

CDC case law update 11 – June 2016

This update is intended to provide general information about recent decisions of the courts and Upper Tribunal which are relevant to disabled children, young people, families and professionals. It cannot and does not provide advice in relation to individual cases. Where legal issues arise specialist legal advice should be taken in relation to the particular case.

Kent County Council v M, K (by her guardian) [2016] EWFC 28

Case overview

In this Family Court judgment, a local authority was held to have breached a child's right to family life and right to a fair trial under the Human Rights Act 1998 following failures in relation to assessment and care planning and the failure to issue care proceedings. Damages of £17,500 were awarded to the child. This suggests that serious failures in assessment and care planning by local authorities in relation to disabled children may also result in human rights breaches.

Decision

K was 14 at the time of the judgment (May 2016). She was accommodated by the local authority under section 20 of the Children Act 1989 in December 2011. Care proceedings were issued in November 2015. The Court had to consider two issues, firstly whether a care order should be made for K and secondly whether her human rights had been breached by the local authority's actions and inactions in her case.

The Court decided it was necessary to make a care order for K, endorsing the plan for her to remain in long term foster care. No party disputed that this order should be made to 'give K the security and stability that her welfare clearly demands'. K's mother accepted that she was not able to care for K as a result of the mother's mental illness. Nor was any member of the wider family able to do so. By the time of the hearing K was 'in a placement where she was settled and experiencing some stability'.

The human rights claim was put under three hearings; failure to assess K, failure to meet her needs and failure to issue court proceedings. The claim succeeded on all three issues. The Judge held that 'the failures by the LA to properly assess and then support K's needs and to delay issuing legal proceedings for over three years were actions that were unjustified and incompatible with K's article 6 and 8 rights'. Article 6 of the European Convention on Human Rights protects the right to a fair trial. Article 8 protects the right to family life, amongst other matters¹. In accordance

¹ For example, respect for 'private life', which includes a person's physical and psychological integrity, is also required under Article 8 ECHR.

with section 6 of the Human Rights Act 1998 it is unlawful for a public authority to act contrary to these rights.

In considering the relevant law the Judge referred to what was said in an earlier case by the Court of Appeal about the unacceptable use of section 20 to avoid issuing care proceedings.² The Judge also referred to another earlier case where delays and mismanagement has resulted in a breach of Article 6 ECHR and had prejudiced the child's rights under Article 8 ECHR.³

On behalf of K, it was argued that the delay and drift in her case had added to her difficulties and led to more entrenched challenging behaviours. The local authority argued that they had managed K's care in a way which complied with her human rights and that the use of section 20 to accommodate children was not time limited.

The Judge found that while there is no time limit on providing accommodation under section 20, 'each case has to be considered on its own facts, with active consideration being given as to whether proceedings should be issued'. In K's case Care proceedings 'would have helped significantly to provide the stability and security that K so clearly needed'.

The Judge noted the local authority's concession in 2015 that K had been 'passed around services for the last 18 months with no real support or assessment in place'. The Judge observed that 'This is hardly a ringing endorsement by the LA of their own care planning for K'. The Judge found that K was caused harm by the lack and security of her previous placements.

The Judge gave a long list of reasons as to why the local authority had breached K's human rights. These included:

- The failure by the local authority to conduct or update K's core assessment for three years. As such 'The care plan for long term fostering lacked any detailed foundation that such an assessment would have given it'.
- The failure to secure appropriate mental health assessments and/ or therapeutic support for K.
- The repeated failure to seek legal advice to secure K's position through issuing proceedings. 'The delay meant K was denied access to an independent guardian and her own legal representation.'

The Judge held that 'reliance by the LA on the unlimited term of s 20 simply cannot be justified in a factual vacuum'.

² See *Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112 at para 157.

³ *Northampton CC v AS and others* [2015] EWHC 199 (Fam).

Overall, the Judge concluded that 'The delays by the LA in taking the necessary steps that their own decisions provided for, to safeguard K's welfare, security and stability have had a negative impact on her emotional health and development'.

This led to a finding of four breaches of K's human rights:

1. Failure to properly assess K from March 2012 until July 2015
2. Failure to implement a care plan that met K's needs from March 2012 to July 2015
3. As a result of (1) and (2), failure to provide K with a proper opportunity to secure a suitable long term placement and a settled and secure home life.
4. Failure to issue proceedings in a timely manner.

Taking account of the impact on K, the Judge decided that an award of £17,500 to K in damages under the Human Rights Act 1998 was necessary to afford K 'just satisfaction' for the breaches of her human rights.

What this means for children, young people and families

This judgment makes clear that serious breaches by local authorities of their obligations under the Children Act 1989 can result in human rights breaches. This can lead to significant damages being awarded by the courts. This may apply where there has been serious delay and / or failure to act in cases involving disabled children.

It is however important to keep in mind that the assessment and care planning failures in K's case lasted for over three years and had a seriously detrimental impact on her welfare. Less significant failures (for example a short delay in completing a child in need assessment for a disabled child without any serious adverse consequences) will be unlikely to result in a human rights breach. Advice will be needed on the facts of any specific case.

The primary concern of the courts is to ensure that breaches of human rights are brought to an end rather than to award compensation. As such the first issue will be to ensure that the human rights of disabled children and families are being respected, with damages being a second concern.

Any damages awarded will be 'highly fact sensitive'. The award in K's case was based on an assessment by the Judge that K's rights had been 'seriously interfered with over an extended period of time'.

Implications for local authorities and other public bodies

Local authorities will be reminded by this judgment that one of the consequences of breach of statutory duties owed to children and families may be a successful claim for damages under the Human Rights Act 1998. This highlights the need for proper and prompt compliance with the assessment and care planning duties owed to children at all times.

The judgment also specifically emphasises that if section 20 of the Children Act 1989 is being used instead of care proceedings for a child, this must be kept under careful review with active consideration given at all times as to whether proceedings should be issued.