
GARDEN COURT
CHAMBERS

Community Care Law: The Year in Overview

Tim Baldwin, Garden Court Chambers
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20 January 2022

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Adult Social Care

Tim Baldwin, Garden Court Chambers

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R (BG) v Suffolk CC [2021] EWHC 3368 (Admin)

Two adult disabled brothers applied for judicial review of the Defendant's decision under the Care Act 2014 and the Care and Support (Eligibility Criteria) Regulations 2015 to withdraw funding for holidays and to cease direct payments for use in outings and recreational activities.

Care Act 2014, s 18 and part of Defendant's duty to meet disabled adults needs for care and support. "Support" had a broad meaning and could include a power to pay for costs of holidays or recreational activities,

If an eligibility assessment under the Act identified a need as arising from disabilities then that was a need which had to be met under the Act.

Also had the eligibility criteria not been met Defendant to fund recreational activities Defendant should have considered whether to exercise that power before deciding to cease all direct payments.

SoS for Justice v LA v C [2021] EWCA Civ 1527

C was 27 with a genetic disorder which caused developmental delay and difficulty with social communication. He was subject to a DOLS. In 2018 he expressed a desire to have sex and asked if he could make contact with a sex worker. He had capacity to consent to sexual relations and contact with a sex worker but not the arrangements himself.

Judge at first instance in the Court of Protection declared care workers would not commit an offence contrary to Sexual Offences Act, s 39. SoS appealed.

The Court of Appeal allowed the appeal and that care workers were at risk of committing an offence contrary to s39 and raises issues concerning:

1. Civil courts and declarations as to the meaning of statutes – doubtful whether CoP judge should have expressed a view.
2. Interpretation of s 39 – "causes" to be given ordinary meaning in criminal law. Judge's restrictive meaning reading in words wrong.
3. Art 8 and 14 LA argued this had to mean s 39 interpreted differently. But CoA held EctHR not recognised this and the issue concerned the balancing of protection. Parliament had struck the balance under s 39

The court held it was impossible to tell if judge had considered jurisdiction and judges had to be satisfied of that. Also, not demonstrated the Trust had considered this.

R(SH) v Norfolk CC [2020] 3436 (Admin) (18 December 2020)

The Claimant applied for judicial review of Norfolk's decision to change the basis on which it calculated the charges made in respect of care.

The Claimant was 24 with Down's syndrome with associated physical disabilities and severe learning disabilities. She had never been able to work and would unlikely to do so for the near future. She was reliant on welfare benefits and Norfolk provided support and it charged her according the means test Care Act 2014 s 14(7) where they could not levy charges causing income to go below a certain amount with certain disregards of earnings from employment and self employment. Norfolk introduced a new charging policy which reduced the minimum income guarantee and brought into account previously disregarded ESA and PIP daily living component. Claimant's charge went from £16.88 to £53.52 per week.

The court allowed the claim and held that this change discriminated against severely disabled people, contrary to ECHR art.14 read with Protocol 1 art.1. Severely disabled people were disadvantaged compared to disabled people who could earn money from work because earnings from employment or self-employment continued to be disregarded.

R(Lancashire CC) v SoS H v SC v JM, St H [2021] EWHC 268 (admin)

Lancashire applied for judicial review of the SoS's decision that JM was ordinarily resident in their area.

JM had sustained a serious brain injury in a RTA in 1990 when 5 years old. He had been living in accommodation in the Claimant's area which had been bought with funds, under the control of the deputy, from the damages award. No community care assessment had been made but in May 2010 agreed to move to a private Transitional Rehabilitation Unit in the area of St Helens. A dispute arose as to which Local Authority was responsible for funding JM at the Unit.

The issue was which one was responsible under the National Assistance Act 1948, s 24(5) and NHSCCA 1990 s 47 as to the deeming provision in s 24(5).

The court held SoS had not erred in deciding JM was ordinarily resident in Lancashire under the National Assistance Act 1948.

R. (on the application of Greenwich LBC) v Secretary of State for Health [2006] EWHC 2576 (Admin), applied.

R(Worcestershire CC) v SoS HSC [2021] EWCA Civ 1957

The SoS appealed against a decision as to which local authority was responsible for the cost of after-care services provided to a service-user (JG) under the Mental Health Act 1983 s.117(3).

- JG, who suffered from schizoaffective disorder, lived in a property owned by the respondent local authority, Worcestershire, from 2011. In March 2014, while ordinarily resident in Worcestershire, she was detained in hospital under s.3 of the 1983 Act. In April, it was decided that it was in JG's best interests for her to move to a residential placement closer to her daughter in Swindon.
- In July 2014, JG's period of detention ended and she was released to a care home in Swindon pursuant to s.117. At that time, she was still funded by Worcestershire. In February 2015, Worcestershire moved her to a home in Swindon which was better able to meet her needs. That placement was again funded by Worcestershire.

- In June, JG was detained in a hospital in Swindon. In August 2017, she was discharged to after-care services. A dispute arose as to where JG was "ordinarily resident" immediately before her second detention and which local authority should pay for her after-care services.

Worcestershire (2)

- The SoS was asked to determine that issue under the mechanism provided by the Care Act 2014 Pt 1 s.40(1). In accordance with his guidance issued pursuant to s.78 of the 2014 Act, the SoS held that JG was ordinarily resident in Swindon because that was where she was living immediately before her second period of detention. Swindon sought a review of that decision. The SoS reversed his decision and decided that JG was ordinarily resident in Worcestershire for "fiscal and administrative purposes", pursuant to the judgment in *R. (on the application of Cornwall Council) v Secretary of State for Health* [2015] UKSC 46, [2016] A.C. 137.

- In the judicial review judge concluded that Worcestershire's duty ceased by operation of law on JG's release from her second period of detention on the basis that s.117(2) and s.117(3) contemplated that one clinical commissioning group and one local services authority would owe the person described in s.117(1) the s.117(2) duty, and would become subject to that duty when it was triggered under s.117(1) by the person's discharge from s.3 detention and release from hospital.

- The SoS appealed.

Worcestershire outcome

The Court of Appeal allowed the SoS appeal:

- Following detention in hospital under the Mental Health Act 1983 s.3, the court considered the s.117(2) duty to provide after care and the place where the service-user was "ordinarily resident" for the purposes of s.117(3), as amended by the Care Act 2014. The court held that it was not appropriate to take the policy-driven approach set out in *R. (on the application of Cornwall Council) v Secretary of State for Health* [2015] UKSC 46, [2016] A.C. 137, namely to decide upon the place of ordinary residence on the basis of fiscal and administrative considerations. Whilst a policy-driven approach was justified in the statutory context under review in *Cornwall*, that was a decision on a different statute and there was no basis on which it could be read across to the different provisions of the Mental Health Act 1983.

- Accordingly, Worcestershire was the local authority with the duty to provide after-care services to JG

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Children's Social Care

Maria Moodie, Garden Court Chambers

20 January 2022

R. (on the application of AR (A Child)) v Waltham Forest LBC [2021] EWCA Civ 1185

Systemic challenge to the LA's arrangements for providing secure accommodation to children who would otherwise be detained overnight in a police cell

- Pursuant to s.21(2)(b) CA 1989 a LA has a discretion (not an absolute duty) to provide *secure* accommodation. There is requirement that a LA has a reasonable system in place to respond to police requests for secure accommodation under s.38(6) PACE

- Divisional Court dismissed the claim on the basis that it involved a complaint about the nationwide lack of secure accommodation due to the absence of funding by central government.

- Appeal allowed: Breach of s.21(2)(b) CA 1989
  - The statutory duty to provide a reasonable system is imposed on each individual local authority not central government.
  - LA can discharge this duty in a number of ways, not limited to providing secure accommodation itself.
  - The system which WF had in place was not reasonably capable of providing secure accommodation in response to a request under section 38(6) of PACE.
  - There was no reasonable prospect of secure accommodation being available at short notice during the week - it was common practice that PACE requests were refused across all London LAs.

R. (on the application of H) v Swindon BC [2021] EWCA Civ 1836

Appeal by a VoT against a decision that the LA had not breached of Art 4 ECHR despite finding that it had breached s.47 CA 1989 duty to investigate whether action was needed to protect his welfare

UASC looked after and accommodated in foster care by LA pursuant to s.20 CA 1989.
Incidents of concerning behaviour and indicators of trafficking – but LA failed to undertake s.47 assessment or make enquiries with police or SCA about risks faced by H on the basis of (i) age assessment and (ii) lack of evidence of trafficking.

High Court:

- The reasons for not initiating a s.47 assessment did not amount to a good reason for departing from guidance
- No breach of operational or procedural duties imposed by Article 4 ECHR

Court of Appeal:

- Accepted that Article 4 ECHR was engaged. Failure to make enquiries *may* amount to Art 4 breach.
- Not necessary to show that loss has flowed as a result of Art 4 breach (*R (TDT)*), but in this case, although LA had failed to make enquiries, H had, in fact, been accommodated, supported and protected - no Art 4 breach

ST (A Child) v Secretary of State for the Home Department [2021] EWHC 1085 (Admin)

Challenge to the NRPF scheme

Held:

- The Welfare Reform Act 2012 did not confer a single claimant with an unqualified statutory right to universal credit. A decision-maker is entitled to publish policy regarding the exercise of broad statutory discretion [at 156]
- **The NRPF scheme breached SSHD's s.55 duty relating to the best interests of the child**
  - A general statement that the Immigration Rules comply with the s.55 duty is not of itself decisive – this is decided by a construction of the provisions and any guidance that may mitigate or exacerbate the effect of the rules [at 157].
  - The rules did not refer to the best interests of a relevant child and did not reflect the correct approach to best interests - *ZH (Tanzania)* and *FZ (Congo)* [at 159].
  - The guidance doesn't mitigate this deficiency - references within the guidance relate to s.55 in context of granting LTR not in relation to imposing a NRPF condition [at 160])
- No discrimination contrary to Equality Act 2020 or Art 14 ECHR (SSHD had complied with the s.149 equality duty and NRPF was justified under Art 14)
- No breach of Art 3 ECHR (amendments to the guidance post-*W v SSHD* [2020] EWHC 1299 (Admin): NRPF condition must be lifted or not imposed if an applicant was destitute or at risk of imminent destitution without recourse to public funds)

Re W and Re Z (EU Settled Status for Looked After Children) [2021] EWHC 783 (Fam)

Guidance as to how local authorities should approach applications to the EU Settlement Scheme ("EUSS") for children in their care

A LA is generally entitled to make immigration-related applications on behalf of a child subject to a care order or placement order pursuant to the parental responsibility conferred on it by s.33 (3) CA 1989 and s.24 Adoption and Children Act 2002, without the court's authorisation and in the face of parental objection or absence of consent.

Additional Guidance given:

- The immigration status of LAC should be addressed as part of the care plan.
- Local authorities were required to identify children eligible to apply under the EUSS and make applications in a timely manner .
- The duty extended to children looked after by reason of being accommodated by the local authority under s.20, care leavers, children in receipt of s.17 local authority support, and children who were lost or abandoned.
- The child's wishes and feelings should be considered.
- While the parents' views should be obtained and considered, they were not determinative unless they had a real bearing on the child's welfare.

Age Assessment Cases

***R. (BF (Eritrea)) v Secretary of State for the Home Department* [2021] UKSC 38**

- Challenge to Criterion C Home Office policy "Assessing Age" : *" an individual could be assessed as an adult if their physical appearance or demeanour very strongly suggested that they were significantly over 18 and there was no other credible evidence to the contrary"*
- Held: Ministers were not obliged to issue policy guidance to eliminate uncertainty in the application of a stipulated legal rule. Where the lawfulness of policy guidance was in issue, however, it was necessary to consider the obligations of the person promulgating the guidance with regard to its content.
- In the immigration context, a policy that immigrants claiming to be children should be assessed as an adult only if their physical appearance and demeanour "very strongly" suggested that they were "significantly" over 18 was lawful and did not direct immigration officers to act in conflict with their legal duty under the statutory regime.

***R. (AB) v Brent LBC* [2021] EWHC 2843 (Admin)** *Also known as: R. (NLK) v Brent LBC , R. (AD) v Brent LBC*

- Challenge by 3 putative UASC to LA's refusal to accommodate under s20 CA 1989 pending AA
- Held: LA had acted unlawfully in refused to accommodate under s.20 pending completion of an age assessment, after the Home Office had placed them in adult accommodation under the IAA 1999 s.98. There had been no justification for the local authority's departure from non-statutory guidance that children and young people were to be looked after under s.20 while the age assessment process continued and that most assessments should be completed within 28 days.

Age Assessment cases continued…

R. (Birmingham City Council) v Croydon LBC **[2021] EWHC 1990 (Admin)**
Unsuccessful JR of Croydon's obligation to do AA.

R. (M) v Waltham Forest LBC **[2021] EWHC 2241 (Admin)**
Second AA incorporated and built upon unlawfulness of first AA
Wasn't appropriate to remit to LA for reconsideration – transfer to UT for fact finding.

R. (on the application of G) v Greenwich RLBC **[2021] EWHC 3348 (Admin)**
Refusal to reassess when presented with new information not unlawful. Refusal fell within the range of reasonable responses.

HJ v LB of Croydon v Royal Borough of Greenwich **[2021] EWHC 66 (Admin)**
Vietnamese PVoT. Deficient first AA by first LA – responsibility of second LA to do fresh AA.

Challenge to lawfulness of s.117 MHA assessment

- The Code of Practice gave statutory guidance to LAs and they were therefore required to have regard to it. However, it was not statutory guidance for commissioners of health services.
- Where two bodies were responsible for the welfare of an individual and were working together for the purposes of s.117 MHA 1983, especially a vulnerable child, the responsibilities imposed on the local authority by statutory guidance had to be the applicable standard. The CCG was therefore obliged to follow the Code, absent cogent reasons for not doing so.

- Guidance given on contents of Discharge Care Programme Approach (DCPA) document.

Community Care Law: The Year in Overview
Asylum Support

Connor Johnston, Garden Court Chambers

20 January 2022

Introduction

- This is a case law update covering the field of asylum support. Using the term asylum support to refer to support under s95(1) and s4(2) Immigration and Asylum Act ('IAA') 1999, i.e. accommodation and financial support for current and failed asylum-seekers.

- A lot has happened in the last year, much of which is pandemic related (pause on evictions, continued use of barracks and hotels etc), so I will focus on picking one or two legal principles or factual characteristics from some key cases. Will group cases thematically: (i) who can get support?; (ii) how do you get it?; (iii) what do you get?

- *Reminder*: the eligibility criteria for s95(1) support = asylum-seeker + destitute, and for s4(2) support = rejected asylum-seeker + destitute + satisfies one of criteria in reg 3(2) Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) ('IA (PAFAS)') Regs 2005). Accommodation must be 'adequate' and financial support must meet 'essential living needs'.

Who can get support? Case law on eligibility.

When support needed to avoid breach of ECHR

FtT had found that all failed asylum-seekers entitled to s4(2) support, pursuant to reg 3(2)(e) IA (PAFAS) Regs 2005, to avoid breach of ECHR at height of lockdown restrictions, arising from risk to self/others caused by COVID.

- *R (SSHD) v First-Tier Tribunal (Social Entitlement Chamber)* [2021] EWHC 1690 (Admin), 21 June 2021.
  - FtT had erred. Positive obligation under ECHR to protect public from COVID a matter of 'high principle' (i.e. not for courts). But whether applicant personally facing ECHR breach requires a multi-factorial assessment including whether they are at high risk from COVID. Boundaries of this category not precisely defined.
  - The accommodation of persons not eligible for support under ss4 and 95 during pandemic 'has been conceptualised as the exercise of the prerogative power'.

How do you get support? Case law on process.

Delay

Two cases where applicants detained unlawfully by reason of failure to provide s4 support within reasonable period.

- *R (AO) v SSHD* [2021] EWHC 1043 (QB), 20 April 2021.
  - Delay of nearly 8-months characterised by error and inaction, unlawful. Quality of delay relevant as well as quantity.

- *R (Babbage) v SSHD* [2021] EWHC 2995 (Admin), 9 November 2021.
  - Delay of 10-months unlawful. But within that, initial delay of 1-month to process application (taking into account pandemic) and 1-month to source accommodation lawful. Indication of what court may consider reasonable.

What do you get? Case law on service provision.

Financial support to meet 'essential living needs'

Two cases challenging level of subsistence payments to those in full-board (hotel) accommodation. No payments at all made until October 2020. Thereafter £8 per week paid (for clothing, travel and non-prescription medication, but not communication) and partial backdated payments made to March 2020 (for clothing) and July 2020 (travel).

- *R (JM) v SSHD* [2021] EWHC 2514 (Admin), 4 October 2021
  - Wrong to make no provision for communication needs throughout.
  - Lawful to limit backdating of travel payments in line with lockdown restrictions.

- *R (AXG) v SSHD* [2022] EWHC 56 (Admin), 14 January 2022.
  - Wrong to make no provision for non-prescription medication in back payments.
  - SSHD had failed to meet 'essential living needs' prior to March 2020 (clothing, travel, non-prescription medication) but lawful to impose a 'long stop' of March 2020 (start of first lockdown) for back payments, to remedy that failing.

What do you get? Case law on service provision.

Accommodation

- *R (NB) v SSHD* [2021] EWHC 1489 (Admin), 3 June 2021
  - SSHD's decision to accommodate asylum-seekers in former army barracks unlawful. Reception Conditions Directive continues to apply notwithstanding Brexit, meaning that in order to be 'adequate', accommodation, judged objectively, must 'ensure a standard of living adequate for the health of applicants'. Combination of fire and COVID risk meant barracks did not meet this standard.
  - Contractual standards between Clearsprings and SSHD, governing provision of accommodation, not necessarily co-terminous with adequacy.

- *R (Hussain) v SSHD*, 30 November 2021
  - Lawful for SSHD to refuse permit failed asylum-seeker to live with friend and carer under s4(2), and provide financial support only. SSHD had power to do so, but refusal not irrational given paucity of evidence of cost-savings.

Community Care Law: The Year in Overview
Trafficking

Miranda Butler, Garden Court Chambers

20 January 2022

Recent developments

- Leave to remain for potential and recognised victims of trafficking: *EOG and KTT v SSHD* [2020] EWHC 3310 (Admin); [2021] EWHC 2722 (Admin)

- Financial support for VoTs previously housed in initial accommodation: *JB v SSHD* [2021] EWHC 3417 (Admin)

- Right to work for victims of trafficking: *IJ (Kosovo) v SSHD* [2020] EWHC 3487 (Admin)

EOG in the High Court

VoT who lost her leave during consideration within NRM challenged the lack of any policy for granting LTR or a right to work to PVoTs

- Mostyn J found that EOG was left in a situation where she was *"deprived of access to basic services, unemployed, dehumanized, and penalized … far removed from the idea of social and psychological recovery"*.

- Held: unlawful lacuna in existing policy which fails to implement obligation in Art 10.2 of ECAT to protect persons in receipt of a positive RG decision from removal – leaving them as overstayers or unlawfully present does not fulfil that obligation.

Caselaw update: *EOG*

- Did not accept argument that Article 13 ECAT assisted EOG
  - Article 13 requires the SSHD to *"authorise"* VoTs' residence in the UK during the recovery and reflection period
  - Instead, VoTs remain in hostile environment: "*in a most unhappy situation where she, as an overstayer, is branded a criminal […], deprived of access to basic services, unemployed, dehumanised and penalised. She has filed some moving evidence describing her sense of failure and emotional isolation since she has been deprived of the opportunity to work. The treatment meted out to her is far removed from the idea of social and psychological recovery.*"

Caselaw update: *EOG*

- Highly critical of the extremely long delays in decision-making within the NRM: a "*remorseless increase*" in delays, which have "*gone from bad to worse*" despite the Home Office's policy stating that decisions should be made "*as soon as possible*".
    - Contrasts with assurances that delays were improving given to the High Court in *R (O and H) v SSHD* [2019] EWHC 148 (Admin).

KTT in the High Court

Linden J:

- ECAT is justiciable domestically – at least as regards Art 14 ECAT
- Art 14 ECAT requires the SSHD to grant a residence permit to asylum-seeking VOTs with a positive Conclusive Grounds decision
- Their residence is necessary as a matter of their personal situation (*per* Art 14)
- SSHD's policy was that discretionary leave would normally not be considered before asylum claim determined.

EOG & KTT continued

- SSHD appealed both decisions
- Cases linked by the CoA
- Listed for four-day hearing from 8 February 2022
- AIRE Centre intervening in *EOG* and given permission to do so in *KTT*
- Similar challenges being stayed pending outcome of these appeals although no formal stay granted in *EOG*

JB v SSHD

- At start of pandemic, SSHD paused dispersals from initial asylum accommodation.
  - Accommodation is (in theory) full board but many VoTs only provided with basic food.
- In July 2020, SSHD unilaterally and without warning stopped financial support to many in initial accommodation, in particular VoTs. Subsequently reinstated but support cut from £65 to £35 for VoTs.
- Peter Marquand (DHCJ): this was inconsistent with the SSHD's published policy at the time (NB: no longer in force). That policy mandated that, even where housed in full-board accommodation, VoTs would receive £65.
- Consequentials hearing on 21.1.22

Right to work: asylum-seeking VoTs

- *IJ (Kosovo) v SSHD* [2020] EWHC 3487 (Admin)
  - Guidance issued to caseworkers re permission to work should be granted to asylum seekers outside the shortage occupation list was unlawful.
  - Guidance failed to make it clear that there was a residual discretion to grant a wider permission to work outside the mandatory terms of the Immigration Rule 360A, particularly where there were reasonable grounds to believe that the applicant was a victim of trafficking.
  - In applying that discretion, the decision-maker should have regard to the objectives of ECAT (now in RTW policy)

Community Care Law: The Year in Overview
Education

Ollie Persey, Garden Court Chambers

20 January 2022

Upper Tribunal cases

i) *VS and RS v Hampshire CC* [2021] UKUT 187 (AAC)
ii) *NN V Chesire East Council (SEN)* [2021] UKUT 220 (AAC)
iii) *JL (by EA as appointed person) v Somerset County Council* [2021] UKUT 324 (AAC)
iv) *MS & LS v Wakefield Council* [2021] UKUT 316 (AAC)

VS and RS v Hampshire CC

- Concerns status of health and social care “recommendations” in sections C,D, G and H of an EHCP.
- Distinction in the SEND Code of Practice between specificity/flexibility for SEP and HSC provision: “must” vs “should”, see para 48
- “Less rigid” standard for HSC provision recommendations: para 4
- Recommendations Regulations do not provide a single route of redress for HSC needs/provision disputes, but rather a “further attempt to mitigate” differing duties and governance arrangements: para 54.
- Indicates that recommending future health/social care reviews is more likely to be a sufficient recommendation given lack of specificity required: para 57.

NN -v- Cheshire East Council- EOTAS

Section 61 Children and Families Act 2014:

Special educational provision otherwise than in schools, post-16 institutions etc

(1)A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.

(2)An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.

(3)Before doing so, the authority must consult the child's parent or the young person.

NN -v- Cheshire East Council- EOTAS

A. The tribunal must consider section 61 CFA 2014. It must separately ask whether it is satisfied that it would be inappropriate for (i) any special educational provision that it has decided is necessary for the child to be made in any school and (ii) any part of the provision to be made in any school.

B. The tribunal must consider section 61 CFA 2014. It must separately ask whether it is satisfied that it would be inappropriate for (i) any special educational provision that it has decided is necessary for the child to be made in any school and (ii) any part of the provision to be made in any school.

   A. i. the child's background and medical history;
   ii. the particular educational needs of the child;
   iii. the facilities that can be provided by a school;
   iv. the facilities that could be provided other than in a school;
   v. the comparative cost of the possible alternatives to the child's educational provisions, either at school or elsewhere;
   vi. the parents' wishes (although they are not generally determinative); and
   vii. any other particular circumstances that apply to a particular child

NN -v- Cheshire East Council- EOTAS

C. If the tribunal is satisfied that it would be inappropriate for any such special educational provision to be made in any school, then Section I must be left blank.
D. Conversely, if the tribunal is not satisfied that it would be inappropriate for any such special educational provision to be made in any school, it follows that a particular school or type of school would be appropriate for the child (Derbyshire County Council v EM and DM (SEN) (above)) in relation to at least part of the provision to be made. This will lead to consideration of what should be specified in Section I of the EHC plan. That, in turn, will involve consideration of regulation 12 of the 2014 Regulations.
E. If a particular educational institution is proposed, and if it is in issue as to whether or not that institution is a 'school', the tribunal must consider whether it falls within the definition of a 'school' as set out section 4 of the Education Act 1996. This is a question of fact to be determined in the light of all the evidence including, where relevant, matters such as regulation governance, financing and administration.

NN -v- Cheshire East Council- EOTAS

F. If it is in issue, the tribunal must consider whether the school or type of school will be 'attended by' the child. If it is satisfied that the child will be present at a school or type of school for at least part of the time, that is sufficient and so the school or type of school must be specified in Section I. Attending provision provided by the school as part of a bespoke package outside a conventional classroom setting will nonetheless mean that the school is to be attended by the child within the meaning of regulation 12(1)(i).

G. What is specified in Section I must be strictly limited to the of name the school and type of school to be attended by the child, or where the name of the school is not specified, the type of school to be attended by the child. No more and no less.

H. For the avoidance of doubt, education in a child's home cannot be named in Section I

I. Any special educational provision which will be made otherwise than in a school or type of school will be set out in Section F.

JL (by EA as appointed person) v Somerset County Council [2021] UKUT 324 (AAC)

- Concerns meaning of 'academic year' within meaning of Reg 46 SEND regulations.
- Context sensitive question, in some circumstances it can extend to the day before YP turns 26.
- Whether to extend under s46 CAFA is a question of lawful exercise of the LA's discretion.
- FTT cannot order an LA to extend the EHCP. However, the s46 discretion is a material factor when determining provision in section F.

MS & LS v Wakefield Council

1. Importance of being careful in narrowing issues in dispute between the parties. On the facts of this case, the FTT had not been asked to consider whether appropriateness of the [69]:

"The parties' agreed list of disputed section F matters was connected to the provision currently made at A School and the authority's case was that certain deficits in A School's provision rendered A School inappropriate. Given the parties' stances before the tribunal, I do not accept that paragraph 111 discloses a legal misdirection. It may well have been different had the First-tier Tribunal been asked to address whether A School was capable of delivering any section F provision that it was not, or might not have been, currently providing. However, the tribunal was not asked to address that point."

2. SALT evidence goes beyond appropriateness of direct provision of speech and language therapy.

3. "Appropriate" in section 40(2) not in doubt. Cannot determine UNCRPD breach as a standalone breach when assessing appropriateness- applying UKSC in *R (SC, CB & 8 children) v Secretary of State for Work & Pensions and others [2021] UKSC 26*

Thank you

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