

## **CDC case law update 7 – March 2016**

### ***R (MM, by his mother and litigation friend TM) v London Borough of Hounslow [2015] EWHC 3731 (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 is an important judgment about the nature of local authority assessment and planning duties to disabled children. On the facts there was nothing unlawful about the local authority's approach to MM's case. However the judgment emphasises the need for detailed assessment and careful planning in cases involving children with significant levels of need.

MM is a child who was aged 15 at the time of the judgment. He has a diagnosis of autistic spectrum disorder with associated language difficulties. There was a dispute between MM's mother and the local authority in relation to his education. A Tribunal had dismissed an appeal against the local authority's decision as to school placement and since that time MM's mother had educated him exclusively at home, despite having been served with a school attendance order.

There had been local authority input in relation to MM's care needs for some time. When MM's mother challenged the level of support the local authority agreed to review its eligibility criteria and reassess MM. Although the local authority did clarify that the eligibility criteria were only used as a guide to the number of hours support, no new assessment was in fact completed and so a judicial review claim was issued.

After the claim was issued a fresh assessment was produced. A further decision was taken in July 2015 to reduce MM's level of support. The claim was amended to challenge the new assessment and also the eligibility criteria, on the basis that they unlawfully informed this decision.

#### **Decision**

The Judge emphasised that assessment of disabled children is an important process, describing it as 'a process which will lead to an improvement in the well-being of the child'. The requirement for a 'realistic plan of action' for disabled children was emphasised, identifying 'the services to be provided, allocating responsibility for such action as

needs to be taken, laying down a timetable for that action, and specifying the mechanism by which that action can be taken’.

The Judge also described the needs of parent carers as an ‘integral feature’ of assessments of disabled children, ‘since providing services which meet the needs of parents is often the most effective means of promoting the welfare of children in need, particularly disabled children.’ The local authority’s fresh assessment was lengthy and comprehensive. The Judge was struck by the effort which had gone into producing it. The assessment did not underestimate the needs of MM or his mother. The arguments that the assessment failed properly to address needs in relation to overnight care, supervision and housing were rejected. In particular the social worker had been entitled to take account of what the impact would be if MM went to school full time.

No care plan had been produced and the recommendations in the assessment could not be described as a such a plan as they were in very general terms. However it would have been premature for the local authority to have produced a care plan when the assessment was being challenged in court.

The Judge doubted whether the local authority’s panel had all the information it needed when it took the decision to reduce MM’s support. He held ‘A care plan specifying the services which had to be provided if MM’s needs and those of his mother were to be met had to be produced before a panel...could come to a definitive view of the resources which should be made available to MM...’. As such when a care plan had been produced ‘MM’s case should be considered by the Resource Allocation Panel afresh’.

There was no breach of the Breaks for Carers of Disabled Children Regulations 2011, because these require a range of short breaks services to be provided and do not give rise to a specific duty to provide breaks to any individual carer.

The eligibility criteria were not irrational and were not prescriptive as to the amount of support which could be offered.

### **What this means for children, young people and families**

The judgment reiterates that disabled children are entitled to a careful assessment of their needs by local authorities, with a ‘realistic plan of action’ put in place to meet any eligible needs.

Further, all assessments of disabled children should take into account the needs of parent carers, whether or not there is a separate parent carers needs assessment (PCNA).

### **Implications for local authorities and other public bodies**

It is obvious that in this case the Judge was impressed by the quality of the local authority's assessment. The judgment emphasises that it is essential that local authority assessments demonstrate a proper understanding of the child's needs in the family context. However if this is done then the Court will be slow to interfere on matters of professional judgment.

Local authorities must ensure that decisions in relation to support packages for disabled children, particularly decisions to reduce support, are only taken in the light of all the relevant information, including an up to date care plan.

It was also important that the eligibility criteria did not set a fixed cap on the amount of support children could access. If they had it seems likely that the Judge would have accepted the criticism that the level of support under them was too low.