CDC case law update 29 – July 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 (KS and AM) v LB Haringey [2018] EWHC 587 (Admin)

The High Court allowed an application for judicial review concerning the failures by children's services and housing to address the housing needs of a family with a child with autism who was at risk from falling from a balcony at home.

Case overview

This application for judicial review was brought by KS, a mother of two children, and her daughter AM, a girl aged 6 at the time of the judgment with a diagnosis of autism. In addition to her caring responsibilities, KS also has significant physical and mental health difficulties of her own.

The family (including AM's older brother) were living in a two-bedroomed council property on the first floor of a block of flats. The family argued that the property was dangerous for AM. In particular there were two outside balconies and windows from which AM could fall.

The family applied for alternative housing, relying on their health- and disability-related needs. Their solicitors asked for ground floor accommodation, an outside play area, appropriate bathing and toilet facilities and three bedrooms (given AM's sleeping difficulties which significantly affected her older brother).

Children's services produced a Child and Family Assessment which stated that the social worker was 'very concerned that the home is...a safety risk'. It was also recognised that the living arrangements were having an impact on the entire family. The social worker concluded that the family needed a three bedroomed ground floor accommodation with a garden and that their current accommodation did not meet their needs. However it was said that there were no safeguarding concerns because the parents were 'taking every step to meet their children's needs by keeping them safe'.

The child in need plan identified an action for an occupational therapist to identify necessary equipment and make adaptations in order for the home to be secure. A further action was for the social worker to send the Assessment to the housing department and the plan noted that what was needed was for the family to be 'provided with appropriate accommodation'.

Through their assessment, children's services made a request for assistance from the housing department, under section 27 of the Children Act 1989. The case was then closed to children's services as there were said to be no safeguarding concerns.

Following input from an independent medical advisor, the housing department made a decision that the family would remain in 'Band C' under the housing allocation scheme, meaning there was no realistic prospect of them being rehoused imminently.

After solicitors' letters were sent, the housing department obtained a report from a Dr Keen, who did not either examine AM or visit the property. Dr Keen concluded that the property was 'less than ideal' but there was not a serious medical need to relocate. He agreed that a ground floor property would be optimum but that 'given a fall from a first floor is unlikely to be fatal, and that availability of ground floor properties may be so scarce as to potentially delay a relocation, then I think that a first floor property is an acceptable alternative'. The Judge criticised Dr Keen's report in several respects, noting that he had not indicated 'what injuries he considers it likely that a 6 year old child might sustain falling from a first floor flat...and what level of injuries he considers to be an acceptable risk.'

The housing department's officers met to consider the case again, by which time it was clear that the balcony doors could not be permanently locked. The decision was that the risk to AM 'could be significantly reduced by practical measures' and that the level of risk and the impact on the family of their accommodation was 'not so serious or critical as to warrant Band A or Band B priority'. Nor would a 'direct offer' be made of a particular property.

The Judge recognised that housing authorities, particularly in London, face great difficulties in finding accommodation. The Judge further noted that all the evidence of those who knew the family was that they were experiencing very great difficulties as a result of AM's autism. On the other hand Dr Keen, whose evidence was heavily relied upon by the local authority, had not seen AM or KS and had not visited the property.

The Judge found the first floor balconies posed a very real risk to AM's well-being and that despite what Dr Keen had said a fall from a balcony would cause at the very least serious injury and possibly death. The level of parental supervision required for AM was not a 'realistic burden' for KS, taking account of her own needs.

Although children's services had requested co-operation from housing, this request had not been fulfilled. As a consequence the family had fallen between children's services and housing without any prospect of being rehoused.

It was not sufficient for children's services to refer the matter to housing and then close the file. The obligation on children's services was ongoing, underpinned by the obligation in section 17 of the Children Act 1989 and section 11 of the Children Act 2004 to safeguard and promote the welfare of a child in need. It was irrational and unlawful for children's services not to have continued their involvement with the family.

The conclusion by the housing authority to keep the family in Band C, without finding any alternative way to provide accommodation, was irrational in the light of the Child and Family Assessment. It was the gap between what children's services had clearly identified as a need that required addressing and the failure

of children's services and housing to address that identified risk that led to a finding that the local authority had acted irrationally and unlawfully. Housing had failed to give any, or any sufficient, weight to the information provided by the social worker. Once the suggestion of permanently locking the balcony doors was rejected because of the fire risk, the decision that the risk to AM was only moderate became unsustainable.

For the housing authority to rely on the constant and never wavering vigilance of KS to ensure AM's safety was irrational. Housing had therefore failed to formulate a plan to deal with the very real risks of AM harming herself and the very real and immediate harm to both AM and her brother by reason of the overcrowding in the property.

The local authority had also failed to have regard to the risks to the children contrary to the duty under section 11 of the Children Act 2004. There was no evidence of consideration of the need to safeguard and promote the welfare of the children in the decision making.

By reaching the conclusion that no change was required to the family's housing situation, the housing department had failed to comply with the request for co-operation from children's services.

The Court quashed the local authority's previous decisions and made mandatory orders that the local authority put in place a plan to meet the unaddressed needs of the claimants and that the housing department reassess and reconsider the need to rehouse in accordance with the request from children's services.

What this means for children, young people and families

This judgment emphasises that children, young people and families have a right to expect a 'joined up' approach from public bodies, which are expected to always keep in mind the need to safeguard and promote children's welfare. Families who consider that they are falling through the gaps in the system in the same way as happened to this family may want to seek urgent legal advice, particularly if there is a significant risk to the welfare of a child or children in the family.

Implications for local authorities and other public bodies

Local authorities will note the rigour with which the Judge scrutinised the decision making process in this case, which emphasises the need to provide appropriate written evidence if decisions are challenged. The fundamental message from this judgment is that all parts of local authorities (and external partners such as CCGs) need to work together to safeguard and promote children's welfare. It is not acceptable for one part of a local authority to 'pass the buck' to another part where this leaves important needs unmet for a child or young person. Furthermore local authorities need to be cautious in relying on medical or other evidence, particularly if the person giving the evidence has only had limited or no engagement with the child or family.