



reading of section 1H(2), it is an interpretation which makes eminent practical sense. Crucially, the 'public health functions' referred to in section 1H(2) are defined in the NHA 2006. They are incredibly wide ranging. As noted by Green J, they encompass just about all of the possible activities, tasks, and functions that the secretary of state or a local authority could conceivably perform in relation to the provision of a health service. If the 'public health functions' of the secretary of state and the local authorities did serve to limit the duty of NHS England pursuant to section 1H(2) (as NHS England argued), the scope of the duty would be practically reduced to nothing. This could not be what parliament had intended.

NHS England tried to overcome this difficulty by submitting that 'public health functions' should be construed purposively to refer to health provisions that were directed to the public generally or subsets of the public, rather than identified individuals. The effect of section 1H(2), it submitted, was to exclude health measures aimed at the public generally from the scope of NHS England's duty.

However, as correctly noted by Green J,

this completely ignores the express statutory definition of 'public health functions'. Even leaving this aside, Green J stated that the test proposed by NHS England was very imprecise. It would be difficult to draw the line between services offered to an identified individual (which would be within NHS England's duty) and those offered to the public generally or a subset of the public (which would not be).

NHS England's second main submission was that, under the relevant regulations, there is a division of labour between NHS England and local authorities, with the latter assuming responsibility for preventative medicine in relation to sexually transmitted diseases.

Green J also rejected that submission. There are two relevant sets of regulations: the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (the 2012 Regulations), and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (the 2013 Regulations). Green J found that the 2012 Regulations were free standing and imposed a duty on NHS England in

The financial implications 'lurked only marginally' below the parties' submissions