

Neutral Citation Number: [2026] EWHC 1956 (Admin)

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

Case No: AC-2025-CDF-000150



AC-2025-CDF-000150
Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 29 July 2026

Before :

JUDGE BARRY CLARKE
(sitting as a Judge of the High Court)

Between :

The King (on the application of FZW)

Claimant

- and -

Bristol City Council

Defendant

Ms Gráinne Mellon and Ms Georgie Rea
(instructed by Deighton Pierce Glynn, Solicitors) for the Claimant
Mr Hilton Harrop-Griffiths
(instructed by Legal Services, Bristol City Council) for the Defendant

Hearing date: 31 March 2026

JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives at
10.30 am on 29 July 2026 and by release to the National Archives

Judge Barry Clarke:

1. The claimant is the younger of two sisters. Both have lawfully been in the UK for just over three years. The claimant recently became an adult. This application for judicial review concerns the disputed question of whether the defendant, a local authority, is required to provide her with care-leaver support.
2. The claimant was anonymised as FZW earlier in the proceedings. Her sister was anonymised as MSW. At this substantive hearing of her application for judicial review, the claimant was represented by Ms Mellon, who led Ms Rea. The respondent was represented by Mr Harrop-Griffiths. I am grateful to all counsel for the quality of the submissions I received.
3. I was provided with a core bundle (CB) of 381 pages, a supplementary bundle (SB) of 173 pages and an authorities bundle of 810 pages.

Statutory context

4. A local authority is required to support children in need and their families in accordance with its legal obligations as set out at Part III of the Children Act 1989. All statutory sections mentioned in this judgment are, unless otherwise stated, from that Act. The obligations set out in Part III have been the subject of extensive litigation in the years since, generating a considerable amount of case law. I will return to the case law later in this judgment, but I will set out the statutory provisions at this stage in order to explain some of the terminology that features in my summary of the facts. This is not the totality of Part III; I only set out the provisions that are relevant to this judgment.

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

- (1) *It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—*
 - (a) *to safeguard and promote the welfare of children within their area who are in need; and*
 - (b) *so far as is consistent with that duty, to promote the upbringing of such children by their families,*
by providing a range and level of services appropriate to those children's needs.
- (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.*
- (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.*

20 Provision of accommodation for children: general

- (1) *Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—*
- (a) *there being no person who has parental responsibility for him;*
 - (b) *his being lost or having been abandoned; or*
 - (c) *the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*
- (6) *Before providing accommodation under 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 accommodation; 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.*

22 General duty of local authority in relation to children looked after by them

- (1) *In this section, any reference to a child who is looked after by a local authority is a reference to a child who is—*
- (a) *in their care; or*
 - (b) *provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions within the meaning of the Local Authority Social Services Act 1970, apart from functions under sections 17, 23B and 24B.*
- (2) *In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.*
- (3) *It shall be the duty of a local authority looking after any child—*
- (a) *to safeguard and promote his welfare; and*
 - (b) *to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.*
- (3A) *The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.*
- (3B) *A local authority ... must appoint at least one person for the purpose of discharging the duty imposed by virtue of subsection (3A).*

- (3C) *A person appointed by a local authority under subsection (3B) must be an officer employed by that authority or another local authority ...*
- (4) *Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—*
- (a) *the child;*
 - (b) *his parents;*
 - (c) *any person who is not a parent of his but who has parental responsibility for him; and*
 - (d) *any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.*
- (5) *In making any such decision a local authority shall give due consideration—*
- (a) *having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;*
 - (b) *to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and*
 - (c) *to the child's religious persuasion, racial origin and cultural and linguistic background.*

22B Maintenance of looked after children

It is the duty of a local authority to maintain a child they are looking after in other respects apart from the provision of accommodation.

22C Ways in which looked after children are to be accommodated and maintained

- (1) *This section applies where a local authority are looking after a child (“C”).*
- (2) *The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).*
- (3) *A person (“P”) falls within this subsection if—*
- (a) *P is a parent of C;*
 - (b) *P is not a parent of C but has parental responsibility for C; or*
 - (c) *in a case where C is in the care of the local authority and there was a child arrangements order in force with respect to C immediately before the care order was made, P was a person named in the child arrangements order as a person with whom C was to live.*
- (4) *Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—*
- (a) *would not be consistent with C's welfare; or*
 - (b) *would not be reasonably practicable.*

23A The responsible authority and relevant children.

- (1) *The responsible local authority shall have the functions set out in section 23B in respect of a relevant child.*
- (2) *In subsection (1) “relevant child” means (subject to subsection (3)) a child who—*
- (a) *is not being looked after by any local authority in England or by any local authority in Wales;*

- (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2; and*
- (c) is aged sixteen or seventeen.*

23B Additional functions of the responsible authority in respect of relevant children.

- (1) It is the duty of each local authority to take reasonable steps to keep in touch with a relevant child for whom they are the responsible authority, whether he is within their area or not.*
- (2) It is the duty of each local authority to appoint a personal adviser for each relevant child (if they have not already done so under paragraph 19C of Schedule 2).*
- (3) It is the duty of each local authority, in relation to any relevant child who does not already have a pathway plan prepared for the purposes of paragraph 19B of Schedule 2—*
 - (a) to carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide him under this Part; and*
 - (b) to prepare a pathway plan for him.*
- (8) The responsible local authority shall safeguard and promote the child's welfare and, unless they are satisfied that his welfare does not require it, support him by—*
 - (a) maintaining him;*
 - (b) providing him with or maintaining him in suitable accommodation; and*
 - (c) providing support of such other descriptions as may be prescribed.*
- (9) Support under subsection (8) may be in cash.*

23C Continuing functions in respect of former relevant children.

- (1) Each local authority shall have the duties provided for in this section towards—*
 - (a) a person who has been a relevant child for the purposes of section 23A (and would be one if he were under eighteen), and in relation to whom they were the last responsible authority; and*
 - (b) a person who was being looked after by them when he attained the age of eighteen, and immediately before ceasing to be looked after was an eligible child, and in this section such a person is referred to as a "former relevant child".*
- (2) It is the duty of the local authority to take reasonable steps—*
 - (a) to keep in touch with a former relevant child whether he is within their area or not; and*
 - (b) if they lose touch with him, to re-establish contact.*
- (3) It is the duty of the local authority—*
 - (a) to continue the appointment of a personal adviser for a former relevant child; and*
 - (b) to continue to keep his pathway plan under regular review.*
- (4) It is the duty of the local authority to give a former relevant child—*
 - (a) assistance of the kind referred to in section 24B(1), to the extent that his welfare requires it;*
 - (b) assistance of the kind referred to in section 24B(2), to the extent that his welfare and his educational or training needs require it;*
 - (c) other assistance, to the extent that his welfare requires it.*

- (5) The assistance given under subsection (4)(c) may be in kind or, in exceptional circumstances, in cash.*
 - (5A) It is the duty of the local authority to pay the relevant amount to a former relevant child who pursues higher education in accordance with a pathway plan prepared for that person.*
 - (5B) The Secretary of State may by regulations—*
 - (a) prescribe the relevant amount for the purposes of subsection (5A);*
 - (b) prescribe the meaning of “higher education” for those purposes;*
 - (c) make provision as to the payment of the relevant amount;*
 - (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by the local authority from a former relevant child to whom a payment has been made.*
 - (5C) The duty set out in subsection (5A) is without prejudice to that set out in subsection (4)(b).*
 - (6) Subject to subsection (7), the duties set out in subsections (2), (3) and (4) subsist until the former relevant child reaches the age of twenty-one.*
 - (7) If the former relevant child’s pathway plan sets out a programme of education or training which extends beyond his twenty-first birthday—*
 - (a) the duty set out in subsection (4)(b) continues to subsist for so long as the former relevant child continues to pursue that programme; and*
 - (b) the duties set out in subsections (2) and (3) continue to subsist concurrently with that duty.*
 - (8) For the purposes of subsection (7)(a) there shall be disregarded any interruption in a former relevant child’s pursuance of a programme of education or training if the local authority are satisfied that he will resume it as soon as is reasonably practicable.*
 - (9) Section 24B(5) applies in relation to a person being given assistance under subsection (4)(b) or who is in receipt of a payment under subsection (5A) as it applies in relation to a person to whom section 24B(3) applies.*
 - (10) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section as they apply in relation to assistance given under that section.*
5. For present purposes, three points may be noted from the statutory scheme set out in Part III.
 6. First, it draws a distinction between two types of duty: the general section 17 duty and the specific accommodation duty under section 20.
 - 6.1 The general duty under section 17 is to safeguard and promote the welfare of children in need and, so far as is consistent with that duty, to promote the upbringing of children by their families. In pursuit of this duty a local authority may provide a range and level of services appropriate to a child’s assessed needs. Its powers in this regard can extend to the provision of accommodation.

- 6.2 The specific duty under section 20 is to accommodate children whose apparent need for accommodation arises when one of three conditions in subsection 20(1) is met: (a) no one has parental responsibility for them; (b) they are lost or abandoned; or (c) the person who has been caring for them is prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.
7. Second, where a local authority accommodates a child under section 20 for more than 24 hours, that child is designated a “looked after” child to whom certain further duties are owed; see section 22 and 22A-C. A local authority also has duties to a looked after child who is leaving care; see sections 23A-B. Collectively, these duties are known as “corporate parenting”. Section 23C sets out various “continuing functions” that a local authority must perform until the care leaver (designated for this purpose as a “former relevant child”) reaches the age of 21, with some further duties extending to the age of 25. Those functions – often part of a tailored package – may include the appointment of a personal adviser, a pathway plan, and support with education, training, employment, accommodation and financial needs. The framework is designed to replicate, so far as possible, the support that a good parent would provide to a young person transitioning to adulthood.
8. Third, at various points in the legislation – sections 17(4A), 20(6) and 22(4) – emphasis is placed on the fact that the local authority cannot act without ascertaining the wishes and feelings of the child involved.

The issues

9. This case concerns the defendant’s explicit decision to accommodate the claimant under section 17 rather than section 20. In consequence of that approach, the claimant was not considered to be a former relevant child for the purposes of section 23C. She therefore received no care-leaver support upon turning 18.
10. There are two grounds of challenge, with the principal remedy sought being for the court to order the defendant to provide the claimant with care-leaver support.
- 10.1 In ground one, it is contended that the defendant unlawfully “mislabelled” the support and accommodation it provided to the claimant. The claimant says that, in substance if not in form, that support was based on section 20 rather than section 17. The defendant’s position is that it lawfully accommodated both sisters under section 17, properly and rationally choosing the section 17 pathway in its efforts to keep the sisters together, given that section 20 would necessarily have meant splitting them up. As it properly chose the section 17 pathway, it cannot be said that the claimant “required accommodation” for section 20 purposes.
- 10.2 In ground two, it is alternatively contended that the defendant failed to exercise its discretion to treat the claimant as a former relevant child. The defendant treated it as axiomatic that the sisters should be accommodated together, thereby rejecting the section 20 pathway from the outset and doing so without any attempt to gauge the claimant’s wishes and feelings. The defendant’s position is that the claimant’s voice was clear and central to its approach; and, even if she had been asked, she would have chosen to remain with her sister.

Facts

11. The relevant facts, summarised below, are not materially disputed.
12. The claimant and her sister are from Eritrea. MSW was born there on 1 January 2005. The claimant followed on 11 June 2007, so they are separated by about 2½ years. Their mother died in 2013 when they were both young. Their father is disabled. By 2019, aged 12 and 14, the claimant and her sister were living by themselves in a refugee camp in Ethiopia. This was a well-known time of conflict between Ethiopia and Eritrea.
13. The claimant and MSW have an older brother. He was born on 20 May 1999. He fled Eritrea in 2015, when aged 16, to avoid military service. He was granted refugee status in the UK on 20 June 2017, just after he turned 18. He found work in the UK and paid for the two sisters to live in a flat in Addis Ababa. He began efforts to be joined by them. These were initially unsuccessful. On 28 September 2021, the Home Office refused the sisters entry clearance to the UK. This was on the basis of insufficient evidence that their mother had died or that their father was unable to care for them and, further, that they possessed no unusual dependency on their older brother. However, by a decision dated 12 March 2022, the First-tier Tribunal allowed the sisters' appeal (SB, pp 33-38). It concluded that they met the requirements of paragraph 319X of the Immigration Rules which, at that time, permitted a child to join a relative in the UK who had limited leave to remain as a refugee. The Tribunal found that the brother, by now 22 and in good employment, could adequately maintain and accommodate them without recourse to public funds.
14. On 14 July 2022, the brother was granted indefinite leave to remain in the UK. On 13 October 2022, the claimant and MSW were granted leave to enter the UK as his relatives. They were issued with visas (SB, pp 39-44). On 11 January 2023, they arrived lawfully (SB, p 39). The claimant was 15. MSW had turned 18 barely a fortnight earlier.
15. The sisters moved in with their brother in rented accommodation in Bristol. On 27 January 2023, the Home Office issued them with biometric residence permits. The permits stated that they had no recourse to public funds. On 19 September 2023, following an intervention by the British Red Cross and support from a local Member of Parliament, the Home Office accepted that they should have recourse to public funds. The claimant entered secondary education at a school in Bristol.
16. Unfortunately, the accommodation arrangements between the brother and two sisters did not work out. They lasted only until April 2024, about 15 months in total. For the purposes of these proceedings, it is common ground that the brother's alcohol consumption and abusive behaviour led the sisters to flee the property they had shared with him. I am told they have not seen him since. On 8 April 2024, with the assistance of a refugee charity, they presented to the defendant as homeless. At this stage, the claimant was 16 and MSW was 19.
17. Something then happened to complicate matters. Erroneously, the Home Office told the sisters that they had no leave to be in the UK at all. Documents at this time also referred wrongly to the claimant as an asylum-seeking child (e.g., SB, p 64).

18. It is not necessary to narrate the subsequent legal back-and-forth. At this stage, I will simply note that separate judicial review proceedings concluded with a consent order sealed on 2 May 2025. By this order, the sisters were deemed as having been granted indefinite leave to remain in the UK on 15 September 2023, one year after their lawful arrival. This order was not in the core bundle or supplementary bundle but a copy was provided to the court. It involves no criticism of the defendant in this case to observe that Home Office errors about the sisters’ immigration status infected the local authority’s decision-making in respect of accommodating them.
19. When the sisters presented to the defendant as homeless in April 2024, it initially accepted that they were eligible for publicly-funded assistance. It provided them with interim accommodation in a shared house under section 188 of the Housing Act 1996, a form of support predicated upon permissible recourse to public funds. It is more accurate to say that the defendant accommodated the older sister and permitted the claimant to reside with her as an occupant (SB, pp 74-80). The British Red Cross provided the sisters with destitution payments (SB, pp 88-89). In late May 2024, a multi-agency meeting took place involving the defendant’s asylum team and third sector organisations. Concerns were raised about the brother’s parental role (although it is now common ground that he had no parental responsibility), his alcohol use and the presence of other adult men in his household (CB, p 200) and the pressures on the older sister (CB, p 206).
20. Nonetheless, on 19 July 2024, following the Home Office’s erroneous revocation of the sisters’ leave to remain, the defendant gave notice terminating the section 188 housing support given to the sisters on the false premise that they were ineligible (SB, pp 82-87). At the same time they were fearful of returning to their brother. The documents refer to MSW exhibiting suicidal and self-harming ideation in consequence (CB, p 213, 258, 270-271; SB, p 125). She was admitted temporarily to hospital. A week later, their tenancies were terminated. The claimant had just turned 17.
21. As it happens, the sisters were not evicted. This is because the defendant’s “Families in Focus” children’s services team stepped in to provide emergency accommodation – indeed, doing so at the same address where section 188 support had been provided (CB, p 261). A social worker, Ms Shaw, became involved. She quickly raised concerns about the complexity of the sisters’ situation, given that neither the brother nor the older sister had parental responsibility for the claimant. She explained to MSW that the focus needed to be on ensuring that the needs of the 17-year-old claimant were being met (CB, p 217). Ms Shaw described the position to the defendant as complex, setting out her worries – especially for the claimant. A manager in another children’s services team, the Family Assessment Service, Mr McFeat, responded to say that the focus should be on keeping the sisters together rather than separating them so as to treat the 17-year-old as homeless (CB, p 223). Another manager said that pursuing a duty for the 17-year-old would “defeat the point” (of, presumably, keeping the sisters together) (CB, p 224). Another member of the team observed that the availability of accommodation from the brother meant that the sisters were not street homeless but, given MSW’s distress, expressed concern about who was acting in the claimant’s interests (CB, p 225).
22. The documents clearly show these public servants seeking to find a path through a complex situation, trying to work out what was best for the sisters. Mr McFeat’s view remained that the focus should be on “supporting the sisters to continue to live together rather than separating them to consider [the claimant] as homeless” (CB, p 226). This

view prevailed. However, the practical consequence was that the local authority chose a section 17 pathway for accommodating both sisters rather than a section 20 pathway for accommodating the claimant (CB, p 229).

23. The defendant arranged an assessment under the 1989 Act for this purpose (CB, p 261). In so doing it described the two sisters and the brother as a unit and observed that, if there were no safeguarding concerns and no resolution to their immigration status, the sisters would be returned to their brother or to their country of origin (CB, p 269). It also noted expressly that the claimant had no person with parental responsibility (CB, p 272). As already noted, the Home Office's errors in respect of the sisters' immigration status had complicated the situation. The next few months were characterised by interventions designed to avoid financial hardship, including continued and multiple destitution payments from the British Red Cross (SB, p 88-89) and the use of food banks.
24. Ms Shaw finalised the section 17 assessment, which took effect on 4 October 2024 (CB, p 291-297). The following points are notable from her assessment: MSW continued to display suicidal ideation; MSW was neglecting her self-care despite her nominal role as the claimant's caregiver; the sisters had a strong relationship; Ms Shaw's primary concern was the claimant, as (technically) the only child in the situation; ongoing uncertainty about their immigration status might be settled after a court challenge; and the claimant would be turning 18 in July 2025 but would then be without support. Thus the claimant's post-18 situation was plainly in the defendant's contemplation, albeit there was no mention in this context of the alternative section 20 pathway by which such support could have been made available.
25. In light of the assessment, the defendant concluded that it would continue to provide support to the claimant as a "child in need" (CB, p 298). This decision was said to be informed by the complexity and "nuances" of the situation "due to the sisters' immigration status, experience of instability, trauma and pending court hearing". This approach was considered to be best "for the time being until more is known about what the family are entitled to and the options available" (ibid).
26. The defendant conducted a management review in December 2024 which described the sisters' situation as "complicated" and the pathway as "confusing". It noted that clarification of their immigration status remained outstanding and that the claimant had "no real adult supporting her". Strikingly, the defendant noted this of the sisters' case: "This is not solely about accommodation costs ... support is likely to be needed beyond [the claimant] reaching 18 and we do not want to be in a situation where this falls away" (CB, p 323). As we shall see, this is precisely what happened.
27. Ms Shaw continued to support the sisters into 2025. This included accompanying them to the permission hearing for the judicial review of the Home Office's purported revocation of their leave to remain. As I have noted, the matter was finally resolved with a consent order on 2 May 2025, just before the claimant turned 18. An associated claim against the Home Office for damages was transferred to the County Court. On 15 May 2025, and in consequence of clarification of the sisters' immigration status and permissible recourse to public funds, the defendant granted MSW (for a second time) accommodation under section 188 of the Housing Act 1996 (SB, pp 106-108), with the claimant again residing with her as an occupant.

28. Ahead of the claimant turning 18 on 11 June 2025, thoughts shifted towards ending the support the defendant provided to them. The final care plan was prepared with a view to expiring on that date (CB, p 346). At a “closure meeting” on 5 June 2025, it was made clear that the claimant no longer qualified for support from the children’s services team. Ms Shaw’s concerns about the impending cliff edge could not have been clearer: “My main worry is the girls going from monthly support from me to nothing” (CB, p 347). The closure meeting was attended by the solicitor who had supported the sisters in their judicial review claim concerning their immigration status; she specifically asked whether care leaver support was available to the claimant under section 23C. She was told that the defendant “doubted” this was possible because the claimant “was not LAC [looked after child]” but it would be “something in enquiry about as their case was complex and didn’t really ‘fit’ with any team” (CB, p 348). The solicitor followed up with an email asking whether the case could remain open until the care-leaver issue had been clarified, but Ms Shaw considered that, as all support had been provided under the section 17 pathway, there was no basis for care-leaver support (CB, p 349).
29. There was further correspondence on the issue (CB, pp 356-362). There is no need to explain the disagreement that persisted between the claimant’s solicitor and the defendant as these are now issues for the court to resolve. The crucial point is that, by an email to the claimant’s solicitor dated 11 June 2025, being the claimant’s 18th birthday, the defendant maintained that it had never accommodated her under section 20 and had not mislabelled the situation. The material part of the email said this:

It is our position that the s20(1) duty did not arise because [the claimant] had [MSW] available to care for her at the time they sought [local authority] support. The girls presented as a homeless family and accommodation was provided under s17 to avoid destitution pending their housing and immigration claims. [The claimant] was provided accommodation alongside her adult carer; it would be illogical to suggest that [the defendant] had provided accommodation to [MSW] as a kinship carer on the basis that [the claimant] had become accommodated.

30. This is the decision under challenge.
31. The defendant then closed the case. The last relevant act taken by the local authority was on 18 June 2025, when Ms Shaw signposted the sisters to other services (CB, pp 367-369).
32. I was provided with three witness statements: two from the claimant (CB, pp 134-144 and 177-179) and one from the defendant’s deputy service manager (CB, pp 145-160). These did not add materially to the facts that could be ascertained from the documents, save for the claimant’s second witness statement. In this statement, she said that the defendant never explained to her the difference between support under section 17 and section 20, nor sought her views before deciding that section 20 was not in her best interests. She disputed the defendant’s assertion that she would necessarily have prioritised living with her sister above all other considerations, maintaining that, had the options been properly explained to her, she would have chosen the section 20 pathway even if that meant she could not continue living with her sister. She considered it unfair that the defendant had made assumptions about her wishes without consulting her. In particular, she emphasised the importance that she places upon her education and her aspiration to study nursing. Having learned of the educational, financial and practical assistance available to care

leavers, she regarded that support as highly significant to her ability to pursue her educational ambitions and build an independent future in the UK.

33. I will now turn to the case law. The parties provided a great many authorities to the court. I refer below to those which I have found most relevant to the issues I must decide and on which oral argument was focused. I take them by relevance to each ground of appeal and then mostly in chronological order.

The relevant case law (ground one)

34. The starting point is the conjoined appeals in *R (G) v Barnet London Borough Council, R (W) Lambeth London Borough Council* and *R (A) v Lambeth London Borough Council* [2003] UKHL 57, which reached the House of Lords. These were cases about mothers wishing to be accommodated with their children. It was not disputed that the children in these appeals were owed the section 20 duty. The issue was whether there was a duty to provide the whole family unit with accommodation, either under section 17 or alternative provisions. Lord Hope emphasised at paragraph 68 of the judgment the importance to be attached to the promotion of the upbringing of children with their families, a point on which the defendant in this case has placed significant emphasis. At paragraph 91, he described section 17 as setting out “duties of a general character which are intended to be for the benefit of children in need in the local social services authority’s area in general”; section 20 was to be read in the light of that general duty. Lord Hope further emphasised at paragraph 100 that section 20 can come into operation where a child is in need because the person who cares for them is prevented from providing them with suitable accommodation or care “for whatever reason”, as the statute prescribes.
35. The next case of relevance is *H & others v Wandsworth London Borough Council & others* [2007] EWHC 1082 (Admin). There, the question arising was whether a local authority providing accommodation to a lone child in need could specify that they were acting under section 17 when, on the facts, they were also under a duty to act under section 20. In that case, rather like the challenge I am considering, the significance of the issue was that it affected whether “looked after” duties were owed when the child turned 18. H had been an unaccompanied asylum-seeking child – and so there was nobody with parental responsibility for him – but the local authority accommodated him under section 17. Holman J said this at paragraph 57 and 59:

In my view, the approach of the majority of the House of Lords in *G v Barnet* in the various passages which I have already quoted does require and have the effect that, if a local authority do provide accommodation for a child in need, and if on the facts a duty to do so did arise under section 20, then the local authority must be regarded as providing that accommodation under section 20 and not under section 17 ... On the facts of the Wandsworth case, the local authority expressly assessed the claimant to be a child in need within their area, who appeared to them to require accommodation, and if they applied their minds to the question, it could not have failed to appear to them that he required it as a result of the reason in paragraph (c). So all the ingredients for imposition of a duty under section 20(1) did arise in this case, and when they actually provided the accommodation, they must have done so in discharge of that duty.

36. The passage above first articulated the notion that the statutory “label” a local authority applied when supporting a child (whether section 17, section 20 or some other provision)

was not conclusive as to the source of the power that it was, in reality, exercising. I adopt Ms Mellon's concise description of this approach: substance triumphs over form.

37. The next case again reached the House of Lords: *R (M) v Hammersmith and Fulham Borough Council* [2008] UKHL 14. M was the youngest of five children. The family had spent many years in unsettled and temporary accommodation. M was excluded from school from the age of 14. Her relationship with her mother, who was ill, broke down. She became involved in the criminal justice system. Just before she turned 17, M presented to her local authority, needing a bail address, and with her mother considered to be either unwilling or unable to care for her. M was not referred to children's services. She was variously accommodated in bed and breakfast accommodation, then in a hostel, then with her sister and, at one point, she entered custody. In judicial review proceedings launched while she was in custody, M sought accommodation and a declaration that she was owed duties under the 1989 Act. The local authority accepted she might be owed duties under the Housing Act 1996 but denied any duty under the 1989 Act. The High Court refused M permission and the House of Lords unanimously dismissed her appeal.
38. It was what the House of Lords said along the way that matters. The appeal turned on the meaning of "a child who is looked after by a local authority" in section 22. M's claim depended on establishing that, when the local authority accommodated her under section 188 of the Housing Act 1996, it had in truth been acting under section 20, such that she had been a "looked after" child to whom other corporate parenting obligations were owed consistent with that status. In other words, this was a dispute about the proper "label" to be applied, with substance triumphing over form. In the leading judgment, Baroness Hale said this at paragraphs 42-43:

... I am entirely sympathetic to the proposition that where a local children's services authority provide or arrange accommodation for a child, and the circumstances are such that they should have taken action under section 20 of the 1989 Act, they cannot side-step the further obligations which result from that duty by recording or arguing that they were in fact acting under section 17 or some other legislation. The label which they choose to put upon what they have done cannot be the end of the matter ...

It seems to me that there may well be cases in which there is a choice between section 17 and section 20, where the wishes of the child, at least of an older child who is fully informed of the consequences of the choices before her, may determine the matter. It is most unlikely that section 20 was intended to operate compulsorily against a child who is competent to decide for herself. The whole object of the 1989 Act was to draw a clear distinction between voluntary and compulsory powers and to require that compulsion could only be used after due process of law.

39. Baroness Hale therefore noted the importance of ascertaining the wishes of the child. Then, in dismissing the appeal, she said this at paragraph 44:

But that is by the way. It is one thing to hold that the actions of a local children's services authority should be categorised according to what they should have done rather than what they may have thought, whether at the time or in retrospect, that they were doing. It is another thing entirely to hold that the actions of a local housing authority should be categorised according to what the

children's services authority should have done had the case been drawn to their attention at the time.

40. Baroness Hale therefore drew a distinction between two propositions. She accepted the first as sound: that a children's services authority which provides or arranges accommodation, in circumstances where it should have acted under section 20, cannot escape the consequential obligations by attaching a different label to what it did. She rejected the second: that the actions of a housing authority should be re-characterised according to what a children's services authority ought to have done, had the matter been referred to it. In "label cases", a children's services authority had itself done something resulting in the provision of accommodation; here, there was no evidence that children's services did anything at all. For present purposes, the key point is that Baroness Hale's reasoning asserted the primacy of the section 20 duty.
41. Something rather like the reverse situation arose shortly afterwards in *R (G) v Southwark London Borough Council* [2009] UKHL 26, which also reached the House of Lords. G was a child approaching adulthood (age 16/17) who, after falling out with his mother, found himself "sofa surfing". He presented to children's services with a letter requesting both assessment as a child in need under section 17 and accommodation under section 20. He was referred to a social worker and given bed and breakfast accommodation, but the local authority declined to accommodate him under section 20. At paragraphs 9 and 10 of her analysis, Baroness Hale noted how the "label" problem arose in previous cases where children's authorities had arranged accommodation for a child but were reluctant to accept that they had done so under section 20. She reiterated that "they cannot 'sidestep' the issue by claiming to have acted under some other power ... In particular, they cannot claim simply to have been acting under the general duty in section 17(1)".
42. In this case, it was argued on behalf of G that a child meeting any of the three limbs of section 20(1)(a)-(c) would, by definition, "require accommodation" within the meaning of section 20. For the local authority, it was argued that, when deciding if a child "requires accommodation" under section 20, the authority can take account of all other sources of accommodation that may be available to the child and conclude in appropriate circumstances that accommodation can instead be provided under the general duty in section 17. At paragraphs 25-26 of her judgment, Baroness Hale criticised that reasoning as circular, and reiterated the primacy of the specific duties owed by local authorities under section 20 over the general duty owed to children and their families under section 17. At paragraph 28, she adopted and approved (from the earlier case of *R (A) v Croydon London Borough Council* [2009] LGR 24) a series of seven questions that must be asked in each case (while the eighth and ninth questions did not apply on the facts). Those questions were:
 - (1) Is the applicant a child?
 - (2) Is the applicant a child in need?
 - (3) Is the child within the local authority's area?
 - (4) Does the child appear to the local authority to require accommodation?
 - (5) Reflecting the three limbs of section 20(1), is that need for accommodation the result of:
 - (a) there being no person who has parental responsibility for the child;
 - (b) the child being lost or having been abandoned; or

- (c) the person who has been caring for the child being prevented from providing the child with suitable accommodation or care? (Noting that limb (c) is to be given a wide construction if children are not to suffer for the shortcomings of their parents or carers.)
 - (6) What are the child's wishes and feelings regarding the provision of accommodation?
 - (7) What consideration (having regard to the child's age and understanding) is duly to be given to those wishes and feelings?
43. The three limbs of section 20(1)(a)-(c) were built into question (5). They were not, in and of themselves, conclusive. Other answers were required, such as to question (4): whether the child "required accommodation". But, as each of these questions were answered in the affirmative in G's case, Baroness Hale concluded that the section 20 duty had arisen (with all that entails) and that the local authority could not sidestep that duty by giving the accommodation a different label.
44. At paragraph 30, Baroness Hale passed comment on a local government circular then in operation. This had stressed that the power to accommodate under section 17 "will almost always concern children needing to be accommodated with their families"; this was consistent with the general duty in section 17(1)(b) "to promote the upbringing of such children by their families". The circular had suggested that there may be cases where a lone child who did not need to be "looked after" might be accommodated under section 17 instead. As to that suggestion, Baroness Hale again emphasised the need to ascertain the child's wishes:

Before deciding which section was the more appropriate the authority should carry out an assessment, which would include taking into account the wishes of the child. The assessment should first determine whether the child met the criteria in section 20(1). If the child had no parent or guardian in this country, perhaps because he arrived alone seeking asylum, the presumption should be that he fell within section 20, unless the needs assessment reveals particular factors which would suggest that an alternative response would be more appropriate. He should be cared for under section 20 while the assessment was being carried out ...

45. The next case is *KS v City of Bradford Metropolitan District Council* [2014] EWHC 11 (Admin). This is another example of substance triumphing over form. KS was one of several children living in neglectful and abusive conditions. It was agreed that the local authority would arrange for her to be accommodated with her maternal grandmother. The fact that accommodation was available to KS with a relative might suggest that she did not "require accommodation" at question (4). The High Court concluded at paragraph 45 that she had been accommodated pursuant to section 20. While the judgment contained no analysis of section 17, Ms Mellon contended that it demonstrates that living with a relative is not, in and of itself, a bar to the application of section 20.
46. On this point, Mr Harrop-Griffiths drew my attention to *R (MK) v London Borough of Barking and Dagenham* [2013] EWHC 3486 (Admin). MK was a 20-year-old woman, ineligible for housing assistance, who sought support under section 17(3) alongside support that the local authority was already providing to her aunt and the aunt's two children. HHJ Judge Bidder KC, sitting as a Deputy High Court Judge, rejected the claim. In his judgment, the local authority had properly concluded that it was not necessary for

the assessed needs of the children that MK should also be supported (see paragraphs 68-71). Mr Harrop-Griffiths placed particular emphasis on what the judge observed at paragraph 56: that the statutory scheme was bifurcated such that section 17 was the platform for supporting families while section 20 was the platform for supporting a lone child.

47. Ms Mellon drew my attention to *R (CO) v Surrey County Council* [2014] EWHC 3932 (Admin), as further supporting the proposition that accommodation with a relative does not act as a bar to the application of section 20. In that case, the difference between section 17 and section 20 was considered explicitly. Again, a child was placed with a maternal grandmother. (I should note that, when this case was considered, section 23 provided two routes by which a local authority could fulfil its duty to provide accommodation to a child in need. Those provisions were repealed and are now expressed elsewhere.) At paragraph 9, Popplewell J noted:

Local authorities may be involved in private arrangements by which a child in need is accommodated with a friend or relative without the s.20 duty arising or the child becoming a looked after child. Arrangements between family members for a child to live with a relative who does not have parental responsibility are common, and need not involve the local authority at all. Where the local authority is involved, the circumstances may be such that the local authority is fulfilling its duty to promote and safeguard the welfare of the child under s.17 by encouraging or facilitating such arrangements before a stage has been reached when it would come under a duty to accommodate the child itself under s.20. Therefore a private arrangement for a relative to foster a child may become available in such a way as to permit a local authority, which is on the verge of having to provide accommodation to the child, to “side-step” the duty by helping to make such a private arrangement ...

48. In other words, it was still possible for a local authority legitimately to side-step its section 20 duties by acting under section 17. The example given was a fostering arrangement. Popplewell J noted that determining whether a local authority had effectively side-stepped its duty would be a question of fact. He also noted, at paragraphs 10 and 11, an important factor that would weigh heavily in that analysis: whether the local authority had played “a central or major role in making the arrangements”. If yes, “it is more likely to be concluded that it is doing so in the exercise of its duties as a public authority pursuant to sections 20 and 23”. Popplewell J thereby accepted that a local authority may, on the facts, fulfil its duty by accommodating a child in need under section 20 with a relative and still be required to treat the child as a looked-after child – with all that entails.
49. Mr Harrop-Griffiths also drew my attention to *R (OA) and others v Bexley London Borough Council* [2020] EWHC 1107 (Admin). This was a case about financial support rather than accommodation. A Nigerian family in the UK – a mother (OA) and her two sons aged 16 and 19 – had no recourse to public funds by reason of their immigration status. The local authority recognised the 16-year-old son as a “child in need” and accommodated him under section 17 alongside OA as his care-giver. It did not accept that it owed any obligations to the 19-year-old but allowed him to live with his mother and younger brother; as a result, it assessed its financial support on the basis that it was catering for a mother and a lone child. OA challenged that assessment on the basis it left her dividing a food allowance for two people between three people. Sam Grodzinski KC, sitting as a Deputy High Court Judge, noted at paragraph 61 that “family” was a concept

extending beyond those persons with parental responsibility. He noted at paragraph 63 that services under section 17(3) could be provided to any member of the family so long as they are appropriate to the assessed needs of the relevant child. In his judgment, the local authority had correctly concluded that it had no power to provide financial support to the older brother if the older brother was not providing support relevant to the child's assessed needs (paragraphs 81-84).

50. Ms Mellon referred me to *R (CLT) v London Borough of Hounslow* [2026] EWHC 162 (Admin). In that case, CLT, aged nearly 17, had lost both his parents. He was in squalid conditions. There was a dispute about whether the local authority's involvement in CLT's living arrangements (first with a neighbour and then a distant cousin) amounted to the provision of accommodation under section 20 (thereby conferring "looked after" status) or were fostering arrangements confined to the residual power under section 17. The local authority's contention was that, applying section 20(1), the involvement of the neighbour and cousin meant that CLT did not require accommodation. Applying the series of questions adopted by Baroness Hale in *R (G) v Southwark*, Benjamin Douglas-Jones KC, sitting as a Deputy High Court Judge, rejected that contention. He noted the major role the local authority played in facilitating these placements, including by making a positive decision not to enforce a right of possession against CLT. His judgment said this at paragraph 74:

By making a positive decision not to enforce its right to possession against the Claimant, and by creating a "use and occupation" account to regularise his stay, the Defendant was not merely observing a stable situation; it was, by its own forbearance and administrative action, providing that stability. It follows that the Defendant's argument that the Claimant did not require accommodation because he was not being evicted would involve circular reasoning: the Claimant only had secure accommodation because the Defendant chose to provide it. As established in *G*, the duty under s.20 is to "provide" accommodation. Where a local authority allows a child to remain in a council property to which the child has no legal title – and against whom it could obtain a possession order at any time – specifically to prevent that child from being homeless and to enable a carer to look after them there, the authority is "providing accommodation". The Defendant cannot rely on its own decision to provide housing (by not evicting) to negate its statutory duty to provide housing. This would lead to the incoherent result that a local authority could discharge its duties to a child with no parents simply by refraining from evicting them from a council property, while simultaneously denying them the "looked after" status that Parliament intended for children dependent on the state for their home.

51. Since *R (G) v Barnet*, the need for a purposive approach to section 20 has been evident in several cases, such as when interpreting the phrase "for whatever reason". This appears in limb (c) of section 20(1): whether the person caring for the child has been prevented, "for whatever reason", from providing them with suitable accommodation or care. In the case of *R (S) v London Borough of Sutton* [2007] EWHC 1196 (Admin), Stanley Burton J held at paragraph 40 that the limb (c) test was met where "people are so incompatible that they simply cannot live together". This was followed by Burton J in *R (L) v Nottinghamshire County Council* [2007] EWHC 2364 (Admin). Having concluded at paragraph 40 of *R (L)* that Stanley Burton J's approach had itself been endorsed by the Court of Appeal (in *R (S) v London Borough of Sutton* [2007] EWCA Civ 290), Burton J

concluded at paragraph 41 of *R (L)* that a mother was prevented from providing care to a daughter whose assault upon her had led to a breakdown in their relationship.

52. This primacy of section 20 over section 17 is further supported by the Guidance given to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16- and 17-year-old young people. This is the Prevention of Homelessness and Provision of Accommodation for 16-17-year-olds who may be Homeless and/or Require Accommodation (DfE /MHCLG, 2018) (the "Guidance"). It was in the authorities bundle. Paragraph 1.2 of the Guidance provides in clear terms:

Where the specific duty is owed under section 20 ... a 16 or 17 year old should be accommodated under that provision rather than looking to the general duty owed to children in need and their families under section 17 ...

53. This is underscored by paragraph 3.58 and 3.59 of the Guidance:

Children's services authorities have powers to accommodate children under section 17(6) of the 1989 Act. A young person provided with accommodation under this section would not be looked after and the local authority would not have the corresponding duties set out at in sections 22, 22B, 23, 23ZA-23ZB and 24 of the 1989 Act. However, the provision of accommodation under section 17 will almost always concern children needing to be accommodated with their families.

The powers of local authorities to provide accommodation under section 17 cannot be used as a substitute for their duty to provide accommodation under section 20(1) of the 1989 Act to homeless 16 and 17 year olds in need. Children's services do not have the option of choosing under which provision they should provide accommodation for homeless 16 and 17 year olds. Section 20 involves an evaluative judgment on some matters but not discretion.

54. I have already noted the emphasis placed by Baroness Hale, in *R (M) v Hammersmith and Fulham Borough Council*, upon ascertaining the wishes of the child. The importance of doing so was noted (even if only in passing) by the High Court in *R (TW) v Essex County Council* [2024] EWHC 264 (Admin) at paragraph 99. This is also reflected in the Guidance, paragraph 3.48 of which provides:

Some 16 and 17 year olds may decide that they do not wish to be provided with accommodation by children's services under section 20 of the 1989 Act, for example, because they do not wish to be supported as a looked after child. In these circumstances it is important that children's services are clear that the young person's decision is properly informed, and has been reached after careful consideration of all the relevant information. If the young person is subsequently not accommodated by housing services and remains homeless, housing services must inform children's services who may need to take further action.

Relevant case law (ground two)

55. The main case underpinning ground two is *R (GE (Eritrea)) v Secretary of State for the Home Department & Bedford Borough Council* [2014] EWCA Civ 1490. GE arrived in

the UK from Eritrea, saying that she was 16 years old. The Home Office assessed her as an adult; then, because she was an adult, the local authority decided that she was owed none of the duties that, under the Children Act 1989, it would otherwise have discharged in respect of a lone child in its area. GE brought judicial review proceedings against both the Home Secretary and the local authority. The challenge against the local authority was heard first. By this time, GE had, even on her own account, turned 18. The sole issue for determination was whether the authority owed GE duties as a former relevant child under section 23C, on the assumption that the Home Office's age assessment had been wrong. The High Court dismissed GE's claim that she would have been owed those duties.

56. GE took the matter to the Court of Appeal, which was also required to analyse the position in the abstract: it was asked to identify the legal consequences of a wrong that had not yet been shown to have occurred. The main judgment was given by Christopher Clarke LJ. At paragraphs 52 to 55, he said this (with original emphasis):

For the reasons which I have already given it does not seem to me that it is open to the court to *deem* accommodation to have been provided pursuant to section 20 of the 1989 Act with the result that the child is to be treated as a former relevant child. That would be to sidestep the definition in section 23A of the 1989 Act ...

... If, as I think, [the person] could not be deemed to be a former relevant child, the best that he could hope for would be that the local authority should treat him *as if* he was a former relevant child. For practical purposes that might be regarded as amounting to the same thing. But there is a critical difference. If [the person] was to be *deemed to be* a former relevant child, he would be entitled to the whole range of duties applicable to such a person. If, however he was to be treated *as if* he was such a child, this could only be on the basis that the local authority should exercise its discretion to act in this way. Any such discretion, if it fell to be exercised at all, would have some flexibility. The local authority might, for instance, decide to provide some but not all of the services that it might have been obliged to provide if R was, in fact, a former relevant child.

I accept that a local authority may use its discretionary powers to make good any unlawfulness that it has committed in the past and may, in some circumstances, be obliged to do so ... those circumstances might include the present need to remedy injustice caused by past illegality ...

There is no general rule that, wherever it has acted unlawfully, a local authority must undo its past errors to the fullest extent that it can. Much will depend on the circumstances, including whether or not the claimant had sought interim relief and been refused (as here), whether he was guilty of unacceptable delay, and whether and to what extent the authority or the claimant should be regarded as blameworthy. There may be countervailing considerations of public interest which would entitle it to refuse any relief at all. It may be relevant to consider what other remedies are open to the claimant. The matter would be one for the discretion of the local authority, to be determined in the light of whatever application is made and in the circumstances applying when it is invoked.

57. Then, at paragraph 73:

Parliament chose to confer an entitlement to important rights on those who were in fact children at the relevant time. If, as it turns out, they have wrongfully been deprived of that entitlement, the possible need to remedy an injustice should be addressed.

58. The Court of Appeal allowed the appeal. It remitted the matter to the Administrative Court to determine GE's age; what followed would then depend upon the assessment reached. But paragraph 70 of the judgment makes clear that it was plainly in the Court of Appeal's contemplation that, if GE were concluded to have been under 18 at the relevant time, she could then invite the local authority to afford her, as a matter of discretion, some or all of the benefits which she would have enjoyed had she been accommodated by the local authority and thereby in fact become a looked-after and former relevant child.
59. *R (GE (Eritrea))* is therefore authority for the proposition that local authorities have a discretion (albeit not an obligation) to treat a person as a former relevant child if, in consequence of their unlawful approach, they have deprived that person of support available under the 1989 Act. That approach was followed by Hayden J in *R (A) v Enfield London Borough Council* [2016] EWHC 567 (Admin). In that case, A was a child whom the local authority declined to support under section 20 despite the fact that her relationship with her parents had become fraught following her exposure to radicalisation, on the basis that they were prepared to accommodate her. Adopting the approach of Christopher Clarke LJ in *R (GE (Eritrea))*, Hayden J directed that the local authority should still regard A as a former relevant child.
60. In *R (HP) v Greenwich London Borough Council* [2022] EWHC 744 (Admin), Fordham J was dealing with a situation that could be seen as a sequel to *R (GE (Eritrea))*. HP was an unaccompanied asylum-seeker from Afghanistan whose age was initially assessed as 20 but revised downward to 17 by the Upper Tribunal. When he turned 18 the local authority declined to treat him as a former relevant child on the basis that he had never been looked after, but it also declined to exercise its discretion – the sort of discretion envisaged in *R (GE (Eritrea))* – to provide him with continuing support services under section 23C. Fordham J derived 15 propositions from the Court of Appeal's judgment in *R (GE (Eritrea))* case. Insofar as relevant to the case before me, these included:
- 60.1 Local authorities have a discretionary power to treat a person as a former relevant child, this being in the nature of a remedial power to remedy present injustice arising from past unlawfulness (paragraph 23(iv));
- 60.2 In considering whether it should exercise this power, a local authority should have regard to all the circumstances of the case (paragraph 23(viii));
- 60.3 Those circumstances may involve matters of such obvious seriousness that favourable exercise of the power is the "sole justifiable outcome" (paragraph 23(ix)), and this may be informed by "the degree of unfairness, blameworthiness, culpability or other serious maladministration" (paragraph 23(xi)); and
- 60.4 Any discretionary power is required to be exercised reasonably, but where there is a sole justifiable outcome then, in the circumstances, the discretion hardens into a duty (paragraph 24(ii)).

61. Fordham J decided that the age assessment in HP's case, while flawed, was not so obviously serious – in terms of unfairness, blameworthiness or culpability – that the discretion to remedy the consequent injustice had hardened into a duty (paragraph 26(ii)). However, the claim for judicial review was allowed on the basis that the local authority had still not conducted a reasonable enquiry into what became subsequently known about HP's needs in order to decide whether to exercise its discretion (paragraph 33, 44-49).

The parties' submissions (ground one)

62. On ground one, Ms Mellon submitted for the claimant that this was a case of mislabelling. Properly analysed, the accommodation and support which the defendant had provided to the claimant between late July 2024 and her 18th birthday had been accommodation under section 20, notwithstanding the section 17 label applied by the defendant. The claimant met the terms of section 20(1) at the relevant time. That being so, she had been a looked-after child within section 22 and, having accrued the qualifying period, had become a former relevant child entitled to leaving-care support under section 23C. She relied on *R (G) v Southwark* and *R (M) v Hammersmith and Fulham* for the proposition that a local authority could not sidestep the consequences of section 20 by recording or asserting that it had acted under section 17.
63. Particular emphasis was placed on section 20(1)(a). Ms Mellon contended that the absence of any person with parental responsibility for the claimant was decisive or, at least, a sufficient route to the conclusion that section 20 had been engaged. Neither her brother nor her sister had parental responsibility for her; a point which, as I note below, the defendant now accepts. In substance, said Ms Mellon, this was a child without a parent who required accommodation – precisely the scenario at which section 20 was directed.
64. Ms Mellon also relied on section 20(1)(c), were it needed. She submitted that MSW had been prevented from providing suitable accommodation or care, taking into account all the circumstances: the Home Office's erroneous revocation of the sisters' immigration status, with the consequential removal of their recourse to public funds or any other means of securing accommodation or income; and MSW's mental ill health, including suicidal ideation and hospitalisation. In this context, she relied on *R (G) v Barnet*, *R (S) v Sutton* and *R (L) v Nottinghamshire* as authority for the need to construe the phrase "for whatever reason" broadly and purposively.
65. For the defendant, while Mr Harrop-Griffiths accepted that there was no person with parental responsibility for the claimant, he emphasised that she had never been accommodated under section 20 at any stage and so had not become a former relevant child. Instead, the defendant had lawfully accommodated both sisters under section 17 as a family unit. He characterised the application for judicial review as raising an important point about what a local authority should do when a family seeks accommodation, where the use of section 20 for the child alone would necessarily involve separating that child from the adult family member with whom they had been living. Faced with that situation, and rather than separate the sisters, the defendant had properly acted to preserve family life and to promote the claimant's upbringing within her family. He relied on *R (MK) v London Borough of Barking and Dagenham* and *R (OA) v Bexley* as emphasising the bifurcation of section 17 for families and section 20 for lone children and the broad definition of "family" for this purpose. Throughout, the claimant and her sister had consistently been treated as a family unit for housing purposes.

66. Unlike Ms Mellon, Mr Harrop-Griffiths did not consider that the absence of a person with parental responsibility was decisive to the application of section 20. A submission to this effect – that a child meeting any of the three limbs of section 20(1)(a)-(c) would, by definition, “require accommodation” within the meaning of section 20 – had been made but rejected in *R (G) v Southwark*. The series of questions adopted by Baroness Hale in that case gave priority to an earlier question: did the claimant appear to the local authority to require accommodation? In this case, Mr Harrop-Griffiths submitted, the claimant did not appear to require accommodation. This was because accommodation had been available to her as part of a family arrangement under section 17 that was consistent with her welfare.
67. Mr Harrop-Griffiths further submitted that MSW had not been prevented from providing suitable care or accommodation to the claimant. Although the defendant acknowledged MSW’s mental health difficulties, the contemporaneous assessment materials showed that, with support, she had been able to continue caring for the claimant.
68. Ms Mellon replied that the defendant’s reliance on the family nature of the case was an inadequate answer: the distinction between a child alone and a child with an adult sibling had no clear basis in the legislation or in the authorities. While she accepted that families should generally be kept together, this had never been a typical family case: it had involved a child and a barely older sibling, neither of whom had a parent in the jurisdiction, and the older sibling had been vulnerable herself. On the claimant’s case, the unusual facts reinforced rather than weakened the conclusion that the section 20 criteria had been met. Ms Mellon further contended that the defendant’s argument on “requiring accommodation” involved precisely the sort of circular reasoning criticised in *R (G) v Southwark* and *R (CLT) v Hounslow*.

The parties’ submissions (ground two)

69. Turning to the second ground, Ms Mellon’s alternative case for the claimant was that, if the accommodation could not in law be deemed to have been provided under section 20, the defendant’s decision to proceed under section 17 was still unlawful. This was because the defendant had treated it as axiomatic that the sisters should remain together without any lawful assessment of whether that served the claimant’s best interests and without ascertaining her wishes and feelings. This was a failure to comply with the statutory duties to ascertain wishes and feelings as set out in section 17(4A) and/or section 20(6). Due to its failure to take relevant considerations into account and its failure to make reasonable inquiries, the defendant’s decision was irrational.
70. Ms Mellon submitted that the unusual nature of the case was again central. This was no ordinary case of a child remaining with a parent or settled adult carer. It had involved two young sisters close in age, with no parent in the UK, an older sister with significant vulnerabilities of her own, and a history of immigration error which had caused the sisters’ position to become precarious. On that basis, the defendant could not simply assume that family unity was the only answer. It needed positively to ascertain what the claimant wanted.
71. Once that unlawfulness was identified, the discretion recognised in *R (GE (Eritrea))* arose. Ms Mellon submitted that the discretion was not confined to cases where a child

had been denied accommodation altogether, but extended to cases where a local authority had unlawfully failed to accommodate the child under the correct statutory regime. Relying on *R (A) v Enfield* and *R (HP) v Greenwich*, she submitted that this was a case where past unlawfulness had deprived a young person of leaving-care status and had a continuing, significant impact upon her, such that the defendant should be required to treat her as a former relevant child. She further submitted that this was a case where the discretion had hardened into a duty.

72. For the defendant, Mr Harrop-Griffiths submitted that ground two must fail because there had been no antecedent unlawfulness: the defendant had acted within the statutory scheme by supporting the sisters together under section 17. The defendant had supported a family to stay together. It had not been required to present the claimant with the type of “section 17 versus section 20” choice for which the claimant contended. The *R (GE (Eritrea))* discretion therefore did not arise. Even if the court identified a procedural flaw, it was highly likely that the outcome would have been the same: the claimant would have chosen to remain with her sister. Keeping them together was in the claimant’s obvious best interests. The defendant relied on the history of the sisters living together, their presentation to the housing department as a single household and the absence of any contemporaneous indication that the claimant wished to live apart from her sister. Her evidence in her second witness statement was dismissed as “tentative”.

Discussion and conclusion (ground one)

73. I start with the uncontroversial observation that there was no person in the UK with parental responsibility for the claimant. The defendant no longer pursues the contrary contention. That being so, one of the three limbs of section 20(1) – that is, section 20(1)(a) – was plainly satisfied at the point in July 2024 when the children’s services team stepped in to provide support to the claimant and her sister.
74. Ms Mellon’s contention that this is all the court needs to find in the claimant’s favour resembles the argument that was made on behalf of the child and recorded by Baroness Hale at paragraph 19 of *R (G) v Southwark*. The contention by Mr Harrop-Griffiths, that the claimant did not require accommodation because it was available from another source (in this case, via section 17), resembles the argument that was made on behalf of the local authority and recorded by Baroness Hale at paragraph 21 of *R (G) v Southwark*. The correct approach is to follow the series of questions that, in *R (G) v Southwark*, Baroness Hale adopted from *R (A) v Croydon*. The first three questions are not in dispute: (1) the claimant was, at the relevant time in July 2024, a child; (2) the claimant was a child in need; and (3) the claimant was in the defendant’s area. The real dispute is question (4): whether the claimant required accommodation.
75. As I noted above, the defendant’s position is that the claimant did not require accommodation because the defendant had in fact provided accommodation for her, with her sister, under section 17. Ms Mellon has persuaded me that this approach is undermined by its circular reasoning. In *R (G) v Southwark*, it was contended that children would not require accommodation if it was available to them under the Housing Act 1996. In *R (CLT) v Hounslow*, it was contended that a child did not require accommodation because it could be provided by a neighbour and a cousin and because the local authority declined to enforce a right of possession. In both cases, the reasoning was rejected as circular. In my judgment, the same circularity undermines the defendant’s contention in

this case. To modify what Baroness Hale said at paragraph 26 of *R (G) v Southwark*, it is correct that the statutory scheme assumes that there will be some homeless 16- or 17-year-olds who are not owed a duty under section 20, but that is very different from saying that there are children who are not owed a duty under section 20 because they are or may be owed a duty under section 17. This would invert the primacy of section 20.

76. The focus must be on the claimant's circumstances at the point when she required accommodation in July 2024, not the statutory label that the defendant subsequently attached to its response. If the provision of accommodation under section 17 were capable of negating the duty which would otherwise arise under section 20, a local authority could in any case avoid the statutory consequences of section 20 simply by choosing to rely on section 17. That approach has been repeatedly rejected by a line of authority that traces its lineage back to *R (G) v Barnet* as interpreted in *H & others v Wandsworth*, and was most emphatically stated in *R (M) v Hammersmith and Fulham*. The settled position, reflected in national guidance, is the primacy of the specific duties owed by local authorities under section 20 over the general duty owed to children and their families under section 17.
77. Accordingly, I am satisfied that the claimant did require accommodation when, in July 2024, following the Home Office's erroneous revocation of the sisters' leave to remain, the defendant gave notice terminating their housing support under section 188 of the Housing Act 1996. Looking at question (4) of the list adopted in *R (G) v Southwark*, the answer is therefore yes – at that time, the claimant did require accommodation. Then, at question (5), it is clear that she required such accommodation because there was no one with parental responsibility for her.
78. I will deal with Ms Mellon's further argument in respect of question (5), by reference to section 20(1)(c); namely, that the claimant's sister was prevented from providing the claimant with suitable accommodation and care. I agree with Ms Mellon that the phrase "for whatever reason" in that subsection should be interpreted broadly and purposively. That approach is consistent with authority: suitable care and accommodation was prevented by relationship incompatibility in *R (S) v Sutton* and a relationship breakdown in *R (L) v Nottinghamshire*.
79. In this case before me, it is necessary to have regard to the combined effect of MSW's serious mental ill health, including periods of suicidal ideation and hospitalisation, and the consequences of the Home Office's admitted error in revoking the sisters' immigration status and their concomitant recourse to public funds. I agree with Ms Mellon that, as a result of those events, MSW was prevented from providing care to her sister. In my judgment, when carrying out this assessment, one must also have regard to another reality of this situation. This was not a case of a child struggling in a relationship with a parent or grandparent, or even a considerably older sibling. MSW was only marginally older than the claimant. MSW's response to the pressures placed on her speaks volumes as to her vulnerability. She was barely able to care for herself, let alone the claimant. The defendant's own documents recorded how the claimant had "no real adult supporting her", which sits uneasily alongside its later contention, in the decision under challenge, that the claimant "was provided accommodation alongside her adult carer".
80. Accordingly, looking at question (5) of the list adopted in *R (G) v Southwark*, I consider that the claimant required accommodation because there was no one with parental

responsibility for her or, alternatively, because MSW was prevented for the aforementioned reasons from providing her with suitable accommodation.

81. This being so, I have asked myself whether it was open to the defendant to side-step its obligations under section 20 by recording or arguing that it was in fact acting under section 17; the sort of mislabelling criticised in *R (M) v Hammersmith and Fulham*. Case law recognises that such a side-step can be legitimate, such as where a local authority is fulfilling its duty to promote and safeguard the welfare of the child under section 17 before a stage has been reached when it would come under a duty to accommodate the child under section 20; see the fostering scenario considered in *R (CO) v Surrey*. Even then, an important factor weighs heavily in the analysis: whether, as Popplewell J put it in *R (CO)*, the local authority has played “a central or major role in making the arrangements”. In the case before me, as in *R (CLT) v Hounslow*, the local authority was the key party in making these arrangements. That being so, I conclude that it was, in substance if not in form, doing so under section 20.
82. As I noted earlier, Mr Harrop-Griffiths characterised the application for judicial review as raising an important point about what a local authority should do when a family seeks accommodation, where the use of section 20 for the child alone would necessarily involve separating that child from the adult family member with whom they had been living. In my judgment, the response to that comes in two parts.
83. First, it is necessary to reject the binary proposition that section 20 only applies to lone child cases and section 17 only applies to family cases. While that is true as a general observation, it does not mean it is correct as a matter of principle. Such a neat bifurcation can mislead when confronted by the complexity of real life. It seems tolerably clear that the courts have accepted in the past that section 20 can operate where a child is accommodated with a family member; see, again, *R (CO) v Surrey*. I do not think that the reliance Mr Harrop-Griffiths places on *R (OA) v Bexley* takes the issue much further, as that case was about the financial support available to an older sibling when a mother and a younger sibling had been accommodated under section 17. The proper approach, applying *R (CLT) v Hounslow*, is to conduct a fact-sensitive enquiry, in which an important factor for analysis is the extent to which the local authority has played a central or major role in making accommodation or care arrangements.
84. Second, there is a straightforward response to the suggestion from Mr Harrop-Griffiths that a local authority faces an intolerable choice between a section 17 pathway to keep a family together or a section 20 pathway that separates a child from the adult family member with whom they have been living. That response is found in the next two questions in the *R (G) v Southwark* sequence. At question (6), the local authority must ascertain the child’s wishes and feelings regarding the provision of accommodation; and, at question (7), the local authority must decide what consideration is to be given to those wishes and feelings, having regard to the child’s age and understanding. I note again what Baroness Hale said at paragraph 43 of *R (M) v Hammersmith and Fulham*:

It seems to me that there may well be cases in which there is a choice between section 17 and section 20, where the wishes of the child, at least of an older child who is fully informed of the consequences of the choices before her, may determine the matter. It is most unlikely that section 20 was intended to operate compulsorily against a child who is competent to decide for herself. The whole object of the 1989 Act was to draw a clear distinction between voluntary and

compulsory powers and to require that compulsion could only be used after due process of law.

85. A child-centred approach requires the child to be consulted. In a case such as the one before me, where the claimant was approaching adulthood, genuine weight should have been placed on her wishes and feelings, which could well have been determinative. It is clear from the documents before me that, in terms, she was never asked about her wishes and feelings over the pathway that should be followed. The only information now available to the court is a witness statement where the claimant makes clear that, if she had been asked, with the choice between section 17 and section 20 laid out before her, she would very likely have chosen the section 20 pathway – because that would have provided her with targeted support to assist her in meeting her aspirations, post-18, for education and training in nursing. I accept that she would have so chosen: these appear to be longstanding educational aspirations; the significance of post-18 support is objectively obvious; and her account is consistent with the defendant's own recognition that support would be needed after age 18. That being so, both questions (6) and (7) are answered in such a way as to support the claimant's case. This reinforces my earlier conclusion that, in substance if not in form, the defendant was acting under section 20.
86. Accordingly, I uphold the challenge on ground one. In my judgment, the defendant should have found in law that the claimant appeared to them to require accommodation under section 20. The duty arose on or around 19 July 2024. The defendant discharged that duty in substance if not in form, with the consequence that the claimant was a looked-after child for the purposes of section 22 and 22A-C and was (and remains) a former relevant child – that is, a care leaver – for the purposes of section 23C. She is entitled to the benefits that flow from that status.

Discussion and conclusion (ground two)

87. For completeness, I will say that, if I had not upheld ground one, I would alternatively have upheld ground two. This is on the basis that the defendant's approach was tainted by what can be called "process irrationality". It was irrational because of its failure, before making its decisions, to comply with its statutory duty to ascertain the claimant's wishes and feelings as set out in section 17(4A) and/or section 20(6).
88. I have said above that the defendant's officials were doing their conscientious best for the sisters. They faced a situation they themselves described as complex, unusual and difficult, and they acted in good faith in seeking a way through. In so doing, as Ms Mellon put it, they treated it as axiomatic that the sisters should remain together. That approach, no doubt motivated by kindness and empathy, did not accord with what the statute required of them.
89. Mr Harrop-Griffiths contended that there was no contemporaneous indication that the sisters wished to separate. The documents certainly support that approach. But this does not confront the central difficulty: the claimant was never asked. The absence of any recorded wishes and feelings is not a neutral feature but the very legal error about which she has complained. This was a child on the cusp of adulthood; significant weight should have been given to her wishes had they been properly obtained. In those circumstances, the defendant's assertion that the claimant would inevitably have chosen to remain with her sister is speculative. I appreciate that the claimant's second witness statement may be

seen as an exercise in post hoc rationalisation, and Mr Harrop-Griffiths described it as such. But it is the best the court has to go on, and I consider it inappropriate to allow the defendant to rely on uncertainty that its own failure to consult has created.

90. Given what I have said about the good faith of the defendant's officials, I am not persuaded that there has been a degree of blameworthiness or culpability such that the *R (GE (Eritrea))* discretion has, for those reasons, hardened into a duty. But it has hardened into a duty for a different reason: namely, the degree of unfairness on the claimant. For the reasons I gave in respect of ground one, I accept that, if the claimant had been asked for her wishes and feelings, and presented with an informed choice between section 17 and section 20, she would have chosen the section 20 pathway. The defendant's irrationality in failing to consult her has been profoundly unfair to her; it has deprived her of the significant support that a good parent would have provided upon the transition to adulthood. It continues to have that impact on her, bearing in mind the pre-existing vulnerability that is apparent from almost every page of the defendant's records. The defendant's official had observed that the claimant needed support beyond 18 and she did not want this simply to fall away. The degree of unfairness is significant: present injustice continues to be caused by past unlawfulness. No countervailing factor displaces the need to remedy that injustice. That being so, if I had not upheld ground one, I would have upheld ground two on the basis that the sole justifiable outcome was for the defendant to exercise its discretion to treat the claimant as a former relevant child and extend care-leaver benefits to her on that basis.
91. I repeat my thanks to all counsel involved and invite them to draw up a consequential order for the court's approval, including as to costs.