

## **Care Act 2014: Summary and Learning from Davey, R (On the Application Of) v Oxfordshire County Council [2017]**

### **Context**

Luke Davey, a 40 year old man with severe physical disabilities bought a Judicial Review challenge against Oxfordshire council on the grounds that his care and support services were unlawfully reduced because they had failed to consider the impact of the reduction on his individual Wellbeing. This case represents the first legal challenge relating to a possible breach of the duty to promote individual Wellbeing under Section 1 of the Act.

This briefing is a short summary of the case, judgement and learning for practitioners working with the Care Act. To read the full judgement, see <http://www.bailii.org/ew/cases/EWHC/Admin/2017/354.html>.

### **Background**

Prior to the reduction Luke had been funding a 24 hour personal assistant service using monies from both the council and the Independent Living Fund (ILF). Luke had been in receipt of 24 hour care for over 20 years.

His needs were reassessed when the ILF was disbanded in 2015. Following this reassessment the council made a decision that they would only make a small increase to the amount of Luke's personal budget, meaning that overall he would be receiving 42% less money and would not be able to continue to fund the services he had previously used in the same way.

The council did set out in a Care and Support Plan how Luke could manage his services within the revised budget. They said that:

- a) Luke could spend more time alone without a personal assistant present; and
- b) The rates, terms and conditions paid to his personal assistants could be reduced.

They also explored other options, including live-in care but Luke and his family were adamant that they did not wish to pursue this and wished to maintain a personal assistant service.

## **Luke's Argument**

Luke argued that spending increased periods of time on his own would cause him anxiety, although he was already spending 2 hours each Tuesday on his own through personal choice. He had a history of anxiety and had taken medication for this some years previously. He was also concerned that he would not be able to access the same social activities.

A further argument was that changes to the terms and conditions of his personal assistants would run the risk that some would resign, destabilising his support which had been working well for the last 18 years. Changes included reduced hourly rates and no mileage payments.

Overall Luke felt that the actions of the council were Wednesbury unreasonable. Wednesbury unreasonable is a legal term used to describe any action by a public body (including a Local Authority) that no reasonable person, who was acting in a reasonable manner at the moment in question, could have possibly performed. Acts which are deemed Wednesbury unreasonable are thought to be irrational. Should an act be deemed Wednesbury unreasonable, the courts may be motivated to correct the act.

## **The Council's Argument**

Oxfordshire council argued that there was no medical evidence that Luke's current mental health put him at risk of harmful anxiety. They said that he had a need for greater independence and it was the professional view of the social worker and occupational therapist involved in the case that spending more time on his own would help meet that need and build resilience.

The council's Care and Support Plan indicated that Luke would be supported by a team of personal assistants and not by the same team of personal assistants he was already using. The council were of the view that Luke's wish to continue to be supported by the same team of people was not a need but a wish. It was also argued that there was no evidence that the changes to personal assistant terms and conditions would lead to resignations as none of Luke's personal assistants had indicated this intention. However, even if this were the case the council felt that there would be no issues recruiting personal assistants and that the market place was good. Alternatively the council felt that Luke's needs could be met through live-in care.

## **The Judgement**

The judge presiding, Justice Morris dismissed the case brought by Mr Davey, saying it was understandable Luke and his family had objected to the cut but there was no "relevant legal error" in the council's actions.

He said: "The result may impose change or even strictures upon the claimant which are unwelcome, but that does not of themselves mean that the process has been unlawful."

Furthermore the actions of the council were not found to be Wednesbury unreasonable in any way.

## Learning from the Judgement

The main reason for the case being dismissed on all grounds was that Oxfordshire council had followed due process as laid out in the Care Act 2014 when making their decisions about Luke's personal budget.

They had:

- a) Carried out a comprehensive reassessment of need before making any changes to the personal budget;
- b) Taken all reasonable steps to reach a decision about the best way to meet needs with Luke and his family (even though this had been made difficult through the instigation of legal proceedings);
- c) Developed a clear Care and Support Plan;
- d) Monitored the situation and were prepared to respond and reconsider their position in response to change;
- e) Explained the process of on-going review and action should needs or circumstances change;
- f) Based the personal budget on an understanding of the marketplace and available care and support services.

When making decisions they had:

- a) Used professional expertise, skills and knowledge to justify decision making;
- b) Based decisions on facts and current evidence available;
- c) Promoted positive risk taking to promote independence.

In relation to the promotion of individual Wellbeing the council had demonstrated through assessments and other evidence that they had given regard to Wellbeing (even if the final decision was not what Luke wanted).

They had:

- a) Acknowledged Luke was anxious about being left alone;
- b) Explored reasonable alternative options within the proposed personal budget to increase the time spent with a carer present (primarily live-in care);
- c) Ensured that Luke was able to continue accessing all of the social activities that were important to him;
- d) Implemented a staged approach to the reduction of budget to allow for a gradual reduction and less anxiety;
- e) Monitored and reviewed the impact of the reduction.

Some other key learning for practitioners raised by the case:

- a) Anxiety is normal in times of change and not a reason to avoid change;
- b) It is quite appropriate for a professional to have a view that does not support the wishes of the person when that view is grounded in evidence, fact and experience;
- c) The Care Act duty when providing services is to give regard to how those services may assist people to meet their outcomes, but not to actually meet the outcomes;
- d) When reaching an agreement with a person, the duty is to take all reasonable steps to do so not to do so at all costs;
- e) There is a duty to give regard to all individual circumstances of a person holistically (not circumstance by circumstance) when making decisions.

This case highlights the emphasis that Judicial Reviews relating to the Care Act are likely to place on both due process and the ability to demonstrate how regard has been given to the views, wishes and feelings of the person with care and support needs.

## Contact Us

To find out more about working with tri.x contact us on: Telephone: 024 7667 8053 or visit our website [www.trixonline.co.uk](http://www.trixonline.co.uk).

Copyright: The content of this Briefing can be accessed, printed and downloaded in an unaltered form, on a temporary basis, for personal study or reference purposes. However any content printed or downloaded may not be sold, licensed, transferred, copied or reproduced in whole or in part in any manner or in or on any media to any person without the prior written consent of Signis Group.

*tri.x is part of the [Signis Group](#), which also includes [PRICE Training](#) (Positive approaches to challenging behaviour) and [Reconstruct](#) (Training, consultancy and direct work). As a group we provide those working with children and vulnerable people with the best information, practice guidance, training and consulting available.*

— Part of the —