

F: Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

Case Summary – Violations of Human Rights

I confirm that I, Janet Hilary Willicott, have made clear which the facts and matters referred to in this case are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete opinion and facts on the matters to which they refer.

The Local Authority Namely The London Borough of Barnet within The United Kingdom (GB) did not uphold the law, in so far as to protect its citizen (Bastian Willicott) from undue harm.

The United Kingdom, failed to uphold UK legislation in so far as to uphold its decision, and due process held in line with its legislation within the, Human Rights Act (1998), Rights of the Child (1924), Convention of the Rights of the Child - Child Rights Charter (1989), Equality Act (2010), Disability Discrimination Act (1995, 2005), The Rare Disease Strategy 2010, Education Act (1996, 2011), Child and Learning Act (2009), Health and Social Care Act (2008), Mental Capacity Act (2005), Mental Health Act (2007), Children and Young Person Act (2008), Child and Families Act (2014), Children Act (2004), Children, Schools and Family Act (2010).

Bastian was not allowed his voice, Medical and or psychological evidence was not given its weight and merit, due process was unlawful, the cost of placement was not calculated accordingly as a whole pot fund coming from the central government.

The Universal Declaration of Human Rights

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.*

Bastian John Atreyu Willicott is a 12 year old boy, (DOB: 07/07/2003) born with a rare, de novo loss neurological condition called SETD 5 and Agenesis of the Corpus Callosum (ACC), which in turn causes Bastian to live with complexed mixed profiled intellectual disabilities

which impart as certain physical disabilities including associated phenotyping of behavioural patterns and dysmorphic features.

Bastian is an only child, who lives with his mother in England, UK. His father lives on the Greek island of Kos. Bastian went to Christ Church Primary School (mainstream) for the purposes of sociocultural environmental and inclusion setting, so as to enhance and further stimulate neurological plasticity, which fell within the London Borough of Barnet council until July 2014.

However, upon Bastian's rather distraught transition from junior primary to secondary education, it was of critical importance that Bastian be able to attend a school more suited to his individual needs. Such a school was found in Hertfordshire, after an extensive 18 month research period involving 35 schools, expanding an area of **19,096 km²** (7,373 sq. mi), just 9 miles outside the London Borough of Barnet, called The Collett School. This school was felt to be most suitable for Bastian's future educational, mental, and emotional development because it more closely mirrored the mainstream school atmosphere and environment that Bastian had become accustomed to not just at Christ Church Primary School, but also from his continued home and social setting, which were implemented to exercise neuro plasticity and enhance continued cognitive function within Bastian brain.

Initially, The London Borough of Barnet (SEND) Department, suggested that Bastian could go to The Collett School, if Ms Willicott took him herself (in a telephonic conversation with Bastian's 'Advocacy and Monitoring Officer (Mr Robin Deavin) – Barnet Children's Service' of the 18th March 2014; however The London Borough of Barnet subsequently reneged on this, confirming all Disabled children are the same and are suitable for their borough school, namely Oak Lodge School.

The London Borough of Barnet (SEND) department argued that Bastian's education could be catered for at a school in the borough called Oak Lodge Special School. Ms Willicott was left with the choice of sending Bastian to Oak Lodge Special School, which she (and other professionals) including Bastian, believes will affect his mental and emotional health or to home educate him. Ms Willicott has been legally and officially home educating her son in the meantime.

Bastian (with the aid of his mother, Janet Willicott) took the matter to the First Tier Special Educational Needs and Disability Tribunal. Bastian was eligible for the Legal Help Scheme and was represented by Maxwell Gillott Solicitors in setting up bundles and preparing administration/litigation only and NOT on the day representation.

The Tribunal found in favour of The London Borough of Barnet at the hearing and their DECISION was that The London Borough of Barnet to name Oak Lodge School in Bastian's Special Education Statement of need; based on "inefficient use of public resources". Maxwell Gillott ceased to act for Bastian after the hearing, stating that they could not help further. Ms Willicott was not allowed to take it to the Second Tier Tribunal as SENDist First

tier had not erred in law, although the costs of the placement at The Collett School were considerably less, but with transport it worked at as a cost neutral placement.

As Ms Willicott was not informed of her right to Judicial Review and had no prior knowledge of such, in making a judicial review application of the Tribunal's decision, the 3 month deadline had passed and so she needed to make application for exceptional circumstances. The deadline for judicial review was 2nd January 2015, and Ms Willicott was not made aware of the judicial review option or the deadline for the application until she first visited The Royal Courts of Justice (CAB) for an appointment on the 13th April 2015 with the duty solicitor.

It was then that Ms Willicott made an application to the Bar Pro Bono Unit for legal assistance from a specialist Chamber Barrister. Ms Willicott believes that the cost issues, Bastian's voice and rare neurological conditions of Bastian (mental, emotional, phenotype, genetic, educational and complex intelligent and self-esteem) and their implications were not adequately taken into account and that the provision costs were not accurately calculated by the SENDist Tribunal and The London Borough of Barnet (SEND Department), in so far as to highlighting the locality of the school; and that as The Collett School is an out of Borough (London) school the school placement is considered less of an 'expense' so coupled with the transportation costs, the school placement at The Collett School was in fact cost neutral.

The reasons for the cost neutral calculation, is that London Borough Schools are set at a higher premium cost and therefore are more cost detrimental, however adding Bastian's transportation costs to The Collett School, would in effect make The Collett School the same expenditure per head were Bastian to attend the Oak Lodge School; resulting in the 'cost neutral school placement'; which needs to take into account Bastian no longer needing speech and language, which the courts need to take into account, in addition to this Ms Willicott also pays for Bastian's own private Occupational Therapy, therefore relieving the Local Authority from providing this further provision.

Ms Willicott further believes that Bastian's Human Rights were not upheld, in so far as the courts not giving weight to his rare disease and complex disabled profile, (The Right to not be discriminated in terms of disability) Bastian's voice was also not heard; due to the fact he was not asked nor given the opportunity to express himself or his thoughts/views pertaining to his future educational development and needs (His Right to freedom of thought and conscience).

Bastian's right to a family life was and still is detrimentally affected by The London Borough of Barnet's continued unlawful handling of his educational future, in so far as to state, that they have abused due legal process, have continued to act unlawfully by not upholding the law, including the lengthy duration it has taken Barnet and the Courts to reach their decisions and or acknowledge their unlawful actions. Duration (Length of time when handling or managing a child's legal case) of process will always have a detrimental effect on

the child's life as their rate of development is in direct relation to their continued needs; even more so when implementing strategies or making decisions for the more vulnerable disabled person.

Ms Willicott further provided evidence from Mr Mark Carter, Head of Departments for Barnet Scan and CAMHS London (Barnet, Enfield, and Haringey) a Clinical Analytical Psychoanalyst and Child and Adolescent Psychotherapist (CAMHS) who has worked with Bastian for over 6 years, Mr Carters report was not accorded adequate weight.

Ms Willicott was informed that Legal Aid was still available for Judicial Review however after contacting eight legal aid Specialist legal firms and 20 legal aid public law firms and most UK human rights firms, none were able to assist, citing case complexity and resources as reasons.

In addition to seeking 'exceptional circumstance judicial review' Ms Willicott researched the law and further made an application to the ECHR, and this case attached was recorded as [BWillicott v UK 17275/15]. Ms Willicott sought to contact all Human Rights Advocacies and Specialist Human Rights legal firms throughout the United Kingdom all of whom cited complexity of case and resources for being unable to help.

Ms Willicott decided to act as her own representative of Bastian Willicott, to compile a theoretical and empirical report explaining and highlighting Bastian's rare disease. Report:

How an oppugning schooling placement and or environment can adversely affect a child's mental & emotional development across the SEND spectrum. - CONTRADICTION IN TERMS

Overview of Comparable Theoretical Literature and Empirical Evidence in support of and in recommending that, Bastian Willicott is educated according to his need and that his voice is heard, by exercising his right, through National and International Legislation.

Normal-Like-Me, Specialist SEN Research Services Limited – 10176663

Ms Willicott further details and documents chronological events and actions carried out by The London Borough of Barnet leading up to and after Tribunals Decision including unlawful actions which have negatively impacted Bastian Willicott and Ms Willicott's own life.

Ms Willicott applied through the Bar Pro Bono Unit for Judicial Review assistance and was awarded a barrister Ms Hanisha Patel of Chambers 7 Bedford View – her view was recorded as the following: As the Local Authority (Namely – The London Borough of Barnet) did not break the law, and that both schools appeared similar, it would be hard to describe otherwise the environmental and how it would / wouldn't affect Bastian, therefor it was unlikely that Judicial Review would be permitted, therefore a hearing would not be likely. At no point did Hanisha Patel consider and or add to her view, that a Child by law has to be awarded his view and his thoughts recorded. Bastian's voice was therefore not upheld nor were his rare complex disabilities.

Following Ms Patel's judicial review advice, Ms Willicott embarked on researching further legal assistance from various other independent resources and outside agencies; however all of whom agreed that Bastian's Human Rights were indeed breached, however none of them had the time, and or resources to take on such a complex case and in particular a case with a rare disease where little and or no psychological review papers/reports that were readily available to measure comparisons let alone find suitable case law for rare and unique complex cases.

Ms Willicott, further to this rather impacting daunt and desolate advice, continued to home educate Bastian; postponing her own Academic Career, Job, and Sociocultural life; undertaking to research on her own merits International Law, National Law, Neuro-Science, Neurology, Psychology, Educational Law, Human Rights, and Sociology, in order to underpin an extremely rare disease. It is experienced courage to state that Ms Willicott is and always be the most experienced professional to carry out such research, as her wealth of experience has added to the science and medical field as a whole.

To add even complexity to Bastian Willicott's case load, is that The London Borough of Barnet saw fit to continue to harass and to cause harm by detrimentally impact Bastian's life further by unlawfully trying to criminally prosecute Janet Willicott whereby it was deemed that it was in fact The State having committed the crime, but were charging Ms Willicott. The London Borough of Barnet has subsequently dropped all proceedings against Janet Willicott; however, the lasting and impacting damage that it has caused Bastian Willicott will and has altered his psychological development as well as causing extreme angst and distrust where any Local Authority and or Government to decide his fate in life.

UN Convention on the Rights of Persons with Disabilities 2007

EDUCATION

Just because we have a disability doesn't mean we can't learn. Our education should be just as good as that for any child. We belong in the regular classroom as much as possible. We want to learn, not just to be put in the classroom. The school must change so it works for us, too. We should be taught in a way we can understand. If we need support to take part in an equal way, we should get it. Teachers must be taught about their own prejudices. Teachers must learn how best to teach us. The government must hire trained teachers.

Article 7 of the Convention deals specifically with the rights of young disabled people – those aged 17 years and under. It says that:

- ❖ Governments must do all that they possibly can to make sure you get all your rights
- ❖ Governments must do all they possibly can to make sure you enjoy equal rights to children and young people that are not disabled
- ❖ Whenever things are being decided, or people are doing things, that affect you, your best interests should be a top priority

- ❖ Governments must make sure that your right to express your views freely is upheld. Your views should always be given “due weight” according to your age and understanding. Your views should be taken just as seriously as the views of children and young people who are not disabled
- ❖ You should be given help to make sure your right to be heard and taken seriously is followed. This assistance may be necessary because of your age or because of your disability. The important point is that everything possible is done to make sure you enjoy this right wherever and whatever you are doing.

The Facts that have given rise to Bastian’s (MY) application:

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My name is Bastian Willicott; I am one of (6) 7 people in the world with a very rare genetic neurological intellectual disability called SETD5 and the only one in the world with SETD 5 and ACC (Agenesis of the Corpus Callosum)

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3980521/>

[National Center for Biotechnology Information, U.S. National Library of Medicine](#)

Assess: The American Journal of Human Genetics – April 2014

Despite having this disability, I am known in the medical and educational world as an ENIGMA, because although I have an intellectual disability, the rest of my neurological function is that of a ‘normal’ child. I know my limitations and I also know what I can and can’t achieve. I can’t read or write or access the normal set national curricular, however I can with specialist assistance achieve a curricular set for my needs and abilities. I do not see myself as disabled and I do not allow myself to be treated any differently.

Just because I have a rare disability does not stop me wanting to be a happy a normal child. I am very intelligent and can articulate the spoken word with immense charisma and with higher than average standards.

The issue is that I don’t fit a mainstream school and neither do I fit a special educational school, I need a school in the middle of both streams, but sadly these do not exist. However after 18 months of research and 35 schools visited, we did find a school as close as possible to being in the middle between main stream and special school.

The only difficulty is that my Local Government Council (The London Borough of Barnet) together with the First Tear SEND Tribunal under the direction of the (United Kingdom) has said that “All disabled people are the same and that all disabled people can go to the local special school.

The local special school is called OAK LODGE SCHOOL and is a mixed severe disabled school, with varied behaviours; it is a very large and noisy school. I struggle in large and noisy environments. When I went to visit OAK LODGE for an open day, I was very scared, as the pupils are very different to me and the schooling environment is just too severe. It really frightened me. I do not see myself with any behavioural issues at all. It is just that my brain functions differently.

After visiting and spending time with all special schools around London, the South East of England and Hertfordshire, I eventually found a school (THE COLLETT SCHOOL) that met my enigma needs; it is a warm, friendly, happy school, with children almost like me. I did not feel scared in that school. I felt accepted for who I am and not what I am. The children are wonderful with me and so were all the teachers. My disability felt like it was not a hindrance in that school. As I live on the border of London and Hertfordshire – my local government said that I could go as it met my needs. However they then changed their minds.

The difficulty is that my Local Government Council said that local school (OAK LODGE) is good enough as I am disabled and all disabled people go there and that they can teach me their education. The issue is that NOT ALL DISABLED PEOPLE ARE THE SAME AND SOME ARE JUST DIFFERENT, RARE NEEDS AND OR DIFFERENT NEEDS. The Local Government Council then said it would cost too much money to send me to my SPECIAL school that makes me feel safe and secure.

My clinical, medical and analytical psychological teams all have written reports together with my SENCO's statement all stating the OAK LODGE SCHOOL is not appropriate for me based on my needs. They are concerned that my emotional health and mental wellbeing will be severely affected and the chances of me receding are high.

The Tribunal judge ruled stating that the local school was good enough as the **education** curricular is the same and that they did not want to pay for me to go to a school that would indeed improve my overall, social and emotional development.

The Tribunal judge and The Local Government Council have never met me; they have never asked what I feel or what impact this has on my life as a child with a rare disability. They have never taken my feelings into consideration and or my special disability into consideration, despite all the medical reports and recommendations. They have never given me a choice or a voice to be allowed to speak for myself.

They have ignored all evidence and have based the value of my life on financial costs. However the United Kingdom have already spent thousands on my case and yet can't afford to send me to a school that meets my needs, rare disability, personality, interests and most of all a school that makes me feel secure, safe and **normal**.

I want to invest in my future wellbeing and want my emotional health and mental wellbeing intact. It is hard enough having a unique disability; but don't want to end up severely unwell by being placed in the wrong school.

I have exhausted all domestic routes, and have not been able to apply for judicial review because the judge interpreted the law based on education only and not on my special medical and psychological grounds.

I have NOT been in school since September 2014, and now am Home Schooled by my mother Janet Willicott, who has had to give up her science job to educate me. I have had no choice or opinion or view point on my own future or life. My only option for my future is to now submit an application to The European Court of Human Rights enabling me to safeguard my special education and health care needs, enabling me to have a safe, sure and happy normal life.

I can think and I can have an opinion of my own life, I am a human and I can voice my needs, I can also say that I am not totally disabled and that being in a severe mixed disabled school will harm my emotion and mental wellbeing. I have my own opinions and free to think of myself as I see fit. My rare disability should not be the cause of me simply being labelled disabled. I have a voice and I can think. Why can I be offered a choice like any other non-disabled human being?

My mother is the expert in knowing me, she has known me for almost 13 years my psychologists are the experts in knowing me for the last 6 years. Their views should be allowed together with MY own personal, moral and ethical view based on how I see and conduct my life to the best of my ability. I should not be discriminated against. Costs even if there were some additional costs which there are none, as it the school in question is cost neutral, should not be used as a means to withhold an education I need to meet my needs.

Joe Whittaker – Leeds University Disabilities Studies states: “Whilst I would argue that cost should not be the issue for effective and meaningful support it is bizarre for education authorities and head teachers to deny disabled children the right to attend their local school or school on the grounds of insufficient funding.”

Therefore I would like my mommy Janet Willicott to state for me, the following: “my government and local authority can work out a financial cost of sending me a child to a particular school, but can't seem to work out the loss to me the child and of my (his or her) long term emotional and mental wellbeing not only to myself but to me and my (the) community resulting from their (The London Borough of Barnet's) immoral and cost driven educational budget. How can my life be based on a cost neutral budget?

The article or articles of the Convention that I say have been breached:

PROTOCOL ONE

ARTICLE 2 - THE RIGHT TO EDUCATION, AN EFFECTIVE EDUCATION (THAT IS ADEQUATE AND APPROPRIATE)

Economic, social and cultural rights (ESC rights), more often referred to as socio-economic rights or social rights in a European context, include work-related rights as well as the right to education, health, housing, social security and, more generally, an adequate standard of living. Cultural rights have remained largely underdeveloped and unaddressed in scholarship and litigation.

Approaches to economic, social and cultural rights

Key points

- Securing the availability of adequate resources is key to ensure the protection of social rights.
- Essential elements of social rights are availability, accessibility, adaptability and acceptability

Under CoE law, the ECSR notes that when the realisation of a right is “exceptionally complex and particularly expensive to resolve”, it assesses progressive realisation against three criteria: measures must be taken “to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources”. It also introduces a prioritisation, in that it reminds states of “the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected”

In the context of the right to education, the ECSR, in line with the approach of the UN Committee on Economic, Social and Cultural Rights, has adopted the analytical framework of availability, accessibility, acceptability and adaptability. The distinction between availability and accessibility also features in the case law of the ECtHR. The criteria or essential elements of availability, accessibility, acceptability and adaptability guide the analysis that follows, to the extent that relevant case law is available.

Under CoE law, Article 2 of Protocol No. 1 to the ECHR guarantees the right to education. The ECtHR clarifies that this article does not oblige states to make education available; it provides “a right of access to educational institutions existing at a given time”.

Furthermore, educational institutions have to be accessible to everyone without discrimination. The ESCR held that the “integration of children with disabilities into mainstream schools [...] should be the norm and teaching in specialised schools must be the exception”. States do not enjoy a wide margin of appreciation regarding the choice of the type of school for persons with disabilities; it must be a mainstream school

ARTICLE 8 - THE RIGHT TO RESPECT MY PRIVATE AND FAMILY LIFE

The CJEU deals with matters such as the child's best interests and the right to family life as laid down in the EU Charter of Fundamental Rights, relative to the Brussels II Regulation. ECtHR case law relating to family life recognises interdependent rights, such as the right to family life and the right of the child to have their best interests, as a primary consideration. It acknowledges that children's rights are sometimes conflicting. The right of the child to respect for family life, for instance, may be limited to secure their best interests. Right to respect for family life.

Key points

- States have positive obligations to ensure children's effective enjoyment of their right to respect for family life.
- Under both EU and CoE law, judicial and administrative authorities should take into account the child's best interests in any decision related to the child's right to respect for his/her family life

Under CoE law, the ECtHR has underscored that Article 8 of the ECHR primarily establishes the duty of the state not to intervene in family life

ARTICLE 9 - MY RIGHT IN THAT EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE.

Freedom of thought, conscience and religion

Key points

- Freedom of thought, conscience and religion, as guaranteed under the EU Charter of Fundamental Rights and the ECHR, includes the right to change religion or belief and the freedom to manifest religion or belief in worship, teaching, practice and observance.
- Parents have the right to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions.
- Parents have the right and duty to provide direction to the child in the exercise of the child's right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child

Under CoE law, Article 9 of the ECHR provides the right to freedom of thought, conscience and religion. Three dimensions of the right to freedom of religion have been distilled from the ECtHR's case law: the internal dimension; the freedom to change one's religion or belief; and the freedom to manifest one's religion or belief. The first two dimensions are absolute, and states may not limit them under any circumstance. The freedom to manifest one's religion or belief may be limited if such limitations are prescribed by law, pursue a legitimate aim and are necessary in a democratic society (Article 9 (2) of the ECHR).

In its case law, the ECtHR has dealt with children's freedom of thought, conscience and religion, mainly in relation to the right to education and the state school system. A topic of much public debate in European countries is religion in schools.

Parents' rights and the freedom of religion of their children

The rights of parents in the context of the freedom of religion of their children are addressed differently in European law compared to the CRC.

It includes the organisation and financing of public education, the setting and planning of the curriculum, the conveying of information or knowledge included in the curriculum in an objective, critical and pluralistic manner (hence forbidding the state to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions), as well as the organisation of the school environment, including the presence of crucifixes in state-school classrooms.

Under the CRC, parents have the right to provide guidance and direction not in accordance with their own convictions, but in accordance with the convictions held by the children. The wording of Article 14 (2) of the CRC is in line with the CRC's general conception of parental responsibilities: that parental responsibilities must be exercised consistently with the evolving capacities of the child (Article 5 of the CRC), and based on the best interests of the child (Article 18 (1) of the CRC).

ARTICLE 10 - MY RIGHT TO EXPRESS MYSELF - EVERYONE HAS THE RIGHT TO FREEDOM OF EXPRESSION. THIS RIGHT SHALL INCLUDE FREEDOM TO HOLD OPINIONS.

Freedom of expression and information

Key points

- Both the EU Charter of Fundamental Rights and the ECHR guarantee the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities.

Under CoE law, freedom of expression is guaranteed by Article 10 of the ECHR and may be limited only if the limitation is prescribed by law, pursues one of the legitimate aims listed in Article 10 (2) and is necessary in a democratic society.

In its case law, the ECtHR stressed that "freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man"

Right to be heard

Key points

- Under EU law, children have the right to express their views freely. Their views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

- Under the ECHR, there is no absolute requirement to hear a child in court. Whether or not to do so has to be assessed in light of the specific circumstances of each case and is dependent on the child's age and maturity.
- Under UN law, children's right to express their own views freely in all matters affecting them has been recognised as one of the general principles of the Convention on the **Rights of the Child**.

Under international law, Article 12 (1) of the CRC affirms that a child who is capable of forming her or his own views has the right to express these views freely in all matters affecting her or him. The child's views should be given due weight in accordance with her or his age and maturity. Article 12 (2) of the CRC furthermore prescribes that the child must be provided the opportunity to be heard in any judicial and administrative proceedings affecting her or him, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

ARTICLE 14 - THE RIGHT TO NOT BE DISCRIMINATED AGAINST IN TERMS OF DISABILITY

Freedom from discrimination is one of the basic principles of a democratic society. Both the EU and the CoE have been instrumental in interpreting this principle. EU institutions have adopted a series of directives which are highly relevant for children's issues. The European Court of Human Rights (ECtHR) has developed a substantial body of case law on the freedom from discrimination under Article 14 of the ECHR on the prohibition of discrimination, in conjunction with other Convention articles.

Under CoE law, the prohibition of discrimination applies to the exercise of any of the substantive rights and freedoms set forth in the ECHR (Article 14), as well as to the exercise of any right guaranteed under domestic law or in any act by a public authority (Article 1 of Protocol No. 12 to the ECHR). Protocol 12, however, is of limited applicability, since it has only been ratified by a small number of countries and no child-related cases have yet been decided on its basis. The provisions set forth in both instruments include a non-exhaustive list of grounds on which discrimination is prohibited: sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Where the ECtHR finds that persons in relevantly similar positions have been treated differently, it will investigate whether this can be objectively and reasonably justified.

Non-discrimination based on other protected grounds

Key point

- Further grounds of discrimination, such as disability or birth, have been addressed in European jurisprudence pertaining to children.

The First Protocol:

Protocol 1 consists of three rights: the right to enjoy property and possessions, **the right not to be denied an education**, and the obligation on governments to hold free elections.

ARTICLE - 2: RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 2 Protocol 1

*Britain has a national system of state education that meets the requirements of the Protocol. The disproportionate levels of permanent exclusion among Black Caribbean, Mixed White/Black Caribbean and Gypsy and Traveller students and **those with special educational needs are more likely to be tackled effectively through the Equality Act 2010 than through the Protocol.***

*Says that no one shall be denied the right to education. Unlike most rights in the Convention, this is expressed in negative rather than positive terms, reflecting the **comparatively weak protection it provides**. It requires every signatory to guarantee that individuals can take advantage of existing educational institutions, but it does not guarantee an education of a particular kind or quality, or that the education will be provided by a particular institution.*

The second part of Article 2 Protocol 1 concerns the rights of parents and provides that they are able to ensure that their children's education conforms to their own religious or philosophical convictions. This obviously covers religion, but any other conviction must be seriously held and of importance before it will merit the same protection.

*The parents' right need only be 'respected', which does not mean that their wishes must always be granted. **Interferences with the right to education will only be justified if they are foreseeable and pursue a legitimate aim, such as protecting children from harm.***

However, whilst Bastian is not being denied a right to an education, he is being denied the right to education that meet his complex needs, based on his own philosophical and emotional and perceptive belief, parental belief and wishes as well as medical and analytical psychological recommendations based on Bastian's evidence of his mental and emotional capacity and wellbeing of him being an individual living with rare disability. Bastian's voice as scribed and legislated in the Child Rights Charter – must be upheld. The Local Authority and Government has to also take into account The Rare Disease Strategy 2010, which states that all public services including Local Authorities and Educational Institutions must take into account the needs of the Rare Diseased Person. The professional's recommendations (medical and psychological) who have worked with Bastian for many years including Mr Mark Carter need to be given weight and merit.

The Local Authority and or Tribunal CANNOT simply base or make their decision on a school placement by stating that they as a Local Authority can met the child's needs by simply measuring or conducting a 20 minute observation or by an Educational Psychological Report based on a 45 minute assessment using standardised testing, as this will never yield the truth clinical curve or data needed to make the full recommendations; especially when assessing a child with a rare disorder, therefore Mr Carter's report carries more weight as it is measured clinical empirical evidence conducted over 6 years.

Local authorities, though it may also be of interest to all those supporting the educational attainment of a child with health needs, including all types of schools, providers of alternative provision, parents and providers of health services - Section 19 of the Education

Act 1996 and Equality Act 2010 UK– Local Authorities should not:

Have processes or policies in place which prevent a child from getting the right type of provision and a good education.

Withhold or reduce the provision, or type of provision, for a child because of how much it will cost (meeting the child's needs and providing a good education must be the determining factors). Special Educational Needs and Disability Code of Practice: 0-25 years.

No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions, Department of Work and Pensions," The Child has a Right to Challenge, The Child has a right under The Mental Health Act 2007, The Child has a Right to be Heard and Listened too.

ARTICLE – 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of** national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, **for the protection of health or morals, or for the protection of the rights and freedoms of others.**

Therefore to protect Bastian's health state of mind and emotional well-being Article 8 needs to be applied when applying Part 2 of Article 2, however, in addition to this, The London Borough of Barnet have also, through their unlawful due process continued preventing Bastian his right to a peaceful family life. The duration or time it has taken for The London Borough of Barnet to acknowledge

their unlawful actions has caused significant harm and psychological damage to Bastian's family life.

ARTICLE - 9: RIGHT TO FREEDOM OF THOUGHT CONSCIENCE AND RELIGION

Article 9 of the Convention provides as follows:

Article 9(1) protects the right of individuals to hold religious and other beliefs, and to practise them alone or with other people. It also protects people's right to freedom of conscience, and the right to follow one's own ethical and moral principles in one's actions.

The right to hold, as distinct from to manifest, religious and other beliefs is an absolute right. Holding a belief may be intrinsically bound up with manifesting it, for example, through worship, teaching others, the wearing of symbols or of special clothes, or the avoidance of certain foods.

The right to manifest a belief is a qualified right and its limitation is permissible if it is prescribed by law and can be justified as being necessary in a democratic society in the interests of public safety, the protection of public order, health or morals or the protection of the rights and freedoms of others.

The Report: (B WILLICOTT versus UNITE KINGDOM 17275/15 - How an oppugning schooling placement and or environment can adversely affect a child's mental & emotional development across the SEND spectrum.

CONTRIDICTION IN TERMS

Overview of Comparable Theoretical Literature and Empirical Evidence in support of and in recommending that, Bastian Willicott is educated according to his need and that his voice is heard, by exercising his right, through National and International Legislation.) – highlights that although Bastian has a rare disability, is complex with a mixed spiked profile, he can and does have the ability to express, by intellectually stating his personal view, expresses his views and is self-aware.

As Bastian's brain is very complex, his thoughts and conscience stance regarding him including his beliefs are vital in him affording him his own right to what he values. He knows he is complex, but won't allow his disability to put him in a box and labelled disabled, Bastian prefers to be seen as normal and wants to be in an environment that is not severe and or complex; yet he knows he can't cope in a larger mainstream school nor does he want to be in a complex school environment.

Article 9 places the following obligations on the state:

- **A negative obligation** requiring the state not to interfere in the right of individuals and organisations to hold religious and non-religious beliefs.

• a positive obligation to secure enjoyment of Article 9 rights by ensuring they are protected in law, and there are sanctions if they are infringed, and by preventing or remedying any breach by its own agents or institutions.

ARTICLE - 10: RIGHT TO FREEDOM OF EXPRESSION

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers..

Safety, for the prevention of disorder or crime, **for the protection of health or morals, for the protection of the reputation or rights of others**, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

As Bastian sees himself as intelligent, articulate and normal, he would appreciate a school that delivers that environment, therefore preferring a school environment with less 'severe behaviours'. Bastian does not have behaviour and or severe problems, but rather a complex mixed profile. It is critical that his self-esteem is upheld by this Article. Educational Institutions and their environments are not just about an educational offer.

ARTICLE - 14: PROHIBITION OF DISCRIMINATION

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Bastian should not be discriminated against in terms of his disability whatever degree of disability, complex or not. Disability can take many forms, and crosses all spectrums. Disability THEREFORE CANNOT BE DEEMED AS JUST DISABILITY. No child should be denied education based on their needs by virtue of cost. Therefore The London Borough of Barnet (United Kingdom) in violation of Bastian's human rights when linked with Article 14.

With the current emphasis on mental health and wellbeing, it is the recommendation by leading clinicians to implement a long term solution rather than a short term cost saving measure for children in general.

It is of the opinion with government and political parties in general, that they seek to govern long term visions with short term means.

The United Kingdom doesn't have specific guidance to support unique and or rare persons, apart from The Rare Disease Strategy 2010, as acted and implemented by The EU Rare Disease Legislation 2009.

ARTICLE 34 /35

This case bundle and in accordance with the above application for the individual Bastian Willicott – having exhausted all UK jurisdictions.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 21

(2) Everyone has the right of equal access to public service in his country.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 18

Everyone has the right to freedom of thought, conscience and religion

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 3

Everyone has the right to life, liberty and security of person.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

These must be considered when implementing Human Rights at Any Level

Convention on the Rights of the Child (1989)

Article 5 (Parental guidance):

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and development):

Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 2 (Non-discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child):

The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of rights):

Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country. Article 41 of the Convention points

out the when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

UN Convention on the Rights of Persons with Disabilities (2007)

Article 12: Equal recognition before the law

People with disabilities have the right to recognition as persons before the law. People with disabilities have legal capacity on an equal basis with others in all aspects of life. Countries must take appropriate measures to provide support to people with disabilities so that they can effectively exercise their legal capacity.

Article 17: Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 21: Freedom of expression and opinion, and access to information

People with disabilities have the right to express themselves, including the freedom to give and receive information and ideas through all forms of communication, including through accessible formats and technologies, sign languages, Braille, augmentative and alternative communication, mass media and all other accessible means of communication.

Article 24: Education

People with disabilities have a right to education without discrimination. Countries must ensure that people with disabilities can access an inclusive, quality and free primary and secondary education in their own community. Countries must also provide reasonable accommodation and individualised support to maximise academic and social development.

UN Convention on the Rights of Persons with Disabilities 2007

EDUCATION

Just because we have a disability doesn't mean we can't learn.

Our education should be just as good as that for any child.

We belong in the regular classroom as much as possible.

We want to learn, not just to be put in the classroom.

The school must change so it works for us, too.

We should be taught in a way we can understand.

If we need support to take part in an equal way, we should get it.

Teachers must be taught about their own prejudices. Teachers must learn how best to teach us. The government must hire trained teachers.

I confirm, that I, Janet Hilary Willicott, have made clear which the facts and matters referred to in this case are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete opinion and facts on the matters to which they refer.

Signature: Bastian John Atreyu Willicott (Applicant)

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B J A Willicott

Signature: Janet Hilary Willicott (Representative)

.....

J H Willicott

Date:

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2 June 2016