CHILD LAW NETWORK UK

NEWS & UPDATES ON CHILD LAW DEVELOPMENTS IN THE UK

Submission to the Independent Review of Administrative Law

We are the Child Law Network – UK, a UK-wide network of NGOs who specialise in representing children. Our Network includes organisations from each country in the UK, representing children in nearly every area of law that they might have contact with. These include but are not limited to; public family proceedings, education, special education needs, disability, physical health, mental health, community care, housing, crime, prison law, immigration, asylum, asylum support, employment,

The organisations in the Child Law Network – UK are: Clan Childlaw (Scotland), Children's Legal Centre Wales, Children's Law Centre (Northern Ireland) (CLC-NI), Coram Children's Legal Centre (England) (CCLC), Just for Kids Law (England) (JfKL), The Howard League for Penal Reform (England) (Howard League) and Family Rights Group (England).

This submission highlights the role of judicial review in protecting children by upholding the law at a local level. Judicial review enables parents, carers and children themselves to receive the support central government has legislated for.

We are not talking so much about challenging the executive as ensuring the will of the executive is carried out at a local level, where central government has delegated decision making and budgets to local authorities to carry out the business of government.

These are the cases that don't get to court: they are not high profile but the rely on the availability of judicial review to make sure that the law of the land is followed at a local level by sending pre-action protocol (PAP) letters or letters before the action (LBA). These cases are about ensuring children receive the support they need for their health, well-being and education.

This is a long-term difficulty but has been exacerbated in the recent months, in lockdown and during Covid-19, the experience of the organisations is that local authorities are increasingly failing to deliver on their responsibilities to children

Overall

Most organisations in the network identified that they had to issue more pre-action protocol (PAP) letters in 2020, due to Covid-19, than in any other year but that the majority of these cases did not end up in Judicial Review as the local authority accepted its legal responsibility once a PAP had been

sent. **For example,** the Children's Law Centre – Northern Ireland (CLC-NI) has had to issue more PAPs/JR proceedings in the last six months than it would normally do in a three-year period.

Examples of challenges for Children in relation to education

- CLC-NI: Securing provision for children with complex needs in lockdown. This is of critical importance to these children and their parents given further lockdown and the closing of schools in NI which adversely impacts children with SEN and disability. CLC-NI issued PAPS in 3 cases which are before the court on the systemic issues.
- CCLC: Education law team have issued approximately 25 letters before action (LBAs) so far this year. LBAs are issued against local authorities for issues such as failure to implement Education Health Care Plans (EHCP) for children with Special Education Needs (SEN) and failure to educate children out of formal education. They are also issued against the failure of the Local authority to educate a child whilst the SEN appeal is pending, for instance where an appeal date may be 3-4 months off you cannot leave the child out of the education, in these cases the Local Authority would not go to court but settle after an LBA, offering a child education in the interim.
- In Wales lawyers have had to write letters before action on at least 2 occasions to the Welsh Government and a Local Education Authority on issues arising from COVID-19 emergency regulations. On both occasions the regulations were revised, or services were provided.

Examples of challenges for Children in relation to housing and community care support

- An emerging issue has been homeless young people who are in custody who cannot get bail as a result of being homeless. CLC-NI has acted on behalf of a number of these young people to ensure compliance with the statutory guidance.
- CCLC: In Community Care across the team there have been 35-40 letters before the action (LBAs) because local authorities are delaying implementing decisions and plans such as moving children into suitable accommodation. Following LBAs the local authorities are usually implementing the plans.
- JfKL have sent at least 6 pre-action protocol letters to Local Authorities who had refused to look after vulnerable children and young people, these children were subsequently looked after by the local authority after the legal letters were sent.
- In addition, JfKL have sent about 25 pre-action protocol letters this year for homeless children and young people, where it is clear that the local authority has failed to carry out their statutory homeless duties towards vulnerable young people. The law says the local authority must provide temporary accommodation, if someone is priority need, whilst they carry out their inquiries. Many young people in this category are either street homeless or are sofa surfing or have been asked to leave the family home due to a breakdown in their relationship with their parents or carers. They have asked the housing department for assistance as a homeless person and have been turned away without due process being followed by the local authority. The law is followed only after sending the LBAs only then do the local authorities agree to carry out their statutory duties (that they are aware of) by providing temporary accommodation whilst investigating the homelessness claims.

- In 2020 the Howard League has provided legal letters on behalf of clients in 31 instances in which they secured positive outcomes for children and young people. Most of these cases concerned ensuring young people in the criminal justice system received accommodation and support from local authorities. The power of judicial review made this possible, but we did not have to take a single case in Court the local authority agreed based on the legal correspondence.

Examples of challenges for Children relating to immigration

- CCLC challenge delays in Home Office decision making on asylum and immigration matters for vulnerable children and young people. They estimate they have sent around 20-25 pre-action letters so far this year which do not end up in judicial review but stop the delay for vulnerable children and young people.
- CLC-NI have issued 4 PAPs on the same issue.

Examples of challenges for Children in relation to health

- CLC–NI: 4 Judicial Reviews relating to delaying discharge of children with complex needs from hospital, a huge public health expense and taking up a hospital bed. The reason they are kept in hospital is due to the deficit of provision in the community. They are probably going to issue at least another 4 PAPs in the next few weeks to try and secure services for children in similar fact circumstances in need of respite.

CASE STUDY 1
BECOMING A LOOKED AFTER, AUTISTIC CHILD

Peter* is 17 years old and autistic. He was eligible to be released early from prison but had nowhere to live. He could not go home to his mum or dad. Although he had been "looked after" by children's social services before going to prison, they hadn't put anything in place for his release.
The law is clear that 17-year-old children who are in need of accommodation because they are unable to live with the person who they would ordinarily live with, are entitled to the provision of accommodation and support by children's services as a looked after child. Peter wanted to be looked after by children's services. Children's services told Peter that he did not meet the threshold to be a looked after child and that he would have to contact the local authority's housing department. This would mean he would have been on his own upon release. The Howard League sent a pre-action letter challenging children's services' failure to comply with their legal duties. Children's services accepted their duties and provided Peter with accommodation and support as a looked after child.

CASE STUDY 2
A CHILD IN NEED OF ACCOMMODATION

James* is 16 years old. As a result of a family breakdown he found himself to be homeless. He had previously been known to services and had mental health needs which had unfortunately resulted in him making several attempts upon his life. He had been the victim of a serious assault whilst homeless and found himself in the Juvenile Justice Centre as a result of a minor offence committed whilst being homeless.

CLC-NI were forced to begin judicial review proceedings when James was refused support.
The law is clear that once a young person is deemed to be homeless, they are the responsibility of the Health and Social Care Trust who must accommodate them. Thirteen weeks after becoming a 'looked after child', the young person is entitled to leaving and aftercare support which can last until the young person is aged 21 years, or beyond if they remain in training or education.
Whilst the position was clear, the practice had developed in Northern Ireland of wrongly classifying homeless young people and thus they became the responsibility of the Housing Executive and therefore not entitled to any support as a looked after child.
Mr. Justice Tracey stated that the law in relation to the duties owed to homeless young people is clear and he repeated the test set out by the UK Supreme Court in previous cases. As a postscript to the judgment it was ordered that the Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21-year olds be revised. This guidance now sets out a clear pathway to be followed by professionals when faced with a homeless young person.

CASE STUDY 3
A CHILD WITH AUTISM IN NEED OF SUPPORT

Lauryn* is 17 years old, has autism and learning difficulties. When lockdown began, her school closed and with it all the support Lauren received including occupational therapy and art therapy. While the children of key workers had somewhere to go; Lauryn, who requires constant supervision, was left at home 24-hours a day. Lauryn is a very routine-orientated person and during lockdown her routine was taken away completely. In the absence of having her educational needs met, Lauryn's behavioural problems escalated and she would attack her family and harm herself.
Since lockdown began, Lauryn's family asked again and again for help from the Department of Education, the Education Authority and from Lauryn's school, but got no assistance. What happened instead is that drugs were thrown at the problem. Rather than going to school or putting in place measures to respond to this extraordinary situation, the authorities chose to medicate the problem. No one thinks about the routine of a disabled child and the respite that carers receive through that routine. This decision making is not in the child's best interests, nor sustainable for the carers. CLC-NI issued 3 similar judicial reviews on behalf of disabled children and their families during lockdown.

CASE STUDY 4
A CHILD IN NEED OF ACCOMMODATION

Jessica* is 17 years old. The relationship with her parents had broken down as they were physically abusive, resulting in Jessica obtaining a non-molestation order against them. She sofa surfed with another family, but it was not sustainable. She approached children's services and was informed that the local authority would go through its process but would not provide accommodation for her while the assessment was pending. This advice contradicts the statutory guidance. That night she found herself unable to stay at her friends' home, she contacted the out-of-hours children's service stating she was street homeless. Jessica was told to wait for a call back, but children's service never did call back. As a result, Jessica had to stay in the police station until the early hours of the morning. The following night JfKL obtained emergency funding to place Jessica in accommodation for one night. JfKL sent a pre-action protocol letter. The local authority provided Jessica with 'interim

accommodation’ pending an assessment of her needs. After receiving the PAP letter, the local authority agreed that Jessica should be a looked after child and accommodated under s20 Children Act 1989.

*not young person’s real name