

Council wins JR challenge to academy order: *Somerset County Council v Secretary of State for Education* [2020] EWHC 1675 (Admin)

By [Katherine Anderson](#)

In these proceedings, Somerset County Council sought judicial review of a decision made by the South West Regional Schools Commissioner to make an academy order permitting Swanmead Community School to become an academy and join the Bridgwater College Trust, a multi-academy trust or “MAT”. At the end of June, the Administrative Court handed down judgment, declaring that the decision was unlawful and that the Council was entitled to an order quashing the decision and the academy order.

The background to the proceedings was that the Council had initiated a formal review process in early 2019 to consider the organisation of education generally in the Crewkerne and Ilminster areas of Somerset. Historically the schools in the relevant area were organised in a three-tier system, with first, middle and upper schools. Swanmead was the only middle school in the relevant area that was not an academy. The review, which included a process of consultation of viable options for all the schools in the relevant area, was ongoing at the time of the Commissioner's decision. In the judicial review proceedings, the Council submitted that by making the decision when she did and on the material that she did, the Commissioner severely curtailed its options in terms of the re-organisation. The Defendant submitted *inter alia* that the Commissioner could not be expected to delay or defer any decision on academy status until the review into schooling in the relevant area had been completed: had it done so, that itself would have been potentially subject to judicial review by the school. It also relied upon co-operation by the MAT following the academy order, to meet the Council's point that the legal effect of the order was to give the school, or more accurately, the MAT which it would have joined, an effective ‘veto’ over future re-organisation across the whole area.

The Court concluded *inter alia* that there was a failure by the Commissioner to have regard to the prejudicial impact that making an academy order in respect of Swanmead would have upon the on-going SCC review of the educational structure of the relevant area, and a failure to give adequate reasons. However, the Court stressed that the facts of this case are highly unusual and that the outcome of this judicial review “*should not be interpreted as granting carte blanche to those wishing to challenge the making of academy orders generally, or to contain any finding that there is a general duty to give reasons whenever such an application is approved*”. It also noted that there is a total of three different sets of judicial review proceedings that have been threatened or initiated concerning schools in this area and commented that legal proceedings are expensive, and even expedited ones can take a number of months. Consultation, consensus and co-operation are far more likely to result in viable solutions for education in this particular area than continuing conflict and yet more litigation.

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