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**Davey v Oxfordshire County Council**

**[2017] EWHC 354 (Admin)**

**Briefing[[1]](#footnote-1)**

## Facts of the case

Luke Davey is a disabled adult, who had been living in his own home with (more or less) 24 hour support from a team of personal assistants who had supported him for 18 years. They were, to Davey, his ‘community’, his ‘family’ (some of them literally, as he employed his sister-in-law). On Davey’s own assessment, his independence was central to his wellbeing, and this in turn relied upon his being supported by this team of PAs. His package of care had been partially funded by the Independent Living Fund. The local authority assessed his needs, and concluded that his eligible needs could be met for substantially less: a reduction in his ‘personal budget’ from £1651 to £950. This was based on a contention that he could meet his assessed eligible needs for less by reducing the number of hours that he was supported, so that he spent 6 hours alone each day, and also by reducing the pay for his PA’s. They assessed Davey as having an ‘eligible need’ to enhance his ‘independence’ by spending more time alone. Davey, meanwhile, experienced anxiety when on his own, and although he was spending 2 hours a week alone did not want to increase this. He agreed that ‘independence’ was essential for him, but for him, independence was about exercising control over his life, not about not being supported.

## The legal challenge

Davey argued that LA’s decision was unlawful on the grounds of

1. Being left alone or “spending more time alone” is not a lawfully assessed need.

2. The LA failed to have regard to the number of considerations:

* The risk to the Claimant's psychological wellbeing arising from having to spend more time alone;
* Compatibility of the need to “spend more time alone” with Mr Davey’s assessed need for an assistance with toileting;
* The effect of spending periods of time alone upon the Claimant's ability to engage in social activities;
* The LA has failed to take all reasonable steps to reach agreement with Mr Davey about how it should meet his needs.

3. The LA failed to consider the risk to the Mr Davey’s wellbeing if his team of PAs has to change.

4. The LA failed to evidence its contention that the proposed rates for PAs are reasonable or compatible with its obligations under the Care Act

The judge found in favour of OCC in relation to all those grounds.

## CRPD

The Judge considered the application of article 19 of the UN CRPD in relation to the wellbeing principle in the Care Act and general duty to promote wellbeing and made the following observations:

As an unincorporated instrument it cannot be an independent source of substantive domestic legal rights. However CRPD provides a framework on how to address the rights of disabled people and by ratifying it the state should ensure its laws comply with it whenever possible. Therefore courts must interpret domestic law in a way that is consistent with obligations under the CRPD. The UN CRPD could be used to interpret particular provision of the Care Act, in case of ambiguity or uncertainty.

In the Davey case however the judge did not identify the specific ambiguity in the Care Act which art 19 of the CRPD could help to address.

## Assessment of needs and the duty to assess

The decision confirms the line, which was developed in case law predating the Care Act: the assessment duty is a duty upon the local authority and the assessment of needs is an objective assessment made by the local authority. There is no duty to achieve the outcomes which the Disabled person wishes to achieve; rather it is a duty to assess whether the provision of care and support could contribute to those outcomes.

The decision confirmed however that local authorities are required to demonstrate how they considered all aspects of wellbeing contained in art 1 of the Care Act.

When assessing the needs LA must consider:

1. *The impact of the adult's needs for care and support on the different aspects of wellbeing specified in the Care Act;*
2. *The outcomes that the adult wishes to achieve in day-to-day life;*
3. *Whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes."*

Moreover the judge agreed that emotional and psychological wellbeing are so important that a failure to take those factors into account is the assessment and care planning process could invalidate the decision.

LA can take into account resources when assessing needs and determining eligibility, it is then under an absolute duty to meet eligible needs.

The judge also looked at how much influence a person’s wishes and preferences should have on a final decision about the needs and the support provision. He commented that a Disabled person’s wishes are no more than that and are not "needs"; those "wishes", whilst of significant importance, are not paramount. The duties upon the LA with regards to promoting person’s wellbeing are duties to "have regard". These duties are a starting point and do not prevent the LA from taking a different view about the person’s needs based on their objective professional judgement and experience.

In relation to the need to spend more time alone the judge interpreted the assessment as stating the need to “increase independence and reduce anxiety when spending time alone” and spending more time alone would be the way to meet this need. He did not consider it unreasonable based on the social worker’s experience and based on the fact that Mr Davey did not seem to have problems spending short periods of time alone.

When considering the fact that a new support plan will limit Mr Davey’s opportunities to participate in social activities the judge on the facts of the case did not think there will be significant limitations, except fewer opportunities for day trips and in relation to that he commented:

*This very limited curtailment does not amount to a breach of s.1 (the wellbeing duty) of the Act. Article 19 UNCRPD does not impose any additional obligation upon the Defendant, beyond those arising under the Act.*

## Rates for PAs and the risk of existing long established team falling apart

The judge made the following observations: the LA was aware of how important it was for Mr Davey to maintain his team of PAs. However, the LA thought that such change would not have negative impact, moreover it could be quite positive as it would reduce the dependence on specific carers. In any event, when making an assessment LA is not required to make judgements about the future. The judge also took into account the fact that none of the existing PAs has left.

In relation to the dispute about the reduced rates of pay for PAs, the judge did not think there was enough evidence to make a determination that the LA’s approach was unreasonable. He relied on the opinion of a social worker, who stated that other service users can recruit PAs on those rates. He thought that evidence showing higher rates for agency workers was not relevant. The judge also took into account the fact that none of the PAs has left since the reduction took place and that Oxfordshire had stated that if there were difficulties with recruitment, they will reconsider the proposed rates.

Importantly however the judge said that once a support plan has been agreed local authorities are not able to say that even though a proposed personal budget may not be enough to pay for the support provision in the support plan a disabled person could choose to use another cheaper alternative. In Davey’s case OCC argued that even if their proposed personal budget was not enough, Mr Davey could use it to pay for a live-in carer instead of hiring a team of PAs.

## Conclusion

The wellbeing duty is a duty to have due regard. LAs have to consider all aspects of wellbeing when assessing the needs, making decisions about eligibility and developing support plans. It also appears that assessments and care plans do not have to record how the LA considered the impact on all aspects of wellbeing. Some of this consideration could be implicit based on the experience of a social worker. LAs can safeguard themselves by promising to review the support plan and personal budget if their suggested option is not working.

1. Full copy of the judgement available at http://www.bailii.org/ew/cases/EWHC/Admin/2017/354.html [↑](#footnote-ref-1)