THE HIGH COURT

[RECORD NO. 2017 534 JR]

BETWEEN

J. F., A. F.

(A MINOR SUING BY HIS MOTHER AND NEXT FRIEND, J. F.)

APPLICANTS

AND

HEALTH SERVICE EXECUTIVE

RESPONDENT

[RECORD NO 2017 803 JR]

K. K., F. C.

(A MINOR SUING BY HER MOTHER AND NEXT FRIEND, K. K.)

APPLICANTS

AND

HEALTH SERVICE EXECUTIVE

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 15th day of May, 2018

1. The within proceedings are grounded on the admitted failure of the respondent to complete assessments of need in respect of the minor applicants within the statutory timeframe enacted by the Disability Act 2005 ("the 2005 Act") and S.I. No. 263- Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 ("the 2007 Regulations").

2. An assessment of need is an assessment to determine the health and education needs (if any) of a person with a disability and the health services or education services (if any) required to meet those needs. (Section 7 of the 2005 Act).

3. The relevant section of the 2005 Act has been commenced in respect of children under the age of five. The assessment process is open to any child under that age, and to all who were on the date of commencement of the 2005 Act, aged under five. This is as a result of the decision in *HSE v. Dykes* [2009] IEHC 540: -

> *"The right to an assessment of needs under s 9 applies to all children under 5 as of 1 June 2007 and, thereafter, to all children under 5."*

4. It is therefore a scheme which is open to the (infant) public at large, where certain persons, *inter alios* a parent/guardian, are of the opinion that a child will have a disability: s.9 of the 2005 Act. The process of assessment then determines whether a child has a disability. As regards the present cases, it is suspected by their respective parent, that the infant applicants have autism.

5. The importance of early intervention, where autism is diagnosed, was comprehensively addressed in *O'C v. Minister for Education* [2007] IEHC 170 where Peart J., in the context of a claim for damages, in a case where the facts pre-dated the statutory time frames set out in the 2005 Act, held as follows:

> *"That duty extended at that stage to completing a diagnosis within a time-frame which was reasonable given his age and the recognised importance of early intervention should a positive diagnosis be made in due course. The fact that diagnosis was not completed until the end of November 2002 and reported on the 9th December 2002 means a delay from referral to diagnosis of about seven months. That is a long time in the plaintiff's life at that stage. It follows in my view that a delay of seven months in formal diagnosis is an unreasonable delay, and does not adequately address the duty of care owed.*
>
> *…The diagnosis is the only key which has the potential to unlock the package of ameliorating measures to which the plaintiff would be entitled after diagnosis. In my view it was foreseeable by them that delay in diagnosis would as a matter of probability impact adversely on the rate at which any deficits would be reduced, and that his progress would be delayed as a result.*
>
> *…*
>
> *It was known by all concerned from that point onwards that early intervention was essential. It was known that lack of early intervention at that sort of age has adverse implications for deficit reduction. While accepting the reality facing the HSE personnel that they did not have sufficient resources to address adequately the demand on services, this alone is insufficient in my view to reduce the scope of the duty of care given the extreme vulnerability of the children with whom they are dealing. The duty of care in relation to such vulnerable and dependent children who are in need of urgent attention places a particular onus upon those with responsibility, to provide relevant assistance within reasonable time-frames. It is just and reasonable that this be so given the nature of autism."*

6. The timeframe for carrying out assessments of need is enacted in the 2005 Act and in the 2007 Regulations.

7. Section 9(5) of the 2005 Act provides: -

> "Where an application under subsection (1) or a request under subsection (4) is made, the Executive shall cause an assessment of the applicant to be commenced within 3 months of the date of the receipt of the application or request

and to be completed without undue delay."

8. Article 9 of the 2007 Regulations states that:

> "The Executive shall commence the assessment process as soon as possible after the completed application form has been received but not later than three months after that date"

9. "Undue delay", as referred to in s.9(5) of the 2005 Act is not defined in the Act but Article 10 of the 2007 Regulations provides: -

> "The Executive shall complete the assessment and forward the assessment report to the Liaison Officer within a further three months from the date on which the assessment commenced, save for in exceptional circumstances, when the assessment will be completed without undue delay. In circumstances where the assessment will not be completed within three months of the commencement of the assessment, the Executive shall specify in writing, before the three month deadline has expired, to the individual concerned the reasons why it will not be completed within the three month period and shall specify a timeframe within which it is expected the assessment will be completed."

10. Article 5 of the 2007 Regulations provides:

> "The Executive shall process applications for assessment in order of the date on which they are received by the Executive. Where two or more applications are received on the same date then they shall be processed in alphabetical order of the surname of the applicant."

11. A statutory complaints procedure is also enacted in the 2005 Act. As regards the present applications, among the possible complaints envisaged to be dealt with by the complaints procedure is where there has been delay in the commencement or completion of an assessment of need. Section 14 of the Act provides: -

> "(1) An applicant may, either by himself or herself or through a person referred to in section 9 (2), make a complaint to the Executive in relation to one or more of the following:
>
> (a) a determination by the assessment officer concerned that he or she does not have a disability;
>
> (b) the fact, if it be the case, that the assessment under section 9 was not commenced within the time specified in section 9 (5) or was not completed without undue delay;
>
> (c) the fact, if it be the case, that the assessment under section 9 was not conducted in a manner that conforms to the standards determined by a body referred to in section 10;
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> (d) the contents of the service statement provided to the applicant;
>
> (e) the fact, if it be the case, that the Executive or the education service provider, as the case may be, failed to provide or to fully provide a service specified in the service statement.
>
> (2) A complaint under subsection (1) shall be made by the applicant concerned or a person referred to in section 9 (2) as soon as reasonably may be after the cause of the complaint has arisen and in any case within such time (if any) as may be prescribed under section 21."

12. The complaints procedure is set out in s. 15 of the 2005 Act, which provides for the investigation of a complaint, if informal resolution is not possible, by a complaints officer "who shall be independent in the performance of his or her duties".

13. Section 15(8) states: -

> "A report of a complaints officer may contain one or more of the following:
>
> (a) a finding that the complaint was or, as the case may be, was not well founded whether in part or in whole;
>
> (b) if the report contains a finding that the Executive failed to commence an assessment within the period specified in section 9 (5) or to complete an assessment without undue delay, a recommendation that the assessment be provided and completed within the period specified in the recommendation;
>
> (c) if the report contains a finding that the person may have a disability, a recommendation that the person be the subject of a further assessment under section 9 within the period specified in the recommendation;
>
> (d) if the report contains a finding that the Executive failed to carry out an assessment under section 9 in conformity with the standards referred to in section 10, a recommendation that the Executive cause the assessment or a specified part of it to be carried out in conformity with those standards within the period specified in the recommendation;
>
> (e) if the report contains a finding that the contents of the service statement concerned are inaccurate or incorrect, a recommendation that the statement be amended, varied or added to by the liaison officer concerned within the period specified in the recommendation;
>
> (f) if the report contains a finding that the Executive or an education service provider failed to provide or to fully provide a service specified in the service statement, a recommendation that the service be provided in full by the Executive or the education service provider or both as may be appropriate within the period specified in the recommendation"

14. Section 18 of the 2005 Act provides, inter alia, for an appeal to an appeals officer against a finding or recommendation under section 15 (8) or against the non-implementation by the Executive or a head of an education service provider of a recommendation of a complaints officer.

15. The statutory complaints mechanism set out in ss. 14 and 15 of the 2005 Act is backed by a specific provision providing for judicial enforcement of any recommendations of a complaints officer. The Act provides that the complaints officer's finding and recommendation may be enforced by way of an application to the Circuit Court in the event that the recommendation is not implemented within three months. Specifically, s. 22(1)(a) provides:

> "If the [HSE] … fails…
>
> > (iii) to implement in full a recommendation of a complaints officer,
> >
> > within 3 months from the date on which the determination, resolution or recommendation is communicated to him or her or, where the determination, resolution or recommendation specifies a date for the provision of a service, within 3 months from the date specified in the determination, resolution or recommendation for such provision, then, the applicant concerned, a person referred to in section 9 (2) or the appeals officer may apply to the Circuit Court on notice to the Executive or the head of the education service provider concerned for an order directing him or her to implement the determination or recommendation in accordance with its terms or to give effect to the resolution, as the case may be."

16. As can be seen therefore, the Oireachtas, having enacted the system of assessments of need with associated timeframes, has also enacted an integral statutory system of redress for complaints about breaches of those timelines, together with an inbuilt mechanism for judicial enforcement.

The applicants' proceedings

17. On 3rd July 2017, by order of Noonan J., the applicants in the proceedings bearing record number 2017/534 JR ("the first proceedings") were granted leave to apply by way of an application for judicial review for the following reliefs: -

> (i) An order of mandamus compelling the respondent to commence and/or complete an assessment of need in respect of the second applicant, requested, pursuant to the Disability Act, 2005, in May 2016, within thirty days or other such period considered reasonable by the Court.
>
> (ii) A declaration that the respondent has failed to comply with its statutory obligations to the first applicant, in the premises that having received a request from the applicants for an assessment of need pursuant to s. 9 of the 2005 Act, the respondent was required, pursuant to the 2005 Act and the 2007 Regulations, to commence the assessment of need within three months and complete it within three months after commencement, and if not to be completed within three months of commencement, to specify in writing before the three-month deadline has expired the reasons why and specify a timeframe for completion.
>
> (iii) If necessary, a declaration that the statutory complaints process, contained within the 2005 Act is not an adequate or appropriate remedy, in the premises that it runs counter to proper administrative practice and nullifies the timelines set out in s. 9 of the 2005 Act, insofar as it creates further delay and, due to the number of complaints now being made, there is now a delay in the statutory complaints process itself.

18. An order in similar terms was made by Noonan J. on 23rd October, 2017, in respect of the proceedings bearing record no. 2017/803 JR ("the second proceedings").

19. In respect of the first proceedings, the background to the leave application is set out in an affidavit sworn by the first applicant, J.F., on 28th June, 2017.

20. J.F. avers that she is a mother of two special needs children. Her daughter was diagnosed with autism in November, 2015. She avers that her son, A.F., (the second applicant), born 1st December, 2014, may also have autism. In July, 2016, J.F. submitted an application for an assessment of needs in respect of the second applicant to the respondent. The application was acknowledged as being received by the respondent on 29th July 2016. Pursuant to the provisions of the 2005 Act, the assessment of need should have been commenced no later than three months after receipt of the completed application and completed no later than three months after the day the assessment of needs began. Consequently, A.F.'s assessment of need should have commenced as soon as possible after 29th July, 2016 or in any event not later than 29th October, 2016 and should have been completed by 29th January, 2017.

21. In November 2016, J.F. lodged a complaint concerning the delay in having A.F. assessed with Ms. Angela Kennedy, (the respondent's complaints officer for the purposes of s.14 of the 2005 Act). It is common case that as of 10th April 2017, J.F.'s complaint was number 1038 in circumstances where Ms. Kennedy was then dealing with complaint number 660.

22. J.F. also lodged complaints with the respondent about the delay in assessing A.F.

23. On 25th May, 2017, J.F. received a response from the Area Manager, Cork and Kerry Disability Services. The letter stated, inter alia, as follows: -

> "An Assessment of Need application was received for [A.F.] on 29th July 2016; therefore, the assessment of need process should have commenced on or before 29th October, 2016. Unfortunately, due to the high volume of applications received, it was not possible to commence [A.F.'s] assessment until 1st March, 2017. [A.F.] has now been referred for multidisciplinary assessment to Brothers of Charity Southern Services at Marian House. Under the timelines of the Disability Act, this assessment should be completed by 1st June 2017. It is clear that, in some complex cases, the statutory time-frames do not afford enough time to complete the necessary assessments. Clinicians will often want to observe a child in various environments over a number of months before committing to a final diagnostic assessment. In addition, it is sometimes the case that an additional assessment is identified as necessary late in the process and it cannot be completed within the allotted time. There are currently lengthy delays in completing multidisciplinary assessments in the region as a result of this."

24. It was also advised that the steps being taken to address the backlogs in the assessment of needs process for children in the Cork area included backfilling vacant assessment officer posts, employing additional administrative staff to support the work of assessment officers and addressing vacancies in psychology positions.

25. As of the swearing of J.F.'s affidavit on 28th June, 2017, the commitment made to complete A.F.'s assessment of need by 1st June, 2017 had not been met.

26. J.F. avers that the prejudice to A.F. in not having the assessment of needs completed is significant insofar as he cannot access vital services which he may need due to a lack of formal diagnosis. She avers that this has a knock-on effect on his education and social life; he cannot access ASD Pre-school without a diagnosis. It is further averred that there is detriment in respect of delayed treatment and early intervention. It is also stated that a formal diagnosis would be of great assistance in securing home tuition, Domiciliary Care Allowance and other vital supports for A.F.

27. On 22nd June 2017, J.F. withdrew her complaint to the Complaints Officer in favour of judicial review.

28. At para. 13 of her affidavit, she avers as follows: -

> "I say and believe, having been advised by my legal advisers, that the statutory complaint process is not an appropriate remedy in the following circumstances: I do not yet have a recommendation from the Complaints Officer and I am aware that there is a delay in the complaints process (I am aware of some complaints taking 8-9 months to be determined); even after I receive a recommendation, I would have to wait between 3-6 months before I could bring enforcement procedures in the Circuit Court …I would then be waiting in the Circuit Court system to have my case heard."

29. The second proceedings are grounded on the affidavit of K.K. (the first applicant) who is a mother of F.C., the second applicant. On foot of her concerns for F.C., who K.K. believes may have a disability, K.K. made an application for a statutory assessment of need under the 2005 Act on 11th May, 2016. This was acknowledged by the respondent as having being received on 20th May, 2016.

30. The assessment of need should have commenced as soon as possible after 20th May, 2016 and in any event no later than 20th August, 2016, and should have been completed by 14th November, 2016 at the very latest.

31. At the time of the assessment of needs application, F.C. was three and a half years of age, her date of birth being 10th December, 2012.

32. F.C.'s assessment of needs commenced on 24th August, 2016, as evidenced by a letter dated 8th March, 2017 from the respondent to Councillor Vicky Casserly, an elected representative in South Dublin County Council, who had written to the respondent on K.K.'s behalf. The letter stated as follows: -

> "The Assessment Officer had a meeting with [F.C.'s parents] on 23rd August 2016. As part of the Assessment of Need Process, the Assessment Officer referred [F.C.] to Dublin West Early Intervention Team for a multidisciplinary team assessment on 24th August 2016.
>
> The current wait list for assessment is approximately 15 months; the Early Intervention Team will contact [F.C.'s] parents when her name comes to the top of the waiting list."

33. On 16th December, 2016, K.K. made a complaint to the complaints officer in respect of the delay in having F.C.'s assessment of need completed.

34. By email dated 2nd August 2017, the respondent wrote to K.K. informing her that the delay regarding the completion of F.C's assessment was now eighteen months.

35. On 13th October, 2017, some ten month after she made complaint to the complaints officer regarding the delay in getting F.C. assessed, K.K. withdrew her complaint in favour of judicial review.

36. In aid of the case made for mandatory relief in the within proceedings, the applicants put before the Court the affidavit of Rita Honan, Chartered Psychologist. In her affidavit, Ms. Honan refers to the "acute need for early assessment where there is a query of possible Autistic Spectrum Disorder". She avers that peer-reviewed literature and international guidelines for best clinical practice confirm that under no circumstances should the assessment of children with emerging or recognisable characteristics of autism be deferred as this excludes from them dedicated early intervention services that can make remarkable improvements in the trajectory of their condition. This is particularly so when implemented at the youngest possible age. According to Ms Honan:

> "Diagnosis is the gateway to treatment and the subsequent reduction of symptoms and increased cognitive and adaptive functioning for the majority of children on the Autism Spectrum. Every day this is delayed leads to missed learning opportunities."

37. With regard to early diagnosis, Ms Honan states that retrospective analysis suggests that differences in development between typically developing children and those with autism may be apparent at an early stage in a child's development.

> "At age 6 months, differences in fine motor skills and social skills and communication, and concerns about vision are associated with subsequent diagnosis of autism. Differences in hearing, vocabulary, and understanding words, and in feeding difficulties and fads were apparent by age 15 months. At age 18 months more widespread differences were associated with the subsequent diagnosis of autism: listening and responding to sounds, play and imitation, health concerns and repetitive and unusual behaviours. Temperamental traits and differences in bowel habit and stool characteristics were noticed by age 24 months, and by 30 months differences in crying and tempers were associated with autism….

This confirms that diagnosis under the age 2 years can and be validly established."

38. Ms. Honan also avers: -

> "[D]etecting infants at risk before the full syndrome is present and implementing treatment can alter the course of early behavioural and brain development thus resulting in improved outcomes. Numerous studies have demonstrated that Applied Behavioural Analysis (ABA) techniques produce improvements in communication, social relationships, play, self care, school and employment…27 hours per week of early behavioural intervention is supported in the published literature.
>
> ...
>
> I say that a number of peer-reviewed studies have examined the potential benefits of combining multiple ABA techniques into comprehensive, individualised and intensive early intervention programs for children with autism. Such studies have

demonstrated that many children with autism experience significant improvements in learning, reasoning, communication and adaptability when they participate in high-quality ABA programs. Some pre-schoolers who participate in early intensive ABA for two or more years, acquire sufficient skills to participate in regular classrooms with little or no additional support."

39. Citing a number of studies which establish the benefits of early intervention, Ms Honan goes on to state: -

> "All the foregoing is well-established, widely -known and accepted and … the Respondent is well aware of the critical need for early diagnosis and dedicated intervention."

The grounds relied on by the applicants for the reliefs sought

40. As grounds for the mandatory and declaratory relief sought in respect of the respondent's failure to commence and/or complete the assessments of need in respect of the infant applicants in the within proceedings, reliance is placed on the provisions of s. 9(5) of the 2005 Act, and Articles 6(1), 9, and 10 of the 2007 Regulations. The applicants contend that the said provisions provide a maximum six month timeline for the commencement and completion of an assessment of need; three months for commencement and three months for completion. Where an assessment is commenced and is not going to be completed within three months, the individual concerned must be informed within three months of the commencement of the reasons for the delay and the specified timeframe for completion.

41. The applicants contend that in breach of statute, the respondent does not appear to have informed the applicants of the date upon which the assessments of need would be commenced and completed. They also assert that in breach of statute the respondent has not specified in writing, prior to the end of the three month period for completion of the assessment of need: that there would be a delay; the reasons for the delay and; a timeframe for completion. In breach of statute and to the detriment of the applicants, the respondent has failed to commence the assessment of need within three months and has failed to complete the assessment of need within the maximum six month timeframe. It is further contended that the respondent has offered in each case a new completion date which has not been complied with.

42. As grounds for the declaration that the statutory complaints process is not an adequate or appropriate remedy, the applicants advance the following arguments:

> (i) An applicant may, pursuant to s. 14 of the Disability Act, 2005, make a complaint to a complaints officer, three months after the initial application for an assessment of need (where it has not commenced) or, if it has commenced by the end of the three month period, three further months after the initial three months (i.e. six months total after the initial application).
>
> (ii) This six month period constitutes the total period of time in which the entire process should be commenced and completed. Yet, if that is not achieved and the statutory complaints process is invoked, an applicant engaging with the complaints process must then await the determination of a complaints officer, which may take up to eight to nine months, as there is currently a waiting list and delays in the statutory complaints process due to the current large number of complaints. A complaints officer's report will normally stipulate a further three month period in which the assessment of need should be completed. It is also noted that the complaints officer does not appear to inform those making complaints of their right to seek enforcement of the complaints officer's recommendation before the Circuit Court.
>
> (iii) An applicant may only file a motion in the Circuit Court, pursuant to s. 22 of the Disability Act, 2005, seeking enforcement of the complaints officer's recommendation, three months after the date specified for the provision of a service in the complaints officer's report. Thus, if a three month period for completion of an assessment of need is stipulated in the complaints officer's report, a total period of six months will have passed before enforcement in the Circuit Court can be sought. This timeframe does not take account of any waiting time in the Circuit Court system. Even when an enforcement order is made by the Circuit Court, there will normally be a period of time given and/or necessary in which to complete the assessment of need.
>
> (iv) Consequently, an applicant with a special needs child, urgently awaiting a diagnosis and access to services, using the complaints process, may have to wait up to in excess of twenty months to secure a statutory right (i.e. an assessment of need which at the outset which should be fulfilled within a maximum of six months from the date application is first made). This is not an adequate or appropriate remedy.

The respondent's pleadings

43. In its statements of opposition to the within proceedings, the respondent admits that the timeframes enacted in the 2005 Act and the 2007 Regulations have been exceeded in respect of the minor applicants as regards the commencement and completion of the assessments of need. Notwithstanding that admission, the respondent contends that the applicants are not entitled to seek orders of *mandamus* in relation to the alleged failure by the respondent to comply with its statutory obligations under s. 9 of the 2005 Act and/or the 2007 Regulations. It is contended that the grant of the relief sought by the applicants would be to give the minor applicants priority over other children who are also awaiting assessments of need, at the expense of those other children. It is further contented that the reliefs sought by the applicants would compel the respondent to conduct the assessments of need in breach of the statutorily prescribed order of processing such applications. The respondents also specifically deny that the statutory complaints process is not an adequate or appropriate remedy.

44. In her affidavit sworn on 11th December, 2017 in the first proceedings, Ms. Angela O'Neill of the respondent's National Disability Children and Families Team avers that the respondent finds itself faced with "unprecedented levels of demand for assessments of need in circumstances where in the allocation of its scarce budgetary resources, the [HSE] has been constrained in its ability to take account of that increase."

45. She avers that the number of applications for assessments of need has grown significantly since the commencement of the 2005 Act in June 2007. Some 1,137 applications were received in 2007. By the end of the third quarter of 2017, some 4,503 applications had been received for that year alone. Ms O'Neill anticipates that for the whole of 2017, the figure will be in the order of 6,000 applications. She accounts for the increase in the number of applications by reference to the decision of the High Court in *Dykes*, which had the effect of expanding the eligibility of applicants for assessments of need substantially beyond that envisaged when the 2005 Act was enacted. She avers that the increase in the number of applications "has significant budgetary . . . implications".

46. Ms. O'Neill also avers that assessments of the kind in issue in the within proceedings "make significant demand on scarce clinical resources". An average assessment of need takes at least twenty nine hours of clinical time, in addition to the time engaged by assessment officers, liaison officers and administrative staff.

47. It is further averred that the increase in demand on resources coincided with a period of crisis in the public finances of the State. As of April 2017, a staffing equivalent of 28.9 Assessment Officers was in place to deal with assessments of need across the country. Ms O'Neill states that in many cases the backlog in the processing of assessments derives not from delays of an administrative nature but rather through a shortage of appropriately trained clinical staff.

48. At this juncture, it is important to emphasise that, as advised by counsel for the respondent in the course of the hearing, the respondent is not relying on a resources defence in its opposition to the applications for judicial review.

49. Ms O'Neill acknowledges that "in view of [the] disparity between increased demand and static resources, the HSE has experienced increasing difficulty in complying with the statutory timelines outlined in the Statement of Grounds." It is accepted that by mid-2017, 838 applications for assessment were classified as being "overdue to commence", in that the second stage of the assessment process (statutorily required to begin within three months of receipt of an application) had not been commenced in time. By the third quarter of 2017 that figure had been almost halved to 429. Ms O'Neill accepts however that the trend in respect of assessments that are classified as being overdue for completion, i.e. where the total six month deadline for commencement and completion of an assessment of need has passed with no exceptional circumstances existing to justify that delay, is less positive. At the end of the second quarter of 2017, there were 4,009 such cases, with the figure being reduced only to 3,918 by the end of the third quarter of 2017.

50. Ms. O'Neill maintains that irrespective of the fact that the assessment of needs process has not been completed in many cases access to services is being granted to children. In that regard, she refers to a letter sent on 4th August, 2016 by the assessment officer for West Cork in respect of A.F., which recommended referral to the Early Intervention Services Forum.

51. With regard to the delay in the statutory complaints process, Ms O'Neill avers that as of December, 2017, an average of eighty complaints per month is being received by the complaints officer. She states that since the end of August, 2017, an additional complaints officer has been assigned to deal with the increased number of complaints and in order to insure that the efficacy of the statutory complaints process is not undermined. She further avers that four additional staff are being recruited for the Complaints Office.

52. Ms. O'Neill acknowledges that there is some variation in the carrying out and delivery of assessments of need around the country. It is accepted that this is inconsistent with the Guidelines set by HIQA in 2007. As a consequence, a new draft national policy for assessments of need is in the course of being prepared which will "significantly streamline and consolidate existing practices and policies across the country, minimising delays to the benefit of applicants for assessments of need."

53. On 21st February, 2018, Ms. O'Neill swore a further affidavit for the purpose of providing updated information regarding the assessment process for the minor applicants. With regard to A.F., Ms. O'Neill avers that as of February, 2018, he remains on the waiting list for an ASD assessment. With regard to F.C., her multidisciplinary assessment commenced on 23rd January, 2018, with further appointments scheduled. Ms O'Neill anticipated that the report of the 23rd January, 2018 assessment "will be submitted to the Assessment Officer at the end of March".

54. As regards the implementation of the revised assessment of needs procedure, Ms O'Neill states: -

> "As averred in my grounding affidavits sworn herein, the HSE has engaged a process of revising its practices and procedures around delivering Assessments of Need over the course of the last year. It is hoped that the introduction of a more standardised approach will reduce delays in the Assessment of Need process. The provision of a Preliminary Team Assessment will ensure that children's needs are identified quickly and they will access appropriate intervention at the earliest opportunity. Following this assessment, children will be prioritised based on clinical need.
>
> I say that a Revised Standard Operating Procedure was approved by the Social Care Management Team and HSE leadership team in late 2017. This Procedure was circulated throughout the HSE assessments system in December 2017 and it is intended to implement this Procedure with effect from 1 April 2018.
>
> …
>
> The new Procedure is intended to give clear direction regarding eligibility for Assessment of Need. Children and young people who present with a level of need that demonstrates their requirement for a Disability Service will be deemed to meet the criteria for an assessment. They will receive a preliminary team assessment to determine:
>
> (a) If they have a disability
>
> (b) The nature and extent of their disability and
>
> (c) Any health or education needs occasioned by the disability.
>
> Depending on the outcome of this preliminary team assessment, a multidisciplinary team will then identify appropriate care pathways, which may include:-
>
> (a) Diagnostic assessment…
>
> (b) Initial interventions
>
> (c) urther referrals.
>
> …

> All Assessments of Need, including those for children who are awaiting assessment, will be completed according to this Procedure from 1 April. It is intended that letters will issue to families of children who remain on the waiting list in early March. In addition, information regarding the revised AON process will be available on the HSE website shortly"

Considerations

55. Arising from the pleadings in the within proceedings, the following issues arise:

> (1) Do the provisions of the 2005 Act impose a legal obligation upon the respondent to carry out an assessment of need such as would entitle the applicants to an order of mandamus, and;
>
> (2) Does the statutory complaint process provide an adequate and appropriate remedy for the applicants?

56. It is not disputed that the statutory content of the 2005 Act – the diagnosis of disability in childhood – imports a significant degree of urgency in the assessment of children for disability. This is evident from the use of the term "as soon as possible" in Article 9 of the 2007 Regulations, the clear intention of the Oireachtas being that the assessment would commence as soon as possible, with the three month period specified within s. 9(5) of the 2005 Act and Article 9 of the 2007 Regulations constituting the maximum time and the very outer limit for commencement of the assessment of needs. Further, it does not appear that there are any other provisions in the Act or Regulations which permit delay in the commencement of the assessment of need. It is also clear from Article 6(1) of the 2007 Regulations that the administrative exercise involved in the preliminary determination of whether or not an assessment of need is necessary and the preparation of the acknowledgment letter (setting out the time frames) cannot constitute commencement of the assessment of need. Once commenced, completion of the assessment of need is required to be done within three months of its commencement, save in exceptional circumstances, as provided for in Article 10 of the Regulations.

57. The management reports exhibited by Ms. O'Neill in her replying affidavit show that in the "second quarter 2017 management report", only 14% of applications from West Cork (the place of residence of A.F.) were commenced for assessment within the statutory three month period. This is to be compared to North Dublin where 91% of such applications were commenced within the requisite time-frame. On the other hand, in Dublin North-West only 11% of such applications were commenced within time. In the third quarter 2017 management report, none of the applications received from West Cork were commenced within the statutory time-frame. This is to be compared to Cavan/Monaghan where 96% of assessments were commenced within the statutory time-frame. Galway, Mayo and Roscommon had a 100% commencement rate. Counsel for the applicant submits that the discrepancies show that the system is effectively a "geographical lottery". While I do not necessarily believe that to be the case, I note that Ms O'Neill accepts that there are significant deficiencies in the system. The upshot of those deficiencies is that the entitlement of A.F. and F.C. to have their respected assessments of need commenced and completed within the requisite statutory period has not been fulfilled.

58. An applicant seeking mandamus must, per Henchy J. in *State (Sheehan) v. Government of Ireland* [1987] I.R. 550, establish "*a statutorily imposed duty…where the duty has been clearly and unambiguously expressed in the statute."* The term "shall" is expressly used in s. 9(5) of the 2005 Act and the relevant provisions of the 2007 Regulations, in particular Articles 9 and 10 thereof. In *McD. v. Minister for Education* [2008] IEHC 265, O'Neill J. considered the effect of the term "shall" in the context of the Education Act 1998:

> *"Section 6 of the Act of 1998 states that the first named respondent "shall" have regard to the list of objects set out in the section. The use of the word "shall" indicates that it is mandatory for the first named respondent to have regard to the objects as outlined. Section 7(1) of the Act of 1998 also contains the word "shall". It provides that a number of exercises "shall" be a "function" of the Minister under the Act. Section 7(2) goes on to specify that it shall be a function of the Minister to provide "support services" to students who have a disability, amongst others. The use of the word "shall" in these contexts, and particularly in the context of the function under Section 7[2] of providing support services tends to suggest an obligation to provide a service to cater for the specific educational needs of a particular person. Given that this provision may be exclusive to that person, the use of the expression "shall" in this regard is persuasive that it was intended by the Oireachtas that a failure to discharge the duty to provide would be actionable at the suit of the person denied the service in question."*

59. The statutory duty in s.7 of the Education Act 1998 was also endorsed by Herbert J. in *Nangle v. South Western Area Health Board and the Minister for Education* (Unreported, High Court, Herbert J. 30th October, 2001). In *CL.T v. Health Services Executive* [2011] 3I.R. 29, McMahon J. granted an order of mandamus in circumstances where he was satisfied that the HSE had a statutory obligation to make an application for a care order under s. 16 of the Child Care Act 1991 which provides:

> "Where it appears to the Child and Family Agency…a child…requires care or protection which he is unlikely to receive unless a court makes a care order or a supervision order in respect of him, it shall be the duty of the health board to make an application for a care order or a supervision order"

60. As regards the 2005 Act, I perceive the duties imposed upon the respondent, once an application is made for an assessment of need in respect of an individual child, as being also entirely and unambiguously mandatory. Thus, insofar as the applicants have to satisfy the Court that they have an actionable suit against the respondent, I am satisfied that this test has been met by virtue of the mandatory provisions of s.9(5) of the 2005 Act and Articles 9 and 10 of the 2007 Regulations.

61. Applicants for *mandamus* must, in the normal course of events, call upon an administrative body to perform its duty. (See *R. (Butler) v. Nevin UDC* [1926] I.R. 466 and *de Burca v. Wicklow County Council* [2002] 2 I.R. 196). The applicants in the within proceedings have unsuccessfully called upon the respondent to fulfil its duty. It has failed to do so. Are the applicants thus entitled to mandatory relief?

62. The respondent submits that the existence of a statutory complaints process enacted in conjunction with the system of assessment of need, militates against the grant of judicial review. On the other hand, the applicants have placed the shortcomings of the statutory enforcement remedy squarely before the Court. They seek both mandatory relief and a declaration that the statutory complaints process is not an adequate or an appropriate remedy.

63. The question of whether judicial review lies where an alternative remedy exists was considered in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497, where Barron J. held:

> *"It is not just a question whether an alternative remedy exists or whether the applicant has taken steps to pursue such*

remedy. The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that the applicant has not gone too far down one road to be estopped from changing his or her mind."

64. This passage has been cited, approved and applied by the Supreme Court in *Buckley v. Kirby* [2000] 3 I.R. 431, *Stefan v. Minister for Justice* [2001] 4 I.R. and *O'Donnell v. Tipperary South Riding Council* [2005] IESC 18. In G. v. DPP [1994] 1 I.R. 374, Finlay C.J. held that where there is an alternative remedy it requires to be established "*that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure."*

65. In *EMI v. Data Protection Commissioner* [2013] 2 I.R. 669, Clarke J. opined on the question as to when a party would be justified in not pursuing a statutory appeal and instead pursuing judicial review. He stated:

"[34] In The State (Abenglen Properties) v. Corporation of Dublin [1984] I.R. 381 this court had to consider a case where an application was made to a local planning authority for permission to erect a mixed office and residential development. The relevant permission was granted subject to a number of conditions. The applicant was dissatisfied with the conditions imposed and sought by judicial review to quash the conditional permission as having been granted ultra vires. However, it was also open to the applicant to pursue an appeal to An Bord Pleanála under the relevant statutory regime. In considering which avenue was the more appropriate for the applicant to take in the circumstances, O'Higgins C.J. stated, at p. 393:-

> *"The question immediately arises as to the effect of the existence of a right of appeal or an alternative remedy on the exercise of the court's discretion. It is well established that the existence of such right or remedy ought not to prevent the court from acting. It seems to me to be a question of justice. The court ought to take into account all the circumstances of the case, including the purpose for which certiorari has been sought, the adequacy of the alternative remedy and, of course, the conduct of the applicant. If the decision impugned is made without jurisdiction or in breach of natural justice then, normally, the existence of a right of appeal or of a failure to avail of such, should be immaterial. Again, if an appeal can only deal with the merits and not with the question of the jurisdiction involved, the existence of such ought not to be a ground for refusing relief. Other than these, there may be cases where the decision exhibits an error of law and a perfectly simple appeal can rectify the complaint, or where administrative legislation provides adequate appeal machinery which is particularly suitable for dealing with errors in the application of the code in question. In such cases, while retaining always the power to quash, a court should be slow to do so unless satisfied that, for some particular reason, the appeal or alternative remedy is not adequate."*

[35] In that case, this court was satisfied that the appeal provided under statute to An Bord Pleanála was adequate as An Bord Pleanála had full jurisdiction to consider all aspects of the appeal and also taking into account that it was open to An Bord Pleanála to state a case to the High Court. It is notable that the passage cited does leave open the possibility that there may be certain cases where a court, for good reason, can proceed to make an order of certiorari even if an appeal or alternative remedy is available.

[36] Therefore, it follows that, where there is an adequate alternative remedy available and an applicant for judicial review fails to avail of that alternative, the court is likely to exercise its discretion against the applicant.

[37] However, it should also be noted that the mere presence of an appeal mechanism, in and of itself, does not operate as a bar to relief in judicial review proceedings. Rather, as Denham J. pointed out at p. 216 in Stefan v. Minister for Justice [2001] 4 I.R. 203:-

> *"It is clear that whilst the presence of an alternative remedy, an appeal process, is a factor, the court retains jurisdiction to exercise its discretion to achieve a just solution."*

…

[40] A recent summary of the law in this area can be found in the judgment of Hogan J. in *Koczan v. Financial Services Ombudsman [2010] IEHC 407 (Unreported, High Court, Hogan J., 1st November, 2010). At pp. 11 and 12 of his judgment, the following is said:-*

> *"19. There are, doubtless, certain categories of cases where the legal argument raised falls properly to be canvassed by means of judicial review rather than by way of a statutory appeal. As indicated in* Square Capital Ltd. v. Financial Services Ombudsman [*2009] IEHC 407, [2010] 2 I.R. 514, an argument directed towards a total lack of subject matter jurisdiction is perhaps one such case. Judicial review might also be appropriate where the complaint relates to the integrity or basic fairness of the decision-making process, so that in justice the decision-maker ought to be afforded an adequate opportunity of defending his or her position in judicial review proceedings which admit of the possibility of cross-examination and oral evidence. There may well be other cases – such as, e.g. , those touching on the constitutionality of legislation or the validity of statutory instruments – where the legal issues cannot properly be raised by way of appeal (whether by virtue of the special rule contained in Article 34.3.2° of the Constitution or otherwise) and which must be dealt instead with by means of a declaratory action: cf. the discussion of this issue in the judgment of Kearns J. in* S.M. v. Ireland *[2007] IESC 11, [2007] 3 I.R. 283.*
>
> *20. These cases must, however, be regarded as the exception rather than the rule. It is well established that the Oireachtas must be presumed to know the law and the Oireachtas is, of course, well aware of the existence and parameters of the High Court's judicial review jurisdiction. It follows, therefore, that the creation by legislation of a right of statutory appeal from an administrative decision which is not confined to an appeal on a point of law generally raises the inference – albeit a rebuttable inference – that the Oireachtas 'must have intended that the court would have powers in addition to those already enjoyed at common law' in respect of its judicial review jurisdiction: see Dunne v. Minister for Fisheries [1984] I.R. 230 at p. 237 per Costello J. That in turn suggests that the Oireachtas further intended that the statutory appeal would form the vehicle whereby the entirety of an appellant's arguments could be ventilated in such an appeal without any need to commence a further set of proceedings, at least to the extent that it was procedurally possible to do so: see, e.g. , the comments in this*

regard of Laffoy J. in Teahan v. Minister for Communications [2008] IEHC 194, (Unreported, High Court, Laffoy J., 18th June, 2008).”

[41] Thus the overall approach is clear. The default position is that a party should pursue a statutory appeal rather than initiate judicial review proceedings. The reason for this approach is, as pointed out by Hogan J. in Koczan v. Financial Services Ombudsman [2010] IEHC 407, (Unreported, High Court, Hogan J., 1st November, 2010), that it must be presumed that the Oireachtas, in establishing a form of statutory appeal, intended that such an appeal was to be the means by which, ordinarily, those dissatisfied with an initial decision might be entitled to have the initial decision questioned.

[42] However, there will be cases, exceptional to the general rule, where the justice of the case will not be met by confining a person to the statutory appeal and excluding judicial review. The set of such circumstances is not necessarily closed. However, the principal areas of exception have been identified. In some cases, an appeal will not permit the person aggrieved to adequately ventilate the basis of their complaint against the initial decision. As pointed out by Hogan J. in Koczan v. Financial Services Ombudsman [2010] IEHC 407, (Unreported, High Court, Hogan J., 1st November, 2010), that may be so because of constitutional difficulties or other circumstances where the body to whom the statutory appeal lies would not have jurisdiction to deal with all the issues. Likewise, there may be cases where, in all the circumstances, the allegation of the aggrieved party is that they were deprived of the reality of a proper consideration of the issues such that confining them to an appeal would be in truth depriving them of their entitlement to two hearings.”

66. Turning now to the present case, the legal issue is whether it is permissible for the applicants to bypass the statutory complaints regime. The onus rests on the applicants to establish that they are entitled to bypass the exclusive procedural code as set out in the 2005 Act. As set out in the case law, the Court, in deciding this question, must take account of all the circumstances of the case, the adequacy of the alternative remedy and the conduct of the applicant.

67. While Ms. O’Neill, in her affidavit of 2nd February, 2018, advises the Court that there is now provision for the recruitment of four or five additional complaints officers, at the time of the instigation of the within proceedings there was only one complaints officer, Ms. Kennedy, employed for the entire country.

68. In an affidavit sworn 21st July, 2017 in relation to proceedings other than those before the Court, which it was agreed the Court could have regard to, the applicants’ solicitor, Mr. Gareth Noble, avers as follows:

> “I say that one of the fundamental problems now arising for persons such as the Applicants in the within proceedings is that whilst there is a statutory complaints process, it is wholly ineffective in the premises that it, too, is now subject to similar delays. This is evidenced by correspondence, dated 25th April, 2017, from Ms. Angela Kennedy, a statutory disability Complaints Officer [which issued to an applicant in one of the other judicial review cases]”

69. Ms. Kennedy’s letter reads:

> “You are correct that the HSE must [complete] the assessment process within a 6 month period from the date of receipt of an application.
>
> I am sorry for the frustration both the assessment and complaints processes are having on you as a family.
>
> Regrettably assessments must be completed by the relevant [areas] as they would be the ones providing intervention, if available, following the assessment process.
>
> First let me clarify my role. I investigate complaints specifically relating to the application of the Disability Act, 2005 with regard to the correct implementation of the Assessment of Need process.
>
> [Your complaint] is complaint number 284 of those received in 2017 regarding the application of the Assessment of Need process and I am currently addressing number 669 of 1,119 complaints received in 2016. There is currently an 8-9 month delay in responding to complaints, your complaint was received on the 23rd April 2017. Delays are being incurred as a result of the increased number of complaints to my office combined with the fact that I am the only officer nationally addresses complaints arising from the Assessment of Needs process. The situation with the complaints process is far from ideal and I understand the frustration you must be feeling.”

70. The respondent itself acknowledges the shortcomings in the complaints process, as is evident from Ms. O’Neill’s affidavit sworn 11th December, 2017, where she states:

> “The National Disability Complaints Officer is also facing a backlog of the carrying out of her work … As of 27th November, 2017 the backlog in that office is of the order of 664 outstanding complaints”.

The respondent also acknowledges that the ineffectiveness of the complaints process may only be addressed by the recruitment of additional staff, a matter now being addressed.

71. The question which arises for determination is whether the applicants’ particular circumstances are such as relieved them of the obligation to pursue and/or remain in the statutory complaints procedure. There is no doubt but that in both cases, the applicants pursued their statutory remedy, withdrawing from same only after some considerable number of months had elapsed without their complaints having been addressed.

72. Counsel for the applicants submits that the delay of eight/nine months general delay in the processing of complaints, as alluded to by Ms. Kennedy in her letter, and the delays in fact experienced by the applicants, well exceeds the maximum six months timeframe in which the whole assessment of need process must be commenced and completed. I agree with this submission. The 2005 Act does not set out a statutory period in which the complaints officer must consider a complaint. However, the timeframe has to be a reasonable one, as acknowledged by the respondent. The respondent also acknowledges the eight/nine and ten months delay, respectively, on the part of the complaints officer in the processing of the applicants’ complaints, which was the position when the applicants, respectively, withdrew from the complaints process.

73. By no stretch of logic can it be considered reasonable that a person who avails of the inbuilt statutory process to complain of the failure to provide a service within a mandatory timeframe (and which complaint is specifically provided for in s. 14 of the 2005 Act) should then find himself or herself subject to a complaints process which, by virtues of deficiencies in administering the complaints process, forces the complainant to be subject to further delay in accessing an assessment of need for his or her child. This is particularly so when one has regard to the evidence of Ms Honan as to the need for early intervention when autism is suspected, something which has already been recognised by the courts, as is evident from the judgment of Peart J. in *O'C v. Minister for Education*.

74. It is submitted on behalf of the respondent that contrary to Mr. Noble's averment, it is open to an applicant to make a complaint to the complaints officer if the assessment of need has not commenced within three months after receipt of the application and that, accordingly, an applicant is not required to wait until the total statutory six months period has expired. Moreover, while it is acknowledged that the complaints officer has on occasions, where a recommendation has been made following a complaint of delay, given the respondent a period of three months to comply with such recommendation, counsel for the respondent contends it is not invariably a three month period which the complaints officer recommends and that lesser time periods can be recommended. As to the process when an enforcement application is dealt with by the Circuit Court, the respondent points to one instance, at least, where a Circuit Court application to compel the complaints officer's recommendation was dealt with in less than three weeks after the return date. Taking those factors into account, counsel for the respondent submits that there has been an unnecessary elongation of the alleged waiting time by Mr. Noble in his affidavit particularly where his estimates of twenty to twenty-three months delay in the completion of an assessment of need includes the permitted statutory time periods. The respondent also points to the fact that albeit the within judicial review proceedings were fast tracked, it still took a period of seven months for the hearing to get on.

75. While I accept that Mr. Noble's estimate of how long the whole process may take, were the applicants to remain in the statutory complaints process, may be unduly pessimistic and a trifle exaggerated, it cannot be gainsaid by the respondent that the delays in the present cases are wholly unreasonable. It seems to me that the applicants, respectively, were reasonably entitled to withdraw from the statutory complaints process, in the particular circumstances of their respective cases. As they had withdrawn from the statutory complaints process, they could not then benefit from any recommendation in their favour the complaints officer might ultimately have made, and, without the benefit of a recommendation from the complaints officer, the applicants similarly could not then avail of the Circuit Court enforcement procedure, if it were to arise that the recommendation was not acted upon.

76. It is acknowledged by the respondent that the statutory remedy has not operated as it should with regard to the applicants' complaints. In those circumstances, counsel for the respondent effectively concedes that she cannot argue against the Court granting an order directing that the respondent complete the assessments of need in respect of the minor applicants within a given timeframe, effectively analogous to what the Circuit Court might have done had the applicants remained in the statutory complaints process, and were the recipients of a recommendation from the complaints officer which had not been acted on by the respondent. Accordingly, the Court will make mandatory orders in favour of the applicants.

77. Giving that the waiting time within the complaints process at the time of the initiation of the judicial review proceedings was eight to nine months, counsel for the applicant argues that this reinforces the applicants' request for declaratory relief vis-à-vis the shortcomings of the statutory complaints process as provided for in the 2005 Act. It is argued that this is so in circumstances where the shortcomings in the statutory complaints regime have led to delays of nineteen months and longer in the completion of assessments. This, counsel submits, is a far cry from the provisions of s. 9(5) of the 2005 Act, and the 2007 Regulations, which provides a maximum timeframe of six months for the commencement and completion of an assessment of needs.

78. Counsel for the respondent contends that there is no basis upon which the applicants should be granted a declaration that the statutory complaints process in the 2005 Act is not an adequate or appropriate remedy. Counsel argues that the complaints process constitutes an adequate remedy, if the applicants' complaints had been dealt with in an adequate timeframe.

79. It is also argued by the respondent that the within proceedings do not constitute a constitutional challenge to the 2005 Act. In those circumstances, counsel contends that the legislative framework must be accepted as it is and that the sole question for the Court is whether judicial review is permissible in the particular circumstances of the present cases. Counsel therefore requests the Court to find that the statutory complaints procedure is the appropriate process for those who complain that the respondent has failed to commence or complete an assessment of need, on the assumption, counsel concedes, that the complaints process deals with the complaint within a reasonable timeframe.

80. Overall, while I am satisfied, given the factual situation of delays in the complaints process of nine months or more, to make an order directing the assessments of need in respect of the minor applicants be completed within a number of weeks, I have not been persuaded that a case has been made out for the declaratory relief sought by the applicants. In the first instance, the Court must take cognisance of the fact that no challenge has been brought against the 2005 Act or the 2007 Regulations. The issue before the Court is the manner of the respondent's discharge of its statutory duties in relation to the completion of assessments of need and its management/implementation of the statutory complaints process. I find nothing inherently wrong with the remedy provided in the 2005 Act to address a failure on the part of the respondent either to commence or complete an assessment of need.

81. In arriving at this conclusion, I take into account that s. 14 of the 2005 Act enables a complaint to be made for a failure to commence an assessment of need within three months of receipt of the application. Similarly, if an assessment has been commenced but not completed within three months from when it began (as it must, save in exceptional circumstance), an applicant has again recourse to the complaints officer under s. 14. of the 2005 Act. Once a complaint is received, the complaints officer, as the respondent concedes in the within proceedings, and as the Court has held, must deal with such complaint in a reasonable timeframe. The Court has already expressed its view as to the unreasonableness of delays of the ilk which occurred in the present cases.

82. While there is no statutory provision, where a complaint has been upheld, directing the complaints officer to specify a particular timeframe for the commencement or completion of the assessment of need, as the case may be, it seems to me that any such recommendation would have to take cognisance of the timeframes set out in s.9(5) of the 2005 Act and the 2007 Regulations for the commencement and/or completion of an assessment of need, and the fact that any such recommendation is being made against the backdrop of an already established delay, in circumstances where the assessment of need is subject to mandatory timeframes as a matter of first principle.

83. Much is made by counsel for the applicants about the fact that albeit a person may be the recipient of a recommendation from a complaints officer, he or she must await the expiry of three months from the date specified in the recommendation before seeking enforcement in the Circuit Court where there is non-compliance by the respondent with the recommendation. Given that I have already found that it behoves a complaints officer to act expeditiously in dealing with a complaint, and to set a deadline for the commencement or completion of an assessment of need that reflects the fact that the statutory imperatives in s.9(5) and the 207

Regulations have not been respected in the first place, I do not therefore perceive that having to wait three months before seeking enforcement in the Circuit Court, pursuant to s. 22(1)(a)(iii) of the 2005 Act, necessarily undermines the statutory imperatives pertaining to the commencement or completion of an assessment of need.

84. By reason of the foregoing, I do not propose granting the declaration sought at paragraph 3 of the respective notice of motions.

85. Summary

86. In all the circumstances of these cases, and for the reasons set out herein, the Court directs that the respondent complete the assessments of need in respect of the minor applicants within a period of six weeks from today's date.