Neutral Citation Number: [2026] EWHC 1567 (Admin)

Case No: AC-2025-LON-000396

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2026

Before:

MR JUSTICE MACDONALD

- -

Between:

ATN	**Claimant**
- and -	
WELLBN PARTNERSHIP	**Defendant**
-and-	
(1) ATT (By Her Litigation Friend, the Official Solicitor) (2) NHS SUSSEX INTEGRATED CARE BOARD (3) NHS ENGLAND	**Interested Parties**

- -

Mr Vikram Sachdeva KC and Ms Rachael Gourley (instructed by **Conrathe Gardner LLP**) for the **Claimant**
Ms Nicola Newbegin KC and Mr Ben Jones (instructed by **Gordons Partnership**) for the **Defendant**
Ms Alexis Hearnden (instructed by **Bindmans LLP**) for the **First Interested Party**

Hearing dates: 13 May 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

Mr Justice MacDonald:

INTRODUCTION

1. The Claimant, ATN, seeks permission for judicial review of what he contends is the Defendant's continuing policy of prescribing gender affirming hormones / hormone replacement therapy[1] to persons under the age of 18 experiencing gender incongruence[2] or gender dysphoria.[3] There is an anonymity order in force with respect to the Claimant and the first Interested Party.

2. The Claimant is the father of ATT, the first interested party. ATT was born on 22 May 2008 and was aged 17 at the date of the permission hearing and 18 at the date of this judgment. There is no evidence that she lacks capacity to consent to the administration of hormone treatment. As at the commencement of these proceedings, ATT was being prescribed spironolactone and oestrogen by Dr Samuel Hall, a partner at the Defendant.

3. The Defendant, the WellBN Partnership, is a private partnership which consisted, at the time these proceedings were issued, of five partners (four of whom were practising GPs) which operates out of three surgeries. It provides NHS services to approximately 25,000 patients, including ATT. It has a particular focus on transgender healthcare.

4. The second interested party, NHS Sussex Integrated Care Board (hereafter "the ICB"), is the responsible commissioner for services provided by the Defendant, with such commissioning responsibility delegated to it from the third interested party, NHS England (hereafter "NHSE") in relation to primary medical services. NHSE is an executive non-departmental public body which leads and oversees the commissioning of healthcare provision in England.

5. The Claimant also instituted proceedings in the Family Division seeking a declaration as to ATT's best interests. As a result, the Claimant's application for permission for judicial review was adjourned pending the determination of whether it was in ATT's best interests to continue with the medication regime prescribed by the Defendant. The background and context of the proceedings in the Family Division is described in the judgment of this court in *N v N (Expert Evidence on Gender Affirming Treatment)* [2025] EWHC 1325 (Fam). Immediately prior to the final hearing of the family proceedings, ATT was offered and accepted an expedited transfer into a specialist NHS gender service. In the circumstances, the Claimant sought and was granted permission to withdraw his applications in the Family Division.

6. In considering and determining the application for permission for judicial review, I have had the benefit of written and oral submissions from Mr Vikram Sachdeva of

---

[1] It is important to note that this case is *not* about GnRH analogues (colloquially known as 'puberty blockers').

[2] 'Gender incongruence' is the term used in the International Classification of Diseases Eleventh Revision (ICD-11) (World Health Organization, 2022) to describe "a marked and persistent incongruence between an individual's experienced gender and the assigned sex".

[3] 'Gender dysphoria' is the term used in Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) (American Psychiatric Association, 2022). In the DSM-5-TR definition gender incongruence has to be associated with clinically significant distress or impairment of function.

King's Counsel and Ms Rachel Gourley of counsel, on behalf of the Claimant, Ms Nicola Newbegin of King's Counsel and Mr Ben Jones of counsel, on behalf of the Defendant, and Ms Alexis Hearnden of counsel on behalf of ATT. The second and third interested parties did not appear and were not represented.

7. Finally by way of introduction, during the currency of these proceedings NHSE and the ICB have undertaken a rapid Independent Patient Safety Investigation (hereafter "IPSI") of the Defendant, chaired by Professor Judith Ellis. For reasons given in a separate *ex tempore* judgment at the outset of the hearing I refused an application made by the Claimant for disclosure into these proceedings of the draft IPSI report and the consequential adjournment of the permission hearing.

8. I was satisfied that disclosure of the IPSI report was not necessary to determine the application for permission. As I observed in my *ex tempore* judgment, whilst the terms of reference for the report included the identification of any breach of legislation, it did so in relation to GnRH analogues and not gender affirming hormones. Further, and in circumstances where disclosure will not be appropriate in most applications for judicial review, per *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 52, [2007] 1 AC 650, I was satisfied that the court had sufficient information to identify the policy impugned, to identify the legal framework and policies within which the policy was drafted, and to identify whether the impugned policy was unlawful on public law grounds (see *National Bank of Anguilla v Chief Minister* [2025] UKPC 13, [2025] UKPC 14). In addition, I noted that prior to the question of whether the claim was arguable the court had to consider, on the Defendant's case, whether the claim is now academic; whether the claim is time barred, and if so, whether an extension should be granted; whether the Claimant availed himself of alternative remedies; whether the Claimant has established the Defendant is a public body; whether the Claimant has identified a decision capable of challenge by way of judicial review; and whether the Claimant has articulated public law grounds amenable to judicial review.

9. Notwithstanding the court's decision not to order disclosure of the draft IPSI report, and at a point when the court was finalising its draft judgment, on 12 June 2026 the Claimant's solicitors wrote to the court enclosing a copy of the published IPSI report.

10. The letter from Mr Conrathe enclosing the IPSI report amounted to a further set of legal submissions, apparently drafted with the assistance of leading and junior counsel, on the question of permission. No application had been made by the Claimant for leave to make further written submissions on the question of permission and the court had not directed further submissions. A further letter from the Claimant's solicitor dated 16 June 2026, after the court had enquired as to the basis on which further written submissions were being made following the conclusion of the hearing, also comprised extensive legal submissions. Whilst that letter purported to justify the provision of the IPSI report to the court, it failed to address the basis on which the Claimant contended he was entitled to make further written submissions on the question of permission following the close of argument. Neither the Defendant nor the interested parties have had an opportunity to respond to the further written submissions sent by Mr Conrathe on 12 June 2026.

11. The letters sent by the Claimant's solicitors failed to comply with CPR r.39.8(4) regarding correspondence with the court. In any event, in *MH (Eritrea) v Secretary of State for the Home Department* [2022] EWCA Civ 1296, [2023] 1 WLR 482, the

Court of Appeal made the position regarding unilateral submissions sent after the end of argument abundantly clear:

> "[53] The Secretary of State, without having been asked by the court, and without having asked for permission to do so, sent written submissions to the court during the afternoon after the hearing. They did not raise any new point but were merely a reiteration, in more succinct terms, of points which counsel had made during the hearing. Ms Hooper felt constrained to reply to them.
>
> [54] In making the following observations I do not intend to be critical of counsel but rather to clarify what the practice should be. As a general rule, the parties should not unilaterally send submissions to the court, after the end of the argument, which raise points which should have been raised during the hearing. If, however, there is a matter which has arisen during the hearing, on which they wish to make further submissions, they should raise that with the court during the hearing. The court will then be able decide whether such submissions are necessary. If, after the hearing, counsel wish to raise a further point, they should tell the other party or parties, and ask the courts permission before filing anything else. If the point concerns an issue which arose for the first time at the hearing, or which has unexpectedly come to light immediately afterwards, the court may well agree to the filing of further short submissions, provided that the point is raised promptly after the hearing (and subject to a right of reply). An advocate will, however, rarely be given permission to file a document which puts forward arguments which could and should have been made during the hearing."

12. As I have said, no permission was sought from the court before the Claimant sent further written submissions. The letter from Mr Conrathe of 12 June 2026 largely repeats submissions made by leading counsel at the hearing and, as I have noted, was drafted with the assistance of leading and junior counsel, Mr Alasdair Henderson. The Defendant contends that there is no basis for allowing the Claimant to make further submissions following the close of argument and invites the court to proceed on the basis of the information available to the court, and the submissions made at, the hearing on 13 May 2026. I make clear that I have proceeded on that basis in considering my decision in this case.

BACKGROUND

13. ATT was born male but identifies as female and has done so from a relatively early age. She lives at home with her parents. From October 2024, ATT was prescribed spironolactone and oestrogen for gender incongruency by the Defendant, under what was characterised as a "bridging prescription" pending referral to a specialist gender service. That treatment was provided to ATT based on an "informed consent" model of care, ATT having forged her mother's signature on a self-assessment form on 4 September 2024.

14. The Claimant asserts that he repeatedly told the Defendant that he did not want ATT to receive treatment. The Claimant does not accept that ATT has been properly diagnosed with gender incongruence or gender dysphoria. Whilst not medically qualified, he considers it more likely that ATT is suffering from distress which is related to other, underlying, severe mental health conditions. However, by a letter dated 14 March 2025,

CAMHS confirmed to the Claimant and ATT's mother that a consultant psychiatrist was of the view that ATT experiences gender incongruence with bodily related distress and recommended referral to the National Gender Incongruence Service.

15. The Claimant now challenges what he describes as the Defendant's "ongoing" practice of prescribing HRT to ATT and other young people under the age of 18, and the Defendant's policy on providing HRT for gender affirming purposes. As I will come to, ATT is, in fact, no longer being treated by the Defendant, and is instead receiving specialist NHS care following the recommendation by CAMHS and the resolution of the proceedings in the Family Division and is, in any event, now 18 with no suggestion that she lacks capacity.

16. More widely, in compliance with an instruction given by the ICB on 11 April 2025, at the direction of NHSE dated 8 April 2025, the Defendant is no longer prescribing gender affirming hormones to new patients under the age of 18 experiencing gender incongruence or gender dysphoria. The direction to the ICB from NHSE stated as follows:

> "...the approach adopted by the WellBN sits neither within the scope of a specialised service commissioned by NHS England nor within treatment to be offered under a General Medical Services Contract. It follows that WellBN should be instructed to cease offering the prescription of exogenous hormones for gender incongruence or dysphoria in 16-or-17-year-olds as part of the National Health Service."

17. On 11 April 2025 the Defendant wrote to the ICB confirming that it would comply with its request to cease offering the prescription of exogenous hormones for gender incongruence or dysphoria in 16-or-17-year-olds. On 15 April 2025 the Defendant wrote to the ICB and reiterated it would comply with the request. However, the Defendant disputed the assertion that it was in breach of its GMS Contract by prescribing gender affirming hormones. The Defendant pointed to the fact that whilst, since 26 June 2024, the prescription of GnRH analogues has been prohibited by regulation, there is no equivalent provision prohibiting the prescription of gender affirming hormones for gender dysphoria or gender incongruence under a GMS contract. The Defendant further avers that gender affirming hormones were not prescribed unless it was considered clinically appropriate to do so and that, ultimately, each prescription was the result of a clinical decision made in respect of each individual patient. The Defendant relies on the fact that there had been two previous investigations by NHSE into its gender prescribing practices, with no fault found.

18. In compliance with the request of the ICB, since 11 April 2025 the Defendant has ceased prescribing gender affirming hormones to persons under the age of 18 for gender incongruence or dysphoria, save in respect of patients who were already being prescribed gender affirming hormones at that time. The ICB instructed the Defendant to continue prescribing gender affirming hormones to existing patients aged under 18 until either national gender services or the ICB instructs them otherwise. At this hearing, the Defendant has confirmed that it has not, since 11 April 2025 instigated gender affirming hormones for gender dysphoria / gender incongruence for persons under the age of 18. Dr Hall has ceased to be a partner at the Defendant. In her statement on behalf of the Defendant dated 8 May 2026, Dr Marshall-Andrews

confirms that the Defendant has no intention of re-starting prescriptions of gender affirming hormones for persons under the age of 18, stating as follows:

> "In response to that remedial notice, [the Defendant] immediately ceased instigating prescriptions of GAHs for under 18s. We have therefore complied with the remedial notice. We intend to continue comply with that notice. We are concerned that to do otherwise might lead to Sussex ICB withdrawing our GMS contract which would affect all of our staff and our 25000 patients."

19. As I have noted, subsequently the conduct of the Defendant has been the subject of rapid IPSI chaired by Professor Judith Ellis, the conclusions of which have now been published. In April 2026, upon receipt of the draft IPSI report, the ICB referred three partners of the Defendant to the Practice Standards Team for investigation. On 9 March 2026 NHSE announced a policy proposition that hormone replacement therapy would no longer be available for routine commissioning for 16-17 year olds, even through the NHS Children and Young People's Gender Service. The policy proposition is subject to a 90 day consultation.

20. In the foregoing context, by his Claim Form dated 6 February 2025 the Claimant seeks to challenge what he describes as "the current policy and practice" of the Defendant of prescribing gender affirming hormones to "persons under the age of 18 who may be experiencing gender incongruence or gender dysphoria". The date of the decision under challenge is identified in the Claim form as 22 January 2025, the date on which ATT confirmed she was still receiving treatment. The Claimant pursues two grounds against the Defendant as follows:

    i) The Defendant's policy was unlawful because gender-affirming hormone treatment is not lawfully commissioned and funded where provided by a GP.

    ii) The Defendant's policy was unlawful as it misstated the law having failed to take account of mandatory relevant factors in the form of legal and professional duties, namely: (i) the need for "extreme caution" in the prescription of gender-affirming hormones; (ii) the discrediting of the informed consent model as compared with the gender assessment approach; (iii) that temporary (or 'bridging') prescriptions are allowed for only in very limited circumstances for adult patients in collaboration with specialists; and (iv) the mandatory criteria which must be satisfied where specialists prescribe such treatment.

21. The Claimant's second ground previously referred to "treatment" but now refers to "policy". The Claimant seeks the following declaratory relief:

    i) The Defendant's practice of prescribing HRT to ATT and other young people under the age of 18 is unlawful as it is not permitted under the NHS commissioning legislative framework and does not have due regard to all relevant legislation and guidance issued by NHSE, the Secretary of State or local authorities, and in particular to the recommendations of the Cass Report; and

    ii) The Defendant's policy (which it described as its 'informed consent model') for providing hormone replacement therapy for gender affirming purposes is unlawful.

22. The Defendant resists the application for permission. The Defendant points to the fact that it does not have a "current policy and practice" of prescribing gender affirming hormones, such practice having ceased in respect of ATT when she was referred to the specialist NHS service and more widely on 11 April 2025 in response to the direction of the second Interested Party.

23. In addition to contending that the Claimant's grounds are not arguable grounds for judicial review having a realistic prospect of success, the Defendant relies on a number of discretionary bars. Namely, that the claim was not issued in time, that the claim is now academic, that the Claimant has no standing, that the Claimant has not established that the Defendant is a public body (the Claimant accepting that providing treatment is a private law matter) and that the Defendant has not articulated a decision amenable to judicial review.

24. With respect to the position of ATT, Ms Hearnden submits that it is already difficult for a young person when their parents decide to engage lawyers and commence litigation as a means of challenging their choices, and that those difficulties can only be enlarged if attempts are made to use emotionally charged litigation as a collateral means of addressing broader matters of policy. In this context, she cites what was recorded by this court in its judgment in the proceedings before the Family Division regarding ATT's views:

> "[ATT] wishes the court to know that she finds it insulting that her ability to investigate treatments, understand them and act responsibly with the assistance of her General Practitioner in relation to her medical treatment is being questioned by a small group of individuals, including her parents, who have taken her to court in an effort to stop her treatment…..Ms Fottrell [leading counsel for ATT] informed the court that it is difficult to convey [ATT]'s strength of feeling that her personal story has become highly politicised. [ATT] told the Children's Guardian that "I live in two opposite worlds, one in my household where I am seen as less than and the other outside the home where I am calm and grounded."

RELEVANT LEGAL FRAMEWORK

25. NHSE is an executive non-departmental public body which leads and oversees the commissioning of healthcare provision in England. The Department of Health and Social Care entrusts NHSE with NHS funding for England.

26. Pursuant to s. 1 and 2 of the National Health Service Act 2006 (hereafter "the 2006 Act"), NHSE is under a statutory duty, together with the Secretary of State, to continue the promotion in England of a comprehensive health service designed to secure improvement (a) in the physical and mental health of the people of England, and (b) in the prevention, diagnosis and treatment of physical and mental illness.

27. Pursuant to s.83 of the 2006 Act, NHSE must, to the extent necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary medical services throughout England. NHSE may make such arrangements for the provision of primary medical services as it considers appropriate. This includes, in particular, making contractual arrangements for the provision of primary medical services with any person, referred to as a "General Medical Services Contract"

(hereafter "GMS Contract"). Section 84 of the 2006 Act provides a general power to enter into a general medical services contract on such terms as the parties see fit, subject to the provisions of the 2006 Act that require certain contractual terms to be included.

28. Under s.89 of the 2006 Act contracts must contain the provisions prescribed in relevant regulations. The NHS (General Medical Services Contracts) Regulations 2015/1862 (hereafter "the 2015 Regulations") set out the required terms which must be included in GMS Contracts entered into with contractors by NHSE. The term 'contractor' is defined in r.3 of the 2015 regulations as having the meaning given in s.84(5) of the 2006 Act, namely any person entering into a GMS contract. This includes the Defendant. Regulation 94 of the 2015 Regulations states as follows:

> "The contractor must-
>
> (a) Comply with all relevant legislation; and
>
> (b) Have regard to all relevant guidance issued by NHS England, the Secretary of State or local authorities in respect of the exercise of their functions under the Act."

29. Under s.88 of the 2006 Act, a GMS contract must also contain provision requiring the contractor or contractors to comply with any directions given by the Secretary of State as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the contract. The NHS (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004/629 (hereafter "the 2004 Regulations") set out a list of drugs, medicines and other substances that may not be prescribed under a GMS Contract.

30. This case concerns the prescription of gender affirming hormones to persons under the age of 18. Pursuant to the NHS (General Medical Services Contracts) (Prescription of Drugs etc) Amendment Regulations 2024/728 (hereafter "the 2024 Regulations"), which amended the 2004 Regulations, since 26 June 2024 the prescription of GnRH analogues for under 18s for the purpose of puberty suppression in respect of gender dysphoria, gender incongruence or a combination of both pursuant to a GMS contract has been prohibited, save in limited circumstances where a patient is already receiving GnRH analogues under an existing NHS prescription. There is at present no equivalent provision in the 2004 Regulations prohibiting the prescription of gender affirming hormones for gender dysphoria or gender incongruence under a GMS Contract.

31. By section s.65Z5(1) of the 2006 Act, the NHSE may arrange for its functions to be exercised by a relevant body, including an ICB, and pursuant to that provision NHSE has entered into delegation agreements, including with the second Interested Party. By that agreement, commissioning responsibility for primary care is delegated to the relevant body, which then enters into GMS Contracts with GPs and GP Partnerships for the provision of primary care, in this case the Defendant. This includes a commissioning role in overseeing the provision of primary care treatment provided to children and adolescents via a Delegation Agreement between NHS England and the ICB and a Primary Care Commissioning Assurance Framework. The ICB can take action against a provider if it has concerns that it is not fulfilling the clinical governance requirements under the contract. The standard GMS Contract includes the following terms at clause 2.1.1 and clause 8.1.2:

> "2.1.1 The Contract is a contract for the provision of services. The Contractor is an independent provider of services and is not an employee, partner or agent of the Commissioner. The Contractor must not represent or conduct its activities so as to give the impression that it is the employee, partner, or agent of the Commissioner".
>
> ...
>
> 8.1.2 The Contractor must provide:
>
> (a) Services required for the management of the Contractor's registered patients and temporary resident who are, or believe themselves to be:
>
> (i) ill with conditions from which recovery is generally expected;
>
> (ii) terminally ill; or
>
> (iii) suffering from chronic disease."

32. The 2006 Act also imposes general duties on an ICB in the exercise of its functions. In particular, the Claimant relies on the duty imposed on the ICB by s.14Z34 of the 2006 Act requiring an ICB to exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals, including their effectiveness and safety. The Claimant further relies on the duty imposed on an ICB by s.14Z43 of the 2006 Act requiring that, in making a decision about the exercise of its functions, an ICB must have regard to all likely effects of the decision in relation to the quality of services provided to individuals by relevant bodies or in pursuance of arrangements made by relevant bodies. They must also have regard to any guidance published by NHSE.

33. Whilst NHSE allocates the majority of the funding it receives to commissioning provision from ICBs, it also directly commissions some specialised services. One of these specialised services is gender identity development services for children and adolescents. Section 3B(1)(d) of the 2006 Act provides a power to the Secretary of State to make regulations to require NHSE to commission certain services or facilities as specified in those regulations. The Secretary of State has exercised that power in the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (hereafter "the 2012 Regulations"). By r.11 and Schedule 4 of the 2012 Regulations, NHSE must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision of "Gender identity development service for children and adolescents" and "Gender identity disorder services" respectively.

34. Section 3A(3) of the 2006 Act provides that an ICB may not arrange for the provision of a service if NHS England has a duty to arrange for its provision. The ICB is accordingly prohibited by statute from commissioning any gender identity development service for children and adolescents or gender identity disorder services. The NHS England Prescribed Specialised Services Manual records that these services have not been delegated to ICBs. In pre-action correspondence in these proceedings, NHSE confirmed that it does not commission any service from the Defendant, has not

approved funding for any service commissioned by the ICB at the Defendant's practice and has not been asked to do so by the ICB.

35. The Claimant also relies, *inter alia*, on amended non-statutory guidance from the Royal College of General Practitioners (hereafter "RCGP") issued in March 2025 (and therefore post-dating the matters under challenge) which provides that the "RCGP does not consider that the GP role in relation to children and young people would include prescribing gender affirming hormones to address gender incongruence in a patient aged under 18."

36. The Claimant further points to the GMC Guidelines on Protecting Children and Young People, which provide that doctors should normally discuss any concerns regarding the young person's safety with parents and keep parents informed as to what is happening. Whilst acknowledging that the GMC guidance allows for GPs to give a temporary bridging prescription of endocrine treatment, the Claimant contends this applies only to adults. The Claimant further points to the NHSE referral pathway in relation to gender affirming hormones, which states as follows:

> "Gender affirming hormones may only be prescribed on the recommendation of a consultant paediatric and adolescent endocrinologist through the NHS CYP Gender Service if strict criteria are met, from the age of 16 years, and subject to the recommendation for initiation of the intervention being endorsed by a national multidisciplinary team that has an independent chair."

37. Finally, the Claimant makes regular reference in his evidence and submissions to the Cass Report in circumstances where he submits that the court is required to decide in this case "whether the Cass Review's recommendations are actually enforceable to protect vulnerable children, like [ATT]."

DISCUSSION

38. Having considered carefully the submissions of the parties, I am satisfied that Claimant's claim is time barred, that there is no good reason to extend time for filing the claim and that, in any event, the claim is now academic. In the circumstances, I am satisfied that it would not be appropriate to grant the Claimant permission for judicial review and I refuse to do so. My reasons for so deciding are as follows.

Limitation

39. The Defendant submits that the claim is out of time in circumstances where the basis of the Claimant's claim is his objection to the Defendant prescribing ATT gender affirming hormones and time runs from the point at which the Claimant first became affected. The Defendant asserts that, on his own evidence, the Claimant was aware that ATT was receiving a prescription from the Defendant from at least 19 October 2024. Within this context, the Defendant contends that the application for judicial review has not been made promptly and in any event within 3 months of the act complained of and there is no good reason for extending time. The Defendant submits that this is not a case in which the delay was the result of the Claimant seeking to pursue alternative resolutions, the Defendant contending that the Claimant has not responded to an offer

to meet with the Defendant nor sought to utilise the Defendant's complaints procedure.

40. The Claimant submits that the claim has been brought in time as the relevant date is 22 January 2025, being the date that ATT confirmed that she was *again* being prescribed gender affirming hormones, the Claimant seeking to contend that he had removed medication from ATT between 28 October 2024 and 19 December 2024 and was unaware whether any further prescription had been provided by the Defendant.

41. Time begins to run when the Claimant first becomes affected by the policy or practice (*R (Badmus) v Home Secretary* [2020] EWCA Civ [2020] 1 WLR 4609 at [78]). It is clear from the Claimant's witness statement that on 19 October 2024 he discovered that ATT had forged her mother's signature on a consent form that indicated it concerned "gender affirming hormone therapy" and that ATT "had gained access to medication blocking male testosterone and adding female oestrogen". On 21 October 2024, the Claimant reported ATT to the police for fraud. On 23 October 2024 the Claimant emailed the Defendant and stated that he and ATT's mother did not consent to hormone treatment. In the Claimant's pre-action protocol letter of 19 December 2024 he states that ATT was continuing to take medication and that her prescription had been issued by the Defendant. Prior to these events, in June 2024, the Claimant deposes that ATT had presented his mother with the consent form in an effort to persuade her to sign it. A pre-action protocol response letter was sent on 16 January 2025 providing a substantive response to the Claimant's pre-action protocol letter of 19 December 2024. A further three weeks elapsed before the Claimant filed his claim form on 7 February 2025.

42. In the foregoing circumstances I am satisfied, as was the Hon Sir Peter Lane on 19 February 2025, that the time for the Claimant bringing a claim for judicial review began to run on 19 October 2024, when the Claimant first became affected by the policy under which ATT was being prescribed gender affirming hormones and which he seeks to impugn. In the circumstances, I am further satisfied that the Claimant's application on 7 February 2025 was not made promptly and in any event no later than 3 months after the grounds to make the claim first arose, as required by CPR 54.5(4)).

43. I am further satisfied that there is no good reason for extending time in this case pursuant to CPR 3.1(2)(a). This is not a case in which there is a continuing policy or practice. The Defendant has confirmed that the policy is no longer in operation and will not be reinstated. There is no good reason given by the Claimant for the delay. Finally, I am satisfied that it would not be appropriate to extend time in this case where the Claimant's claim is, in any event, now academic and there are no good public interest reasons for granting the Claimant permission to proceed with an academic claim.

Claim Academic

44. The Defendant submits that, given developments since the hearing on 7 April 2025, the claim is academic and there is no basis for the court to exercise its discretion to permit the claim to proceed.

45. The Defendant contends that, to the extent that the claim relates to ATT, her appropriate treatment pathway has been resolved by proceedings in the Family Division and she is

now over the age of 18. In so far as the claim relates to the Defendant's former policy, the Defendant states that it accepts that the policy can no longer operate and that it will not operate again. In respect of existing patients, the Defendant submits that prescriptions to existing patients are administered under supervision of NHSE and the ICB and that there is no evidential basis for any assertion that the Defendant would seek to act contrary to the directions of either NHSE or the ICB. In respect of future patients, the Defendant repeats that it will not instigate any new prescriptions.

46. The Claimant asserts that the claim is not academic and that it remains appropriate for the court to hear it, notwithstanding the evidence before the court indicating that ATT is no longer receiving treatment from the Defendant and that the Defendant's policy is no longer operative and will not operate again.

47. The Claimant submits that the fact that prescriptions to existing patients are taking place and being administered under supervision of NHSE and the ICB demonstrates that the claim is not academic. The Claimant further contends that the claim is not academic because the Defendant asserts it has not acted in breach of its contract or unlawfully. The Claimant further asserts that the evidence before the court demonstrates that, notwithstanding its sworn statement to the contrary, the Defendant has left open the possibility of restarting its policy. Finally, although offering no evidence for the assertion beyond a contended for discrepancy between BMA guidance, NHS policy and previous case authority, the Claimant contends that there "are significant reasons to be concerned that the approach taken by the Defendant may be taken by other GPs" as this "will give rise to pressure on GPs to prescribe such hormones".

48. Where a claim has become academic since it was issued it is not generally appropriate to pursue the claim (*R (Parsipoor) v SSHD* [2011] EWCA Civ 276, [2011] 1 WLR 3187). It is wrong for the court to entertain a claim overtaken by events unless there are other similar cases existing or are anticipated and the decision would not be fact-sensitive (*R (Zoolife International Limited) v Secretary of State for Environment, Food and Rural Affairs* [2007] EWHC 2995 (Admin)). It is not the function of the courts to decide a case which will not directly affect the rights and obligations of the parties to the claim (*Rusbridger v HM Attorney-General* [2003] UKHL 38, [2004] 1 AC 357 at 35 and para 6.3.4.1 of the Administrative Court Guide 2025).

49. ATT is no longer being treated by the Defendant and is receiving treatment through an appropriate specialist NHS service, her treatment pathway having been resolved by agreement in the proceedings in Family Division. ATT is now in any event over the age of 18 with no evidence that she lacks capacity. The Claimant has never been the subject of treatment under the Defendant's policy. Whilst in the Claimant's Skeleton Argument the Defendant's policy is described as "current", that is not the case. In compliance with the instruction given by the ICB at the direction of NHSE, the Defendant is no longer operating its policy of prescribing. The Defendant does not seek or intend to operate the policy in the future.

50. In the foregoing circumstances, I am satisfied that the claim is now academic in so far as the rights and obligations of the parties are concerned. Further, I am satisfied that there are no good reasons in the public interest justifying, exceptionally, the court hearing the claim notwithstanding it has become academic as between the parties.

51. I acknowledge that the courts have recognised that, in exceptional circumstances, there may be a good reason in the public interest to deal with an academic claim where there is a point of real substance that requires to be addressed (*Johnatty v Attorney General* [2008] UKPC 55 at [19]). Lord Slynn of Hadley said in *R v Secretary of State for the Home Department ex parte Salem [*1999] 1 AC 450 at 456:

> "… I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to questions of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House, there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se … The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is good reason in the public interest for doing so as for example (but only by way of example) where a discrete point of statutory construction which does not involve detailed consideration of the facts, and where large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

52. In *R (MS) v SHD* [2019] EWCA Civ 1340, the Court of Appeal held that the key question is whether, in all the circumstances, it is in the public interest for the court to consider and determine the issue that is academic as between the parties. The Court of Appeal noted that the authorities suggest that the cases in which it will be in the public interest will be rare.

53. Whilst in *R (on the application of Raw) v Lambeth LBC* [2010] EWHC 507 (Admin) the court held that it might be a good reason in the public interest for the court to entertain a claim that had become academic in relation to a *subsisting* policy, in this case the evidence before the court is that the Defendant's policy is longer operative and will not operate again. In such circumstances, this case can be readily distinguished from the case of *R (Smith) v Chief Constable of Northumbria Police* [2025] EWHC 1805 relied upon by Claimant, in circumstances where that case concerned an impugned act that was due to take place again. That is not the position in respect of the Defendant's former policy.

54. The Claimant's assertions that, if dissatisfied with the specialist service, ATT may again seek treatment from the Defendant in the future, that in the absence of a binding court order the Defendant may continue to engage in a similar prescribing practice in relation to other children and that there may be other general practitioners who take a similar approach to the Defendant, amount to unevidenced speculation. The court has no evidence before it that ATT is dissatisfied with the specialist provision agreed in the context of proceedings in the Family Division, no evidence that the Defendant intends to engage in similar prescribing practice and no evidence that other general practitioners are, or are considering, operating a similar policy to that previously operated by the Defendant.

55. There is likewise no evidence before the court that there are other similar claims in process. In circumstances where the NHSE is now consulting on a policy proposition that hormone replacement therapy would no longer be available for routine commissioning for 16-17 year olds, even through the NHS Children and Young People's Gender Service, the basis for future claims may be removed.

56. It is very important that the limited resources available from public funds for testing points of public interest in otherwise academic cases are confined to cases where it is really necessary (see *R (Cronin) v Sheffield Magistrates Court* [2002] EWHC 2568 (Admin), [2003] 1 WLR 752 at [30]). There is an obvious public interest, particularly where public funds are involved, in the avoidance of using valuable court time and the incurring by one or more parties of unnecessary costs normally inherent in the entertaining of academic cases. This is particularly so having regard to the overriding objective in the CPR of dealing with a case justly, including allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases.

57. I acknowledge that, in his submissions, the Claimant makes a number of broad assertions regarding the import of these proceedings from the perspective of the public interest. The Claimant contends that the case raises the question of whether the Cass Report "will actually be applied in practice or can simply be ignored by an individual clinician or GP practice" and whether "it is possible for a GP practice, in the course of providing NHS-funded care, to ignore national NHS England specialised commissioning policy in respect of hormonal treatment for children." The Claimant accordingly seeks to characterise the claim as one concerning a "wider systemic and policy problem" and invites the court to engage in a wide-ranging debate about the lawfulness, safety and merit of prescriptions of gender affirming hormones to persons under the age of 18 in the context of the outcome of the Cass Review. In his statement of evidence, the Claimant asserts that "The Court needs to decide whether the Cass Review's recommendations are actually enforceable to protect vulnerable children, like [ATT]."

58. The dangers inherent in courts expressing views on wider systemic and policy problems were emphasised by the Court of Appeal in *Office of Communications v Floe Telecom Limited* [2009] EWCA Civ 47. At [122], Lawrence Collins LJ quoted Justice Heydon of the High Court of Australia as having observed in this context that, "It is difficult to solve every aspect of a problem satisfactorily and conclusively when only one element of it is presented for concrete decision." Earlier in the judgment, Mummery LJ held as follows at [22]:

> "One of the dangers of unnecessary rulings is that, with only the assistance of the parties and without the benefit of wider consultation on relevant aspects of the public interest, the court's opinions, though meant to be helpful, may turn out to be damaging in practice and wrong in law. The court may be unaware of all the available arguments or ignorant of the practical implications of what it says. Those who rely on its advisory opinions when applying the law in practice may be misled or confused. A judgment aimed at giving authoritative advice and guidance may be misused by selective citation in different and unforeseen disputes and circumstances."

59. In the context of judicial review, as further made clear by Munby J (as he then was) in *R (Howard League for Penal Reform) v SSHD* [2002] EWHC 2497 (Admin), [2003] 1 FLR 484 at [140]:

> "The Administrative Court nowadays has to deal with many issues which even in the comparatively recent past would not have troubled the courts at all and which would probably have been thought by many to be simply

non–justiciable. That is an entirely wholesome development. But making every allowance for this, the fact remains that the courts- including the Administrative Court- exist to resolve real problems and not disputes of merely academic significance. Judges do not sit as umpires on controversies in the Academy. Nor is it the task of a judge when sitting judicially - even in the Administrative Court - to set out to write a textbook or practice manual or to give advisory opinions."

60. I am satisfied that the lawfulness, safety and merit generally of prescriptions of gender affirming hormones to persons under the age of 18 in the context of the outcome of the Cass Review is not an issue appropriate for determination by way of judicial review. The question of whether and in what circumstances all persons under the age of 18 who seek it should be prescribed gender affirming hormones having regard to the outcome of the Cass Review is subject to an intense ongoing debate, both within the medical profession and more broadly in the political arena and within wider society. It is a decision that requires to be informed by research, broad public debate and open consultation. In these circumstances, a single fact specific case that has now become academic is not the appropriate forum to resolve this political, social and medical controversy.

61. I am also satisfied that there is a countervailing public interest in not putting ATT through the considerable stress of the further litigation of a claim that has become academic for the reasons I have described.

62. ATT was 17 years old at the date of the permission hearing. As a "mature and measured young person who has thought deeply about her situation and want she wants from life, and did not start taking HRT lightly" and who has strong objections to the proceedings brought by her parents, there is no suggestion that she lacks capacity to consent to treatment (it having been confirmed in *O v P* [2024] EWCA Civ 1577, [2025] 2 WLR 9 at [42] and [46] that administration of hormone treatment is not in a special legal category as regards consent). In the circumstances, from the age of 16 and pursuant to s.8(1) of the Family Law Act 1986, ATT was entitled as a matter of law to consent to treatment and that consent is as effective as if she were an adult. As a capacitous adult she remains entitled to consent to treatment.

63. In this context, the Claimant seeks to advance a case that is wholly at odds with the position taken by ATT as the recipient of treatment from the Defendant. From ATT's perspective, the Claimant's written evidence and submissions consistently misgender her, use her male birth name and contend she is "severely mentally ill" rather than suffering from gender incongruence with bodily related distress as identified by CAMHS and now the subject of treatment by specialist NHS provision. Those documents advance an argument which ATT considers amounts to being questioned by a small group of individuals, including her parents, who have taken her to court in an effort to stop treatment to which she was entitled to consent and consented.

64. As stated in my judgment in proceedings in the Family Division at [47], it is already difficult for a young person when their parents decide to engage lawyers and commence litigation as a means of challenging their choices. In addition to her father reporting her to the police alleging fraud, ATT has had to endure receiving correspondence from her father's solicitors whilst living with her parents in the family home. Dr Cotterill recorded in his expert report for the family law proceedings that ATT and her family

are already under significant stress due to many court hearings. As I also observed in the Family Division, these difficulties can only be enlarged if attempts are made to use such already emotionally charged litigation as a collateral means of addressing wider matters of policy and public controversy with respect to gender affirming treatment that are properly the province of the NHS, the medical profession, the regulators and Parliament. These are powerful factors militating against the court allowing an academic claim to proceed on the grounds of public interest.

65. Finally, in considering whether it is in the public interest to proceed to determine a claim that I have determined to be academic, I am also satisfied that it is appropriate to take into account of the fact that this is a case in which the Claimant also had, and has utilised, an alternative remedy in the Family Division.

66. In his order of 19 February 2025, the Hon Sir Peter Lane noted as follows with respect to the appropriate forum in this case:

> "**Forum:** It would be wrong not to highlight at this stage a matter raised by the defendant; namely, whether judicial review proceedings in the Administrative Court are the appropriate vehicle for adjudicating the claimant's concerns. At the core of the claim is the apparent assertion that IP1 has not given informed consent to be treated by the GP. This issue could perhaps better be addressed by the Family Division under its inherent jurisdiction or under the Children Act 1989."

67. In my order of 20 March 2025, I reiterated the court's concerns regarding the appropriate forum for the Claimant to seek relief:

> "With respect to forum, it is arguable that the fundamental question in this case is one of best interests rather than legality and that, accordingly, the issues arising from the claim should be determined in the Family Division of the High Court under the relevant provisions of the Children Act 1989 or under the inherent jurisdiction. Alternatively, in circumstances where IP1 is 16 years of age and it is contended that she lacks capacity to consent to treatment, it is arguable that any best interests decision is a matter for the Court of Protection under the provisions of the Mental Capacity Act 2005."

68. The Claimant issued proceedings under the inherent jurisdiction in the Family Division and on 7 April 2025 I adjourned the judicial review proceedings pending the determination of those proceedings. The court permitted the instruction of an expert endocrinologist in the proceedings in the Family Division as necessary to determine the application and benefited from the report of Dr Cotterill.

69. Whilst the Claimant contends in these proceedings that ATT is "severely mentally ill" rather than suffering from gender incongruence with bodily related distress, in his evidence he nonetheless contends that his motivation for litigating is to ensure ATT is treated in a manner consistent with "the Cass Review, NHS Guidance and Professional Guidance." As such, the core of the Claimant's case is that ATT was being treated inappropriately and it was in her best interests to receive different medical treatment. That outcome the Claimant has achieved in the Family Division. Upon ATT being offered and accepting an expedited transfer into NHS specialised gender services, the Claimant applied for permission to withdraw the proceedings he had commenced in the

Family Division. I granted that permission on 8 December 2025 by consent. In addition, and to repeat, the Defendant has agreed not to operate its policy and not to restart that policy.

70. In *R (L) v Devon County Council* [2021] EWCA Civ 358 at [50] the Court of Appeal made clear that:

> "50. Judicial review is a flexible and practical procedure. All remedies in judicial review are discretionary, including declarations (a substantial topic on which we received no distinct submissions). The Administrative Court has at its disposal a range of doctrines, with discretionary elements, to control access to its scarce resources. They include the doctrine that judicial review will not generally be available where there is a suitable alternative remedy, and its approach to timeliness. The discipline of not entertaining academic claims is part of this armoury. It enables the court to avoid hearings in cases in which, although the issue may be arguable, the court's intervention is not required, because the claimant has obtained, by one means or another, all the practical relief which the Court could give him. I incline to the view that the claims in these cases were academic, because the As had obtained all the practical relief for which they had asked, that is, the issue of the final amended statements. There was still a potential issue between the parties about the construction of the Regulations, but it was no longer live. It was no longer live in these proceedings, whether or not it was possible, probable, or virtually certain that it would arise again in a future year. As a matter of judicial policy, the best way of controlling access to the court for claims such as these is the rigorous filter of the test in *Salem*.."

71. In circumstances where ATT is no longer receiving treatment from the Defendant, her treatment pathway has been resolved by proceedings in the Family Division and she is now over the age of 18; where the remaining prescriptions to existing patients are administered under supervision of NHSE and the ICB; where there is no evidential basis for any assertion that Defendant would seek to act contrary to the directions of either NHSE or the ICB; and where the Defendant is otherwise no longer operating its policy and does not seek or intend to operate the policy in the future, I am satisfied that the Claimant's claim is now academic.

72. Further, in circumstances where there is no evidence that ATT may again seek treatment from the Defendant in the future, that the Defendant may continue to engage in a similar prescribing practice in relation to other children or that there may be other general practitioners who take a similar approach to the Defendant; where there are no other claims in process and NHSE is now consulting on a policy proposition that hormone replacement therapy would no longer be available for routine commissioning for 16-17 year olds; where judicial review is inapt to address the matters of political, medical and social controversy that this case gives rise to; and where there is a public interest falls in favour of not exposing ATT to the stress of academic litigation and the Claimant has had and utilised another suitable remedy in respect of his child, I am satisfied that this is not one of those exceptional cases where the academic claim should nonetheless be allowed to proceed in the public interest.

73. Having determined that the Claimant's claim is academic, I am satisfied that it is not necessary to deal with the other bars raised by the Defendant in this case nor the

submissions as to arguability. I mean no discourtesy to the considerable efforts of leading and junior counsel by not doing so. The fact that the claim is out of time and now academic is sufficient in my judgment to deal with the question of permission for the reasons I have given.

CONCLUSION

74. In the circumstances, and for the reasons set out above, I am satisfied that application for permission for judicial review should be refused. I will invite counsel to draft an order accordingly.