

CDC case law update 49 – January 2021

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, either for families or public bodies. Where legal issues arise, specialist legal advice should be taken in relation to the particular case.

London Borough of Haringey v A and B [2020] EWFC 38, [2020] EWHC 1162 (Fam), [2020] EWHC 1282 (Fam)

The Family Court found that a local authority had made fundamental errors and fallen considerably short of their obligations to safeguard and protect the children in this case, one of whom was severely disabled.

Case Overview

These proceedings concerned A, who has complex health and social care needs related to quadriplegic cerebral palsy, and his brother B. A lived in a residential unit and has educational support from a school; B lived with his mother.

Earlier proceedings concerned adaptations to the family home which would enable A to live there, and delays in the relevant local authority (Haringey) meeting the statutory obligations in this area. A and B's father had displayed anger in these hearings, stemming from his frustration with Haringey's delays and shortcomings. Following this, social services declined to speak with him. Hayden J stated this was not a proportionate or a sensible response, and that it contributed to the Local Authority making 'fundamental errors in which they fell considerably short of their obligations to safeguard the children'. The Judge considered that cutting the father out to this extent gave the appearance of petulance and created the impression that the welfare of the staff was regarded as having greater value than the welfare of the child.

An anonymous phone call informed the Local Authority that A and B's mother was in a relationship with CC, a Schedule 1 sex offender. A 10-year sexual harm prevention order had been imposed upon CC; this, amongst other things, prevented contact with any children under 16 unless their parent or guardian was aware of the conviction and consented to the contact. The mother had consistently concealed, and lied to social services and the Court about, the extent of her relationship and contact with CC.

Hayden J stated that it was 'alarming' that Haringey failed to fully appreciate the significance of the risk that CC posed to A and B. Social services failed to adequately assess the information that was at their disposal - or easily attainable - to conduct a risk assessment. There had been 'a collective professional amnesia' regarding good

practice in evaluating the risk of child sexual abuse: the team had lost sight of the most basic of child protection and safeguarding procedures.

The Judge was 'to say the least, surprised' that, at the hearing in July 2019, Haringey were resistant to a risk assessment and wanted to proceed with A's return to a home where the involvement of a Schedule 1 Child Sex offender had not been subject to any real professional scrutiny. This position was a 'dereliction of responsibility'. Haringey had failed to do any keep safe work with B and, when the Guardian volunteered to undertake it herself, Haringey resisted. This constituted a 'fundamental vacuum in child protection'. The Guardian submitted that there was 'a real lack of understanding of what safeguarding actually means' and a lack of liaison with Guardians, stemming from a significant gap in education and training.

Haringey's failings were carefully set out by the Guardian and accepted without amendment by the Judge. These failings included that: the Local Authority had allocated a social worker with no experience in cases involving sexual risk, which was unacceptable given that A was at particularly high risk in light of his disability and B was living at home with no child protection measures in place; the Local Authority failed to take appropriate protective measures when the mother was found with CC in March 2019; the social worker and management failed to take seriously the views of the Guardian; and the Local Authority failed to inform the father until June 2019 of CC's involvement with the mother. Hayden J described this as a 'litany of failure', and underlined the volume and extent of mismanagement over many months. The service manager and social worker had not offered anything that came close to an understanding or explanation of how things had gone so badly wrong. No coherent defence or explanation had been offered. In the Judge's view, there could be none. There had been a 'root and branch failure of social work'.

In isolation, the failures were concerning; cumulatively, they were profoundly troubling. The failure to inform the father of CC's involvement in his sons' lives 'defies comprehension'. It constituted a breakdown in understanding of the fundamental principles of child protection and active discrimination towards a father: it is at least arguable that it was inconsistent with the Art.8 ECHR rights of the children and the father. Hayden J concluded that there was a need for significant retraining.

Hayden J considered that the mother's ambivalence in her reaction to CC was 'reinforced by the fundamentally flawed approach taken by the social services'. However, this did not create a safe haven for her to hide from responsibility: Hayden J, whilst recognising her vulnerability, was critical of her in not recognising her own manifest failure to protect A and B, by continuing in a relationship that posed a significant risk to them.

The Judge concluded that B should live with his father and be joined whenever possible by A. He made a Care Order in relation to A in favour of the Local Authority. The Judge also made a 6-month Supervision Order in respect of B.

Hayden J had originally concluded that the local authority should not be named. In his judgment, the Judge noted an 'understandable concern' amongst the public and press that failings by public bodies should not be concealed. Two fundamental rights had to be balanced: freedom of speech and the children's privacy. Hayden J stated that judges ought not be magnetically attracted to the welfare principle (by which the welfare of the child is the paramount consideration), for this would distort the balancing exercise. The nature, extent and persistence of the failings gave real cause for public concern. There was an undoubted public interest in the Local Authority being named, in order that they might be subject to public scrutiny. The Judge therefore concluded that the press was at liberty to make an application to remove the anonymity he had granted.

In *PA Media Group v London Borough of Haringey*, the press made such an application. In this application, the press relied on a 2018 Ofsted report which heavily criticised the Disabled Children's Team, perhaps 'most alarming[ly]' finding that 'thresholds in the children with disabilities team are not well understood nor well applied when risks escalate. Assessments are not updated and plans are insufficiently child focused. In the majority of cases, plans focus on the needs of the parents rather the child'. This report supported Hayden J's conclusion that this case was not an isolated instance of strikingly poor practice but was reflective of a broader and deeper malaise within Haringey's Children with Disabilities Team. Hayden J considered in particular that 'any social worker who elevates the needs of the parent beyond those of a vulnerable child has disconnected with the fundamental precepts of child protection and lost their professional compass'.

With regards to anonymity, there were three central considerations. First, these vulnerable children required, and were entitled to, protection. Second, there was a public interest in identifying the local authority, particularly in light of its 'lamentable history'. Third, the Judge highlighted the importance of freedom of speech and the responsibility of the press to hold public bodies to account. Hayden J concluded that the public interest in naming the local authority prevailed against the potential, but not inevitable, identification of the children and the emotional distress that might be caused to them.

[What this means for children, young people and families](#)

This case underlines the fundamental duties of child protection, owed by local authorities to children and families. The repeated criticisms of the local authority for failing to prioritise the interests of the children ahead of those of the parents are

particularly striking. The judgment also highlights the important role that children's guardians play in ensuring that a holistic analysis of risk is undertaken at all stages and in holding local authorities to account.

The judgments concerning anonymity underline the public interest in naming the local authority, so that it might be subject to public scrutiny and held to account by the independent press. However, the Judge clearly recognised the importance of maintaining the anonymity of children involved in legal proceedings.

Parents will also note the criticisms of the local authority's failure to discharge its duties in relation to adaptations to the family home prior to these proceedings being required, discussed further below.

Implications for local authorities and other public bodies

The Family Court made severe findings of poor practice and fundamental failings by the London Borough of Haringey. These were not isolated instances but indicative of a gap in education and training for social workers.

It is the duty of local authorities to protect children and young people. Local authorities should conduct robust risk assessments and take appropriate protective and risk management measures when risks are identified. Social workers should not elevate the needs of a parent beyond those of a vulnerable child. At the other end of the spectrum, communication with a parent should not be cut off.

The decision emphasises the importance of education and training across local authorities, including the Children with Disabilities Team or equivalent. It is also striking that the reason why this matter first came before a court was that the Local Authority had failed to carry out its duties to make adaptations to the family home to take account of A's needs, leading to him going into residential care against his wishes. The Judge referred to the 'bureaucratic sclerosis that has dogged the Local Authority', which all local authorities will need to be careful to avoid.