

CDC case law update 21 – January 2018



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.

R (J and L) v London Borough of Hillingdon [2017] EWHC 3411 (Admin)

The High Court allowed a judicial review challenge to an assessment and decision concerning a disabled child's housing needs, stressing the duties on local authorities to ensure co-operation between departments and to actively promote children's welfare.

Case overview

The High Court allowed an application for judicial review challenging failures by the London Borough of Hillingdon in relation to housing and social care duties owed to a disabled child and his mother. The court stressed the need for effective co-operation between local authority departments and the requirement that local authority decisions should actively promote children's welfare.

Decision

This case concerned L, a boy with a range of impairments including autism and uncontrolled epilepsy, and his mother J, a single parent with a history of depression resulting from prolonged periods of childhood abuse. At the time of the hearing the family were living in a privately rented bungalow in Hillingdon. L's wheelchair did not fit through the doors of the bungalow and no adjustments had been made to the property to reflect his needs. There were a range of other issues with the property, including disrepair, dampness and the risk to L posed by the neighbouring car park and busy road.

The local authority's housing department decided that the family had 'no housing need'. A child and family assessment completed by the children's services department concluded that L's needs could be adequately addressed by measures put in place by J.

The family made an application for judicial review based on three grounds of challenge. Firstly, it was said that the decision that they had 'no housing need' was unlawful. Secondly, the family challenged the child and family assessment. Thirdly, it was alleged that the local authority had failed to ensure that its housing and children's services departments co-operated in a manner which ensured that they safeguarded and promoted the welfare of L and failed to comply with the duty under section 11 of the Children Act 2004.

The High Court allowed the application for judicial review. The child and families assessment identified a risk of harm to L from the accommodation but this risk was not communicated to the housing department. This was a failure of co-operation by the local authority departments. The assessment also failed to

comply with the Working Together statutory guidance because (1) the outcome that was identified for the risks to L was too generalised to be of any practical value and did not adequately focus on what was needed, who would provide it and by when, and (2) the process was not integrated and no-one in the authority took responsibility for carrying out the overall review.

The decision that the family had no housing need had very serious defects, including its reliance on a medical assessment which went beyond the doctor's expertise. There was no reference in the decision to the child and families assessment. The letter was wholly superficial and simply failed to engage adequately or at all with the risks to L arising from his housing that had been identified in the assessment.

Following that decision, the local authority had no plan in place to address or meet L's identified needs. It appeared to have no internal mechanism even to recognise that these needs were unmet, given that the case was closed to children's services. The decision letter failed completely to demonstrate compliance with the duty under section 11 of the 2004 Act actively to promote L's welfare.

What this means for children, young people and families

This judgment emphasises that children and their families have a right to have their needs looked at in a 'holistic' (joined up) way by local authorities. Although the relevant departments in this case were housing and children's services (social care), the same principle applies to co-operation between other departments, for example social care and education. This principle also extends to adults under the Children and Families Act 2014 (to age 25) and Care Act 2014 (generally).

The judgment also makes clear that the duty under section 11 of the Children Act 2004 requires local authorities actively to promote the welfare of children. The same duty arises in the education context under section 175 of the Education Act 2002. As such children and families can expect local authorities to take decisions in all contexts which actively promote their welfare, both individually and as a group – or at least that the need to actively promote children's welfare is given very careful consideration by the authority. Children and families may well be able to challenge decisions which run contrary to children's welfare via an application for judicial review, for which legal aid may well be available.

Implications for local authorities and other public bodies

This judgment stresses the importance of effective co-operation by local authorities, both with relevant partners such as NHS bodies and also internal co-operation between departments. The High Court emphasises throughout the judgment the need for ongoing co-operation, including keeping cases under review to see if the position has changed and if interventions are working appropriately. Local authorities will also need to be able to evidence compliance with the duty to actively promote children's welfare if any of their decisions are challenged on this basis – or at least demonstrate that the need to actively promote children's welfare was given careful consideration throughout the

decision making process. The judgment suggests that the requirement is for local authorities to actively promote children's welfare in their decision making, although section 11 of the 2004 Act refers to 'having regard to the need to safeguard and promote the welfare of children'.