

Education law: Key cases from the last year

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Worcestershire County Council v SE [2020] UKUT 217 (AAC)

- i. Test for specificity: *“in relation to any particular statement is whether it is so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. Very often a specification of hours per week will no doubt be necessary and there will be a need for that to be done.” L v Clarke and Somerset at p.137B-C*
- ii. Context sensitive exercise
- iii. Lack of particularity may allow less specific provision; a more detailed case may require more detailed provision
- iv. Quantification in hours not always required
- v. Not all details need to be specified
- vi. Failure to specify a level of support after a particular date potentially unlawful
- vii. Need requirements rather than recommendations
- viii. Level of flexibility a matter for the Tribunal
- ix. Plan not just for the moment it’s made, but for the future. Absolute precision has costs: continual process of revision could be disruptive. EHCP must allow professionals sufficient freedom to use their judgment.
- x. Realistic and practical document
- xi. More flexibility where provision is for a special school.



London Borough of Redbridge v HO [2020] UKUT 323 (AAC)

How specific is ‘specific enough’? Practical considerations [21]:

- a) the statutory duties of the LA. The plan must provide must give the LA a clear picture of what it is required to provide.
- b) the EHC plan is a free-standing legal document setting out the LA’s duties
- c) Flexibility should not be used as an excuse for lack of specificity where detail could reasonably have been provided
- d) Nature of provision. Experts will provide a view
- e) Vague words such as ‘support’, ‘input’, ‘interventions’ and ‘opportunities”, when unadorned by specifics, are unlikely to be sufficient.



LB & DJ v West Sussex County Council

Procedural fairness: disruption caused by telephone evidence led to lack of effective participation in proceedings by expert witnesses.

Specificity:

- Appellants should identify all points of dispute, although Tribunal has a duty to identify and correct areas of the WD.
- “educational staff”, “school staff”, “other professionals” – specific enough?
- “opportunities”- key bugbear for the Tribunal



L, M and P v Devon County Council [2021] EWCA Civ 358

- Underlying issue: delay in amending an EHCP following a review (Regulation 22). Decision of High Court imminent!
- When should Court exercise discretion to hear academic claims? *Salem* test
- *“The parties were before the court. Eady J had given permission to apply for judicial review. She had explained why she considered that the claims were not academic. In the light of that, the parties incurred the costs of preparing for a hearing. R did not suggest in its skeleton argument for the hearing that the construction issue should not be decided because it was academic. Not only were the parties ready to argue the construction point, but they argued it fully at the hearing. The Judge accepted both that the construction point was a short point, and that it raised 'general issues of public interest'. Mr Broach told us that the Judge even indicated during the hearing that he would, in any event, give his view on the construction issue. The parties had expended time and money in preparing for, and attending the hearing, and precious court time had been devoted to the hearing. In those circumstances, the overriding objective would have been furthered by deciding the claims, and frustrated by declining to do so.”* [52]
- *“The dispute in this case is a pure issue of statutory construction. The issue potentially affects many children and young people who have EHC plans (and their parents), and the local authorities which are responsible for maintaining those EHC plans. Even R concedes that it is possible that the issue will arise again in the future between these very parties. The issue concerns a short period in a longer process, so it is unlikely ever to be live by the time an application for judicial review reaches a substantive hearing, and, therefore, unlikely to be decided unless in these claims. There are three cases before the court, and the facts of those cases are not in dispute. It follows that there are good reasons in the public interest for the claims to be heard.”* [55]



R (BA) v Nottinghamshire County Council [2021] EWHC 1348 (Admin) (20 May 2021)

- Judicial review- breach of duty under s. 42 Children and Families Act 2014
- Interesting on impact of pandemic , past breaches and remedy (declaratory and mandatory relief granted)
- HHJ Coe QC- No best endeavours defence in the legislation”
- *“I find that even if the defendant is entitled to a reasonable time to implement the provision and even in the context of a pandemic, one year is not a reasonable period of time. I agree...that the five week period built into the statutory regime is to allow preparation for implementation and the bulk of the programme should at least have been in place within that five year period.”*
- Declaratory and mandatory relief granted



JJ and SP V Hertfordshire County Council [2020] UKUT 200 (AAC)

- Upper Tribunal case- whether sufficient reasons were given for rejecting expert evidence and for finding that a school could provide a “low arousal environment”- discussion on whether it is possible to require a specialist unit within a mainstream school to be identified in Section F of EHC Plan.
- Approach to Section I
- Remedy- remitted it despite child having started in the school



A Local Authority v GP (Capacity – Care, Support and Education) [2020] EWCOP 56

- Mental capacity and decision-making re education
- COP case – HHJ Dodd- 29 September 2020
- Whether a 19 year old man with autism had capacity to request an EHC needs assessment under section 36(1) of the Children and Families Act 2014 and make decisions as to his education.
- HHJ Cobb outlined the “relevant information” for the purposes of the capacity analysis and made interim declarations that GP lacked capacity
- As a result, the local authority was obliged to carry out a needs assessment under Care Act 2014 (P’s refusal was not a reason not to do so).



Thank you

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