Neutral Citation Number: [2022] EWCA Civ 1047

Case No: CA-2022-000005

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
Lang J
[2021] EWHC 3368 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 July 2022

Before :

LORD JUSTICE BAKER
LADY JUSTICE NICOLA DAVIES
and
LORD JUSTICE PHILLIPS

- -

Between :

The QUEEN on the application of (1) BG (by his mother and litigation friend SQ) and (2) KG (by his mother and litigation friend SQ)	**Claimants/ Respondents**
- and -	
Suffolk County Council	**Defendant/ Appellant**

- -
- -

Andrew Sharland QC and Lee Parkhill (instructed by **Suffolk County Council Legal Services**) for the **Appellant**
David Wolfe QC and Catherine Rowlands (instructed by **Bindmans LLP**) for the **Respondents**

Hearing dates : 16 June 2022

- -

Approved Judgment

Lady Justice Nicola Davies :

1. This is an appeal arising from the order of Lang J dated 14 December 2021 in which she allowed the claim for judicial review brought by BG and KG by their mother and litigation friend SQ. Lang J quashed the appellant's decision of 3 March 2020 which determined that the appellant would no longer fund the family holidays of BG and KG upon the basis that the appellant council was no longer including holiday travel and accommodation costs in personal budgets. In her order, Lang J declared that the appellant has the power, as a matter of law, to provide financial support for recreational activity and holidays under section 18 of the Care Act 2014 ("CA 2014"). It was further ordered that the appellant by no later than 31 January 2022 was to prepare a fresh assessment of each of the respondent's needs having regard to the terms of the court's judgment including the fact that it has the power to provide financial support for the BG and KG to access recreation activities and holidays.

The facts

2. The respondents are two brothers who are disabled adults acting by their mother and litigation friend SQ. The appellant is the local authority with responsibility for the social care needs of the respondents and the needs of their main carer, SQ, under the CA 2014.

3. BG, born on 10 April 1985, and KG, born on 10 October 1983, have diagnoses of autism and a learning disability. Each suffers from epilepsy and anxiety. BG suffers seizures and incontinence and requires support with eating, washing and toileting. KG has significant sensory needs, he suffers from fibromyalgia which results in pain and on occasion a need for a wheelchair. He is incontinent at night and needs support with all aspects of daily living. The respondents are prescribed extensive medication. They are in receipt of benefits, personal independence payments, employment and support allowance.

4. SQ is the main carer for her sons, she cares for them 24 hours a day including night-time attendance. The respondents' stepfather and two family members provide additional support. SQ and her husband are in receipt of carer's allowance.

5. BG and KG had previously attended a day centre where they experienced abuse. As a result, they find it almost impossible to trust anyone outside the family, they cannot attend day centres and will not tolerate external carers in the home.

6. From 2011 onwards, BG and KG each received a care package that involved direct payments from the appellant which ranged between £108 and £150 a week. The assessment of their needs included access to the community by way of family outings and activities and family holidays. The appellant approved the use of direct payments to meet these needs. From 2013 they also received a respite budget.

7. In 2014, the respondents were each given an annual yearly payment of £3,000 as a "respite budget" to allow them to go on supported holidays and planned trips away. This sum was in each of the respondent's care plans from 2015. The money was used to finance trips and holidays which Lang J found had a beneficial impact on their mental health and which supported SQ as the primary carer. The monies funded family holidays in Florida in 2015, 2017 and 2018 which BG and KG enjoyed.

8. In a letter to the appellant dated 19 July 2019, Community Nurse Thomas confirmed that both BG and KG were dependent on their family for support and could not trust outsiders, identifying past difficulties which each had experienced with previous placements and carers. Nurse Thomas explained that conventional respite care with carers coming into the home or the respondents spending time away from home in respite settings was not an option because of the respondents' condition. She stated:

> "As neither [BG] or [KG] can have a break at this time without [SQ] they need to go away, on what to others is perceived as a holiday, for [SQ] it is a change of ordinary life, a chance for some of the chores and tasks she does at home to be taken away or shared with her husband. Meals are out so no cooking, no washing up and having to plan the different meals that are needed. …
>
> The need to be away from the local area is considerable due to the issues with others comments and behaviours towards them all…
>
> All the breaks away have had a long-term positive effect and meant [SQ] has been able to continue again with her caring role….
>
> The respite "holiday" has therefore a therapeutic value in terms of allowing all to feel less distress, to use it as a positive reinforcement to help with the need to change the negativity that has been present throughout their life as positive."

9. On 18 October 2019 a draft support plan was prepared for BG. It recommended a reduced direct payment of £108 per week, no one-off respite payment was recommended. The plan stated that respite was "to be discussed". Within the draft plan it was noted that BG enjoys nature activities such as walking, wildlife and picture taking outside of the local area. He enjoyed visiting historical places of interest such as castles, bird sanctuaries and National Trust places. It also noted that, due to BG's negative experience at the day centre and his anxiety, he needed someone with him in order to access the community. He was no longer able to access cafes where he had previously relaxed and met people.

10. On 18 October 2019 the appellant completed Care Act Eligibility Assessments for KG and BG applying the eligibility criteria set out in regulation 2 of the Care Support (Eligibility) Criteria Regulations 2015 ("the 2015 Regulations"). Eight of the specified outcomes set out in Regulation 2(2)(a) – (i) of the 2015 Regulations were not met and each was assessed as representing an eligible need. Of note is the fact that neither holidays nor recreational activities were assessed as "eligible needs", a departure from previous assessments. Within each assessment it was noted that without SQ's support neither BG nor KG could access anything outside the home including medical appointments. It was stated that if either respondent did not receive full support from his mother there would be a significant impact on his well-being. SQ stated that the assessments were not sent to herself or to BG and KG until 22 November 2020.

11. On 3 March 2020 Sara Eden, a team manager employed by the appellant, wrote to SQ (but not to BG or KG) informing her of a "replacement care budget and how it can be used". The phrase was used by the appellant to describe non-residential care services, or a personal budget given to purchase non-residential care, intended to allow carer to take time to attend to their own needs away from the caring role. The letter stated:

> "Whilst I appreciate that historically, there has been a one off payment of £6,000 - £3,000 for [BG] and £3,000 for [KG] which has covered the cost of your family holiday to Florida, as referenced in the letter you received from Nicola Roper dated 19 April 2018, Suffolk County Council is no longer including holiday travel & accommodation cost in personal budgets. This is because, as part of a wider review of how direct payments are used throughout the country, it has been identified that paying customers' holiday costs (rather then meeting the cost of support that they need to achieve a holiday) is not a Care Act eligible need. The council can only use the Adult and Community Services (ACS) budget to meet the council's statutory functions.
>
> It is my view that whilst [KG] and [BG] may have eligible support needs under the Care Act when on holiday, for example support to make sure [BG/KG] wear outfits appropriate to the weather, it would appear that your are meeting these needs as the main carer of [BG] and [KG]; therefore there are no identified eligible, unmet needs under the Care Act that the Local Authority have a duty to meet through the provision of care and support. If that is not the case, do please let me know and I will arrange an assessment conversation with you to look into this further.
>
> If you wanted to look into short breaks for [BG] and [KG] where you, as main carer, will not be meeting their eligible needs for care and support, for example engaging a care agency to support them instead, Suffolk County Council would be responsible for funding such support.
>
> ….
>
> I have summarised the responsibility for funding around short breaks as follows.
>
> Please note that such costs **must be approved by Suffolk County Council** as part of [BG]/[KG]'s care and support plan in order to proceed further.

What Suffolk County Council are responsible for funding	What Suffolk County Council are not responsible for funding

Support costs for when BG and KG participate in activities in the community, for example to meet the cost of a carer supporting BG or KG to • Visit the local library or shops • Visit a leisure activity or attraction • Participate in a hobby or interest Admission cost of carer to accompany BG or KG to an activity with paid for entry where there is no carer free entry concession available and carer support is necessary to allow them to access the activity	"Universal costs" i.e those that are incurred by everyone regardless of whether they have a disability or long term health need, and are not linked to Care Act eligible needs such as: • The cost of food • The cost of accessing an activity, e.g. entrance ticket or admission cost of an attraction • The cost of participating in a hobby or interest (e.g. craft supplies or specialist equipment)

12. As at the date of the letter, the appellant did not have up-to-date assessments and care plans for BG or KG. In the letter, the appellant accepted that the way forward would be for reassessments of each respondent which would lead to the production of new care and support plans. Social workers met with KG and BG in August 2020, revised plans were sent to SQ in September 2020. A meeting took place between the social workers and the respondents in October 2020. The appellants undertook capacity assessments and concluded that both BG and KG had capacity to decide how their support needs should be met.

13. On 12 November 2020 Sara Eden wrote separate letters to BG and KG, the purpose of which was to confirm the outcome of the support planning process and to inform them that the appellant would be ending direct payments to them after 29 November 2020. The letters stated in identical terms:

> "I am writing this letter to confirm the outcome of the support planning process.
>
> You have met with Kelly and Leanne twice – first time was on Thursday 20th August 2020 and the second time was on Thursday 29th October 2020.
>
> You and your advocate, Kate Chapman, spoke with Kelly and Leanne about the things that you need help with, and Kelly and

> Leanne were able to confirm that you still have needs that mean you are entitled to support from the Council, if you want it.
>
> In their second visit, Kelly and Leanne spoke with you to make sure you are able to decide how you want your support needs to be met and to understand what choices are available to you.
>
> You told Kelly and Leanne that you wanted your family, mainly your mum [SQ], to support you day to day. When asked if you would like to explore other things, like activities in the community or being supported by someone outside the family, you said no.
>
> As you want your mum to support you, Kelly and Leanne have not been able to find any way in which providing funding for care and support would help meet the care needs that you have.
>
> This means that Suffolk County Council will be ending the Direct Payment.
>
> The Direct Payments Team have already paid up to 29th November 2020 – no further payments will be made after this date.
>
> …."

14. Care and support plans dated 27 November 2020 were prepared for each respondent. KG's plan, in summarising the current situation, included the following:

> "**Hobbies and interests**
>
> [KG] has written down with his brother on a A4 piece of paper a list of all the things/activities that he enjoys doing: Computers, going to the beach, Lego, railway, mechono, going out to meals, going out to reserves, Nintendo, holidays, keeping Parrots, going to the Zoo, going to the cinema, wildlife trips, scrap booking, automotor, sailing, photography, bird watching (everywhere), boat trips, going to a castle, going on a train, going to Norwich, going to Cambridge, bird watching Norfolk, making light sabers, going to London, going to Xmas fairs, Tower of London, Westminster Abbey, visiting staff in Sizewell and Minsmere café, Havergate island, art galleries, Orford Castle, Bempton weekend, Norfolk weekend, Florida holiday, space stuff, Norfolk wildlife trust, Norfolk owl trust, Scalthrope Moor, Pensthorpe, Lackfield Lakes, rain marshes, whale watching, art stuff, Minsmere House, Rainham marshes, some random things, aquariums, short breaks, train journeys."
>
> It noted the following:
>
> "**Being Met**

Developing or Maintaining Family or other Personal Relationships – Eligible Need

[KG] is able to have his relationships when he has built up his confidence and have (sic) become familiar with the person/place.
Due to anxiety building relationships can be challenging.

Unachieved

To be able to access the community with full support to build and maintain relationships – to resume going to cafes where I am
relaxed and can enjoy meeting people."

Being Met

Making use of necessary facilities or services in the local community including public transport and recreational facilities or services – Eligible Need

Due to [KG's] experience at The Bridge Project and negative reputation in the local community this causes anxiety – he needs
someone with him the whole time when out in the community. Without mum's support [KG] could not access anything outside the home, including medical appointments.

Unachieved

To continue receiving full support from mum to be able to go out
including cafes."

15. BG's plan, in summarising the current situation, contained the same paragraph for hobbies and interests as set out above. His plan further stated:

"**Being Met**

Developing or Maintaining Family or other Personal Relationships – Eligible Need

Due to [BG's] mental health (anxiety) this is challenging. [BG] states that he has lost his socialisation as he can no longer access
the cafes in which he made these relationships.

In progress

[BG]'s wish is to return going to cafes where he is relaxed and enjoys meeting people. To be able to access the community

> with
> full support to build and maintain relationships.
>
> **Being Met**
>
> **Making use of necessary facilities or services in the local community including public transport and recreational facilities or services – Eligible Need**
>
> Due to [BG's] negative experience at The Bridge Project and his
> anxiety, he needs someone with him when he accesses the community. Without mum's support [BG] could not access anything outside the home, including medical appointments.
>
> **Unachieved**
> [BG] To continue receiving full support from mum to be able to
> go out including cafes."

16. On 10 February 2021 KG and BG issued proceedings to challenge the appellant's decision dated 12 November 2020 that they have no care needs which could lawfully be met.

17. On 22 September 2021 KG's draft care and support plan was prepared but not completed. As to the activities enjoyed by KG, a repeat of the summary in the 2020 care and support plan was included. KG stated that some of his favourite activities included visiting bird sanctuaries and walking around nature reserves. He stated that his family no longer visit these places as they cannot afford the entry and travel costs. He said he would like to do the things that they had previously done, for example, holidays, bird watching and visiting the places which they talked about. He said that now "we just sit in a lot of the time". The plan for his eligible needs was similar to the 2020 plan save that the steps to take were "to be discussed".

18. KG's draft Care Act Eligibility Assessment dated 12 October 2021 considered, among other matters, the outcome described in regulation 2(2)(g) of the 2015 Regulations and included the following:

> "**Making use of necessary facilities or services in the local community including public transport and recreational facilities or services**
>
> Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? .... Is unable to achieve it without assistance.
>
> [He scored at the top of the scale, meaning that he wants to be part of his community and regularly needs a lot of support to do this (e.g. daily or several times each day).]

> What you able to achieve in this area? When in a familiar café or similar setting, [KG] feels he is able to speak with staff and order his food/drink.
>
> What are the worries and concerns? Due to [KG's] experience at
> The Bridge Project and negative reputation in the local community this causes anxiety – he needs someone with him the
> whole time when out in the community. Without mum's support
> [KG] could not access anything outside the home including medical appointments.
>
> What would you like to achieve to maintain your well-being? [KG] would like support from Mum to make use of necessary facilities or services in the local community including recreational facilities or services."

19. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations the assessment found that, as a consequence of KG's needs and his inability to achieve two or more outcomes, there was or was likely to be a significant impact on his well-being in respect of all the aspects of well-being set out in section 1(2) CA 2014. It was described as being "if [KG] did not receive full support from his mother there would be a significant impact on his well-being".

20. BG's draft care and support plan dated 22 September 2021 was prepared but not completed. As to hobbies and interests it replicated the summary in the 2020 care and support plan and the eligible needs identified were also very similar save the steps to be taken were "to be discussed".

21. In BG's draft Care Act Eligibility Assessment dated 11 October 2021 the appellant also considered the 2015 Regulations. The assessment of the outcome contained in regulation 2(2)(i) of the 2015 Regulations stated:

> "**Making use of necessary facilities or services in the local community including public transport and recreational facilities or services**
>
> Is the adult able to get around in the community safely and able to use facilities such as public transport, shops and recreational facilities? .... Is unable to achieve it without assistance.
>
> [He scored second from the top on the scale, meaning that he frequently needs support to be part of his local community (e.g. several times each week)]
>
> What you able to achieve in this area? Due to [BG's] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community.

> What are the worries and concerns? Due to [BG's] negative experience at The Bridge Project and anxiety he needs someone with him when he accesses the community. Without mum's support [BG] could not access anything outside the home including medical appointments. [BG] doesn't like to go through
> Sudbury town centre due to past experiences.
>
> What would you like to achieve to maintain your well-being? For
> [BG] to access the community with support from his mum."

22. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations the assessment found that as a consequence of BG's needs and his inability to achieve two or more outcomes, there was or was likely to be a significant impact on his well-being in respect of all aspects of well-being set out in 1(2) CA 2014.

23. The appellant undertook carers' assessments of SQ and her husband AQ in September 2020. It identified, in respect of each, unmet eligible needs. SQ and AQ informed the appellant that they wished to use any payments made for the purpose of financing a break away from home with the respondents. On 9 September 2021 Sara Eden notified SQ and AQ that she had approved a budget of £750 per person per annum.

Legal framework

24. The Care Act 2014:

> "**1 Promoting individual well-being**
>
> (1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being.
>
> (2) *"Well-being"* , in relation to an individual, means that individual's well-being so far as relating to any of the following —
>
> (a) personal dignity (including treatment of the individual with respect)
>
> (b) physical and mental health and emotional well-being;
>
> (c) protection from abuse and neglect;
>
> (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
>
> (e) participation in work, education, training or recreation;
>
> (f) social and economic well-being;

(g) domestic, family and personal relationships;

(h) suitability of living accommodation;

(i) the individual's contribution to society.

(3) In exercising a function under this Part in the case of an individual, a local authority must have regard to the following matters in particular—

(a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being;

(b) the individual's views, wishes, feelings and beliefs;

(c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist;

(d) the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behaviour which might lead others to make unjustified assumptions about the individual's well-being);

(e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;

(f) the importance of achieving a balance between the individual's well-being and that of any friends or relatives who are involved in caring for the individual;

(g) the need to protect people from abuse and neglect;

(h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

...

8 How to meet needs

(1) The following are examples of what may be provided to meet needs under sections 18 to 20 —

(a) accommodation in a care home or in premises of some other type;

(b) care and support at home or in the community;

(c) counselling and other types of social work;

(d) goods and facilities;

(e) information, advice and advocacy.

(2) The following are examples of the ways in which a local authority may meet needs under sections 18 to 20—

(a) by arranging for a person other than it to provide a service;

(b) by itself providing a service;

(c) by making direct payments.

…

9 Assessment of an adult's needs for care and support

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

(a) whether the adult does have needs for care and support, and

(b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a *"needs assessment"* .

(3) The duty to carry out a needs assessment applies regardless of the authority's view of—

(a) the level of the adult's needs for care and support, or

(b) the level of the adult's financial resources.

(4) A needs assessment must include an assessment of—

(a) the impact of the adult's needs for care and support on the matters specified in section 1(2),

(b) the outcomes that the adult wishes to achieve in day-to-day life, and

(c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.

(5) A local authority, in carrying out a needs assessment, must involve—

(a) the adult,

(b) any carer that the adult has, and

(c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.

(6) When carrying out a needs assessment, a local authority must also consider—

(a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and

(b) whether the adult would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community.

(7) This section is subject to section 11(1) to (4) (refusal by adult of assessment).

18 Duty to meet needs for care and support

(1) A local authority, having made a determination under section 13(1), must meet the adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence,[and][1]

(b) the adult's accrued costs do not exceed the cap on care costs, and

(c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.

(2) Condition 1 is met if the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are at or below the financial limit.

(3) Condition 2 is met if—

(a) the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are above the financial limit, but

(b) the adult nonetheless asks the authority to meet the adult's needs.

(4) Condition 3 is met if—

(a) the adult lacks capacity to arrange for the provision of care and support, but

(b) there is no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

(5) A local authority, having made a determination under section 13(1), must meet the adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and

(b) the adult's accrued costs exceed the cap on care costs.

(6) The reference in subsection (1) to there being no charge under section 14 for meeting an adult's needs for care and support is a reference to there being no such charge because—

(a) the authority is prohibited by regulations under section 14 from making such a charge, or

(b) the authority is entitled to make such a charge but decides not to do so.

(7) The duties under subsections (1) and (5) do not apply to such of the adult's needs as are being met by a carer.

19 Power to meet needs for care and support

(1) A local authority, having carried out a needs assessment and (if required to do so) a financial assessment, may meet an adult's needs for care and support if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and

(b) the authority is satisfied that it is not required to meet the adult's needs under section 18.

(2) A local authority, having made a determination under section 13(1), may meet an adult's needs for care and support which meet the eligibility criteria if—

(a) the adult is ordinarily resident in the area of another local authority,

(b) there is no charge under section 14 for meeting the needs or, in so far as there is such a charge, condition 1, 2 or 3 in section 18 is met, and

(c) the authority has notified the other local authority of its intention to meet the needs.

(3) A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—

(a) carried out a needs assessment or a financial assessment, or

(b) made a determination under section 13(1).

(4) A local authority may meet an adult's needs under subsection (3) where, for example, the adult is terminally ill (within the meaning given in section 82(4) of the Welfare Reform Act 2012).

(5) The reference in subsection (2) to there being no charge under section 14 for meeting an adult's needs is to be construed in accordance with section 18(6)."

25. Care and Support (Eligibility Criteria) Regulations 2015:

"**2.— Needs which meet the eligibility criteria: adults who need care and support**

(1) An adult's needs meet the eligibility criteria if—

(a) the adult's needs arise from or are related to a physical or mental impairment or illness;

(b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and

(c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.

(2) The specified outcomes are—

(a) managing and maintaining nutrition;

(b) maintaining personal hygiene;

(c) managing toilet needs;

(d) being appropriately clothed;

(e) being able to make use of the adult's home safely;

(f) maintaining a habitable home environment;

(g) developing and maintaining family or other personal relationships;

(h) accessing and engaging in work, training, education or volunteering;

(i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and

(j) carrying out any caring responsibilities the adult has for a child.

(3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—

(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or

(d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

(4) Where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish accurately the adult's level of need.

The Care and Support Statutory Guidance ("the Statutory Guidance")

26. The Guidance was issued under section 78 CA 2014, it provides:

"**Promoting well-being**

....
1.1 The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life….
Underpinning all of these individual
'care and support functions' .... is the need to ensure that doing so focuses on the needs and goals of the person concerned.

1.2 Local authorities must promote well-being when carrying out
any of their care and support functions in respect of a person.

This may sometimes be referred to as 'the well-being principle',
because it is a guiding principle that puts well-being at the heart of care and support.

Promoting well-being

1.7 Promoting well-being involves actively seeking improvements in the aspects of well-being set out above when carrying out a care and support function in relation to an individual at any stage of the process ....Well-being covers an intentionally broad range of the aspects of a person's life and will
encompass a wide variety of specific considerations depending on the individual.

1.8 A local authority can promote a person's well-being in many
ways. How this happens will depend on the circumstances, including the person's needs, goals and wishes, and how these impact on their well-being. There is no set approach – a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the well-being of the individual.

1.9 The Act therefore signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs' (set out in sections 8 and 18-20 of the Act). This
is the core legal entitlement for adults to care and support...

1.10 The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into. The concept of meeting needs also recognises that modern care and support can be provided in any number of ways, with new models emerging all the time...

1.11 Whenever a local authority carries out any care and support
functions relating to an individual, it must act to promote well-being – and it should consider all of the aspects above in looking at how to meet a person's needs and support them to achieve their desired outcomes. However, in individual cases, it is likely that some aspects of well-being will be more relevant to
the person than others… Local authorities should adopt a flexible approach that allows for a focus on which aspects of

> well-being matter most to
> the individual concerned."

27. The purpose and nature of the section 9 CA 2014 assessment is dealt with in the Guidance as follows:

> "6.9 The purpose of an assessment is to identify the person's needs and how these impact on their well-being, and the outcomes
> that the person wishes to achieve in their day-to-day life....
>
> 6.10 An assessment must seek to establish the total extent of needs before the local authority considers the person's eligibility
> for care and support and what types of care and support can help
> to meet those needs. This must include looking at the impact of the adult's needs on their well-being and whether meeting these needs will help the adult achieve their desired outcomes...
> .....
> 6.15 During the assessment, local authorities must consider all of the adult's care and support needs, regardless of any support being provided by a carer. Where the adult has a carer, information on the care that they are providing can be captured during assessment, but it must not influence the eligibility determination...."

28. The breadth of the concept of "meeting needs" is as follows:

> "**What does it mean to 'meet needs'?**
>
> 10.10 'Meeting needs' is an important concept under the Act and
> moves away from the previous terminology of 'providing services'. This enables a greater variety of approaches in how needs can be met, developed through care and support planning……. The concept of 'meeting needs' is
> intended to be broader than a duty to provide or arrange a particular service. Because a person's needs are specific to them,
> there are many ways in which their needs can be met. The intention behind the legislation is to encourage this diversity, rather than point to a service or solution that may be neither what
> is best nor what the person wants. The purpose of the care and support planning process is to agree how a person's needs should
> be met, and therefore how the local authority will discharge its duty, or its power, to do so….

> 10.13 Needs may be met through types of care and support which
> are available universally, including those which are not directly provided by the local authority....”

Proceedings in the Administrative Court

29. In the Judicial Review Claim Form filed on 11 February 2021 the decision challenged was that of 12 November 2020, stated to be the “Decision by Defendant to reduce the Claimant’s care package to zero.” As to the remedies sought, included were: “a. An order that Defendant shall provide a revised care and support plan which includes provision for the Claimants to have recreation and a holiday as previously allowed for; b. A declaration that Defendant is in breach of its statutory duties …”

30. The grounds for seeking judicial review stated that the claimants “contend that the care plan is flawed and that the Defendant should be ordered to prepare a fresh care and support plan, which includes provision for family outings and holidays for the following reasons.” The reasons were the seven grounds upon which judicial review was sought namely:

    (i) Error of law, in ruling out holidays;

    (ii) Fettered discretion, in refusing to even consider holidays;

    (iii) Failure to make the requisite inquiries into the issue of holidays and recreation;

    (iv) Irrationality in abruptly ceasing to meet the cost of travel and so on as used to be the case;

    (v) Failure to consider exercising the powers under section 19;

    (vi) Failure to give reasons for the reduction of the personal budgets to zero;

    (vii) Failing to give reasons for the refusal to fund leisure and respite for the carers.

31. On 22 March 2021 Mostyn J granted the respondents permission to apply for judicial review on grounds 1 – 5 and 7. In its summary grounds of resistance the appellant submitted that the claim was out of time as the decisions under challenge were made on 3 March 2020. Mostyn J rejected that contention in these terms:

> “It is clear to me that the March 2020 decision was reissued, but
> in materially altered terms in November 2020, and that the latter
> decision should count as a new decision. Therefore the claim is
> not out of time. If I am wrong about that, time should be
> extended given the ongoing nature of the discussions and the
> clearly arguable points of law which these seriously impaired
> claimants should be entitled as a matter of justice to place

before
the court."

32. Lang J upheld the challenges on grounds 1, 2 and 5. Her judgment begins by stating that "the Claimants seek judicial review of the Defendant's decisions…. to withdraw funding for holidays (notified on 3 March 2020); and to cease the direct payments which were being used for the Claimants' outings and recreational activities (notified on 12 November 2020)". In noting that the appellant was submitting that the claim was out of time as the decision under challenge were made on 3 March 2020, Lang J relied on the reasoning of Mostyn J and stated that "a further reason for extending time is that the dispute over funding is ongoing, and so it would be open to the Claimants to file a fresh claim in respect of the same issues if this claim was time-barred."

33. In a detailed and careful judgment Lang J set out the facts (paras 6 – 77) and the law (paras 78 – 94) and addressed the grounds of challenge. The focus of the judgment was upon ground 1, namely, the respondents' contention that the appellant erred in law in concluding that it had no power under the CA 2014 to contribute to the funding of outings or holidays for BG and KG and their carers, as they met the eligibility criteria in the 2015 Regulations and the duty under section 18 CA 2014 was engaged, on the proper interpretation of the CA 2014.

34. Lang J determined that she was unable to find any statutory basis for the restrictive interpretation of needs adopted by the Council (para 102). Her reasoning for so finding included the following:

> "103. Section 1(1) CA 2014 imposes a general duty on the Council to promote the Claimants' well-being in the exercise of its functions under Part 1 of the CA 2014. The duty is described in broad terms in section 1(2) CA 2014, and explained in the Statutory Guidance at paragraphs 1.1 to 1.11 (paragraph 80 above).
>
> 104. A needs assessment must assess an adult's needs by reference to the matters in section 1(2) CA 2014 (see section 9(4) CA 2014).
>
> 105. The Care Act Eligibility Assessments carried out in 2019 and 2021 found that, as a consequence of the Claimants' needs, and their inability to achieve two or more outcomes listed in regulation 2(2) of the 2015 Regulations, there was or was likely to be a significant impact on their well-being in respect of all the aspects of well-being set out in section 1(2) CA 2014.
>
> 106. The aspects of well-being which are of particular relevance to the issues in this case are:

"(b) physical and mental health and emotional well-being";

"(f) participation in ... recreation";

"(g) domestic, family and personal relationships".

107. Prior to the current dispute, the Care and Support Plans drawn up by the Council's social workers repeatedly referred to the Claimants' wish to access recreational activities in the community, on day trips and on holidays, and the social workers assessed the resulting benefits to their well-being from such activities…

109. The term "Care and Support" is central to the CA 2014….

111. In the context of the CA 2014, the natural and ordinary meaning of the word "care" is the provision of personal services to someone in need. The words "care" and "support" are not synonymous, and the word "support" must have been added by Parliament to denote something in addition to, "care". In the context of the CA 2014, the natural and ordinary meaning of the word "support" is the provision of assistance to someone in need, in particular, financial assistance.

112. This analysis is supported by the use of the term "support" on its own, in the context of the assessment of carers' needs in section 10 CA 2014, and the duty and power to make provision for carers' needs in section 20 CA 2014. Ordinarily, a carer does not need "care" but he or she may well need "support".

113. The illustrations of "support" for carers in the Statutory Guidance indicate that the term is intended to have a broad meaning…

114. Consistently with this Statutory Guidance, the Council has accepted that it has power to address the needs of the Claimants' carers (their parents) by providing them with "support" in the form of an annual payment towards the cost of a family holiday.

115. In principle, the same broad meaning of "support" for

> carers in the Statutory Guidance should equally apply to an adult in need.
>
> 116. Section 8 CA 2014 describes a wide range of ways in which needs may be met, which is contrary to the Council's restrictive interpretation that it can only provide the Claimants with personal care assistance. In sub-section (1), it gives non-exhaustive "examples of what may be provided to meet needs under sections 18 – 20". Those relevant here are support in the community (sub-paragraph (b)) and goods and facilities (sub-paragraph (d)). Section 8(2) gives examples of the way in which a local authority may meet needs under sections 18 to 20, by arranging for a person other than it to provide a service, to provide a service itself, or by making direct payments."

35. Lang J considered the authority of *R v North Yorkshire CC ex p. Hargreaves (No.2) (1997-98) 1 CCLR 331*, in which the Council accepted that the disabled claimant had an assessed need for a holiday, but would only meet the costs of her carer, not the costs of her holiday, on the basis that section 2(1) of the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act"), read with section 29 of the National Assistance Act 1948, did not intend to relieve poverty, but only to relieve persons of the added financial burden imposed by their disability. She agreed with the reasoning of Latham J. who rejected the Council's case stating:

> "The Respondent's principal argument, namely that the legislation was not intended to provide relief from poverty, but relief from the extra expense of disability, begs the question. If the Council have determined, as in this case, that the need for the
> holiday is a result of the disability, then the cost of the holiday to the disabled person must be capable of being an additional cost which is the result of the disability, although the question may well arise as to whether in the particular case it is necessary,
> in order to facilitate the holiday to assist with that cost."

36. At para 122 Lang J stated:

> "Put simply, if the Claimants' assessed needs arising from their disabilities includes a need for a holiday or other recreational activities, then the cost of the holiday to the disabled person is a need which can be met under CA 2014."

37. Lang J considered the appellant's alternative submission that the Eligibility Assessment for the respondents did not refer to a need to access recreational activities in the community, on day trips and on holidays. She noted that there was no plausible evidence that there has been a diminution of the respondents' needs, nor any reduction in the benefits to their well-being from such activities. At para 132 and following Lang J observed that:

> "132. The evidence indicates that, from at least 2018 onwards, managers in the Council began to adopt a restrictive approach to the provision of services, leading eventually to the decision letters of 3 March and 12 November 2020…
>
> 135. In my view, the Claimants' Care Act Eligibility Assessments were deliberately drafted so as to reflect the Council's restrictive stance on eligible needs, with the focus on any need for care, and the exclusion of financial support for goods and facilities, in this case, the cost of accessing recreational facilities…."

38. The judge gave examples from KG's 2019 Eligibility Assessment and continued her consideration of the assessment as follows:

> "139. Other than the brief reference to visiting cafes, there is no mention of the long list of recreational activities in the community enjoyed by KG and which he wished to continue to access, nor the benefits to his well-being from participating in such activities. There is no mention of holidays. Nor is there any mention of support in the form of membership and entrance fees for regular destinations such as RSPB reserves, and travel costs. In my view, these matters were wrongly excluded from consideration.
>
> 140. Applying the third criterion in regulation 2(1)(c) of the 2015 Regulations, the assessment found that, as a consequence of KG's needs and his inability to achieve two or more outcomes, there was, or was likely to be, a significant impact on KG's well-being in respect of all the aspects of well-being set out in section 1(2) CA 2014.
>
> 141. The impact was described solely in the following terms: "if [KG] did not receive full support from his mother there would be a significant impact on well-being". There was no mention of the impact of a lack of financial support to enable him to achieve the outcomes of making use of recreational facilities and developing or maintaining relationships. In my view, these matters were wrongly excluded from consideration.
>
> 142. By tailoring the assessment in this way, to accord with the Council's restrictive reading of the scope of the Care Act 2014, the only need identified was care and support from SQ. As SQ remained willing and able to provide care to the Claimants, by section 18(7) CA 2014, the Council had no duty to meet the Claimants' needs. Consequently, Ms Eden wrote to the Claimants on 12 November 2020 terminating all direct payments.
>
> 143. In my judgment, the Council's erroneous interpretation of

> its powers under the CA 2014 tainted the Eligibility Assessments by leading to a misguided exclusion of aspects of the Claimants' needs. The Council then failed to consider whether financial support should be offered to meet those needs. Therefore the Council cannot rely upon the Eligibility Assessments to avoid liability under Ground 1.
>
> 144. For the reasons set out above, Ground 1 succeeds."

Ground 2

39. It was the respondents' contention that in its letter of 3 March 2020 the appellant unlawfully fettered its discretion by stating that it would no longer meet holiday needs. The judge found that as the letter was based on a restrictive interpretation of the CA 2014 which she had found to be unlawful under Ground 1, it followed that ground 2 was made out.

Ground 5

40. It was the respondents' case, in the alternative, that if the eligibility criteria were not met the appellant had a discretionary power under section 19 CA 2014 to fund recreational activities in the community, on day trips and on holidays which it failed to consider in this case. The appellant contended that section 19 CA 2014 did not confer a power to fund the identified activities as they were not "needs" and did not come within the meaning of "care and support" in the CA 2014. The judge concluded that given her ruling in respect of ground 1, in principle, the appellant would have to consider whether or not to exercise its powers under section 19 before reaching its decision to cease all direct payments to the claimants.

Grounds of appeal

41. Three grounds of appeal are advanced namely that the judge erred:

    (i) In holding that the appellant's assessment of the respondents' care needs, conducted in October 2019, were defective, such that they could not be relied upon to defend the 3 March 2020 decision, in circumstances where the respondents had advanced no challenge to the assessment;

    (ii) In declaring that the appellant has a power, as a matter of law, to provide financial support for recreation activities and holidays, under section 18 of the CA 2014; and

    (iii) In holding that section 19 of the CA 2014 confers the power to provide financial support for recreation activities and holidays.

The appellant's submissions

42. The appellant raises two issues:

    (i) The extent to which the Administrative Court can, on an application for judicial review, grant relief in relation to decisions that are not challenged and, because of the passage of time, are not challengeable.

(ii) Whether the appellant has the power, pursuant to section 18 or 19 of the CA 2014 to fund foreign holidays and recreation activities for BG and KG.

Ground 1

43. It is the appellant's case that, as there was no challenge in the judicial review claim form to any decisions other than that of 12 November 2020, this was the only decision which should have been considered by the court. In its order the court effectively granted relief in relation to the two eligibility needs assessments completed in October 2019 and quashed the appellant's decision of 3 March 2020. In the absence of challenge, the court was required to treat the assessments as lawful and effective, its failure to do so amounts to an error or law. The need for procedural rigour in judicial review proceedings is important.

44. The court should have considered only the issue of whether the November 2020 decision was unlawful because it allegedly breached the appellant's statutory duties under section 18 CA 2014. In October 2019 the appellant adopted the sequential approach provided by the CA 2014 in assessing the care and support needs of the respondents and identified eight "eligible needs" under the 2015 Regulations. As neither holidays nor recreational activities were assessed as "eligible needs" in the October 2019 eligibility needs assessment it follows that the appellant had no duty or power to provide support pursuant to section 18 or 19 of the CA 2014.

45. The appellant accepts that it has a duty to meet the identified eligible needs (section 18(1) of CA 2014) unless those needs were met (section 18(7) CA 2014). All of the respondents' identified eligible needs were being met by a carer, mainly SQ, with occasional assistance from other members of the family. It is accepted that where a carer is meeting an adult's eligible needs that carer will have breaks during which the adult in need receives respite care from others. The respondents were unwilling to be cared for by persons other than their immediate family. In these circumstances the appellant concluded that it was not required to meet the respondents' identified eligible needs and therefore it ceased to make direct payments in November 2020.

Ground 2

46. The appellant contends that the court's analysis focuses exclusively on whether the holidays and recreational activities can amount to "needs for care and support". The statutory duty in section 18(1) to meet needs is not triggered by the existence of a "need for care and support" but only by the existence of an "eligible need". It is the appellant's case that holidays and recreation activities are not "needs for care and support" but even if they are, they are not "eligible needs" so no power to provide them pursuant to section 18(1) arises.

47. The appellant relies upon its interpretation of para 2(2)(i) of the 2015 Regulations, namely, that recreational activities and services are limited to the local community for the adults being cared for. Such an outcome provides for the use of such a facility by the adult but not for the cost of admission to the same. The appellant would pay for the adult's travel to the facility but not for the entry ticket.

48. The appellant submits that the phrase "needs for care and support" in the context of section 9 CA 2014 concerns needs to be "looked after". Reliance is placed upon the

judgment of Mr Michael Fordham QC (as he then was) in *R (Aburas) Southward LBC [2019] EWHC 2754* who in considering relevant needs under the CA 2014 stated:

> "5. I turn to the statutory scheme as it affects Southwark's functions. I can describe it by asking and answering some key questions. First, what are relevant needs for the purposes of CA14? The answer is that they are 'looked- after needs'. CA14 is a statutory scheme for the assessing and meeting "needs for care and support". These are in the nature of needs to be 'looked-after'. That idea was well-recognised in relation to predecessor legislation concerning needs for "care and attention" and the parties were agreed that the case-law makes clear that the same idea underpins CA14. It was Lady Hale who explained the 'looked-after needs' point in *R(M) v Slough Borough Council [2008] UKHL 52 [2008] 1 WLR 1808* at §33:
>
> "... the natural and ordinary meaning of the words 'care and attention' in this context is 'looking after'. Looking after means doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list."

49. It is the appellant's case that the need for accommodation is not itself a "need for care and support" (*R(GS) v Camden LBC [2017] PTSR 140* at para 29), the need for food is not a need for care and support. Such needs are universal and are not "looked after" needs to be provided under the CA 2014. Similarly, the need for holidays and recreational activities are not "looked after" needs but are universal needs.

50. There is nothing in the Statutory Guidance which suggests that holidays and other recreational activities can be a "need for care and support" for adults with mental or physical impairments. The appellant accepts that "support" adds something to "care" however it does not follow that "support" includes the provision of holidays.

51. If, contrary to the primary submissions, holidays and recreational activities could be care and support, the appellant contends that such matters are not eligible needs because they do not "arise from or are related to a physical or mental impairment or illness" (regulation 2(1) of the 2015 Regulations). It is a universal rather than a specific need arising from an adult's disability. By contrast, the need for care and support whilst on holiday, for example from a carer who assists the individual and makes sure that they remain safe by ensuring they wear outfits appropriate for the weather would arise from or are related to the respondents' "physical or mental impairment or illness". The appellant would meet such needs as set out in their letter of 3 March 2020. The respondents' carer meets all such needs whether the respondents are in the UK or on holiday abroad.

Ground 3

52. The appellant in its unchallenged eligibility needs assessment did not conclude that the respondents had a need for holidays and recreational activities therefore the appellant had no power pursuant to section 19 to fund such matters. The court's conclusions in relation to section 19 are legally flawed for the same reasons as its conclusions upon section 18.

The respondents' submissions

Ground 1

53. In *R v London Borough of Hammersmith and Fulham v Others Ex Parte Burkett and Another [2002] UKHL 23* Lord Steyn at [31] stated that "in public law the emphasis should be on substance rather than form". At [43] Lord Steyn stated:

> "At this stage it is necessary to return to the point that the rule of court applies across the board to judicial review applications. If a decision-maker indicates that, subject to hearing further representations, he is provisionally minded to make a decision adverse to a citizen, is it to be said that time runs against the citizen from the moment of the provisional expression of view? That would plainly not be sensible and would involve waste of time and money…."

54. *R (on the application of Ireneschild) v Lambeth LBC [2007] EWCA Civ 234* concerned a challenge to an adult social care assessment. The application for judicial review of that assessment provoked a further assessment. The challenge for judicial review failed on the merits but at [72] Hallett LJ in considering the nature and purpose of the community care assessment noted that process allowed for representations to be made about the assessment following its competition and stated that:

> "…this was not a final determination of an entitlement. It was an assessment prepared as part of an ongoing process which by its very nature was capable of further review."

55. The respondents contend that the appellant did not reach a conclusion in 2019 as to whether KG or BG needed recreational facilities, the October assessments stated that it was "to be discussed". Internal discussion resulted in the preliminary indication of 3 March 2020 that henceforth holidays costs would not be met. That only took effect in practice when, following the further review and assessment process, the appellant on 12 November 2020 informed the respondents that it was cutting their direct payments to zero. As in *Burkett,* the respondents were entitled to challenge the 12 November 2020 decision.

56. The judge's focus on the 3 March 2020 letter was permissible but in any event made no difference in substance given the respondents' permissible and in time challenge following the 12 November 2020 decision.

Grounds 2 and 3

57. The needs of KG and BG did not change in any material way throughout the period covered by the care and support plans commencing in 2011 and from 2013 receiving a respite budget specifically for accessing community and for holidays. The October 2019 care plans recorded how important excursions and holidays are to each of the respondents and referred to a list of activities they had prepared but it did not consider how they were to be facilitated.

58. Recreational activities and holidays for BG and KG meet two of the eligibility criteria set out in regulation 2 of the 2015 Regulations namely:

> "(g) developing and maintaining family or other personal relationships: …
>
> (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services."

59. It is the respondents' contention that regulation 2(2)(1) can be broken down into: (i) making use of necessary facilities/services in the local area; (ii) making use of recreational facilities; (iii) making use of [recreational] services. Recreational facilities and services are not confined to the local area.

60. Having the use of recreational facilities is not made possible by having support to access the facilities if the person cannot afford facilities themselves. Support includes financial support.

61. As to the appellant's argument that needs for accommodation, food and holidays are universal needs, there is nothing in the CA 2014 which precludes a local authority from providing universal needs.

62. The needs of the respondents to take part in recreational activities arise from their physical or mental impairment or illness (regulation 2(1)(a) of the 2015 Regulations). There is and will be a significant impact on their well-being as a result of not meeting the specific outcomes. Accordingly this is an eligible need. It can be met, (section 8(1)(d) CA 2014) by the provision of goods or facilities, in this case financial support in the form of a direct payment.

63. Further, the appellant has a power under section 19 to meet non-eligible needs to the extent that they are needs for care and support. Thus, even if KG and BG needed financial support only to meet one of the eligible outcomes, the appellant could still meet that need.

The Respondent's Notice

64. In the Respondent's Notice, the respondents contend that the appellant could have exercised powers under section 2, the Chronically Sick and Disabled Persons Act 1970, section 1, the Localism Act 2011 and section 2, the Local Government Act 2000 which provide wide ranging powers to support individuals in the local area.

Discussion and conclusion

Grounds of appeal 2 and 3

65. The CA 2014 provides for a sequential approach to the provision of social care and support to individuals in need. Under the Act, councils are required to:

    (i) Carry out a needs assessment (section 9);

    (ii) Assess whether the needs for care and support found are "eligible needs" under the 2015 Regulations (section 13);

    (iii) Meet the needs identified as eligible needs unless such needs are being met by a carer (section 18(1) and (7));

    (iv) Consider whether to exercise its discretion to meet needs identified in the assessment which are not "eligible needs" (section 19(1));

    (v) Draw up a care and support plan (section 24-25).

66. In 2014, relying upon eligibility assessments and care plans, the appellant made direct payments to KG and BG as a "respite budget" in order to fund recreational activities and a holiday. The funding enabled the respondents and their mother to take holidays in Florida in 2015, 2017 and 2018. The holidays and the ability to attend and take part in other recreational activities in the UK had a positive impact on the well-being of each of the respondents as the care plans and eligibility assessments for the years since 2014 attest. There has been no change in the physical and mental health of either KG or BG such as to undermine the factual basis of these needs assessed pursuant to the CA 2014 and the 2015 Regulations. What has changed is the approach of the appellant who now seeks to maintain that it was in error in finding that the respondents had an eligible need to attend recreational activities and holidays under the CA 2014 and the 2015 Regulations.

67. The general duty of a local authority in exercising a function under the relevant part of the CA 2014 in respect of an individual is to promote that individual's well-being (section 1(1)). Pursuant to the CA 2014, an individual's well-being can relate to: personal dignity (including treatment of the individual with respect) (section 1(2)(a)); physical and mental health and emotional well-being (section 1(2)(b)); control by the individual over day-to-day life including over care and support or support provided to the individual in the way in which it is provided (section 1(2)d)); participation in work or recreation (section 1(2)(e)); social and economic well-being (section 1(f)) and domestic family and personal relationships (section 1(2)(g)).

68. In exercising a function under the relevant part of the CA 2014 in respect of an individual, a local authority must have regard to certain matters which include: the importance of beginning with the assumption that the individual is best placed to judge the individual's well-being (section 1(3)(a)); the individual's views, wishes, feelings and beliefs (section 1(3)(b)); the importance of preventing or delaying the development of needs for care and support (section 1(3)(c)); the need to ensure that decisions about the individual are made having regard to all the individual circumstances (section 1(3)(d)); the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information support necessary to enable the individual to participate (section 1(3)(e)).

69. Section 1 of the CA 2014 is clear as to the purpose of the statute namely the promotion of an individual's well-being, within that is recognition of the autonomy of that individual. This is also reflected in the Statutory Guidance which identifies the broad nature of the concept of well-being, the need by a local authority to consider the particular circumstances of each individual and to recognise that each person's needs are different and personal to them. The core purpose of this provision of adult social care and support as set out in the CA 2014 is to help individuals to achieve outcomes which matter to them in the life which they lead.

70. Of note is the language used: the adult's needs for "care and support" are the basis of the s.9 assessment and the s.18 duty. In my view, "support" begins with the identification of the needs and wishes of the particular individual and, is or should be tailored, to address the same. Contrast the phrase "care and support" with "care and attention" to be found in predecessor legislation. It was "care and attention" which was interpreted by Lady Hale in *R(M) v Slough Borough Council* as referring to "looked-after needs". I accept that such a phrase does reflect the concept of "care and attention". In my view it does not reflect the development in the approach which local authorities are now to adopt as set out in sections 1, 9 and 18 CA 2014 which recognise the autonomy of the individual and the need for care and support. In my judgement, the needs under the CA 2014 can no longer be described as "looked-after" needs as such a description does not properly reflect the individual nature of the assessment, its recognition of the autonomy of the individual and the tailored and broad nature of the support which can be provided.

71. Further, and consistent with the greater emphasis placed upon the autonomy of the individual linked to well-being and support, I read the intention of the legislation as being to broaden the discretion and flexibility of local authorities in their provision of care and support to adults.

72. KG and BG are adults with needs for care and support. Their needs meet the eligibility criteria recognised in section 13(7) of CA 2014 and are of a nature identified in the 2015 Regulations. As a result of their needs, and as was consistently found, the respondents were unable to achieve two or more of the outcomes specified in regulation 2(2). The respondents were unable to achieve these outcomes as they were unable to do so without assistance (regulation 2(3)(a)).

73. The change by the appellant in the 2019 assessment was the omission of an eligible need in respect of recreational activities and holidays. The relevant regulation is regulation 2(2)(i): "making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and …" I read this as confining the use of "necessary facilities or services in the local community" to such facilities or services in that local community. I do not read the paragraph as confining the provision of "recreational facilities or services" as being so geographically confined. I note the difference in the provisions set out in regulation 3, "needs which meet the eligibility criteria: carers". Regulation 3(2)(vii) states "making use of necessary facilities or services in the local community, including recreational facilities or services; and …". It is of note that recreational facilities or services are specifically included as being within the local community.

74. I accept the respondents' contention that the provision of recreational activities and holidays for BG and KG would meet two of the eligibility criteria set out in regulation

2 of the 2015 Regulations namely: (g) developing and maintaining family or other personal relationships; and (i) making use of necessary facilities or services in the local community including public transport and recreational facilities or services. I do not accept that it is possible to use recreational facilities merely by the provision of support to access the facility if the adult in question cannot afford to pay for the entry requirements.

75. As identified in the assessments, the respondents' well-being is assisted by the taking of holidays, visiting nature reserves and similar activities, which is no doubt the reason why the appellant previously provided financial support for the same. I accept that the needs of the respondents to take part in recreational activities, which include holidays, arises from their physical and mental impairment (regulation 2(1)(a)). The financial support, previously provided by the appellant, is not simply a means of paying for the respondents to take part in such activities and to go on holiday, it is a means of meeting their needs which arise from and are related to the physical and mental disability from which each suffers. It is a need which cannot be met without financial support from the appellant.

76. Further, I am satisfied that the needs of each respondent are specific to each rather than a universal need. I do not interpret the relevant provision of the CA 2014 as prohibiting the provision of what is termed a "universal need"; rather, it guides the need to be assessed by reference to the eligibility criteria of the adult. It follows, and I so find, that the need for holidays and recreational activities, arising as they do from the respondents' physical or mental impairment, are eligible needs and can be met by the provision of goods or facilities in this case financial support in the form of a direct payment (section 8(1)(d), section 8(2)(c) CA 2014).

77. One purpose of the CA 2014 is to provide support to an individual taking account of all the individual's circumstances. In considering the circumstances of each of the respondents, account has to be taken of past traumatic events, the result of which is that they will trust only their mother as their carer. SQ is the means whereby KG and BG are able to access any activities outside the home.

78. SQ cannot meet all her sons' needs for recreation as she is unable to afford entrance fees, transport and other costs. To find, as the appellant did, that SQ as their carer can meet all the eligible needs of the respondents is to ignore a key element of those needs namely the ability to fund the means to access and take part in recreational activities including holidays.

79. It was the appellant's view set out in its decision of 12 November 2020 that SQ was meeting all the respondents' eligible needs. This was at the core of the operative decision challenged by the respondents. For the reasons given, I find that such a determination was wrong. I find that it was based upon a restrictive and incorrect interpretation of the relevant needs pursuant to the CA 2014 and the 2015 Regulations. Had the appellant not acted upon this restrictive and wrong interpretation, it would or should have reached different decisions in the assessments in October 2019, the decision set out in the letter of 3 March 2020 and the decision contained in the 12 November 2020 letter.

80. Accordingly, and for the reasons given, I am satisfied that Lang J correctly concluded that the appellant has a power, as a matter of law, to provide financial support for

recreational activities and holidays under section 18 CA 2014. It follows that the judge was also correct in holding that section 19 CA 2014 confers the power to provide financial support for recreational activities and holidays. Accordingly grounds of appeal 2 and 3 are dismissed.

81. Given the findings made in respect of grounds of appeal 2 and 3, the issues raised in the Respondent's Notice do not require determination.

Ground of appeal 1

82. I am satisfied that from October 2019 there was an ongoing process by the appellant to assess the eligible needs of each of the respondents. It was this process which would provide the basis for the care and support finally determined and notified in the letters of 12 November 2020. For the reasons given, I am satisfied that the assessments of 2019 and the letters dated 3 March 2020 and 12 November 2020 were based upon an incorrect interpretation of the provisions of the CA 2014 and the 2015 Regulations. I regard the attempt by the appellant to confine the power of the court to the 12 November 2020 decision as unrealistic in that it failed to reflect the ongoing nature of the process, illustrated by the letter of 3 March 2020, which identified the way forward as obtaining further assessments and care plans. The final determination was contained in the letter of 12 November 2020 and was properly identified by the respondents as the primary ground of challenge. In my judgment, the approach of the court in considering the assessments in 2019 and the process thereafter, was not only reflective of the ongoing nature of the same it was a reasonable course to take and accordingly ground 1 of this appeal is dismissed.

83. The order of the court, which was drafted and agreed by counsel and approved by the court, identifies the order to be quashed as being that of 3 March 2020. An error has arisen, in that the decision 12 November 2020 is not included in the order which was the clear intention of the judge. Accordingly, an order is required to be made quashing the decision of 12 November 2020.

Lord Justice Phillips

84. I agree.

Lord Justice Baker

85. I also agree.