Is it lawful for an EHC plan to specify home education – and if so, how? London Borough Camden v KT [2023] UKUT 225 (AAC)

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In this appeal concerning an Education, Health and Care Plan (EHCP), Upper Tribunal Judge Jacobs analysed the legal position when a parent consents to the special educational provision in their child's EHCP being arranged in the family home. The appeal concerned the EHCP authorised for P by the First-tier Tribunal; KT, P's mother, was represented by Charlotte Hadfield and Alice de Coverley of 3PB Barristers, instructed by Geldards LLP. The First-tier Tribunal ordered that the special educational provision in P's EHCP should be arranged otherwise than in a school, in accordance with section 61 of the Children and Families Act 2014 – in P and KT's home.

Among other grounds of appeal, it was argued on behalf of the local authority that while the home may be the venue in which some 'EOTAS' (education otherwise than in a school) is delivered by agreement with parents, this cannot be ordered by a Tribunal because it is unenforceable because the Tribunal has no power to impose obligations on parents via an EHCP and a local authority cannot require that parents provide access to the home (real or virtual) for the purposes of delivering the 'EOTAS' provision. This argument had fundamental importance as a limitation on the jurisdiction of the First-tier Tribunal.

Considering this argument, Jacobs J, held, at [26], that the First-tier tribunal had found that P's disability called for a range of provision which included that it be delivered for the time being outside a school. In order for P's education to be effective, it had to be delivered at his home, at least for the time being. By definition, a provision for a child's education to be delivered outside a school is different from provision generally available in schools. On the evidence in this case, Jacobs J had no objection in principle to 'EOTAS' being included in Section F. Section 42 of the Children and Families Act 2014 imposes a duty on the local

authority to secure the specified special educational provision for the child or young person. However, that duty is subject to section 42(5): it does not arise for so long as the child's parent has made 'suitable alternative arrangements. Jacobs J accepted that neither a local authority nor the First-tier Tribunal can impose on a parent the responsibility of making alternative arrangements, but that was not what had happened in this case. It was KT who argued for the provision and the tribunal accepted her argument. She could, of course, refuse to provide the provision, and if she were to do so, the plan would have to be revised and different provision ordered.

It has always been apparent from the statutory guidance issued under the 2014 Act - the SEND Code of Practice 0-25 years - that an EHCP can specify home education if parents and the local authority agree. The guidance states, at paragraph 10.31, that in cases where local authorities and parents agree that home education is the right provision for a child or young person with an EHC plan, the plan should make clear that the child or young person will be educated at home (however, following *East Sussex County Council v TW* [2016] UKUT 528, home education may not be specified in *section I* of the plan). *Camden LBC v KT* explains the reason why this works from a legal perspective: it is by virtue of section 42(5). The parent, in volunteering the home as the venue in which the special educational provision may be arranged, is making 'suitable alternative arrangements' for that aspect of the provision.

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