

PATHWAY PLANS

Note for managers and advocates on the case of J v Caerphilly County Borough Council (2004)

This case addresses issues relating to local authority responsibilities towards care leavers in assessing and drawing up pathway plans (this includes “eligible children” leaving YOIs, STCs or LASCHs.

Specifically it covers –

- Role of personal advisers
- The assessment and planning process of pathway plans
- The content of pathway plans
- Local authority responsibilities where the young person does not engage

Key principles set by the judge Mr Justice Munby –

1 The role of the personal adviser

A personal adviser can be an employee or officer of the local authority drawing up the pathway plan but that person cannot also draw up the statutory assessment or pathway plan itself. (para 30 of judgment)

Part of the role of the personal adviser is to be the advocate or representative of the child in the course of the child’s dealings with the local authority. (para 30 of judgment)

2 The process of drawing up the pathway plan

i) Time scale

The local authority must start the process within the statutory time period i.e. an assessment must be completed not more than 3 months after the date on which the child reaches the age of 16 or has become an eligible child after that age. (regulation 7 The Children Act 1989 as amended by the Children (Leaving Care) Act 2000 (if Welsh the citation would be Children (Leaving Care) (Wales) Regulations 2001).

ii) Seeking the views of the child and family

In carrying out an assessment and in preparing or reviewing a pathway plan, the local authority must –

- a) seek and have regard to the views of the child or young person to whom it relates; and
- b) take steps to enable him or her to attend and participate in any meetings at which his or her case is to be considered (Reg 6 of the Act)

It is not enough simply to ‘share’ the decision with the child and family after it has been taken. They must be fully involved as above. Failure to do so is not only a breach of the statutory obligations under regulation 6 above, it is potentially also a breach of Art 8 European Convention on Human Rights and Fundamental Freedoms.

These same rights are also enjoyed by the parents.

3 Content of the pathway plan

“A pathway plan must clearly identify the child’s needs, and what is to be done about them, by whom and by when....A pathway plan must spell out who does what, where and when”. (Para 45 of judgment)

The judge recommends using the Department of Health pro-forma.

4 Care plans

Mr Justice Munby goes on to comment on care plans generally.

“A care plan is – or ought to be – a detailed operations plan. Just how detailed will depend upon the circumstances of the particular case. Sometimes a very high level of details will be essential. But whatever the level of detail which the individual case may call for, any care plan worth its name ought to set out the operational objectives with sufficient details – including details of the ‘how, who, what, and when’ ...nothing less is called for in the pathway plan” (para 46)

5 The problem of the uncooperative child

“The fact that a child is uncooperative and unwilling to engage, or even refuses to engage, is no reason for the local authority not to carry out its obligations under the Act and the Regulations” (para 56 of the judgment)

Where the local authority is hindered in carrying out its duties by the child’s lack of engagement then that should be documented clearly and in detail in the assessment and the pathway plan.

It should give clear and specific details of the steps taken by the local authority and to try and engage with the child and explain why it has not been “reasonably practicable” to do everything contemplated by the regulation (i.e. seeking and having regard to child’s views, taking steps to enable the child to attend and participate in meetings at which his or her case is to be considered providing the child without delay

copies of the results of the assessment, the pathway plan and each review of the pathway plan) (para 57 of judgment)

If particular components of the plan are dependent upon the child's cooperation and willingness to engage, then that fact should be spelt out explicitly. i.e. not only should the plan spell out what the child can expect from the local authority but also what the local authority can expect from the child if the plan is to work. E.g. attending appointments, filling application forms etc and the likely implications if those expectations are not met.

Where there is reason to fear that the child will not engage, *“careful thought will need to be given to working out and articulating explicit detail the ‘fall-back’ or contingency plan to be included in the pathway plan”*.

SUMMARY OF THE FACTS

J was being held in a young offender institution and was due for release. He had previously been subject to a care order. J, like many young people in care and in the youth justice system had been the victim of severe abuse over many years. The judge described him as having had a “wretched life”.

As a ‘looked after’ child prior to going to prison, J was entitled to services as a care leaver. The main duty of the local authority was therefore “to advise, assist and befriend him with a view to promoting his welfare when they have ceased to look after him”. (paragraph 19A, Schedule 2 Children Act 1989, as amended by the (Children (Leaving Care) Act 2000)

Essentially this meant having a duty to carry out an “assessment” of his needs and prepare a “pathway plan” for him. In doing this they had a duty to involve him in the decision making process.

In this case there was a strong suggestion that until lawyers got involved a “pathway plan” had not even been drawn up and then was put together hastily. The judge criticised it for being extremely inadequate. For instance the only plan for finding J accommodation was to take him down to the homelessness unit on release. When he was offered accommodation it was in an area which would have put him at risk because of his cultural background. In fact he has now ended up back on the streets living rough.

A personal adviser was appointed for J but he was also the person who did the assessment of J's needs and then drew up the pathway plan without any involvement of J. This was said because he refused to engage in the process. His lack of co-operation was not disputed but the judge accepted the argument that this was part of the overall problems J had and was no reason for the local authority not to carry out its obligations.

HOW TO USE THIS CASE

Many local authorities act in similar ways when dealing with care leavers, particularly with non-cooperative young people they find difficult like J.

If you are advocating for a young person who is entitled to the services described in this case you can quote the case to help get them. For instance, if you find that the personal adviser is also the person drawing up the pathway plan write and point out that this is unlawful following the judgment of Mr Justice Munby in J v Caerphilly County Borough Council (2005). You do not have to quote the paragraph or the exact words although doing so can make the argument more forceful.

If the young person's "pathway plan" is vague or the young person has not been involved in the process then again quote this case as above. If you are not sure what to do ask your manager or speak to a legal advisor in the London office.

The most difficult task following this case will be ensuring that young people get the services they are entitled to as described by the judge. Pointing out to local authorities that they must in each individual case is the best way.

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