

Editorial review

In *CP (a protected party who proceeds by her father and next friend JP) v North East Lincolnshire Council* [2018] EWHC 220 (Admin), (2018) 21 CCLR 221, HHJ Wood QC dismissed an application for declarations and damages arising out of a series of alleged failures by the local authority to make adequate SEN and social care provision holding, inter alia that a local authority was not required to fund the social care aspect of special educational provision, or the cost of a placement, pending the outcome of the individual's First-tier Tribunal appeal, which would determine to what extent the local authority was responsible.

In *East Sussex County Council v JC* [2018] UKUT 81 (AAC), (2018) 21 CCLR 251, the Upper Tribunal (UTJ Levenson) held that a powered wheelchair was capable of being 'special educational provision' for the purposes of an EHC Plan (which includes vocational, social, physical and recreational training).

In *London Borough of Hackney v John Williams and Adenike Williams* [2017] EWCA Civ 26, (2018) 21 CCLR 260, the Court of Appeal (The President of the QBD, McFarlane and Burnett LJ) held that there was no obligation to obtain a positive expression of consent from a parent before accommodating a child under Children Act (CA) 1989 s20 and, on the facts of this case, the parents' right to object had not arisen because they were prevented from providing suitable accommodation and care for the children. There had not been any breach of Article 8 of the European Convention on Human Rights (ECHR).

In *Nottinghamshire County Council v The Estate of Mr Wilfred Belton and Ian Belton* [2017] EW Misc 26, (2018) 21 CCLR 287, HHJ Godsmark QC held that the limitation period for recovering charges under the Care Act 2014, by way of ordinary proceedings, was six years: a much longer period than under the National Assistance Act 1948.

In *R (KI) v London Borough of Brent* [2018] EWHC 1068 (Admin), (2018) 21 CCLR 294, DHCJ David Elvin QC held that the local authority had breached its duty of candour in the litigation; consideration of all the documents showed that it had failed in breach of duty under CA 1989 s20 to provide KI with suitable accommodation, having provided him accommodation that it had been irrational to consider as being suitable; and the local authority had erred in law by not treating the claimant as a 'former relevant child,' given that his placement with his uncle, whilst still a child, had been very much engineered by the local authority, who continued to play a monitoring role. The judgment contains important litigation guidance for local social services authorities.

In *R (Juttla, Scott and Murphy) v Hertfordshire Valleys Clinical Commissioning Group* [2018] EWHC 267 (Admin), (2018) 21 CCLR 325, Mostyn J rejected most grounds of challenge to a clinical commissioning group's (CCG's) decision to withdraw funding from a respite service for children with severe disabilities (public sector equality duty, Article 8 ECHR and Article 3 of the United Nations Convention on the Rights of the Child and Care Act 2014 re service funding reductions) but quashed the decision because, in breach of regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, the CCG had failed to consult with the local authority.

We also report a selection of recent Local Government Ombudsman decisions about care fees:

- *Investigation into a complaint against Lincolnshire County Council* application no 16 003 268, (2018) 21 CCLR 341 (maladministration resulting from a failure to offer Mr C a care home without a top-up fee payable and a failure, in that circumstance, to offer to pay the full fee);
- *Investigation into a complaint against North Yorkshire County Council* application no 17 001 003, (2018) 21 CCLR 352 (maladministration through failing to give proper advice about care home charges in particular top up fees, requiring the local authority to reimburse the resident's estate); and
- *Investigation into complaint against Wiltshire County Council* application no 16 015 946, (2018) 21 CCLR 363 (maladministration arising out of the council asking the mother of a severely disabled adult to pay towards the cost of his transport between home and day care).

In *Richards (by his litigation friend, Anne Minihane) v Worcestershire County Council and South Worcestershire Clinical Commissioning Group* [2017] EWCA Civ 1998, (2018) 21 CCLR 376, the Court of Appeal (Jackson, Lewison and Hamblen LJ) declined to strike out a claim for restitution against public authorities in respect of after-care services, notwithstanding the submission that the claim in restitution was a private law claim and need not be pursued through judicial review.