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Community Care Law Update May 2023



Children's Rights Update
Shu Shin Luh (s.luh@doughtystreet.co.uk)

THEMES FOR UPDATE

- Unsuitability of accommodation for children
- Inadequacy of support
- Consent and access to healthcare and treatment
- Miscellaneous concerning local authority conduct in caring for children



Unsuitability of Accommodation

R (AR) V WALTHAM FOREST [2021] EWCA CIV 1185

Facts: AR is 16, arrested on suspicion of possession of knife & robbery. Detained at police station at 2pm on 27.12.18. At 5 pm, next day, police request LA to provide secure accommodation b/c of risk posed by AR to public. LA says can't do that because of lack of notice and all providers outside London. AR remains in custody until court appearance on 29.12.18.

Challenge to lawfulness of LA's arrangements (lack thereof)

Held:

- CA 1989 s21(2)(b) imposes duty to provide reasonable system of secure accommodation. This can be done by direct provision or arrangements with others (like charity). But CANNOT avoid the duty.
- End result of arrangements it chooses to make has to be "reasonable system": *R (M) v Gateshead MBC* [2006] EWCA Civ 221
- This is not (contrary to court below) a nationwide problem caused by lack of funding by central govt. No evidence that LA even asked for central govt funding
- System was such that no realistic prospect of secure accommodation being available for child in response to police request at least during the week. System was "inherently likely to fail"
- "Reasonable system" – more than a telephone service or negotiating with police on whether secure accommodation really is needed. This seems to be a London wide problem.
- Declaratory relief granted. Court not specify what LA needs to do to comply with reasonable systems duty.

R (ARTICLE 39) V SSE [2022] EWHC 589 (ADMIN)

Issue: Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 came into force on 9 September 2021 & introduced prohibition on placing LAC under 16 in unregulated accommodation but did not alter position re: 16 / 17 year olds. Unregulated placement for 16/17 year olds permitted so long as criteria under s22C CA applied properly (i.e. suitable for the child). Can be independent / semi-independent. Under 16s were restricted to 5 types of regulated accommodation (i.e. care home, hospital, residential family centre, school, respite placement for disabled children)

Challenge to difference of treatment between children above / below 16, breach of PSED, and unfairness in consultation prior to introduction of regulations

Held:

- Independent / semi-independent not inconsistent with CA 89 obligation to provide care in situ.
- SSE had ample evidence of distinction between two groups. Unregulated accommodation of 'sufficiently high quality' could continue to be provided depending on individual suitability assessment.
- PSED did not require consideration of all options including what wasn't in decision-maker's mind
- No unfairness in consultation b/c process had enabled those against the use of unregulated placements to 16+ children (including the children themselves) to make their opposition known.

TAMESIDE MBC V AM; DERBY CITY COUNCIL V BA, LAMBETH LBC V DE, MANCHESTER CC V DM [2021] EWHC 2472 (FAM)

Facts: Cases arose from consequence of prohibition of unregulated placement for under 16s. Question is whether court can authorise, under inherent jurisdiction, the deprivation of liberty of a child under 16 where placement in which restrictions were the subject of that authorisation would be applied was prohibited by the scheme.

Held:

- remains open to court to authorise deprivation of liberty b/c inherent jurisdiction is of protective nature in response to anticipated and prevented harm. Courts should be slow to find that an inherent power abrogated or restricted by Parliament unless expressly intended to.
- Amended scheme directed at discharge of LA powers toward LAC children, not High Court powers under inherent jurisdiction. No legislative intent to remove court's inherent jurisdiction.
- Court must decide on best interests analysis and whether "imperatively necessary" to authorise deprivation in an unregulated placement.

DERBY CITY COUNCIL V BA, OM, CK, SSE AND OFSTED [2021] EWHC 2931 (FAM)

Practice Guidance in response to the regs on unregulated placements which state that a court will need to ascertain what steps taken for a home to register when a child is placed in an unregistered home.

Court considered several cases where child placed in home that can't / won't register. Can the inherent jurisdiction be exercised here?

Answer: not normally appropriate to do so where child is in such unregistered home. BUT Practice Guidance doesn't oust inherent jurisdiction to make orders where it would be in child's best interests, albeit such placement should be short-term where it is clear registration is not a viable option.

R (MEDWAY COUNCIL) V SSHD [2023] EWHC 377 (ADMIN)

Challenge by Medway Council against a direction from SSHD to require its participation in a national statutory scheme for equitable distribution of responsibility for unaccompanied asylum-seeking children. Under CA 89 s20, LAs have a duty to provide accommodation and other welfare-based needs to children who are in need and require accommodation, but, for example, do not have an adult with parenting responsibility to look after them. Immigration Act 2016 confers a power for SSHD to prepare a scheme for the transfer of Children Act 1989 functions and responsibilities in relation to an unaccompanied child from one LA to another under National Transfer Scheme. Scheme used to be voluntary, SSHD wanted to make it mandatory.

Held: all grounds rejected. SSHD had the power to direct mandatory participation if “not unduly prejudice” the discharge of a LA’s functions. Rational for SSHD to want equal sharing of burden of resources for this cohort of children. Should be really a situation of breakdown or exceptionality that the LA would be exempt. On facts, not the case.



Inadequacy of Support

R (BECKER) V PLYMOUTH CITY COUNCIL [2022] EWHC 1885 (ADMIN)

Facts: C was the special guardian for her grandchildren K and R, aged 6 and 5. The claimant also had a child aged 14 who had special needs, and an 18-year-old daughter.

Challenge to LA decision on special guardianship financial support of £168.16 per week.

- Her income consisted of income support, child tax credit, child benefit and a carers allowance.
- A centralised model had been issued by government which recommended that a special guardian in receipt of income support should receive the maximum amount of support without the need for a means-test. LA purported to use the model, but did, in fact apply a means test.
- The purpose of a special guardianship order is to provide legal permanence for those children for whom adoption is not appropriate. In broad terms, it comprises a form of 'halfway house' between adoption, on the one hand, and long-term foster care, on the other. A special guardian can be entitled to financial support pursuant to regulations and guidance issued under the Children Act 1989.

Held: the LA approach produced financial disadvantage for C in that it took no account of her dependent children when assessing general household expenditure. Unlawfully decided to means-test by reference to a model in a way that destroyed coherence of model.

R (BCD) V BIRMINGHAM CHILDREN'S TRUST [2023] EWHC 137 (ADMIN)

Facts: EFG, the grandmother of BCD, arrives in the UK from Jamaica to care for him and two older siblings because their mother was terminally ill with cancer. Mother died five weeks later. At the time EFG was on visitor's visa, NRPF. Asked LA for help under s. 17 CA 89. LA refused to assess, and then later provided support at level for asylum seeking families. Said to be according to NRPF policy.

Challenge lawfulness of LA to pay carer of British children same level of carers of non-British children. Says unjustified discrimination re; failure to treat British children differently in breach of Art 14.

Held: unlawful not to treat differently. Non-asylum seeking NRPF families eligible for s17 support are different to asylum-seeking families who can only get 'essential living' and accommodation. S17 about "welfare needs" which is much more. Bottom line is asylum support but totality needs to be to welfare needs' standard, likely to be higher, and adjusted for inflation. In BCD's case, fostering allowance level.



Consent and access to healthcare and treatment

RE C (LOOKED AFTER CHILD: COVID-19 VACCINATION) [2021] EHCW 2993 (FAM)

Facts: A decision to offer vaccinations for COVID-19 to all 12- to 15-year-old children was announced on 12 September 2021. The provision of the flu vaccine for children in school years 7 to 11 was added to the flu programme on 13 October 2021. C, who was nearly 13, was a child looked after by the local authority following a care order made in 2015. He wished to be vaccinated against COVID-19 and flu. He was supported by his guardian, the local authority and his father. The respondent mother was strongly opposed to C being vaccinated.

LA applied for order that it had right to do this under s. 33 CA 89 – exercise of parental responsibility re an LAC child notwithstanding parental objection.

Held:

- LA can do this under s33 CA 89 but only where necessary to promote child's welfare. Can't just use power to override parental wish on grave / serious matters with profound consequences for child.
- Administration of vaccines that are routine / standard not serious or grave. Unless significant features to say not in child's best interest, not necessary for LA to seek court authorisation. In that case, in any event child expressed wish to be vaccinated and was Gillick competent.

BELL V TAVISTOCK AND PORTMAN NHS FOUNDATION TRUST [2021] EWCA CIV 1363

Case concerning when treatment for gender dysphoria could be given to a child under 16. When can a child be treated as giving informed consent? Respondents brought JR proceedings against the trust claiming that sanction of the court should always be obtained before puberty blockers were prescribed.

HC had made declaration specifying relevant information that a child under 16 would have to understand, retain and weigh up in order to give informed consent to the administration of puberty blockers. Declaration covered areas of disputed fact, expert evidence and medical opinion.

HC also gave guidance which covered all children up to the age of 18, which indicated highly unlikely that a child aged 13 or under would ever be Gillick competent to give consent and doubtful that a 14/15 year old could understand long-term risks and consequences.

CoA held:

- JR jurisdiction not forum to resolve contested issues of fact, causation, clinical judgment.
- inappropriate to give such guidance which in effect served as a check list that clinicians would be expected to adopt where it involved areas of disputed fact, expert evidence and medical opinion. Informed consent cannot be generalised.



Miscellaneous concerning local authority conduct in caring for children

HXA V SURREY COUNTY COUNCIL; YXA V WOLVERHAMPTON CITY COUNCIL [2022] EWCA CIV 1196

Court's consideration of the breadth of cases where a public authority might owe a duty in care in negligence:

- Court of Appeal declined to strike out two claims concerning alleged negligence in ensuring welfare of children.
- In HXA the court found that the specific safeguarding duties in s22(3) of the Children Act 1989 could lead to an assumption of responsibility by the local authority for a child.
- in YXA, where a child was provided with respite care on a number of occasions, it was possible for assumption of responsibility to be established even in the periods when respite care was not being provided.
- At minimum, they were triable issues not appropriate for strike out.

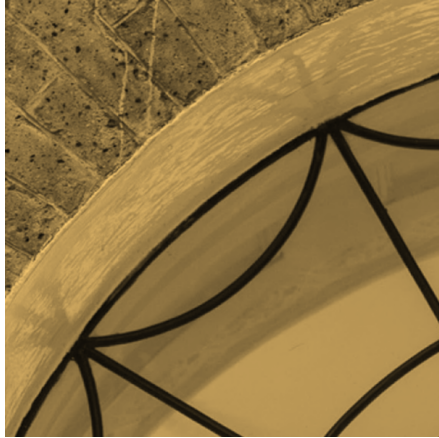
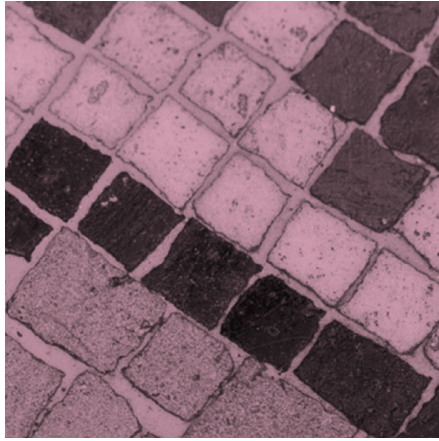
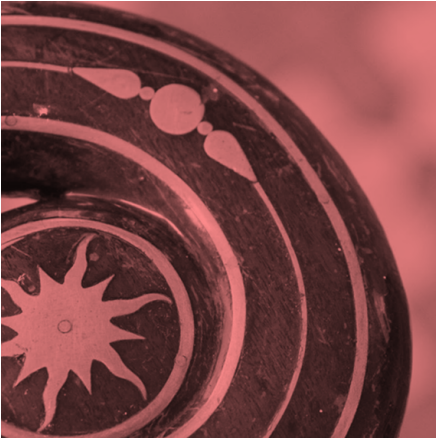
R (BOYCE) V HM SENIOR CORONER FOR TEESSIDE AND HARTLEPOOL [2022] EWHC 107 (ADMIN)

Facts: 15 year old girl was found hanged in a private children's home where she had been placed by LA and had lived for about a year

- coroner decided that state's Article 2 duties to protect life were not engaged in the investigation into the death by the coroner's inquest. This was of significance because the scope of the inquest may be wider if Article 2 is engaged.

Held

- Where child subject to care order under s. 31 CA 89 had taken own life in care, death not automatically engage Art 2 investigative duty.
- Relevant that C was living in a care home, not in state detention (i.e. not secure accommodation). There is obvious difference if there is deprivation of liberty, not free to come and go.
- Even if deprived of liberty at children's home, private company so not exercising public function to make it a public authority for purposes of ECHR, therefore Art 2 not engaged.
- coroner was entitled to conclude that the high level of care provided to the child (despite failings) meant it was not arguable that improvements to the system would have improved the prospect of survival. In any event the coroner had made it clear that she would keep the position under review during the inquest.



THANK YOU

Questions?



@AliceLlving

@DoughtyStPublic

www.doughtystreet.co.uk

Community care update: Adults



Dr. Alice Irving
a.iving@doughtystreet.co.uk

OVERVIEW

- *R (BG and KG) v Suffolk County Council* [2022] EWCA Civ 1047
Considers whether local authorities have the power to provide financial support for recreational activities and holidays under ss. 18-19 Care Act 2014.
- *R (Campbell) v London Borough of Ealing* [2023] EWHC 10 (Admin)
Explores the relationship between the Care Act 2014 and the Housing Act 1996.
- *R (HL) v Secretary of State for Health and Social Care* [2023] EWHC 866 (Admin)
A challenge to the failure of the Secretary of State to introduce an appeals system for the resolution of adult social care disputes.

R (BG and KG) v Suffolk County Council

- Two autistic brothers who required 24-hour care.
- Due to abuse suffered at previous day centre, unable to attend day centres or tolerate external carers in the home.
- Care Act assessment had identified needs to access the community by way of family outings and family holidays.
- LA provided annual payments of £3,000 each to finance trips / holidays, as conventional respite not an option.

R (BG and KG) v Suffolk County Council

- Fresh assessment determined neither holidays nor recreational activities were “eligible needs” and payments were stopped.
- LA rationale: paying travel and accommodation costs (rather than cost of support needed to achieve a holiday) is not an “eligible need”.
- Support needs on holiday are being met by family carers. Therefore, no unmet eligible needs.

R (BG and KG) v Suffolk County Council

- Successful judicial review at first instance.
 - Error of law
 - Fetter of discretion
 - Failure to consider exercise of power under s.19 Care Act 2014
- Appeal on basis that judge erred in declaring LA had a power to provide financial support for recreational activities / holidays under ss.18, 19 Care Act 2014.

R (BG and KG) v Suffolk County Council

- Key LA argument that “needs for care and support” were limited to needs to be “looked after”.
- ss. 9 (duty to assess), 18 (duty to meet eligible needs) and 19 (power to meet non-eligible needs) all refer to “needs for care and support”.
- LA say that accommodation, food and other universal needs are not “looked after” needs.
- Holiday and recreational activities are universal needs.

R (BG and KG) v Suffolk County Council

LA argued:

- Or, even if holidays / recreational needs are needs for care and support, they are not eligible needs: they do not arise from or are related to a physical or mental impairment or illness.
- They are a universal need rather than a specific need arising from an adult's disability.
- Cf. needs for care and support while on holiday.

R (BG and KG) v Suffolk County Council

Court held:

- [69] Emphasised general duty in exercising functions to promote well-being, and breadth of definition of well-being in s.1
- [70] “support” begins with the identification of the needs and wishes of the particular individual and, is or should be tailored, to address the same.’

R (BG and KG) v Suffolk County Council

- [70] ‘the needs under CA 2014 can no longer be described as “looked-after” needs as such a description does not properly reflect the individual nature of the assessment, its recognition of the autonomy of the individual and the tailored and broad nature of the support which can be provided.’
- [71] ‘I read the intention of the legislation as being to broaden the discretion and flexibility of local authorities in their provision of care and support to adults.’

R (BG and KG) v Suffolk County Council

- reg 2(2)(i) 'making use of necessary facilities or services in the local community including public transport, and recreational facilities or services'
- [73] the provision of "recreational facilities or services" is not geographically confined to the local community.
- [74] 'I do not accept that it is possible to use recreational facilities merely by the provision of support to access the facility if the adult in question cannot afford to pay for the entry requirements.'

R (BG and KG) v Suffolk County Council

- BG and KG's well-being is assisted by taking holidays and this need arises from their physical and mental impairment.
- [75] 'The financial support... is not simply a mean of paying for the respondents to take part in such activities and to go on holiday, it is a means of meeting their needs which arise from and are related to the physical and mental disability from which each suffers. It is a need that cannot be met without financial support.'
- [78] Mother cannot meet sons' needs when cannot afford holidays – cannot ignore this.

R (BG and KG) v Suffolk County Council

- [76] 'I do not interpret the relevant provisions of the CA 2014 as prohibiting the provision of what is termed a "universal need"; rather, it guides the need to be assessed by reference the eligibility criteria of the adult.'
- In this case, the needs are specific to each respondent taking into account their circumstances.
- [80] Local authorities do have a power, as a matter of law, to provide financial support for recreational activities and holidays under ss.18, 19 CA 2014.

R (Campbell) v London Borough of Ealing

- Claimant: partially sighted, OCD, depression.
- Accommodated by another LA under Part VII HA 1996, but evicted for failing to pay rent. Housing duty discharged.
- Defendant funded temporary accommodation in exercise of discretion to meet urgent needs under s.19(3) CA 2014, pending completion of assessment.
- Accommodation continued after assessment for ~ 5 years.
- Concerns raised as to unsuitability of temporary accommodation: brings discrimination claim.

R (Campbell) v London Borough of Ealing

- Decision to withdraw funding of temporary accommodation.
- Has Priority B under Part VI HA 1996 allocation scheme.
- Alleged had not engaged with support to find own housing.
- Denies having funded accommodation because of any duty to provide care and support under Care Act 2014.

R (Campbell) v London Borough of Ealing

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- Has Priority B under Part VI HA 1996 allocation scheme.
- Alleged had not engaged with support to find own housing.
- Denies having funded accommodation because of any duty to provide care and support under Care Act 2014.

R (Campbell) v London Borough of Ealing

- s.8 CA 2014: can meet needs for care and support by providing accommodation 'in a care home or in premises or some other type'
- accommodation alone is not a need for care and support – *R (GS) v Camden LBC*
- s.23 CA 2014: an LA 'may not meet needs under section 18-20 by doing anything which it or another local authority is required to do under... the Housing Act 1996'

R (Campbell) v London Borough of Ealing

- What is required under HA 1996?
 - Part VI Allocations: must have an allocation scheme and allocate housing in accordance with scheme
 - Part VII Homelessness: range of duties / powers, including to provide temporary accommodation (s.188) and 'main housing duty' which is duty to secure accommodation available for occupation (s.193)

R (Campbell) v London Borough of Ealing

- C's position under HA 1996:
 - Part VI Allocations: Band B priority and has made numerous bids. Has also turned down direct offers.
 - Part VII Homelessness: Made three applications for support but never determined.

R (Campbell) v London Borough of Ealing

- Did s.23 CA 2014 mean Defendant could not provide accommodation to Claimant?
- LA 'may not meet needs under section 18-20 by doing anything which it or another local authority is required to do under... the Housing Act 1996'
- In short, can social care pass the buck to housing?

R (Campbell) v London Borough of Ealing

- *R (Idolo) v Bromley LBC* considered s.23 CA 2014
- Following medical emergency leaving C disabled, Care Act assessment carried out and placed in high priority band on housing register.
- Issue whether unlawful delay in rehousing C. In particular, argued that LA had erred in passing matter on to housing rather than pursuing a social care solution.

R (Campbell) v London Borough of Ealing

- *R (Idolo) v Bromley LBC* considered s.23 CA 2014
- Claim dismissed.
- s.23 CA 2014 intended to give a measure of priority to the general scheme of the HA 1996
- housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within the HA schemes
- fact C requires adapted property does not change fact that matter falls under HA 1996

R (Campbell) v London Borough of Ealing

- *R (Idolo) v Bromley LBC* considered s.23 CA 2014
 - Claim dismissed.
 - s.23 CA 2014 intended to give a measure of priority to the general scheme of the HA 1996
 - housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within the HA schemes
 - fact C requires adapted property does not change fact that matter falls under HA 1996 – fulfilling Care Act duties depends on fulfilling Housing Act duties first

R (Campbell) v London Borough of Ealing

- *Idolo* applied here.
- C argues that s.23 HA 1996 does not apply because LA does not owe him a duty to provide accommodation: only has priority bidding under Part VI and application under Part VII not progressed.
- [57] Argument rejected. D was required to provide the C with housing under HA 1996. C on housing register and afforded priority. The fact C not yet provided accommodation to C under Part VI does not mean it is not 'required' to do so.
- [58] Could also have pursued homelessness application. Implicit criticism of C failing to follow through.

R (HL) v Sec of State for Health and Social Care

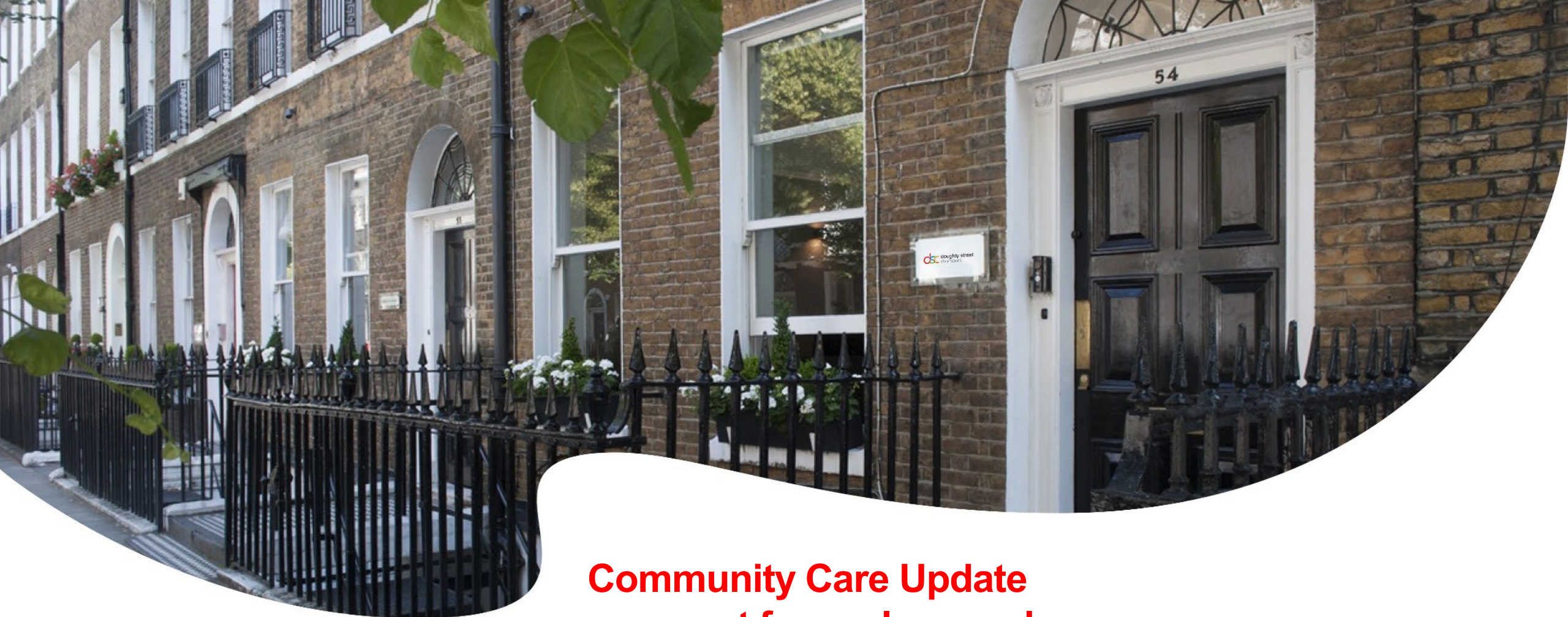
- C: multiple and complex disabilities, as well as sole carer for disabled 11-year-old son.
- Package of care and support of 21 hours per week. Following reassessment in 2019, cut to 10.5 hours per week.
- Took over 18 months to resolve dispute – revolving door of pre-action letters and promises of reassessment.
- C brings evidence of other adults with adult social care packages experiencing similar difficulties.

R (HL) v Sec of State for Health and Social Care

- Challenge to failure of the SS to introduce an appeals system for resolving adult social care disputes.
- S.72 CA 2014 empowers SS to introduce appeals system.
- In 2016, SS announced decision to introduce appeal system (upon which they had consulted). Care Act factsheet and statutory guidance updated to reflect it would be introduced in April 2020.
- Series of statements confirming still on agenda when social care reforms were pushed off.
- Then, December 2021 in White Paper state that 'do not intend to introduce such a system immediately' but keeping under review.

R (HL) v Sec of State for Health and Social Care

- Grounds of challenge:
 - Failure to consult (prior practice, conspicuous unfairness)
 - Or, voluntary consultation which is not *Gunning* compliant
 - Unlawful impediment to common law right of access to justice
 - Breach of procedural obligations under Art 8 ECHR.
- Unsuccessful. Under appeal.



Community Care Update - support for asylum-seekers

3 May 2023

Simon Cox

Home Office duties & powers

Destitute asylum-seekers:

- Immigration & Asylum Act 1999 (*IAA 1999*), Part VI sections 98 and 95

Destitute former (failed) asylum-seekers:

- IAA 1999, section 4

People on bail:

- Immigration Act 2014, Sch 10, para 9

Legislation - Nationality and Borders Act 2022

Existing powers not yet brought into force:

Part 2 of Nationality, Immigration and Asylum Act 2002 - power to introduce accommodation centres

Part 5 & Schedule 6 of Immigration Act 2016 – reduce appeal rights and replace section 4 with a new section 95A.

New Legislation - Nationality and Borders Act 2022

In force from 28 June 2022

NABA section 13(1) 7 (3) – new IAA sub-section 97(3A):

Under s. 95 and s. 4, asylum seekers may be housed in different forms of accommodation, depending on:

- The stage their claim for asylum is at, including where notified claim is being considered for a declaration of inadmissibility
- Their previous compliance with any accommodation or bail conditions.

However, Home Office has not yet exercised these powers, see “Allocation of asylum accommodation policy” version 8.0, 23 December 2022

Rest of section 13 not in force yet

New Legislation - Nationality and Borders Act 2022

In force from 28 June 2022

NABA section 17, adds IAA section 94(4A) – (4C)

– Home Office decision that asylum claim is inadmissible acts = a “refusal” for asylum support purposes ending entitlement to s. 95 – but leaving possibility of s. 4

“**Inadmissible**” claims refers to new sections 80A and 80B of Nationality, Immigration and Asylum Act 2002, inserted by NABA, the process challenged in the Rwanda litigation.

New Legislation - Nationality and Borders Act 2022

Home Office looking at military airfields, disused cruise ships, ferries, barges

Most recent roundup of plans: Diane Taylor, 2 May 2023, Guardian, *"The Home Office calls asylum seekers criminals one minute, heroes the next. It's cynical and cruel"*

<https://www.theguardian.com/commentisfree/2023/may/02/home-office-asylum-seekers-criminals-heroes-suella-braverman-essex>

Councils and others bringing judicial reviews.

Case law – EU derived rights for asylum-seekers repealed?

EU (Withdrawal) Act 2018, s. 4(1) continues in force EU derived rights

Immigration and Social Security Coordination (EU Withdrawal) Act 2020, in force 31/12/20, paragraph 6 of Schedule 1, states that s. 4(1) does not apply in so far as those rights affect the operation of the Immigration Acts or any provision under those Acts.

In *R(AAA) v SSHD* [2022] EWHC 3230, 19 December 2022 (“Removals to Rwanda”), Divisional Court held this applies not only to EU free movement rights, but also to the Asylum Directives. That case concerned the Qualification Directive, but the reasoning applies to operation of asylum support provisions.

That issue is under appeal to Court of Appeal.

Case law – EU derived rights for asylum-seekers repealed?

Not all provisions for asylum seekers are made under the Immigration Acts.

Asylum Seeker Reception Regulations 2005 are made under the European Communities Act 1972, to implement the Reception Directive.

But query whether reliance on the Reception Directive would 'affect the operation of' section 95 etc of IAA 1999

Court challenges: level of asylum support

R (CB) v SSHD [2022] EWHC 3329 (Admin), 21 December 2022

Successful challenge to SSHD's uprating decision

Court:

- found no reasonable justification for SSHD to use Consumer Price Index rate of inflation
- Ordered SSHD to raise rate by 10.1% (which meant rise from £42 to £45 p/p p/w)

Court challenges: inadequate hotel accommodation

R (MQ) v SSHD [2023] EWHC 205 (Admin), 7 Feb 2023

Failed challenge to hotel accommodation

“170. The hotels had reasonable facilities and there was no overcrowding. The physical condition of the hotel accommodation was adequate in that there was no disrepair or inherent health risk. There were some issues with food, but they appear to be about individual taste rather than the basic quality of the food provided. There is no medical evidence to suggest that any health issue (sepsis, anxiety, loss of weight) were connected to the quality of the accommodation provided.”

Court challenges: refusal to grant immigration bail to persons at liberty not a barrier to Sch 10 accommodation

R (Ganpot) v SSHD [2023] EWHC 197 (Admin), 3 Feb 2023

Successful interim relief application for accommodation under Schedule 10

Claimants overstayed leave and then applied for leave to remain. SSHD had power to grant bail, but had not done so (or considered it), and therefore claimed she had no power to accommodate under Schedule 10.

Court nevertheless granted interim relief ordering accommodation, on basis of argument that SSHD had power to grant bail.

Court challenges: withdrawal of LA support from former asylum-seeking care leaver

R (CVN) v Croydon LBC [2023] EWHC 464, 28 February 2023

Successful challenge that withdrawal disproportionate under ECHR A3 and P1 A2

Claimant had been accommodated by LA as an unaccompanied asylum-seeking child. His asylum claim had been finally dismissed and he had turned 21. However, he had not been removed from the UK. LA decided to withdraw support.

LA decided that since C's case for accommodation was based on his right to continuing education, LA had no power to accommodate. At door of court abandoned argument C could return to Albania.

Judge decided that, given LA's concession claimant had a right to continuing education (under ECHR P1 A2), he also had a right to continuing accommodation to avoid a breach of ECHR A3.

Court challenges: refusal to issue Asylum Registration Card to former asylum seeker

Said's Application for Judicial Review [2023] NIKB 1, 9 January 2023

Unsuccessful discrimination challenge

Claimant's asylum claim had been finally dismissed and he had made further submissions, which SSHD had not considered whether were a fresh asylum claim. He claimed JR of policy not to issue an ARC.

Judge decided that former asylum-seeker not analogous to person with pending asylum claim, under ECHR Art 14.

(Judge did observe that 19 month delay in deciding further reps was "completely unacceptable" and an "abject failure to implement the Immigration Rules".)

Issues bubbling under: overpayment recovery from persons on asylum support

Several JRs of SSHD recovery of overpayments from asylum support, reducing level of asylum support to below the minimum.

SSHD's defence that overall support is at same level and claimants should budget. Ignores that overpayment was not notified as such, spent some time ago and is not available for essential living needs now.

Issues bubbling under: Napier, Penally, curfew, damages

Central London County Court dealing with dozens of damages claims arising from accommodation in barracks.

Might decide questions of:

- Triaging vulnerable persons / persons who lack capacity
- Whether curfew was unlawful imprisonment.

Other legal challenge issues

Broken complaints system

Challenges on healthcare grounds –access to medical treatment.

Article 8 challenges – contact with family members.

Access to adequate education – ECHR A2 P1.

Access to legal advice – ECHR A6 / legal aid deserts.

Long-term asylum support accommodation of recognised refugees