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No. 624

R (M & A) v Islington LBC

[2016] EWHC 332 (Admin), Administrative Court, February 25, 2016

Collins J

The Administrative Court has held that although the specific social services power under s27 Children Act 1989 to request assistance from another authority, such as a housing authority, did not apply to a single-tier or unitary authority, similar power did nonetheless exist for such an authority; but it had not been unlawful in the present case for the local authority's Disabled Children's Team not to request from housing an exceptional direct offer of alternative accommodation, outside the usual housing allocation procedures, for two families with children having severe non-physical disabilities who were known to be at risk from falling from upper floor balconies or windows at their present council accommodation; and it had not become irrational, even after the passage of about 2½ years, for the local authority to allow the families to remain in their present accommodation with limited or no real prospect of success in bidding for accommodation through the Housing Allocation Scheme.

Christopher Baker of Arden Chambers appeared for Islington LBC.

Background

The two Claimants were severely autistic children, with an impaired sense of danger, who lived with their respective mothers in flats rented from the Authority. M had a younger brother, S, who was also severely autistic. It was alleged in both cases that the failure of the Authority to afford transfers to other accommodation was unlawful since the present accommodation was said to be unsafe for the Claimants, in particular because of windows and balconies above ground level from which the children might fall if climbing.

Both families were known to the Authority's Disabled Children's Team and the Claimants had been the subject of various assessments, including by an Occupational Therapist (who was not employed by the Authority) to whom was entrusted the assessment of risk within the accommodation. She reported that the current accommodation was unsuitable for a number of reasons, including the risk of falls. Multi-disciplinary meetings had been held in relation to both Claimants, including in relation to the housing issues. Both families had been assessed

in 2014 as being in an Amber risk category under the Authority's procedures, ie having urgent but not immediate needs. Cases of the latter type were assessed under those procedures as being in a Red risk category; and in some of those cases the Authority had arranged exceptional "direct offers" of new accommodation through their Housing Allocation Scheme (ie offers made without the applicant having made a bid for the accommodation under the usual choice-based lettings scheme).

Both mothers were registered for a transfer under the Housing Allocation Scheme and had been awarded priority points. Their points awarded had been reviewed and increased over time but by the date of the hearing in January 2016 were still well below the average number of points for successful bidders for accommodation of the size and type for which they had been assessed as requiring, such was the high level of demand and the low level of supply. M's mother did, however, have sufficient points to have received one offer of accommodation considered suitable by the Authority, but she had declined it because she did not consider it suitable. A's mother had not received an offer and her points award was below the level at which the Authority generally expected an offer might be made.

The Claimants' principal contention was that the social services team should have made a request to the housing team, under s27 Children Act 1989, for the latter to make a direct offer of alternative accommodation to the mother of each Claimant. It was also alleged that the Authority had failed to produce, in accordance with statutory guidance concerning children, a lawful plan for each Claimant in relation to their housing needs and that the Authority's procedures were inadequate.

In 2014, the Authority had confirmed that, pursuant to the assessments which had been carried out, the relevant arrangements in relation to each Claimant's housing were a risk management plan to be implemented in the current accommodation and for any transfer to alternative social housing to be subject to the usual procedure and priority under the Housing Allocation Scheme; and that all the professionals involved, including the OT, were satisfied this was sufficient. The Authority remained of that view as at the date of the hearing, even though neither family had moved and notwithstanding their prospects of a transfer.

Section 27 Children Act 1989

Section 27 provides, so far as material:

"(1) Where it appears to a local authority that any authority mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority specifying the action in question.

(2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

(3) The authorities are—

(a) any local authority; …

(c) any local housing authority …".

In R(C) v Hackney LBC [2014] EWHC 3670 (Admin); [2015] PTSR 1011, Turner J held that s27 Children did not apply to a London borough council because it exercised both social services and housing functions, whereas s27 was directed to the situation where such functions were exercised by different authorities. The present claim was stayed pending a decision of the Court of Appeal on the claimants' application for permission to appeal in the Hackney case, but the stay was lifted after the Court of Appeal (McCombe LJ, 15 May 2015) refused permission

at an oral hearing. In the present case, the Claimants submitted that Turner J had been wrong and his decision should not be followed.

In March 2015, the Secretary of State had issued updated statutory guidance, Working together to safeguard children, para 68 of which stated:

"Where requested to do so by local authority children's social care, professionals from other parts of the local authority such as housing and those in health organisations have a duty to co-operate under Section 27 of the Children Act 1989 by assisting the local authority in carrying out its children's functions." (Other statutory guidance did not draw a distinction in the operation of s27 as between requests for assistance to a separate authority or within a single authority.)

In the present case, the Authority denied that the power s27 was applicable, but accepted that this did not mean they had no power for the social services team to request the housing team, for example, to make a direct offer of accommodation. The Authority contended, however, that this was discretionary and that, if such a request were made, the housing team would be entitled to operate considerations such as those under s27(2); and that in the circumstances there had been no unlawfulness.

Decision

The Court held (dismissing both claims):

(1) The Court was entirely satisfied that Turner J's construction of s27 in the Hackney case was correct.

(2) The attempt to overturn the Hackney decision was entirely unnecessary. It was apparent that Parliament required the degree of co-operation between authorities set out in s27. While the various guidance was poorly drafted, it could and should be read to require that the same degree of co-operation between departments in a unitary authority was given as would be required by s27 between different authorities.

(3) It was important to bear in mind the obligation on the requested authority was to comply with a request for help if it was compatible with their own statutory or other duties and objectives and did not wrongly prejudice the discharge of any of those functions. It was to be noted that in R v Northavon DC ex p Smith [1994] 2 AC 402, at 410/H Lord Templeman had remarked on the undesirability of using judicial review to obtain the necessary co-operation. It was equally important to bear in mind that s27 did not require that the functions of the requesting or the requested authority were changed.

(4) The absence of a general plan for provision of services was not material because there was no reason why ensuring safety, so far as reasonably possible, should not be dealt with outside such a plan, provided there was a proper means of dealing with the issue. It was not inappropriate to deal separately with the question of whether a transfer was needed to a particular sort of accommodation because of safety issues. If the system did properly protect children in need where there were real dangers unless alternative accommodation was provided, the absence of a general plan was not unlawful.

(5) The Authority's system was satisfactory: it was clear that it did involve all relevant professionals; it was open to anyone in Children's Services to raise any concerns about risk in existing housing; there was no reason to doubt that an OT was the best person to assess risk; and the fact that the OT, and the Head of Paediatric Therapy and Specialist Nursing, were not employed by the Authority was not of any significance since they worked together with social workers.

(6) Although the Court was concerned at the length of time that had elapsed and, in one of the

cases, that the level of points awarded was not such as to mean that a bid for the desired accommodation was likely to succeed, the Court could not intervene unless persuaded that, having regard to the conclusion that the system was proper and lawful, its implementation in either case was unlawful, which meant it had to fail the Wednesbury test. As Lord Templeman indicated in the Northavon case, judicial review was not a satisfactory means of dealing with this situation and in any event the continuing absence of a transfer was not irrational.

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