Case No: CO/6213/2004

Neutral Citation Number: [2005] EWHC 586 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 12 April 2005

Before :

MR JUSTICE MUNBY

- -

Between :

THE QUEEN on the application of J (by his litigation friend MW)	**Claimant**
- and -	
CAERPHILLY COUNTY BOROUGH COUNCIL	**Defendant**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Mr Ian Wise (instructed by The Howard League for Penal Reform) for the claimant
Mr Rhodri Williams (instructed by the Head of Legal Services) for the defendant

- -

Judgment

Mr Justice Munby :

1. This case discloses serious failings on the part of a local authority in carrying out its duties under the 'leaving care' legislation to one of the children in its care.

The factual setting

2. J was born in June 1987, so he is not yet 18 years old. In law he is still a child. He has had a wretched life. His mother was sexually abused by her step-father. She has a drug habit. J himself was sexually abused by the same man from about the age of 4. The abuse continued for many years. J acquired a drug habit, having apparently been fed drugs by his abuser as an inducement to submit to the abuse. His first recorded offence – burglary – was in 1998 when he was still only 10 years old. He received a caution. His first appearance in the Youth Court was in 1999 at the age of 11 when he received a conditional discharge for theft. In March 2001 the defendant local authority obtained an interim care order from the Family Proceedings Court. In September 2002 the local authority was granted a full care order. It remains in force. So the local authority has had parental responsibility for J for the last four years. Over the years there have been numerous periods when J has been detained by the local authority in secure accommodation pursuant to section 25 of the Children Act 1989. He now has a long criminal record, though his first custodial sentence was as recently as July 2004 when he received sentences of detention and training orders totalling a year in all. He was detained in Ashfield YOI from which he was released, having served half his sentence, on 13 January 2005. For some of the time he was on suicide watch after threatening self-harm. He was also bullied. Although he presents as an intelligent young man J has special needs in relation to literacy and numeracy. His current reading age, I was told, is about 13. His relationships with his family are difficult. He lives in an area of great social deprivation, high criminal activity and high drugs use.

3. In short, as his counsel, Mr Ian Wise, observed by reference to what I said in *R (Howard League for Penal Reform) v Secretary of State for the Home Department* [2002] EWHC 2497 (Admin), [2003] 1 FLR 484, at paras [10]-[11], J suffers from many of the deeply disturbing constellation of disadvantages and difficulties which afflict so many of the children in our YOIs. As long ago as January 2003 a perceptive report by a specialist child and adolescent mental health nurse worried that J – then still not yet 16 – was at risk of institutionalisation. Another report, this time in May 2003, said that J "will need a great deal of support" not merely from social services but also from the local area drug services. The local authority's own care plan for J dated 18 September 2003 referred to his "complex needs" and stated the local authority's view as being that he was in need of "specialist support".

4. J's relationship with the local authority whilst he has been in care has plainly been very difficult. His repeated periods in secure accommodation speak for themselves. But there is no doubt – and this is an important part of his problems – that J has been remarkably uncooperative and unwilling to engage with the local authority in its repeated attempts to help him. In March 2004 Mr S was appointed by the local authority as J's personal adviser (for the significance of this see below). But despite concerted efforts between March and May 2004 the local authority was unable to engage with J, who failed to keep no fewer than nine appointments with Mr S. In fact Mr S was able to establish contact with J only after he had been placed at Ashfield. (This has to be put in context. In May 2004, when J was on the run and his address

was unknown he had no allocated social worker – a manager was holding the case.) The records of the looked after children (LAC) reviews which were held on 1 April 2004, 13 July 2004, 22 July 2004, and 19 October 2004, whilst depressing in their analysis of J's many needs are also eloquent of his continuing failure – refusal – to engage not merely with the local authority but also with a number of other agencies.

The legislation

5. The key statutory provisions are to be found in the Children Act 1989, as amended by the Children (Leaving Care) Act 2000, and – because this is a Welsh case – the Children (Leaving Care) (Wales) Regulations 2001, SI 2001/2189 (W151).

6. It is common ground that J is both a "looked after" child within the meaning of section 22(1) of the Act and also an "eligible child" within the meaning and for the purposes of Part II of Schedule 2 to the Act: see the definitions in paragraph 19B(2) of Schedule 2 to the Act and regulation 3(1) of the Regulations. In these circumstances the relevant provisions are to be found in paragraphs 19A, 19B and 19C of Schedule 2 to the Act. Paragraph 19A provides that:

> "It is the duty of the local authority looking after a child to advise, assist and befriend him with a view to promoting his welfare when they have ceased to look after him."

Paragraph 19B, so far as material, provides as follows:

> "(4) For each eligible child, the local authority shall carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide him under this Act –
>
> (a) while they are still looking after him; and
>
> (b) after they cease to look after him,
>
> and shall then prepare a pathway plan for him.
>
> (5) The local authority shall keep the pathway plan under regular review.
>
> (6) Any such review may be carried out at the same time as a review of the child's case carried out by virtue of section 26."

Paragraph 19C provides that:

> "A local authority shall arrange for each child whom they are looking after who is an eligible child for the purposes of paragraph 19B to have a personal adviser."

7. So far as relates to the Regulations the relevant provisions are to be found in regulations 6-9 and 12. Regulation 6 provides that:

"(1) The responsible local authority in carrying out an assessment and in preparing or reviewing a pathway plan, shall to the extent that it is reasonably practicable –

(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.

(2) The responsible local authority shall without delay provide the child or young person with copies of –

(a) the results of his or her assessment,

(b) his or her pathway plan,

(c) each review of his or her pathway plan

and shall so far as reasonably practicable ensure that the contents of each document are explained to him or her."

8. Regulation 7 provides that:

"(1) The responsible local authority shall assess the needs of each eligible child, and each relevant child who does not already have a pathway plan, in accordance with these Regulations.

(2) The assessment is to be completed –

(a) in the case of an eligible child, not more than three months after the date on which the child reaches the age of 16 or becomes an eligible child after that age …

(3) Each responsible local authority shall ensure that a written record is kept of –

(a) the information obtained in the course of an assessment;

(b) the deliberations at any meeting held in connection with any aspect of an assessment; and

(c) the results of the assessment.

(4) In carrying out an assessment the responsible local authority shall take account of the following considerations –

(a) the child's health and development;

(b) the child's need for education, training or employment;

(c) the support available to the child from relationships with members of his or her family and with other persons;

(d) the child's financial needs;

(e) the extent to which the child possesses the practical and other skills necessary for independent living; and

(f) the child's needs for care, support and accommodation.

(5) The responsible local authority shall, unless it is not reasonably practicable to do so, seek and take into account the views of –

(a) the child's parents;

(b) any person who is not a parent but has parental responsibility for the child;

(c) any person who is caring for the child on a day to day basis;

(d) any school or college attended by the child, or the local education authority for the area in which the child lives;

(e) any independent visitor appointed for the child;

(f) the general practitioner in whose list the child is included;

(g) the personal adviser appointed for the child; and

(h) any other person whose views the responsible local authority or the child consider may be relevant."

9. Regulation 8 provides that:

"(1) As soon as possible after completing the assessment, the responsible local authority shall prepare a pathway plan for each eligible child ... in accordance with this regulation.

(2) The pathway plan must include, in particular, the matters referred to in the Schedule.

(3) The pathway plan must, in relation to each of the matters referred to in the Schedule, set out –

(a) the manner in which the responsible local authority proposes to meet the needs of the child; and

(b) the date by which any action required to implement any aspect of the plan, will be carried out by the responsible local authority.

(4) The pathway plan must be recorded in writing."

10. The Schedule refers to the following matters:

"1 The nature and level of personal support to be provided to the child or young person.

2 Details of the accommodation the child or young person is to occupy.

3 A detailed plan for his or her education or training.

4 Where relevant, how the responsible local authority will assist the child or young person in employment or seeking employment.

5 The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.

6 A programme to develop the practical and other skills necessary for him or her to live independently.

7 The financial support to be provided to the child or young person, in particular where it is to be provided to meet his or her accommodation and maintenance needs.

8 The health needs, including any mental health needs, of the child or young person, and how they are to be met.

9 Contingency plans for action to be taken by the responsible local authority should the pathway plan for any reason cease to be effective."

11. Regulation 9 provides that:

"(1) The responsible local authority shall review the pathway plan of each eligible ... child in accordance with this regulation.

(2) The responsible local authority shall arrange a review –

(a) if requested to do so by the child or young person;

(b) if it, or the personal adviser considers a review necessary; and

(c) in any other case, at intervals of not more than six months."

12. The functions of personal advisers are dealt with in regulation 12:

"(1) A personal adviser shall have the following functions –

(a) in relation to eligible ... children, the functions listed in paragraph (2) ...

(2) The functions are –

(a) to provide them with advice (including practical advice) and support;

(b) to participate in their assessment and the preparation of their pathway plans;

(c) to participate in reviews of their pathway plans;

(d) to liase with the responsible local authority in the implementation of the pathway plan;

(e) to co-ordinate the provision of services to them, and to take reasonable steps to ensure that they make use of such services;

(f) to keep informed about their progress and wellbeing; and

(g) to keep a written record of any of the adviser's contacts with them."

13. As will be seen the Regulations provide both for the *procedure* by which assessments and pathway plans are to be prepared and for their *content*. So far as is material in the particular circumstances of the present case, the following points are especially to be noted:

i) *Procedure*: Regulation 7 requires the assessment to be "completed" not more than three months after the child reaches the age of 16. Regulation 6 requires the local authority, so far as "reasonably practicable", to "seek and have regard to the views of the child", to "enable him ... to attend and participate in ... meetings" and to "ensure that the contents of [his assessment and pathway plan] are explained to him". Regulation 6 also provides that the local authority must – "shall" – and "without delay" provide the child with copies of his assessment and pathway plan. Regulation 7 requires the local authority to take into account the views of the child's personal adviser. Regulation 12 provides that amongst the functions of the personal adviser are "to participate in [the] assessment and the preparation of [the] pathway plan" and "to liase with the ... local authority in the implementation of the pathway plan".

ii) *Content*: Regulation 7(4) identifies the matters which the local authority "shall" take account of in carrying out the assessment. Regulation 8 provides that the pathway plan "must" include the matters referred to in the Schedule. Paragraph 3 of the Schedule, it will be noted, requires there to be a "detailed plan" for education or training. Regulation 8 also provides that the pathway plan "must", in relation to "each" of the matters referred to in the Schedule, set out the "manner" in which the local authority proposes to meet the needs of the child and the "date" by which "any" action required to implement any aspect of the plan, will be carried out by the local authority.

14. I should also refer to the *Children Leaving Care Act Guidance* issued in September 2001 under section 7 of the Local Authority Social Services Act 1970 and therefore required to be observed by the local authority. For present purposes I can be very selective in what I quote.

15. Chapter 6 (paragraphs 6.1-6.18) deals with the assessment. As paragraph 6.7 recognises, the essential issues which the local authority must address during the assessment process are those identified in regulation 7(4). But Mr Wise properly lays stress on paragraph 6.12, which refers to the *Framework for the Assessment of Children in Need and their Families* published in 2001 by the National Assembly for Wales and the Home Office:

> "The needs assessment to inform the Pathway Plan should be based on the three domains within the Framework for the Assessment of Children in Need and their Families ... the starting point for assessing the young person's developmental needs should be as set out in the Looking After Children System. The Assessment and Action Records should provide a comprehensive picture of the child's developmental needs and the agreed actions to address these."

16. Paragraph 7.2 identifies the pathway plan as "pivotal to the process whereby children and young people map out their future". Paragraph 7.7 says that:

> "The Pathway Plan should be explicit in setting out the objectives and actions needed to achieve these; this should include who is responsible for achieving each action and time-scale for achieving it."

17. Chapter 3 (paragraphs 3.1-3.21) is important to an understanding of the role and functions of the personal adviser. Paragraph 3.5, addressing the personal adviser's role in the preparation of the assessment and pathway plan, says that:

> "the personal adviser is likely to play a negotiating role on behalf of the child or young person, ensuring that the plan is realistic and deliverable whilst meeting assessed needs. Whilst there is an element of advocacy in this, it would be wrong to construe the role primarily as that of an advocate."

Paragraph 3.13 says that:

> "In order to avoid setting up conflicts of interest, the personal adviser should **not** also be the budget-holder."

Paragraph 3.18 points out that:

> "the personal adviser is not intended to supplant existing sources of support."

The litigation

18. On 18 November 2004 J contacted the Howard League for Penal Reform on its advice line. On 19 November 2004 the Howard League contacted the local authority. On 25 November 2004 it sent a letter before claim. On 2 December 2004 the local authority responded, stating that a needs assessment and pathway plan had been completed but were to be "reviewed" soon after J's release. Those documents were in fact incomplete, unsigned and undated. The local authority is coy about precisely when they were prepared, merely saying that it was in November 2004. I strongly suspect that they were not in fact prepared until after the local authority had become aware of the Howard League's involvement in the matter. The pathway plan, according to the local authority, had been "drafted" by Mr S.

19. On 8 December 2004 the present proceedings were commenced. Following orders made by Davis J on 8 December 2004 and Lindsay J on 10 December 2004, the local authority filed an acknowledgement of service on 23 December 2004, asserting that the local authority "has a clear plan to meet [J's] needs when he is released". (As we will see in due course it was nothing of the sort.) The acknowledgment of service was accompanied by a letter enclosing copies of the needs assessment and the pathway plan. The letter said that these "have not yet been shared with [J]. This will be accomplished on his release from prison."

20. In response to what it perceived as the inadequacies of the assessment and pathway plan the Howard League on 6 January 2005 filed a response to the acknowledgement of service, and amended grounds of claim on behalf of J. These indicated that the relief J now sought was:

    i) declarations that the local authority had acted unlawfully (a) in failing to assess J's needs and (b) in failing to secure suitable accommodation for him; and

    ii) mandatory orders requiring the local authority (a) to appoint a personal adviser for J, (b) to produce a proper assessment and pathway plan, and (c) to provide accommodation and support for J consistent with his assessed needs.

21. On 13 January 2005 J was released. On the same day the matter was considered again by Davis J, who described the acknowledgement of service as being "not very informative" – which no doubt led to the filing by the local authority on 14 January 2005 of an amended acknowledgement of service. On 17 January 2005 the local authority gave Bennett J an undertaking to produce a revised pathway plan. Bennett J gave J permission to apply for judicial review. On 24 January 2005 the local authority produced a revised needs assessment and a revised pathway plan. These, according to the local authority's own evidence, were "completed" by Mr S. The pathway plan was signed by Mr S as J's personal adviser. Interestingly, the space for signature by the

Leaving Care Worker was left blank. The pathway plan identified the first review date as being 14 February 2005. No such review took place. The local authority filed detailed grounds for contesting the claim on 18 February 2005.

22. The matter came on for hearing before me on 8 March 2005. I reserved judgment. On 10 March 2005 the next LAC review took place. Consistently with paragraph 19B(6) of Schedule 2 to the Act and regulation 5(4) this was treated as being also a review of the pathway plan. On 11 March 2005 the local authority produced a formal 'Pathway Plan Review' and a revised pathway plan. The first was signed by Ms S in his capacity as Leaving Care Social Worker, the other in his capacity as J's personal adviser. Again, as in the case of the previous pathway plan, the space for signature by the Leaving Care Worker was left blank. Both the minutes of the LAC meeting on 10 March 2005 and the 'Pathway Plan Review' identify the great efforts the local authority and Mr S have continued to make to try and get J to engage, and they chronicle his continuing failure and refusal, for example, to attend appointments arranged for him and to engage with those, within or outside the local authority, who are trying to help him.

23. On 15 March 2005 Mr Wise filed further written submissions.

24. There is no doubt that in principle relief of the kind sought by Mr Wise, including mandatory relief, can be granted in a case such as this: see *R (AB and SB) v Nottingham CC* [2001] EWHC Admin 235, (2001) 4 CCLR 295, approved in *R (G) v Barnet London Borough Council* [2003] UKHL 57, [2004] 2 AC 208, at para [32], and *R (P) v Newham LBC* [2004] EWHC 2210 (Admin), (2004) 7 CCLR 553. Mr Rhodri Williams on behalf of the local authority did not contend otherwise.

The complaints

25. Mr Wise on behalf of J has four complaints. They relate to (i) the appointment and role of J's personal adviser, Mr S, (ii) the process by which the assessments and pathway plans were produced, (iii) the content of the assessments and pathway plans, and (iv) the failure of the local authority to provide J with suitable accommodation. I shall deal with each of these in turn.

J's personal adviser

26. Mr Wise has two complaints. First, he submits that it was wrong in principle to appoint a member of the local authority's own staff to act as J's personal adviser. Secondly, he complains that the local authority and indeed Mr S himself misunderstood his role, not least in the process leading up to the preparation of the pathway plans. In my judgment there is no substance in Mr Wise's first point. Unhappily there is all too much substance in his second.

27. In my judgment there is nothing either in the general law or in the relevant legislation which makes it either unlawful or necessarily undesirable to appoint as the personal adviser of a child in care an officer or employee of the local authority which is the child's statutory parent. On the other hand, if such a person is appointed, it is important that both he or she and the local authority should recognise that the personal adviser is indeed acting in that role and not in some other, let alone conflicting, role. That, unfortunately, seems not to have been appreciated in the present case.

28. Mr S, as I have said, was appointed as J's personal adviser in March 2004. Yet the minutes of the LAC review on 1 April 2004 record him as being present as a member of the Leaving Care Team. Now that is accurate so far as it goes, but it might be thought that he should have been recorded as being present not as a member of the Team but as J's personal adviser. The point may be thought to be trivial, even pedantic. But it is, as it seems to me, a small but telling illustration of an approach which ran the risk of obscuring or confusing Mr S's true functions. A personal adviser has important functions, spelt out in regulations 7 and 12, and it is important when a personal adviser attends a meeting such as the LAC meeting on 1 April 2004 that no-one (including the personal adviser) should be left in any doubt as to the capacity in which he is there and the capacity in which he is speaking.

29. Unhappily there is a more fundamental respect in which this ambiguity as to Mr S's true role and function has led to difficulties: the role which Mr S adopted in the process leading up to the preparation of the pathway plans. The pathway plans were prepared – drafted and completed – by Mr S. Mr Wise complains that this was wrong. I agree. The point is a short one, but compelling. Regulation 12, as we have seen, identifies the functions of a personal adviser as including (regulation 12(2)(b)) to "participate" in the child's assessment and the preparation of the pathway plan and (regulation 12(2)(d)) to "liase with the ... local authority" in the implementation of the pathway plan. Moreover, regulation 7(5), as we have seen, requires the local authority – and it is the local authority, after all, which has the statutory duty of undertaking the assessment and preparing the pathway plan – to "take into account the views" of the personal adviser. All this, says Mr Wise, shows that the assessment is to be undertaken and the pathway plan is to be prepared by someone other than the personal adviser. I agree.

30. It is not part of the personal adviser's functions to undertake the statutory assessment or the preparation of the pathway plan, nor should he do so. The Regulations, in my judgment, show that it is not permissible for him to do so. It is in any event undesirable that he should do so. Part of the personal adviser's role is, in a sense, to be the advocate or representative of the child in the course of the child's dealings with the local authority. As the *Children Leaving Care Act Guidance* puts it, the personal adviser plays a "negotiating role on behalf of the child". He is, in a sense, a 'go-between' between the child and the local authority. His vital role and function are apt to be compromised if he is, at one and the same time, both the author of the local authority's pathway plan and the person charged with important duties owed to the child in respect of its preparation and implementation.

31. Mr Wise submits that in these circumstances the local authority has not in truth provided J with a personal adviser. Mr S is in a position where his dual roles put him in a position of conflict, or at least ambiguity, and prevent him single-mindedly acting in his role as personal adviser. That function, says Mr Wise, has been obscured and compromised. J is entitled to a personal adviser and Mr Wise seeks a mandatory order to compel the local authority to provide one.

32. I do not seek to criticise Mr S personally, who I am sure has done his best in very difficult and trying circumstances, but there is, as it seems to me, compelling force in Mr Wise's complaints. J is entitled to a personal adviser whose function is just that, and whose function is not obscured and compromised by the conflicts and ambiguities which, unfortunately, cloud Mr S's position. The present situation cannot continue

and must be remedied. I will hear further argument if necessary on the form of order if the parties are not able to reach agreement on the appropriate way forward.

The process

33. The deficiencies in the process in this case are all too obvious. Making every allowance, as I do, for the difficulties faced by the local authority in having to deal with a child who was, as I have said, and seemingly still is, in many ways remarkably uncooperative and unwilling to engage with it in its repeated attempts to help him, the fact nonetheless remains that the process in this case was characterised by a number of serious failings. Quite apart from the confusion about the personal adviser's role, the local authority failed in a number of important respects to comply with its obligations under the Regulations:

    i) The local authority embarked upon the process far too late. The pathway plan should have been completed by September 2003. The first pathway plan was not produced until November 2004. That was a breach of regulation 7(2)(a). J should have had a personal adviser long before March 2004: see paragraph 19C of Schedule 2 to the Act read in conjunction with regulation 3(1).

    ii) Whatever steps were taken to involve J in the process were inadequate. There were, as it seems to me, breaches of regulations 6(1)(a), 6(1)(b) and 6(2). In this regard the local authority's approach is exemplified by the comment in its letter of 23 December 2004 that the documents "have not yet been shared with [J]."

34. I have had occasion in the past to criticise the 'mindset' and 'culture' of local authorities who exclude families from the decision-making process, merely 'sharing' the decision with them after it has been taken: see *Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam), [2003] 2 FLR 42, at paras [2]-[3] and [57]. As I pointed out in that case, this approach may well involve breach of the family's rights, under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to be properly involved in the decision-making process, rights which are, of course, enjoyed as much by the child as by the parents: see *CF v Secretary of State for the Home Department* [2004] EWHC 111 (Fam), [2004] 2 FLR 517, at paras [158], [167], [173]. It is depressing to see the same attitude in the present case, encapsulated in the local authority's statement in its letter dated 23 December 2004 that the Pathway Plan would be "shared with [J] ... on his release from prison." It is all the worse in the present context where, quite apart from any obligations arising under Article 8, there were the clear and mandatory statutory obligations imposed on the local authority by regulation 6.

The content of the documents

35. I propose to focus on the content of the pathway plans rather than the assessments because the pathway plans are so deficient that it is scarcely necessary to spend time examining assessments which are in many ways equally unsatisfactory. It is, after all, the inadequacy of the assessments – which feed into and form the basis of the pathway plans – which is in large measure the cause of the deficiencies in the pathway plans.

36. The local authority prepares its pathway plans using a standard pro-forma. It is divided into six parts, broadly though not precisely, or in my judgment adequately, reflecting the requirements of the Schedule to the Regulations: 1 Health & Development; 2 Education / Training / Employment; 3 Family Social Relationships; 4 Identity; 5 Independent Living Skills Practical and Money Matters; 6 Accommodation. Each part is arranged in five columns: the first is headed 'Identified Needs of Young Person'; the second 'Tasks / Actions – What has to be done'; the third 'Person/s responsible'; the fourth 'Target Date'; and the fifth 'Desired / Planned Outcome'. There are also spaces on the pro-forma for recording under each of the six parts both the 'Young Person / Carers Views' and the 'Contingency Plan'. A striking omission from the pro-forma is any separate section dealing, as required by paragraph 7 of the Schedule, with the "financial support to be provided to the child ... to meet his ... accommodation and maintenance needs."

37. This pro-forma can usefully be compared with the pro-forma prepared in 2002 by the Department of Health. It is not suggested, as I understand it, that there is any statutory or other obligation on the local authority to adopt the Department of Health's format, but I cannot help thinking that many of the deficiencies of the pathway plans in the present case would have been avoided if those preparing them had had to submit themselves to the much more rigorous discipline imposed on those preparing a pathway plan using the Department of Health's pro-forma.

38. The Department of Health's pro-forma is more detailed, searching and demanding in almost every respect. For example, and as it seems to me more appropriately meeting the mandatory requirement of regulation 8(3)(b) that the pathway plan must "set out ... the date by which any action required to implement any aspect of the plan, will be carried out", the relevant column in the Department of Health's document is headed 'Date services to commence /commenced'. The local authority's use in its pro-forma of the rubric 'Target Date' invites a flabby and much less specific response, exemplified by the fact that even in the revised pathway plan dated 24 January 2005 the relevant box as completed says either "ASAP" (parts 1 and 2) or "On going" (parts 3-6). Moreover, the Department of Health's document has an additional column headed 'Frequency & length of service: *eg hours per week*' for which there is no equivalent in the local authority's version. Furthermore, the Department of Health's document has a section headed 'Financial' which, amongst other things, requires details of the 'financial arrangements ... to be put in place to support the plan' and 'future payments ... in respect of ... accommodation', including identification of the 'Person Responsible', the 'Financial arrangements /cost', the 'Date From' and the 'Date To'.

39. I do not propose to take up time considering the original needs assessment and pathway plan, for they have been superseded by the revised versions produced on 24 January 2005. The defects and inadequacies of the earlier documents are glaring. Three examples – there are many more – will suffice. The pathway plan contained *no* action plan for meeting J's identified needs for training and employment after leaving Ashfield; it contained *no* action plan for how his identified needs for support in literacy and numeracy might be met after he had left Ashfield; and it contented itself with the anodyne observation that the local authority would "continue to explore accommodation options in preparation for [his] release." It was, as Mr Wise says, hopelessly inadequate. It contained little more than vague aspirations. His criticism is

harsh, but I am afraid only too well justified: as a plan to promote J's independence and ensure that he had the necessary support it was little more than worthless.

40. Mr Wise submits that the revised pathway plan produced on 24 January 2005 remains a perfunctory document. It does not, he says, deal in any meaningful way with the matters required to be dealt with by the Schedule to the Regulations.

41. The revised pathway plan remains, in my judgment, an inadequate document which fails to meet the requirements of the Regulations. It has, as it seems to me, to be evaluated in the light of J's many problems as highlighted in paragraph [2] above and in the light of the local authority's previous acknowledgment (see paragraph [3] above) that J has "complex needs" and needs "specialist support". One measure of the pathway plan's inadequacies is that one would scarcely realise from reading it just how significant J's needs and problems are. Another telling indicator is its failure, so far as I can see, to identify any truly *specialist* support for him.

42. I do not propose to subject the revised pathway plan to a minute textual analysis. Its most obvious deficiencies can be summarised as follows:

i) Part 1 – Health & Development: Having identified concerns about J's emotional well-being, including depression and paranoia, the only action to be taken would seem to be to register J with a local GP and "facilitate a health assessment". There is a contingency plan to "liaise" with "relevant health agencies". That is all. The persons responsible are identified as Mr S and J's social worker. The 'Target Date' is "ASAP".

ii) Part 2 – Education / Training / Employment: J's identified needs are said to be "Training / Employment Support in literacy and numeracy". The only actions to be taken are "To arrange an appointment with the local Careers Office" and "To liaise with the local Princes Trust representative to explore their options". Now quite apart from the fact that the local authority's planning as embodied in a pathway plan ought to be considerably further advanced than this, it is far from apparent how either the Careers Office or the Princes Trust, are going to assist J in tackling his literacy and numeracy problems.

iii) Part 4 – Identity: An identified problem is "Limited social skills". The action proposed is to "Provide opportunities for increased social interaction". The contingency plan is for Mr S to "explore ways of linking [J] into mainstream agencies".

iv) Part 5 – Independent Living Skills Practical & Money Matters: One of J's identified needs is for help in "Reading and filling out forms". The identified action is "To develop a programme in order to equip [J] for some level of independence", the person responsible is Mr S and the 'Target Date' is said to be "On going". The contingency plan is stated to be that Mr S will "devise then implement an independent, individual, living programme."

v) Part 6 – Accommodation: The identified need is for "Appropriate, supportive accommodation". The identified action is to "Continue to explore" various options (a named project, private renting and private housing associations) and

to "follow up" J's local authority housing application. This again is described as "On going".

43. The deficiencies in this are all too apparent. Where are the details of the "nature and level of personal support" to be provided to J? Where is the "detailed plan" for J's education and training? Where are the details of the "programme to develop the practical and other skills necessary for [J] to live independently"? Where are the details of the "financial support" to be provided to him? How are his "mental health needs" to be met? Too often, as can be seen, the answer is that the plan is to arrange an appointment with someone else, or to "explore options", or to "develop" a programme. In no case is the "date by which" any of these actions will be carried out specified. Everything is either to be done "ASAP" or is "On going". There seems in some instances to be a lack of clarity in distinguishing between the plan and the contingency plan. What are identified in Parts 1, 3 and 5 as aspects of the contingency plan would seem more appropriately to be required as part of the main plan.

44. In *R (AB and SB) v Nottingham CC* [2001] EWHC Admin 235, (2001) 4 CCLR 295, as Mr Wise correctly points out, Richards J emphasised the rigour and detail required of a local authority embarking upon an assessment such as this. At the end of the process, what is needed is a document, as Richards J put it at para [20], from which "it should be possible to see what help and support the child and family need and which agencies might be best placed to give that help". Striking down the assessment in that case Richards J said at para [43]:

> "it was essentially a descriptive document rather than an assessment, and in any event sufficient detail was still lacking both as regards the assessment itself and as regards the care plan and service provision. There was no clear identification of needs, or what was to be done about them, by whom and by when."

Mr Wise was right to draw attention to those last few words which, as it seems to me, helpfully encapsulate the essence of what is needed of a pathway plan if it is to meet the requirements of the Regulations. The revised pathway plan dated 24 January 2005, in my judgment, manifestly fails to meet these requirements.

45. To repeat, because the point is so important, and a clear statement of what is required may assist not merely this but other local authorities: *A pathway plan must clearly identify the child's needs, and what is to be done about them, by whom and by when.* Or, if another aphorism would help, *A pathway plan must spell out who does what, where and when.* As the *Children Leaving Care Act Guidance* makes clear in paragraph 7.7:

> "The Pathway Plan should be explicit in setting out the objectives and actions needed to achieve these; this should include who is responsible for achieving each action and time-scale for achieving it."

I draw attention to and wish to emphasise the word "explicit". At the risk of stating the obvious, the pathway plan here was very far indeed from being explicit.

46. Any judge who sits in the Family Division will be familiar with the depressing inadequacies and deficiencies in too many of the care plans presented to the court for its approval. A care plan is more than a statement of strategic objectives – though all too often even these are expressed in the most vacuous terms. A care plan is – or ought to be – a detailed operational plan. Just how detailed will depend upon the circumstances of the particular case. Sometimes a very high level of detail 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 detail – including detail of the 'how, who, what and when' – to enable the care plan itself to be used as a means of checking whether or not those objectives are being met. Nothing less is called for in a pathway plan. Indeed, the Regulations, as we have seen, mandate a high level of detail.

47. On 11 March 2005, after I had reserved judgment, the local authority, as I have said, produced a further revised pathway plan. As Mr Wise accepts, this is plainly an improvement on the version produced on 24 January 2005. But, he says, it is in very many respects still hopelessly vague. I am inclined to think that the latest version is, even now, inadequate, but since I have heard no full argument on the point, and since the issue may yet fall for determination, I say nothing more about it.

48. Mr Wise submits that the assessments and pathway plans, that is, both those produced in November 204 and those dated 24 January 2005, fail to comply with the requirements of regulations 7 and 8 respectively and with the relevant provisions of the *Children Leaving Care Act Guidance*, in particular paragraph 6.12. I agree. He seeks declarations to that effect and mandatory orders requiring the local authority to produce a lawful assessment and pathway plan. In principle he is entitled to that relief.

Accommodation

49. Mr Wise asserts that the local authority failed to make the necessary arrangements to ensure that suitable accommodation was available for J on his release and that in failing in this way the local authority neglected its parental responsibilities towards J. He seeks an appropriate declaration to this effect.

50. The local authority's alleged failures in this respect, if true, are particularly grave, given that there is clear and unchallenged evidence from the Howard League that J had been granted early release from Ashfield on 13 December 2004 *subject to there being suitable accommodation for him to be released to*. This was on the basis that if released early he would be electronically tagged. In the event, as I have said, he was not released until 13 January 2005. Since 24 January 2005 he has in fact been accommodated in accommodation found for him by the local authority.

51. The local authority has filed evidence from the team manager setting out the extensive steps it took to try and find accommodation for J. One of the obstacles was the unwillingness of private landlords to accept him whilst he was electronically tagged. In her statement dated 9 December 2004 the team manager explained:

> "All avenues of accommodation available to the Local Authority have been explored. The only viable [option] is to present himself to the CCBC Homelessness Department when he is released on 13th January 2005, without electronic tag. He

would then be eligible for emergency Bed and Breakfast Accommodation."

52. As Mr Williams correctly observed, Mr Wise did not, either in his skeleton argument or in his oral submissions, develop in any way J's case in relation to the alleged failure to provide him with accommodation. Nor did he do so to any significant extent in his further written submissions, beyond pointing out, by reference to *Kingston Upon Thames Borough Council v Prince* [1999] 1 FLR 593 at p 599, that there is no obstacle to a minor holding an equitable tenancy of a property, eg, a council house.

53. I am in no position to make any findings of fact which would entitle me to reject the local authority's very clear evidence that it took extensive steps to find J accommodation prior to his release and that all those steps proved unsuccessful for the reasons given by the team leader. I decline, therefore, to grant J any relief under this head.

54. This does not mean that I necessarily accept that J's current accommodation is satisfactory. There is reason to believe, in fact, that it is neither satisfactory nor acceptable to J. This is something which requires to be addressed urgently, but in the context of the preparation by the local authority of a proper assessment and pathway plan.

The problem of the uncooperative child

55. I have considerable sympathy with the local authority, faced as it is with a child who, as I readily acknowledge, has for a long time been, and who continues to be, remarkably uncooperative and unwilling to engage – indeed who on occasions refuses to engage – not merely with the local authority but also with a number of other agencies who are trying to help him. Mr Wise in his further written submissions seeks to deflect the blame from J, pointing to his life experiences and more particularly to the fact, as Mr Wise would have it, that the local authority has, over a number of years, consistently failed to give J the attention which in law it was bound to give him as a child in its care. I am in no position to evaluate whether there is substance in that last complaint. I have been hearing an application for judicial review founded upon alleged breaches of the 'leaving care' legislation. I have not been conducting a general inquiry into the local authority's handling of J whilst he has been in its care. And in any event I simply do not have sufficient evidence to enable me to come to any view, one way or the other.

56. What I should say is this. 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. After all, a disturbed child's unwillingness to engage with those who are trying to help is often merely a part of the overall problems which justified the local authority's statutory intervention in the first place. The local authority must do its best.

57. If the local authority is hindered in carrying out its duties under the Act and the Regulations by the child's lack of engagement then that should be documented, clearly and in detail, in the assessment and the pathway plan. Thus, for example, if the local authority, because of the child's unwillingness to engage, is unable to comply with all the requirements of regulation 6, the assessment and the pathway plan should

say so, should give clear and specific details of the steps taken by the local authority to try and engage with the child and explain why it has not been "reasonably practicable" to do everything contemplated by the regulation.

58. Furthermore, if, as will often be the case, particular components of the pathway plan are dependent for their implementation upon the child's cooperation and willingness to engage in the process, then that fact should be spelt out explicitly in the pathway plan. Just because a pathway plan is in significant measure a statement of what the child can expect from the local authority, there is no reason why it should not equally spell out what is expected – indeed required – of the child if the plan is to work. Where appropriate, the pathway plan should be explicit as to what is expected of the child – for example, attending appointments, filling in application forms, etc, etc – and explicit as to the likely implications if those expectations are not met. And in a case such as this, where there is reason to fear that the child will not be willing to engage, careful thought will need to be given to working out and articulating in appropriately explicit detail the 'fall-back' or contingency plan to be included in the pathway plan.

MR JUSTICE MUNBY: This was an application for judicial review challenging alleged failures by the defendant local authority to comply with its statutory obligations in relation to the leading care legislation. For the reasons set out in a written judgment, the draft of which has already been sent to the parties, the claim succeeds. Yes, Mr Wise?

MR WISE: I am most grateful for your Lordship's judgment. You should have on your desk an agreed order.

MR JUSTICE MUNBY: The order is now agreed, is it?

MR WISE: It is, my Lord. I only managed to contact my opponent late yesterday afternoon.

MR JUSTICE MUNBY: Is it, in fact, in the same form as the previous draft?

MR WISE: Very similar. Before I come to the details of that, my Lord, firstly on the judgment itself, on re-reading it this morning I did come across a very small typo. I apologise for not noticing it before. It is at page 13, paragraph 22. The third line from the bottom should be "Mr S" and not "Mrs S". Nothing hangs on it.

MR JUSTICE MUNBY: It should be "Mr" and not "Mrs". It has been corrected.

MR WISE: Has it already? I am obliged. Before we turn to the substantive relief, as your Lordship would expect, prior to taking the judgment, we have taken instructions as to what the current position is. We want to know that and anticipate that your Lordship will be concerned to know. We have contacted the family and the situation is that J left the Park Hotel some time ago because of the constraints that were placed upon him. Your Lordship recognised that. He now has nowhere to live. He cannot stay at grandmother's because of the condition of his licence and he is now sleeping rough. There has been no accommodation offered to him whatsoever. We are, of course, very

concerned about that, as your Lordship will appreciate. That was one of the primary issues that prompted the application in the first place. I have not had the opportunity--

MR JUSTICE MUNBY: One of the local authority's concerns, as I recall, was what from their perspective was an unwillingness, or refusal, on the part of J, to engage in the process which might have led to him being accommodated by a particular project.

MR WISE: Regarding the Mall (?) project. Your Lordship will recall discussion about that at the end of the hearing, there was a process for applying for a place there. An application was made. We did fully co-operate with that, as we indicated in our note. Those instructing me also contacted the project themselves to see if some satisfaction could be gained by that route.

It was clear from the outset that there was going to be difficulties in J being accommodated there. In any event, there was a panel that the project meets to determine the extant applications that were before them. J's application was unsuccessful and so that proposal fell on stony ground. So no offer of a place at the Mall (?) project was forthcoming. Through no fault of my client's own, I must emphasise.

Clearly there is simply a lack of places and the project is an independent project which can, of course, choose which of the number of applicants it can take. It chose unfortunately not to take J. No further offers have been made which is a matter of very great concern, despite your Lordship's comments in the judgment.

What we would seek, therefore, in addition to the relief that has been agreed, is that a further order be made that the authority make an offer of suitable accommodation to my client within seven days.

MR JUSTICE MUNBY: Let us just take it in stages. Is the defendant authority, which, I think, is not represented or present today, on notice of the fact that you are making that application?

MR WISE: No, my Lord, because instructions were only received late this morning.

MR JUSTICE MUNBY: Mr Wise, it seems to me there are probably two quite separate reasons why it is not appropriate for me to make that order. The first is that you are effectively seeking substantive relief of an important nature, seeking to impose onus obligations on the authority and have not put them on notice. The other and separate point is this: these judicial review proceedings have now come to an end. I have given a final judgment. The order, which is in the agreed form, is plainly a final order.

As you will recall, there is the principle, which I think is first and most clearly articulated -- I cannot remember who the judge was -- in Hackney cases, to the effect that it is not an appropriate use of the judicial review procedure for the court to embark upon an ongoing process of monitoring the compliance, or, as you would have in this case, the non-compliance by a statutory authority of its public law obligations.

That is, in a sense, what you are seeking to do here. One does not want to become too technical. The fact is that if there is a basis for complaint against a local authority that

in principle ought to be the subject of further judicial review proceedings. As you will be aware from previous cases in which you have appeared in front of me, while there are ongoing judicial review proceedings I take a broad and, what I hope is, a sensible view. If the case moves on, subject to appropriate amendments, I am perfectly happy to, as it were, allow the matter to proceed by amendment rather than by starting fresh proceedings. I think it is rather different in this situation.

MR WISE: So be it.

MR JUSTICE MUNBY: Moreover, the fact is that the order, which I am invited to make, does, I see, require the pathway plan to be completed by 10th May. I appreciate that is a month away. The third fact is this (and one does not want to put it in housing law terms, because everyone knows this is a leading care case and not a housing law case) your client did have accomodation which he has chosen to leave. I can understand why he may have thought it was inappropriate or undesirable, but he has chosen to leave that and he has not helped himself in the past.

I make very clear in the judgment that I made, and as you correctly say, serious strictures about the failings of the local authority. I did draw attention to the fact that your client had failed and indeed on numerous occasions refused to engage with those trying to help him at all. It is a simple fact, and, so far as I am aware, though better in Caerphilly than it would be in Tower Hamlets or Newham, Public Housing cannot simply be produced at the drop of a hat.

MR WISE: That is a a consequence of the failure to begin this process 18 months ago, as they should have done.

MR JUSTICE MUNBY: I appreciate that. I think, Mr Wise, what it comes to is for a variety of reasons I am not going to make that order now. It seems to me that your appropriate remedy is to make your complaints known to the local authority. If it be the case that your client is sleeping rough, then in those circumstances it cannot wait for the present plan in process to conclude on 10 May. He has his remedy and no doubt you can draw to the attention of the local authority the case of application for judicial review arising in those circumstances. Applicants often make applications for interim relief which on occasions the court grants. I am not indicating that is what the court will do here, but you do have your remedy.

MR WISE: We do, of course. We were merely seeking to avoid any necessity for fresh proceedings.

MR JUSTICE MUNBY: I know, Mr Wise, but the trouble is the Sirens' song of "Let us avoid fresh proceedings," which has many attractions, and not just the fact that the legal aid fund is saved the issue fee, can so quickly turn into what Newman J in the Hackney cases characterises as a process as simply supervising a public authority. I am afraid we are all familiar with the fact that in this kind of case, which generically, in a sense, is a community care case, or technically it is a leading care case, there is a particular danger of the court getting sucked into that process.

MR WISE: We understand that.

MR JUSTICE MUNBY: You can suddenly wake up, years down the line, discovering, as I have, to draw attention to the judgment I handed down yesterday, the costs of the litigation have reached £1 million. Mr Wise, although I understand why you are making the application, I am not prepared to make an order today.

MR WISE: In one sense we are merely expressing our disappointment that the local authority have not guarded themselves and taken more effective action than they have done. There we have it.

Can we turn then to the proposed order? This is, in substance, the same as the draft which was emailed to your Lordship towards the end of last week.

MR JUSTICE MUNBY: It is a declaration that the appointment was unlawful. There is an order there to appoint a personal adviser.

MR WISE: Your Lordship will see a date specified in number 3.

MR JUSTICE MUNBY: A declaration as to past failure to comply with the legisaltion by September 2003. The previous pathway plan is no good, yes. That all seems appropriate. That is agreed by the local authority?

MR WISE: It is.

MR JUSTICE MUNBY: Yes, very well.

MR WISE: At number 8 your Lordship will also see a date inserted there.

MR JUSTICE MUNBY: For 10th May? Yes.

MR WISE: Has your Lordship seen that it is signed on behalf of the local authority, but not by Mr Williams who unfortunately could not hold this?

MR JUSTICE MUNBY: Very well. Thank you very much, Mr Wise. I will make an order in those terms, which I would now hand down to the associate, together with copies for both the court file and the shorthand writer of the judgment. There are copies of the judgment in the final approved form available both for you, Mr Wise, and anybody else who wants it.

MR WISE: I am much obliged.

MR JUSTICE MUNBY: Thank you very much, indeed.