

Local authorities to fund holidays if identified as need

From 2011 until 2018, the Care and Support Plans for two adult, disabled brothers (BG and KG) included funding for supported holidays and day trips. This was based on a clearly identified need for BG and KG to access recreational activities in the community (on day trips and holidays), and the benefits to their well-being of such activities.

Despite there being no change in BG and KG's identified needs, in 2019 Suffolk County Council ceased providing funding to BG and KG for holidays and day trips on the basis that they believed they had no power under the Care Act 2014 to do so.

Legal provisions and arguments

Sections 9 and 13 Care Act 2014 ("CA 2014") require local authorities to assess an adult's needs for care and support and then determine whether those needs meet the relevant eligibility criteria set out in regulation 2 of the Care and Support (Eligibility Criteria) Regulations 2015. One example of when an adult's needs would meet the eligibility criteria is where, because of a physical or mental impairment, they are unable to make use of recreational facilities, which has a significant impact on their well-being (regulation 2(2)(i)). Section 18 CA 2014 dictates that the local authority is under a duty to meet any need that satisfies the eligibility criteria in regulation 2. Section 8 CA 2014 sets out a non-exhaustive list of how needs may be met.

The Council's position, relying upon *R (GS) v London Borough of Camden* [2016] EWHC 1762 (Admin), was that section 18 and regulation 2(2)(i) give rise to a duty to provide a carer to support an individual to access recreational facilities (such as a holiday) but this does not extend to providing funding to enable an individual themselves to access those facilities e.g. the cost of transport or entrance fees.

Decision

Mrs Justice Lang concluded that there was no basis for the restrictive interpretation of the CA 2014 adopted by the Council. She held:

1. Section 8 CA 2014, and the relevant Statutory Guidance, describe a wide range of ways in which needs may be met, not just via personal care assistance.
2. The authoritative textbook 'Community Care and the Law' by Clements (7th ed.) expressly states that CA duties can include the provision of a holiday for an adult in need.

- Therefore, although the CA 2014 itself does not specifically refer to the provision of holidays, this can come within the broad scope of the provision for meeting needs in section 8 CA 2014.
1. Accordingly, if a person's assessed needs arising from their disabilities includes a need for a holiday, then the local authority are under a duty to meet that need (section 18 CA) and funding the cost of the holiday is a way in which the local authority can meet that need (section 8 CA 2014). The Council erred in law in determining otherwise.

Additionally, the Court found that the Council also had a discretionary power under section 19 CA 2014 to fund recreational activities, including holidays, which it ought to have considered before reaching its decision to cease all payments.

Commentary

This case can be contrasted with *MacDonald* [2011] UKSC 33 where it was held by the Supreme Court that it was not unlawful for a local authority to change the method by which they met a person's needs to a more cost-effective method, provided they continued to meet that need. The principle to be drawn from these cases therefore is that where a social care need is identified, the Council are required to find a way of meeting that need.

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