



Neutral Citation Number: [2015] EWHC 203 (Admin)

Case No: CO/5568/2014

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/02/2015

Before :

**MR JUSTICE MOSTYN**

Between :

**THE QUEEN**

On the application of

(1) L

(by his mother and litigation friend LM)

(2) P

(by her mother and litigation friend RP)

**Claimants**

- and -

**WARWICKSHIRE COUNTY COUNCIL**

**Defendant**

- and -

**WARWICKSHIRE SAFEGUARDING CHILDREN  
BOARD**

**Interested  
party**

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**Ian Wise QC & Stephen Broach** (instructed by **Irwin Mitchell Solicitors**) for the **Claimants**  
**James Goudie QC & Edward Capewell** (instructed by **Warwickshire Legal Services**)  
for the **Defendant**

Hearing dates: 29-30 January 2015

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**Approved Judgment**

**Mr Justice Mostyn :**

1. This is my judgment on a rolled-up hearing in judicial review proceedings for permission to apply and, if granted, substantive relief.
2. The claimants are two disabled children who live in Warwickshire. Their litigation friends are their mothers. The defendant is Warwickshire County Council. The interested party is the Warwickshire Safeguarding Children Board. It is true to say that the claimants act as informal representatives of a number of other interested disabled children, their parents and campaigning organisations.
3. There are five grounds of claim. Of these three concern the public law duty to consult, and most of the argument over the two days I heard this matter has centred on that aspect. The first ground (Ground A) is that the defendant, Warwickshire County Council, "acted unlawfully in failing to consult properly or at all on the cuts to funding for social care services for disabled children which it intends to introduce when the 'local offer' is approved in January 2015." In fact those cuts to the annual budget of the Integrated Disability Service ("IDS") have already been effected, at least partially, as I will explain.
4. The first ground is the principal one and I suspect that had it not been advanced the others would not have been mounted. That is not to say that the other grounds are not important but rather that the catalyst for the claimants' complaints has been the cuts to the IDS budget.
5. The case is complex and intricate. The claimant's arguments if accepted will extend the law into territory where it has not been before namely the imposition of a common law duty of consultation on a local authority before it makes the political decision in a meeting of its full council to approve a budget which cuts funding to certain services supplied to vulnerable members of the community. My decision is said to be likely to affect thousands of vulnerable children in Warwickshire. It is said it will have national implications as many other authorities are considering implementing similar cuts.
6. The case has been excellently and most interestingly argued by Mr Wise QC and Mr Broach for the claimants and Mr Goudie QC and Mr Capewell for the defendant. The interested party has not participated in the proceedings.
7. The context of the case is obvious. Since the general election of May 2010 the coalition government has imposed heavy cuts across the public sector with only two areas being exempted. In the face of these cuts in 2011 Warwickshire adopted a Medium Term Financial Plan for the period 2011 to 2014 which required savings of £66m to be made for that period. Of this only £275,000 was intended to come from the IDS budget. However, in late 2012 the government imposed further cuts to the Early Intervention Grant and the Local Authority Central Service Education Grant. Warwickshire's loss in these two respects was £5.9m annually.
8. On 5 February 2013 the full council met to consider the budget for the forthcoming year. That budget had been considered by the cabinet in December 2012. The papers containing and explaining the proposed cuts were sent out to all elected members. They proposed, as the cabinet had previously agreed, that of the £5.9m cut, £1.1m

would be found "corporately" with the balance coming from the children's services budget.

9. At that time Warwickshire was controlled by the Conservatives who had an overall majority. However an election was coming up on 2 May 2013. The proposal by the governing Conservatives was that £1.786m be saved in the year 2013/14 from the SEN and IDS budgets. According to a spreadsheet produced by them "this will involve a fundamental review and transformation of the IDS including a reduction of at least 20% in the short breaks service." The proposals of Labour and the Liberal Democrats did not dispute this aspect of the savings plan. Accordingly, it was voted through *nem con*. At the election on 2 May 2013 the Conservatives lost overall control but remained the largest party. They then governed as a minority administration. The savings plan was maintained and has not since been reversed. However, in October 2013 Warwickshire ran a public engagement exercise called "Let's Talk" which involved a road show and the launch of an online budget simulator which allowed residents to say how they would set the Council's budget, where money would be saved and what their service priorities were. 661 people engaged in the exercise and the majority indicated their support for an across-the-board reduction in spending. The average response to the children's services and education budget was that it should be cut by 15%.
10. In fact no saving of £1.786m, or any part of it, was made in the financial year 1 April 2013 – 31 March 2014. According to papers prepared for a cabinet meeting on 18 August 2014 it was anticipated that in the current financial year (1 April 2014 – 31 March 2015) savings of £1.258m would be made, a "slippage" of £528,000. None of the savings of £1.258m came from cuts to front-line services. The great majority came from staffing cuts (i.e. redundancies). For the next financial year it is expected that the full £1.786m will be saved but again the majority would come from staff salary savings. However £475,000 will come from the "Early Help Offer" which is a front-line service. So it can reasonably be anticipated that the claimants will be at risk in the next financial year of some cut in services made available to them.
11. The decision to set a local authority budget at a certain level and to make reductions in certain areas must surely be the very quintessence of a political decision. A challenge to a budget proposal should normally be made through elected representatives or, if dissatisfied with what they are doing, by seeking to unseat them at an election. That is what local democracy is all about. The main challenge here does to my mind raise a serious constitutional question. I whole-heartedly agree with the statement of Collins J in the Lincolnshire library closure case (*Draper v Lincolnshire County Council* [2014] EWHC 2388 (Admin)) at para 53:

"The overwhelming objection to the decision does not in itself mean that it is unlawful. The decision to make the £2 million cuts was a political one which was not and cannot be challenged in the courts. It can of course when it comes to electing councillors. The need for cuts will inevitably produce hard decisions for many, but that does not make them unlawful."
12. That does not mean of course that every political decision made by an elected county council is immune from challenge in judicial review proceedings. It does mean

however that I must be especially careful that I do not cross the line into the political arena and get lured into making a judgment about the merits of a democratic decision which imposes a cut.

### **The public law duty to consult**

13. That a public duty to consult in certain circumstances is established in legion cases. It is an aspect of the requirement of procedural fairness when reaching an administrative decision which the common law has insisted on at least since the early 17<sup>th</sup> century. In the curious case of *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (QB) the Divisional Court stated at paras 84 – 86:

"84. It is appropriate to start any legal analysis by examining the Common Law principle of fairness in this context. Where a statutory process is of itself insufficient to ensure the requirements of fairness are satisfied, the Common Law will generally intervene to ensure that the requirements of fairness are met. As Byles J observed in *Cooper v Board of Works for the Wandsworth District* (1863) 14 CB(NS) 190, 194:

*"[A] long course of decisions... establish that, although there are no positive words in a statute that the party shall be heard, yet the justice of the Common Law will supply the omission of the legislature."*

85. In *Lloyd v McMahon* [1987] 1 AC 625, 702-3, Lord Bridge of Harwich said:

*"[I]t is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."*

86. The intervention of the Common Law pre-dates the development of the modern law of Judicial Review. It has its *genesis* in judgments such as those of Coke CJ in *Bragg's Case* (77 E.R. 1271 at 1275; (1615) 11 Co. Rep. 95b); Coke CJ in *Bonham's Case* (77 E.R. 646; (1610) 8 Co. Rep. 113) and Fortescue J in *Dr Bentley's case* (93 E.R. 698; (1723) 8 Mod. 148; (1723) 1 Str. 557)."

14. In some circumstances fairness demands that a consultation take place before a decision is reached. This is to state the obvious. Sometimes Parliament specifically enacts that a consultation shall take place in certain circumstances. In such a case the statute will usually define precisely the subject matter of the consultation and the people to be consulted.

15. In some circumstances there is no statutory obligation to consult but the common law nonetheless imposes one in order to satisfy the requirement of procedural fairness. Plainly, the circumstances where the judges will intervene to tell a decision maker, who may very well be an elected representative, how procedurally to make his or her decision will be very circumscribed. This is shown by numerous cases the principles from which are hermeneutically identified and listed in the *Plantagenet* case at para 96. The principles are:

"(1) There is no general duty to consult at Common Law. The government of the country would grind to a halt if every decision-maker were required in every case to consult everyone who might be affected by his decision. *Harrow Community Support Limited v. The Secretary of State for Defence* [2012] EWHC 1921 (Admin) at paragraph [29], *per* Haddon-Cave J).

(2) There are four main circumstances where a duty to consult may arise. First, where there is a statutory duty to consult. Second, where there has been a promise to consult. Third, where there has been an established practice of consultation. Fourth, where, in exceptional cases, a failure to consult would lead to conspicuous unfairness. Absent these factors, there will be no obligation on a public body to consult (*R (Cheshire East Borough Council) v. Secretary of State for Environment, Food and Rural Affairs* [2011] EWHC 1975 (Admin) at paragraphs [68-82], especially at [72]).

(3) The Common Law will be slow to require a public body to engage in consultation where there has been no assurance, either of consultation (procedural expectation), or as to the continuance of a policy to consult (substantive expectation) (*R Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755, at paragraphs [41] and [48], *per* Laws LJ).

(4) A duty to consult, i.e. in relation to measures which may adversely affect an identified interest group or sector of society, is not open-ended. The duty must have defined limits which hold good for all such measures (*R (BAPIO Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1139 at paragraphs [43]-[44], *per* Sedley LJ).

(5) The Common Law will not require consultation as a condition of the exercise of a statutory function where a duty to consult would require a specificity which the courts cannot furnish without assuming the role of a legislator (*R (BAPIO Ltd)* (supra) at paragraph [47], *per* Sedley LJ)

(6) The courts should not add a burden of consultation which the democratically elected body decided not to impose (*R (London Borough of Hillingdon) v. The Lord Chancellor* [2008] EWHC 2683 (QB)).

(7) The Common Law will, however, supply the omissions of the legislature by importing Common Law principles of fairness, good faith and consultation where it is necessary to do, e.g. in sparse Victoria statutes (*Board of Education v Rice* [1911] AC 179, at page 182, *per* Lord Loreburn LC) (see further above).

(8) Where a public authority charged with a duty of making a decision promises to follow a certain procedure before reaching that decision, good administration requires that it should be bound by its undertaking as to procedure provided that this does not conflict with the authority's statutory duty (*Attorney-General for Hong Kong v Ng Yuen Shiu* [1983] AC 629, especially at page 638 G).

(9) The doctrine of legitimate expectation does not embrace expectations arising (merely) from the scale or context of particular decisions, since otherwise the duty of consultation would be entirely open-ended and no public authority could tell with any confidence in which circumstances a duty of consultation was to be cast upon them (*In Re Westminster City Council* [1986] AC 668, HL, at 692, *per* Lord Bridge).

(10) A legitimate expectation may be created by an express representation that there will be consultation (*R (Nadarajah) v Secretary of State for the Home Department* [2003] EWCA 1768 Civ), or a practice of the requisite clarity, unequivocalness and unconditionality (*R (Davies) v HMRC* [2011] 1 WLR 2625 at paragraphs [49] and [58], *per* Lord Wilson).

(11) Even where a requisite legitimate expectation is created, it must further be shown that there would be unfairness amounting to an abuse of power for the public authority not to be held to its promise (*R (Coughlan) v. North and East Devon Health Authority* [2001] 1 QB 213 at paragraph [89] *per* Lord Woolf MR)."

16. Looking at Principle No. 2 it can be seen that there are three circumstances where the common law will impose a duty to consult:
  - i) where there has been a promise to consult; or
  - ii) where there has been an established practice of consultation; or
  - iii) where, in exceptional cases, a failure to consult would lead to conspicuous unfairness.
17. So far as circumstance (i) is concerned there must not just be a broken promise but there must also be shown to be unfairness amounting to an abuse of power for the public authority not to be held to it. As for (ii) the practice must be clear, unequivocal and unconditional and, again, there must also be shown to be unfairness amounting to

an abuse of power for the public authority not to be held to it. For each of (i) and (ii) the duty must be predictable and finite in scope. As for (iii) not only must the case be exceptional but the unfairness must be of a very high level – it must be "conspicuous". An example of a case falling within (iii) is *R (Luton BC and others) v Secretary of State for Education* [2011] EWHC 271 (Admin). In each instance where the decision not to consult has been made by a democratically elected representative the court should be very slow to intervene, for obvious constitutional reasons.

18. So these are the principles to be applied in working out whether a duty to consult arises or not. Let us assume that it does. The next question is how it should be carried out. Plainly the answer is that the consultation must be carried out fairly. In *R (Baird) v Environment Agency and Arun District Council* [2011] EWHC 939 (Admin) at paras 50-51 Sullivan LJ stated that a consultation will only be so unfair as to be unlawful when something has gone "clearly and radically wrong". This strong test was affirmed in *R (Royal Brompton NHS Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472 by Arden LJ at para 13.
19. There has been a debate before me whether this remains the test following the recent decision of the Supreme Court in *R (Moseley) v Haringey LBC* [2014] 1 WLR 3947, which was a case concerning a statutory consultation on the implementation in Haringey of a council tax reduction scheme in the light of the withdrawal by the government of the council tax benefit scheme and the passing on of its operation (with less money) to local authorities. It was said that the consultation was unfair because it in effect applied Henry Ford's prescription about the Model T: "any customer can have a car painted any color that he wants so long as it is black." Haringey only consulted on its sole proposal, which was to pass on the cut, and did not set out any alternatives (such as keeping it at the old level and paying for it by cutting other services or by increasing council tax).
20. At para 27 Lord Wilson stated that "fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options". As I read his judgment he did not seek to alter the high test propounded by Sullivan LJ for a case where the duty was imposed at common law. Rather, to my mind, he applied it as the consultation there had gone clearly and radically wrong by presenting the people with Henry Ford's single choice alone. Nor do I read Lord Reed's judgment as altering that high test. He expressed his analysis of the relevant law in a way which "lays less emphasis upon the common law duty to act fairly, and more upon the statutory context and purpose of the particular duty of consultation with which we are concerned" (para 34). At paras 37 and 38 he stated:

"37. Depending on the circumstances, issues of fairness may be relevant to the explication of a duty to consult. But the present case is not in my opinion concerned with circumstances in which a duty of fairness is owed, and the problem with the consultation is not that it was "unfair" as that term is normally used in administrative law. In the present context, the local authority is discharging an important function in relation to local government finance, which affects its residents generally. The statutory obligation is, "before making a scheme", to consult any major precepting authority, to publish a draft scheme, and, critically, to "consult such other persons as it

considers are likely to have an interest in the operation of the scheme". All residents of the local authority's area could reasonably be regarded as "likely to have an interest in the operation of the scheme", and it is on that basis that Haringey proceeded.

38. Such wide-ranging consultation, in respect of the exercise of a local authority's exercise of a general power in relation to finance, is far removed in context and scope from the situations in which the common law has recognised a duty of procedural fairness. The purpose of public consultation in that context is in my opinion not to ensure procedural fairness in the treatment of persons whose legally protected interests may be adversely affected, as the common law seeks to do. The purpose of this particular statutory duty to consult must, in my opinion, be to ensure public participation in the local authority's decision-making process."

21. Therefore, Lord Reed was saying that for this particular statutory consultation the legislative intention was that the people should in a meaningful way "participate" in the decision making process. That is a distance away from what the common law is doing when it imposes a duty to consult. Rather, it is imposing a requirement that the decision making process is fair not that the consultees should (at least up to a point) actually be decision makers as well.
22. My view is supported by the decision of Richards LJ in *R (Robson) v Salford City Council* [2015] EWCA Civ 6 (20 January 2015) where he stated at para 22 that "in fact the decision in *Moseley* is largely an endorsement at Supreme Court level of principles already established at the level of the Court of Appeal ..." Plainly he thought that the high test of Sullivan LJ was still applicable where the common law had imposed the duty.
23. With these legal principles in mind I return to the five grounds.

#### **Ground A**

24. This is in these terms:

"The defendant acted unlawfully in failing to consult properly or at all on the cuts to funding for social care services for disabled children which it intends to introduce when the 'local offer' is approved in January 2015."
25. There is a dispute as to when the actual decision was made. The defendant says that the substantive decision under challenge was made on 5 February 2013 at the full council meeting. All later decisions, such as they were, were about the detail of implementation and not about its principle. Accordingly the defendant says that the application for judicial review made here on 1 December 2014 is spectacularly out of time having regard to the 3 month time limit from when the grounds to make the claim "first arose" in CPR 54.5(1) and permission should accordingly be refused irrespective of the merits. The fact that the decision was subject to further ironing out



is neither here nor there says the defendant and it relies on *Nash v Barnet LBC* [2013] EWCA Civ 1004, [2013] PTSR 1457 which it says is directly in point and which is binding on me.

26. The claimants firmly disagree. They say that they are not challenging any decision taken in February 2013 and that "it is wholly unnecessary for them to do so at this time for two reasons". Those reasons are:

i) Local Authority budgets are set on an annual basis. The decision taken in February 2013 was only relevant to the defendant's budget for the financial year 2013-14 and to its Medium Term Financial Plan. Budgets for each financial year must be fixed by 1 April. As such the defendant will take a decision in February 2015 on its budget for the financial year 2015/16. As pointed out above the defendant will not achieve the full savings first indicated in February 2013 until the forthcoming financial year 2015/16.

ii) Following the February 2013 decision the defendant gave repeated assurances to families that the budget savings were not fixed and that they would formally consult with parents. For example:

a) on 12 April 2013 defendant's officer Jessica Nash wrote to Mrs W (a witness for the claimants) stating that the savings target 'does not have to be reached until a point in the year which has regard to the need to consult';

b) at meetings on 12 March 2013 and 10 July 2013 with the campaigning group Family Voice Warwickshire officers stated that the budget was an estimate only and that there were contingency funds available; and

c) on 3 June 2014 the Head of Early Help and Targeted Support, Hugh Disley, wrote to Mr H (a witness for the claimants) saying that:

'the decisions relating to the savings you are referring to have since been superseded and no final decision has yet been made in respect of how savings in this area might be made. The Council is currently in ongoing discussions with parent and carer groups and final decisions are still to be made in respect of the future of these services. We therefore feel that prolonged and disproportionate focus on previous, now outdated, proposals is not productive'.

27. It seems to me that while everything that the claimants say is accurate it surely cannot be disputed that the true substantive decision was made at the full council meeting on 5 February 2013 and that everything said and done later was about ironing out the detail of implementation. In March 2013 the predecessor of Family Voice Warwickshire published a newsletter which stated:

"In the Warwickshire County Council Cabinet (sic) meeting of 5 February 2013 it was decided that the budget cut for IDS will be £1.8m rather than the proposed £225,000 agreed in the

2009-2012 budget reform. This equates to 40% of the IDS non-dedicated schools grant. As a matter of urgency members of the Parent and Carer Steering group have been contacting their local councillors and MPs to request further information surrounding how this news will effect families with disabled children within the county. To see the minutes of the cabinet meeting follow this link: <http://goo.gl/6XUYJ>. We would advise you to contact your local councillor or MP if you would like further information on how the cuts might affect you or your family."

28. To my mind this shows conclusively that the informed public recognised that the decision to make this cut had been substantively agreed at the meeting on 5 February 2013 (even if they thought it was at cabinet rather than at a meeting of the full council). Officers of the defendant later sought that the newsletter be amended to say that to make the savings there would be a consultation on a "modernisation and redesign programme to ensure a fair distribution of supporting focusing on those in greatest need". This shows that the further consultations and discussions would be about ways and means and not about whether the cut should be made.
29. In fact since the decision was made the defendant has run no fewer than five consultations as follows:
  - i) May-August 2013 – consultation on ‘New Local Offer for Short Breaks and Social Care for Disabled Children’.
  - ii) October-November 2013 – consultation on the ‘Matrix of Need’.
  - iii) June-July 2014 – consultation on ‘Social Care Local Offer’.
  - iv) September-November 2014 – consultation on ‘Warwickshire Local Offer’.
  - v) December 2014 – January 2015 about the 'Resource Allocation System', which is the way of identifying the amount of the resources made available to support families who have a child or young person with SEND and who qualify for social care support.
30. Mr Goudie QC says that each of these consultations were of sufficient width and quality to allow affected parents and carers ample time and means to say whatever they wanted about how, as opposed to whether, the cuts should be executed.
31. However Mr Wise QC correctly says that:

"None of these consultations covered the central question of whether it was necessary or appropriate for the defendant to reduce funding for services for disabled children to the extent proposed or at all."
32. This concession seems to me to accept that the substantive, operative, effective decision was that of the full council on 5 February 2013.

33. I revert therefore to the decision in *Nash*. The case of the claimant there was that the defendant local authority ought to have consulted before deciding to outsource a large number of its services to the private sector. She issued proceedings in January 2013 ostensibly challenging a decision to award a contract in December 2012. The Court of Appeal upheld the judge's refusal of permission on the grounds of delay. The court held that the grounds for the claim had first arisen in 2010/11 when the council had taken decisions to initiate a procurement process. That was when the decision of principle to outsource had been taken. The decisions taken then had legal effect and were intended to be substantive or 'final', notwithstanding that there was no guarantee that outsourcing contracts might ultimately be awarded during the process which followed.

34. In his judgment Davis LJ stated at paras 54 -56:

"As I see it, statutory consultation is ordinarily designed to be needed, and is required, at the formative stage of the relevant process: see for example *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213 ... The fact that the council may withdraw from its procurement proposals at any subsequent stage is, in my view, nothing to the point under this head of the argument: on the contrary, one of the whole purposes of consultation is to enable an authority, properly informed through the process of consultation by representations of residents of the borough and other "stakeholders", to decide whether or not to pursue or withdraw from a particular policy or strategic decision.

...

To the extent that Mr Giffin argued for a continuing breach of a continuing duty of consultation up until the time the council was contractually committed, that in itself gets him nowhere: as the judge pointed out, under the CPR time runs when the claim first arose."

35. In his skeleton Mr Wise QC argues that reliance on *Nash* by the defendant is misplaced. He says:

"it is clear that the decision impugned in *Nash* was to '*proceed with outsourcing and initiate the procurement procedures*'. It is therefore unsurprising that the Court of Appeal found that it was necessary to challenge this decision promptly. There is no such decision in the present case; the decision taken in February 2013 was merely to set a budget for a single financial year with a savings target. *Nash* therefore provides the Court with little if any guidance as to the correct approach in the present case."

36. I am afraid that I do not agree. I cannot see any distinction in reality between this case and *Nash*. I do not see how it can be disputed that the cuts in question were

substantively agreed at the full council meeting on 5 February 2013. That is when the grounds "first arose".

37. Therefore the claim is seriously out of time, and permission ought to be refused for that reason.
38. However, I will nonetheless address the merits as both leading counsel have addressed me on it at some length. In my judgment this is not a category (i) case. No-one has suggested that this is a category (ii) case. It is not a category (i) case as none of the promises of consultation or the consultations themselves addressed the core question of whether the cuts should be made in principle. The question is whether this is a category (iii) case.
39. I have explained that cases falling within category (iii) will be very rare. One such case was *R (Luton BC and others) v Secretary of State for Education* [2011] EWHC 271 (Admin). That case was concerned with the abrupt termination of funding for the 'Building Schools for the Future' project by the new Secretary of State following the general election of May 2010.
40. In paras 2 and 3 Holman J described the decision in question as follows:

"2. In 2003 the Department for Education (DfE or "the department" – I ignore the different titles of the department over the period in question) within the then (Labour) government launched a national programme called Building Schools for the Future (BSF). The programme aimed over a fifteen year period from 2005 – 2020 to rebuild or refurbish every secondary school in England, of which there are about 3,500. The estimated overall capital cost increased, and exceeded £50 billion by 2009. By July 2010, 181 schools had benefited from BSF funding of which 98 were new builds. A further 735 were, at more or less advanced stages, in the pipeline for refurbishment/rebuild.

3. On 12 May 2010, after a general election the previous week, a new, coalition, government was formed. On 5 July 2010 the newly appointed Secretary of State for Education in that government, Mr Michael Gove MP, made a statement in the House of Commons in which he announced that certain projects which were in the pipeline would go ahead; others would be stopped; and, in effect, that the BSF programme, which he criticised in trenchant terms as "a dysfunctional process", would come to an end."

41. Holman J concluded that this was a category (iii) case for the following reason:

"96. In my view, the way in which the Secretary of State abruptly stopped the projects in relation to which [Outline Business Case] approval had already been given [by Partnership for Schools and HM Treasury], without any prior consultation with the five claimants, must be characterised as

being so unfair as to amount to an abuse of power. However pressing the economic problems, there was no "overriding public interest" which precluded any consultation or justifies the lack of any consultation; and insofar as it affects the five claimants the decision making process was unlawful."

42. However, I cannot conclude that this case comes remotely close to the conspicuous unfairness amounting to an abuse of power as was so obviously present in the *Luton* case. This case was an example of a budget being regularly and constitutionally set by a local authority in the present time of austerity. All democratic procedures and safeguards were followed. It simply cannot be said that to make that decision without prior consultation was so conspicuously unfair as to amount to an abuse of power. On the contrary, it was an example of democratic power being properly, lawfully and constitutionally exercised. If the people of Warwickshire did not like that decision they could have voted out the councillors three months later.
43. My overriding conclusion is that the claimants here are voicing their complaints in the wrong place. Rather than raising them in a court room they should raise them in councillors' surgeries and ultimately in the voting booth. As I have said earlier, that is what local democracy is all about.
44. It therefore follows that had there not been the fatal impediment of delay I would have concluded on the merits that Ground A was unarguable and would have refused permission on that basis.

### **Local Offer**

45. Grounds B, C and D all refer to the "Local Offer". In order to understand them I should explain what a Local Offer is.
46. Section 30 Children and Families Act 2014, which came into force on 1 September 2014 defines and prescribes the content of a Local Offer. Before that they had been made by local authorities on an informal basis. It provides:

#### **30 Local offer**

(1) A local authority in England must publish information about—

(a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs or a disability, and

(b) the provision within subsection (2) it expects to be available outside its area at that time for—

(i) children and young people for whom it is responsible, and

(ii) children and young people in its area who have a disability.

(2) The provision for children and young people referred to in subsection (1) is—

- (a) education, health and care provision;
  - (b) other educational provision;
  - (c) other training provision;
  - (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided;
  - (e) provision to assist in preparing children and young people for adulthood and independent living.
- (3) For the purposes of subsection (2)(e), provision to assist in preparation for adulthood and independent living includes provision relating to—
- (a) finding employment;
  - (b) obtaining accommodation;
  - (c) participation in society.
- (4) Information required to be published by an authority under this section is to be known as its “local offer”.
- (5) A local authority must keep its local offer under review and may from time to time revise it.
- (6) A local authority must from time to time publish—
- (a) comments about its local offer it has received from or on behalf of—
    - (i) children and young people with special educational needs, and the parents of children with special educational needs, and
    - (ii) children and young people who have a disability, and the parents of children who have a disability, and
  - (b) the authority's response to those comments (including details of any action the authority intends to take).
- (7) Comments published under subsection (6)(a) must be published in a form that does not enable the person making them to be identified.
- (8) Regulations may make provision about—
- (a) the information to be included in an authority's local offer;
  - (b) how an authority's local offer is to be published;

(c) who is to be consulted by an authority in preparing and reviewing its local offer;

(d) how an authority is to involve—

(i) children and young people with special educational needs, and the parents of children with special educational needs, and

(ii) children and young people who have a disability, and the parents of children who have a disability,

in the preparation and review of its local offer;

(e) the publication of comments on the local offer, and the local authority's response, under subsection (6) (including circumstances in which comments are not required to be published).

(9) The regulations may in particular require an authority's local offer to include—

(a) information about how to obtain an EHC needs assessment;

(b) information about other sources of information, advice and support for—

(i) children and young people with special educational needs and those who care for them, and

(ii) children and young people who have a disability and those who care for them;

(c) information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2);

(d) information about how to make a complaint about provision mentioned in subsection (2).

47. As subsection (8) expects Regulations have been made. These are the Special Educational Needs and Disability Regulations 2014 (S.I. 2014 No. 1530). These provide, so far as is material to this case

53 A local authority must include the information in Schedule 2 when it publishes its local offer.

...

54(1) When preparing and reviewing its local offer, a local authority must consult the following persons in its area—

(a) children and young people with special educational needs and the parents of children with special educational needs;

- (b) children and young people with a disability, and the parents of children with a disability;
  - (c) the governing bodies of maintained schools and maintained nursery schools;
  - (d) the proprietors of Academies;
  - (e) the governing bodies, proprietors or principals of post-16 institutions;
  - (f) the governing bodies of non-maintained special schools;
  - (g) the management committees of pupil referral units;
  - (h) the advisory boards of children's centres;
  - (i) the providers of relevant early years education;
  - (j) the youth offending teams that the authority thinks have functions in relation to children or young people for whom it is responsible;
  - (k) any other person that makes special educational provision for a child or young person for whom it is responsible and those who provide advice in relation to making that provision;
  - (l) persons who make provision to assist children and young people in preparation for adulthood and independent living;
  - (m) its officers who—
    - (i) exercise the authority's functions relating to education or training;
    - (ii) exercise the authority's social services functions for children or young people with special educational needs or a disability;
    - (iii) so far as they are not officers within paragraph (i) or (ii), exercise the authority's functions relating to provision to assist children and young people in preparation for adulthood and independent living; and
  - (n) such other persons as it thinks appropriate.
- (2) When preparing and reviewing its local offer, a local authority must also consult—
- (a) the National Health Service Commissioning Board;
  - (b) any clinical commissioning group—



(i) whose area coincides with, or falls wholly or partly within, the local authority's area, or

(ii) which exercises functions in relation to children or young people for whom the authority is responsible;

(c) any NHS trust or NHS foundation trust which provides services in the authority's area, or which exercises functions in relation to children or young people for whom the authority is responsible;

(d) any local Health Board which exercises functions in relation to children or young people for whom the authority is responsible;

(e) any health and wellbeing board established under section 194 of the Health and Social Care Act 2012(2) which exercises functions in relation to children or young people for whom the authority is responsible.

(3) When preparing and reviewing its local offer, a local authority must also consult any bodies specified in paragraphs (1)(b) to (k) and (m) that are not in the local authority's area, but which the local authority thinks are or are likely to either—

(a) be attended by children or young people for whom it is responsible; or

(b) have functions in relation to children or young people for whom it is responsible.

55. A local authority must consult children and young people with special educational needs or a disability and the parents of children with special educational needs or a disability in their area about—

(a) the services children and young people with special educational needs or a disability require;

(b) how the information in the local offer is to be set out when published;

(c) how the information in the local offer will be available for those people without access to the Internet;

(d) how the information in the local offer will be accessible to those with special educational needs or a disability;

(e) how they can provide comments on the local offer.

48. Schedule 2 provides for a very extensive range of information to be published in its Local Offer. I have set out Schedule 2 in full in the Annex to this judgment. I have

set all this out in full in order not only to show the vast number of people and bodies each local authority must consult before publishing its Local Offer but also the huge range of information that must be referenced.

49. In addition to all this there is statutory guidance. Statutory guidance must be followed unless there is good reason not to do so: see Wilson LJ (as he then was) in *R (TG) v Lambeth LBC* [2012] PTSR 364 at para 17. The guidance here is entitled:

Special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities.

50. It addresses the Local Offer at Chapter 4 where it provides:

**"What is the Local Offer?"**

4.1 Local authorities must publish a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans.

In setting out what they 'expect to be available', local authorities should include provision which they believe will actually be available.

4.2 The Local Offer has two key purposes:

- To provide clear, comprehensive, accessible and up-to-date information about the available provision and how to access it, and
- To make provision more responsive to local needs and aspirations by directly involving disabled children and those with SEN and their parents, and disabled young people and those with SEN, and service providers in its development and review.

4.3 The Local Offer should not simply be a directory of existing services. Its success depends as much upon full engagement with children, young people and their parents as on the information it contains. The process of developing the Local Offer will help local authorities and their health partners to improve provision.

4.4 The Local Offer must include provision in the local authority's area. It must also include provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are

responsible and disabled children and young people. This could, for example, be provision in a further education college in a neighbouring area or support services for children and young people with particular types of SEN that are provided jointly by local authorities. It should include relevant regional and national specialist provision, such as provision for children and young people with low - incidence and more complex SEN.

4.5 Local authorities and those who are required to co - operate with them need to comply with the Equality Act 2010, including when preparing, developing and reviewing the Local Offer.

4.6 The Special Educational Needs and Disability Regulations 2014 provide a common framework for the Local Offer. They specify the requirements that all local authorities must meet in developing, publishing and reviewing their Local Offer, and cover:

- the information to be included
- how the Local Offer is to be published
- who is to be consulted about the Local Offer
- how children with SEN or disabilities and their parents and young people with SEN or disabilities will be involved in the preparation and review of the Local Offer, and
- the publication of comments on the Local Offer and the local authority's response, including any action it intends to take in relation to those comments.

4.7 The Local Offer should be:

- **collaborative:** local authorities must involve parents, children and young people in developing and reviewing the Local Offer. They must also cooperate with those providing services
- **accessible:** the published Local Offer should be easy to understand, factual and jargon free. It should be structured in a way that relates to young people's and parents' needs (for example by broad age group or type of special educational provision). It should be well signposted and well publicised
- **comprehensive:** parents and young people should know what support is expected to be available across education, health and social care from age 0 to 25 and how to access it. The Local Offer must include eligibility criteria for services where relevant and make it clear where to go for information,

advice and support, as well as how to make complaints about provision or appeal against decisions

- **up to date:** when parents and young people access the Local Offer it is important that the information is up to date
- **transparent:** the Local Offer should be clear about how decisions are made and who is accountable and responsible for them."

51. Although the prescriptions are extremely extensive it is important to understand that the requirement is no more than to publish information about what services are expected to be available. Section 30 of the 2014 Act incorporates a publication obligation, no more, no less.

## **Ground B**

52. This states:

"The consultation on the proposed Local Offer was unfair, unlawful and breached the Claimants' parents legitimate expectations because it did not include any consultation on the proposed reconfiguration of the Defendant's Integrated Disability Service (IDS) which will lead in significant reductions in eligibility for social care for disabled children and families — despite the Defendant confirming that these issues would be part of the Local Offer consultation. The unfairness of this approach is exacerbated by the fact that the proposals have changed in significant ways since the completion of the flawed consultation exercise by the Defendant in June 2014."

53. In his skeleton argument Mr Wise QC stated:

The claimants' challenge is to the fairness and legality of the consultation which subsequently followed in September 2014 and which closed on 30 November 2014. ... The claimants' case is that there was no proper consultation by the defendant on its proposed changes to the provision of social care services for disabled children.

54. There is no doubt that there is an obligation to consult about these matters. As set out above Regulation 55 of the 2014 Regulations requires that the consultation on a Local Offer should include consultation on the services children and young people with special educational needs or a disability require. Further, paragraph 4.7 of the SEN Code of Practice, set out above, clearly states that 'the Local Offer must include eligibility criteria for services where relevant...' However, it must be very clearly understood what the purpose of the consultation is. It is about what appears in the Local Offer, which is a compendium of information. I remind myself of the words of section 30. The local authority has a duty to publish information about certain provision it expects to be available. It is not about, for example, whether short breaks

should be provided to certain people. Rather it should clearly state for whom short breaks will be available.

55. With that in mind I ask myself whether the consultation in September 2014 went clearly and radically wrong. I cannot see that it did. I am wholly persuaded by Mr Goudie's argument that nothing went wrong at all. For the benefit of the reader who may not have access to Mr Goudie's skeleton I shall summarise his points:

- i) The defendant had consulted specifically on the “*eligibility criteria and service delivery of the social care and short breaks elements*” of the IDS Local Offer between 4 June and 2 July 2014 as the consultation documents in the bundle clearly show. Parents and carers had a full opportunity then to understand and comment upon the changes to the social care local offer which were proposed. There is no challenge to that consultation exercise in these proceedings.
- ii) The social care local offer was then consulted upon again from 1 September 2014 as part of the overall Local Offer consultation. The consultation material included information on social care eligibility criteria. Moreover, consultees responding to the Local Offer consultation would have known of the nature of the defendant’s proposals for redesign of the social care local offer because of all of the previous consultations which had been carried out, most notably in June 2014. They would have realised that the classes of persons for whom short breaks were "expected to be made available" had narrowed to acute or severe needs cases.
- iii) The consultation documents available during the consultation which commenced on 1 September 2014 included questions in the following form for education, health and care services:

***The type and quality of education, health and care services you need***

*Social care:*

*Is there anything missing? Yes/No/Not sure*

*Can you suggest any improvements? Yes/No/Not sure*

*Comments box:*

- iv) The claimants' statement of facts and grounds accepts at paragraph 96 that the proposed Local Offer did include information on social care eligibility criteria.

56. The claimants' principal complaint is expressed as follows:

"An initial version of the proposals was consulted upon in June 2014 and significant changes were made to the proposals by the time they reached Cabinet in August 2014. As set out below there was a clear commitment at the Cabinet meeting that there would be further consultation on the proposals in the consultation on the proposed Local Offer. However once the Local Offer consultation was launched in September 2014 it was plain that no such consultation was taking place."

57. It is true that there were differences between what had been consulted on in June 2014 about short breaks and what was now being proposed. But in my opinion that was perfectly apparent. Even if I am wrong about this and there is a defect I cannot see that it is of the scale or quality to meet Sullivan LJ's high test especially bearing in mind that this consultation is about what the Local Offer should say about "services expected to be provided" and not about what services should be provided (let alone whether the budget cut should be reversed).
58. I remind myself that the defendant has also recently concluded a further consultation on its proposed Resource Allocation System for social care.
59. I therefore agree that it is not seriously arguable that parents and carers such as the claimants' litigation friends have not been consulted about changes to the social care offer made by the defendant. Given that the proposed Local Offer has not yet been promulgated and is still subject to review, and by its nature will always be subject to continuous updating, it is unreal to say that the claimants have not had the fullest opportunity, not least through this litigation where no stone has been left unturned, fully to express their concerns about the statement of social care eligibility as it will be expressed in the Local Offer.
60. For these reasons I am satisfied that ground B is unarguable and I refuse permission.

### **Ground C**

61. This is in these terms:

"The Local Offer consultation was also unlawful because it was unfair to consult on proposals which breach the requirements of statutory guidance without alerting consultees to this fact. In particular, the defendant has consulted on a system which restricts access to assessments under section 17 of the Children Act 1989 (and thereby specialist services to children with the most complex needs), whereas any child who is or may be a child in need' is entitled to a social care assessment under the relevant statutory guidance (*Working Together to Safeguard Children*). Although a Local Authority may choose not to follow statutory guidance where there is good reason not to do so, fairness required the defendant to alert consultees to the proposed breach of the guidance and put forward any good reason it has to justify taking a different approach."

62. This is explicated in Mr Wise QC's skeleton as follows:

"The issue here is that the defendant is putting forward as part of its proposed Local Offer an approach to assessment of disabled children, which if adopted, would result in an impermissible departure from statutory guidance, *Working Together to Safeguard Children* (2013). This fact was not explained to Local Offer consultees and this provides a further reason why the Local Offer consultation was unfair and unlawful. Again, the claimants rely on the specific

requirements in section 19 of the 2014 Act for information to be provided to parents (and disabled children and young people) to enable proper participation. Although there was no proper consultation on the defendant's social care proposals the social care pages of the proposed Local Offer (D523-527) clearly set out this approach, and did not bring the relevant passages of *Working Together* to the attention of consultees

63. Section 17 Children Act 1989 provides, so far as is material:

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

...

(10) For the purposes of this Part a child shall be taken to be in need if—

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled ...

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part -

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health."

64. Therefore a disabled child, irrespective of the scale of his disability, is to be taken, without any qualification or value judgment, to be "in need" and subject to the general duty referred to, provided of course that the child is referred to the local authority.
65. Part 1 of Schedule 2 of the 1989 Act specifies certain duties and powers for the "purpose principally of facilitating the discharge of their general duty". This does not prescribe how any assessment should be undertaken beyond saying in para 3 that the authority may assess the child's needs at the same time as any assessment of his needs is made under the Chronically Sick and Disabled Persons Act 1970, Part IV of the Education Act 1996, the Disabled Persons (Services, Consultation and Representation) Act 1986, or any other enactment.
66. However, the statutory guidance *Working Together to Safeguard Children* says on page 17 that:
- "A child in need is defined under the Children Act 1989 as a child who is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled. In these cases, assessments by a social worker are carried out under section 17 of the Children Act 1989. ..."
67. This guidance suggests that a disabled child must be assessed by a social worker even if his or her disability is minor. The flow chart at page 32 seems to suggest the same thing. On the other hand, the guidance at para 8 specifically addresses early help assessments done under the Common Assessment Framework, falling short of a full-blown social worker assessment for children in need. It would be very surprising if the author of the guidance had intended that every disabled child should immediately, and irrespective of the scale or nature of the disability, proceed to that extensive and no doubt expensive assessment. The guidance expressly recognises a spectrum which at the lower end are needs which can be assessed through use of an 'early help assessment' (of which the CAF is given as an example) and at the upper end of which are those needs which may require assessment and intervention under the 1989 Act.
68. In this case the Interested Party, the Warwickshire Safeguarding Children Board, had prepared a threshold document, revised in May 2014, which stated:
- "A Common Assessment Framework (CAF) assessment can be initiated by any professional who has attended the Warwickshire CAF training. This will enable the needs of the child or young person and their family to be identified and the best services to be co-ordinated to meet their needs. The Lead Professional will organise a CAF Family Support meeting with the parent(s) young people and relevant services to coordinate the CAF Family Support Plan.
- Professionals can consult with a children's Social Worker in the Local Authority if they are unsure whether a Social Work Assessment is necessary.



...

Children in need may be assessed through a CAF Assessment or through other assessments in relation to the care they are receiving, their special educational needs, disabilities, or as a carer, because they have committed a crime, for children and young people whose parents are in prison and for asylum seeking young people.

...

Where a child or young person or their family has very complex needs or the CAF Family Support Plan has not resulted in the desired improvement outcomes for the child or young person, an assessment by a Local Authority Social Care may be appropriate"

69. Unsurprisingly, this procedure has been carried through into the proposed Local Offer.
70. It is said that the threshold document is unlawful inasmuch as it suggests that a disabled child can be assessed under the CAF by a professional who is not a social worker. This illegality is carried through into the consultation for the proposed Local Offer.
71. In my judgment this ground is wholly meritless and unarguable. It would not make sense for any child with any "*mental disorder*" to be entitled automatically to receive a section 17 assessment conducted by a social worker given the mutability of the term mental disorder. I agree with Mr Goudie QC that it may, for example, be entirely inappropriate for a child with dyslexia or dyspraxia to receive a social care assessment under section 17.
72. In my judgment the guidance should not be read as insisting that every disabled child should initially be the subject of a full-blown social worker assessment. Alternatively, if it does say that then local authorities and safeguarding boards would have good reason for departing therefrom. The approach taken in the threshold document strikes me as eminently reasonable in terms of initial deployment of resources.
73. I refuse permission in relation to Ground C.

#### **Ground D**

74. This is in these terms:

"The defendant has unlawfully failed to introduce a Local Offer pursuant to section 30 of the Children and Families Act 2014 by 1 September 2014. Furthermore the purported 'Local Offer' on which consultation has just concluded is so flawed as to render the consultation irrational, unfair and unlawful. It is irrational and unfair to put forward for consultation a Local Offer which is so flagrantly non-compliant with the

requirements of the regulations (Regulation 53 of and Schedule 2 to the Special Educational Needs and Disability Regulations 2014)."

75. No argument is now advanced as to the first sentence, and to my mind that is a wise stance. Having regard to the legion matters which the Act, the Regulations and the guidance prescribe it would be amazing if any local authority had by now actually formulated and issued a Local Offer which met every requirement. On the other hand it is well known that many local authorities have by now published Local Offers which are believed to be largely compliant with the requirements.
76. The argument that is advanced is that the proposed Local Offer as published by the defendant falls so far short of what is required that it is in fact unlawful. The witness statement of the claimants' solicitor Polly Sweeney appends a table which appears to show that the defendant has provided no or no proper information in its proposed Local Offer in relation to 16 of the matters prescribed by Schedule 2 to the 2014 Regulations. The table shows that the defendant's proposed Local Offer is only in any way compliant with seven of the Schedule paragraphs. Thus it is said that the defendant's proposed Local Offer continues to fail to comply with over two-thirds of the requirements imposed by the Schedule. This is not seriously disputed by Mr Goudie QC.
77. Mr Goudie QC however submits that ground is meritless and unarguable for the following reasons:
- i) The development and publication of the Local Offer is, as the legislative framework envisages and the implementation guidance makes clear, intended to be an iterative process, subject to consultation and to be done in accordance with the new spirit of 'co-production'. The defendant is continuing to update its website with further information on the Local Offer and will continue to do so in the coming weeks and months as the Offer is refined and further developed. That is entirely lawful.
  - ii) The claimants' criticisms are of form and not substance. They do not give rise to any real public law illegality such as to justify the court's intervention. To take an example of the nature of the criticisms, it is obviously not arguably unlawful for information to be published on the defendant's website by way of a link through to a partner's website (as is done, for example with the information on healthcare provision and SEN provision in schools).
  - iii) It is unclear what useful purpose is served by bringing and pursuing a claim for relief on this ground. The Local Offer can hardly be quashed and the defendant has made it quite clear, both in its defence to this claim and in the witness evidence served to accompany it that it is continuing to refine and improve its Local Offer and wishes to work in a spirit of co-operation and co-production with parents and carers going forward.
78. These are all good points but they do not meet the main point which is that the proposed Local Offer falls a considerable distance short of the statutory requirements.

79. I agree that the proposed Offer needs a good deal more work before it is issued in final (but variable) form. The defendant will have noted the criticisms made by the claimants and will no doubt work very hard to improve the current draft.
80. In the circumstances I grant permission on Ground D. No substantive relief is sought beyond a finding that the proposed Local Offer in its present form is deficient, which I formally make.

### **Ground E**

81. This is in these terms:

"The defendant is in breach of its duty under paragraph 2 of schedule 2 to the Children Act 1989 to maintain a register of disabled children. As a result it is unable to comply with (for example) the duty imposed by section 27 of the Children and Families Act 2014 to review the sufficiency of education and care provision available to children in its area as it does not know how many disabled children may require such provision."

82. The defendant admits that it does not presently maintain a single register of disabled children as required by paragraph 2 of Schedule 2 to the Children Act 1989. However it is actively taking steps to correct this omission and expects to have a register in place by the end of March 2015.
83. The defendant is over 20 years late in complying with its duty under paragraph 2 of Schedule 2 to the Children Act 1989, which does raise questions as to when this ground "first arose", although I have heard no argument about this. Plainly unless this local authority has such a register and knows more or less precisely how many disabled children there are in the county it cannot make a fully informed decision about budgetary allocation or as to the terms of a proposed Local Offer. That is not to say however that the decisions that it has reached hitherto have gone clearly and radically awry.
84. In the circumstances I grant permission on this ground. Again no substantive relief is sought beyond the findings which I formally make namely that (a) the failure by the defendant to create and maintain a register of disabled children is a breach of the law and (b) the defendant is obliged promptly to remedy that breach.
85. That concludes this judgment.

## ANNEX

### Special Educational Needs and Disability Regulations 2014 (S.I. 2014 No. 1530)

#### Schedule 2

##### Information to be published by a local authority in its local offer

1. The special educational provision and training provision which the local authority expects to be available in its area for children and young people in its area who have special educational needs or a disability by—
  - (a) providers of relevant early years education;
  - (b) maintained schools, including provision made available in any separate unit;
  - (c) Academies, including provision made available in any separate unit;
  - (d) non-maintained special schools;
  - (e) post-16 institutions;
  - (f) institutions approved under section 41 of the Act;
  - (g) pupil referral units; and
  - (h) persons commissioned by the local authority to support children and young people with special educational needs or a disability.
  
2. The special educational provision and training provision the local authority expects to be made outside its area by persons specified in sub-paragraphs (a) to (g) of paragraph 1 for children and young people in its area with special educational needs or a disability.
  
3. The information in paragraphs 1 and 2 must include information about—
  - (a) the special educational provision and training provision provided for children and young people with special educational needs or a disability by mainstream schools and mainstream post-16 institutions including any support provided in relation to learning or the curriculum;
  - (b) the special educational provision and training provision provided by special schools and special post-16 institutions, and those approved under section 41 of the Act;
  - (c) the special educational provision and training provision secured by the local authority in mainstream schools, mainstream post-16 institutions, pupil referral units and alternative provision Academies for children and young people with special educational needs or a disability; and
  - (d) the arrangements the local authority has for funding children and young people with special educational needs including any agreements about how any of the persons specified in paragraph 1 will use any budget that has been delegated to that person by the local authority.
  
4. The arrangements the persons specified in paragraphs 1 and 2 have for—
  - (a) identifying the particular special educational needs of children and young people;
  - (b) consulting with parents of children with special educational needs or a disability and with young people with special educational needs or a disability;
  - (c) securing the services, provision and equipment required by children and young people with special educational needs or a disability; and
  - (d) supporting children and young people with special educational needs or a disability in a transfer between phases of education and transfers from one post-16 institution to another, and in preparation for adulthood and independent living.

5. Information, in relation to the persons specified in paragraphs 1 and 2, about-
  - (a) their approach to teaching of children and young people with special educational needs;
  - (b) how they adapt the curriculum and the learning environment for children and young people with special educational needs or a disability;
  - (c) the additional learning support available to children and young people with special educational needs;
  - (d) how the progress towards any of the outcomes identified for children and young people with special educational needs will be assessed and reviewed, including information about how those children, their parents and young people will take part in any assessment and review;
  - (e) how the effectiveness of special educational provision and training provision will be assessed and evaluated, including information about how children, their parents and young people will take part in any assessment and evaluation;
  - (f) how facilities that are available can be accessed by children and young people with special educational needs or a disability;
  - (g) what activities (including physical activities) are available for children and young people with special educational needs or a disability in addition to the curriculum;
  - (h) what support is available for children and young people with special educational needs or a disability;
  - (i) how expertise in supporting children and young people with special educational needs or a disability is secured for teaching staff and others working with those children and young people;
  - (j) how the emotional, mental and social development of children and young people with special educational needs or a disability will be supported and improved.
6. Where further information about the bodies specified in paragraphs 1 and 2, including the information required by section 69 of the Act, can be obtained.
7. Where the strategy prepared by the local authority under paragraph 1 of Schedule 10 to the Equality Act 2010(1) can be obtained.
8. Special educational provision and training provision the local authority expects to be made in relation to young people with special educational needs or a disability who have entered into an apprenticeship agreement within the meaning of section 32(1) of the Apprenticeships, Skills, Children and Learning Act 2009.
9. Special educational provision and training provision the local authority expects to be made by providers of training in its area, and outside its area for young people in its area with special educational needs or a disability.
10. Provision available in the local authority's area to assist children and young people with special educational needs or a disability in preparation for adulthood and independent living.
11. Information about support available to young people with special educational needs or a disability receiving higher education, including any disabled student's allowance available under chapter 3 of Part 5 of the Education (Student Support) Regulations 2011(2).
12. Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area, including—

- (a) services for relevant early years providers, schools and post-16 institutions to assist them in supporting children and young people with medical conditions, and
- (b) arrangements for making those services which are available to all children and young people in the area accessible to children and young people with special educational needs or a disability.

13. Social care provision for children and young people with special educational needs or a disability and their families including—

- (a) services provided in accordance with section 17 of the Children Act 1989;
- (b) the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;
- (c) support for young people in planning and obtaining support to assist with independent living;
- (d) information and advice services made available in accordance with section 4 of the Care Act 2014(3).

14. Transport arrangements for children and young people with special educational needs or a disability to get to and from school or post-16 institution, or other institution in which they are receiving special educational provision or training provision including—

- (a) arrangements for specialist transport;
- (b) arrangements for free or subsidised transport;
- (c) support available in relation to the cost of transport, whether from the local authority or otherwise.

15. Sources of information, advice and support in the local authority's area for children and young people with special educational needs or a disability and their families including information—

- (a) provided in accordance with section 32 of the Act;
- (b) about forums for parents and carers of children and young people with special educational needs or a disability;
- (c) about support groups for children and young people with special educational needs or a disability and their families;
- (d) about childcare for children with special educational needs or a disability;
- (e) about leisure activities for children and young people with special educational needs or a disability and their families;
- (f) about persons who can provide further support, information and advice for children and young people with special educational needs or a disability and their families.

16. The procedure for making a complaint about provision mentioned in section 30(2) of the Act.

17. The procedure for making a complaint about any provision or service set out in the local offer.

18. Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.

19. Information about how to request an EHC needs assessment, and the availability of personal budgets.

20. Information on where the list of institutions approved under section 41 of the Act is published.
  21. Arrangements for notifying parents and young people of their right to appeal a decision of the local authority to the Tribunal.
  22. Arrangements for mediation made in accordance with section 53 or 54 of the Act.
  23. Arrangements for the resolution of disagreements made in accordance with section 57 of the Act.
-