required and, where possible, should be co-ordinated so the child and family experience a coherent process and a single plan of action….. "

Para.146 states the purposes of needs assessments include to decide whether a child is 'in need' and to 'provide support to address those needs to improve the child's outcomes and welfare'. Para.148 states the assessment framework should

investigate the child's developmental needs; the capacity of parents to respond to those needs; and the impact of the family, community and environment. Para.161 states assessments should be 'child-centred and responsive to the child's voice' and decisions should be made in the child's best interests. Para 162 states:

> "[A]ssessments should: • be focused on action and outcomes for children • be multi-agency and multi-disciplinary, based on information gathered from relevant practitioners and agencies, and drawing in the relevant expertise • be discussed with the child and their parents or carers, as appropriate • build a full picture of all aspects of a child's and their family's life, including their strengths and interests as well as any previous referrals and interventions • be holistic in approach and address presenting and underlying issues and each of the child's needs…• explore the needs of all members of the family as individuals and consider how their needs impact on one another…• be a dynamic process, not an event, analysing and responding to the changing nature and level of need…• recognise and respect the individual and protected characteristics of families, including the ways in which these can overlap and intersect, ensuring support reflects their diversity of needs and experiences • lead to action, including the provision of services, the impact of which is reviewed on an ongoing basis."

51. The availability of alternative support, including from the local authority itself, is plainly relevant to whether a child is not just 'in need' under s.17(10) CA but needs support *under s.17 or Part III CA services,* or as it was put in *R(P)* at [95] whether:

> "…those needs will not properly be met without the provision of local authority social services [i.e. under Part III CA, including s.17]."

As noted in *R(TW)* and *R(BC)* at [127], even if a child has 'unmet needs', one alternative to s.17 / Part III CA support is 'Early Help' provision (like in this case during 2024), which is instead governed by '*Working Together*' at para.118:

> "Early help is support for children of all ages that improves a family's resilience and outcomes or reduces the chance of a problem getting worse. It is not an individual service, but a system of support delivered by local authorities and their partners working together and taking collective responsibility to provide the right provision in their area. Some early help is provided through 'universal services', such as education and health services….Other early help services are coordinated by a local authority and/or their partners to address specific concerns within a family and can be described as targeted early help. Examples of these include parenting support, mental health support, youth services, youth offending teams and housing and employment services. Early help may be appropriate for children and families who have several needs, or whose circumstances might make them more vulnerable. It is a voluntary approach, requiring the family's consent to receive support and services offered. These may be provided before and/or after statutory intervention."

52. Alternative support to s.17 / Part III CA is a particular issue with accommodation, e.g. for the independent teenagers in *R(TW), R(BC), R(DF)*. Each considered Lady Hale's judgment in *R(GA) v Southwark LBC* [2009] 1 WLR 1299 (SC), where at [28(2)] she suggested that a 16 or 17 year-old who is 'sofa surfing' will be 'in need' under s.17 CA. This was then stated in the 'Teenage Guidance' later considered in

R(DF), R(TW) and *R(BC)*. Yet in the latter two cases, sofa-surfing teenagers were not 'in need' *for accommodation under Part III CA* as other housing was available. Likewise, in *R(DF)* a teenager under threat of eviction from her property was held not to 'require accommodation' under s.20 CA because the threat of eviction was insufficiently imminent, although that test could be met by precarious housing, not only the absence of a roof over a child's head. But Underhill LJ said at [21] 'requires accommodation' was a different test than s.175 HA 'homelessness' or 'threatened with homelessness' (i.e. when homelessness is 'likely' within 56 days):

> "[s.20 CA and s.175 HA] are provisions of different statutes, which have different subject-matters: that is, respectively, the welfare of children and ….homelessness —and unrelated legislative histories. Although there is no doubt an overlap between their potential fields of operation in the case of children, there is no indication that the provisions are intended to form part of a single statutory scheme."

If the phrase 'requires accommodation' in s.20 CA does not necessarily mean the same as 'threatened with homelessness' under s.175 HA, nor can 'child in need'. So, an authority who applied a sharp-edged 'homelessness threshold' based on s.175 HA to whether a child was 'in need' under s.17(10) CA would be wrong, as NRPF families are ineligible under the HA and s.17 CA is different: *R(G)* at [92].

53. Indeed, turning back to assessments of need for NRPF families, it is worth repeating this status does not in itself establish a child is 'in need', still less with a need for services under s.17 / Part III CA. In *R(C)*, the family were not only NRPF, they were unlawful overstayers and the parents were unable to work or rent private housing and s.17 support to the family (as opposed to the child directly) was limited to that necessary to avoid breach of the ECHR under para.3 Sch.3 NIAA. (So, *R(C)* was what I call a 'Category 3' case under the *R(BCD)* categories, also the category in *R(LR)*, where I discussed *R(C)* at length). Yet, as quoted earlier in this judgment, but worth repeating in part, Sir Ernest Ryder SPT in *R(C)* at [12] took the same approach to scrutinising s.17 needs assessments as in *R(A)*, *R(TW)* and *R(BC)*:

> "[I]t 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 authority can demonstrate that due regard has been had to the dimensions of a child's best interests for the purposes of s. 17 CA.. in the context of the duty in s.11 [CA 2004] to have regard to the need to safeguard and promote the welfare of children."

54. A similar approach was taken in another 'Category 3' NRPF case, recently cited by Lane J in *R(AM)* as noted above: *R(O) v Lambeth LBC* [2016] ACD 96, where Helen Mountfield KC sitting as a Deputy High Court Judge said at [15]-[17]:

> "15. The duty of an authority [under p.1 Sch.2 CA] is to take 'reasonable steps to identify' whether a child is in need. What those steps are is a matter for the…authority, subject to complying with public law requirements….

> 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 Kensington & Chelsea LBC* [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 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."

(This chimes with the need to avoid 'over-zealous textual analysis' of social work assessments in *R(Ireneschild) v Lambeth LBC* [2007] HLR 34 (CA) [57]).

Summary of the approach to needs assessments for NRPF children

55. I will draw the threads together on the legal framework for 'needs assessments' of children of NRPF families under s.17 CA into five principles. (Indeed, I hope they may be of some use to hard-pressed social workers and advisers with assessments):

(1) s.17 CA is the main (and sometimes only) source of support for NRPF children, who will often be (but are not automatically) 'in need' under s.17 CA. s.17 / Sch.2 is a duty to assess need, not a duty to meet it: *R(G)*. But that does not make it an 'empty shell' *(R(AM)*), as failure to assess is unlawful and assessment or provision under s.17 CA can be challenged by judicial review (*R(G)*). However, under s.17(10) the legal focus of the assessment is not simply whether a child is 'in need' as such, but also 'whether those needs will not properly be met without the provision of services under s.17 / Part III CA' (*R(P)* and *R(VC)*).

(2) This means the assessment can look at alternative (potential) support, from family or others, or authority provision outside Part III CA, like 'Early Help' (*R(BC)*). However, except for Asylum Support (under s.122(5) IAA), eligibility under s.17 CA is not *excluded* by *support* under another scheme, e.g. PVoT payments (*R(AM)*), still less *eligibility* under it (*R(VC)*). Authorities should be wary of anticipating a family's eligibility for Home Office support and should not require them to leave the UK if they have an arguable application for leave to stay: *R(Clue)*.

(3) Similarly, the legal *threshold* for being 'in need' under s.17(10) CA is not the same as 'destitution' or 'homelessness' under other statutory schemes (*R(C) / R(DF)*). However, just because a family may be 'destitute' or 'homeless' under

another statutory scheme, that does not necessarily mean a child is 'in need' under s.17 CA (*R(VC)*).

(4) Ultimately, whether (i) a child is 'in need' and (ii) that need is for services under s.17 / Part III CA, are evaluative questions for the professional judgement of social workers (*R(A)*). The Court will not substitute its own judgement, but it will scrutinise the assessment on the usual judicial review grounds: (*R(G), R(A)*) (albeit not with the same 'anxious scrutiny' as it will with an authority failing to meet an assessed need: *R(VC)*. These usual grounds include illegality (e.g. application of the wrong legal *threshold* like 'destitution', or superimposing a wrong legal *exclusion*, like receipt or eligibility of other support, save Asylum Support as in *R(VC)*); or because the family could leave the UK, when there is an arguable pending claim for leave *(R(Clue));* or failing to take a forward-looking' approach: *R(TW)*). Alternatively, the ground may be procedural unfairness (e.g. not following *Working Together* guidance about the assessment process without good reason (*R(DF*)); unfairly rejecting credibility (*R(O)*); or relying on important new third-party information without giving the parents/child a chance to respond (as alleged but rejected in *R(Ireneschild)*). Or the ground for challenge could be irrationality, which is a 'high hurdle' (*R(BC)*) but one which may be met if the assessment did not pay 'due regard' to the child's best interests and the need to safeguard and actively promote their welfare (*R(C)*).

(5) Whilst social workers' assessments must be 'dilligent', appropriate respect must be given to their professional judgment, operating under pressure in financially-straightened times with competing demands on resources (*R(O)*). In particular, the assessment should be read by the Court fairly and realistically against its factual background in a practical way to discover its true meaning as the articulation of a social work judgement, not a legal one (*McDonald* / *R(O)*).

I now turn finally to the four grounds of challenge to the April 2025 assessment.

Conclusions

Ground 1: 'Misdirection on the facts and in law when considering whether C is a child in need: need for additional provision to meet welfare needs'.

56. As I said, the nub of this ground is the allegation that the Defendant wrongly applied a 'destitution threshold' to its assessment of whether the Claimant was 'in need'. It follows from my analysis above that if I were persuaded the April assessment had refused support because it had applied a 'destitution' or 'unmet subsistence need' threshold, I accept that would be an error of law. Indeed, it was an arguable error in the July 2024 assessment which had said that emergency accommodation would not be provided at that time to the family *'due to the fact they are not destitute'*. Building on that, Mr Khubber contended that a similar legal error was made in paragraph 122 of the April 2025 assessment, which I repeat for convenience:

> "On balance, the family has housing, income and support with the possibility of improving their own situation as [RM] is actively searching for employment and there is no medical evidence suggesting [BW] could not work or contribute by caring for the children whilst [RM] works. *The evidence suggests the children's needs being met through several sources of support and the family not being destitute."* (my italics)

57. But Mr Alomo responded that Ms Benyon was there only responding to the Claimant's parents' assertion that they were 'destitute' which she had already noted in the April assessment (my italics):

> "79. The family are currently requesting further financial assistance from the Authority under [s.17 CA] *as they report they are destitute* and unable to manage the needs of their children on the current funding provided….
>
> 108. The initial referral into Children Services was due to [RM] and [BW] *being destitute* and [RM] being the victim of modern-day slavery…"

I accept in the context of the whole assessment and its background, a fair, realistic and practical reading (c.f. *R(McDonald)* and *R(O)*) of Ms Benyon's conclusion at para. 122 that the children were 'not destitute' is simply her rejecting the family's *factual* case they were destitute, rather than applying a *legal* 'destitution threshold' for 'in need' as the 2024 assessment arguably did. I take this view for three reasons.

58. Firstly, far from just saying the family were 'not destitute' (as the 2024 assessment arguably did), or that the children's 'subsistence needs' were being met, Ms Benyon methodically and in detail went through the family's history and relationship with extended family (including RM's difficult relationship with MM), the physical and mental health of the children, their education and interests, their culture and identity, the parents' basic care, emotional warmth, stability, parenting risks, housing situation (to which I return on Ground 2) and financial situation, including the family's employment situation, existing support, expenses and arrears. Ms Benyon did not say or imply that support was excluded because RM received a PVoT payment, or indeed the other support they had from the Health Visitor and school. Whilst Ms Benyon did not speak to the children themselves, as discussed above, she also had the July 2024 assessment from a few months earlier that had done so. I accept this was a holistic professional social work judgement on the evaluative question of 'need' that did not apply a 'destitution threshold' or similar legal error.

59. Secondly, in any event, Ms Benyon did not simply conclude that the children were not 'in need' of any support at all. On the contrary, at paragraph 123 of the assessment (immediately after the paragraph principally attacked), she said she would liaise with the Health Visitor to ensure the family were still getting food bank vouchers; and if not, the Defendant would continue to provide them until the case was closed (which I read to mean the family's case to Children's Services, not the litigation). After all, the Defendant's own *'Children, Young People and Families Support Level'* Guidance (2023) provides that the first stage in support for families is 'Early Help' with collaborative working with other agencies like schools and Health Visitors; and that before escalating to a higher level of support, a social worker should ask whether the children's needs are being met by Early Help and if not, what impact that may have on the children now and in the future. That approach is entirely consistent with the statutory 'Working Together' Guidance and *R(BC)* that 'Early Help' can be an alternative to full s.17/Part III CA support. Notably, food vouchers addressed one of the four parts of the assessment which Mr Khubber and Ms Sekhon's skeleton argument said identified unmet needs: lack of regular cooked food due to finances. On a similar point, another alleged unmet need in their skeleton argument is that the family had struggled to fund post-school or extra-curricular activities (as Ms Benyon noted at paragraph 39). That is certainly an unmet 'welfare need', but not one which obviously requires s.17 support or Part III

CA services (*R(VC)*). Indeed, Ms Benyon had also noted at paragraph 38 of the assessment that the school itself had funded school trips and after-school clubs and the support was ongoing. Whilst Ms Benyon also noted at paragraph 37 that both boys were working under their academic expectations, that is something which is principally a matter of support to be provided by the school, not the local authority.

60. Thirdly, Mr Khubber and Ms Sekhon's skeleton argument also alleges 'misdirection on the facts' between paragraph 122 of the assessment and its other findings (that the parents were worried about the impact of their finances on their children and that neither parent was working and had health issues affecting their ability to work (assessment paras 29-35 and 50). Mr Khubber focussed on submitting orally that para.122 was not 'forward-looking' as required by *R(TW)*, and/or failed to take into account the effect of delay in the assessment in the family's deteriorating situation (which I flagged up as a potential point when granting permission on Grounds 1-3 but refusing it on the 'unlawful delay' point). However, having heard Mr Alomo's full submissions, I accept these points do not show public law error in the assessment. Ms Benyon correctly recorded (at paragraphs 94-102) that whilst RM was saying her health reasons meant she could not work (this was before the hernia was diagnosed), she was 'actively searching for employment'. Moreover, Ms Benyon also concluded in paragraph 122 that there was no medical evidence that BW could not work or contribute by caring for the children whilst RM worked (also discussed at paragraphs 92-93). That too was plainly correct. This was not even a case like *R(O)* where the assessment (fairly) found the parents not credible. It is an indisputable fact that there is no medical evidence supporting BW's assertion that he cannot work, especially when there was such medical evidence in 2024 and he worked anyway. By focussing on the parents' potential means, Ms Benyon not only took into account s.17(8) CA but applied a suitably 'forward-looking' analysis. However, that was not at the expense of ignoring any deterioration in the family's finances over the three months since the assessment was due in January 2025 (which unlike the housing situation, had not markedly changed). So, I dismiss Ground 1.

Ground 2: *'Misdirection on the facts and in law when considering whether C is a child in need: availability of housing provision to avoid street homelessness'.*

61. As Mr Alomo accepted, Ground 2 is the central challenge in this case. At the permission hearing in June 2025, Mr Khubber and I identified three distinct facets to it, namely that: (i) the assessment failed to adopt a 'forward-looking' approach to the children's likely housing needs given the threat of possession proceedings (which arose in March 2025 during the delay in the assessment being due in January 2025); (ii) the assessment wrongly factored-in that RM 'undoubtedly had a valid defence to a possession claim'; and (iii) the assessment failed to appreciate the only source of alternative accommodation was from the Defendant itself under s.17 CA; and/or wrongly applied a 'homelessness threshold' for the children being 'in need' under s.17(10) CA. I take those three in turn, after first re-quoting from the assessment.

62. The paragraphs of the assessment most relevant to all three facets of challenge are worth repeating for convenience (and all of them are generally relevant to all three):

> "72. At present, the family are currently within the UK under a Health Care Visa Sponsored through the Company. This visa unfortunately does not

allow for the family to access public funds. Therefore, the family are not eligible for homelessness accommodation provided through the Local Authority's Housing Team on a long-term basis.

73. I have made further enquiries with the Local Authority Housing Support Team and was informed that….until the family have received a Notice of Eviction from the Court, which gives a date of pending eviction from the home, the housing team would not provide any advice or support to the family, as the family would not be deemed as homeless until the time where this notice has been granted by a Court.

74…. formal eviction proceedings have not started, and the family have not yet received any further paperwork at this time regarding the eviction…..

115. The family are currently in a period of instability due to the recent update regarding the letter of intent to evict the family from the home. This letter has been provided due to [RM] and [BW] being unable to afford the rent of the property and amassing significant rental arrears. [RM] and [BW] have reported they are unable to clear the rental arrears or pay towards the rent every month due to receiving no income from [RM]'s employer.

116. At the point of…assessment no Court proceedings have been initiated.

117. However,….if proceedings are issued by the landlord for possession of the home, [RM] will undoubtedly have a valid defence to the claim given that her alleged inability to pay her rent can be linked directly to her landlord/employer making unlawful deductions from her wages.

118. Further, if [RM] is correct in stating that she has been harassed or threatened by her landlord she would be entitled to counterclaim for damages for breach of the covenant relating to quiet enjoyment which can be set off against any rent due to the landlord.

119. Therefore, it is incorrect to claim that the claimant and his family are at risk of being street homeless imminently leading to the local authority having to provide housing.

120. The Local Authority have a duty to any child within their area under [s.17 CA] who may be in need. [s.17] defines what constitutes a child in need and…is a target duty which creates a discretion in a local authority to make a decision to meet a child's individually assessed needed.

121. However, caselaw defines this decision as being 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 needs of other children.

122 On balance, the family has housing, income and support with the possibility of improving their own situation as [RM] is actively searching for employment and there is no medical evidence suggesting [BW] could not work or contribute by caring for the children whilst [RM] works. The evidence suggests the children's needs being met through several sources of support and the family not being destitute."

63. The first complaint under Ground 2 is that the assessment failed to adopt a 'forward-looking' approach consistent with *R(TW)*, having regard to the recent s.8 notice

seeking possession and the threat of eviction. Mr Khubber focussed in oral submissions on what he termed the precarity of the family's housing situation, given the family were ineligible for HA accommodation and could not afford alternative private accommodation. He submitted the assessment had simplistically focussed on the fact possession proceedings had not started (April assessment paras.73, 74, 116, 119 and 122), when they were inevitable and started within weeks. He submitted that this was a legal as well as a factual error because the assessment was not 'forward-looking'. It should have considered not just whether the family currently had a roof over their heads, but whether they were vulnerable to street homelessness in the near future.

64. However, I agree with Mr Alomo that the assessment was 'forward-looking' *at the point in time when it was done, rather than in the light of hindsight*. At the date of the assessment on the 9th April 2025, Ms Benyon *did* remind herself that a s.8 notice had been served and possession proceedings threatened. Whilst she did not explicitly take into account that this had happened in the three months since the assessment was due she did take the s.8 notice into account (and analysed the issue in detail) even though it had happened since her conversations with RM and BW (see para.69). In any event, the criticism is that she was not 'forward-looking', which I do not accept. By 9th April, there had been a s.8 notice, but possession proceedings had not even been issued, let alone a possession order, still less a warrant for eviction, made. Nevertheless, at paras 115-119, Ms Benyon analysed the future risks of eviction through the possession proceedings which she correctly anticipated at paras.117-118. I will come on in a moment to whether that analysis was flawed, but it was unquestionably 'forward-looking'. As I shall elaborate below, in para.119, Ms Benyon was simply saying that it was 'incorrect to claim' that the risk of street homelessness was 'imminent' (Lord Lloyd-Jones' own word in *R(K)*) 'leading to the authority having to provide housing' (i.e. it being required at that time). At para.122, Ms Benyon said correctly that the family 'has housing' in the present tense, but she was not ignoring the future and the possession proceedings - she had just spent several paragraphs considering that issue. Ultimately, at the time of the assessment on 9th April 2025, Ms Benyon was entitled to consider the need for housing was not only not 'imminent', but that their housing situation was not yet sufficiently precarious for the Claimant and his siblings to be 'in need' on that basis.

65. The second criticism in Ground 2 is that paragraph 117 wrongly factored-in that RM 'undoubtedly had a defence to the claim given that her alleged inability to pay rent can be linked to her landlord/employer making unlawful deductions from wages'. I have already said at paragraph 29 of this judgment above that Ms Benyon's analysis here was over-stated but not necessarily legally-wrong. Indeed, Mr Khubber accepted he could not 'have his cake and eat it' because Ms Benyon's points at paras.117-118 are essentially the same as those pleaded in RM's Defence and Counterclaim since. Instead, Mr Khubber (and Ms Sekhon's) argument was once again that para.117 was 'insufficiently forward-looking', because even if RM does have a defence to the possession proceedings, that does not help the family in the future, as they have no income to afford to pay the £780 monthly rent to stay in the property.

66. However, it is one thing saying that an assessment should be 'forward-looking', it is another thing to expect a social worker to gaze into a crystal ball. This argument presupposes that the family will continue to have insufficient income to afford the rent. But as Mr Alomo pointed out, that just goes back to the points discussed above under Ground 1 that Ms Benyon was entitled to take into consideration that RM may have health problems, but also that she was authorised to work and actively looking for it (again, one cannot use hindsight to rely on her subsequent diagnosis of a hernia and unfitness to work); and there was no medical evidence proving that BW could not work (and he would not need to care for the children if RM was not). Not only were those conclusions to which Ms Benyon was entitled to come, she specifically bore them in mind in para.122: as Mr Khubber accepted, the crucial paragraph of the assessment (which is why he attacked it). Neither para.122, para.117, nor indeed the April assessment generally, failed to take a 'forward-looking' approach.

67. The third criticism in Ground 2 as stated in Mr Khubber and Ms Sekhon's skeleton argument was that the assessment 'failed to appreciate the only source of alternative accommodation was under s.17 CA from the Defendant'. However, as Mr Alomo said, Ms Benyon plainly did bear that in mind. At paragraphs 70-71 of the assessment, she said she had investigated but no NRM family accommodation was available. Moreover, at para.54 of the assessment (as Mr Khubber and Ms Sekhon's skeleton stated) Ms Benyon accepted the family were not in a financial position to seek privately rented accommodation. Whilst she also there said 'they are not eligible for housing support from Dudley Council', as Mr Alomo submitted, that had to be read fairly and practically in the light of what Ms Benyon said at paragraphs.72-73. She said at para.72 'the family are not eligible for homelessness accommodation provided through the Local Authority's Housing Team on a long-term basis'. That is plainly right because the family are NRPF excluded under s.185 HA. It is unrealistic to think she overlooked this at para.73 (or indeed Mr Alomo at para.37 of his skeleton which simply summarised paras.72-73) in saying that the Defendant's housing department told her that until the family received a notice of eviction, they would not provide any advice or support as the family would not be deemed as homeless. I accept that is probably a reference to the test in s.175 HA of being 'threatened with homelessness' within 56 days. However, a fair reading of para.73 in the context of para.72 is that Ms Benyon was essentially saying: 'You are not eligible for homelessness support; and even if you were, you would not be homeless yet'. That was legally correct and does not mean that she ruled out accommodation through s.17 CA, which she specifically went on to consider in paras.115-118 in finding there would be a defence and counterclaim, before adding at para.119 that:

> "*Therefore, it is incorrect to claim* <u>that the claimant and his family are at risk of being street homeless imminently</u> *leading to the local authority having to provide housing."* (my italics and underline).

When I granted permission, I was more concerned whether the underlined words in para.119 suggested Ms Benyon applied a 'homelessness threshold' to whether the children were 'in need' under s.17 CA in respect of housing. In his oral submissions, Mr Khubber re-focussed this facet of Ground 2 on that argument, especially in the light of the potential tension between paras.72-73 which I discussed above.

68. However, I have been persuaded by Mr Alomo that on a fair, realistic and practical reading of the April assessment as a whole in the light of its background as a social work judgement not a legal one (c.f. *R(McDonald)* and *R(O)*), Ms Benyon did not fall into this error in the April assessment read fairly as a whole, for three alternative reasons:

    a. Firstly, even reading para.119 of the April assessment in isolation, the underlined words must be read in the light of the italicised words. As I said, Ms Benyon did not apply a legal 'homelessness threshold' for s.17(10) CA 'housing needs', she was simply saying that it would be '*incorrect to claim*' the family were so 'imminently' at risk of street homelessness that they would have to be accommodated *now* by the Defendant. That was plainly correct – possession proceedings had not even started yet, let alone a possession order or eviction order. Moreover, there is no *duty* to meet housing needs under s.17 CA: *R(G) v Barnet*.

    b. Secondly, reading para.119 of the April assessment fairly as leading on from paras.115-118 through the word 'therefore', Ms Benyon was really saying that *because the family had a defence to possession*, it was incorrect to say they would be at risk of street homelessness such as to require authority housing now under s.17 CA.

    c. Thirdly, that view becomes even clearer on taking into account paras.72-74 of the April assessment and Ms Benyon's uncriticised self-direction on s.17 CA in paras.120-121. Reading para.119 as applying a 'homelessness threshold' is inconsistent with her correctly recalling at para.72 that the family were NRPF and so ineligible for homelessness support, but saying at para.73 that even if the family were eligible they were not yet 'homeless', which should be read as a social work judgement about 'homelessness' in a broad sense, not a legal one that s.175 HA does not apply (*R(O)*). Ms Benyon was not saying that 'the s.175 threshold was not met' when she had already said the HA did not apply. She was simply saying there was not yet any need to provide accommodation: an evaluative judgment to which she was entitled to come.

69. Even if I am wrong and Ms Benyon inappropriately applied a 'homelessness threshold' to 'housing need' under s.17(10) CA, that was an immaterial error. To put it another way, s.31(2A) Senior Courts Act 1981 applies (c.f. *R(AM)* at [234]) because not only would the result have been highly likely to have been the same had that error not occurred, it clearly made no difference. After all, at the time of the April 2025 assessment, possession proceedings had not even started, let alone a possession or eviction order having been made. Ultimately, even if Ms Benyon applied too high a legal threshold for housing need – which I do not accept on a fair reading of her assessment – she was plainly entitled to conclude the family's housing situation was not yet sufficiently precarious as to constitute a housing 'need' under s.17 CA for the children requiring accommodation at the time of the assessment or in the near future. Therefore, either way, I reject all the criticisms under Ground 2 and I dismiss it.

Ground 3: '*Misdirection on the facts and in law when considering whether C is a child in need: availability of voluntary return to Zimbabwe'.*

70. As I said, the nub of this ground is the allegation that the Defendant wrongly found the family could return to Zimbabwe to improve its material situation, when that would have the effect of frustrating RM's claim to residence under the NRM. In their skeleton argument Mr Khubber and Ms Sekhon set out four different ways that would be an error of law: (i) firstly, RM and her family have leave to remain in the UK under her carer's visa and that RM has been actively seeking work; (ii) that they are not overstayers or otherwise unlawfully in the UK so are not caught by para.3 Sch.3 NIAA or therefore only entitled to what I called in *R(BC)* and *R(LR)* restricted 'Category 3 support'; (iii) RM is a PVoT awaiting a NRM 'conclusive grounds' decision and so cannot be required to leave the UK under s.61(2) NBA or the principle in *R(Clue)* and (iv) the assessment wrongly minimised the difficulties RM and family would have on return to Zimbabwe given the difficulties between RM and her sister MM.

71. I entirely accept that if Ms Benyon in the assessment had refused support simply because the family could obtain greater support if they left the UK and returned to Zimbabwe and that actually or effectively required the family to leave the UK, that would be an error of law, as discussed above. The real question is whether Ms Benyon did that. The important paragraphs of her assessment are as follows:

> "124. When considering the Visa requirements and basis upon which the [family] entered the UK, the local authority is also bound to consider whether the family could return home with support from the local authority.
>
> 125. [RM] and [BW] did not flee an unsafe country. They report that returning to Zimbabwe is not a viable option at this time due to the poor quality of education within Zimbabwe, the fact [BW] and [RM] do not have any property their country of origin and the on-going issues with Maternal Family who do not understand the difficulties the family have faced whilst in the UK from maternal aunt. There is a safe passage to repatriate back to home country with the support of the International Migration Organisation.
>
> 126. Taking into consideration the issues and placing these issues upon a balancing act, with the information reported by [RM] and [BW], I do not believe that it would be unsafe for the family to return to Zimbabwe…
> ….[T]his could be support[ed] by the Local Authority under the International Migrant Scheme, which would allow for the family to receive support to return to their country of origin and be provided with a settlement fee, which would allow for them to set themselves up within the country.
>
> 127. The local authority would support and assist the family in this regard.
>
> 128. Should the family decide to decline the offer of repatriation through International Organisation for Migration (IOM, they will need to notify the Home Office about their change of circumstances, for their immigration status to be amended/ changed. The local authority requires them to accept the support of repatriation or to work with the Home Office to enable them to review their current immigration status."

Mr Khubber pointed to Ms Benyon saying that she was 'bound to consider' the issue at para.124, the 'balancing act' she performed at para.126 and the local authority 'requiring them' to repatriate or 'work with the Home Office' in para.128.

72. It would have been better if Ms Benyon had stopped at para.127. Para.128 is flawed. There is no recognition in it of RM and her family's right to stay in the UK under the visa or s.61 NBA pending RM's conclusive grounds decision. It was not for Ms Benyon to 'require' RM and her family to do anything, especially as she assessed them as only eligible for 'Early Help'. Para.128 is redolent of what I called in *R(BCD)* and *R(LR)* 'Category 3' or 'Category 4' cases where a local authority offers support restricted to those with no leave to remain under para.3 Sch.3 NIAA or under the 'Withholding and Withdrawal of Support' Regs 2002 (see paragraph 39 of this judgment above). Indeed, I fear 'cut and paste' from such templates may have sneaked in right at the end. Para.128 is why I gave permission on Ground 3.

73. However, again I have been persuaded by Mr Alomo that on a 'fair reading' of the assessment as a whole, the flaws in para.128 do not invalidate the decision overall:

    a. Firstly, unlike para.128 of the April assessment, paras.124-127 are not flawed. At paras.125-126, Ms Benyon concluded it would be safe for the family to return to Zimbabwe, an evaluative conclusion only challenged on the factual basis that it minimised family difficulties on RM's side. This is a minor 'irrationality point' that goes nowhere, especially as the difficulties are only on the maternal side. Paras.126-127 offer to support the family to return, but against the acknowledged background at para.124 that the family had leave to remain under RM's working visa. s.61 NBA prohibits *'requiring a PVoT to leave the UK'* and likewise *R(Clue)* prohibits refusal of assistance where there is an arguable pending claim for leave *'if that would have the effect of requiring the person to leave the UK'*. Neither prevents a family repatriating *voluntarily*, or a local authority encouraging them with support to do so, provided its refusal of other support does not actually or effectively require them to leave the UK, which paras.124-127 did not do.

    b. Secondly, whilst para.128 of the April assessment does fall into the language of 'requirement', it did not 'require RM to leave the UK' as such: it 'required' RM and her family to accept support to repatriate, or alternatively 'to work with the Home Office to enable them to review their current immigration status'. This is vague, even meaningless, but it does not actually require RM and family to leave. Moreover, whilst in many NRPF cases where the family has no lawful means of improving its income (e.g. overstayers), refusing support may *have the effect* of requiring them to leave (see *R(Clue)*), in this case Ms Benyon had rightly found there was no medical evidence justifying BW not working and that RM was actively looking for work. Therefore, it is unrealistic to say (and indeed the Claimant does not say) that the assessment's refusal of support has the effect of requiring him and his family to leave the UK. So read in its in context, the analysis para.128 is unfortunate but not unlawful.

    c. Thirdly, even if I am wrong about that, as Mr Alomo submitted, para.128 (if not all of paras.124-128) is immaterial to the decision Ms Benyon had already reached at paras 107-123. If there was no error in her earlier conclusions (as I have found under Grounds 1-2 and will also find under Ground 4) whatever is said on the distinct issue at paras.124-128 is superfluous. In other words, if para.128 was unlawful, it made no difference

to the outcome as the refusal of support was otherwise unimpeachable and para.128 simply a regrettable coda. s.31(2A) SCA therefore applies.

For those reasons, I also dismiss Ground 3.

Ground 4: 'Irrationality'.

74. As I explained above, this ground is a late addition – and in argument Mr Khubber mainly put it on the basis that it presupposed at least one of the earlier grounds succeeding. It follows that it cannot succeed on that basis. However, he did not abandon, but did not press, Ground 4 as a free-standing ground of irrationality. In fairness to the Claimant, there are three ways I would consider, though reject it:

    a. Firstly, it is not always a case of '0 + 0 = 0' and flaws in an assessment which do not themselves invalidate it can cumulatively cause it to tip over into 'irrationality'. However, for the reasons I have explained, other than para.128 of the April assessment, I do not see it as having such flaws that cumulatively invalidate it. Whilst the 'homelessness language' in paras.72-3 and 119 could have been better expressed, reasons always can be (as doubtless a reader may say of this judgment – and which I did say of *R(BCD)* in *R(LR)*). There is also Ms Benyon's failure to interview the children, departing from *Working Together* paras.140/161. But she still ascertained and considered the children's wishes and feelings under s.17(4A) CA having been informed of them by RM and BW; and she also had the boys' views from her colleague in the July 2024 assessment. Therefore, cumulatively there was 'good reason' to depart from the guidance, whether or not it was considered at the time (although neither of these points are pleaded grounds). Otherwise, Ms Benyon's assessment did not just comply with '*Working Together*', it was a scrupulously fair, balanced, comprehensive and conscientious assessment recognising the importance of promoting welfare, not just safeguarding, nor limiting 'need' to 'destitution' or 'homelessness'.

    b. Secondly, whilst Mr Khubber focussed on the 'deterioration though delay' point on Grounds 1 and 2, he touched on it on Ground 4. But the delay in assessment between January and April 2025 made no difference whatsoever to the 'return to Zimbabwe' point scrutinised in Ground 3, little difference (save on one point discussed below) to the family's deteriorating financial situation discussed in Ground 1; and only meant a significant change to Ground 2 because of the s.8 notice in March 2025. But that was analysed extensively in the assessment by Ms Benyon, as I have discussed above under Ground 2. Indeed, she was primarily attacked for being insufficiently forward-looking, not insufficiently backward-looking due to the delay. Whilst Ms Benyon did not in terms acknowledge that the s.8 notice was only served since the date the assessment should have been produced, the reality is that possession proceedings had been threatened by TG (and indeed Z) on MM's behalf in and before January 2025. The delay did not cause the s.8 notice to be issued; and in any event, I refused permission on the 'unlawful delay' point at the hearing in June 2025.

    c. Thirdly, there is the extent to which the Defendant has made the family's financial position worse by the Council Tax liability orders, attachment from earnings orders then a fresh bill during the three-month delay since January

2025. Regrettably, it appears to be a case of 'the right hand not knowing what the left hand is doing' at the Defendant. But that is not the same as public law error. It would also be unfair to the Defendant to find the assessment invalidated by a point which barely received any argument – written or oral. Nevertheless, I would urge Ms Benyon to seek to dissuade her colleagues in enforcement from making the family's current situation worse.

I therefore also dismiss Ground 4 and accordingly, the entire claim. However, I would point out that if a possession order is made, or there is some other marked deterioration in the children's or family's circumstances, that would be a significant change of circumstances probably justifying a fresh needs assessment, that I would expect to happen much more quickly.

Permission to Appeal

75. After I circulated my draft judgment, Counsel helpfully agreed a draft order and a list of corrections to the judgment (and I have also made some suggested by Mr Khubber alone). Indeed, Mr Khubber and Ms Sekhon also sensibly made a written application for permission to appeal to avoid the need for and cost of a consequential hearing. They presented fairly and respectfully three grounds of appeal (which I label 'A', 'B' and 'C' rather than '1', '2' and '3' to avoid confusion with the original grounds of challenge, because A and B largely focus on the original ground 2 and C on the original ground 3). I have considered carefully those grounds of appeal and whether my conclusions are arguably wrong; and/or whether there is some other compelling reason for the appeal to be heard under CPR 52.6. However, I refuse permission to appeal for the following reasons:

    a. Ground A submits that my conclusions under original Ground 2 were arguably wrong in considering the 'forward-looking' focus of need under s.17 CA and the precarity of the Claimant's family's housing position. In particular, it is argued that I was wrong to focus at paragraphs 64 and 69 of my judgment on whether their housing situation was 'not yet precarious' or 'not yet so precarious' to mean the children were 'in need'. In the light of that criticism, I have clarified those phrases in the final judgment to make clearer my reasoning. However, I do not consider my conclusion that the April assessment was entitled to find that the Claimant and his siblings were not 'in need' due to the alleged precarity of their housing situation was arguably wrong for the reasons I have given. Nor do I consider there is any compelling reason for the Court of Appeal to review the issue of when children of NRPF families are 'in need' due to housing or otherwise. The fact there have been three recent Court of Appeal decisions on 'need' outside the context of NRPF families does not mean a fourth on such families is needed. In any event, the Court of Appeal itself is far better placed than I am to make that assessment (or indeed whether I was arguably wrong in my conclusions).

    b. Ground B submits under Ground 2 at paragraphs 67-68 and elsewhere of this judgment, that I gave too much latitude to the April assessment itself and made over-generous inferences filling the gaps in it. I do not accept that my analysis of the April assessment was arguably wrong. The approach to

reading assessments is well-established in the authorities to which I have referred and I consider I applied them appropriately.

c. Ground C submits under Ground 3 at paragraph 73 of this judgment that I wrongly marginalised the flaws in paragraph 128 of the April assessment and related flaws on the return to Zimbabwe which it is submitted went well beyond a 'regrettable coda' not undermining the rest of the assessment (as I called para.128 of the assessment). Again, I do not accept my analysis was arguably wrong for the reasons I gave. The analysis in the April assessment of the family's return to Zimbabwe at least up to paragraph 127 of that assessment did not fall into public law error. Whilst paragraph 128 of the April assessment was regrettable, it was an immaterial error, or alternatively made no difference to the outcome under s.31(2A) SCA for the reasons I gave. The ongoing dynamic situation and possibility of a new assessment coming to a different conclusion – which I have specifically flagged up at paragraph 74 above – does not mean that the outcome of the April assessment itself would have been any different in the absence of para.128.

For those reasons, I dismiss the claim, refuse permission to appeal and make the order in the otherwise agreed form on Legal Aid costs. However, I cannot leave the case without paying tribute once again to the skill and dedication of Counsel and their legal teams in dealing with work involving some of the most vulnerable families in our community.
