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[R \(on the application of A\) v B COUNCIL \(2007\)](#)

[2007] EWHC 1529 (Admin)

QBD (Admin) (Lloyd Jones J) 7/3/2007

EDUCATION - LOCAL GOVERNMENT - PENOLOGY AND CRIMINOLOGY

CRIMINAL RECORDS BUREAU : DRIVERS : LOCAL AUTHORITIES' POWERS AND DUTIES : PREVIOUS CONVICTIONS : PROPORTIONALITY : PUBLIC SUPPLY CONTRACTS : REASONABLENESS : RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE : RISK : SCHOOL TRANSPORT : SPENT CONVICTIONS : LOCAL EDUCATION AUTHORITIES' POWERS AND DUTIES : REMOVAL OF SUB-CONTRACTED DRIVER WITH NUMEROUS PREVIOUS CONVICTIONS : RATIONALITY AND PROPORTIONALITY OF DECISION : s.17(3) LOCAL GOVERNMENT ACT 1988 : REHABILITATION OF OFFENDERS ACT 1974 : s.17(4)(c)(i) LOCAL GOVERNMENT ACT 1988 : s.36(5) CRIMINAL JUSTICE AND COURT SERVICES ACT 2000 : Art.8 EUROPEAN CONVENTION ON HUMAN RIGHTS

A local authority's decision refusing to permit the claimant to be used as a driver in its education transport contracts was lawful where she had several previous convictions relating to extreme and dangerous conduct, including offences against children and offences in a school setting, despite the fact that almost 30 years had passed since the offences had occurred.

The claimant (X) applied for judicial review of a decision of the defendant local authority (B) not to permit its education transport contractors to use her as a sub-contractor driver. X had been employed for six years by a firm providing education transport to the local authority. There were never any complaints concerning the manner in which she performed her duties. However, X was assessed under the Criminal Records Bureau procedure as being unsuitable to perform the service. B advised X that she would not be permitted to be used as a driver in education transport contracts. X had a number of convictions, dating back to when she was a school pupil, for offences including making threats to kill, possession of firearms with intent, false imprisonment and wounding. She had threatened to kill her teacher, attempted to strangle her and falsely imprisoned some fellow school pupils, using a firearm in the course of that incident. She was subsequently detained in hospital to undergo treatment for a psychopathic disorder. However, since the age of 21, X had not committed any further offences, had no further difficulties with her mental health, had held a number of responsible jobs and had brought up two children. X argued that (1) the issue was amenable to judicial review, as in deciding that she should not be permitted to drive on its school passenger contracts B was exercising a function regulated by the [Local Government Act 1988 s.17\(3\)](#). Further, in relation to a subsisting public supply contract, giving or withholding approval for persons to be sub-contractors for the purposes of the contract fell within [s.17\(4\)\(c\)\(i\)](#) of the Act; (2) B's decision was irrational or disproportionate. The [European Convention on Human Rights 1950 Art.8](#) was engaged, and B's response was disproportionate, in particular there was no pressing need for the decision; (3) alternatively, B's decision was predicated on the proposition that approval would permit her to have unsupervised access to children, however the work she had done for B previously had always involved working with an escort; (4) in so far as she would be working with an escort, B had erred in having regard to those of her convictions which were spent convictions by reason of the Rehabilitation of Offenders Act 1974.

HELD: (1) There was a pronounced public law element to the decision under challenge. B was not simply exercising a contractual power to require the removal of a sub-contractor. It was taking a policy decision in pursuit of its public duties as an education authority as to the suitability of X to act on its behalf in the discharge of its functions. The decision was amenable to judicial review, [R v Enfield LBC Ex p TF Unwin \(Roydon\) 46 BLR 1 DC](#) followed and [R v Bristol City Council Ex p DL Barrett & Sons \(2001\) 3 LGLR 11 QBD](#) applied. (2) It was clear that Art.8 was engaged. The effect of B's decision had been to prevent X from providing the services she had provided for the previous six years to vulnerable children with special needs. She had been reduced to taking employment as a toilet attendant. There was a considerable stigma attached to the decision, and there had been a profound interference with X's personal relationships with colleagues and the vulnerable children with whom she worked. The approach adopted by B was entirely rational and proportionate. It had clearly been entitled to take into account the nature of the misconduct, the extent of it, the time which had elapsed since it occurred and any mitigating circumstances. X's conduct had been so extreme and dangerous that B was clearly entitled to come to the conclusion that there was a real risk of recurrence and it should not expose the children in its care to such a risk, notwithstanding that there had been no recurrence in almost 30 years. It was also highly relevant that X's conduct included offences in the school setting and offences against children. B had shown there was a pressing need for it to take the action it did, [R \(on the application of D\) v Secretary of State for Health \(2006\) EWCA Civ 989. \(2006\) Lloyd's Rep Med 457](#) applied. (3) Once it was accepted that it was rational and proportionate for B to conclude that X must not be used on occasions when an escort was not present, it was entirely rational for it to conclude that the presence of an escort did not alter the risk to the children so as to make any material difference. (4) An escort was a carer within the meaning of the [Criminal Justice and Court Services Act 2000 s.36\(5\)](#). It was necessary to ask whether the position in question was one whose normal duties involved contact with children in the absence of the escort. It was inevitable that there would be contact between X and the children in the absence of the escort. Therefore it was lawful for B to take into account X's spent convictions. Furthermore, even if B had excluded from its consideration the spent convictions, it would have reached the same conclusions based on other material which was before it.

Application refused

Counsel:

For the claimant: N Giffin QC

For the defendant: P Coppel

Solicitors:

For the claimant: Biscoes

For the defendant: Local authority solicitor

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