



Government Legal Department

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Your ref: AR/492
Our ref: Z2306234/GBR/JD5

30 November 2023

Dear Rook Irwin Sweeney

[REDACTED] v THE SECRETARY OF
STATE FOR EDUCATION

Pre-action Response Proposed Judicial Review – [REDACTED] (and others) v Secretary of State for Education

1. This is the response of the proposed Defendant to your Pre-Action correspondence, dated 8 June 2023 and 17 July 2023 respectively. As we indicated in our previous correspondence (dated 20 July 2023, 25 August 2023 and 26 October 2023), our client required some time to consider her position on the matters raised in your letters. This letter is our client's substantive response.
2. The response below is sent in accordance with the Pre-Action Protocol for Judicial Review.

The Proposed Claimant

3. [REDACTED] (by his mother and proposed litigation friend [REDACTED])
4. [REDACTED] (by his mother and proposed litigation friend [REDACTED])
5. [REDACTED] (by his mother and proposed litigation friend [REDACTED] and [REDACTED])
6. [REDACTED] (by her mother and proposed litigation friend [REDACTED])

The Proposed Defendant

7. The Secretary of State for Education

Reference Details

8. Our reference: Z2306234/GBR/JD5

Gary Howard - Head of Division
Emma Parker / Natalie Cohen - Deputy Directors, Team Leaders MOJ, Public Law



9. The Government Legal Department is instructed to act for the proposed Defendant in this matter. Please address any future correspondence to [REDACTED] at [REDACTED].

Details of the matter being challenged

10. The matter that your clients propose to challenge, relates to the non-provision to them, by local authorities, of free meals which they would be receiving if they were registered pupils at a state school.

Response to the proposed claim

11. Primary legislation provides a power – and, in some circumstances, a duty – for local authorities and Academies to provide free lunches to registered pupils when they are attending state funded schools (see sections 512 and 512A of the Education Act 1996).¹ No similar statutory provisions exist in relation to the provision of meals to children when they are not attending a state school (whether because they are not pupils at a state school at all, or at times when they are not attending the school, such as during school holidays).
12. Parliament's purpose in making such provision is not difficult to discern. Children attending school are better able to learn if they have access to a nutritious meal during the school day. Therefore, state schools, as part of their provision of state education, provide pupils with access to a school lunch during the school day, and that school lunch is made available free of charge to children from lower income families.
13. The Department for Education seeks to ensure that state schools carry out their statutory responsibilities, including in relation to the provision of school meals (including free school meals provided to eligible children). As noted above, the scheme provided for by Parliament is concerned specifically with the provision of meals to be consumed by registered pupils receiving state education at a school.
14. As your letters highlight, some children are provided by their local authority with education other than at a state school and are, therefore, not registered pupils at a state school. At least some of those children are receiving teaching provided to them by a local authority and live in a family who meet the eligibility criteria for free school meals. The provision of nutritious meals to such children, in conjunction with providing them with education, has the potential to assist such children in better accessing, and benefiting from, the education being provided to them.
15. The Department for Education, having given careful consideration to your letters and to the issue they highlight, has come to the view that it may be a breach of Article 14 ECHR, if children who are receiving state provided education, other than at a school, are not provided with meals where such meals can be provided and consumed in conjunction with receiving the education (and can enable the child to better benefit from the education being provided). Local authorities should consider the circumstances of such children and should ensure access to a nutritious meal to be received and consumed in conjunction with receiving the education that the local authority is providing. Your letters show that this is not always happening at present. The Department for Education is therefore preparing guidance for local authorities which will make clear that this is what the Department believes and expects local authorities should do. The Department anticipates issuing this new guidance in around March 2024.
16. The precise way in which meals are provided to such children is properly a matter for local authorities. There are many different reasons why a local authority may have decided that a child should not be a registered pupil in a state school. There are also wide differences between such children in terms of the nature and quantity of education they receive, and how and where such education is provided to them. It must therefore be a matter for local authorities to determine precisely how and when meals are provided to the child, in conjunction with education.

¹ Where we refer to 'Free School Meals' this is as defined in Section 512 of the Education Act 1996 as food made available for consumption by the pupil as his midday meal on a school day.

17. Thank you to your firm and your clients for bringing this matter to the Department's attention.

Details of any other Interested Parties

18. The local authorities for the localities where the proposed claimants live would need to be served as Interested Parties.

Alternative Dispute Resolution

19. As this letter resolves the proposed claim, at least as against our client, this matter has been successfully resolved through pre action correspondence and there is no need for an ADR process.

Disclosure/Requests for Documents

20. In consideration of the position that is outlined above at paragraph 15, our view is that it is neither necessary, nor proportionate to provide further information or documents at this time.

Address for further correspondence and service of court documents

21. If, in despite of the above you decide to commence proceedings then they may be served upon this office by email: please see <https://www.gov.uk/government/organisations/government-legaldepartment>. We would be grateful if any documents could be copied to [REDACTED].

Yours sincerely

Georgina Raymond

**Georgina Raymond
For the Treasury Solicitor (Government Legal Department)**

E [REDACTED]