What is the correct timeframe for a local authority to issue a Final Amended Education, Health & Care Plan?

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Well, we still do not know the answer to the above question in spite of the Court of Appeal's decision in *R (L, M, P) v Devon County Council* [2021] EWCA Civ.

The background to this case concerned an underlying claim for judicial review. The Respondent local authority had carried out annual reviews of the appellants' Education and Health Care Plans ("EHC Plans") and had proposed amendments to them in accordance with Regulation 22 of the Special Educational Needs and Disability Regulations 2014 ("Regulation 22"). The Respondent had delayed issuing the Final Amended EHC Plan and also contended that it had 8 weeks, from the date of issuing the Regulation 22 notice, to issue the Final Amended EHC Plan. The Appellants disagreed and challenged the overall delay in the issuing of the EHC Plan as well as the component parts of that delay.

By the time the Respondent had lodged its acknowledgment of service, it had already served the amended EHC Plans. The Respondent therefore argued in its summary grounds of defence that permission should be refused because the claims were now academic. Eady J did not agree that the claims had become academic. This was on the basis that "*there will be ongoing reviews of the [As' EHC plans] and the issues raised by this claim remain live between the parties*". Permission to apply for judicial review was consequently granted.

At the substantive hearing HHJ Gore QC reopened the issue of whether the claims were academic. He invited the parties to make submissions on the point, including further written submissions after the hearing. He also heard full arguments on the issue of the construction of the relevant Regulations. In his judgment, HHJ Gore QC noted that the underlying claim for declarations was "*a very interesting hotly contested question of pure statutory interpretation*" (judgment paragraph 15) and accepted that the question gave rise to general issues of public importance. However, he decided that the relief sought had become

"*unnecessary and academic*" and therefore dismissed the claims without determining the issue of the construction of the Regulations.

In the Court of Appeal, the questions to be answered were 1) whether the claims were academic; and 2) if the claims were academic, whether HHJ Gore QC was wrong not to exercise his discretion to determine them.

Delivering the leading judgment Lady Justice Laing DBE did not consider it necessary to reach a final view of whether the claims were academic. However, assuming that the claims were academic, she found that 1) the Judge had a discretion to decide the claims even if they were academic; and 2) that he should have exercised this discretion.

Lady Justice Laing agreed that the Judge had applied the wrong test to the exercise of discretion. The correct test being that which was set out in *R v Home Secretary ex p. Salem [1999] AC 450*. She found that the reasons that the judge gave for refusing to exercise discretion were "*circular*" as they were either, "*an argument that he had no discretion, or reasons which would apply to every academic claim and would, if valid, mean that the court could never exercise its discretion to hear an academic claim.*"

In allowing the appeal Lady Justice Laing held at para 56:

"*As the Judge erred in principle in the exercise of the discretion, this Court can exercise it afresh. The dispute in this case is a pure issue of statutory construction. The issue potentially affects many children and young people who have EHC plans (and their parents), and the local authorities which are responsible for maintaining those EHC plans. Even R concedes that it is possible that the issue will arise again in the future between these very parties. The issue concerns a short period in a longer process, so it is unlikely ever to be live by the time an application for judicial review reaches a substantive hearing, and, therefore, unlikely to be decided unless in these claims. There are three cases before the court, and the facts of those cases are not in dispute. It follows that there are good reasons in the public interest for the claims to be heard. Those reasons were strongly reinforced, at the time of hearing before the Judge… I consider that the discretion should have been exercised then so as to decide the issue of statutory construction and that it would not be right to take a different course now because that did not happen.*"

The Court of Appeal had intended to finally decide the issue of the construction of the Regulations however, time ran out. The case has been remitted to the Administrative Court and therefore we must wait to hear the final word on the correct interpretation of the timescales for issuing a Final EHCP.

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