***High Court Judgement commenting on the exercise of local authorities’ powers under section 17(3) of the Children Act in relation to non-parent adult family members***

On 7 May 2020 the judgement in the *OA v London Borough of Bexley* case was handed down. Although the claim for judicial review was dismissed, the Judge made a number of useful comments relating to the exercise of local authorities powers under section 17(3) of the Children Act 1989 specifically in relation to support provided to non-parent adult family members which could help other families.

*The Facts*

The Claimants were a Nigerian family of 3 (a 16 year old child, his mother and his 19 year old brother) with no recourse to public funds supported by Bexley Council under section 17 of the Children Act 1989. The Council are providing the family with accommodation and financial support of just £70.98 per week. This is equivalent to asylum support rates, which are set at the bare minimum to avoid destitution, for 2 people. It is also the amount the Council usually provides for 2 people.

Despite providing evidence to the Council that the family do not have enough money to meet their essential living needs and are going hungry, the Council refused to increase the financial assistance.

The Council argued that they were unable to use their powers under section 17(3) to take into account the child’s adult brother, because he is not the child’s parent or carer. They relied on the previous judgement in *MK v Barking & Dagenham LBC* to state that because the adult brother was excluded from receiving support due to his immirgation status, using their powers under section17(3) to provide additional support would be for an “*improper and collateral purpose*”.

We represented the family in a challenge to the Council’s decision arguing that they had misdirected themselves as to their legal powers under section 17(3) and acted irrationally by failing to take into account the third member of the family in deciding what support should be provided.

*The Judgement*

The judgement was handed down on 7 May 2020.

Disappointingly, despite rejecting the Defendant’s submissions that they had no power to provide support for adult members of the family, the Judge accepted that the Council had properly assessed the Claimants’ situation and rationally concluded that they were not required to provide for the elder brother. Although the claim for judicial review was dismissed the Judge made a number of helpful comments that may be useful for practitioners going forward. The Judge stated:

1. It is clear that the meaning of family within section17 is wider than just those persons with parental responsibility.
2. He rejected the argument of the Defendant that “upbringing” of a child for the purposes of section17(1)(b) can only ever be done by a parent.

1. Section17(3) states that the services may be provided “for the child or any member of his family”.
2. However, services can only be provided under section17(3) for the purpose of meeting the general duty under section17(1). He stated that the service must always be those that are appropriate to the “needs” of the relevant child.
3. It does **not** follows from the case of *MK* that providing support to another adult family member of a child in need (ie other than a parent) will always be improper or ultra vires. The Judge referred to instances where other adult family members who were not the parent of the child in need were in fact safeguarding and promoting his/her welfare and thereby meeting the child’s needs and in these circumstances section17(3) could in fact be used by local authorities to provide accommodation and financial support subject to the schedule 3 exclusion.

*Comments on the case*

We consider this analysis will be beneficial for practitioners going forward where local authorities refuse to even consider providing support to include non-parent adult family members. The judgement suggests that local authorities are required to assess the role of the non-parent adult family member in the life of the child in need prior to making a decision as to what support should be provided. We consider it likely, in light of these comments, that any assessment which does not consider this issue in conjunction with the needs of the child will be unlawful and susceptible to challenge.

Furthermore any local authority policies stating that non-parent adult family members can never be supported under section 17 will be unlawful and should also be challenged in light of this decision.

Unfortunately, it was held that the Council had properly assessed the Claimants’ situation and rationally concluded that they were not required to provide for the elder brother as all of the child’s welfare needs could be met by his mother, and by the support and accommodation being provided by the Council. The Judge acknowledged that the brother did play an important role in the child’s life but that, it did not necessarily follow from this that the child’s “welfare needs” were being met by the brother.

We query whether the Judge applied too narrow a definition of “welfare needs” in this context, which failed to take into account the need of a child to live with his entire family unit in order to achieve or maintain a reasonable standard of health and development. We anticipate that this issue will likely be the subject of further litigation in future.

The Claimants in this case were represented by Azeem Suterwalla of Monckton Chambers and Olivia Halse in our Public Law and Community Care Department.

For further information on about this challenge or similar issues - please contact Olivia Halse.