



31 May 2012

PRESS SUMMARY

R (on the application of KM) (by his mother and litigation friend JM) (FC) (Appellant) v Cambridgeshire County Council (Respondent) [2012] UKSC 23

On appeal from [2011] EWCA Civ 682

JUSTICES: Lord Phillips (President); Lord Walker; Lady Hale; Lord Brown; Lord Kerr; Lord Dyson; Lord Wilson.

BACKGROUND TO THE APPEALS

The appellant, KM, is a profoundly disabled man aged 26, who lives with his mother, brother and sister [1]. He was born without eyes and has a range of serious mental and physical medical conditions [8]. He is intelligent and articulate with many achievements including GCSE passes in French and music [8]. He needs substantial support in feeding, self-care and other aspects of daily living [9]. The respondent, Cambridgeshire County Council, is the appellant's local authority.

Under section 2 of the Chronically Sick and Disabled Persons Act 1970 [‘the Act’] a local authority owes a duty to a disabled person, if it is necessary in order to meet his needs, to make arrangements for the provision of a number of specified services including practical assistance in the home, recreational facilities inside and outside the home and assistance with adaptations to the home [11 - 13]. In fulfilling its duty, a local authority must act according to the guidance of the Secretary of State for Health, but in place of directly providing services it can, and in some cases must, make a direct payment to the disabled person to enable him to arrange his own support [22].

To determine the appropriate direct payment, the respondent applied its ‘Resource Allocation System’, which calculates the payment due based on the average funding for people with specific needs in the local authority area; with additional sums calculated in severe cases by reference to an ‘Upper Banding Calculator’. An independent social worker had produced a report apparently estimating the total annual cost of supporting the appellant as c. £157,000. The respondent did not expressly contest this assessment and classified his needs as being ‘critical’, but disputed the proposed required level of funding.

The appellant challenges by way of judicial review a decision by the respondent, communicated at the latest by a letter dated 3 June 2010, to pay him roughly £85,000 annually. The sum reflected the maximum £61,000 calculated by reference to the Resource Allocation System and an additional amount calculated by reference to the Upper Banding Calculator. The appellant contends that the decision is unlawful either because it was not adequately supported by reasons or because it was irrational [2].

As part of his challenge, the appellant invited the Supreme Court to reconsider the decision of the House of Lords in *R v Gloucestershire County Council, Ex parte Barry* [1997] AC 584 on the extent to which the resources of a local authority may be taken into account in making decisions under section 2 of the Act. Consequently, a court of seven justices was convened; and four charities and the Secretary of State for Health intervened. At the hearing, however, it became clear that the issue did not arise on the facts since the respondent did not rely on resource constraints to justify its decision. The Court therefore did not hear full argument on *Barry*, which is not reconsidered in its judgments [4 - 7; 40 - 41].

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Wilson gives the leading judgment, with which the other justices agree. Lady Hale gives a separate concurring judgment.

REASONS FOR THE JUDGMENT

When a local authority is required to consider whether it is necessary, in order to meet the needs of a disabled person, for that authority to make arrangements for the provision of any of the relevant services, then it must ask itself three questions: (i) what are the needs of the disabled person; (ii) in order to meet these needs is it necessary for the authority to make arrangements for the provision of any of the listed services; and (iii) if so, what are the nature and extent of the services for which it is necessary for the local authority to make arrangements? [15]. The guidance produced by the Secretary of State for Health in respect of the duties under section 2 of the Act reflects these stages of inquiry [16 – 18].

In considering the question of eligibility, at the second stage, the local authority can ask whether the needs of the disabled person can reasonably be met by family or friends, by institutions such as the NHS or charities, or out of the person's own resources [19]. The decision in *R v Gloucestershire County Council, Ex parte Barry* [1997] AC 584 established that the availability of its resources is also relevant [19]. If the needs of a disabled person are deemed eligible, the duty of a local authority to meet those needs is then absolute, and the Court of Appeal erred in holding otherwise [19].

Under regulations made pursuant to the Health and Social Care Act 2001, if a local authority is satisfied that a disabled person's need for the relevant service can be met by the provision of a direct payment to the disabled person then it can, and in some cases must, with the disabled person's consent, make a direct payment to enable him to purchase the relevant service [22]. In that case, a fourth stage of enquiry arises: (iv) what is the reasonable cost of securing provision of the services for which it is necessary for the authority to make arrangements?

In answering that question, it is unduly laborious for a local authority at first to cost each service for every disabled person [24]. Local authorities therefore use resource allocation systems to provide a "ball-park" figure of the appropriate payment, subject to adjustment. The systems generally work by allocating points to eligible needs and then ascribing a cost to each point. A realistic connection between needs and points, and then between points and costs, is crucial [25]. The systems are a lawful tool to provide an approximate indicative sum [26]. Once the indicative sum has been identified, the requisite services should be costed in a reasonable degree of detail to permit a judgement on whether the sum is correct [28]. Adequate reasons can be achieved with reasonable brevity and it will often be sufficient for a local authority to list the required services, and the suggested timings and hourly costs [37].

By reference to its resource allocation system the respondent ascribed points to the appellant in excess of the maximum, which equated to £61,000 [25]. It had developed a second indicative tool, an upper banding calculator, for persons who scored points in excess of the maximum: this brought the figure up to £85,000 [27]. The costing of individual services should then have been carried out, preferably in conjunction with the disabled person, by the making of a support plan [28].

The respondent accepted all of the appellant's presenting needs as eligible [29]. It did not accept his mother's representations that the family would not offer support but, unfortunately, it did not expressly say so [29 – 30]. Had an adjustment been made for a reasonable amount of such support, the indicative figure would have been only c. £46,000 [30]. The jointly instructed social worker uncritically reported the appellant's family's wishes, failing to make an expert assessment of the costs [32 – 33]. The respondent considered the report to be manifestly excessive but, again, failed expressly to say so in proposing the annual sum of c. £85,000 [34]. The respondent broadly explained how this annual sum might be deployed, but not how it had been computed [35]. The appellant's solicitors pressed for an explanation and the respondent accepts that it should have provided it earlier than its letter of 3 June 2010 [35].

The challenge to the rationality of the decision fails, since it was entirely rational for the respondent to use its resource allocation system and upper banding calculator and it appears that any flaw in the computation is likely to have been in the appellant's favour [38]. The respondent should have made a more detailed presentation of its assessment of the reasonable cost of the necessary services in the appellant's case. Nevertheless, in the light of the subsequent amplification of its reasoning during the litigation, it would be a pointless exercise of discretion to quash the decision so that his entitlement might be considered again, perhaps even to his disadvantage [38].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html