

Safeguarding the young from radicalisation (A Local Authority v Y)

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Local Government analysis: What guidance has the court issued with regards to local authorities safeguarding children and young persons from being drawn into terrorist activity? Chris Stevenson, barrister at Fourteen, looks at a recent judgment concerning young and vulnerable people at risk of radicalisation.

Original news

A Local Authority v Y [[2017 EWHC 968 \(Fam\)](#)], [[2017 All ER \(D\) 146 \(Apr\)](#)]

The Family Division approved the applicant local authority's (LA) proposed bespoke package addressing the needs of a 17-year-old, Y, after he turned 18 and was no longer a ward of the court. Y had been made a ward of the court after a number of his family members had flown to Syria to fight for an affiliate group of Al Qa'ida.

What issues did the case raise?

The case concerned Y, aged 17, who had previously been made a ward of court by Hayden J as part of 'light touch' intervention to assist in preventing him from travelling to Syria to join so-called Islamic State. The male members of Y's family are described as all being committed to waging jihad in Syria and Y's two brothers—as well as a family friend—died there, fighting for Jabhat Fateh al-Sham, an affiliate of Al Qa'eda, in the civil war. Y's third brother was injured in battle but remained in Syria and resumed fighting in the war. Since being made a ward of court, Y had remained in the UK and remained safe. His status as a ward of the court had, according to the LA in this case, enabled it to persuade a number of agencies to treat requests for services for Y as a priority as well as preventing him from travelling to Syria.

However, the wardship would cease to have effect upon Y's 18th birthday, as would his status as being a 'child in need'. Anxious that, despite his chronological age, Y would continue to be a vulnerable young person, Hayden J questioned what obligations fall upon the LA when wardship falls away and how a young adult in Y's position could continue to be supported and prevented from being radicalised and drawn into terrorist activity.

In this case, the LA put together a bespoke service for Y, broadly similar to what he would have been legally entitled to as a care leaver (he had never been accommodated during the involvement of social services), which would last until he is 21 years old or potentially longer, if he were to enter into further education. Y would, however, need to engage consistently and agree to 'information sharing' for this to happen. The service proposed by the LA included a pathway plan, which would be reviewed every six months, and his current social worker will be appointed as his personal adviser in order to provide consistency and avoid Y being required to work with a number of different professionals, which he sometimes finds overwhelming. It was noted that, unlike a care leaver when a care order expires, Y would not automatically have been entitled to such a package.

Pursuant to section 26(2) of and Schedule VI to the [Counter-Terrorism and Security Act 2015 \(CTSA 2015\)](#), LAs are placed under a general duty to have due regard to the need to prevent people from being drawn into terrorism. Paragraph 67 of the [Prevent duty guidance](#) requires LAs to assess the risk to children of being drawn into terrorism, however participation is voluntary and, in the case of children, requires parental consent (see the [Channel duty guidance](#)).

The court records that young adults are entitled to support arising from:

The provisions of the [Care Act 2014 \(CA 2014\)](#)

There are, however, limitations to statutory support that is available, when the young adult is a person such as Y. Although the duty to consider providing support under [CA 2014](#) is not negated by a lack of engagement—or false engagement—the need for care and support must arise from a physical or mental impairment or illness. In the case of an adult at risk of being radicalised, that may not apply. Therefore, Y would not be deemed to be 'eligible' for support, according to [CA 2014, s 18](#).

[CA 2014, s 19](#) establishes a basis on which Y's needs may be addressed even though he does not meet the 'eligibility criteria', but an adult with capacity to make the relevant decisions is able to refuse an assessment and/or services. [CA](#)

[2014](#) provides a framework for taking preventative measures and a safeguarding enquiry could be used, which permits information being shared between relevant professionals. This enables professionals to assess the risk of harm and to be confident that the adult is not being unduly influenced, coerced or intimidated and is aware of all the options. The aim is to promote the adult's autonomy and allows professionals to ensure that safe and valid decisions are being made.

Capacity

While not directly relevant in this case, Hayden J notes that it is possible for adults to be protected under the [Mental Capacity Act 2005](#) and he does not exclude the possibility that, living in a radicalised household, children and young adults may have their will overborne to such a degree that their capacity to make decisions about their own safety becomes distorted. In any event, even if the adult has capacity, the High Court retains its inherent jurisdiction to protect vulnerable adults (see, for example, *Re SA (Vulnerable Adult with Capacity: Marriage)* [\[2005\] EWHC 2942 \(Fam\)](#) and *DL v A Local Authority* [\[2012\] EWCA Civ 253](#)).

Entitlement to an education care health plan pursuant to the [Children and Families Act 2014](#)

Here, Y would, at the age of 18, be entitled to a degree of support if he is not in education, employment or training—however, when he attains the age of 19, that entitlement may arise only if the young adult has a statement of special educational needs. The efficacy of the support offered is also contingent on the young adult's engagement.

Duties to young people in need of employment or training

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Probation

In Y's case, his youth rehabilitation order is due to terminate five months after his 18th birthday, and so the oversight from probation would cease at that stage, unless there were to be a further conviction.

Acceptance as a 'channel' subject

[CTSA 2015, ss 36–41](#) confer a duty on LAs and partners of local panels to support those who are vulnerable to being drawn into terrorism. This is a key part of the 'prevent' strategy. There may, however, be an overlap between the duties and support arising from this legislative scheme and the broader safeguarding duty of other agencies. As with other sources of support, the provision of support measures is dependent on consent and, in the case of a child, parental or guardian's consent. [CTSA 2015, s 36](#) does, however, provide for further assessments of a person's vulnerability to being drawn into terrorism where consent is refused or withdrawn. Nonetheless, while there is clearly potential for the channel project to be effective, even in the absence of consent, disengagement is a key issue that is likely to hinder the effectiveness of the support available.

To what extent is the judgment helpful in clarifying the law in this area?

The case clearly identifies the disparity between the provision of support—and entitlement to support—for those who attain the age of 18 and were previously children in care, and those who were wards of court. In this case, Hayden J records very clearly the various means available to LAs and other public bodies to support young adults who are vulnerable to radicalisation and being drawn into terrorism. There is a very helpful summary and exposition of the key statutory frameworks, which merit close reading.

To what extent does this judgment give assistance to local authorities dealing with cases of radicalised children reaching adulthood?

The judgment is a real 'go-to' authority for those seeking a comprehensive overview of the legal framework surrounding support for children who are, or who are at risk of being, radicalised when they reach adulthood. It highlights the strengths and weaknesses in that framework but, above all, emphasises the need for LAs to avoid falling into the trap of adopting a 'one size fits all' approach. Authorities that fail to be flexible and are not prepared to step outside the usual offerings of support and assessment will no doubt attract significant—and probably publicised—criticism from High Court judges.

What are the implications for practitioners? What will they need to be mindful of when advising in this area?

The first issue to be considered appears to be the legal framework under which the State intervenes in the life of a child who has been—or is at risk of being—radicalised. Bearing in mind what can be provided to care leavers as opposed to wards of court, judges, LAs and, indeed, all parties to proceedings should consider at the outset of the proceedings whether the institution of proceedings under [section 31](#) of the Children Act 1989 or wardship proceedings is a more appropriate course to take.

Wardship is by no means a paradigm approach. The focus should be on the young person's vulnerabilities as they progress into adulthood and what services can be provided during that transition and beyond. A bespoke approach is required. LAs will need to consider very carefully their responsibilities towards young, vulnerable adults in this area of law and will no doubt face pressure to formulate a bespoke package of support if that would not ordinarily be forthcoming from the legal status of the young person as they attain their majority. As Hayden J states at the end of his judgment, 'every child is different and every radicalised child is different'.

Are there still any unresolved issues practitioners will need to watch out for? If so, how can they avoid any possible pitfalls?

The key is to maintain a flexible approach in what is an evolving and challenging area of family law. The statutory framework for assessment and support is wide-ranging, but there are plenty of circumstances under which young people may find themselves without it. Where services are dependent on consent and cooperation, in radicalisation cases this can prove to be particularly problematic in ensuring that appropriate assessments and services are provided to safeguard vulnerable young adults. In the absence of statutory reform, LAs will need to continue to be flexible and prepared to formulate bespoke support packages for young adults, otherwise they will be left exposed to the grave risk of radicalisation and/or being drawn into terrorist activity.

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