Neutral Citation Number: [2024] EWHC 1353 (Admin)

Case No: AC-2023-LON-001792
AC-2023-LON-001997
AC-2023-LON-002048

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/06/2024

Before:

MR JUSTICE CHAMBERLAIN
- -

Between :

THE KING on the application of ECPAT UK (Every Child Protected Against Trafficking)	**Claimant**
- and -	
KENT COUNTY COUNCIL	**Defendant**
-and-	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Interested Party**

THE KING on the application of KENT COUNTY COUNCIL	**Claimant**
-and-	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
-and-	
BRIGHTON AND HOVE CITY COUNCIL	**Interested Party**

THE KING on the application of BRIGHTON AND HOVE CITY COUNCIL	**Claimant**
-and-	

SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
-and-	
(1) SECRETARY OF STATE FOR EDUCATION **(2) KENT COUNTY COUNCIL**	**Interested Parties**

Ms Luh and Ms Benfield (instructed by Freshfields Bruckhaus Deringer LLP) for ECPAT UK

Ms Harrison KC and Mr Persey (instructed by Bhatt Murphy Solicitors) for Brighton and Hove City Council and East Sussex County Council

Mr Southey KC and Ms Hannett KC and Mr Suterwalla (instructed by Bevan Brittan LLP) for Kent County Council

Ms Clement KC, Mr Anderson and Mr Cisneros (instructed by Government Legal Department) for the Secretary of State for the Home Department and the Secretary of State for Education

Hearing date: 14 March 2024
Post-judgment written submissions: 27 March and 5, 12, 24 and 30 April 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on 5 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 This is my fourth substantive judgment concerning unaccompanied asylum-seeking children ("UAS children") entering the United Kingdom in Kent on small boats. It explains why I have decided that there should be no further relief and the Court's supervision of the lawfulness of the conduct of the Kent County Council ("Kent CC") and the Home Secretary should now be brought to an end, at least as far as these proceedings are concerned.

Procedural background

2 There were three separate claims for judicial review. Their targets included a protocol agreed in September 2021 between Kent County Council ("Kent CC") and the Home Secretary setting out how Kent CC was to deal with UAS children ("the Kent Protocol"), a protocol setting out the procedure for the transfer of responsibility for UAS children from one local authority to another under the National Transfer Scheme ("the NTS Protocol") and a series of decisions made by the Home Secretary in relation to the design and operation of the NTS.

3 On 27 July 2023, I handed down a judgment on a series of preliminary issues arising in these claims: [2023] EWHC 1953 (Admin), [2024] PTSR 243 ("Judgment no. 1"). I concluded that Kent CC was acting unlawfully, in breach of its duties under the Children Act 1989 ("CA 1989"), by failing to accommodate and look after all UAS children when notified of their arrival by the Home Office and by ceasing to accept responsibility for some newly arriving UAS children, while continuing to accept other children into its care. I also concluded that the Home Secretary was acting unlawfully by agreeing the Kent Protocol, which capped the number of UAS children for whom Kent CC would accept responsibility; by arranging transfers (purportedly under s. 69-73 of the Immigration Act 2016 ("IA 2016")) other than in accordance with arrangements made between local authorities; and (from December 2021 at the latest) by systematically and routinely accommodating UAS children in hotels, outside the care system.

4 Having heard submissions from the parties about relief, I made an order quashing the Kent Protocol in its entirety and the NTS Protocol insofar as it permitted the Home Secretary to make arrangements for the transfer of responsibility for UAS children without the participation of the entry authority. However, I suspended the effect of both these orders under s. 29A(1)(a) of the Senior Courts Act 1981 ("SCA 1981") for three weeks, until 18 August 2023, and set a further hearing for 17 August 2023 to consider whether to grant any further relief.

5 In a second judgment handed down on 1 September 2023, I explained why I had granted that relief and why, at the hearing on 17 August 2023, I extended for a short time the suspension of the order quashing in part the NTS Protocol, granted mandatory orders against Kent CC and the Home Secretary and set a further hearing to consider whether to grant additional relief: [2023] EWHC 2199 (Admin) ("Judgment no. 2").

6 The second relief hearing took place on 15 September 2023. I granted a mandatory order requiring the Home Secretary to take all possible steps to transfer UAS children in hotels at that date into the care of a local authority by 22 September 2023 and, in respect of

children placed in a hotel after that date, all possible steps to transfer each such child into the care of a local authority within 5 working days.

7 As I have explained, the first stage of this litigation, which led to the first judgment, involved the resolution of certain preliminary issues of law arising in all three judicial review claims. The next stage concerned a series of issues arising in Kent CC's claim for judicial review, in particular Kent CC's allegations that the Home Secretary was acting unlawfully in the design and operation of the NTS. Those issues were argued at a hearing on 10 October 2023. In a judgment handed down on 28 November 2023, I dismissed four grounds of challenge to the NTS, but held that the Home Secretary's decision-making in relation to the NTS scheme was unlawful during the period December 2021 to 27 July 2023 because and insofar as it failed to have regard to the facts that: (i) the Home Secretary was (through her agreement to the Kent Protocol) partly responsible for Kent CC's unlawful failure to discharge its s. 20 CA 1989 function in respect of every UAS child; and (ii) the Home Secretary's use of hotels had by December 20212 become systematic, routine and therefore unlawful: [2023] EWHC 3030 (Admin) ("Judgment no. 3").

8 At [55] of Judgment no. 3, I said this:

> "…if the provisions of the 2023 Act [the Illegal Migration Act 2023] are not to be commenced, and once final arrangements between Kent CC and the Home Secretary are concluded, rationality will require a plan to be prepared to ensure that the use of hotels to accommodate UAS children ceases and does not resume. The details of such a plan are for the Home Secretary to determine. A lawful plan will at minimum need to:
>
> (a) expressly recognise the Home Secretary's own responsibility for the unlawful state of affairs identified in my first judgment and his resulting responsibility to remedy it and ensure it does not recur;
>
> (b) estimate the range of numbers of UAS children likely to arrive in the short and medium term (taking into account historical data and accounting for inherent uncertainties);
>
> (c) model (based on the terms of the final arrangements concluded between Kent CC and the Home Secretary) the speed and quantity of NTS transfers likely to be required to ensure that no UAS children are accommodated in hotels;
>
> (d) contain arrangements to ensure that transfers take place in line with what is required to eliminate permanently the use of hotels to accommodate UAS children (whether through incentives offered to receiving authorities or through a dispute resolution and/or enforcement procedures or otherwise)."

9 It was agreed that there would be a further hearing to consider relief between two and four weeks after my third judgment was handed down. That hearing was fixed for 15

December 2023. Following that hearing, I made a further order, which included declarations in the following terms, reflecting the terms of my first and third judgments:

> "1. The SSHD has power to accommodate children in hotels over very short periods in true emergency situations, where stringent efforts are being made to enable the local authority promptly to resume the discharge of its duties. That power cannot be used systematically or routinely in circumstances where it is intended, or functions in practice, as a substitute for local authority care. From December 2021, the SSHD's practice of accommodating UAS children in hotels, outside local authority care, was systematic and routine and had become an established part of the procedure for dealing with UAS children. From that point on, the SSHD's provision of hotel accommodation for UAS children exceeded the proper limits of his powers and was unlawful.
>
> 2. The SSHD's decision-making in relation to the National Transfer Scheme ('NTS') was unlawful during the period from December 2021 to 27 July 2023 because and insofar as it failed to have regard to the facts that (i) the SSHD was (through agreement to the now quashed Kent Protocol) partly responsible for KCC's unlawful failure to discharge its section 20 Children Act 1989 functions in respect of every UAS child; (ii) the SSHD's use of hotels had by December 2021 become systematic, routine and therefore unlawful and (iii) the SSHD has failed to devise a plan directed at using the NTS to eliminate the use of hotels."

10 I also made the following further orders, which were largely agreed (save as to timing):

> "7. By 4pm on 31 January 2024, KCC and the SSHD must file and serve an agreed action plan setting out the actions they will each take, and take jointly, to secure the outcomes identified at paragraph 5 of the Court's order of 21 September 2023 ('the Action Plan'). The plan is to include short-term and long-term measures, costings and specific timescales as to when these outcomes are to be achieved.
>
> 8. By 4pm on 29 February 2024, the SSHD must file and serve evidence as to his proposals in relation to the NTS in compliance with para 55 of the NTS judgment ('the NTS Plan')."

Progress since December 2023

11 Since December 2023, a great deal of progress has been made.

12 On 31 January 2024, the Home Secretary closed the last of the hotels which had been used to accommodate UAS children. Prior to its closure, two UAS children who required isolation on medical grounds had been accommodated there. Since then, all children who

required accommodation have been accommodated by Kent CC, although there has been a delay in accepting children in some cases.

13 The agreed Action Plan was filed on 1 February 2024 (after an extension of time was agreed). Action point 2.8 required the parties to:

> "Finalise the emergency response plan process should KCC's placement options approach capacity, in particular whilst KCC's additional capacity is being brought on stream, such that KCC may not be able to accommodate any more UAS children in accordance with the Children Act 1989".

14 On 27 February 2024, Kent CC filed an Application Notice, seeking a mandatory order that Kent CC and the Secretaries of State file and serve an Emergency Response Plan ("ERP"), which "includes the steps to be taken (including by the Secretaries of State) should KCC reasonably consider that it cannot safely discharge its duties under the CA 1989 to an unaccompanied asylum seeking child". This is because Kent CC considers that there is still a danger that the numbers of UAS children arriving in Kent will be such that it cannot safely accept new arrivals into its care.

15 The NTS Plan was filed on 29 February 2024. Since 17 January 2024, the escalation process had been brought forward so that non-compliance letters are triggered 10 working days (rather than 20) after a receiving local authority receives a referral. Escalation letters are copied directly to Department for Education ("DfE") Regional Improvement and Support Leads. There is a programme of targeted engagement with local authorities with a history of delays in transfer, designed to improve pace and local authority placement sufficiency issues. There has been an extension until at least 30 September 2024 of the use of incentivised funding for transfers from Kent CC within 5 working days, with the potential for a further extension if a trigger point is reached. There is also a programme of further work to identify best practice and additional actions to reduce the number of failed transfers.

16 In the run-up to the hearing on 14 March 2024, there were discussions between Kent CC and the Home Secretary. As a result of these discussions, on 6 March 2024, a funding settlement was agreed for the work being done to increase Kent CC's ring-fenced capacity for UAS children. The Home Secretary agreed to fund the entirety of the capital and revenue costs requested by Kent CC. Estimated revenue funding for the financial year 2024-5 is £47.63 million, which includes potentially up to £5.04 million of additional revenue funding for spot purchases of additional placements in the private market, which may be required when Kent CC's ring-fenced provision is full. By the date of the hearing, discussions were close to complete in relation to a grant agreement for capital funding.

17 The DfE has filed evidence on the steps being taken to increase the number of regulated placements nationally.

Submissions and evidence before and at the hearing

Kent CC

18 As at 4 March 2024, Kent CC was accommodating 423 UAS children. This comprised 346 who make up Kent CC's 0.1% cohort as defined in the NTS Protocol, who will stay in Kent CC's care on a long-term basis, and 77 who were being looked after on a temporary basis and were expected to transfer out. Since 15 December 2023, Kent CC had been able to secure safe placements for all arriving UAS children (save for the two children who required medical isolation and were accommodated by the Home Secretary in a hotel for a short period in January). The average transfer time (calculated as the time between KCC transferring a child into the NTS by submitting the relevant form to the Home Office and the transfer being completed) was 9 working days.

19 Kent CC's evidence summarised the steps taken since December 2023 to increase capacity. Nonetheless, this capacity could not be brought into use overnight. In addition, the new requirement, applicable from 23 October 2023, for 16 and 17 year-old children to be accommodated in registered provision meant that flexibilities deployed in the past (e.g. accommodating more than one child in a room) were not now permitted. Kent CC's ability safely to accommodate every arriving UAS child was accordingly dependent on speedy transfers through the NTS.

20 Kent CC's evidence also summarised the work being done to produce accurate projections of capacity and demand. As of November 2024, Kent CC anticipates that its ring-fenced physical capacity for UAS children above its permanent 0.1% cohort will be 358 beds (comprising 68 beds for under-16s and 290 beds for 16 and 17-year olds). Taking into account Kent CC's other ring-fenced capacity (such as block-booked foster carers for under-16s and ring-fenced semi-independent provision for 16 and 17-year UAS children), it anticipates its total ring-fenced capacity will be 420 (comprising 113 beds for under 16s and 305 beds for 16 and 17-year olds).

21 Even on the most optimistic scenario presented by the Home Office in its modelling (with an average transfer time of 16.4 calendar days), there are points in 2024 when it is predicted that there will be twice the number of under-16s as Kent CC can accommodate in its ring-fenced capacity. In order to meet this, the transfer time would have to be half what is assumed in the modelling (i.e. an average of 8 calendar days). In other, less optimistic scenarios, the transfer time would need to come down even more.

22 Kent CC currently has 4 medical isolation rooms at its Millbank Reception Centre and 2 further rooms at Appledore. The new buildings being commissioned will include medical isolation provision for 16 and 17-year old children. The Secretaries of State criticise Kent CC for delays in this regard. Kent CC does not accept the criticism.

23 Mr Southey for Kent CC draws attention to the requirements in [55] of Judgment no. 3. The broad aim of the requirements set out there was to ensure an NTS which operates, in conjunction with KCC's capacity, such that KCC is able to look after all the UAS children arriving in its area. The current draft NTS Plan conspicuously fails to achieve that aim in that:

(a) The transfer times are too long. There is nothing to substantiate the assertion that faster transfer times are "thought to be an unrealistic operational scenario".

(b) The gap cannot be filled by private placements.

(c) In any event, the timescales are not calculated in accordance with the NTS Protocol because they are calculated from the point at which the child is allocated to the receiving authority (rather than the point at which the child is referred to the NTS).

(d) Potentially relevant matters, such as local authority placement sufficiency and the implementation of the Illegal Migration Act 2023, were not considered.

(e) Ultimately, the current NTS Plan ought, in accordance with Judgment no. 3, to have started by asking what speed of transfers is required to achieve the objective (all UAS children being safely look after by Kent CC). Instead, it says that the Home Secretary cannot achieve the rate of transfer required and proposes nothing adequate to remedy the situation.

24 Kent CC and the Home Secretary have been unable to agree the contents of the ERP. Kent CC's position is that it must specify actions that will be taken between Kent CC and the Secretaries of State in the event that a situation arises in which Kent CC considers that it cannot find a safe placement for any child – which is referred to in the plan as "Trigger Point 4".

25 The risk that Kent CC becomes unable to discharge its duties under the CA 1989 can never be eliminated, because the numbers of children arriving is inherently uncertain. In this respect it is in a unique position among local authorities and because the amount of safe and lawful provision for arriving UAS children in Kent is finite. The scenario where Kent CC is unable to look after every UAS child is likely to transpire; and it is precisely what needs to be addressed in the ERP.

26 The Secretaries of State have concluded that it is unnecessary to address the eventuality in which Kent CC cannot safely accommodate every UAS child, because it is Kent CC's responsibility to source provision elsewhere in this scenario. But this conclusion is irrational, because: Kent CC already looks outside its own ring-fenced provision when at or nearing its capacity limit. The Education Secretary recognises that placement sufficiency is a challenge. Kent CC cannot "magic up" placements that do not exist. The additional funding agreed by the Home Secretary is welcome, but does not provide the whole answer. There are logistical issues relating to staffing and limits on the number of placements, which apply irrespective of funding.

27 Insofar as Kent CC is criticised for proposing a geographical limit on their search for additional placements in the external market, the criticism is misplaced. First, it is not in the best interests of children who have just completed a difficult journey across the Channel to be driven to a location which may be some considerable distance away. Second, there are obvious practical difficulties for Kent CC social workers (whose duty it is to monitor the suitability of the placement) if children are located more than about 3 hours from Dover. If children were routinely located this far away, Kent CC would be replacing one breach of duty (s. 20 of the CA 1989) with another (the duty to provide safe placements.)

The Home Secretary

28 The overarching submission of Joanne Clement KC for the Home Secretary was that there was no reason for these proceedings to continue further and no further relief that the Court should grant.

29 The Court had already recognised in [11]-[14] of Judgment no. 1 that "rolling judicial review" is rarely justified. Matters on the grounds have moved on significantly since Judgment no. 1 was handed down. The use of hotels has ceased. The Secretaries of State have made a generous funding offer, meeting all Kent CC's requests for revenue and capital funding. The ERP is close to agreement. No party has raised new grounds of challenge, so the defendants have had no opportunity to plead to any such challenge.

30 As to Kent CC's application for a further mandatory order, the purpose of the Action Plan is to secure that Kent CC fully discharges its duty vis-à-vis every UAS child notified to it. It is not open to Kent CC to refuse to accept responsibility for any UAS child. The purpose of the ERP is to address the situation where Kent CC placement options approach capacity. It would be wrong to suggest, contrary to the clear position set out in Judgment no. 1, that Kent CC may "reasonably" conclude that it can refuse to accept a child to whom it owes the duty under s. 20 of the CA 1989.

31 For essentially the same reason, there can be no geographical limit on the placements that Kent CC may have to secure from the private market.

32 Kent CC must ensure that it can accommodate all UAS children arriving, including those who require medical isolation.

ECPAT UK

33 Shu Shin Luh for ECPAT UK drew attention to the conclusion at [160] of my Judgment no. 1 that Kent CC's refusal to accommodate and look after all UAS children "violates a fundamental aspect of the statutory scheme… a local authority's duties under the CA 1989 apply to all children, irrespective of immigration status, on the basis of need alone". She noted that the Kent Protocol had been found to be unlawful because Kent CC had "announced in advance its intention to refuse to discharge its duty to accept [UAS children]" when it was "obliged to accommodate and look after every such child, not only the exceptionally vulnerable ones": ibid., [167]. Yet, despite this, Kent CC was now asking, in its application for a mandatory order requiring the agreement of an ERP, "the steps to be taken (including by the Secretaries of State) should Kent CC reasonably consider that it cannot safely discharge its duties under the CA 1989 to an unaccompanied asylum seeking child". The Court should refuse to make such an order because, for the reasons given in Judgment no. 1, any putative arrangements which foresee, permit or sanction a breach by Kent CC of its duties under the CA 1989 will be unlawful.

34 Kent CC continued to proceed on the logically fallacious basis that it could lawfully breach its duties under CA 1989 if the numbers it was being asked to accept would exceed safe limits, relying on s. 11 of the Children Act 2004 ("CA 2004"). On 17 January 2024, it had refused to take into its care two under-16 UAS children by issuing "s. 11 notices" which Ms Luh described as "a complete legal fiction".

35 ECPAT UK agrees with Kent CC that it is necessary for Kent CC and the Home Secretary to agree an "early warning system" with thresholds and markers which may indicate cause for concern in relation to Kent CC's ability to meet its CA 1989 duties to children in need in Kent, including arriving UAS children. But the purpose and function of such a system must be to trigger the urgent steps necessary before a crisis point is reached.

36 ECPAT UK appreciates that its ring-fenced capacity may not be capable of dealing with all UAS children arriving in spring and summer, but there is no lawful or rational basis on which to place a geographical limit on the location of private placements.

37 Ms Luh invited me to note that, in [43] of Judgment no. 3, I concluded that I should not assume that, whenever Kent CC said that it could not safely accept any more UAS children, that was always so. The numbers accommodated had increased from 466 on 27 July 2023 to 535 on 14 August 2024 to 777 on 11 September 2023. It had then reduced to 514 on 8 December 2023 and reduced again to 423 on 4 March 2024.

38 Kent CC has now forecasted the capacity likely to be needed in each month in 2024, so should be in a strong position to plan for the number of private placements likely to be needed while it builds up its ring-fenced capacity. In those circumstances, its request to countenance planned arrangements for future breaches of its duties under CA 1989 should be regarded as a retrograde step.

39 As to the Home Secretary's compliance with the Court's previous orders, the NTS plan is based on a fundamentally flawed modelling approach, which treats the 10 working day timeframe for referrals as starting to run when a UAS child is allocated to the receiving authority. This does not reflect the NTS policy itself, which calculates the 10 working days as running from referral into the scheme to the point at which the transfer takes effect. This flaw means that the Home Secretary has not properly informed himself of the likely speed of transfer necessary to require the objective that no UAS child should be accommodated in a hotel and that Kent CC complies fully with its duties under s. 20 CA 1989.

40 In addition, the modelling is insufficient to analyse whether the current quantity of transfers achieves that purpose. In particular: the rota arrangement is inadequate because it does not identify where spare capacity lies; the modelling is based on Kent CC's ring-fenced capacity when Kent CC itself recognises that that will be insufficient in the summer months; there is a bare assertion that reducing transfer times to 6 calendar days (4-5 working days) is "not a realistic operational scenario"; and does not grapple with the range of additional challenges to the effective operation of the NTS (including placement insufficiency across the UK, the absence of a coherent national strategy to co-ordinate placements and chronic under-funding of the NTS and of local authorities in respect of the costs of caring for a UAS child).

Brighton & Hove CC

41 Stephanie Harrison KC for Brighton & Hove CC opposed the mandatory order sought by Kent CC for essentially the same reasons as the Home Secretary and ECPAT UK: it would endorse a situation which the Court has already ruled to be unlawful (in Judgment no. 1).

42 The existing NTS Plan does not comply with the requirements set out in [55] of Judgment no. 3.

43 Sections 16-17 of the Illegal Migration Act 2023 are not a solution to the increasing capacity in Kent and cannot affect the obligations of a local authority to comply with the CA 1989.

Submissions after the hearing

44 Kent CC produced a revised draft ERP on 13 March 2024, the day before the hearing. At the hearing, it became clear that discussions were continuing between Kent CC and the Home Secretary about the terms of this document. Accordingly, I gave directions allowing those discussions to continue and for Kent CC and the Home Secretary to file further submissions if they remained unable to agree those terms.

Kent CC

45 In written submissions dated 27 March 2024, Hugh Southey KC for Kent CC accepted that the areas of dispute had narrowed, but noted that one area of dispute remained. He invited me to order the Home Secretary to set out concrete steps which will be taken to alleviate Kent CC's position if Trigger Point 4 is reached.

46 Kent CC was not seeking to place a limit on the number of children it could take into its care. It was simply acknowledging the practical reality that its safe capacity is finite.

47 It was welcome that the Home Secretary had now accepted that it was appropriate to include a Trigger Point 4 in the ERP. Kent CC believes that such a trigger point is necessary because modelling cannot address exceptional and unexpected levels of demand. The function of Trigger Point 4 is not to relieve Kent CC of its legal obligations, but to identify when it needs extra help to comply with those obligations.

48 However, there remained two important matters in issue between Kent CC and the Home Secretary. The first concerned the wording of Trigger Point 4. The competing contentions can be seen from the following text, with score-through and underlining showing the Home Secretary's proposed amendments:

> "Where (a) KCC's ~~available~~ ring fenced capacity in one or more of the demographic categories [to be defined] ~~will~~ is likely to be at 0% within 72 hours and (b) KCC ~~expects~~ considers that it will be unable to identify any ~~lawful~~ placements in the external market ~~in those demographic categories~~ for any additional children after the next 72 hours, to enable it to ~~lawfully and safely to~~ meet its duties under the CA 1989 to ~~any new child~~ those additional children, the following emergency response activity will be activated. For the avoidance of doubt, this does not mean that KCC is able to decline to accommodate a child: KCC must take all steps to source placements outside of its ring-fenced capacity, including from other local authorities and from the external market."

49 Kent CC disagrees with the proposed amendments in four respects:

(a) The removal of the word "lawful" prefacing placements in the external market, and the removal of the words "lawfully and safely" to meet its duties under CA 1989. Having these words – "lawful" and "lawfully and safely" - in the definition of Trigger Point 4 would help ensure that the steps taken under Trigger Point 4 are such that UAS children are lawfully and safely accommodated under CA 1989. Kent CC accepts that its duties under the CA 89 are absolute, but this does not

mean that it is lawful to comply with its duties by engaging in some other form of illegality. If Trigger Point 4 is intended to represent the point where Kent CC cannot act lawfully despite doing all it can within its powers, and so needs maximum assistance from central government, the definition of Trigger Point 4 must reflect the fact that the legal obligations imposed on Kent CC are not restricted to merely accommodating all children. The rationale of Judgment no. 1 could not have been to replace one form of illegality (hotel accommodation) with another form of illegality (accommodation in an unregulated placement).

(b) The removal of the words "in those demographic categories" under part (b) of the definition is inappropriate. Kent CC cannot be required, for example, to place a 13-year-old female UAS child in accommodation dedicated to 16-17 year old boys and the words which have been (Kent CC says incorrectly) excised are intended to reflect that fact. There are obvious issues of safety and legality if this is required.

(c) The insertion of the words "for any additional children after the next 72 hours" in part (b) of the definition. If these words remain, there will be an inherent tension between parts (a) and (b) of the definition. The whole point of Trigger Point 4 is that it is intended to be activated to avoid the risk of UAS children being left homeless and/or without safe accommodation. But part (b), as proposed by the Secretaries of State has the effect that 3 days must first pass, where Kent CC has no capacity, before Trigger Point 4 is activated. Its effect will be therefore to materialise or crystallise the risk which Kent CC is so keen to avoid, as there is a real likelihood that there will be no placements at the 72 hour point.

(d) There should be acknowledgement that a point may be reached where Kent CC is unable to find a lawful placement for a child, recognising the tension between Kent CC's obligations under s. 20 of the CA 1989, s. 11 of the CA 2004 and Kent CC's wider obligations. Further, the last sentence proposed by the Secretaries of State goes beyond the mandatory order made in the ECPAT UK proceedings. It is also not a definitional point, and therefore risks causing confusion given the point of the text is to define when Trigger Point 4 will be activated.

50 In addition, Kent CC submits that the steps proposed in the current ERP are inadequate. For Trigger Point 4 to be notified, Kent CC will need to demonstrate that it cannot obtain places in one or more of the demographic categories despite taking all possible steps. In other words, Kent CC will have pulled all "levers" at its disposal but nevertheless these would have proven to be insufficient. In those circumstances, central government will have obligations to take action to avoid illegality or to achieve legality (see Judgment no. 1 at [206]) and the obligations imposed on central government by the ECHR (see Judgment no. 1 at [195]). In this scenario, it will not be enough for central government simply to continue to take the steps it had already been taking up until that point. Given that illegality is about to arise or has arisen, the presumption must be that central government will take all steps available to them. CA 1989 imposes absolute duties, so all possible steps must be taken to achieve legality.

51 However, the only firm commitment in the current draft ERP is to engage with other local authorities. There is no assessment of whether such engagement will make any significant change to the effectiveness of the NTS. It is difficult to believe it will have an effect when: (i) engagement with local authorities is required at the previous trigger points, and (ii) central government claims it has been encouraging compliance with the

NTS for years. It is also said in the draft EPR that consideration will be given to increased incentivised funding. But that is not a firm commitment and is unlikely to result in urgent action in light of the timescales for decisions about funding.

52 What is required are concrete steps, such as:

(a) a commitment to increased incentivised funding at a level designed to achieve transfers in very short time periods;

(b) other penalties built into the NTS to ensure that delayed transfers are minimised;

(c) reducing the number of UAS children Kent CC is expected to accommodate long-term so that there is an increased number of short-term placements pending NTS transfer;

(d) implementation of the provisions in the 2023 Act to ensure that local authorities can be compelled to receive transfers and that children can be accommodated by central government in the meantime.

53 Alternatively, at the very least, there is a need for a plan for actions that have an estimated specific effect so that the effect of actions can be linked to predicted demand. Such an approach would reflect [55] of the Court's decision in Judgment no. 3. However, what is proposed in the current draft of the ERP is far from this. Essentially, all central government is suggesting is that it will encourage improved performance in circumstances where current performance is inadequate. As noted above, no assessment of whether such engagement will make any significant change to the effectiveness of the NTS has taken place.

54 Kent CC therefore submits that I should make an order requiring the Secretaries of State to "set out concrete steps which will be taken to alleviate Kent's position and are either all possible steps or can be demonstrated to have necessary results, if Trigger Point 4 is reached".

The Home Secretary

55 In her written submissions dated 27 March 2024, Ms Clement KC for the Home Secretary said that it was welcome that the revised draft ERP removed any reference to a trigger point when Kent CC "reasonably considers that it cannot safely discharge its duties under CA 1989 to a UAS child"; removed any suggestion that the search for placements should be subject to a geographical limit; and acknowledged that Kent CC owed a duty under s. 20 CA 1989 upon being notified of a child's arrival at port (and not merely once the child had been assessed by Kent CC at port).

56 As to the points in dispute, the Secretaries of State submit that the ERP must be understood in the context of the Action Plan, the funding arrangements between Kent CC and the Secretaries of State and the improvements to the NTS. The trigger points in the proposed ERP are defined by reference to Kent CC's ring-fenced capacity, which does not include the additional placements which it is open to Kent CC to purchase in the private market. Potentially up to £5.04 million of funding has been allocated by the Home Secretary to Kent CC for the purpose of purchasing such placements. Kent CC's

modelling should enable it to predict when it will need to purchase additional placements in the market.

57 The trigger points form an early warning system. The Secretaries of State suggest that Trigger Point 4 should be when Kent CC considers that it will be unable to identify any placements in the market to accommodate children after 72 hours. Trigger Point 4 provides for direct engagement by DfE Ministers with local authorities and Home Office Ministers with the devolved administrations. The Secretaries of State also indicated that "urgent consideration" was being given to the inclusion in Trigger Point 4 of additional incentivised funding above the level of £6,000 per UAS child, targeted at local authorities outside Kent to encourage urgent transfers under the NTS.

58 As to the definition of Trigger Point 4, the Secretaries of State submit as follows. Words such as "lawfully and safely" should be removed, because they may be seen as another attempt by Kent CC to qualify the absolute obligation to accommodate all UAS children in its area of whom it is notified. "Lawful placements in the external market in those demographic categories" should be replaced with "placements in the market for any additional children" because there does not need to be a match between the demographic category for which Kent CC has ring-fenced accommodation and the accommodation that is then provided in the external market. For example, if Kent CC has run out of supported accommodation (suitable only for 16 or 17-year olds), it could still place those 16/17-year olds in foster placements.

59 As to the measures proposed, Ministerial engagement is itself an exceptional measure and an indication of the seriousness with which central government is treating this issue. Urgent incentivised funding is also under active consideration. As to penalties, there is no obvious power to impose these. The Government is also considering reducing the number of UAS children Kent CC is expected to accommodate long-term, but this is unlikely to assist in the emergency situation identified at Trigger Point 4, as it will have a longer lead-in time. The Government has considered bringing into force the powers in ss. 16-20 of the 2023 Act, but has to date decided not to do so.

60 More generally, there is no claim against the Home Secretary that it would be unlawful to decline to include any particular measure in the ERP. It would go well beyond the current litigation to include any such measure. Kent CC's application for a mandatory order should therefore be refused.

ECPAT UK

61 In written submissions dated 5 April 2024, Ms Luh observes that the aim of the Action Plan is to ensure that Kent CC fully discharges its duties under the CA 1989 in respect of every UAS child. Kent CC's submissions suggest that it maintains the submission that it is only required to comply with its duties to the extent that it is safe to do so. There is no tension between that duty and the "due regard" duties in s. 11 of the CA 2004, which "cannot be detached from the statutory functions it is designed to secure": *Mohamoud v RB of Kensington and Chelsea* [2016] PTSR 289 at [63] and the cases cited at [7]-[11] of that judgment.

62 Seasonal fluctuations in numbers of UAS children arriving are foreseen and foreseeable. It is important that the trigger points in the Action Plan are not operated (whether overtly or inadvertently) as steps along the way to Kent CC justifying not discharging its CA

1989 duties. In a true emergency, Kent CC would have a power at common law and/or under s. 3(5) of the CA 1989 to provide accommodation if necessary to avoid a breach of Articles 2 or 3 ECHR. In Judgment no. 1, I accepted that the Home Secretary had such a power, and Ms Luh submits that the same applies to Kent CC.

Brighton & Hove CC

63 In written submissions dated 5 April 2024, Ms Harrison submitted that Trigger Point 4 should be unnecessary if the orders of the Court had been complied with. References to "emergency" in Trigger Point 4 should not be read as including seasonal fluctuations in demand. Brighton & Hove CC strongly oppose bringing the provisions of the 2023 Act into force.

Further supplemental written submissions

64 On 10 April 2024, I granted permission to Kent CC to respond briefly in writing to certain new points raised by ECPAT UK and Brighton & Hove CC in their written submissions.

Kent CC

65 In written submissions filed on 12 April 2024, Mr Southey argued that:

(a) Unlike the Home Secretary, Kent CC has no emergency power to accommodate UAS children, so using unregulated accommodation is not permissible.

(b) The Court should decline ECPAT UK's invitation to determine whether Kent CC's duties under the CA 1989 are limited by reference to other duties (notably under the ECHR). This is an important point which should only be decided in a properly pleaded claim. Alternatively, there would need to be a further oral hearing.

(c) There are plainly circumstances in which Trigger Point 4 could be reached.

The Home Secretary

66 On 19 April 2024, I granted permission to the Secretaries of State to file further brief responsive submissions on the question whether Kent CC has an emergency power to accommodate children in unregulated accommodation. Those submissions were filed on 24 April 2024.

67 The Secretaries of State agree with Kent CC that Kent CC has no common law power to accommodate looked after children outside of the placements described in s. 22C of the CA 1989. Kent CC is a creature of statute and its powers are limited to those conferred by statute. Section 3(5) of the CA 1989 does not confer power on Kent CC to place looked after children in accommodation outside of s. 22C of the CA 1989 because that power is expressed to be subject to the specific provisions of the CA 1989. However, Kent CC does have power to place a child in a placement not listed in s. 22C(6) of the CA 1989 in an emergency where that is necessary to avoid a breach of the operational duties under Article 2 and/or 3 ECHR, as given effect by s. 6 of the Human Rights Act 1998 ("HRA 1998"): see *Derby City Council v BA and others (No 1)* [2021] EWCA Civ 1867; [2022] Fam 351 at [42]-[46], [75] and (by analogy) [82]-[85].

68 However, the Secretaries of State would not wish to encourage Kent CC to place a child in accommodation other than that listed in s. 22C of the CA 1989. The use of s. 3 of the HRA 1998 could be justified only in a true emergency situation, where no accommodation listed in s. 22C(6) is available, in circumstances of imperative necessity, and for the shortest time possible to avoid a real and immediate risk to like and/or a risk of ill-treatment of a child contrary to Article 3 ECHR. That situation could arise only where: Kent CC has taken all possible and practical steps to find alternative age-appropriate accommodation that does not fall within s. 22C(6) – i.e. approved foster placements, registered children's homes or supported accommodation with a registered accommodation provider – and no such accommodation is available; the actions at each trigger point have been taken, so that all practicable steps have been taken to transfer the child under the NTS; and the child would either be street homeless or would remain at the Kent Intake Unit for anything more than a very short period of time.

Brighton & Hove CC

69 Brighton & Hove CC filed further submissions, for which no permission had been given, on 30 April 2024. These supported the positions of Kent CC and the Secretaries of State that there is no general power under s. 3(5) of the CA 1989 to accommodate UAS children and endorsed the position advanced by the Secretaries of State that Articles 2 and/or 3 ECHR would *in extremis* confer power and indeed impose a duty to provide accommodation to prevent a child from being subject to harmful conditions, whether of detention or street homelessness. But this power/duty applies only *in extremis* and cannot be used simply to respond to seasonal or weather-related fluctuations in small boat crossings. To accept that such circumstances triggered the human rights power would be contrary to Judgment no. 1, [201]-[205] and subsequent orders and would be inconsistent with the "systems duties" owed under Articles 2 and 3 ECHR.

Evidence as to Trigger Point 4 being reached

70 On 24 April 2024, I received a witness statement from Alex Stringer, the Assistant Director of Kent CC's UAS children's service. This was to inform me of the operation of the trigger points in the period while certain aspects of the ERP were under consideration by the Court.

71 This statement makes clear that Kent CC notified the Home Office that Trigger Point 4 had been reached at 9.30am on 29 March 2024. Action taken by central government in response generated 75 additional placements for UAS children, on top of those which had been received in response to Kent CC's own requests for assistance under s. 27 of the CA 1989. All UAS children were safely and lawfully accommodated.

72 Further notifications were made that Trigger Point 4 had been reached on 15 April 2024 and 23 April 2024. A meeting was arranged for 30 April 2024.

Discussion

The justification for the remedial course taken in these proceedings

73 The relief I have granted in this case has been very unusual. In Judgment no. 2, on 1 September 2023, I said this:

"11. A question arose about whether to list a further hearing. The normal position in judicial review is that the court determines the issues before it and then decides what relief to give on one occasion, at which point it is *functus officio*. The consequence is that, if unlawful conduct identified in the judgment continues after the court's order, the court can do nothing about it, unless and until a further judicial review claim is brought by the same or another claimant. That further claim will require permission to proceed.

12. There are sound reasons why departures from this normal position should be rare. Even where the court has found that a public authority has acted unlawfully, the public authority can in general be trusted to comply with the judgment. This flows from the principle, recognised in other contexts, that public authorities are 'engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law': *R (Horeau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 1508, [20].

13. Moreover, the courts have deprecated a 'rolling' approach to judicial review, in which fresh decisions arising after the original challenge are sought to be challenged by way of amendment: see e.g. *R (Dolan) v Secretary of State for Health* [2020] EWCA Civ, [2021] 1 WLR 2326, [118]. In general, an allegation that unlawful conduct has continued after a judgment will involve factual allegations distinct from those underlying the original claim. Such allegations should ordinarily be pleaded. The requirement for permission acts as a safeguard, protecting public authorities from the considerable resource implications of having to defend allegations that are not reasonably arguable.

14. There will be rare occasions when a departure from this approach is justified. Where the power in s. 29A(1)(a) to suspend a quashing order is exercised, it may be necessary to hold a further hearing to check that the conditions for suspension have been complied with and to determine whether the suspension should be extended. However, even before the introduction of the power to make suspended quashing orders, there were circumstances in which the court exercised its remedial jurisdiction in such a way as to allow it to monitor the action taken by a defendant to comply with its judgment.

15. One example is *R (ClientEarth) v Secretary of state for the Environment, Food and Rural Affairs (No. 3)* [2018] EWHC 398 (Admin). In that case, Garnham J explained at [12]-[17] that, despite the substantial progress made, there was a continuing failure by the government to comply with its legal obligation to reduce air pollution. He did not doubt the government's good faith or sincerity, but noted that 'the history of this litigation

> demonstrates that good faith, hard work and sincere promises are not enough'. Rather, the court 'must keep the pressure on the government to ensure the compliance with the regulations and the Directive is actually achieved'. Garnham J recognised that the insertion of a liberty to apply avoided the need to obtain permission should the order not be complied with and that there was 'great value in the healthy discipline that is provided by the Administrative Court procedures in managing and regulating the grant of judicial review in this court'. Nonetheless, there was a justification for a liberty to apply, given that 'we have an expert claimant, which to date has advanced only what are properly arguable claims, and which has demonstrated both high level expertise, legal and technical, and a responsible attitude towards making a claim'.
>
> 16. The present case has many of the same features. Kent CC has known that it is acting unlawfully for some time. The first report from its monitoring officer to the effect that its refusal to accept newly arriving UAS children into its care was unlawful was on 2 September 2020. There was a second such report on 10 July 2021. Despite this, the unlawful failure to accept all UAS children continued for more than 2 years, having been formalised in the Kent Protocol in September 2021. The history of this litigation shows that an impasse was reached where Kent CC and the Home Secretary each blamed the other for this unlawful state of affairs. Moreover, the breach of duty identified has had, and is continuing to have, very serious consequences, felt by identifiable children, who are not looked after by any local authority, as they should be. And, as in *ClientEarth*, the litigation has been responsibly and proportionately conducted by expert claimants (ECPAT UK and the local authorities) which have thus far assisted the court by limiting themselves to moderate and properly arguable submissions."

74 At that stage, of course, Kent CC's claim in respect of the operation of the NTS had not yet been heard. It generated further complex relief, which the Court had to supervise. Initially, all parties accepted that further relief should be granted and welcomed the Court's continued supervision of that relief, although there have from the outset been disputes about the precise form of the relief. However, we have now reached the point at which both the principle of continued supervision and the issues capable of being covered by it are contentious.

75 I have set out what I said in Judgment no. 2 because it is important to have firmly in mind the exceptional nature of the remedies granted in this case. There were two main reasons why it was necessary and appropriate for the court to continue to supervise compliance with its orders. First, the unlawful state of affairs which was the subject of my Judgment no. 1 placed at serious risk of harm a large number of vulnerable children. Second, this state of affairs could not be remedied by any one public authority; it required concerted action by two, each of which had spent a considerable time blaming the other. There was

a serious risk that, without continued supervision, the impasse would continue, to the detriment of the UAS children arriving in Kent.

The issues to be determined in these proceedings

76 The issues the subject of these proceedings have ballooned well beyond those pleaded in the original claims. In particular, a dispute has now arisen as to whether, and if so in what circumstances, Kent CC has an emergency power under s. 3(5) of the CA 1989 or s. 6 of the HRA 1998 to accommodate children in placements of a kind not listed in s. 22C(6) of the CA 1989. That raises a new set of legal issues, which may have to be determined at some stage.

77 I can understand why the parties have raised these issues, given the prospect of increasing numbers of UAS children arriving over the summer and the closure in January 2024 of the last hotel for UAS children operated by the Home Secretary. In my judgment, however, they are better addressed in a separate claim if and when the situation on the ground makes such a claim appropriate. That way, Kent CC will have the benefit of a properly pleaded case, supported by evidence, to which it can respond; and the Court will be able to consider those issues against a concrete factual background. No doubt the answer will take into account the conclusions I have drawn as to the powers of the Home Secretary in Judgments nos 1 and 3, but will also have regard to the differences between the Crown and a local authority whose powers are exclusively derived from statute and which is subject to specific statutory constraints in the CA 1989. It would not be appropriate to circumvent the usual procedure by attempting to resolve these potentially difficult issues here.

78 The issues to be determined at this stage accordingly fall into three categories: first, those relating to the definition of Trigger Point 4 in the ERP; second, those relating to the actions to be taken by the Home Secretary when that point is reached; third, the adequacy of the NTS Plan. In relation to each category, I have considered whether any further relief is required and whether it is appropriate for the Court's supervision of that relief (or of the relief granted to date) to continue.

The issues concerning the definition of Trigger Point 4

79 These issues have narrowed considerably since the hearing. It is, however, worth saying a little about the principles against which the remaining issues fall to be determined.

80 As I said at [159] of Judgment no. 1:

> "Kent CC was… acting unlawfully, in breach of its duties under the CA 1989, by failing to accommodate, and then look after, all UAS children when notified of their arrival by the Home Office. This is because newly arrived UAS children are necessarily children in need to whom the section 20 duty is owed; and because it is well established that the duty is absolute and non-derogable and applies irrespective of the resources of the local authority."

81 It has been a consistent theme of Kent CC's submissions, repeated at every hearing before me, that it is also subject to other duties, in particular the duty to operate a system that is

safe for children already in its care; and that it may sometimes have to choose between discharging its s. 20 duty and discharging these other duties, in particular those under s. 11 of the CA 2004.

82 It is important to be clear what it means to say that the s. 20 duty to accommodate and look after all UAS children when notified of their arrival by the Home Office applies "irrespective of the resources of the local authority". It means not only that the duty applies irrespective of any lack of funds, but also that it applies irrespective of the number of placements or social workers or other staff the local authority has available. As a matter of law, non-compliance with the duty is not justified or excused by resource constraints of any kind.

83 Kent CC has in the past issued what it calls "s. 11 notices" to indicate that it can no longer safely accommodate children. It is unclear what legal effect Kent CC thinks these notices have, given Mr Southey's concession that they do not render lawful a breach of s. 20 duty. It is important to be clear that these "s. 11 notices" have no apparent statutory basis. Section 11 of the CA 2004 does not attenuate or qualify the s. 20 duty. Rather, it imposes an obligation to make arrangements for ensuring that Kent CC's "functions" are discharged having regard to the need to safeguard and promote the welfare of children. "Functions" here means Kent CC's functions in respect of <u>all</u> UAS children. Nothing in s. 11 of the CA 2004 cuts down, or otherwise affects, what those functions are.

84 It is, therefore, to be welcomed that Kent CC now accepts that it would be impermissible for the ERP to make provision for what is to happen in the event of Kent CC considering that it is unable safely to perform its duties. As Ms Clement submitted, that would replicate the vice of the Kent Protocol, which was unlawful for the reasons set out at [161]-[169] of Judgment no. 1.

85 The current competing versions of the ERP both accept that the purpose of that document is to ensure that Kent CC can safely discharge its obligations vis-à-vis every UAS child, not to provide for what happens if it considers that it cannot. Subject to that, all parties agree that it is sensible for the ERP to set out an emergency response when Kent CC nears what it regards as its safe capacity; and all parties agree that action by the Home Secretary is essential to ensure that Kent CC can practically continue to discharge its absolute legal obligations.

86 That being so, the extent of the dispute between the parties is now relatively slight. I would make the following observations on the remaining issues:

(a) The rider proposed by the Home Secretary ("For the avoidance of doubt, this does not mean that Kent CC is able to decline to accommodate a child: Kent CC must take all steps to source placements outside of its ring-fenced capacity, including from other local authorities and from the external market") seems to me to be unnecessary, as long as the legal position is clear – as I have held it to be: a notification by Kent CC that Trigger Point 4 is reached does not affect its absolute legal obligation to accommodate and look after every UAS child notified to it.

(b) The wording should recognise that action by the Home Secretary is required <u>before</u> Kent CC is unable to discharge its duties, and with the aim of preventing that situation from arising, rather than once it has already arisen. It appears to be agreed that the appropriate timescale for Trigger Point 4 to be reached is 72 hours in

advance. This does not mean, however, that the Home Secretary should only be required to act 72 hours after Trigger Point 4 is notified. The whole purpose is to enable Kent CC to perform its duties, so the Home Secretary must take urgent action as soon as Trigger Point 4 is reached. The parties should agree wording which reflects this principle.

(c) Inclusion of the words "lawful" and "lawfully and safely" is liable to confuse, as is the reference to the availability of placements in the market "in these demographic categories". The wording should reflect the fact that not every placement is safe and suitable for every child. Some placements (eg foster placements) may be safe and suitable for every child; some may be safe and suitable only for children in a particular demographic group (eg 16 and 17-year old boys). If Kent CC thinks it is about to run out of ring-fenced provision which is safe and suitable for (eg) girls under 16, and believes it cannot source such provision in the external market, that should trigger the action specified from the Home Secretary. Again, the precise wording should be left to the parties.

87 In the light of the above observations, I expect a final version of the ERP to be produced. The further involvement of the Court should be unnecessary.

The actions which the ERP requires the Home Secretary to take when Trigger Point 4 is reached

88 In my judgment, there is force in Kent CC's submission that personal engagement by Ministers may not be enough on its own. It is therefore encouraging to see that serious consideration was being given to the inclusion of additional urgent incentivised funding as a further means of ensuring that Kent CC continues to be able to discharge its s. 20 obligations to all UAS children who arrive. I have, however, reached the view that there is no proper basis on which I could hold that the actions which the current draft of the ERP requires the Home Secretary to take are inadequate to fulfil its legal obligations under the orders I have made.

89 This should not, however, be taken by the Home Secretary as suggesting that it will be acting lawfully if subsequent events prove those actions to be inadequate. Both parties will have to keep the ERP under constant review, bearing in mind their joint responsibility for ensuring that Kent CC continues to be in a position to discharge its s. 20 duties. Although it may be hoped that further litigation is not necessary, this possibility cannot be ruled out.

The NTS Plan

90 In my judgment, there is force in one of the criticisms made of the Home Secretary's decision-making in relation to the NTS Plan. The 10 working day timeframe for referrals should be calculated as running from the point at which a child is referred into the NTS (rather than the point at which the child is referred to a receiving authority) to the point at which the transfer takes effect. This is the period referred to in the NTS Protocol. No adequate reason has been given for deviating from this approach. However, the Home Secretary can be expected to correct this point without the need for any further relief. Subject to that point, I do not consider that the totality of what has been done by the Home Secretary discloses a breach of the obligations in [55] of my Judgment no. 3 at this stage.

91 The obligations set out in [55(c)] were to:

> "model (based on the terms of the final arrangements concluded between Kent CC and the Home Secretary) the speed and quantity of NTS transfers likely to be required to ensure that no UAS children are accommodated in hotels".

92 That obligation has to be read together with what was required in [55(d)], namely, the making of:

> "arrangements to ensure that transfers take place in line with what is required to eliminate permanently the use of hotels to accommodate UAS children (whether through incentives offered to receiving authorities or through a dispute resolution and/or enforcement procedures or otherwise)".

93 These obligations were not specific as to the precise nature or method of the modelling to be undertaken, nor as to the arrangements to be made to achieve the stated purpose.

94 Kent CC's latest evidence suggests that the numbers of UAS children arriving have already caused it to notify the Home Secretary that Trigger Point 4 has been reached on more than one occasion. That suggests that refinements may well have to be made to the NTS Plan. But the time has come for decisions as to such refinements to be subject to the ordinary constraints of public law, rather than the complex remedial regime thus far imposed in these proceedings.

Conclusion

95 For these reasons, I have concluded that no further relief is required. I will give separate directions for the resolution of any remaining issues as to costs.