

[2009] All ER (D) 122 (Dec)

Collins v Plymouth City Council

[2009] EWHC 3279 (Admin)

Queen's Bench Division, Administrative Court (London)**Holman J****11 December 2009**

Local authority – Statutory powers – Disabled persons – Provision of day care services – Fairer charging policy – Claimant rendered paraplegic in road traffic accident – Claimant awarded damages – Defendant authority providing day care services for claimant – Authority charging claimant for services pursuant to statutory power on grounds reasonable to do so having regard to claimant's income from damages award – Whether authority unlawfully fettering discretion – Whether authority applying relevant guidelines – National Assistance Act 1948, s 29 – Health and Social Services and Social Security Adjudications Act 1983, s 17.

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Local authority – Statutory powers. The Administrative Court dismissed the claimant's claim for judicial review of the defendant authority's decision to charge him for day care services provided, where the decision had been made in accordance with a lawful policy designed to make reasonable charges where the authority was permitted by statute to do so.

Digest

The judgment is available at: [2009] EWHC 3279 (Admin)

In 1984, when aged nine, the claimant suffered severe injuries in a road traffic accident. He was left with lifelong paraplegia and cerebral palsy and required constant care. An award of global damages in the sum of £1,139,000 was agreed and made and, since 1992, the claimant's litigation friend acted as receiver, later financial deputy, under orders of the Court of Protection to manage that award. Part of the award was applied in buying, adapting and equipping a suitable home for the claimant, with the balance being invested. The claimant had no other capital and no income save for the state benefits to which he was entitled, amounting to approximately £180 per week, and the income from the invested fund, approximately £26,000 per annum, gross. Since 2006, the defendant authority had provided day care services to the claimant under s 29 of the National Assistance Act 1948. Pursuant to s 17 of the Health and Social Services and Social Security Adjudications Act 1983, an authority providing services under s 29 of the 1948 Act could recover 'such charge ... as [it considered] reasonable'. Statutory guidance had been issued in respect of charging for residential services in the form of a circular, 'Charging for Residential Accommodation Guide' (CRAG) but that did not apply to the claimant's case because he received day care, not residential, services. However, the Department of Health's document entitled 'Fairer Charging Policies for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities' (Fairer Charging) applied to the services provided to the claimant in the instant case. Paragraph 15 provided: 'As a minimum, users' income should not be reduced by charges below "basic" levels of Income Support, as defined in this guidance ... plus a buffer of not less than 25%'. It also provided that, in assessing a person's resources, the capital sum represented by a damages award had to be left out of account. The authority in the instant case also had its own 'Adult Social Care Fairer Charging Policy' (the authority's policy). Paragraph 2.2 of that policy reflected para 15 of Fairer Charging. Paragraph 4.4 of the authority's policy provided: 'The clients charge will be calculated from the amount of income received and capital held. this will include benefits received by the client for example ...'. There followed a wide range of, inter alia, state benefits, pensions and allowances. There was no reference anywhere in the policy to capital or income from personal injury damages awards. The total charge for the day services which the authority provided the claimant in the

instant case normally amounted to approximately £163 per week. The authority assessed that sum as less than the maximum amount which the claimant could be required to contribute and accordingly billed the financial deputy for that amount. Between December 2006 and April 2008, the financial deputy paid the authority the sum of £7,626.99. He then declined to pay subsequent invoices which, at the time of the instant proceedings, totalled £9,623.58 and issued a complaint to the authority in respect of the decision to make the charges. In the course of the correspondence which ensued, the authority stated that the CRAG guidelines provided that if the income from trusts or personal injury awards was used to purchase care not covered by the authority, it would be disregarded for financial assessment purposes, but income not so used would be disregarded, up to a maximum of £20 per week. The claimant, assisted by his litigation friend, did not accept that explanation and eventually, in February 2009, issued judicial review proceedings against the authority.

He submitted that the decision was unlawful on the ground that, inter alia, the authority had not exercised any discretion of its own in deciding to charge him for the day services provided but had rather applied the guidelines contained in CRAG as if they governed the instant case and had in so doing unlawfully fettered or trammelled its discretion.

The application would be dismissed.

The authority did have a policy of its own, namely, Fairer Charging. That policy was lawful and was designed to make reasonable charges where it was permitted to do so in order to maximise the services that could be provided. Paragraph 4.4 of the policy was wide enough to include income from personal injury damages awards and the written policy made no provision for any disregards in relation to such income, although the authority did in fact apply the policy in a way which was more favourable in its treatment of such income, by making the £20 disregard. It exercised its discretion to do so by having regard to, but not directly applying, CRAG guidance. It was not wrong, so as to be unlawful, to have that regard. On the contrary, it was entirely rational and appropriate that, in deciding its approach in situations to which the regulations and guidance did not apply, the authority had some regard to that guidance and ensured that its own decisions were 'no less generous' (see [36] of the judgment).

James Neill (instructed by Pardoes) for the claimant.

Lisa Sullivan (instructed by Plymouth City Council Legal Services) for the authority.





Alison Pryor Barrister.

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