A v Leicester City Council & London Borough of Hillingdon [2009] EWHC 2351 (Admin)

Case No: CO/3737/2008

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Sitting at:

Law Courts

Civic Centre

Mold Flintshire

Wales

CH7 1AE

30th July 2009

B e f o r e :

HIS HONOUR JUDGE FARMER QC

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Between:

A

Claimant

- and -

LEICESTER CITY COUNCIL & LONDON BOROUGH OF HILLINGDON

Defendants

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(DAR Transcript of

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Official Shorthand Writers to the Court)

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Mr C Butler (instructed by Bennett Wilkins) appeared on behalf of the Claimant.

Mr A Sharland (instructed by Legal Department, Leicester City Council) appeared on behalf of the First Defendant

Mr J Moffett (instructed by Legal Department, London Borough of Hillingdon) appeared on behalf of the Second Defendant

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HTML VERSION OF JUDGMENT

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His Honour Judge Farmer:

This is an application for judicial review on behalf of the claimant, A ("the claimant"), against Leicester City Council and the London Borough of Hillingdon.

The claimant is an orphan from Somalia who arrived in the United Kingdom after a long journey via Kenya and Tanzania. For the purposes of these proceedings, her date of birth is agreed as 23 August 1990 (see page 3 of the London Borough of Hillingdon's skeleton argument filed in this case, paragraph 5). She is accordingly over 18 years of age. She arrived in the United Kingdom when she was 16 ½ years of age and presented as an asylum seeker. Her claim was rejected, as was the claim that she was a child. She was remanded in an adult prison for having arrived in the United Kingdom on a false passport and was released eventually by the Secretary of State into the London Borough of Hillingdon's care. She immediately told social workers that she wished to live in Leicester with a family of Somalis whom she knew, who also told London Borough of Hillingdon that the family wished to look after her, that is, the claimant, in Leicester.

The claimant has consistently maintained her wishes, and moved unilaterally to Leicester to live with the family on 25 August 2007. The London Borough of Hillingdon reported her missing, and police in Leicester reporting under Section 46 of the Children Act 1989 informed the London Borough of Hillingdon that the claimant was not at risk of significant harm in Leicester, living with the family of her choice.

The claimant visited Leicester County Council offices in August 2007 seeking advice, and was told by telephone on 31 August 2007 by Seble Ephrem, a social worker with the London Borough of Hillingdon, that by moving out of Hillingdon area she was no longer a looked-after child as far as the London Borough of Hillingdon was concerned. The London Borough of Hillingdon statement dealing with this aspect of the matter is at the trial bundle page 197 and paragraphs 21-25 read as follows:

"On 31 August 2007 Miss Ephrem spoke directly with [A]. Miss Ephrem advised her that by moving out of the London Borough of Hillingdon she would no longer be looked after but that she could return to Hillingdon to be supported with accommodation and Hillingdon would continue to support her with advice and guidance. [A] was advised that she would need to seek any other support from her local social services. [A] informed her she would not be coming back to live in Hillingdon.

22. Following the conversation referred to in paragraph 21 on 31 August 2007, Miss Ephrem telephoned Uxbridge police, referred to the client's CAD reference number and informed them that she is now in Leicester and gave her address. She requested they inform Leicester Police to visit and ensure client is in a safe place.

23. On 12 September 2007 Miss Ephrem made contact with [A] who confirmed that she did not wish to return to Hillingdon. [A] confirmed that the police had visited her and asked her if she was okay. Miss Ephrem informed her she would no longer be accommodated by the London Borough of Hillingdon and that if she required other support she should contact social services in Leicester.

24. On 12 September 2007 Miss Ephrem telephoned both Uxbridge and Leicester police who confirmed that Leicester police visited and spoke to [A] at the address she went to and verified [A] was safe and well. No concerns were raised. They also informed the Metropolitan police of the situation. Miss Ephrem requested a full report of the visit.

25. On 12 September 2007 Miss Ehprem sent a letter to Leicester Social Services informing them of [A] and her address and that she had voluntarily moved to live with family fiends in their area and is no longer accommodated by Hillingdon. We confirmed that Leicester Police visited the address and have verified that she is safe and well. She informed them that [A] does not wish to return to Hillingdon and is a child in need in their area who may need advice and guidance."

This letter is referred to as SR2 in Miss Ross's statement. The letter to which reference is made appears at page 187 of the trial bundle as Exhibit SR2 to the statement of Sheila Ross. It reads as follows:

"Re [A], date of birth 23 August 1990:

This is to inform you that the subject young girl, an unaccompanied asylum seeker, has voluntarily moved to live with family friends in your area and is now no longer accommodated by Hillingdon. She is now living with Mrs Noura Mohammed Alaoui at 6 Hollins Road, Leicester LE3 1QU, mobile 07818617479. Leicester Police visited the place on 31 August 2007 and have verified that she is safe and well. [A] says that she is happy where she is and does not wish to return to Hillingdon. As she is a child in need in your area, we have advised her that she may contact your office for advice and guidance whenever she feels the need to.

Thank you for your assistance."

That letter from Miss Ephrem was addressed to the Social Care and Safeguarding Children Duty Team, 1 Greyfriars, Leicester LEY 5PH. Leicester City Council's response in November 2007 is to be seen at trial bundle page 188 as Exhibit SR3 to Sheila Ross's statement. It was formulated as follows:

"Your department informed us that [A] had moved to Leicester voluntarily in order to stay with family and friends, having been accommodated by your department. She presented to you as an unaccompanied asylum seeker. I am given to understand that she was accommodated by yourself for 13 weeks. Upon her discharge from your care you asked Leicester Police to visit and you were told that she was safe and well. You furthermore advised her that your judgement was that she was a child in need and that she should contact this department for advice and guidance. She has no recourse to public funds and you have closed your involvement.

From the very beginning of this episode we have maintained that [A] remains the responsibility of Hillingdon. Not surprisingly she and her whole family have contacted us requesting financial support. This was entirely foreseeable and I see no evidence of Hillingdon undertaking any form of assessment upon her discharge from care other than asking for a police safe and well check. As a young person who [sic] you had a responsibility for does not have recourse to public funds, it seems disingenuous for you to close the case in this knowledge. It seems to me additionally that given you have not assessed where she now is, it is hard for you to be clear that this is a safe placement for her. A responsible authority would assess this as well as have a robust discussion with carers to ensure they know what it is they are agreeing to. I would argue that if any such arrangement breaks down, your department continue to have full responsibly. It cannot be the case that you discharge your duties under Section 20 and 24 as you have done. You have disregarded your legal as well as safeguarding duties towards [A]. It seems astonishing that when you accommodated her earlier this year you paid her subsistence of £101 fortnightly. It is our view that given she presented to you as a U.A.S, your duties to support her continue beyond her own de- accommodation . She has continued to be advised that Leicester CYPS hold Hillingdon responsible. This view has been conveyed to her advocate. I look forward to your response."

On 6 December 2007 Leicester City Council carried out an initial assessment of the claimant and recorded (at her trial bundle page 40):

"[A] is an unaccompanied minor. [A] said that she has been in Leicester after leaving Hillingdon. [A] said that she has been staying with family friends at 16 Hollins Road, Leicester. [A] said that she has current status in the UK and is an asylum seeker. Mohamed (family friend) said that [A] cannot receive support from NASS as she is under 18. [A] requested financial assistance and said that she used to receive financial support from Hillingdon. A call was made to Hillingdon SSD stating that they should still hold case responsibility and that they should have visited the family in Leicester and checked them out. DEEPA (social worker from Hillingdon) said that she only visit [sic] service users in London. Seble (Hillingdon) said that the police carried out a safe and well check on 31 August 2007 and confirmed that she was safe and well. The assessment worker informed Seble that he did not agree with this and there was hardly any difference that [A] had come to Leicester of her own volition or it was agreed that should live here by Hillingdon [sic]. The family in Leicester would still have needed to be assessed by Hillingdon and support put in place for [A]. The duty team manager advised that [A] should return to Hillingdon in order that they carry on with supporting [A], and if they want [A] to stay permanently with the family friends they would have to go through the correct procedure. Should [A] state that she has no bus fare to get to Hillingdon, we could provide her with the bus fare to get there."

Under the rubric of 'What are the views of the child?', the claimant is recorded as saying:

"[A] is seeking financial assistance and support to continue to live with family friends."

At trial bundle 41, under the rubric "What are the child's emotional and behavioural development needs?", the following is recorded.

"[A] was unsettled whilst living at home in Somalia due to the level of violence surrounding the community. Her father was shot in 2003 and her mother in 2005. This had a detrimental effect on [A], causing her to decide to flee from her country to seek refuge in another country. She left with some friends and eventually went to Kenya. She was deserted by her friends and eventually got connected to an agent who forged a passport for her to come to the United Kingdom. [A] has three brothers and two sisters. She has, however, lost contact with them and has not seen them since fleeing from Somalia. Since being in England [A] is more comfortable, but due to a lack of income she feels that she has lost her pride in being a young woman as she needs things that a young woman has for their esteem. She left Hillingdon to move to Leicester to be with friends that have given her support and knew her from a child. She left because of fear as to what would happen to her next as she had been placed in a detention centre and prison before. [A] sleeps on the family sofa and feels

that she is being a burden on the family and would like to be able to have her own place in time. She is, however, happy that she is at the family home as there was a sense of uncertainty when she was in London as she did not know when she may have been placed in a detention centre or prison again."

At trial bundle 42, under the rubric "What are the child's family and social relationship needs?", the following is recorded:

"[A] appears to have maintained some links with her carers who is said [sic] to have left Somalia for eight years. She met the family unexpectedly in a McDonald's Restaurant near to the hostel where she was staying after the family was in London visiting someone from the same area. As she does not have any other friends and family in this country, her carer's family have been an important support structure for her. [A] states that she has a good relationship with the children in the family. She is more close to Fatima (19) and Sania (13), who are more her peers. [A] says that she has helped out with childcare for Samiha (1) and Salma with nappy changes and have [sic] on occasions given baths. [A] has no friendship network outside Mrs Noura and Mohamed Yousif and their family. [A] said that she could confide in Mrs Noura and also has occasional telephone contact from Pauline who was her key social worker at the hostel where she lived in Hillingdon."

At trial bundle page 44, under the rubrics "Heritage" and "Housing", the following are recorded:

"The family are practising Muslims and attend mosque and other religious events in the community based at St Matthew's, Leicester. The family lives in a three bedded room house owned by a housing association but managed by the local authority. Mohamed Yousif and Mohamed share a room together. Noura share [sic] a room with Salma and Samiha. Fatima and Sania share a room. [A] sleeps on the settee in the lounge."

At trial bundle page 49, under the rubric "Analysis", which is explained to be analysis of information gathered during the initial core assessment which should identify the factors that have an impact on different aspects of the child's development and parenting capacity and explore the relationship between them, the following is recorded:

"[A] came to Leicester to live with Noura Alaouri and Mohamed Yousif. Noura and Mohamed are cousins and knew [A] from Somalia where they were neighbours. Mohamed and Noura fled to the United Kingdom from violence eight years ago as [A] did in March 2007. Noura has five children,

Fatima (19), Sania (13), Mohamed (16) Salma (3) and Samiha (1). The family live in a small three bed roomed house. The family lives in cramped conditions although the home is well presented and clean. From discussions with [A] and mostly Mohamed, it appears that [A] came to the United Kingdom after fleeing violence on a faked passport. [A] said that the picture on the passport was not her and the age of the person was 25. She was initially placed in a hostel and from there to a detention centre and then to a prison and returned to a hostel following an age assessment was carried out and assessed her to be the age of 17. [A] met Mohamed and Noura and the family on a chance meeting at a McDonalds in Hillingdon when Noura Mohamed was [sic] visiting friends in Hillingdon. From that meeting there were weekly visits of support from Noura and Mohamed to [A] when she was in the detention centre and prison and when she went to the hostel. They also made contact with Hillingdon Social Services and produced identification asking for [A] to visit them in Leicester because [A] was unhappy in Hillingdon. This was said to have been refused. [A] eventually left Hillingdon in August 23 [sic] to come to Leicester to live with the family. She said that she was frustrated after constantly asking and getting no joy for her request to reside with this family who were friends and was [sic] giving her support. [A] was in receipt of £93 per fortnight whilst in the hostel. Since arriving in Leicester this support has stopped and she was informed that as was not with the Hillingdon [sic] for 13 weeks that they had no duty to continue to support her.

[A] is in good physical health. She has learned English whilst in Hillingdon and attending an ESOL class whilst there. She has been affected by the death of her parents because of the hostilities in her country from where she has fled. She is estranged from the rest of her family. She has no desire to return to Somalia because of fear for her life. [A] is clearly attached to her family friends as they provide some stability in her life. She is in need of finance for personal effects and to be helped where possible to acquire her own accommodation in the light of the cramped conditions that she lives. There are no records of concern regarding the family of social services systems and from discussions and meetings some of the family members, no concerns are met.

I assess [A] to be a child in need and needs the basic support that a child of her age should receive. Noura and Mohamed have been assessed and in my opinion are already struggling to meet their own needs. They also do not have the physical room to support [A] so are not able to support her financially. They are, however, committed to [A] and will continue to provide accommodation and food."

Under the general rubric "Decisions", it is recorded that A is a child in need; that that decision has been reached following discussions with a manager. At trial bundle page 50, in answer to the question "Is the child one whose vulnerability is such that they are unlikely to reach or maintain a satisfactory level of health or development without the provision of services?", the answer given is yes. At trial bundle 51, in answer to the question "Do we need to provide accommodation ? If so, please obtain Service Manager agreement. It will be necessary to LAC Admissions Policy", the answer given is no. Again, in response to an enquiry "Do we need to take immediate legal action to protect the child/young person? This must be discussed with a manager", the answer given is no.

On 23 January 2008 London Borough of Hillingdon visited the claimant for the purposes of assessing the claimant's wellbeing and to identify the significance of her relationship with her carers. That is dealt with at trial bundle 54 when a report of a home visit with the claimant is set out. It is unnecessary for me to read this lengthy document at this stage in full, but it should be taken as read into this judgment. I shall simply refer to sections of the document to highlight important issues. At trial bundle page 55, it is recorded that the claimant said that she sees Mrs Alaouri as her aunt or mother. She refers to her as Auntie Noura. And then, quoting directly from the report:

"[A] said that she had not planned to stay with them when she first arrived and that they had not been expecting her to come. But now that they have met and they have helped her a lot she does not wish to move away from her placement with them."

I regard that recording and report and those facts as crucially important in this case, particularly when the London Borough of Hillingdon have based from the beginning their contentions upon the fact that the claimant voluntarily left Hillingdon's area and decided to go and live in Leicester. Reverting to the report, it is recorded:

"I explained to her that London Borough of Hillingdon can only support and look after her if she were to move back to London, because it would be very difficult to maintain regular contact and provide an appropriate service from such a distance. [A] made it clear she will not move to London.

The report indicates that she is sleeping on the settee in the lounge, which is a small room, and again, quoting directly from the report at page 55:

"The house is very cramped and there is hardly room to walk between the beds as the rooms are quite small. [A] said that Mrs Alaouri has applied for bigger accommodation ."

At page 56 it is recorded that A was having trouble with her vision, could barely read what was written on the blackboard at school, and that she had visited an optician in Hillingdon and that glasses had been prescribed but she had not collected them at the time she moved to Leicester, and I quote directly from the report:

"I said I would check this on my return to London but that she should also have a new check up with an optician in Leicester."

At page 58 the report sets out an account of a meeting at Leicester City Council with what is described as a Duty Assessment Team. That report provides inter alia:

"Joel explained that his department had been supporting [A] financially because they feel there is a child in need while the matter regarding which LA takes on full responsibility is being sorted out though the legal departments of both authorities. He said that this support would be ending on 24 January. He further said Leicester Social Services would be prepared to refer her to the 16+ team who could then do the pathway plan on behalf of LBH. Joel feels there are exceptional reasons to allow [A] to remain placed with her present carers in view of a strong connection between them. He mentioned the fact that they have often visited and supported [A] whilst she was in detention in Harmondsworth and that they continued to provide her with food and shelter in their overcrowded accommodation . The meeting was cordial and I was reassured that Leicester is meeting [A's] short term needs appropriately while being very understanding of the legal matters that need to be dealt with between our two authorities."

Again, that final comment in my judgment is of significance, given the subsequent history of this matter.

The correspondence in the trial bundle shows that there were exchanges of views between the parties as to the resolution of the claimant's problems and needs. These exchanges could not result in a final resolution of those needs, and a claim for judicial review was made on behalf of the claimant against both Leicester and Hillingdon and lodged on 18 April 2008. Regarding the claim, which is at the trial bundle pages 108-132, I need only refer to page 110 which sets out the remedies sought, at section 6. Those remedies are defined as "an interim order staying the first defendant's decision to cease providing the claimant with financial support (draft attached); a declaration that the first and/or second defendant have acted unlawfully for the reasons set out above; an order compelling the first and/or second defendant to produce a proper care plan in light of the two needs assessments [sic]; an order compelling the first and/or second defendants to provide accommodation and assistance to meet the claimant's needs as assessed by the two needs assessments".

The summary of the grounds leading to the claim appears at trial bundle page 114 and reads, insofar as is relevant for the purposes of setting the background:

"At that point [namely, 29 August 2007] the second defendant ceased to provide her with any support. The first defendant refused to accept that the claimant was its responsibility and refused to provide anything more than financial support pending the resolution of its dispute with the first

defendant as to which was the responsible authority. Both defendants assessed the claimant's accommodation to be unsuitable and assessed her to have a range of other unmet needs. Yet both defendants refused to provide accommodation or support to address those needs because each considered the other to be responsible. The first defendant and/or the second defendants have acted irrationally and in breach of their duties under the Children Act 1989. The claimant seeks inter alia urgent interim relief compelling the first defendant to provide appropriate accommodation and support and a mandatory order compelling the first or second defendant to provide for the claimants' assessed needs."

Thus the situation of the date of the claim was that the claimant remained in unsatisfactory accommodation without long-term support. Mr Yousif, the male carer had been, in January 2008, sentenced to a period of seven months' imprisonment and the local authorities had been unable to resolve the differences between them.

The detailed grounds of challenge are set out at trial bundle 125 to 131 against both defendants. Again, given their length I do not propose to quote them directly, but they should be taken as read into this judgment. Collins J reacted forthrightly when the matter came before him for directions. At trial bundle 134, his remarks on 18 April 2008 are set out by way of observations. Collins J said:

"This is a disgraceful squabble between the two councils at the expense of a vulnerable young person. List for oral application at the end of next week [emphasis added] unless the defendants agree to grant the relief claimed -- a proper plan is obviously needed and compliance with the relevant statutory duty. They should agree that one or other (probably Leicester) undertake the necessary work and provide the claimant subject to Hillingdon (or the other way round) reimbursing in due course. In the meantime Leicester is to continue to provide financial support as hitherto which can if necessary be reimbursed in due course.

No doubt as a result of what he said, a consent order was drawn up, which appears at page 135 of the trial bundle and provides, without prejudice to Leicester's argument, that Hillingdon remain legally responsible for providing for the claimant that Leicester would make interim provision for her.

Mr Christopher Butler, who appeared before me for the claimant and Mr Andrew Sharland, who appeared for Leicester, were parties to that agreement. Mr Harrop-Griffiths appeared on that occasion for Hillingdon but did not appear in front of me, Hillingdon being represented by Mr Moffett. The grounds of resistance of each defendant appear at trial bundle page 14, as far as Leicester is concerned, and at trial bundle page 153, as far as Hillingdon is concerned. I need only read paragraph 21 at page 153 which defines Hillingdon's position which is as follows:

"By 12 September the authority was entitled to conclude that the claimant had chosen not to be accommodated by it but to live instead with her friends in Leicester and entitled to conclude that it was under a duty to provide her with accommodation under section 20."

HHJ Waksman QC gave permission on paper to proceed against Leicester and refused permission to proceed against Hillingdon: see the trial bundle at page 158. Again there is no need for me to add to the length of this judgment by quoting directly. It should be taken as fully read into this judgment. A renewed oral application against Hillingdon was made to HHJ Gilbart QC and granted by him on 27 November 2008. I heard the application on 25 and 26 March 2009 and reserved judgment.

The provisions of the Children Act 1989 which are engaged by this claim are of considerable practical importance to the two defendants involved. At paragraph 2 of the skeleton argument filed on behalf of Leicester, it is said:

"This case raises important issues as to the extent to which a local authority can unilaterally terminate its statutory duties to a looked-after child that it had previously been accommodating pursuant to section 20 of the Children Act 1989. The case raises issues of general importance not limited to the specific case. There are regular disputes between local authorities relating to children who have moved out of an area and therefore guidance on this issue would be of benefit to local authorities generally."

Then in the following paragraph, paragraph 3, it is said that a similar, albeit not identical case was recently considered by the Court of Appeal in R (Liverpool City Council) v LB Hillingdon and AK [2009] EWCA Civ 43 (this case also concerned a failure by Hillingdon to discharge its section 20 Children Act 1989 duty to an individual and an attempt to unlawfully pass the buck to another authority). Hillingdon, at paragraph 4 of the skeleton argument filed on its behalf, says:

"Whilst Hillingdon recognises the undesirability of public authorities having to resort to the court to resolve disputes between them and regrets the fact that that has been necessary to do in the present case, the issues raised by this case have potential ramifications of Hillingdon beyond its own facts. Because Heathrow Airport is located in Hillingdon's area, from time to time it owes or may owe duties pursuant to the Children Act 1989 to a large number of unaccompanied asylum seeking children. Accordingly it is important for Hillingdon to be certain as to the nature and extent of its powers and duties in relation to such children in particular circumstances."

The provisions of Part 3 of the Children Act 1989 have received considerable attention from courts of first instance, the Court of Appeal and the House of Lords. I am grateful to counsel for providing a comprehensive bundle of authorities. At the close of submissions I contacted the chambers of all counsel via counsel for the claimant and invited them to consider R (G)(appellant) v LB Southwark

(respondents), in which judgment was given on 20 May 2009 and which is reported at [2009] UKHL 26, which was heard directly after the hearing before me and which reviewed the authorities and statutory provisions in the speech of Baroness Hale. I invited counsel to consider whether they wish to make further submissions in writing and they have all taken advantage of that invitation and provided me with submissions.

Turning now to the statutory and legal background, section 17 of the Children Act 1989 provides by section 17(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."

By paragraph 17(10) it is said:

"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"

I note that in this case there is no dispute between the local authorities that this child was a child in need at all material times.

Section 20(1) provides:

"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."

Section 20(2) provides:

"Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within --

(a) three months of being notified in writing that the child is being provided with accommodation ; or

(b) such other longer period as may be prescribed."

Subsection (3) provides:

"Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation ."

Section 20(6) provides:

"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."

Section 22 defines the general duty of the local authority in relation to looked after children and defines a looked after child in section 22(1). There is no dispute that the claimant at all material times was a looked after child. Section 22(4) and (5) provide:

"(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."

By Section 23(1) it is provided:

"(1) It shall be the duty of any local authority looking after a child --

(a) when he is in their care, to provide accommodation for him; and

(b) to maintain him in other respects apart from providing accommodation for him."

Section 27 deals with co-operation between authorities. Section 27(1) provides:

"Where it appears to a local authority that any authority mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority specifying the action in question. By subsection 3 it is provided that such authorities include any local authority."

Section 29 deals with the recoupment of costs of providing services and by Section 29(7) provides:

"Where a local authority provide any accommodation under section 20(1) for a child who was (immediately before they began to look after him) ordinarily resident within the area of another

local authority, they may recover from that other authority any reasonable expenses incurred by them in providing the accommodation and maintaining him."

There were other statutory provisions referred to in the skeleton arguments and material put before me and during argument. I do not propose to set them out in this judgment but to refer to them as necessary in the course of the judgment. I simply indicate that I have considered them all for the purposes of my decision.

As I have already indicated, these statutory provisions have been considered by the Courts and the number of authorities to which I was referred is an indication of the importance of the provisions, as I have already indicated. I do not propose to deal exhaustively with the authorities, rather to highlight judicial comment on what I consider to be important issues for the purposes of my decision.

Section 17 was considered by Baroness Hale in R (G) v LB Southwark, to which I have already referred, at paragraph 23. She said:

"By a majority, the House held that the "general duty" in section 17(1) of the 1989 Act was a "framework" duty owed to the local population and did not result in a mandatory duty to meet the assessed needs of every individual child regardless of resources. As Lord Hope pointed out, at para 83, that accords with the view of the Review of Child Care Law (Department of Health and Social Security, 1985), at para 5.8:

'We believe that the provisions should be stated clearly in general terms of making services available at an appropriate level to the needs of the area rather than in terms of duties owed to individual children or families, in order to leave local authorities a wide flexibility to decide what is appropriate in particular cases while providing for a reasonable overall level of provision. It is for local authorities to decide upon their priorities within the resources available to them.'"

In the Liverpool case Dyson LJ referred to the section 17 duty and the section 20 duty at paragraph 13 as follows:

"The section 20 duty is a subset of the general duty created by section 17 which provides for the provision of services for children in need, their families and others. Section 17(1) provides that it shall be the 'general duty' of every local authority '(a) to safeguard and promote the welfare of children within their area who are in need'. Subsection (2) provides that 'for the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.' Those specific duties include the duty to take reasonable steps to identify the extent to which there are children in need within their area (para 1(1)). Para 3 of Part 1 of Schedule 3 provides that 'where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at

the same time as any assessment of his needs is made under [specified other Acts]'. Section 17(4A) is, mutatis mutandis, in the same terms as section 20(6)."

Baroness Hale again considered section 20 in R (M) v Hammersmith and Fulham LBC [2008] 1WLR 535 at page 542, paragraph 20, when she said:

"Once a child is 'looked after' by a local authority, a great many other duties arise. These include, crucially, the duty to safeguard and promote her welfare and to maintain her in other respects apart from providing accommodation for her: 1989 Act, sections 22(3) and 23(1)(b). It would not be consistent with those duties, for example, to place a young person in a bed and breakfast hotel or hostel accommodation without providing her with enough money for food and other essentials. Although the local authority do not have 'parental responsibility' for a child who is accommodated under section 20, they are nevertheless replacing to some extent the role played by a parent in the child's life, and are expected to look after the child in all the ways that a good parent would."

In the Southwark case at paragraphs 24 and 25 she said:

"On the other hand, the Act draws a distinction between the 'general duty' in section 17(1) and the specific duties laid down elsewhere in Part III, including section 20. As Lord Hope made clear in para 81, these duties do leave important matters to the judgment of the authority. But once those matters have been decided in a particular way, it must follow that a duty is owed to the individual child. Thus Lord Hope was able to conclude, in para 100, that there was no doubt that the authorities were under a duty to provide accommodation under section 20(1) for the children of the two claimants who did not qualify for accommodation under the 1996 Act. The concern for children's welfare which ran throughout Part III meant that the children should not suffer because their mother had come to this country or had become homeless intentionally. Thus these mothers were 'prevented' within the meaning of section 20(1)(c) even though it was their own choice. The issue in those cases was whether the duty in section 23(6) to place such children with their families included a duty to provide housing for families who had none. It was not difficult to conclude that it did not.

25. In my view, therefore, the Barnet case is, if anything, helpful to A, in highlighting the primacy of the specific duty owed to individuals in section 20 over the general duty owed to children in need and their families and its associated powers in section 17, just as the Hammersmith and Fulham case is helpful to A in highlighting the primacy of the Children Act over the Housing Act in providing for children in need."

The words "within their area" were considered by Mr Jack Beatson QC as he then was, in R v Wandsworth LBC & Ors ex parte Stewart [2001] 4 CCLR 466. In the headnote his decision is summarised as follows:

"(1) The meaning of the words 'within their area' in the Children Act 1989 section 17 was that physical presence was required

…

(3) The test of physical presence may, as in the present case, involve more than one authority being subject to a duty but this was not an objection to the test. This was a case for co-operation under the Children Act 1989 Section 27 and a sharing of the burden between authorities."

That particular aspect of the case is amplified in paragraph 28 of the decision, page 473E, which reads:

"Requiring physical presence is a clearer test than a purposive approach under which the nature and duration of the presence, or the responsibilities of the different authorities in the frame are taken into account. While physical presence may, as in the present case, involve more than one authority being subject to the duty, I do not consider that an objection. There are, for example, children who are accommodated for part of the week with one parent and partly with the other parent who lives in a different local authority. As Mr Knafler submitted in reply, the absence of a dispute resolution procedure such as that in section 30 in respect of the 'ordinary residence' of a child supports the view that a section 17 duty may lie on more than one authority. In a case where more than one authority is under a duty to assess the needs of a child, there is clearly no reason for more than one authority to in fact assess a child's needs and there is a manifest case for co-operation under section 27 of the Children Act and a sharing of the burden by the authorities."

In this case it is perhaps pertinent to remark that it is a matter for regret that those injunctions were not in the forefront of the minds of both of the local authorities involved.

Section 20 (6) of the Children Act was considered by Dyson LJ in the Liverpool case. At paragraph 32 he said:

"But the position in relation to subsection (6) is different. It does not provide that the child's wishes and feelings are determinative. In view of the emphasis of the CA on a child's welfare (replicated in subsection (6) itself), this is hardly surprising. Children are often not good judges of what is in their best interests. Subsection (6) is carefully drafted. The local authority is required "so far as is reasonably practicable and consistent with the child's welfare" to ascertain the child's wishes and feelings regarding the provision of accommodation and "give due consideration (having regard to his age and understanding) to such wishes and feelings… as they have been able to ascertain"

(emphasis added). The child's wishes are to be given "due" consideration in the assessment process, no more and no less."

Baroness Hale in the Southwark case at paragraph 28(6) dealt with the issue of the child's wishes and feelings. She said, citing the Liverpool case at paragraph 7:

"What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings? As Dyson LJ pointed out in R (Liverpool City Council) v Hillingdon London Borough Council [2009] EWCA Civ 43, para 32, 'children are often not good judges of what is in their best interests'. But that too should not be an issue here. A had been given legal advice as to which legal route to accommodation would be in his best interests. He needed help to get back into education and get his life on track towards responsible adult independence and away from whatever influence the gang culture was exerting over him. That would be better provided for him if he were accommodated under section 20 and became an 'eligible' child."

Thus the views which were expressed by Dyson LJ in the Liverpool case had express approval in the House of Lords by Baroness Hale, namely that the weight to be given to wishes and feelings will vary with the facts of each case and the circumstances of each case. Whilst in some cases, given the age and maturity of the child, they may be decisive, in others they are not. In the Southwark case Baroness Hale, reviewing the judgment of Ward LJ in R v Croydon LBC [2008] EWCA Civ 1445 at paragraph 75 commented upon the list which the learned Lord Justice formulated in order to exercise judgment in a case. She approved that list and the approach enjoined by Ward LJ. In R(M) v Barking and Westminster CC [2002] EWHC 2633 Admin at paragraph 17, Crane J said:

"It is my understanding from what all three counsel have been able to tell me of this case that although no doubt all local authorities have attempted to cooperate where possible, no formal guidelines or structured arrangement has been adopted to assist them in cases involving section 17 where more than one authority may be involved. Such cooperation is plainly important. It is important to avoid any impression that local authorities are able to pass responsibility for the child on to another authority. I say straightaway that I do not suggest there has been any such motive in the present case but the local authorities are naturally concerned in areas where resources are short to avoid carrying out duties…of other authorities. It is vital particularly in cases involving children that the needs of the children are given consideration and that as far as possible arguments about who considers and meets those needs do not hold up the provision of services to those children. To put it shortly the needs need to be met first and the redistribution of resources should, if necessary take place afterwards. It is also important, quite plainly, that the parents of children should not be able to cause inconvenience or extra expense by simply moving on to another local authority, although I do not suggest that it is what happened in the present case."

Baroness Hale in the Southwark case at paragraph 28(3) deals in passing with this issue. She says:

"Is he within the local authority's area? This again is not contentious. But it may be worth remembering that it was an important innovation in the forerunner provision in the Children Act 1948. Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may then pass a child on to the area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7). But there should be no more passing the child from pillar to post while the authorities argue about where he comes from."

When he opened the case to me, in the hearing before me in March, Mr Butler defined the issues as follows. He made four basic submissions: namely that Hillingdon had breached their duty to assess and make provision for the claimant and failed to discharge its section 20 duty; that when a child is a looked after child the local authority is responsible for it as a corporate parent and that responsibility only ends if it is assessed as being no longer necessary or that the local authority has exhausted means of looking after the child; Leicester, he submitted, owed a duty under section 20 and failed to discharge that duty; and if I were to find that Hillingdon were not in breach of its duty then Leicester owed a duty under section 20.

Mr Butler, in amplification of those submissions, submitted that Hillingdon failed properly to assess the claimant under section 20 or produce a care plan which complied with the framework for the assessment of children in need and their families, produced by the department of health in 2000 and which was the current document when the claimant's case fell to be considered in 2007. The framework document identifies a timetable for providing an assessment for a child in need (inaudible): a) a decision as to what response is needed within one working day of a referral (see tab 18, page 38, paragraph 3.8 in the trial bundle); b) a brief initial assessment of each child referred to social services within "a maximum of seven workings days" (see tab 18, page 31, paragraph 3.9 of the trial bundle); c) a care assessment, namely "an in-depth assessment of the needs of a child at the capacity of his or her parents or care givers to respond appropriately to those needs within the wider family and community context" to be produced within "a maximum of 35 working days" (see tab 18, page 32, paragraph 3.11 of the trial bundle). The framework document at tab 18, page 31, paragraph 3.7 emphasises that "time… is critical in a child's life." It follows that the above timetable is not merely an aspiration. It further provides at tab 18, page 33, paragraph 3.13 that "at the conclusion of either an initial or care assessment the…. child, if appropriate, should be informed in writing and/or, in another more appropriate medium, of the decisions made, and be offered the opportunity to record their views, disagreements and to ask for corrections to recorded information… this sharing of information is important to assist agencies' old practice in their work with a child and family". As the paragraph goes on to state, it is also important so the child can pursue any complaints under section 26 of the Children Act 1989.

The courts have considered such plans and their content and the obligation to adhere to guidance such as the framework document. In R (J) v Caerphilly Borough Council [2005] EWHC 586 (Admin). Munby J said at paragraph 46:

"Any judge who sits in the family division will be familiar with the depressing inadequacies and deficiencies in too many of the care plans presented to the court for its approval. A care plan is more than a statement of strategic objectives -- though all too often even these are expressed in the most vacuous terms. A care plan is -- or ought to be -- a detailed operational plan. Just how detailed will depend on the circumstances of the particular case. Sometimes some very high level of detail will be essential, but, whatever the level of detail which the individual cause may call for, any care plan worth its name ought to set out the operational objectives with sufficient detail -- including a detail of the "how, who, what and when" -- to enable to the care plan itself to be used as a means of checking whether or not those objectives are being met. Nothing less is called for in a pathway plan. Indeed, the regulations, as we have seen, (inaudible) a high level of detail."

Richards J, as he then was, said in R (AB & SB) v Nottingham CC [2001] EWHC 235 (Admin) at paragraph 41:

"On the other hand, the whole tenor of the framework document and on the other guidance that I have summarised about this, that the outcome of the child protection path for a child in need should be something equivalent to a core assessment, and if that has not been achieved by the time of the registration it should be achieved at the point if the child remains a child in need. There should be a systematic assessment of needs which takes into account the three domains (child's developmental needs, parenting capacity, family environmental factors) and involves collaboration between all relevant agencies so as to achieve a full understanding of the child in his or her family and community context. It is important, moreover, to be clear about the three-stage process: identification of needs, protection of a care plan and provision of the identified services. It seems to me that where an authority follows a path which does not involve the preparation of the core assessment as such. It must nevertheless adopt a similarly systematic approach with a view to achievement of the same objectives. Failure to do so without good cause will constitute an impermissible departure from the guidance,"

At paragraph 43 he says, in relation to the documents before him:

"Nor do I consider that the January 2001 assessment was adequate in terms of the guidance. True, it did at least adopt a more structured approach than anything previously done, examining the position in terms of the assessment framework, but it was essentially a descriptive document rather than an assessment, and in any event sufficient detail was still lacking, both as regards to the assessment itself and regards to the Care Plan and service provision. There was no clear identification of needs or what was to be done about them, by whom and by when."

Mr Butler began his critique of Hillingdon's actions and documentation by pointing out that it was never in dispute that the claimant was a child in need. It therefore followed that a timetable for the framework document began to run from about 14 June 2007. He submits that Hillingdon failed to provide either a brief initial assessment or a core assessment. Hillingdon rely upon the "age assessment of unaccompanied asylum seeking child", which appears at child bundle page 203 and which was carried out by them on 14 June 2007, and the further documents at page 208(c) to 208(f) and 208 (c)(c) of the trial bundle. I do not propose to read all those documents, but they should be taken as read into the judgment in accordance with the references. I note only that at page 203 the document upon which Hillingdon relies is entitled "age assessment of unaccompanied asylum seeking child" and no more; and, whilst it is a lengthy document, it is largely descriptive and not analytical of the needs.

Elizabeth Hurst, dealing with the document and putting Hillingdon's case in relation to it, says at page 194 in the trial bundle, at paragraph 5 and then paragraph 6 afterwards:

"In response to paragraph 7 of Leicester's grounds, in undertaking an age assessment we were in fact undertaking an initial assessment of needs in keeping with the requirements of the Children Act. The age assessment we do is a comprehensive in-depth assessment that covers all of the areas of need. The age assessment is attached at DH1, paragraph 6. In response to paragraph 7 of Leicester's grounds, the outcome of this age assessment was to accept KA as a looked after child into the Care of Hillingdon Social Services. No further assessment was needed to reach this outcome."

Hillingdon also rely upon the record of planning and placement agreement for unaccompanied asylum seeking children, which is a document which emerged late in the day and is a document which the claimant does not recall ever seeing. Hillingdon did not seek to challenge that assertion on behalf of the claimant at the hearing before me. For my own part, I do not regard any of the documents relied upon by Hillingdon as adding (inaudible) for the purposes of Section 20 or the framework. The age assessment does not provide any considered analysis of the claimant's needs, future strategy for her, or identify who will provide services for her and when. It is a document which, as I have said, is at best descriptive and not an assessment or analytical, to adopt Richards J's words in the Nottinghamshire case. I cannot understand what the document at trial bundle 208(e) purports to record. It is a document which relies upon deletions, and no deletions have been carried out in parts of it. Further, the body of the document does not contain dates, either of historic or future action on the part of Hillingdon, and, whilst the document is signed, it does not appear to have been acted upon, as I understand the evidence. The document entitled "Looking after Children Care Plan" also in my judgment falls far short of what is required by the framework of the Act. Sections 8 and 9 of the document acknowledged the claimant's needs as to remain in long-term semi-independent placement until accommodated, and then to be provided with leaving care (see section 8 of the document), and "K is an unaccompanied minor supported under Section 20 of the

Children Act 1989 (section 9). Section 10, which looks to the future, asks what needs to be dealt before this plan can be achieved. Please identify what are the key tasks, say who will be responsible and give a target date." This section is wholly incomplete with nothing written in the box provided. Section 11 identifies some long-term needs, but Section 12 does not prioritise those needs. The only future action identified is under the bland words "review meeting to be held" (see section 14, 16 and 17 of the document). Whilst a review is fixed for 13 August 2007 (section 18) there is no indication that the plan has been discussed (section 19) or any explanation as to why it has not been discussed (section 20). Nothing is noted under section 21 as to any disagreement with a plan, in spite of the fact that the claimant was by then stating that she wished to live in Leicester and be cared for by her family friends. Although her current placement at Margaret Cassidy House is described as "stable" (section 16 at trial bundle 208(c)), it is clear that she was expressing a wish to move to Leicester consistently (see page 208bb) of the trial bundle under the rubric "Contact".

I accept Mr Butler's submissions that this document does not discharge the Section 20 duty which clearly fell upon Hillingdon, and I accept his further submission that the other documents relied upon by Hillingdon do not discharge the section 20 duty. As Dyson LJ said in the Liverpool case at paragraphs 33 and 34:

"33. There may be cases where the child's wishes are decisive. But in my view a local authority should reach the conclusion that the child's wishes are decisive only as part of its overall judgment including an assessment of the child's welfare needs and the type and location of accommodation that will meet those needs. That is what, in effect, Arden LJ was saying in the Sutton case. It is also clear that this is what Ward LJ was contemplating in the Croydon case. He said that the section 20 decision involves a judgment being made about a range of facts and matters such as the nine that he listed, which included the subsection (6) questions.

34. Where the child is mature, articulate and intelligent and has strong and reasoned views as to why he or she wants to have a certain type of accommodation in a certain place, it may be that the local authority will be able swiftly and easily to form the view that it ought to accommodate the child in accordance with his or her wishes. I believe that this is what Baroness Hale (in the Hammersmith and Fulham case) and Bennett J (in the Lambeth and Croydon case) had in mind. But an assessment of needs will always be required. Otherwise, the authority will not be able to give due consideration to the question whether it is consistent with the child's welfare needs to accede to his or her wishes. I do not believe that Baroness Hale or Bennett J were contemplating a short-cut which would obviate the need for that consideration."

Mr Butler relies heavily upon that passage, as does indeed Mr Sharland on behalf of Leicester, and a requirement of a full assessment is, in their submission, a prerequisite for a proper assessment of

the weight to be given to a child's needs. I accept that submission. In my judgment, nothing of this sort happened insofar as Hillingdon was concerned, and in my judgment Hillingdon made an error to rely, as they did, upon the claimant's expressed wishes as decisive in the absence of a proper and rigorous assessment. As Dyson LJ said in the Liverpool case at paragraph 35:

"35. I can now return to the facts of the present case. LBH did not give any consideration to AK's welfare needs. They did not make any assessment of his needs. It follows that they did not make any assessment of what kind of accommodation would meet those needs. They did not take account of his age, because they did not know what it was. They did not make any assessment of his understanding. They did not make enquiry of what accommodation would be available in Liverpool and whether it would be suitable for his needs. They did not apply the nuanced approach to the wishes and feelings of a child which is mandated by section 20(6). They took the simplistic view that the fact that AK said that he wanted to live in Liverpool was determinative of the matter. This was not a proper discharge of the section 20 duty."

I accept that Hillingdon can lawfully bring its duty under Section 20 to an end after a proper assessment of needs of the kind that Dyson LJ referred to in paragraph 34 in the Liverpool case which I have just quoted. In my judgment the duty under Section 20 endures until such an assessment has taken place; indeed it may survive such an assessment. For instance, in a case where the child's welfare requires that other services continue to be made available to the child in a way he does not wish. While section 20 is not coercive insofar as the child is concerned, it nevertheless requires that the duty under it can only be brought to an end lawfully, in my judgment. Each case turns on its own facts and its own requirements, and the danger of a child falling between two stools needs always to be borne in mind. On facts such as these, a prerequisite to bringing the duty to an end would, in my judgment, be to ensure that every attempt should be made to resolve difficulties as to resourcing between local authorities. An interim plan for provision of services should be made before a final decision or position is taken up. Local authorities must do the best they can, if necessary, without resort to the courts. The impasse that was reached in this case caused Collins J understandable displeasure and indicates the sad reality that, at least until Leicester agreed to make, without prejudice, provision for the claimant, the danger of her falling between two stools was a real one.

In these circumstances, in my judgment, both Hillingdon and Leicester owed a concurrent duty to the claimant. Whilst this may cause practical problems, it nevertheless protects the child from the consequences of arbitrary and unilateral action on the part of local authorities and is the consequence of the nuanced approach enjoined in the Liverpool case and by Ward LJ in the Croydon case, to which I have already made reference. It is, in my judgment, an approach which is commended by Baroness Hale in the various House of Lords authorities to which I have referred in the passages to which I have made reference.

On the evidence before me, Leicester were on notice to the claimant's statement and the view taken by Hillingdon as to their responsibility, as the letter of 20 September 2007 at page 212 shows. Hillingdon made no bones about the way they put their case. Leicester defined their position in a long letter headed "Reply to the Letter Before Action" dated 6 December 2007 to the claimant's solicitors. That letter appears at page 221 of the trial bundle. The letter confirms that from 29 August 2007 Leicester were aware of the claimant's status but were maintaining that she was "still the responsibility of Hillingdon" (see page 222). By 9 September 2007 the claimant made it clear "that she had been in Leicester for three weeks and that she had declined to accept the advice received to return to Hillingdon" (see page 222(c) of the trial bundle). Thus, both to the claimant directly and to her solicitors in response to the letter before claim, Leicester maintained at page 222 that responsibility for KA remained with Hillingdon and amplified the grounds for their decision at page 223. Again, the whole of that part of that letter should be taken as read into this judgment. The section of the letter headed 'The defendant's decision' made detailed reference to the provisions of the Children Act and offers, without prejudice, to carry out a Section 17 assessments of needs, but the primary focus of the letter is, in my judgment, a dispute as to which local authority is "legally responsible" for providing support and assistance (see, for instance, page 223 of the trial bundle).

Leicester should not have refused to offer support to the claimant and should not have attempted to pass responsibility for her back to Hillingdon. One can appreciate, again, why Collins J expressed himself in the way that he did when confronted with the facts of this case. It is surely not beyond the wit of two local authorities with access to legal advice and substantial -- albeit not unlimited -- resources to devise plans and contingencies for such situations, which are said not to be uncommon and perhaps to share the cost of funding pending the resolution of such disputes as they arise. What is not lawful, in my judgment, is to defer the performance of the duty of good parenting under the Act to the resolution of what is essentially a resource led dispute.

As Mr Butler pointed out, this does not leave local authorities impossibly vulnerable. A local authority can always protect its position by initiating a review to which all contentions and issues can be considered with appropriate representations being made on the part of the child. A properly nuanced decision, as a result of such a review, would be difficult to challenge by way of judicial review. If two local authorities were to initiate reviews simultaneously, issues such as good faith might arise, but there is no reason, for instance, why such reviews could not be consolidated. It is no more than a good parent would do and part and parcel of the duty to do the best possible for a child under the Act, in my judgment.

Mr Moffett for Hillingdon says that the issue in this case was resolved by the unilateral action of the claimant, who is Gillick competent. In leaving Hillingdon she was no longer "within" Hillingdon's area and Hillingdon were no longer providing the claimant with accommodation . He relied upon section 22(1)(b), and said that the words "who is provided with accommodation " mean "a child who is in actual receipt of accommodation ". I cannot accept that construction. The words "provided with accommodation " must be read in their context and with regard to the following words: "by the authority of 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 Section 17, 23(b) and 24(b)". Thus the provision is as a result of the exercise of functions by the local authority and not of receipt by the child. If the meaning of "provided" were to be restricted to "in actual receipt", one would have expected the act specifically so to state. The plain fact is that it does not do so. "Provided", in my judgment, must be construed in the wider sense of making available or providing for a person and his needs, as Mr Butler submits.

As to the submission of moving away as an end to the duty, that flies in the face of the reality that the purpose of the act as a whole is to protect children identified as vulnerable. The local authority must display the infinite patience of a good parent and not take advantage of what may be impulsive and unwise acts to absolve themselves of duty. Only if upon mature reflection investigation cannot be concluded that the child's wishes should be decisive can, in my judgment, the duty come to an end. I have already quoted at the beginning of this judgment the initial section, the ambivalence which KA initially felt about her move, and have indicated how important I regarded that particular piece of evidence. There is no need for me to repeat it at this stage.

I accept the submissions of Mr Butler and Mr Sharland upon the issues raised by Mr Moffett and the construction issue put forward by him. I further accept Mr Butler and Mr Moffett's submissions that Hillingdon and Leicester can be the subject of concurrent duties, and in reaching my conclusion I have regard to the passages from the various authorities which deal with that issue to which I have referred.

At the end of submissions counsel helpfully indicated the form of order which I should make if I accepted certain submissions. In respect of Hillingdon, it was accepted that a declaration that Hillingdon had acted unlawfully in the eight respects specified by counsel, Mr Sharland and Mr Butler, in their detailed submissions, should be made; a declaration that the practice adopted by Hillingdon, as identified in this case, was unlawful; a declaration that the claimant remained a looked after child and Hillingdon failed lawfully to discharge its duties towards her as a looked after child; and against Leicester, if I found that there was a concurrent duty, that Leicester had failed to

discharge its section 20 duty at all. I was also invited to come to a conclusion and make an order that Hillingdon should contribute towards expenses incurred by Leicester.

In my judgment the first four of those declarations are appropriate. In reaching that conclusion, I have taken into account all the material which has been put before me and indeed the very helpful submissions which counsel made and which I recorded in the hearing before me. I have not referred to each of those submissions or indeed all of the material for obvious reasons. This judgment is already extremely long and I do not wish it to be any longer than is absolutely necessary. I simply emphasise that point lest it be contended that I failed to take into account any submission which was made before me. I feel some diffidence about acceding to the submission that I should make a finding or an award as between Hillingdon and Leicester. It does not seem to me on the evidence and information before me there is sufficient material for me to make such an award, and I will defer further consideration of this matter until the further telephone/video hearing which I have ordered in this case. That telephone/video hearing should not take place before 10 August, and if possible should take place by 28 August. In any event I am content that counsel should make submissions as to their joint convenience. It is essential for all three counsel to attend that further hearing and as a matter of practicality it should not take place until a transcript of the judgment is available so that everyone can consider their position.

MR ANDERSON: My Lord, could I ask on that point, all three counsel asked if we could have a direction seeking an expedited transcript.

HHJ FARMER: Yes, I direct that there be an expedited transcript.

MR ANDERSON: Sorry, my Lord, they further asked if they could have 14 days from that transcript being available in which to consider…

HHJ FARMER: Yes, to consider their position and to consider any submissions which they wish to make about permission to appeal. In the usual way, when the transcript is obtained counsel will peruse it and will submit it to me for further consideration to identify any obvious factual errors or to deal with matters which counsel wish me to deal with and which I may not have dealt with expressly. That is in accordance with the usual practice in both this and other courts. Now, what else do you want?

MR ANDERSON: My Lord, that is all I have been asked to…

HHJ FARMER: What do you … Yes, all right. Nothing else?

MR ANDERSON: … seek on behalf of each of the …

HHJ FARMER: What?

MR ANDERSON: That is all that I have been asked to request.

HHJ FARMER: Yes. So, in what capacity are you here today? Amicus? Joint … What about your conflict of interest, etc etc? Have you cleared it with bar counsel? Right, well I am very glad you were here today and thank you very much for attending. There is nothing else I can help you with at this stage, is there?

MR ANDERSON: No, my Lord.

HHJ FARMER: All right. So, putting it in robust terms, basically what needs to happen is the transcript needs to be obtained. It is unlikely we are going to be able to work within the August timetable, so we look to September and your chambers and the local authorities involved can liaise with Mrs Gwen Spear from the Rhyl County Court in relation to any dates which may be unsuitable for me. All right?

MR ANDERSON: Thank you very much.

HHJ FARMER: Thank you very much.