

CDC case law update 34 – October 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.

B & M v Cheshire East Council [2018] UKUT 232 (AAC)

The Upper Tribunal set aside a decision of the First-tier Tribunal that the local authority was entitled to cease to maintain an EHC Plan of a severely disabled young person. The Upper Tribunal emphasised that there are numerous reasons why it may be necessary for a local authority to continue to maintain an EHC Plan and that the question is not simply whether the outcomes in the Plan have been achieved.

Case overview

This appeal concerned a decision by the local authority not to maintain an Educational, Health and Care Plan (EHC Plan) for a severely disabled young person, 'Ms M'.

At the relevant time, Ms M was attending the sixth form at a specialist school, 'P School', which was named in her EHC Plan.

In December 2015, she received an offer of a placement at a college, 'DL College'. However, in March 2016, Ms M was told that the independent panel considering her application to attend DL College had not approved the application. The panel considered that her needs could instead be met through a day care placement funded through the Council's adult social care department, in the 'DL Footsteps' programme.

In July 2016, the Council informed Ms M's parents of their decision to cease to maintain her EHC Plan, because Ms M would turn 19 during the academic year, and she no longer required the EHC Plan. The local authority later set out its view that Ms M did not need to remain in education to achieve her outcomes, but that access to non-formal provision would help her to sufficiently prepare for adulthood.

The parents appealed against the local authority's decision to cease to maintain Ms M's EHC plan. The First-tier tribunal ('FTT') dismissed the appeal. It concluded that an educational setting was not required or beneficial to Ms M at this stage in her life. She was ready for a different challenge, within a less structured, less formal environment. She had achieved the outcomes specified in her EHC Plan, and that there was no benefit to her remaining in formal education. Staying in formal education would not help her complete or consolidate her learning, nor help her prepare for adulthood.

The Upper Tribunal (UT) allowed the parents' appeal against the FTT's decision.

The UT first explained that, under section 45(1) of the Children and Families Act 2014, a local authority may cease to maintain a young person's EHC plan where it is no longer necessary to maintain the plan. Where outcomes in an EHC plan have been achieved, this does not automatically mean that it is no longer necessary to maintain the plan. It is also necessary to consider the young person's educational and training aspirations, the reasons why the outcomes were achieved, and whether the young person's special educational needs profile has altered.

In this case, although the achievement of Ms M's outcomes had been an important factor in the FTT's decision, this had not been the sole reason for its decision. The FTT had therefore not made an error in this respect.

When deciding whether to cease to maintain an EHC Plan, the key question for the local authority is whether it is necessary for special educational provision to be made in accordance with an EHC Plan. Before making the decision, local authorities should make sure they have sufficient up-to-date information about a young person.

The local authority in this case had not carried out an assessment of Ms M's educational and training needs in the months preceding their decision to cease to maintain her EHC Plan. The local authority had carried out an assessment and prepared a care and support plan for Ms M under the Care Act 2014, which provided that Ms M's needs for care and support would be met by the DL Footsteps Programme. However the purpose of the Care Act assessment was to assess her care and support needs, not her educational needs.

The FTT had implicitly accepted that Ms M continued to require special educational provision, as it had found that she could make further progress in an educational or training sense, albeit in a different setting. Having made that finding, the FTT then failed to adequately assess the special educational provision that Ms M actually required. It simply found that she needed a less structured and less formal 'setting'. In reaching these conclusions, the FTT had paid scant regard to a number of expert reports that had been prepared regarding Ms M's special educational needs in advance of the FTT hearing.

As a result, the FTT had not been in a position properly to answer the key question of whether the day care placement would deliver the special educational needs of Ms M, such that it was no longer necessary to maintain her EHC Plan.

The UT held that the FTT's decision involved an error on a point of law because it made inadequate findings about the special educational provision required to meet Ms M's special educational needs or, alternatively, gave inadequate reasons for the findings it did make. The UT set aside the FTT's decision, and sent the case back to the FTT to be decided afresh, in accordance with the principles set out by the UT.

By way of further guidance, the UT Judge stated that 'In deciding whether to cease to maintain an EHC Plan, a local authority should ask itself whether a young person would meet the test for preparing and maintaining an EHC Plan in

the first instance. If the answer is 'yes', I do not see how a local authority could properly decide that it is no longer necessary for an EHC Plan to be maintained.'

What this means for children, young people and families

The decision means that a local authority will not be able to cease to maintain a young person's EHC Plan without a proper assessment of whether their special educational needs can be met if the plan is not maintained. Where a young person is offered a day care placement in adult social care, the young person may still have needs which can only be met through provision of formal education. Young people and parents should therefore consider appealing decisions to cease to maintain EHC Plans if they are unhappy with the offer of alternative provision under (for example) a care and support plan governed by the Care Act 2014.

Implications for local authorities and other public bodies

The decision reminds local authorities that, before deciding to cease to maintain an EHC plan, they should make sure they have sufficient up-to-date information about the young person, and ask whether it is necessary to maintain the plan. In deciding whether it is necessary to maintain the plan, it is not sufficient to rely on a recent Care Act assessment. Moreover, the local authority should have regard to the range of considerations explained above, not only to whether the outcomes in the plan have been achieved.