

Case Note: *R (L) v Hampshire County Council* [2024] EWHC 1928 (Admin)

Local Authorities s.42 (Children and Families Act 2014) duties.

By Lauren Fullerton¹ & Arran Dowling-Hussey²

1. Introduction

The case of *R (L) v Hampshire County Council* [2024] EWHC 1928 (Admin) deals with the statutory duty of local authorities under **Section 42 of the Children and Families Act 2014** to provide the special educational support specified in a child's **Education, Health, and Care (EHC) plan**. The claimant, L, a child with severe **special educational needs (SEN)**, challenged

¹ Lauren Fullerton is a barrister practising from 4-5 Gray's Inn Square Chambers, London. She can be contacted at l.fullerton@4-5.co.uk

² Arran Dowling-Hussey is a barrister practising from 4-5 Gray's Inn Square Chambers, London. He can be contacted at adhussey@4-5.co.uk

Hampshire County Council's failure to implement crucial aspects of his **EHF plan**, resulting in a judicial review. The High Court ruled on the **extent of the local authority's obligations**, reinforcing the absolute nature of their duty to secure special educational provision.

2. Factual Background

L is a child diagnosed with:

- **Autistic Spectrum Disorder (ASD)**
- **Attention Deficit Hyperactivity Disorder (ADHD)**
- **Paediatric Acute-onset Neuropsychiatric Syndrome (PANS)**

Due to these conditions, L was unable to attend a mainstream school and was instead placed in an **Education Otherwise Than at School (EOTIS)** program, which

was specifically outlined in his **EHC plan**. The plan detailed the following necessary support:

1. **An Educational Psychologist (EP)** providing **1-2 hours per week** of direct input and coordination.
2. **A Learning Support Assistant (LSA)** to aid L's engagement in learning activities.
3. **A specialist tutor** to support home education.

Despite the plan being **finalized in August 2023**, Hampshire County Council failed to deliver the key provisions, particularly the **EP-led coordination**. This led to significant distress for L and his family, exacerbating his mental health challenges.

3. Procedural History

After several months of **non-compliance** by the council, L's parents sought legal action. They initiated **judicial review proceedings**, claiming that the **local authority's inaction constituted a breach of statutory duty**.

The **relief sought** included:

- . **A declaration** that Hampshire County Council had breached **Section 42 of the Children and Families Act 2014**.
- . **A mandatory order** compelling the council to **immediately fulfill its obligations** under the EHC plan.
- . **Expedited enforcement** of the educational support required.

The **local authority** defended its failure by arguing that **staffing shortages and administrative difficulties** had hindered implementation. However, the claimant

countered that the **duty under Section 42 is absolute**, meaning the local authority **must secure the provision, regardless of resource limitations.**

4. Legal Framework

The case was adjudicated under several key legal principles:

4.1 Section 42 of the Children and Families Act 2014

- . This provision **places an absolute duty** on local authorities to **secure the special educational provision outlined in an EHC plan.**
- . The duty is **not discretionary**—it is a **legal obligation** that must be met.

4.2 Key Case Law Considered

- . **R (Imam) v Croydon London Borough Council [2023] UKSC 45:**
 - Reinforced that **a breach of a statutory duty** (like Section 42) is **grounds for judicial intervention**.
- . **N v North Tyneside Borough Council [2010] EWCA Civ 135:**
 - Established that **lack of resources does not excuse a failure to meet educational needs**.
- . **R (K) v Worcestershire County Council [2021] EWHC 1731 (Admin):**
 - Emphasized that **EHC plans create enforceable rights** for children with SEN.

5. Issues Before the Court

The key issues for the High Court's determination were:

1. Did Hampshire County Council breach Section 42 of the Children and Families Act 2014?

- Specifically, by failing to provide the **Educational Psychologist (EP) support** required by the **EHF plan**.

2. Was the breach justifiable due to staffing shortages or administrative difficulties?

- Could the **lack of available personnel** absolve the council of responsibility?

3. What is the appropriate remedy?

- Should the court issue a **mandatory order** requiring immediate compliance?

6. Decision of the High Court

6.1 Findings

The High Court ruled **in favor of L**, holding that:

- Hampshire County Council **had indeed breached Section 42** by failing to provide the **Educational Psychologist (EP) support**.
- **Administrative delays and staffing shortages are not lawful justifications** for failing to fulfill an EHC plan.
- The **council had ample time** (10 months) to ensure compliance and **had failed to act with urgency**.

6.2 Court's Reasoning

The judgment reinforced several key principles:

1. **Absolute Nature of the Duty**

- Section 42 creates an **unqualified obligation** to deliver the specified support.
- **Local authorities cannot simply make “reasonable efforts”**—they must ensure provision **actually occurs**.

2. **No Excuse for Resource Constraints**

- The High Court **rejected the argument** that staffing shortages excused non-compliance.
- The judgment referenced **N v North Tyneside Borough Council**, reaffirming that local authorities **must proactively plan and allocate resources** to avoid breaches.

3. **Significant Harm to the Child**

- The court highlighted **L's deteriorating mental health** due to the missing provisions.
- It ruled that failure to provide an **Educational Psychologist (EP) assessment and intervention** had exacerbated **L's anxiety and educational disengagement**.

7. Remedies and Outcome

The High Court ordered the following **remedies**:

1. **A declaration of unlawful conduct**
 - The court formally declared that Hampshire County Council **had breached its duty under Section 42**.
2. **A mandatory order for compliance**

- The council was ordered to **secure an Educational Psychologist (EP) within four weeks.**
 - If compliance was not achieved, the council **would face further legal sanctions.**
3. **Costs awarded to the claimant**
- The court ordered the **local authority to pay the claimant's legal costs.**

8. Implications of the Judgment

This case has **significant implications** for local authorities, parents, and children with special educational needs:

1. **Reinforcement of the Absolute Duty**

- The judgment affirms that **local authorities must ensure all provisions in an EHC plan are delivered in full.**
- Failure to do so **will lead to judicial intervention.**

2. No Tolerance for Excuses

- The ruling sets a **precedent that “lack of staff” or “budgetary constraints” will not absolve councils from their legal obligations.**
- Councils must **take proactive measures** to fulfill their EHC plan duties **without delay.**

3. Empowerment for Parents

- The case serves as **a warning to councils** and an **empowerment for parents.**

- Parents of SEN children now have **stronger grounds to demand enforcement** of their child's educational rights.

9. Conclusion

The ruling in *R (L) v Hampshire County Council* **reaffirms the legal protections for children with SEN and clarifies that local authorities cannot evade responsibility due to resource constraints.** The High Court's decision ensures that children with EHC plans **receive the support they are legally entitled to**, setting a firm precedent for future disputes over local authority compliance.

This case stands as a **landmark decision** reinforcing the **accountability of local**

authorities in upholding the educational rights of children with SEN.

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