RECENT CASE-LAW IN ADULTS' AND CHILDREN'S SOCIAL CARE

Assessments

In *R (OH) v Bexley LBC* [2015] EWHC 1843 Admin, (2015) 18 CCLR 375, DHCJ Roger Ter Haar QC quashed Bexley's decision to substantially reduce a care package when it had not adequately explained why, or completed a revised assessment and a revised care plan.

In the *Complaints against Knowsley MBC* (LGO complaint number 15 008 823, 16 June 2015) the LGO made a finding of maladministration in a case where Knowsley MBC reduced a person's respite care package to 4 weeks per year for budgetary reasons because it had decided to reduce everyone's respite care package to 4 weeks, without undertaking a re-assessment and then rejected a social worker's recommendation that the level of respite care be reinstated.

The LGO also found maladministration against Hammersmith & Fulham LBC in *Complaint against Hammersmith & Fulham LBC* (LGO complaint number 15 011 661, 21 July 2016). When Ms J sought direct payments because her care agency was not helping her with organising her clothes so she could dress properly, organising her fridge so she did not miss "use by dates" and scanning documents Hammersmith reviewed her care plan and concluded that she had no unmet needs because a local charity could assist her with computer-related issues and the CA 2014 did not require that she wore matching or clean clothes or ate fresh food (rather than long-life products). The LGO concluded that it had been maladministration (i) to respond to Ms J's complaint with a review of her care package; (ii) not to assess how Ms J would fare if she did not receive help from the local charity with her computer tasks; (iii) not to recognise the importance to Ms J's personal dignity of wearing clean, matching clothes; (iv) not to recognise the nutritional importance of eating fresh food. A subsequent re-assessment was also flawed. It is notable that, under the Eligibility

Regulations, the outcomes include "*managing and maintaining nutrition*" (which seems wider than simply keeping oneself alive by eating) and "*being appropriately clothed*" (which plainly is wider than being able to wear mis-matched and dirty clothes) so there was not just maladministration but an erroneous legal approach.

In *R (SG) v Haringey LBC* [2015] EWHC 2579, (2015) 18 CCLR 444, DHCJ John Bowers QC held that an assessment had been unlawful because Haringey had failed to offer an independent advocate to a person whom it accepted will experience "*substantial difficulty*" in participating in the assessment process.

Care packages

In *N v ACCG and others* [2017] UKSC 22, (2017) 20 CCLR 133, the Supreme Court (Hale, Wilson, Reed, Carnwath, Hughes JSC) upheld the decision of the Court of Appeal that where a dispute as to P's best interests concerns an option that is not an available option for P, e.g. because the local authority concerned has made a clear decision not to provide that option, the Court of Protection is entitled to take the view that no useful purpose will be served by holding a hearing to resolve the issue, and to exercise its case management powers accordingly.

In *R (JF) v Merton LBC* [2017] EWHC 1519 (Admin), (2017) 20 CCLR 241, the claimant, an autistic adult with learning disabilities, challenged the defendant's decision to change his residential provision following a needs assessment. Anne Whyte QC sitting as a Deputy High Court Judge held that Merton LBC had failed to comply with its duties under the Care Act 2014 in deciding to change JF's residential provision following a needs assessment. The decision was unlawful and was *Wednesbury* unreasonable.

In *R (Davey) v Oxfordshire CC* [2017] EWCA Civ 1308 the Court of Appeal (McFarlane, Bean and Thirlwall LJJ) held that it had been lawful for Oxfordshire to reduce Mr

Davey's personal budget and to revise his care and support plan. Essentially, Oxfordshire had undertaken careful assessments and, for rational reasons, had concluded that Mr Davey could spend more time alone without a personal assistant being present and that he could and should reduce the amount that he paid to his personal assistants. In particular, Oxfordshire had confronted and rationally assessed the risks to Mr Davey's well-being that would be entailed. (Note that, however, in general the courts will often bring a more intense scrutiny to bear on assessments that appear to seek to reduce services for budgetary reasons: *R v Birmingham CC ex p Killigrew* (2000) 3 CCLR 109; *R (Goldsmith) v Wandsworth LBC* [2004] EWCA Civ 1170, (2004) 7 CCLR 472.)

Ordinary residence

In *R (Cornwall Council) v Secretary of State for Health* [2015] UKSC 46, [2015] 3 WLR 213, (2015) 18 CCLR 497, the Supreme Court (Hale, Carnwath, Hughes and Toulson JSC; Wilson JSC dissenting) held that a person lacking the capacity to choose where to live will be treated as ordinarily resident in the place where they have lived on a settled basis, as part of the regular order of their life for the time being. The DoH has now published revised guidance in the light of the *Cornwall* decision, at Chapter 19 of the *Care and Support Statutory Guidance*.

Consultation

In *Keep Wythenshawe Special Limited v NHS Central Manchester CCG* [2016] EWHC 17 Admin, (2016) 19 CCLR 19 Dove J held that a consultation process about the closure of Wythenshawe Hospital had been lawful. After the consultation process, and it seems as a result of some consultation responses, the decision-makers had decided to change the parameters of their decision-making, whether to close Wythenshawe or another hospital (Stepping Hill), by taking into account the use made of those hospitals by patients from outside of the Greater Manchester area and not just from within that area (and certain other new factors). Dove J held that these changes were not so significant that re-consultation was required. He applied an oft-cited judgment

of Silber J's called *Smith v East Kent Hospital NHS Trust* [2002] EWHC 2640 Admin, (2003) 6 CCLR 251 in which Silber J concluded that a duty to re-consult only arose when a decision-maker was minded to adopt a course of action that was "*fundamentally different*" from the course he consulted upon. Dove J pointed out that "*fundamental difference*" was not a rule or a mantra and that what was important to consider was whether the failure to re-consult rendered the consultation process "*unfair*", bearing in mind that the courts will generally hold a consultation process was unlawful because of unfairness only when "*something has gone clearly and radically wrong*", in a way that affects at least one group of consultees.[1] In *R (Elphinstone) v Westminster CC* [2008] EWHC 1287 Admin, at paras 94 – 95, DHCJ Kenneth Parker QC had used the expression "*conspicuously unfair*".

In *R (Jones) v Denbighshire CC* [2016] EWHC 2074 Admin, Hickinbottom J held that it had been unlawful to assess the impact of phase 1, but not of phase 2, of a proposed policy and to consult on phase 1, rather than phase 2 (Denbighshire proposed to close 2 primary schools that taught exclusively in Welsh, or offered such a facility, and replace them with a single school operating Welsh/English bilingual teaching, It proposed to operate the new school on both sites of the existing schools (phase 1) and then as a purpose-built school on a single site (phase 1)). In addition, the consultation document too muddled to permit of intelligent discussion and response and failed, in breach of the Code, to allow consultees to suggest alternative courses of action.

Charging

In *Richards v Worcestershire CC* [2016] EWHC 1954 (Ch), Newey J held that a patient could be entitled to bring private law proceedings in restitution, to reclaim money spent by him on after-care services. **He** held that (i) in principle, a person who had paid

[1] R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of PCT [2012] EWCA Civ 472 at para 13-14; R (L and P) v Warwickshire CC [2015] EWHC 203 (Admin) at para 18-22.

for care services that were shown to have been the responsibility of a local authority under section 117 of the MHA 1983, but which in error the local authority failed to provide without charge, was entitled to bring a claim for restitution; and (ii) such a claim could be properly brought as a private law action, at least in a case such as the present where there was no allegation that the local authority had failed properly to assess and meet needs.

In *Damien Tinsley v Manchester CC* [2016] EWHC 2855 Admin, DHCJ Stephen Davies held that a person was entitled to after-care services free of charge notwithstanding his possession of a substantial personal injury award that would enable him to purchase such services and that he had been awarded for that purpose (the Court of Appeal is due to hear Manchester's appeal on the 10 October 2017).

In *Investigation into a complaint against St Helens Metropolitan Borough Council* (reference number 14 009 949)(27 June 2016), St Helens refused to undertake a financial assessment in relation to a Mr A on the ground that he had received an award of damages of £2.85M as a result of a road traffic accident and that, although the consent order did not specify any amount as having been earmarked for the cost of social care, Mr A did have substantial social care needs as a result of the accident and his very high award must have been intended to cover the cost of meeting those needs in full. The LGO held that St Helens had been at fault by failing act in line with government guidance and case law when deciding not to provide services because of the personal injury settlement.

In a follow up report dated the 21 November 2016, the LGO noted that St Helens had refused to accept the LGO's findings on the "*double recovery*" issue and that Mr A had issued a judicial review.

Budgetary decisions

In *R (DAT) v West Berkshire Council* [2016] EWHC 1876 Admin, Laing J held that West Berkshire had not reached a lawful decision to reduce its funding of disabled children's short breaks services under paragraph 6 of schedule 2 to the Children Act 1989 and The Breaks for Carers of Disabled Children Regulations 2011. Its first decision had provided decision-makers with adequate factual information but had failed sufficiently to inform them of their duties under the PSED and was unlawful for that reason. Its second decision had provided decision-makers with fully adequate information, factually and legally, but was unlawful because it had not comprised a proper reconsideration in that, the decision-makers had not had power, at the 2nd meeting, to overturn the 1st decision and in that the 2nd meeting appeared to involve pre-determination on the part of the decision-makers.

Are children truly children in need?

In *R (AM) v Havering LBC* [2015] EWHC 1004 Admin, (2015) 18 CCLR 326 Cobb J held that it had been irrational of Havering not to treat as "*children in need*" children in a homeless family where there were suggestions of ill-health suffered by the mother and children and a case made that the family were unable to find accommodation, despite the authority's view that the father was perfectly able to find accommodation.

By contrast in *R (Jalal) v Greenwich LBC* [2016] EWHC 1848 Admin DHCJ John Bowers QC held that it had been rational of Greenwich to conclude that the children in a homeless family were not "*children in need*" on the basis that their parents had the ability to accommodate them and that, if they failed to do so, Greenwich would offer accommodation for the children alone.

In *R (A) v Enfield LBC* [2016] EWHC 567 Admin, (2016) 19 CCLR 236, Hayden J held that it had been irrational not to conclude that A had been a "child in need" given her vulnerability to being drawn into violent extremist or terrorist conduct. In addition, although A was now over 18, Enfield was ordered to exercise its discretionary powers

and treat A as if she was a "*former relevant child*". The judgment does not identify what the discretionary powers are, but the court may have had in mind the GPC under section 1 of the Localism Act 2011.

In *R (Antwa) v Lambeth LBC* (Lawtel Document – 15/3/2016) the mother of 3 children became homeless and applied to the local authority for housing assistance on the basis that the father had ended their relationship and would no longer support her or the children, so that she could not find accommodation for them. Lambeth concluded that the end of the relationship was a facade and that they were being manipulated to provide public sector accommodation. Holman J refused to continue a mandatory injunction requiring Lambeth to provide accommodation under section 17 of the CA 1989 on the basis that, although Lambeth's assessment contained various flaws, its fundamental conclusion, that it was being manipulated, was supported by some evidence and appeared to be conscientiously performed; in addition, Lambeth had agreed to undertake a fresh assessment with a different social worker;

In *R (O) v Lambeth LBC* [2016] EWHC 937 Admin; (2016) 19 CCLR 626 mother and child applied to Lambeth for support under section 17 of the Children Act 1989. The mother was an overstayer but nonetheless she had managed to fend for herself, and her child, for at least 6 years and there were indications that the mother had sources of income. Lambeth concluded that the mother's case that she was destitute was false. DHCJ Helen Mountfield took the following approach:

> 17 Whether or not a child is 'in need' for these purposes is a question for the judgement and discretion of the local authority, and appropriate respect should be given to the judgements of social workers, who have a difficult job. In the current climate, they are making difficult decisions in financially straitened circumstances, against a background of ever greater competing demands on their ever diminishing financial resources. So where reports set out social workers' conclusions on questions of judgement of this kind, they should be construed in a practical way, with the aim of seeking to discover their true meaning (see per Lord Dyson in *McDonald v Royal Borough of Kensington & Chelsea [2011] UKSC 33* at [53]). The way they articulate those judgements should be judged as those of social care

experts, and not of lawyers. Nonetheless, the decisions social workers make in such cases are of huge importance to the lives of the vulnerable children with whose interests they are concerned. So it behoves courts to satisfy themselves that there has been sufficiently diligent enquiry before those conclusions are reached, and that if they are based on rejection of the credibility of an applicant, some basis other than 'feel' has been articulated for why that is so.

18 The converse is also true. An applicant parent who is seeking to persuade a local authority that they and their child are destitute or homeless, so as to trigger the local authority's duties of consideration under section 17 Children Act 1989 is seeking a publicly funded benefit, to which they would not otherwise be entitled, which diverts those scarce funds from other Claimants. Even the process of assessment is a call on scarce public funds. It therefore behoves such an applicant to give as much information as possible to assist the decision-maker in forming a conclusion on whether or not they are destitute.

19 If the evidence is that a family has been in this country, without recourse to public funds and without destitution for a number of years, reliant on either work or the goodwill and kindness of friends and family, then the local authority is entitled and indeed rationally ought to enquire why and to what extent those other sources of support have suddenly dried up. In order to make those enquiries, the local authority needs information. If the applicant for assistance does not provide adequate contact details for family and friends who have provided assistance in the past, or cannot provide a satisfactory explanation as to why the sources of support which existed in the past have ceased to exist, the local authority may reasonably conclude that it is not satisfied that the family is homeless or destitute, so that no power to provide arises.

20 Fairness of course demands that any concerns as to this are put to the applicant so that she has a chance to make observations before any adverse inferences are drawn from gaps in the evidence, but otherwise, the local authority is entitled to draw inferences of 'non-destitution' from the combination of (a) evidence that sources of support have existed in the past and (b) lack of satisfactory or convincing explanation as to why they will cease to exist in future.

21 In other words, *if* sufficient enquiries have been made by the local authority and *if* as a result of those enquiries an applicant fails to provide information to explain a situation which prima facie appears to require some explanation, then the failure by an applicant to give sufficient information may be a proper consideration for the local authority in drawing the conclusion that the applicant is not destitute: see per Mr Justice Leggatt in *R(MN) v London Borough of Hackney [2013] EWHC 1205 (Admin)* at [44]. But that does not absolve the local authority of its duty of proper enquiry.

22 I also note what was said by Leggatt J in the Hackney case at [26] as to the approach which the court should take to evidence in determining whether there has been such enquiry. He said that little or no weight should be given to witness statements prepared months after a decision had been taken for the purpose of litigation, with the obvious dangers of *ex post facto* rationalization; and more fundamentally:

> "What a public authority decided should in principle be ascertained objectively by considering how the document communicating the decision would reasonably be understood, and not by enquiring into what the author of the document meant to say or what was privately in his mind at the time when he wrote the document".

That is the approach I have taken in considering the extent of enquiry undertaken on the facts of this case.

In *R (S and J) v Haringey LBC* [2016] EWHC 2692 Admin, DHCJ Neil Cameron QC quashed a decision by Haringey that 2 children of an apparently homeless and destitute mother were not children in need. He held that, given all the circumstances including the social worker's view as to the reliability of statements made by the mother it had not been irrational to conclude that, in truth, the children were not children in need because if push came to shove the mother would continue to be able to secure accommodation and support from her social network, as she had done in the past; but the decision had been unfair, in that Haringey had not given the mother a fair opportunity of addressing its concerns.

In *R (MM and A) v Islington LBC* [2016] EWHC 332 Admin, (2016) 19 CCLR 122, MM was a 15-year old boy who had autism and who lived with his mother in a 2-bedroom maisonette on the upper floor of a block of flats. He sought a judicial review of Hounslow's assessment that he and his mother continued to require just 12.5 hours of support a week. DHCJ Sir Brian Keith held that (1) the assessment was rational in all the circumstances, including that the social worker had agreed with SENDIST that MM should attend a special school during the day, had reasonable grounds for concluding that MM's mother had somewhat exaggerated his behavioural difficulties, had arranged some provision of specialised short breaks and had made a referral to a challenging behaviour team; (2) it had also been rational not to assess MM as needing alternative accommodation, given that MM only used a wheelchair occasionally and that the flat had been made safe for his occupation and, in any event, it would not have been unlawful to decline to meet such an assessed need on the basis of *R (G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, (2003) 6 CCLR 500; (3) Hounslow's

eligibility criteria were rational; (4) given that MM had mounted a challenge to the assessment, it had been reasonable for Hounslow to defer completion of a care plan until conclusion of the proceedings.

In *R (A) v Haringey LBC* (unreported, 16/9/16) DHCJ Straker held that Haringey had lawfully offered a 17-year old London boy accommodation in Nottingham (to keep him away from gang-related activities) and that it had discharged its duties under the Children Act 1989 as well as could reasonably be expected, given the boy's almost total lack of co-operation. It was not required to keep accommodation open at cost but would have to continue to perform its duty on request unless and until there was a frequent and unequivocal refusal to accept help which could entitle it to terminate its duty.

In *R (CO) v Lewisham LBC* (Lawtel, 20 June 2017) HHJ Walden-Smith held that an assessment that children were not children in need was unlawful when it failed to take into account evidence as to why support was no longer available, failed to give the mother the opportunity of addressing concerns about her credibility and, ultimately, reached an irrational conclusion given that the mother had only been able to provide hopelessly unstable and totally inappropriate accommodation.

In *R (OK) v Barking & Dagenham LBC* (Lawtel 28/3/17) Barking & Dagenham had assessed children as not being children in need despite the parents not being eligible to work or claim benefits and despite consistent evidence including bank account statements and a list of persons from whom support had been provided; it doubted the parents' credibility or that their previous sources of support had ended. DHCJ Leigh-Ann Mulcahy QC held that the assessment process had not been fair (the parents had not been afforded an opportunity of addressing credibility concerns) and it had not taken into account the substantial and consistent evidence provided by the

parents and explained why it was not believed; ultimately, its conclusions had been irrational.

In *R (N) v Greenwich LBC* [2016] EWHC 2559 Admin, N was a 7-year old French child whose mother, a Gambian national, was challenging the refusal of a residence card. The family had been evicted and had sought accommodation assistance from Greenwich. The mother could not lawfully rent private sector accommodation because of section 21 of the Immigration Act 2016. Greenwich refused to provide accommodation. In response to the application for judicial review, Greenwich stated that the family could stay with friends or in B&B accommodation. DHCJ Andrew Thomas QC granted interim relief because Greenwich had failed in its assessment (or elsewhere) to identify any friends with whom the family could stay, or any basis on which they could pay for B&B accommodation.

Other

In *R (M and A) v Islington LBC* [2016] EWHC 332 Admin, Collins J noted that the co-operation duty in section 27 of the Children Act 1989 only applied as between social services authorities and other authorities, such as housing authorities and did not apply to different departments of unitary authorities. He held, however, that paragraph 68 of *Working Together to Safeguard Children* was to similar effect and, in practice, entitled social services departments to seek assistance from housing departments within the same unitary authority, who were then under a duty to "co-operate" (insofar as it was possible to assist without compromising its own functions). In that case, Islington's system was adequate although aspects of it were quite informal and the housing department had co-operated with the social services department.

In *R (Collins) v Nottinghamshire CC* [2016] EWHC 996 Admin, Patterson J held that it had been rational and otherwise lawful for the local authority to suspend an

organisation as an accredited provider of direct payment support services (which direct payments on behalf of service users) on being informed by the Trading Standards Department that it was pursuing a criminal investigation into alleged fraudulent dealings by that organisation in relation to service-users' accounts: a tranche of rather technical arguments were resoundingly rejected.

Education

In *R (E) v Islington LBC* [2017] EWHC 1440 (Admin), (2017) 20 CCLR 148, Ben Emmerson QC sitting as a Deputy High Court Judge held that a local authority's failure to arrange education for a child who was transferred in and out of the borough breached the right to education in Article 2 of the First Protocol of the European Convention on Human Rights and section 11 of the Children Act 2004. A challenge to the assessment and eligibility decision in relation to the mother under the Care Act 2014 failed but the challenge to child in need and young carer's assessments of the claimant succeeded.

Housing and benefits

In *R (Carmichael and Rourke and Others) v Secretary of State for Work and Pensions* [2016] UKSC 58, (2017) 20 CCLR 103, the Supreme Court (Neuberger, Hale, Mance, Sumption, Carnwath, Hughes and Toulson JSC) held that regulation 13 of the Housing Benefit General Regulations, which introduced the 'bedroom tax' or 'spare room subsidy', resulted in a breach of Article 14 ECHR taken with Article 8 and/or Article 1 of the First Protocol where it failed to allow for an extra bedroom and there was a transparent medical need for an extra bedroom. Where a need to remain in the property arose from other factors, these could be considered the Discretionary Housing Payment Scheme.

In *R (DA) v Secretary of State for Work and Pensions* [2017] EWHC 1446 Admin, Collins J held that the revised welfare benefits cap unlawfully discriminated against lone parents with children under the age of 2 (appeal pending). (The revised welfare cap,

effected by the reduction of housing benefit, required a parent to work at least 16 hours per week to avoid its imposition. The claimants were lone parents with children aged under 2 years, who submitted that they were not reasonably able to work).

Children's DOLS

In *A Local Authority v D and Others* [2016] EWHC 3473 (Fam), (2017) 20 CCLR 219 a local authority applied for permission to seek an order authorising a 15-year-old child's deprivation of liberty in a residential unit. The court had to determine whether to grant the order under section 100 of the Children Act (CA) 1989; whether D had been deprived of his liberty; whether D was '*Gillick*-competent' to consent to his confinement, and, if so, whether he had in fact consented; and whether the use of the inherent jurisdiction to make an order under CA 1989 s100 was compliant with Article 5 of the European Convention on Human Rights. Keehan J held that the local authority was permitted to apply for an order but that as the teenager was *Gillick*-competent and able to consent to the placement, the order was unnecessary. Nevertheless, if the court had to determine the issue, it would have concluded that the use of the inherent jurisdiction to authorise the deprivation of liberty of a child or young person was compliant with the procedural requirements of Article 5 ECHR.

Children from abroad

In *R (ZM) v Croydon LBC* [2016] UKUT 00559 (IAC), UTJ Ockelton required the asylum-seekers to permit Croydon to obtain dental reports to assist their assessment of age, as a condition of their judicial review applications proceeding. He provided the following guidance, at para 79:

> (1) Evidence obtained by x-ray dental tomography may well be relevant to age assessment.
>
> (2) Generally speaking, the danger to an individual arising from exposure to x- rays in the tomography process is wholly outweighed by the intended benefit of a contribution to the evidence used in age assessment. It is likely to be unreasonable for a young person whose age is disputed to refuse to undergo the process, or for a refusal to be entered on his behalf. The earlier a tomograph is taken, the more likely it is to offer useful information.

> (3) Judges should beware of being misled into over-valuing statistical evidence in the context of a fact-finding exercise. They should bear in mind the risks of error and consider in an individual case whether that risk is tolerable. They should be prepared to question the assumptions behind statistical calculations and ensure that the reference data set is valid and that all factors capable of affecting the calculations have been taken into account.
>
> (4) Judges should be prepared also to question the basis of opinions expressed in a report or opinion. Opinions sharing major features with that examined in the present judgment are unlikely to be worthy of reliance, and judges should be wary of accepting age assessments that appear to rely extensively on the reputation of the author rather than the detail, consistency and currency of the data.

In *R (Q) v Leicestershire CC* [2016] EWHC 2087 Admin, Sir Stephen Silber preferred the child's evidence to that of a social worker, in an age assessment case: the social worker's evidence had not been assisted by the fact that they had destroyed their original notes, not provided a witness statement and a "vague and unimpressive" recollection of the assessment. By contrast, Q had not been an evasive, but a reliable witness.

In *R (S) v Croydon LBC* [2017] EWHC 265 Admin, Lavender J held that it had been unlawful not to treat an asylum-seeker as a child pending completion of the age assessment: the statutory guidance, *Care for Unaccompanied and Trafficked Children*, in particular at paragraph 22, required that Croydon must treat the claimant as a child pending completion of the age assessment unless there was some cogent reason why not. The fact that the Home Office considered that the claimant was an adult did not amount to a cogent reason.

In *R (FA) v Ealing LBC* (Lawtel 13/3/17), UTJ Coker refused permission for a dental age assessment in the case of a (claimed) older teenager because (i) dental age assessments were not accurate in the case of older teenagers; and (ii) although the risk of cancer from a dental x-ray was small, it was not justified where the advantage to be gained was minimal.

Court procedure

In *AP v Tameside MBC* [2007] EWHC 65, (2017) 200 CCLR 5, King J declined to grant an extension of time to permit proceedings under the HRA 1998 to be pursued, notwithstanding that the claimant had lacked capacity to bring proceedings because he had been represented by family members and a firm of solicitors. The extension sought was for 18 months, a lengthy period necessitating a critical examination of the reasons for the delay.

In *R (Jones) v Denbighshire CC* [2016] EWHC 2074 Admin, Hickinbottom J held that a 19-year old, who had previously attended one of 2 primary schools ear-marked for possible closure, had sufficient interest to bring judicial review proceedings challenging its closure; clear evidence was needed to establish that bringing proceedings in the name of a child was an abuse of process, to avoid a costs order.

NHS/social care divide

In *R (Forge Care Homes Ltd) v Cardiff and Vale University Health Board* [2017] UKSC 56, the Supreme Court (Hale, Clarke, Wilson, Carnwath and Hodge JSC) held that the NHS was responsible for the cost of "nursing care by a registered nurse" that was provided in a social care setting, e.g. in care homes, and that "nursing care by a registered nurse" included (a) direct and indirect nursing time as defined by a Laing & Buisson study, (b) paid breaks; (c) time receiving supervision, (d) stand-by time and (e) time spent on providing, planning, supervising or delegating the provision of other types of care which in all the circumstances ought to be provided by a registered nurse because they are ancillary or closely connected with, or are part and parcel of the nursing care, which the nurse has to provide.

Although the case involved a dispute between Welsh NHS and social care funders there is no material difference between the statutory regime in Wales and England. Accordingly, the decision applies just as much in England as in Wales. In addition, although some of the legislation has changed somewhat, there have not been any

material changes. Accordingly, the decision will hold good unless and until (which seems unlikely) the government legislates so as to affect the position.

STEPHEN KNAFLER QC

OCTOBER 2017

This seminar paper is made available for educational purposes only. The views expressed in it are those of the author. The contents of this paper do not constitute legal advice and should not be relied on as such advice. The author and Landmark Chambers accept no responsibility for the continuing accuracy of the contents.