

CDC case law update

R (L and P) v Warwickshire County Council [2015] EWHC 203 (Admin)

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.

Case overview

This case was an application for judicial review¹ by two disabled children acting through their mothers, funded through legal aid. It arose from the processes by which Warwickshire County Council sought to reorganise its social care services for disabled children and achieve financial savings while also implementing the new scheme for SEN and disability introduced by the Children and Families Act 2014. The families and the local parent forum (Family Voice Warwickshire) were concerned that this would see less support provided to disabled children and families.

There were five grounds of challenge in the case:

- A. The Local Authority had failed to consult lawfully when putting forward cuts to funding for social care services
- B. There had been no proper consultation on the final proposed changes to social care services
- C. The consultation was unlawful because the proposed policy restricted access to social work assessments only to those disabled children with more complex needs
- D. The 'local offer' put forward by the Local Authority was so flawed as to be unlawful
- E. The Local Authority was in breach of its duty to maintain a register of disabled children

Decision

Grounds A-C were dismissed by the court. Grounds D and E succeeded.

The Judge's reasons for the grounds of challenge which were dismissed can be summarised as follows:

- A. The challenge to the consultation on funding was brought too late. The Judge also held that there was no duty to consult in this case before the decision to reduce funding for social care services was taken.
- B. There was nothing wrong with the way in which the Defendant consulted on the changes to social care provision as part of its 'local offer' consultation.
- C. The guidance should not be read as insisting that every disabled child should initially be the subject of a full-blown social worker assessment. It would not make sense for any child with any "mental disorder" to be entitled automatically to receive a section 17 assessment conducted by a

¹ Judicial review is the process where the High Court reviews the lawfulness of actions or decisions taken by public bodies or the policies they adopt.

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social worker. There was nothing wrong with the Local Authority's approach that disabled children with lower level needs could be assessed under the Common Assessment Framework (CAF).

In relation to the grounds of challenge which succeeded, the Judge held as follows:

- D. The 'local offer' put forward by the Local Authority was deficient and fell short of the statutory requirements.
- E. The Local Authority admitted that it was in breach of its duty to create and maintain a register of disabled children and was obliged promptly to remedy that breach, which it stated in the proceedings it would do.

The judgment in relation to Grounds B and C is the subject of an application for permission to appeal to the Court of Appeal. This application was turned down when it was looked at on the papers and there will now be a hearing of the application in October 2015.

What this means for children, young people and families

The Warwickshire judgment emphasises that Local Authorities must comply with the requirements imposed by the Children and Families Act 2014 and the existing law – for example the duty to maintain a register of disabled children which is found in the Children Act 1989. In particular the duty to put in place a 'local offer' under section 30 of the Children and Families Act 2014 had not been met in full by the Local Authority in this case. There is an extensive list of information required to be present in the 'local offer' through schedule 2 to the SEN and Disability Regulations 2014 (see the annex to the judgment). All this information must be there in every 'local offer' if it is to comply with the law.

The judgment therefore highlights that children, young people and parents everywhere should get the benefit of a 'local offer' which meets the full requirements of the regulations. This is important because the 'local offer' is an essential element of the new SEN and disability scheme, being the main way that children, young people and families will get access to services.

However it is clear from the judgment that there are limits to the extent to which Local Authorities are required to consult with children, young people and parents before reducing funding or changing the way services are provided. Further, it is also clear that there is no requirement for local authorities to carry out social work assessments of every disabled child. Local authorities can instead offer a Common Assessment Framework assessment or other 'Early Help' assessment in some cases – although they must have a policy in place which shows which children can access a 'full' social work assessment. While this ground of challenge is subject to appeal the Judge's decision must be followed unless and until there is a judgment from the Court of Appeal.

Implications for local authorities and other public bodies

Local authorities will have noted the extensive requirements of schedule 2 to the 2014 Regulations in relation to the 'local offer' and will no doubt have checked their own 'local offer' against these requirements. Any local authority which does not have a disability register in place should also take steps to address this.

There is no reason why this register has to be stand-alone; it can be integrated with any other data source. However it must be open for any 'disabled' child (as defined in section 17(11) of the Children Act 1989) to join the register, whether on their own request or through their parents.

In relation to consultation, the judgment confirms that consultation will often not be required unless there is a statutory duty, a promise to consult or a past practice of consultation. However if consultation is carried out it must be done properly, whether or not it is required. There is a statutory duty to consult on the 'local offer', both in its development and review; see regulations 54-55.

In relation to assessment, the judgment does not state which disabled children should have access to a social work assessment but makes clear that this does not have to be available for every disabled child. The examples given of children who may not need a social work assessment are children with dyslexia or dyspraxia. Each local authority should have a transparent and public policy on assessment for disabled children set out in the threshold document issued by the Safeguarding Children's Board for which it is a member; see *Working Together to Safeguard Children* (2015) at p15, para 18.

You can read the full judgment at
<http://www.bailii.org/ew/cases/EWHC/Admin/2015/203.html>