

Directors' Briefing

Davey vs Oxfordshire briefing session

In May 2017 NW Programme Office arranged for the Jonathan Auburn, of 11kbw, to discuss the Davey vs Oxfordshire Judicial Review. Jonathan is the barrister who worked on behalf of Oxfordshire County Council.

- Davey vs Oxfordshire related to a man with significant care needs whose personal budget had been reduced.
- Mr Davey sought judicial review of the decision of Oxfordshire County Council.
- Although the Court found in favour of Oxfordshire there are questions to be considered by local authorities in order to ensure they are compliant with the Care Act.

This briefing sets out the key findings and suggests questions for our local authorities to consider.

(Please note this is not legal advice but a summary of the discussion at our training event)

Care Act decision making and judicial review challenges

Mr Davey was a 40 year old man with significant care needs. He had been living on his own with largely 24 hour support from a team of personal assistants for 18 years. The court also heard evidence of his suffering from anxiety.

Mr Davey's package of care had been partially funded by the Independent Living Fund (ILF). Prior to reassessment his personal budget was £1651, including £730 from the ILF. After the ILF closed the local authority assessed his needs, and concluded that eligible needs could be met for substantially less. His personal budget was reduced to £950.

Mr Davey sought judicial review of the decision of Oxfordshire County Council to reduce the Claimant's personal budget and/or to revise his care and support plan pursuant to the Care Act 2014.

The Court noted that it was understandable that Mr Davey and his family objected to the updated needs assessment, which resulted in a substantial reduction in the personal budget. However, although the result imposed changes that the claimant did not welcome, the Court stated that did not mean that the process was unlawful.

The Court found no relevant legal error or that grounds for challenge had been established. The application for judicial review was dismissed. The judgement is available [HERE](#)

Key points from the presentation

Assessment duty: This is a duty upon the local authority. Under Section 9 of the Care Act, where it appears to the local authority that an adult may have needs for care and support, the local authority must assess if this is the case, and what those needs are. A needs assessment must include an assessment of the outcomes that the adult wishes to achieve in day-to-day life. The duty requires an "objective assessment" focused upon whether the provision of care will contribute to those outcomes. However, there is no duty to achieve those outcomes that the adult wishes to achieve.

Care Act centrality of the individual: The local authority must have regard to the importance of beginning with the assumption that the individual is best-placed to judge their own well-being." The Assessment regulations state that the local authority must also have regard to the wishes, preference and outcomes that the individual seeks. However, "having regard" does not mean "must achieve". The guiding principle is that assessment should be person-centred and person-led, built holistically around people's wishes and feelings, their needs values and aspirations.

Needs or wishes: The local authority in its September 2015 assessment identified a “need” as to “*provide the option for Luke to spend more time alone, safely, in his home, to develop his independence, and reduce anxiety*”. This was a particular issue within the case as Davey argued that he did not want to spend more time alone and this was not an outcome he wished to achieve. The presentation clarified that:

- Wishes and needs are different – wishes are not needs.
- A person’s wishes are *the starting point*.
- This, however, does not prevent the Social Worker or other assessor from taking a different view about what a person “needs”.
- In this case the Court judged that “developing independence” was accepted as a need.

Recording evidence in the assessment: A previous case, Lloyd v Barking, suggested that the law should not be prescriptive about the detail within a care plan. The purpose of a care plan is not for final determination of a legal dispute by a lawyer. The Davey vs Oxfordshire judgement concluded that:

- Courts must be wary of expecting so much of “hard pressed” social workers that we take them away from their front line duties.
- The degree of detail in an assessment or care plan are matters for the local authority and if necessary its own complaints procedure.
- The social worker is entitled to rely upon what the service user told him/her at the time; there is no need for precise formulation of assessment of mental health impact in the needs assessment itself.

Submitting evidence in Judicial Review: During the proceedings the local authority was reliant on witness statements to explain historic assessments and budget decisions. The claimant argued that further evidence such as this should not be admitted. The Court supported the local authority in submitting this information (on the basis that that the information provided a reasonable explanation).

Exploring different options: Jonathan Auburn advised that a weakness in the local authority’s approach was that it hadn’t evidenced consideration of different options. One way to meet Mr Davey’s needs was to provide live in care – which Mr Davey had rejected. Oxfordshire’s decision had not noted that care needs could alternatively be met by moving into a residential and nursing care home, or for him to have live-in care within his property, and had not recorded Mr Davey’s preference not to take these up. As a result, the Care Plan gives the impression that they did not consider the alternatives.

The Care Act: Within the Act “have regard” should be interpreted as requiring the local authority to “show their workings out”. If a court cannot see that the person’s wishes and preferred outcomes have been considered, a decision could be overturned.

The slides are available [HERE](#)

Questions for Local Authorities to ask themselves

Davey vs Oxfordshire clarifies that the local authority is not under a duty to achieve the outcomes that the person wishes to achieve.

However, we do need to recognise that assessment should be meaningfully person centred and has regard to the wishes and outcomes that the person seeks.

Are we confident that the assessment process achieves this? Is the assessment person-centred and person-led, built holistically around people's wishes and feelings, their needs, values and aspirations?

The person's definition of their wishes, and the Local Authority's assessment of needs may well differ and be contested.

Key questions for the individual social worker are "did they genuinely believe the assessment that they made?" and "was the assessment rational?".

Are we confident that our record keeping produces clear evidence about the definition of needs?

How are we supporting social workers to exercise professional judgement and make defensible decisions?

Recording evidence: The Courts have established that local authorities have flexibility to develop appropriate assessment and care planning processes without a burdensome requirement to produce data. Additionally, the Court admitted witness statements to explain historic assessments and budget decisions. However, the local authority was required to provide evidence about assessments and care plans going back to 2004.

Is the local authority recording and retaining evidence in a proportionate manner?

Exploring options: Section 25 (i) (c) of the Care Act sets out the requirement on the local authority to specify how it will meet needs within the support plan. If other options do not have realistic potential to be taken forward the local authority should note this so that they can rely upon the rationale later if needed. This also provides clearer information to the person receiving the support plan.

Does the assessment and care planning process evidence that options have been considered?

Reducing budgets: Local authorities are able to reduce budgets based on the overall availability of resources. However, they have to evidence that they have reviewed care plans to understand how that works and remain compliant with the Care Act.

What is the local authority's process for reviewing care plans and supporting staff? How do we balance resources with "independence"?

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