



Neutral Citation Number: [2026] EWHC 1190 (Admin)

Case No: AC-2025-BHM-000404

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

Birmingham Civil and Family Justice Centre
Priory Courts, Birmingham, 33 Bull Street, B4 6DS

Date: 18th May 2026

Before:

THE HONOURABLE MR JUSTICE KIMBLIN

Between:

THE KING
(on the application of BEA)

Claimant

- and -

STAFFORDSHIRE COUNTY COUNCIL

Defendant

The **Claimant** appeared in-person

William Horwood (instructed by **Staffordshire County Council Legal Services Department**) for the **Defendant**

Hearing date: 15th May 2026

Approved Judgment

This judgment was handed down remotely at 2:30 pm on Monday 18th May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE KIMBLIN

Mr Justice Kimblin:

INTRODUCTION

1. This claim for judicial review arises from the Defendant's placement of the Claimant's son ('Child X') with his paternal aunt between 25th August 2025 and 23rd February 2026. Child X was the subject of an interim care order pursuant to s. 38 Children Act 1989 ('the 1989 Act').
2. At the time that HHJ Wall granted permission on ground 1(2) and ground 5, on 12th February 2026, Child X was in the care of his paternal aunt. HHJ Wall expedited the hearing because the grounds on which she granted permission questioned the legality of that placement under regulations which control and regulate the placement of children: the Care Planning, Placement and Case Review (England) Regulations 2010 ('the 2010 Regulations'). In short, the placement with the paternal aunt exceeded the time limit under the 2010 Regulations.
3. However, on 25th February 2026, the paternal aunt brought the placement to a halt in difficult circumstances. In subsequent applications and hearings, the continued usefulness of the proceedings was brought into question. The Defendant contends that these proceedings are not appropriate to determine the issue of law. I shall therefore set out sufficient of the factual and procedural background to explain the legal issue and the factors which are relevant to whether it should be decided. I will then turn to whether or not this is an appropriate case to decide the legal issue.
4. In advance of the hearing, I was provided with a suitable hearing bundle and skeleton arguments from each party and a list of suggested reading. I read those documents and the relevant statutory and case materials.
5. At the hearing this morning, the Claimant asked that her sister should be permitted to sit beside her for support. The Claimant's sister did not seek to speak on the Claimant's behalf. I observed that the Claimant had a written address which she wished to read, but did not seem to have a copy of the hearing bundle or any other papers. I asked about this and offered to ensure that the Claimant had access to any document which she felt she needed because I was concerned that she was at an evident disadvantage without the papers. The Claimant said that she simply wished to read the speech which she had prepared.
6. There was an intervention from a gentleman at the back of court. I was told his name which I do not record in order to avoid the risk of linked identification of the Claimant and her son. I shall call him Mr R. whose participation as a McKenzie Friend had been refused by Steyn J. at the renewal of the application for permission. Mr R's only contribution was to prompt the Claimant to read her statement and to ask for permission to appeal.
7. I return to the way in which the Claimant's case was presented, below.

BACKGROUND

Facts

8. Child X has four sisters and two brothers. One brother has been adopted and the second is in an independent foster placement. The four sisters have been placed with the maternal aunt who is an approved foster carer. The statement of facts records that the Defendant was aware that Child X's siblings were living together in a stable placement and that relationships were maintained with both mother and siblings.
9. There were four relevant stages to Child X's foster care. Firstly, he was placed with his paternal aunt during 2022-23 during which time it is said that there were recorded concerns. Secondly, there was a change of arrangements to an independent foster placement which came to a conclusion on 13th/14th March 2025. There was an incident in the home which resulted in the carer terminating the placement. The Summary Grounds of Defence state that because of the nature of the issues which caused the placement to breakdown, a further professional placement could not be found at short notice. So, thirdly, Child X was re-placed with his paternal aunt. These proceedings are concerned with the legality of this second placement with the paternal aunt, which concluded, as I have said, on 25th February of this year.
10. The fourth and current stage of care is that Child X has now been placed with a foster carer, with whom he remains at today's date. The reason for the termination of the placement with the paternal aunt is given in the evidence of Donna Thompson, District Lead social worker.
11. Armed officers attended the paternal aunt's home. Child X's father was at the home, albeit there was no reason for him not to be there, and no firearm was located. The Defendant believes that it was the Claimant who called the police, on the basis that a social worker employed by the Defendant has been told by the police that a text message was sent by the Claimant to Child X's father saying words to the effect of "police will be at your door soon." The Defendant understands that the police have arrested the Claimant for harassment of Child X's father and that she is currently on bail. There was a similar incident in September 2025. Given these incidents, the paternal aunt no longer felt able to care for Child X.

Proceedings

12. There were orders in the Family Court, made in June, July, September, October and December 2025. During this period, the Claimant issued her first judicial review: Claim No AC-2025-BHM-000203. HHJ Tindal refused permission on 4th July 2025. HHJ Tindal noted that the N461 form identified the Claimant's counsel as Mr R and as the author of the four grounds of review. On the fourth ground, the judge observed:

“Finally, the fourth ground – unlawful refusal of advocacy support – is also not arguable. In one of the few Defendant authority documents included in the bundle, the social worker recorded that: “It is agreed that [Mr R] will not have any involvement in the children's care or plans. [Mr R] does not hold [Parental Responsibility] for either child and will not be given any information in relation to the children or parents own

personal circumstances. The Local Authority hold a Care Order for [X...] and will take legal action to safeguard the children and by association parents from any breaches of any confidential information. Outcome: [Mr R] putting his own views and perspectives onto parents will not be tolerated and legal advice may be sought to obtain any necessary orders, to prevent any slander which diverts the focus away from the children and into adult issues. The focus is on the children's welfare only.

The Claimant has no legal right to the lay advocate of her choice in care planning procedures, especially if the local authority considers the chosen advocate is obstructive and undermining that process, as the Defendant authority clearly considers Mr R is. Even if he or the Claimant strongly disagree, that contested factual issue is inappropriate for judicial review. Given the Claimant's impairment, perhaps a trained Mental Capacity Advocate should be considered. However, again, that is not an appropriate issue for judicial review.

Finally, there may be some force in the Defendant authority's concerns about Mr R, since from his own notes, he appears to have audio-recorded meetings (it is unclear whether with consent or not) and adopted a legalistic and combative stance, plainly at odds with the consultative approach appropriate for care planning.

Moreover, he has presented four unarguable challenges about that process to the Administrative Court, including a complaint about his own status which a professional lawyer would probably have considered rendered him as having a conflict of interest with his client.

For these reasons, in my view, Mr R is inappropriate to support the Claimant as even a McKenzie Friend at any reconsideration hearing at this claim, let alone to conduct the litigation for her, which may well be unlawful (unless of course, he can provide evidence of his regulatory authorisation to do so). In short, the arguments apparently presented by Mr R on behalf of the Claimant are not arguable, so I will refuse permission for her to claim judicial review.

However, I refrain from certifying them totally without merit, in case with proper and professional support and expert advice, she has arguable challenges to the Defendant's decision-making that do not have an alternative remedy in the Family Court. Since the local authority has not been troubled with responding on permission, there will be no order for costs. Of course, that may change if they are required to respond because the Claimant seeks oral renewal of her permission application."

13. This claim was issued on 16th December 2025. The Claimant applied for interim relief. HHJ Rawlins found that the application fell at every hurdle which such an application is required to clear. He certified it as totally without merit.

14. On 12th February 2026, HHJ Wall granted permission on limited grounds, as I have indicated in paragraph 2 above, observing:

“(7) Ground 1(2) is a specific challenge to the lawfulness/legality of the placement continuing after expiry of the extension period provided by regulation 25 of the Regulations. This circumstance post-dates the decision in AC-2025-BHM-000203 and relates to continuing conduct. Further, the claim was brought promptly after the Claimant became aware that the extension period had expired. The Defendant does not dispute that the placement is unregulated. The summary grounds of resistance do not suggest any statutory basis for the continuation of the placement after expiry of the extension period but rather suggest mitigations and considerations that address the welfare of Child X. In light of the mandatory wording of regulation 25(2) and (6) of the Regulations I am satisfied that Ground 1(2) is arguable (though not the remainder of Ground 1 for the reasons above)

(8) If the lawfulness/legality of the continuation of the placement is arguable, it follows that Ground 5 is similarly arguable because the qualified nature of Article 8 is such that interference with Article 8 rights by a public authority must be lawful.”

15. In granting permission, HHJ Wall gave a warning to the Claimant and Mr R reminding them of the observations made by HHJ Tindal with respect to the prohibition on a non-qualified lawyer conducting reserved legal activities (litigation) on her behalf.

16. On 19th March 2026, HHJ Kelly considered the Claimant’s applications to preserve the status quo of the child’s current placement and for disclosure. The Judge appreciated that the underlying claim had now changed significantly because Child X was no longer cared for by the paternal aunt and so she ordered:

“The parties will be expected to address the Court at the start of the substantive hearing as to whether it is appropriate for the Court to hear and determine the claim in light of the child now having been removed from the contentious placement with the paternal aunt.”

17. The Judge found both applications to be totally without merit. She did not make a civil restraint order, observing:

“The Court is obliged, on finding an application is totally without merit, to consider whether it is appropriate to make a civil restraint order: CPR 23.12. It is noted that today’s findings

are the second and third totally without merit findings within these proceedings. By order dated 18 December 2025, HHJ Rawlings dismissed the Claimant's earlier application for interim injunctive relief as totally without merit. Whilst the Claimant's actions cross the threshold for persistence, the Court is not today going to exercise its discretion to make any form of civil restraint order. As both of the current applications have been disposed of on the same occasion, the Claimant has not had the opportunity to reflect on her litigation conduct. However, the Claimant is warned that if she continues to pursue totally without merit applications (or indeed claims), she is at high risk of a civil restraint order being imposed. The Claimant is strongly advised to seek professional legal advice from a regulated provider as to her conduct of this claim"

18. On 8th May 2026, there was a renewal hearing before Steyn J. She refused permission on the renewed application, leaving the position as it was before HHJ Wall. At that hearing, Mr R applied to address the court as a McKenzie Friend, which Steyn J. refused.

THE ISSUES OF LAW

19. The issues are:
- a) Following Child X's removal by the Defendant from the disputed placement on 23rd February 2026, is this claim now academic or hypothetical, such that the court either should not determine it or should not exercise its discretion to determine it?
 - b) Was the Defendant's maintenance of the disputed placement between 25th August 2025 and 23rd February 2026 unlawful, whether on the illegality ground and/or the Article 8 ground?
 - c) If the Defendant's maintenance of the disputed placement between 25 August 2025 and 23 February 2026 was unlawful on either or both grounds, should the court nevertheless refuse to grant relief pursuant to section 31(2A) of the Senior Courts Act 1981 (hereafter "the 1981 Act") on the basis that it is highly likely that the outcome for the Claimant would not have been substantially different had the conduct complained of not occurred?
20. The core of the legal issue is the interpretation of Regulation 25(6) of the 2010 Regulations, which provides as follows:

"If the period of temporary approval and of any extension to that period expires and the connected person has not been approved as a local authority foster parent in accordance with the Fostering Services Regulations, the responsible authority

must terminate the placement after first making other arrangements for C's accommodation."

21. The temporary period is limited to 16 weeks: Regulation 24(1) of the 2010 Regulations.
22. The Defendant's case is that the legislative history and application of s. 3 of the Human Rights Act 1998 render that which is apparently mandatory in Regulation 25(6) to be discretionary.
23. The predecessor regulations include the Fostering Services Regulations 2002 which were the subject of a decision by Hedley J. *Re W and X (Wardship: Relatives Rejected as Foster Carers)* [2003] EWHC 2206 (Fam), [2004] 1 FLR 415 at [14], as follows:

"An outcome that suggests that the effect of the regulations is to thwart the court's duty under s 1 of the Children Act 1989 begs the question whether the regulations are ultra vires. Although that point was raised in argument, it was not pursued and I express no view on it beyond saying that it is a matter of concern. In the light of numerous inquiries it is not surprising that the regulations are as strict as they are. Whether they were actually intended to have this effect, I do not know. One might perhaps regret that the power of the court to disapply the regulations was not included in these regulations as it had been in their predecessor, after, of course, due diligent enquiry by the court."

24. Mr Horwood, who appeared for the Defendant, submits that s. 3 Human Rights Act 1998 provides the implied power to disapply the 2010 Regulations in appropriate case after diligent enquiry. To hold otherwise yields a result via which there is an obligation to remove a child from a placement which meets his needs and is in his best interests. That would be flatly contrary to duty under s. 1 of the 1989 Act to consider the best interests of the child.
25. Essentially the same points are the Defendant's answer to the Article 8 ECHR ground. In the event that the 2010 Regulations cannot be read as providing the family court with an implied power to disapply the 2010 Regulations in an appropriate case after due diligent enquiry by the court, the 2010 Regulations are both incompatible with Article 8 ECHR and ultra vires the 1989 Act as the enabling statute.

SHOULD THE ISSUE BE DECIDED?

Relevant authorities

26. The court will only determine a hypothetical question if there is a good reason in the public interest, and will treat any invitation to do so with caution: *R v Secretary of State for the Home Department ex parte Salem* [1999] 1 AC 450 at page 456 per Lord Slynn; *R (Williams) v Secretary of State for the Home Department* [2015] EWHC

1268 (Admin) per Hickinbottom J., as he then was, at [55], upheld at [2017] EWCA Civ 98; *R (Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin) at [68] per Lloyd Jones LJ (as he then was) and Jay J.

27. In *Salem's case* Lord Slynn gave an example of an academic case which might warrant consideration of the court, namely if there were a short point of construction on which many other cases also depended.
28. A factor in whether to decide a theoretical case is its suitability. Is it an appropriate vehicle for providing guidance to be applied in other cases?: *R v BBC ex parte Quintavelle* (1998) 10 Admin LR 425, Lord Woolf MR (with whom Aldous and Chadwick LJ agreed).
29. The Administrative Court Judicial Review Guide (August 2025) refers to academic claims as a class of cases which it is inappropriate to determine. It provides [at 6.3.4.1] that where a claim has become academic since it was issued, it is generally inappropriate to pursue the claim: *R (Gardner) v Secretary of State for Health and Social Care* [2022] EWHC 967 (Admin) at [139].

The Arguments

30. Mr Horwood submitted that this case is not one in which the court should exercise its discretion to hear the claim. There is no relief that can be granted which would be of value to the Claimant. In any event, relief would have to be refused pursuant to s. 31(2A) Senior Courts Act 1981.
31. The Claimant submits the issue is capable of repetition:

“... if the Defendant is right, a local authority may continue a placement it itself recognises as unregulated after Regulation 25 expiry if it later says welfare justified doing so. That is not academic.

53. Nor is academicity a proper route to avoid deciding a contested point of statutory legality where the Defendant asks the Court to approve its conduct as lawful and where the issue concerns the statutory safeguards applicable to a looked-after child under 16.”

A case which it is inappropriate to decide

32. I have formed a clear view that it is inappropriate to interpret Regulation 25 of the 2010 Regulations in this case and inappropriate to decide the grounds for which permission was granted. My reasons are as follows.
33. First, if the Claimant succeeded in her arguments, there is no relief which the court could grant which would affect the situation about which she was concerned. That situation came to an end in February of this year. The answer to the legal questions posed by the case would be answers to theoretical questions.

34. Second, the authorities are clear and long-standing that the discretion to determine such theoretical questions is to be exercised with caution. The House of Lords in *Salem's case* makes that clear and the position has been applied and refined in the Court of Appeal and Divisional Court. The authorities point away from undertaking the theoretical exercise without good reason in the wider public interest.
35. Third, I have no evidence that there is a particular need to provide an interpretation of the disputed regulation. There is no list of cases which wait for an answer to a legal issue.
36. Fourth, this case is a poor vehicle to determine the question at issue. It was evident to me during the hearing that the Claimant struggled with the process in which she is engaged. She did not have the papers before her and she limited her oral input to a short statement. For a matter of interpretation to be decided which may have wider application, the court is assisted by adversarial argument. I was assisted by Mr Horwood's argument but it was, of course, one-sided. That is not a sound footing on which to base a decision and should be avoided if possible.
37. I formed the strong impression that Mr R was the driving force behind the claim, not the Claimant. I am unable to make a finding to that effect, but that is a concern which I have. It is supported by the observations made by social workers. It is supported by the observation of HHJ Tindal which I cite at paragraph 12 above. It is supported by the intervention made at court during the hearing before me.
38. I am unsure about the origin of the written materials which are relied upon by the Claimant. As I cite above at paragraph 31, the term used is 'academicity'. I had not ever read that word until this week when, coincidentally, I heard an oral renewal for permission in which the claimant's case was said to be academic. The claimant in that case appeared in person and submitted a document which was formatted in just the same way as the Claimant's skeleton argument in this case, and included the same word: 'academicity'. It caused me concern that I was dealing with AI-generated material. As the authorities which I cite explain, the discretionary question of whether to decide the legal issue is to be exercised in a particular way. The basis of the Claimant's written submissions is not known and I am sceptical about it. The court has to have confidence in the research and comprehension of the legal authorities which underpin a submission. My concern that AI has contributed to the written argument without reference to the key authorities may be ill-founded. Nevertheless, I am not prepared to decide a theoretical case on a matter of statutory interpretation in the circumstances which I have indicated.
39. For these reasons, and as anticipated and warned by HHJ Kelly, I decline to decide the grounds for which permission was given but which have been overtaken by subsequent events.

CONSEQUENTIAL MATTERS

Costs

40. Costs follow the event. Further, the Claimant was warned by HHJ Kelly about the theoretical nature of the claim post February of this year. That warning was not heeded. It was ignored.
41. I have kept at the front of my mind that the Claimant found it difficult to appear at this hearing. If I had thought that there was something which could and should have been said on her behalf on the question of costs, I would have raised it. However, there is nothing that strikes me as being available to the Claimant to help her in saving the costs position in which she now finds herself.
42. I have similarly given consideration to the costs schedule with a view to whether there could be anything which is properly arguable which might reduce the quantum. On the contrary, I found a schedule which was reasonable in the light of the work which was generated by the Claimant. The Council's solicitor was charged a reasonable rate (£60/hr). The only adjustment to make was to reduce the time for the attendance at the hearing, which adjustment I have made (by £240).

Permission to appeal

43. The Claimant asked for permission to appeal. Whether to determine the legal issues is a matter of judicial discretion on the facts of the particular case. If on receipt of my judgment, the Claimant wishes to renew her application for permission to me, then I will consider that in accordance with the directions on my order.

Civil Restraint Order

44. HHJ Kelly drew back from making a civil restraint order when she determined the applications in this case to be totally without merit but gave a strong warning. It was not heeded.
45. The case has now moved on and it is evident to me that the Claimant, driven by Mr R, is persistent in respect of this case. This case should not have been pursued. An application to withdraw the claim should have been made earlier this year. That would have been a reasonable application to make and on the basis of no order as to costs.
46. This court receives a substantial and increasing workload of public law cases. The receipts increased by 35% last year, and by similar amounts the year before. If litigants behave in the way which has occurred in this case, the demands on staff and the pressure on judicial resources has a serious adverse effect on access to the court by other parties. That is contrary to the public interest and the overriding objective. It is necessary to restrain that behaviour.
47. I have no reason to believe that restraint of the Claimant beyond this case is needed. I have made an order accordingly. I have no means of restraining Mr R. If I had, I would give serious consideration to doing so.

CONCLUSION

48. The claim is dismissed.