

CO/1841/2017

Neutral Citation Number: [2017] EWHC (Admin) 1676
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 16 June 2017

B e f o r e:

HER HONOUR JUDGE WALDEN-SMITH

Between:

THE QUEEN ON THE APPLICATION OF
(1) CO
(2) KO
(BY THEIR LITIGATION FRIEND THE OFFICIAL SOLICITOR)
Claimants

v

THE LONDON BOROUGH OF LEWISHAM
Defendant

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Mr S Jacobs (instructed by Morrison Spowart) appeared on behalf of the **Claimants**
Miss S Davies (instructed by the London Borough of Lewisham Legal Services) appeared on
behalf of the **Defendant**

J U D G M E N T
(Approved)
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JUDGE WALDEN-SMITH:

Introduction

1. This is the detailed judgment in the substantive judicial review brought against the London Borough of Lewisham by C and K, who are minors, brought by their litigation friend, the Official Solicitor.
2. I heard submissions in this matter on Thursday 8 June and gave a short ruling with respect to some of the grounds on that date. Time did not permit a full judgment at that time. I have already ruled in favour of the claimants and after this judgment I expect that I will hear further submissions with respect to the appropriate order to be made.
3. The claimants, C and K, are siblings aged 8 and 11. They live with their mother, CF, who arrived in the UK in 2000. She was in the UK unlawfully until 2 June 2015, when she was granted limited leave to remain, which expires on 2 December 2017 with a condition that she have no recourse to public funds ("NRPF").
4. C and K challenged the lawfulness of the London Borough of Lewisham's decisions with respect to not providing support under section 17 of the Children Act 1989. While C and K's mother has no recourse to public funds, Lewisham has concluded that she has means of support or access to means of support. Lewisham's position is that the grounds brought by C and K are, in fact, no more than disagreements with carefully considered findings of fact made by Lewisham as the fact-finding body. Those core findings of fact are that Lewisham is unable to be satisfied that the children are in need because the mother has available to her sufficient resources to meet the children's needs, including support from the children's father, by compulsion if necessary, support from other family and friends and the mother's own financial resources. Lewisham have concluded, using the words contained in counsel's skeleton argument, that C and K's mother "clearly has an agenda" and that she has persistently sought the provision of council accommodation. Lewisham has found her not to be forthcoming or reliable as regards to the provision of relevant information.
5. Permission to bring judicial review proceedings against Lewisham was granted by Richard Clayton QC, sitting as a Deputy High Court Judge, on 17 May 2017. In his order of that date he anonymised the claimants. He made no order for interim relief. He did not grant permission on ground 1, which was that there was a misdirection or fettering of discretion. He did grant permission on grounds 2, 3, 4 and 5 and he gave directions to expedite a hearing.
6. Ground 2 is an allegation that there was insufficiency of enquiry with respect to the assessment of C and K's needs and the support available. In particular, it is alleged under ground 2 that the defendant did not, until proceedings were threatened, meet with the claimants' mother and the claimants in order to discuss their current circumstance; and that Lewisham had been provided with significant additional information since its assessment in November 2016, which additional information warranted careful consideration. In the event, Lewisham's response to the additional information, primarily captured in a follow-up report, was cursory. No attempts had been made to

make contact with the father of the claimants and explore whether he might be able to provide support.

7. Ground 3 is the allegation that to the extent that there was a reconsideration of Lewisham's previous decision, it was procedurally unfair. In particular, it is alleged under ground 3 that Lewisham failed to put to the claimant that no receipts had been provided for the hotel accommodation and that such receipts were required; that the claims to have slept in Lewisham Hospital's A&E were implicitly not accepted; that previous assistance that had been given from a Ms Davis had not been disclosed; and that a deposit into the claimants' mother's account of £200 indicated alternative sources of income.
8. Ground 4 is the allegation that the conclusion reached by Lewisham that the claimants' mother has means of support, so that she can provide C and K with accommodation, is irrational.
9. Ground 5 is the allegation that Lewisham has failed to act consistently with its statutory duty under section 11 of the Children Act 2004 and/or section 17 of the Children Act 1989 to have due regard to the need to safeguard and promote the welfare of the children.

The factual history

10. This is not the first set of judicial review proceedings that this family has sought to bring against Lewisham. As I will explain, those earlier proceedings did not make any progress as permission to judicially review Lewisham was not granted.
11. On 2 June 2015, the claimants' mother had been given 30 months' limited leave to remain by the Home Office by reason of her status as a parent to the claimants. She was not entitled under the Immigration Rules to have recourse to public funds to help meet her living or accommodation costs or those of any dependants. An application was made for reconsideration of the decision to grant leave to remain without access to public funds. The condition of no recourse to public funds will either not be imposed or will be lifted where the applicant has provided satisfactory evidence that they are destitute or that there are particularly compelling reasons relating to the welfare of a child on account of the parent's very low income or the decision maker exercises discretion not to impose or to lift the no recourse to public funds condition because of exceptional circumstances.
12. The decision of the Home Office dated 12 November 2015 did not lift the no recourse to public funds condition. At that time, the claimants and their mother were living in one bedroom of a shared flat and the Home Office was not satisfied that sufficient evidence had been provided to establish that they were living in inadequate conditions. Further, the Home Office was not satisfied that the claimants' mother was destitute and, further, the Home Office was not satisfied that the claimants' mother had provided evidence to establish a lack of support from friends, family or the local community or from her own finances, namely her work nor were the Home Office satisfied that the father was unable to give support. The claimants' mother has now reapplied for a

lifting of the no recourse to public funds condition, but that application is awaiting determination.

13. The claimants had been living with their mother in Room 1, 87 Passfields Road, Catford, SE26 2RF. She approached Lewisham on 1 November 2016 seeking support as she was facing eviction from that single room as a consequence of rent arrears. A no recourse to public funds assessment was undertaken by Lewisham on 1 November 2016. This included an accommodation history and reference to her brother and two sisters, both of whom had indefinite leave to remain. The accommodation history included information that she lived with her sister in various properties rented by her sister and that from 2006 to 2011 she occupied a room with her children in a property rented by her other sister and partner.
14. The information provided by the claimant is that from 2000 to 2006 she was living with Leasa, one of her sisters, and from 2016 to 2011 she was living with Salmarie, her other sister. This is clear evidence that the claimant at that time did have strong support from her family. She was asked to move out in 2011 by Salmarie on the basis that there was not room for both her own and CF's families. Thereafter, she stayed with friends: first, Adda Addison for 8 to 9 months and then Jason McNish and then, for a few weeks, with her sister again before taking the room in 87 Passfields Road. The rent for that room was £390 per calendar month and the record from Lewisham is that her sister paid £210 per month, leaving a balance of £180 per calendar month to find. Lewisham asked the question in their initial assessment as to where the applicant found the £180 to settle the rent.
15. Lewisham set out the family's support network of her two sisters, Salmarie and Leasa, and her brother Godfrey, who had provided no support to her, also limited charitable support from the local church and support of a piecemeal nature from various friends.
16. The claimants' mother set out that she had lost her job in September 2016 as she had not been given regular hours of work from the agency she worked for. When asked for evidence with respect to her income, she provided pay slips for 7 months up until September 2016, which amounted to £5,111 or approximately £730 per calendar month; enough to pay her rent.
17. Lewisham were concerned about the credibility of the claimants' mother with respect to her work as they had evidence from a parent adviser that the claimants' mother had indicated that she was taking on work wherever she could in December 2015. Lewisham concluded that meant that she was not being truthful about her employment history because she had said that her job with the agency Beverley Martins was her first and only job in the United Kingdom and that she had only started working for Beverley Martins in January 2016.
18. As far as the claimants themselves were concerned, Lewisham recorded that there had been no concerns about their education and that they were "well presented and have a hundred per cent punctuation" [which logically must refer to attendance] and "were very intelligent". Multi-agency checks had verified there were no welfare concerns in

relation to the family. In essence, it seems that there were no concerns with the way the claimants' mother was looking after the children.

19. In addition to her work, Lewisham were concerned about CF's failings to be truthful with respect to her contact with the children's father. She had told Lewisham that the last time she had contact with him was 4 years before. She later told Lewisham that the last time she had contact with him was 3 weeks before, which she explained as being because the charity Project 17 had urged her to make contact, and the children's father had then offered £50 a month. It had been suggested to her that she needed to obtain significant support from her former partner either directly or by him claiming child benefit and child tax credit and giving her that money, or by going through the child maintenance agency. Lewisham were plainly concerned at that time that she was "disengaged" and that she failed on numerous occasions to provide appropriate answers or answer at all. Further, Lewisham were plainly concerned about her lack of credibility with respect to the information provided about her accommodation and about her financial situation and concluded that she had good support networks and that she had failed to exhaust those networks or make a claim against the claimants' father for support.
20. In this detailed initial assessment the case worker concluded that she could not find the claimants' mother to be truly destitute and that she did have other means to support herself and her children. Those conclusions were set out in the decision letter dated 29 November 2016 with the decision that the claimants were not "children in need" and were therefore not eligible for services provided pursuant to the provisions of the Children Act 1989.
21. There was a follow up to the initial assessment on 5 December 2016. On 23 November 2016, it is recorded that the claimants' mother said that her sister Salmarie was unwilling to provide any information regarding the course that she was allegedly undertaking at that time. Salmarie did confirm that she had stopped supporting her sister when she got her papers and that Salmarie could not pay the rent on the Passfields room as she was in full-time college and had her own commitments. In a telephone conversation Salmarie said that she had paid rent for Passfields because she had not been able to continue to accommodate her sister in her own property. But she also revealed that the claimants' mother at that time had been given support from the claimants' father, he paying the rent difference. This was a clear contradiction with the information that had been provided by the claimants' mother in interview on 1 November 2016. Salmarie further said that the claimants' father had then "bailed out" and was no longer supporting the children and Salmarie had, from what she said, lost patience with her sister, saying her sister "was not a child" and she had papers and was able to help herself.
22. Lewisham undertook further investigations at the time and found that the claimants' father had his own business and was a stepfather to two other children, his partner being pregnant at that time with his child. The decision from the follow up was that there was no safeguarding or child welfare concerns and it was not clear that the claimants' mother was destitute without any other means to support herself as she had a

substantial support network. Lewisham considered her evidence lacked credibility, that she had resources and was not destitute so that the children were not in need.

23. After that decision was made, an application was made to judicially review Lewisham. Initially an out of hours application was made, which came before Elisabeth Laing J on 29 November 2016, who concluded that whatever doubts Lewisham had about the claimants' mother's financial situation, there was a strong prima facie arguable case that the claimants were not currently in suitable accommodation and were therefore children in need. Interim relief was given pending a hearing before Holman J on 7 December 2018.
24. Further statements were then provided on behalf of the claimants, including statements from Salmarie and from Leasa, both saying that they could not accommodate the claimants and their mother and could not financially support the claimants' mother; and a statement from the claimants' father setting out that he could not support them financially or provide accommodation given his own circumstances. The claimants' father provided evidence that he worked part time as a health care assistant and that he lived with his current partner and their children.
25. Those statements were not part of the original decision-making process and were therefore not taken into account in those earlier judicial review proceedings. They are, however, in my judgment, important evidence now.
26. The first judicial review application came before Holman J who gave a judgment finding that, after careful consideration of the papers, and while he did not at all find it an easy decision, underlying the decision:

"Lewisham have investigated this whole situation very thoroughly and conscientiously. Their staff are their people who are on the ground, and it seems to me that the decisions which they have reached are well within their discretion. They are not irrational and I cannot lawfully override them."

27. An application for permission to appeal that decision was made and by orders on 10 December and 13 December 2016 Elias LJ continued the order that adequate accommodation was to be provided pending the appeal application. Permission to judicially review Lewisham was refused by Robin Purchas QC, sitting as a deputy, and a renewed application was refused by Sara Cockerill QC, also sitting as a deputy. Hamblen LJ then refused permission to appeal and upheld the decision of Holman J and the deputy judges and refused interim relief. Hamblen LJ's decision included the following:

"It is apparent that the Respondent [Lewisham] has examined the circumstances of the Claimants and their mother in considerable detail. It was reasonably considered that the Claimants and their mother had a strong support network of family and friends who had provided extensive financial and social support in the past and could continue to do so. The support network includes two sisters who live in three-bedroom houses

and the children's father. Further, the Claimants' mother was due to start employment on 6 December 2016 and would thereafter be earning."

28. That judicial review challenge is plainly at an end and, for what it is worth, I do not consider there was any proper basis for challenging the decision of Holman J made back in December. However, that was then and this is now. The statements of the claimants' father and her two sisters were not considered as part of that earlier judicial review challenge. That further evidence is now part of these proceedings. The interim relief that had been granted came to an end after the decision of Hamblen LJ on 23 March 2017. The manager of the temporary accommodation allowed the family to stay an extra night. Thereafter, the claimants' mother used her income to pay for a couple of nights at the Premier Inn but on 27 March 2017 the claimants and their mother spent the night in Lewisham Hospital, sleeping in the A&E department.
29. The next day, the family were seen by a Ms Sean Davis, who works as a nursing assistant at Lewisham Hospital. Ms Davis had known the claimants' mother in passing and she invited the family back to her house for a wash, but seeing the circumstances the family were in let them stay until the evening of Thursday, 30 March. That night they stayed again in the hospital and then from 31 March 2017, the claimants' mother having been paid again, through to 10 April 2017, they stayed at a Premier Inn until such time as the money ran out. At that time, on 11 April 2017, a third night was spent by the family in the A&E department of Lewisham Hospital.
30. A referral was made by another agency to Lewisham Children's Services on 29 March 2017 and that resulted in a suggestion being made by Lewisham that an assessment would be undertaken with a view to taking the children into care. A pre-action protocol letter was sent on 30 March 2017 and Lewisham responded that it was aware of its ongoing duty under the Children Act 1989 to consider any relevant change in circumstances but had determined that it was not satisfied that the children were in need.
31. A follow-up review was undertaken on 10 April 2017 by Shirley Spong. It is that follow-up review which is subject to challenge in these judicial review proceedings. That review started with the sentence:

"Please refer to the numerous previous assessments for information on the previous decisions that the children were not 'in need' for the purposes of the Children Act 1989. In addition, this matter has been the subject of various determinations by the High Court and in the Court of Appeal and reference is drawn to those decisions. This further review has taken place due to further threats of judicial review by [the mother's] representatives notwithstanding the order of Lord Justice Hamblen dated 23rd March 2017 dismissing [the mother's] application for permission to appeal the previous judicial review determinations of the High Court."
32. Then Ms Spong sets out her position and her experience and that she had undertaken a review having looked at the extensive history of the case and having had access to the NRPf records in compiling the reports. She sets out the documents that has she

referred to and that previous multi-agency safeguarding checks had been conducted on the children which had disclosed no safeguarding or child in need concerns. She then says:

"We have reviewed the latest documentation and conclude that [CF] can seek assistance from her support network and through her own earnings to enable the welfare needs of her children to be met. As such, we do not find the children to be 'in need' for the purposes of s.17 Children Act 1989."

Then she says:

"In relation to the letter and 'significant events chronology' submitted by Mr Nick Watts, we do not consider that this takes the issues which have been extensively documented in the assessments and the lengthy court proceedings any further. The report is based on [CF] reports to Mr Watts. We appreciate that Mr Watts is a qualified social worker however his letter and report does not address in any substance the central issue of whether [the mother] is reporting her circumstances accurately regarding her support network built up during her long residency in the UK. We do not think that this is an evaluative assessment of whether the children are actually in need, rather it is expressing concerns for the welfare of the children in his capacity as a member of Migrant Family Action. We have considered Mr Watt's submissions however they do not alter the previous analysis that [CF] children are not 'in need'."

The review continues by setting out that:

"We note that [CF] claims to have slept in the A&E department of Lewisham Hospital following the order of Lord Justice Hamblen and we note the witness statement of Sean Davis in this regard. [CF] then appears to have sourced accommodation for herself through her wages and stayed at a Premier Inn outside the Council's area. No receipts or evidence of this arrangement has been provided at the time of writing this report.

Ms Davis' witness statement indicates that she has known [CF] and previously provided financial assistance. However, it is noteworthy that this assistance was not disclosed during the previous assessments and therefore gives the Council further cause for concern in relation to whether [CF] is reporting accurately in relation to her support network."

There is then reference to the mother's bank statements and an entry on 13 March showing a debit for £200.

"[CF], through her representatives, has stated she is not able to obtain assistance from her sisters, who both reside in large houses. It is relevant to note that [CF's] sister previously paid all rent for the family and

provided financial assistance however [CF] states this is now not available to her. We do not find this to be credible in the circumstances and are strongly of the belief that [CF] is misreporting her circumstances in order to obtain accommodation at public expense. On our view, it is not credible that her sisters would totally withdraw such assistance such as to render [CF] and her family street homeless when they had previously provided significant support and no credible reason has been provided as to why this should not still be available to the family."

In conclusion, she sets out:

"The evidence provided since the order of Lord Justice Hamblen does not alter our decision and we were concerned that the Council is being asked to continually assess this family until the decision is reversed which as we have indicated we are not prepared to do on the current evidence available."

She also provided that:

"The decisions the dedicated NRPF Team take in these matters are always a matter of intense scrutiny given the matters concern the welfare of children and such decisions are never taken lightly, however all the evidence must be properly evaluated.

It is, however, extremely concerning that [CF] continues to advance matters that have been lawfully determined by the courts and this gives rise to concerns that [CF] may not be ensuring the welfare of her children. As such, the issue of accommodation for the children alone has been raised with [CF] however this has been refused. In the event that [CF] continues to unreasonably refuse to seek support from her network then the Council will give serious consideration to the exercise of its public law powers in relation to the children."

Then it continues:

" ... the Council is not satisfied that [CF] has been a truthful reporter of her circumstances and this has been accepted by the courts on numerous occasions. The Council cannot provide accommodation to families who are lawfully found not to be in need. The Council has limited resources and must apply those resources to those who are truly in need of assistance. As such we are of the belief that the offer of accommodation for the children alone is a proportionate response in the circumstances which allows the welfare of the children to be ensured."

33. I should say at this stage that it is wrong to say that the previous decisions of the court that I have set out in some detail accepted that CF was not a truthful reporter of her circumstances. The decisions were as I have already set out. Within that decision it is quite clear that Lewisham were placing heavy reliance upon the previous decision and

the fact that it was not one impugned by the court and there is contained within that document the issue being raised that Lewisham might exercise their obligations towards the children pursuant to section 20 of the Children Act, something I will come back to.

34. On 11 April 2017, there was further pre-action correspondence. There was a complaint that no new assessment had been conducted. A response to that was provided on the same day by Lewisham through their lawyer. Within that letter he says:

"In this matter, as we have stated to you on repeated occasions, the court has made determinations as to your client's credibility and also in relation to the rationality of the Council's conclusions on its numerous assessments. All your client's arguments, including those concerning her children's human rights, have been rejected in clear and unambiguous terms by the High Court and the Court of Appeal. The Council is entitled to rely on those judgments, notwithstanding your client's tendentious assertions that she is destitute and following an inappropriate evidence gathering exercise by her advocates Project 17, designed, in their words, to 'reopen the legal case' which our client refers to in the follow up document. Whilst Project 17 might well have concluded, de facto, that your client is destitute, the High Court and the Court of Appeal of England and Wales has not, for quite appropriate and cogent reasons. Project 17 and the Claimant may have little regard for such determinations, however our client does have such regard, and as stated above, is entitled to rely on them."

35. I will not go into any detail précisising why that is an incorrect analysis of previous judicial review proceedings but it plainly is.
36. On 12 April 2016, the claimants' mother was invited to interview at Lewisham and the claimants themselves were interviewed separately from her. The claimants' mother was told she was deliberately sleeping in the hospital to obtain housing from the council and if she did so the children would be taken away from her. That is how she reported that interview.
37. It appears to me that Lewisham were at this time too dependent upon the earlier court findings refusing the claimants' earlier application for judicial review without reassessing the situation as it was in April 2017. There was also, in my judgment, a ready default position being taken by Lewisham that if the claimants' mother continued to seek to challenge the decision of Lewisham then they would take away the children from their mother. In light of the report on the children made by the school, which indicates that they are well cared for, it seems that that is not a likely or appropriate course. All the evidence points towards there being no concerns for the welfare of the children, other than potentially the accommodation issue.
38. An application was made out of hours on 12 April 2017 but proceedings were not issued in accordance with an undertaking given to Jefford J. Interim accommodation that had been provided for a week came to an end then.

39. On 20 April 2017, there was meeting between the claimants' mother and Sara Corlett, an Advanced Practitioner in Lewisham's Multi-Agency Safeguarding Hub. A family social worker suggested that she needed to access early help with her parenting skills. That early help offer still stands. The statement of Ms Corlett refers to the assistance of Ms Davis previously lending her £60 and offering her a bed for a number of days until the permission hearing. As at November 2016, Ms Davis had not offered any accommodation; her only support to the claimants' mother had been a one-off loan of £60, which has not been repaid.
40. In my judgment it is not accurate, in the circumstances, to use that single payment of £60 as cogent evidence of the claimants' mother failing to reveal sources of support, or evidence that the claimants' mother is able to meet the claimants' needs.
41. On 21 April 2017, interim relief was refused by May J on the basis that there was no immediate need for such relief, but she listed the application for a prompt oral permission hearing. A further night was spent in Lewisham Hospital by the family on 21 April 2017 and Project 17 then paid for accommodation for four nights. The family stayed at that accommodation for some further nights funded by the claimants' mother's earnings at the end of April and that temporary accommodation came to an end on 3 May 2017.
42. It is clear from the pattern of spending that the claimants' mother was using those limited monies that she had from her employment to obtain accommodation for a period until those monies ran out. There are, of course, important questions to be raised as to the sense in CF using her limited resources by paying to stay in the Premier Inn. She was asked about that and said that it was the cheapest accommodation she could find. When the money ran out again on 4 May 2017, the family spent another night in Lewisham hospital. Thereafter, Ms Davis allowed the claimants and their mother to stay until 23 May 2017, at which point Project 17 found accommodation for them. That accommodation with a host family comes to an end tomorrow, as I understand it, 17 June, when the children of the host family come back from university.

The legal framework

43. Central to this application is the general target duty created by section 17 of the Children Act 1989. Section 17 sets out provision of services for children in need, their families and others. 17(1) states:

"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."

Section 17(3) provides:

"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."

This is a general target duty which is owed to all children within the local authority's area.

Section 17(8) provides:

"Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents."

Only if there is a deficit will the local authority get involved on the basis that the child is in need.

44. Section 11(2) of the Children Act 2004 provides:

"Each person and body to whom this section applies 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."

45. Finally with respect to the relevant parts of these statutes, section 20 of the Children Act 1989 states:

"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."

Subsection 20(7) of the Children Act 1989 provides:

"A local authority may not provide accommodation under this section for any child if any person who—

- (a) has parental responsibility for him; and
 - (b) is willing and able to—
 - (i) provide accommodation for him; or
 - (ii) arrange for accommodation to be provided for him,
- objects."

Subsection (8) provides:

"Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section."

46. Realistically, in the circumstances of this case, section 20 is not going to have any impact and the matter for consideration is whether Lewisham have failed to fulfil its continuing obligation to assess the needs of each child.
47. In *R(on the application of G) v London Borough of Barnet* [2004] 2 AC 208, a conjoined appeal, Lord Hope at paragraph 77 stated that:

"Section 17(2) provides that, for the purpose of facilitating the discharge of the general duty under that section, every local authority shall have the specific duties and powers set out in Part I of Schedule 2. The duty of the local authority to take reasonable steps to identify the extent to which there are children in need in their area is to be found in paragraph 1 of the Schedule. That will involve assessing the needs of each child who is found to be in need in their area as paragraph 3 makes clear."

In paragraph 19 of the same decision, Lord Nicholls said:

"Section 17 of the Children Act 1989 is the first section in a small group of sections concerning provision of services for children 'in need' and their families. A child is taken to be in need if he is disabled or if, without the provision of local authority services, he is unlikely to achieve or maintain 'a reasonable standard of health or development' or his health or development is 'likely to be significantly impaired': section 17(10). A child without accommodation is a child in need: *R v Northavon District Council, Ex p Smith* [1994] 2 AC 402, 406, per Lord Templeman."

Neil Cameron QC, sitting as a Deputy Judge of the High Court, in the case of *R(on the application of S and J) v London Borough of Haringey* [2016] EWHC 2692 (Admin), set out at paragraph 37 of his judgment:

"A child without accommodation is a child in need (*R (G) v Barnet LBC* [2004] 2 AC 208 at paragraph 19)."

And in paragraph 35 that:

"It is implicit in Section 17(1) that a local authority will take reasonable steps to assess, for the purposes of the 1989 Act, the needs of any child in its area who appears to be in need."

48. In *R(on the application on O) v London Borough of Lambeth* [2016] EWHC 937, Helen Mountfield QC, sitting as a Deputy Judge of the High Court, set out the following from paragraph 16 onwards:

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

18. The converse is also true. An applicant parent who is seeking to persuade a local authority that they and their child are destitute or homeless, so as to trigger the local authority's duties of consideration under section 17 Children Act 1989 is seeking a publicly funded benefit, to which they would not otherwise be entitled, which diverts those scarce funds from other Claimants. Even the process of assessment is a call on scarce public funds. It therefore behoves such an applicant to give as much information as possible to assist the decision-maker in forming a conclusion on whether or not they are destitute.

19. If the evidence is that a family has been in this country, without recourse to public funds and without destitution for a number of years, reliant on either work or the goodwill and kindness of friends and family, then the local authority is entitled and indeed rationally ought to enquire why and to what extent those other sources of support have suddenly

dried up. In order to make those enquiries, the local authority needs information. If the applicant for assistance does not provide adequate contact details for family and friends who have provided assistance in the past, or cannot provide a satisfactory explanation as to why the sources of support which existed in the past have ceased to exist, the local authority may reasonably conclude that it is not satisfied that the family is homeless or destitute, so that no power to provide arises.

20. Fairness of course demands that any concerns as to this are put to the applicant so that she has a chance to make observations before any adverse inferences are drawn from gaps in the evidence, but otherwise, the local authority is entitled to draw inferences of 'non-destitution' from the combination of (a) evidence that sources of support have existed in the past and (b) lack of satisfactory or convincing explanation as to why they will cease to exist in future.

21. In other words, *if* sufficient enquiries have been made by the local authority and *if* as a result of those enquiries an applicant fails to provide information to explain a situation which prima facie appears to require some explanation, then the failure by an applicant to give sufficient information may be a proper consideration for the local authority in drawing the conclusion that the applicant is not destitute: see per Mr Justice Leggatt in *R(MN) v London Borough of Hackney* [2013] EWHC 1205 (Admin) at [44]. But that does not absolve the local authority of its duty of proper enquiry."

49. I cannot summarise the legal framework in any more succinct way than is set out in *Q*. In my judgment, while Lewisham is entitled to draw adverse inferences from the failure to disclose and use that failure to disclose as a basis for inferring that a family is not destitute, Lewisham still has a duty to carry out proper enquiries.
50. As I set out briefly in my initial judgment on 8 June, Lewisham failed both in their obligations to carry out proper enquiries and in their obligations to give the claimants' mother full opportunity to explain the concerns that Lewisham then had. Permission to challenge on the basis that Lewisham had fettered its own discretion was refused by Richard Clayton, sitting as a Deputy High Court Judge. But, as I have already said, that issue arises insofar as it adds to the narrative that Lewisham had failed to undertake the enquiries it needed to as Lewisham had come to the conclusion that, by reason of the failed challenge brought by the claimants to the earlier decision, and the decisions of the High Court and the Court of Appeal, that the decision had been made and it was not possible to go behind that.
51. There were two fundamental errors in that attitude. First, the duty under section 17 of the Children Act 1989 is an ongoing one. I am very mindful of the fact that it is important not to pick over decision letters of social workers or any other decision maker as if those decision letters are legal documents. That is clear from the decision of Lord Neuberger in *Holmes-Moorhouse v London Borough of Richmond upon Thames* [2009] UKHL 7. However, from 24 March 2017 the family were not in stable

accommodation and Lewisham had a duty to reassess. The assessment follow-up review of Ms Spong dated 10 April 2017, which I have already referred to in detail, relies heavily on the earlier conclusions and appears to give the decisions of the court a greater status than they deserved. Those decisions, starting with the decision of Holman J on 10 December 2016, find that the decision then made by Lewisham was not unlawful. That does not obviate the need for Lewisham to undertake enquiries as to the ongoing situation of the claimants and their mother. Indeed, there was not even a meeting with the claimants' mother to discuss the current situation with her until fresh proceedings were threatened. The further statements of the claimants' aunts Salmarie and Leasa had been provided before but had not been taken into account in that earlier decision making and nor had the statement of their father.

52. Simply stated, Lewisham had come to an earlier conclusion that it was not credible that the sisters, who both had large houses, would withdraw their support from their sister and their niece and nephew. No reference was provided in the new decision as to the explanations given by the sisters as to why that support had been withdrawn and the credibility of that explanation. Similarly, the statement of the claimants' father had not been provided until after the earlier decision had been made and was therefore not taken into account. That statement set out his situation and his inability to provide support and provided information with respect to that which Lewisham had discovered, namely that he was a director of a company, setting out that the company was not operating, and he provided evidence with respect to his actual work as a health care assistant.
53. In my judgment, these were serious omissions on the part of Lewisham in not getting a full and accurate picture. Lewisham accept that a child whose parents are homeless and/or are unable to support that child is a child in need for the purposes of section 17 of the Children Act 1989. That proposition is clear from the case of *R(on the application of Giwa) v London Borough of Lewisham* [2015] EWHC 1934 (Admin). The obligation of Lewisham under section 17 of the Children Act 1989 is not to act as an alternative welfare agency where, as in this case, the decision has been made to exclude a person from mainstream benefits. That proposition comes from Dobbs J in *R(on the application of Blackburn-Smith v London Borough of Lambeth* [2007] EWHC 767 (Admin). The duty that was on the Lewisham was to take reasonable steps to identify whether the claimants were in need pursuant to the provisions of Schedule 2, paragraph 1 of the Children Act 1989.
54. Lewisham failed to carry out those necessary inquiries. They relied too heavily on matters that had been looked at in the earlier judicial review proceedings and Lewisham failed to take into account the further information that had been provided. The London Borough of Lewisham had very clear concerns with respect to the claimants' mother's credibility in the account that she gave of her situation but that did not obviate their need to make further enquires in order to satisfy their ongoing duty. As I have already indicated, the reference to the decisions of the High Court and the Court of Appeal in establishing that the court did not believe her, and had accepted Lewisham's position about her lack of credibility, is simply not an accurate record of what the court had decided.

55. The failure under ground 2 connects to the failures alleged under ground 3, namely that there was procedural unfairness. While the London Borough of Lewisham were plainly entitled to start from their earlier findings that she had not been completely truthful in giving her account, for example with respect to her contact with the father of the children, that is not the end of the matter. Particularly where issues involved are the welfare of children, it was necessary for Lewisham to be astute in ensuring that the claimants' mother had the opportunity to deal with any concerns that they had with respect to the case that she was now putting forward. In particular, it was necessary to put to her what the network was that they believed she could now rely upon when making the decision that the children were not in need. The implication is that Lewisham did not believe that the family were in fact sleeping in the A&E department of Lewisham Hospital when it is said by them: "She claims to have slept there". That needed to be put to her, particularly in circumstances where there was evidence from Ms Davis that that was in fact the case. Also it needed to be put to her as to the role of Ms Davis. She was seen by Lewisham as part of a support network. The evidence that Lewisham had before them was that there had been a single payment of £60 which had not been repaid and that she had stepped in to provide washing facilities and had only reluctantly assisted them as she did not feel able to put the children onto the street.
56. The sisters' statements and the statement from the claimants' father did, contrary to what Lewisham said, in fact take matters forward. They provided the evidence to support that which had been said before but had not been believed. The withdrawal of support was said before not to be credible. Lewisham still considered it not to be credible and in light of the further evidence that they had at that time an opportunity needed to be given for a counter to that view. Lewisham was in fact wrong in concluding that the claimants' mother had not challenged the Home Office decision not to lift the no recourse to public funds condition. That challenge was made late but again it was a matter that needed to be put to her. The £200 in her bank account showing an alternative source of income needed also to be put to her. She did have an explanation for that and she was entitled to be given the opportunity to put that forward. All those matters and the lack of receipts for staying at the Premier Inn were relied upon by Lewisham starting from a premise that they had been already vindicated in the earlier judicial review proceedings.
57. In my judgment, the claimants' mother ought to have been given the opportunity to challenge and explain each of those matters relied upon by Lewisham in reaching their conclusion and the failure to do so means that ground 3 is made out.
58. Ground 4 contends that the decision by Lewisham that the claimants' mother has means of access of support to provide accommodation to the family is irrational. The decision as to whether a child is in need is one to be made by the local authority and when considering that decision it is important that proper respect is given to all those decision makers who have a very difficult job. However, the nature of what is being reviewed means that it is necessary to give close scrutiny to the decision. In this case, there is plainly an issue with respect to the claimants' mother's ability, or lack of ability, to manage her finances. It is plainly not sensible for her to spend her limited income on Premier Inn accommodation but her parenting skills do not avoid the question of

whether this family has access to accommodation and whether the claimants are in need.

59. On the evidence I have before me, I am satisfied that the accommodation the claimants have had access to from 23 March 2017 (that is at the end of the interim housing) is woefully inadequate and insecure. Prior to the decision of Ms Spong on 10 April 2017, the family had already spent two nights in Lewisham Accident & Emergency, two nights with Sean Davis and some nights in the Premier Inn. Subsequently, there had been further nights in A&E, the Premier Inn and with Sean Davis until the current housing with a host family until tomorrow. The family have, on the evidence provided by the claimants' mother, lost support from the sisters. There is no support from the father and any attempt to obtain support is realistically not going to be enforceable and while the claimants' mother does have an income, that is not allowing her to both support the children with feeding and clothing them and providing accommodation. A significant contribution could plainly be made by the claimants' mother and while Lewisham quite rightly refer to the needs of all the children in their borough and the very constrained resources available, it is relevant, in my judgment, in those circumstances to take into account that the level of support that this family require is likely to be limited. It is, of course, a matter for Lewisham to determine on all the evidence available as to whether they are satisfied that the children are in need for the purpose of section 17 of the Children's Act 1989.
60. On the face of it, all the evidence, including that from MASH, shows that this is a mother who cares for her children. The description from the school is very positive and there are no safeguarding issues. At the same time, there is cogent evidence that CF is sleeping with her children in the accident and emergency department of the local hospital in order to avoid street homelessness at times when she does not have the money to pay for accommodation.
61. In my judgment, on the basis of all the evidence that I have seen and after a very careful consideration of these matters, the decision of Lewisham is irrational. Lewisham have, in my judgment, fallen into a trap of considering that this is a battle between themselves and the claimants' mother and that she has an agenda which means that she is cynically putting her children, who she otherwise cares for, at risk. To reach that conclusion, and I have not come to this decision lightly, is in my judgment irrational.
62. The final ground, ground 5, is the allegation that Lewisham has failed to act consistently with its statutory duties under section 11 of the Children Act 2004 and/or section 17 of the Children Act 1989 by failing to have due regard to the needs of safeguarding and promoting the welfare of the children.
63. Counsel for the claimants does not seek to argue in this particular case the interesting question of whether the statutory obligations imposed should be construed consistently with the international obligations of the United Kingdom under Article 3 of the UNCRC that "the best interests of the child should be a primary consideration". He says that it should be so interpreted but that is an issue which is, to take the words of Lady Hale, a question for another day.

64. I find that Lewisham have failed to consider that claimants have been in hopelessly unstable and at times unsuitable accommodation, particularly when they have been in the A&E department of Lewisham Hospital, since the time the interim relief came to an end on 23 March 2017. Given there are no other concerns about the care that she gives to her children, and given the clear anxieties that have manifested themselves in the recent behaviour of one of the children seeking to harm herself for fear of being separated from her mother and not knowing where she is going to be staying, it appears to be plainly in the interests of these children that they are housed together with their mother. The family relationship should be maintained, unless there is no other course possible.
65. As I have already indicated, the support needed in this case is likely to be relatively limited: the claimants' mother is working and can substantially contribute to accommodation. The no recourse to public funds might be lifted but as matters currently stand, having due regard to the welfare of the claimants as children with no stable accommodation available, the appropriate outcome is for the local authority to reconsider their decision and determine whether there is an obligation to provide the means to obtain accommodation. The provision of accommodation for the claimant children under section 20 is not, for reasons I have already set out, realistic.
66. I do not accept that Lewisham have properly ensured that the claimant children are safeguarded given the circumstances of their accommodation since 23 March 2017 and for all the reasons I have set out I therefore find that grounds 2, 3, 4 and 5 are made out.

67.

(After further submissions)

68. The only issue that remains between the parties, the local authority very helpfully giving the indication that in light of what I indicated last week they will provide accommodation pending a further decision being made, is the issue of costs. There were the earlier judicial review proceedings for which costs orders were made against the claimants. Those costs orders are outstanding, not surprisingly, and while the claimant in this case is entitled to her costs, those costs, which will be subject to the usual assessment, should be set off as against the costs that are owing to Lewisham.
69. That leaves one issue, which is with respect to the costs reserved from the application for interim relief that came before May J. She refused that application but ensured the matter came on for a prompt hearing before Mr Clayton, sitting as a deputy.
70. In my judgment, the appropriate order with respect to that hearing, where the claimants failed to get their order for interim relief but have been now vindicated in bringing their claim for judicial review, is that there be no order as to costs. Whilst they did not succeed on that hearing, which would normally mean that there would be a costs order against them, the fact that they have now succeeded in the overall application means, in my judgment, that they should not be penalised with respect to that claim but on the other hand nor should the London Borough of Lewisham given that May J was not satisfied that it was appropriate for interim relief. So there will be a set off with respect to costs and no order for costs with respect to the interim relief hearing.

71. Thank you both very much indeed.