Key developments in Community Care Law

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The Green Paper on Social Care

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Williams v Hackney London BC

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- when a parent will be treated as having **voluntarily delegated** their parental responsibility to a local authority under section 20;
- when a parent's **request for the return** of their children renders continued section 20 accommodation unlawful; and
- the **risks of keeping children** in accommodation under section 20 for a long period of time.

Williams v Hackney London BC

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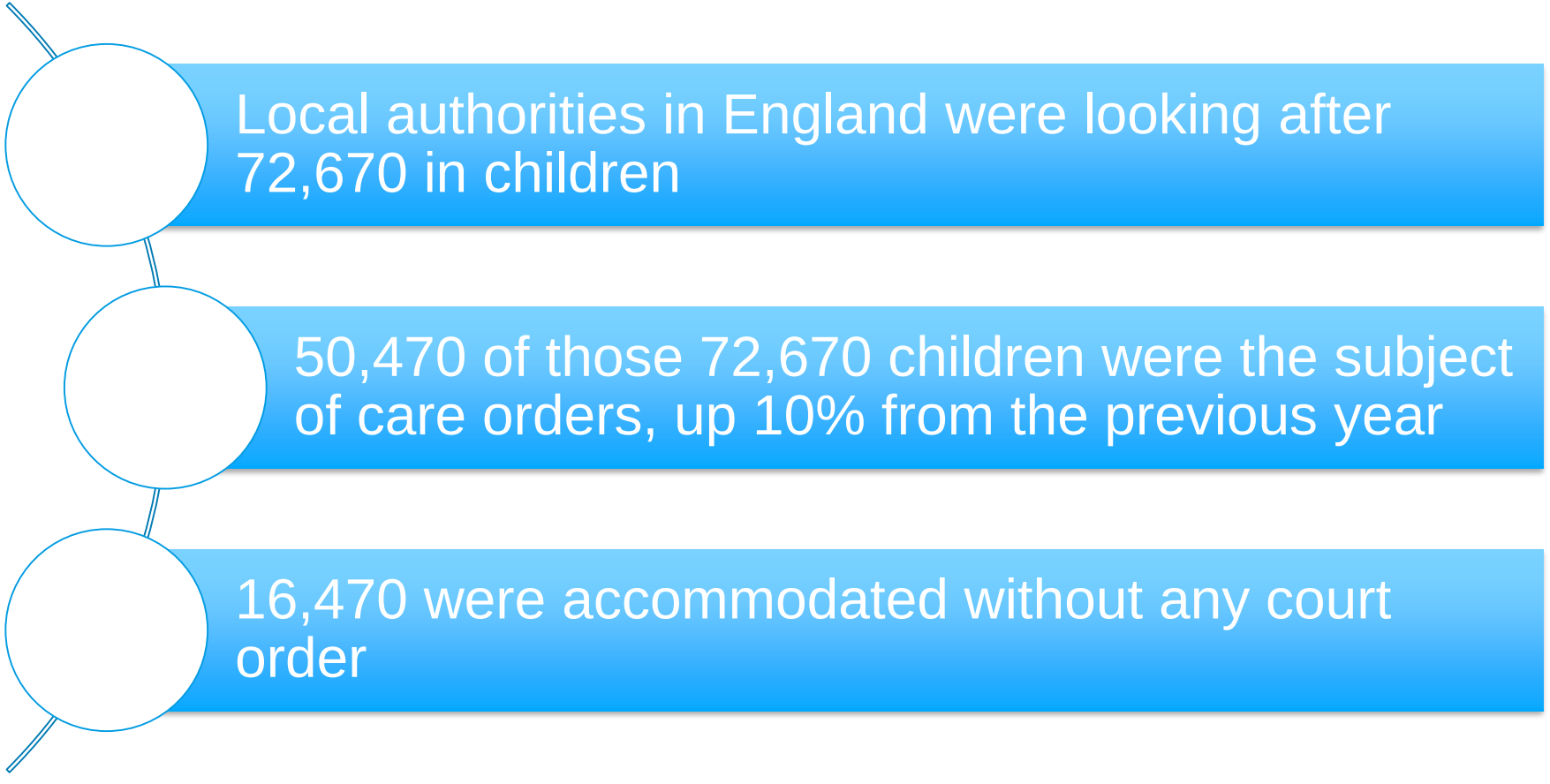


The Facts

- Parents of eight children aged 14, 12, 11, 9, 7, 5, 2 and 8 months.
- 12-year-old son was caught shop-lifting.
- home was unhygienic and dangerous state unfit for habitation by children.
- Parents were both interviewed by the police and prohibited from having unsupervised contact.
- They then went to the LA and were asked to sign a “Safeguarding Agreement”.

The Safeguarding Agreement

- It did not explain its potential relevance in any legal proceedings and the circumstances in which these might be brought.
- Parents were not informed of their right to object to the children's continued accommodation under section 20(7) or of their right to remove the children at any time under section 20(8).

High Court Judgment:

- In July 2015 court dismissed the claims for negligence, misfeasance in public office and religious discrimination.
- But he upheld the claim for breach of the parents' Article 8 Convention rights on the ground that the Council's interference in the family life of the parents and their children was not "in accordance with the law"
- No lawful basis for the accommodation of the children.
- He awarded each of the parents £10,000 damages

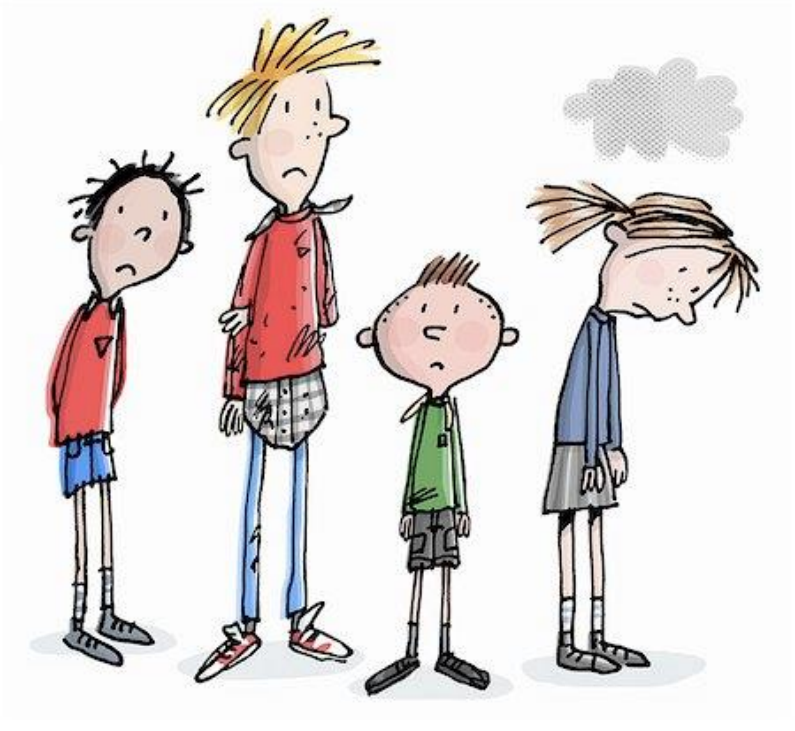
Examples in the Judgment

- *Re H (A Child: Breach of Convention Rights: Damages)* [2014] EWFC 38 (29 October 2014).
- *Northamptonshire County Council v S* [2015] EWHC 199 (Fam),
- *Re AS, London Borough of Brent v MS, RS and AS* [2015] EWFC B150, 7 August 2015

Six Principles

1. **Parental responsibility** encompasses all the rights of a parent. Including the right to look after and bring up one's own children.
2. If a parent does agree it must be **real and voluntary** (not not necessarily "fully informed").
3. Distinction between removing a child and **stepping into the breach**.
4. Parents **may ask the local authority** to accommodate a child, as part of the services they provide for children in need.

5. LA cannot accommodate if a parent is willing and able objects (s.20(7)).
6. A parent may remove the child from accommodation at any time. There is no need to give notice, in writing or otherwise (s.20(8)).



R (VI) v Lewisham LBC

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The facts:

- 55 year old woman with muscular dystrophy
- Dependent on carers for all personal care
- Challenged an assessment which confirmed a reduction of funding for her care package from 104 to 40 hours per week
- Sleep in carer ceased

R (VI) v Lewisham LBC

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Grounds:

- Irrationality/reasons
- Care Act 2014, ss 1(2), 9(4) and 1(3)
- Failure to assess against eligibility outcomes
- Failure to co-operate with other services

R (VI) Lewisham LBC

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- Claim failed
  - Reduction in provision not irrational
  - No breach of the Care Act 2014
  - On the facts, the Council did adequately assess against the eligibility outcomes
  - There was no failure to co-operate with other services

Royal Mencap Soc v Tomlinson-Blake

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- Court of Appeal considered two appeals from the EAT concerning the pay of “sleep in carers”.

- Where worker is contractually obliged to spend the night at or near their workplace and are expected to sleep for all or most of the period but may be woken if required.

- The practice of paying night-carers had been to pay them a flat rate such as £30 or £40 for their time spent asleep.

In April 2017 the Employment Appeal Tribunal handed down judgment in *Royal Mencap Society v Tomlinson-Blake*.

The EAT held the minimum wage did apply for all the time sleep-in carers were required to be on the premises.

HM Revenue and Customs issued guidance and commenced a scheme, the Social Care Compliance Scheme, to ensure the payment of back pay.

The Court of Appeal judgment – assuming it survives any future appeal – now means that care providers have no liability for back pay.

Lord Justice Underhill held that:

"… sleepers-in… are to be characterised for the purpose of the regulations as available for work… rather than actually working… and so fall within the terms of the sleep-in exception. The result is that the only time that counts for national minimum wage purposes is time when the worker is required to be awake for the purposes of working."

LG Ombudsman Reports

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- LGSCO Complaint No 16 015 946 Wiltshire Council
  - Disabled adult with complex needs (severe learning difficulties and epilepsy)
  - Significant cut to respite provision and transport to weekday care placement
  - LGSCO found that the Council's policies (both the Matrix Assessment Model (MAT) to calculate the award of respite and the policy on transport to day care) to be contrary to the Care Act 2014 as they would result in unmet needs