

Q&A: Who's afraid of systemic legal challenges?

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Having consulted my crystal ball (aka 'Westlaw'), I can now confirm that 2025 is likely to see a groundswell of systemic challenges on a range of social and economic issues affecting the education sector. If the last four years of case law is anything to go by, that may be an understatement.

Here's (some of) what you need to know via a Q&A with erm... me. A tidier version of this discussion played out at 3PB's Education law conference in February 2025.

So, what does a systemic legal challenge look like these days?

Well, there hasn't ever really been a definition, so... that's that, I guess.

My back-of-a-disposable-napkin, work-in-progress *definition* is: a claim that targets the underlying lawfulness of decision-making systems, affecting a class of individuals. Most are judicial reviews but [some](#) aren't.

Think macro. Big picture. Closer to the legal equivalent of a hip replacement rather than nano-surgery.

I'm running low on time, caffeine and (now) patience. Just tell me the legal test that I need to rote learn, please.

Ah, that'll be the [Gillick](#) test: does the policy authorise or positively approve of unlawful conduct. You compare the text of the policy with the legal framework and if it fits badly, it's unlawful.

Cheers. That was... painless.

You're welcome. Kudos to the Supreme Court in [R \(A\)](#) for dusting off *Gillick* and reminding everyone to stop frolicking around with less principled tests, diverting as that was.

However, you know it's not that straightforward as soon as judicial review is involved. In *R (A)* alone, the *Gillick* test is described, re-described and described again in slightly different ways each time. Plus, there are certain specific tests that apply in certain cases (eg. fundamental rights like access to justice, human rights, etc.).

Also, not all systemic challenges are against policy documents *per se*...

Oh?

Yup. Systemic challenges come in all sorts of formats so an over-rigid application of a singular, homogenised test risks undermining the judicial review Court's supervisory jurisdiction, imho.

I see that frown. And yes, I feel your pain. Sorry.

That's okay: we're only human!

How does this affect the education sector?

Indirectly, education practitioners may find a 2024 systemic challenge to a [key government funding decision in legal aid](#) insightful, given the funding crisis in the maintained education sector at local and national levels.

Directly, there are a few examples of education-related systemic challenges knocking around. Several challenges to local authority policies or practices have been dismissed for different reasons, including a challenge to [de-centralised provision](#) of specialist visually impaired teaching support; and a challenge to [guidance for schools on LGBT+ issues](#). Elsewhere, a local authority [settled a systemic challenge](#) by agreeing to an independent review of delays to EHC needs assessments. This led to a range of recommendations being taken on board.

Interesting...

Impactful, too. Anyone drafting policies, setting budgets or implementing change should take note, as should affected individuals or organisations. Watch this space as there's bound to be more developments in the works.

Why?

Because my crystal ball said so.

For more resources on this topic, please email education@3pb.co.uk with 'Systemic judicial reviews' in the subject line.

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