

PATHWAY PLANS AND PERSONAL ADVISERS

continuing duties to young people leaving care



This briefing analyses a recent judgement on how pathway plans should be drawn up for children leaving care.

The legislation

The Children (Leaving Care) Act (Northern Ireland) 2002 and the Children (Leaving Care) Regulations (Northern Ireland) 2005 came into force on 1 September 2005. The explanatory notes accompanying the Act state:

'The main purpose of the Act is to improve the life chances of young people who are looked after by health and social services trusts as they make the transition to independent living.'

Amongst its main aims, the legislation sets out to:

'improve the assessment, preparation and planning for leaving care'.

The decision of the High Court in the case of *R (J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin) provided an opportunity for the court to consider the effectiveness of a local authority's implementation of its leaving care duties, in line with the purpose of the legislation.

Background

The Howard League for Penal Reform (HL) instigated judicial review proceedings on behalf of J, who was subject to a full care order to Caerphilly CBC and was an 'eligible child' for the purposes of entitlement to receive continuing care under the Children (Leaving Care) Act 2000.

J was aged seventeen at the time of the proceedings. He had been sexually abused by his step-grandfather from the age of four. He had special education needs and a history of substance misuse. By the time the matter came to court, the local authority had had parental responsibility for him for four years.

J had spent periods during this time in care in secure accommodation and in custody. He had been sentenced to his current period in a Young Offender's Institution in July 2004. He had been on suicide watch whilst in custody. In March 2004 the local authority appointed one of its employees as his personal adviser. J had consistently failed to engage with social workers and services provided by the local authority. In fact, his personal adviser was only able to establish contact with him after he had been placed in secure accommodation.

The litigation

The HL initiated judicial review proceedings, and presented four complaints on behalf of J. These were as follows:

- the appointment of the personal adviser was flawed, in that the personal adviser was an employee of the local authority and had misunderstood his role, as he was involved in both drawing up and then delivering the pathway plan;
- the pathway planning process itself was flawed and no arrangements were put in place to engage and consult J properly;
- the content of the plan was inadequate to meet J's needs; and
- the local authority had failed to secure suitable accommodation for J.

The judgment

The Court dealt with each of the above issues in turn:

(a) Personal adviser

It was contended on behalf of J that it was wrong in principle for the local authority to appoint a member of its own staff to act as J's personal adviser. This was rejected by the court. The judge recognised that the personal adviser could be an employee of the local authority, but considered that the role of the personal adviser had to be a clear one (as set out in Regulation 12 of the Children (Leaving Care) (England) Regulations 2001).

Regulation 12 identifies the functions of a personal adviser as including (regulation 12(2)(b)) to 'participate' in the child's assessment and the preparation of the pathway plan and (regulation 12(2)(d)) to 'liaise with the.....local authority' in the implementation of the pathway plan.

In J's case the court ruled that the personal adviser's role was obscured and compromised by conflicts and ambiguities. In particular, the judge agreed that it is not part of the personal adviser's functions to undertake the statutory assessment or the preparation of the pathway plan, nor should he do so. The judgment went on to say that part of the personal adviser's role is, in a sense, to be the advocate or representative of the child in the course of the child's dealings with the local authority. As the Children Leaving Care Act Guidance puts it, the personal adviser plays a 'negotiating role on behalf of the child'.

(b) The process

The Court ruled that, in this case, the pathway planning process was flawed. Whilst making an allowance for the difficulties faced by the local authority in this case in dealing with an uncooperative child, the judge nevertheless found that the local authority failed to comply

with its obligations under the Regulations in a number of important respects:

1. The local authority embarked upon the process far too late;
2. J's pathway plan was sketchy and did not provide a realistic framework of proposals as to how the local authority might meet his considerable needs;
3. There was a failure to consult J throughout the assessment and pathway planning process.

The Court also criticised the local authority's approach both in terms of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Specifically, the judgment was referring to the fact that the documents had not yet been shared with J. The judgment criticised the local authority in the following terms:

'I have had occasion in the past to criticise the 'mindset' and 'culture' of local authorities who exclude families from the decision making process, merely, 'sharing' the decision with them after it has been taken: see Re G (Care: Challenge to Local Authority's Decision) [2003] EWHC551 (FAM), [2003] 2FLR 42, paras 2-3 and 57). As I pointed out in this case, this may well involve breach of the family's rights, under Article 8 of the ECHR, to be properly involved in the decision-making process, rights which are, of course, enjoyed as much by the child as by the parents.'

(c) The content of the plan

The Court found that both the assessments which 'feed into and form the basis of the pathway plans' as well as the plans were 'deficient' and 'equally unsatisfactory'. The judge criticised the local authority for the use of its own broadly categorised pro-forma as distinct from the pro-forma prepared by the Department of Health. Whilst recognising that there is no statutory obligation on a local authority to adopt the Department of Health's format, the judge suggested that the use of the pro-forma may more readily stand up to judicial scrutiny:

'but I cannot help thinking that many of the deficiencies of the pathway plans in the present case would have been avoided if those preparing them had had to submit themselves to the much more rigorous discipline imposed on those preparing a pathway plan using the Department of Health's pro-forma.'

The Court went on to criticise the plan for lacking detail of the nature and level of personal support to be provided to J. In this respect the judge stated:

'too often, as can be seen, the answer is that the plan is to arrange an appointment with someone else or to 'explore options' or to 'develop' a programme. In no case is the 'date by which' any of these actions will be carried out specified'.

The judge went on to re-state the position following the case of *R (AB&SB) v Nottingham County Council* [2001] EWHC Admin 235, (2001) 4 CCLR 295, which emphasised the rigour and detail required of a local authority embarking on such an assessment.

'At the end of the process, what is needed is a document from which 'it should be possible to see what help and support the child and family need and which agencies may be best placed to give that help'.

The judge felt that the point was so important as to require a clear statement of what is required: a pathway plan must clearly identify the child's needs, and what is to be done about them, by whom and by when. In effect, as the Children Leaving Care Act Guidance makes clear in paragraph 7.7:

'The pathway plan should be explicit in setting out the objectives and actions needed to achieve these; this should include who is responsible for achieving each action and timescale for achieving it'.

(d) Accommodation

The judge agreed that there might have been better contingency planning to identify suitable accommodation for J, but did not make a finding of fact against the local authority on this point.

Conclusions

The *Caerphilly* judgment highlights issues of good practice in working with young people before, during and after leaving care, as well as focusing attention on the requirements of a leaving care personal adviser. The judge was explicit that there is nothing in law preventing a local authority from appointing one of its employees as a leaving care personal adviser, but it will be important that the personal adviser has a clear understanding of her/his role. The assessment must cover every identified need so that the resulting pathway plan provides the young person with a detailed plan with specific information about what, when, who and why. Local authorities will need to assess their own processes to ensure that these comply with the Regulations and Guidance.

Good practice also requires care and pathway planning to support placement stability, maintaining as much continuity as possible to allow young people to fully realise their potential. Pathway planning must have young people's needs and views at its core. Finally, the judgment highlights the vital role local authorities play as a corporate parent for young people in the leaving care process. Like any parent, the local authority does not abrogate its responsibility towards the young person simply because its efforts are met with apathy or uncooperativeness. It, like any other committed parent must 'do its best' (Munby J, paragraph 56).

These principles apply equally to health and social services providers in Northern Ireland.

The Community Care Legal Advice Service is funded by the four health and social services boards.

An advice line operates from the Law Centre's Belfast and Western area offices between 9.30 am and 1.00 pm daily. The telephone number for Belfast is 028 9024 4401. For Western area office telephone 028 7126 2433.

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