

High Court's severe criticism of a local authority's serious failures (YY (Children—Conduct of the Local Authority))

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Family analysis: The High Court found the local authority had 'utterly failed' the children in this case. The court laid bare, in excruciating detail, the failures which were admitted by the head of children services. In the context of a child that died while in care, the court also considered the legal framework as to a local authority's exercise of parental responsibility to consent to medical treatment for children in its care. Tahmina Rahman, barrister, at 1GC Family Law, examines the issues.

YY (Children: Conduct of the Local Authority) [\[2021\] EWHC 749 \(Fam\)](#)

What are the practical implications of this case?

It is rare to see such unflinching and stark condemnation of a local authority. In this case the careful dissection of the failures helps to identify the wider problems that are symptomatic in many local authorities, including a rigid mindset. The findings are detailed and set out in appendices to the judgment.

There was also a criticism of the 'spectacular' late disclosure of voluminous material into the hearing. This case makes clear that local authorities should have policies of disclosure of documents into hearings—if there are no policies (as in this case) that must be remedied without delay.

Two other helpful points were raised by the court on the issue of disclosure. First, it is completely wrong to ask social workers to consider what records and documents are disclosed into proceedings—they are not usually legally qualified and would not have the knowledge or experience to identify relevant material for disclosure. Secondly, the fact that in this case the solicitor for the local authority had not had access to 'mosaic' (where social work case recordings are stored) was 'bizarre' and 'plainly wrong'.

In the context of the death of one of the children in the case, the court reiterated the relevant law and determined that the profound life and death decision to consent to the withdrawal of life support ought to have been the subject of an application to the High Court either by the hospital or by the local authority. It was wrong and an inappropriate use of its powers under [section 33](#) of the Children Act 1989 for the local authority to have exercised its powers to consent to the withdrawal of the child's life support. This was not withstanding the fact that both parents agreed to the withdrawal of life support—the court considered on the facts of this case neither parent was able to give informed consent. Notably, since this case, the local authority has a policy in place reflecting the correct legal principles as identified by the court.

What was the background?

The case concerned siblings aged 17, 13 and 11. They also had a sister who sadly died in June 2019 when aged 14. The four siblings had been made subject to care orders in January 2014 with a plan that they remain in foster care. The applications before the High Court were the mother's application for contact, the local authority's application to discharge the care orders (the local

authority inviting the court to make the children's foster carers their special guardians) and an application to change the children's surnames. The mother and the older two children, who were separately represented, sought findings against the local authority in respect of alleged actions and failings. The foster carers were joined as interveners and mother sought additional findings against them in respect of alleged failings.

What did the court decide?

There were ultimately several concessions made as to the findings and in respect of the applications before the court, such that the issues to be ultimately determined by the court were narrow. The parties were agreed the children should remain, at least for the foreseeable future, subject to care orders.

However, in the context of the above applications, the court found that the children had been 'utterly failed' by this local authority. This compounded the emotional and psychological harm suffered by them. The court found that this was a local authority that ignored and challenged the advice of a 'hugely experienced' child psychiatrist and 'treated with contempt the clarion call of a senior family judge' when she (at a previous hearing) invited the local authority to change its approach.

The court in particular criticised the 'utterly contemptuous response' of the assistant director of children services. The starkest illustration of the failings is perhaps when the judge declared that:

'[...]in the whole of my professional life I have rarely encountered such egregious and longstanding failures of a local authority. They did not have the best interests of the children at the heart of its decision making...they had failed these children in an extraordinary manner over a prolonged period of time'

Ultimately the seriousness of the failings was acknowledged by the local authority and the court received a letter of apology signed by its chief executive and two of the deputy chief executives. The local authority also made it clear that both an internal and an independent external review would be commissioned.

Case details:

- Court: Family Court
- Judge: Mr Justice Keehan
- Date of judgment: 28 March 2021

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