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# Case alert: High Court rejects BMA's challenge to local safeguarding partnership's arrangements under the Children Act 2004

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The High Court's recent decision, in *R (British Medical Association) v Northamptonshire County Council & Others* [2020] EWHC 1664 (Admin), is the first case to consider the new statutory regime for the safeguarding of children in local authority areas under sections 16E-16L Children Act 2004 (the "**2004 Act**").

The British Medical Association ("**BMA**") contended that the Northamptonshire Local Safeguarding Arrangements Plan 2019-21 (the "**Plan**"), published by the Northamptonshire County Council, Chief Constable of the Northamptonshire Police, and the Nene and Corby (now Northamptonshire) CCGs (the "**Safeguarding Partnership**"), should include provision and a budget for how GPs were to be remunerated for compiling safeguarding reports and attending safeguarding conferences ("**safeguarding information**"). The High Court rejected the BMA's challenge. DAC Beachcroft's Alistair Robertson and David Mahon successfully defended the defendant CCGs on all three of the BMA's grounds of review, arguing it was not the role of the Safeguarding Partnership to budget for and meet GPs' costs in preparing safeguarding information.

## The challenge

The BMA unsuccessfully argued that failing to make provision for GPs' remunerated in the Plan was:

1. Unlawful because it did not specify what sum the Safeguarding Partners had budgeted to meet the costs of obtaining GP safeguarding information, in breach of the Secretary of State's *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children* (the "**2018** Guidance") (made under section 16K of the 2004 Act).

2. Formulated without regard to a relevant consideration/or was irrational, namely the way in which the cost of obtaining GP safeguarding information would be met.

3. Failed to discharge the Safeguarding Partnership's obligation under s 11(2) of the 2004 Act to have "*regard the need to safeguard and promote the welfare of children*".

Ultimately all three grounds were found to largely be restatements of the first.

## The decision

In rejecting all three grounds of review the Court held that there is a distinction between the functions to make safeguarding arrangements between the partners (the Plan) which are high level and strategic in nature and detailed in the 2004 Act, and other functions, powers and duties to take specific action to safeguard a child or children, or to promote their welfare (the day-to-day exercise of safeguarding in practice), which are detailed elsewhere. Illustrating this distinction the Court said "*to the extent a local authority, a CCG, or a police force might seek to make arrangements with GPs to obtain information about a particular child, that is not done in exercise of the functions conferred by* [the 2004 Act]*, but in exercise of duties and powers arising elsewhere*". In challenging the Safeguarding Partners the BMA failed to appreciate this distinction.

Taking each of the BMA's arguments in turn the Court held:

1. The BMA's expansive reading of the 2004 Act as placing obligations on the Safeguarding Partners to make arrangements for and to fund all safeguarding matter was wrong, saying that "[s]*ection 16E of the 2004 Act and the provisions that follow… concern the arraignments that ensure safeguarding partners work together. No less, but no more.*" There could be no finding that it was unlawful for the Safeguarding Partners not to have included a budget, or provision to pay GPs for safeguarding information as such matters related to day-today safeguarding which did not form part of the partnership's obligations. The 2018 Guidance, similarly, could not impose such a new duty as statutory guidance is limited by the duties set out in its primary legislation.

2. The Court found that the second ground of review largely collapsed into the first. The Court again rejected the BMA's expansive interpretation that the Safeguarding Partners obligations extended to all functions exercised in connection with

safeguarding of children. The Safeguarding Partnerships is to make arrangements to work together; it is not to take up the mantel of a centralised agency which deals with all safeguarding matters in a local area.

3. The BMA's argument that section 11(2) of the 2004 Act imposed a standalone duty on the Safeguarding Partners was

dismissed for two reasons. First, because, as with the first two grounds, it is not the Safeguarding Partnership's role to be involved in day-to-day matters of paying GPs for safeguarding information. Second, because section 11(2) of the 2004 Act imposes a broad "*have regard to*" obligation to ensure public authorities' functions are "*discharged having regard to the need to safeguard and promote the welfare of children*". As is well-established, "*having regarding*" to a matter does not determine any specific outcome. For both reasons, because the Plan complied with the duties set out in section 16E-16L of the 2004 Act it "*showed no want of regard to the need to safeguard children and promote their welfare*", the very purpose of the Plan.

These are important findings by the court as they emphasises the Safeguarding Partners' understanding that the partnership is to make high level arrangements and determine strategic objectives and learnings from serious case reviews, but that day-to-day safeguarding work is to be carried out by other local authorities, including the partners individually, in accordance with those separate obligations. Any other outcome would have seriously shaken up the roles played by safeguarding partnerships across the country.

Despite rejecting the BMA's challenge the Court went on to make some potentially important obiter statements about the role of GPs in child safeguarding. The Court commented that although there was no obligation on the Safeguarding Partners to include in the Plan provision to pay GPs for safeguarding information, there was equally no statutory obligation on GPs to provide that information, or provide it free of charge. The Safeguarding Partners had argued (in the alternative) that GPs were required under section 16H of the 2004 Act to provide safeguarding information to the Local Council upon request. For the same reason the Court rejected the BMA's arguments, it too rejected this argument. Obtaining safeguarding information for individual cases is about the day-to-day operation of safeguarding, therefore section 16H can only relate to information assisting the partnership with its functions, not assisting any one of the partners with their distinct and individual obligations to safeguard children. The Court went on to comment that safeguarding services are also not covered by the NHS Contract with GPs, nor is there a clear obligation under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 for GPs to do so.

Ultimately the Court left open GPs' ability to claim remuneration for safeguarding information, saying, however, that this would be a matter of private and not public law. Permission to appeal was denied on this basis.

The judgment can be found here.

## Authors

**David Mahon**
*London - Walbrook*
+44 (0)20 7894 6797
dmahon@dacbeachcroft.com