

A **R v North Yorkshire CC ex p William Hargreaves**

Queen's Bench Division
Dyson J
30 September 1994

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A decision by a local authority in breach of the Policy Guidance is unlawful because of Local Authority Social Services Act 1970 s7(1); but local authorities do not always have to give reasons when they depart from Complaints Review Panel recommendations.
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C **Facts**

A dispute arose as to what form suitable respite care ought to take for the applicant carer's intellectually-impaired 55-year-old sister. The applicant's sister had for several years attended the Winged Fellowship Establishment (WFE) in Southport and the Jane Hodge Hotel (JHH) in South Wales, the full cost being met by the
D Department of Social Security (DSS). The DSS payments became insufficient to cover the full cost and the respondent refused to pay the difference. The applicant's position was that only respite care at the WFE, the JHH or similar would be suitable. The respondent favoured the use of local schemes, which were cheaper. The
E Complaints Review Panel decided that the respondent's offer of local community-based respite care was lawful but recommended transitional arrangements whereby an initial ten weeks' respite care was offered – six weeks at the WFE or the JHH, plus four weeks locally – so that the applicant and his sister could adjust themselves to the change. The respondent actually offered transitional
F arrangements involving six weeks' respite care – initially four weeks at the WFE or the JHH, plus two weeks locally.

The applicant was, and described himself as, his sister's spokesman. He clearly asserted that his sister's views on the merits of the WFE or the JHH as opposed to local care were the same as his. The respondent accepted this. The respondent had
G great and understandable difficulty in communicating with the sister, exacerbated by the applicant's protective attitude, but it was by no means impossible: she had shown that she was able to communicate preferences in relation to respite care and there was some evidence that her preferences were not identical to the applicant's.

H **Held:**

- 1 The respondent had failed, in breach of the Policy Guidance paras 3.16 and
I 3.25, to ascertain the applicant's wishes and preferences in relation to respite care, eg, by directly questioning her. Its assessment of the applicant's needs in relation to respite care, and its decision as to appropriate respite care, under National Health Service and Community Care Act 1990 s47(1), were accordingly
J unlawful. This was not a case in which it had been impossible to ascertain the preferences of the user or carer, eg, because of wilful lack of co-operation or disability preventing communication. Rather, the task had been extremely challenging.
- 2 The respondent was entitled to refuse to accept in full recommendations made
K by the Complaints Review Panel in relation to the transitional arrangements. Because (a) the transitional arrangements were collateral to the actual complaint, which was not upheld, and (b) since modification by the respondent of the arrangements recommended was relatively minor, the respondent was not obliged to give reasons for its departure from the arrangements recommended: *R v Avon CC ex p M* [1994] 2 FCR 259 distinguished.

Cases referred to in judgment:

R v Avon CC ex p M [1994] 2 FCR 259; [1994] 2 FLR 1006; [1995] Fam Law 66, QBD.

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Legislation/guidance referred to in judgment:

National Assistance Act 1948 s29 – National Health Service and Community Care Act 1990 ss46(3) and 47 – Local Authority Social Services Act 1970 s7(1) – *Community Care in the Next Decade and Beyond* (the Policy Guidance) (LASSA Guidance, November 1990) – the Laming Letter (guidance in the form of a letter from Mr Herbert Laming CBE, the Chief Inspector, Social Services Inspectorate, dated 14 December 1992).

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This case also reported at:

(1994) *Times*, 9 November.

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Representation

R Gordon QC (instructed by Jenkinson, Nott & Looker, York) appeared on behalf of the applicant.

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I Peddie QC and E Romer (instructed by County Secretary, County Hall, Northallerton, North Yorkshire) appeared on behalf of the respondent.

Judgment

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MR JUSTICE DYSON: The Applicant is the brother of Beryl Hargreaves, who is a service user for community care services provided by the Respondent Council. Miss Hargreaves is now 55 years of age. She lives alone in Selby. She suffers from serious intellectual impairment. In consequence she has been heavily dependent on her brother for support in a significant number of areas. These are described in some detail in a Statement of Need, dated 27th November 1991, made by the Respondent. The Applicant lives some two miles away from Miss Hargreaves and has for many years provided that support every day. For a number of years, starting in 1986, Miss Hargreaves spent a total of six weeks each year at either a Winged Fellowship establishment in Southport or at the Jane Hodge Hotel in South Wales. The establishments were chosen by the Applicant as being particularly well-suited to her needs. Until 1990 the full cost was met by the Department of Social Security. By the summer of 1990, however, the amount being allowed by the Department was insufficient to cover the full cost of Miss Hargreaves' stays at these establishments. The Applicant requested that the Respondent make up the shortfall. The Respondent refused. In the ensuing period the Applicant complained to the Ombudsman and brought a claim against the Respondent for damages for breach of statutory duty. Other allegations were made by him against the Respondent, the details of which I need not relate. Suffice to say that there was much rancour and acrimony. In November 1991, the Respondent decided to carry out an assessment of Miss Hargreaves' needs, with particular reference to the need for respite care. The Statement of Need, dated 27th November 1991, stated in relation to respite care:

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Respite care. Because Mr Hargreaves is the main carer for Beryl they both occasionally need a break from each other.

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Action. Assessment of the support Beryl would need in her own home to be made to determine whether respite care could be provided for her there. Assessment of other provisions which could provide respite care to be made.

The statement concluded with these words:

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- A *Most of Beryl's needs appear to be currently being met. However she does appear to rely very heavily on her brother for support in a number of areas. I feel she needs formal assessment in a number of areas, the assessment process to be arranged and co-ordinated by her Social Worker, Andy Kilpatrick. I would suggest the following assessments be made, the findings discussed with Beryl and Mr*
- B *Hargreaves and a Life Plan arranged to formalise how the needs identified are to be met and who should be responsible but as Mr Hargreaves' and Beryl's involvement and agreement is vital in this process this can only be done with their co-operation.*

- C Accordingly, it was accepted by the Respondent that both Miss Hargreaves and the Applicant (as her carer) were in need of respite care. The next question was to determine what form of respite care was to be provided. The Applicant was firmly of the opinion that Miss Hargreaves required up to seven weeks a year respite care in the Winged Fellowship establishment, the Jane Hodge Hotel or a similar establishment. The Respondent's view as expressed, for example, in a report dated 10th
- D January 1992, by Mr Ransford, the Director of Social Services, was that respite care could adequately be provided for Miss Hargreaves in her own home by means of domiciliary support. The offer of domiciliary support had been rejected by the Applicant by late 1991. On 17th January 1992, the Elderly and Disabled People's
- E Sub-committee refused the Applicant's demands.

- F Since the Statement of Need of 27th November 1991 was not and was not based on a concluded assessment of Miss Hargreaves, the Respondent was anxious, notwithstanding the Sub-committee's decision of 17th January 1992, to complete the assessment process. During 1992 the Applicant refused to allow a further assessment to be carried out despite a number of requests by the Respondent.
- F The Applicant maintained his refusal until about July 1993, when he finally agreed that an assessment could be carried out. The assessment was undertaken by Miss Alison Swain, a Care Manager of the Respondent.

- G On 31st July 1993, the Applicant wrote to the Respondent saying that he was the best judge of the needs of Miss Hargreaves and himself. In his letter he identified her needs, stated that there was a need for respite care of six weeks per annum, and repeated that her needs would be best met at the Winged Fellowship establishment or the Jane Hodge Hotel.

- H On 5th August 1993, Miss Swain met Miss Hargreaves and the Applicant to discuss the proposed assessment. She says at paragraph 2 of her affidavit that Miss Hargreaves did not contribute to the discussion at all, despite attempts by Miss Swain to involve her in the discussion. Miss Swain prepared a draft assessment which rejected the Applicant's suggestion of the Winged Fellowship establishment and the Jane Hodge Hotel and proposed that respite care be provided by some form of residence locally. The Applicant responded by a letter dated 16th
- I September 1993 that there were no options available other than the Winged Fellowship and the Jane Hodge Hotel.

- J On 23rd September, Miss Swain met the Applicant and Miss Hargreaves in a further attempt to ascertain the views of Miss Hargreaves. In her affidavit Miss Swain says that the Applicant assured her that Miss Hargreaves would have contributed to the discussion or interrupted it if she had disagreed with what he was saying. At paragraph 5 of her affidavit she says:

- K *From my meetings with Mr Hargreaves and Miss Hargreaves, I was aware of the fact that Miss Hargreaves was happy in the Winged Fellowship and the Jane Hodge Hotel and had no reason to believe she would not be as equally happy on*

the Adult Placement Scheme once she had been given the opportunity to experience it.

At paragraph 9 she says:

In the light of my conversation with Mr Hargreaves on 23 September 1993 and the Social Services Department's other dealings with him, I considered that there would be no value in seeking to consult further direct with Miss Hargreaves. The previous experience showed that Mr Hargreaves would not permit his sister to contribute to any direct meetings. I did not attempt to write to Miss Hargreaves direct because, in view of the degree of her learning disability, I did not believe that she would be able to correspond with me direct and any reply would come through Mr Hargreaves. I was already fully aware of Mr Hargreaves' view, and such an exercise would not have had any value.

On 1st October, the Applicant made a complaint to the Respondent's Complaints Review Panel alleging that the Respondent's funding policy was unlawful, *inter alia*, because it did not take account of the carer and user choice and ability to pay. On 12th October, Miss Swain wrote to the Applicant as follows:

Please find enclosed the revised summary of strengths and needs and proposed care plan.

I would be grateful if you could contact me with a convenient date for me to visit to discuss it with you and Beryl with the view to both of you looking further at the opportunities with the Adult Placement Scheme.

The document she sent identified a number of potential providers of respite care, including Winged Fellowship and the Jane Hodge Hotel, three local residential establishments and an Adult Placement Scheme. The pros and cons as well as the costs of each potential provider were set out. Of the three local establishments two were said to be unsuitable. The advantage of the Adult Placement Scheme was said to be that it was 'more local and appropriate to individual support needs, specifically respite.' No disadvantage was identified. The assessment stated that respite care was required six weeks per annum. This duration is not in issue between the parties now. Paragraph 12 of the assessment is important. So far as material it states as follows:

Mr Hargreaves is Beryl's only carer and is anxious that wherever Beryl receives Respite the level of care he provides will be maintained.

He believes very strongly that 'The Winged Fellowship' establishments and 'The Jane Hodge Hotel' adequately meet Beryl's needs and assure him of 'peace of mind' while she is away.

He would like 6 weeks' Respite per year away from home to coincide with college holidays.

She sets out the college holidays and then she continues:

The Department would accept the request for 6 weeks' Respite per annum.

It does not accept that the level of support provided by Mr Hargreaves can only be maintained at the establishments Mr Hargreaves refers to and believes that the same level of support can be provided as follows:

(a) *Support could be provided at the level Beryl currently receives within her home through domiciliary care and a 24-hour contact point. This is not acceptable to Beryl or Mr Hargreaves as Beryl enjoys socialising and being away from home. The Department also recognises that for Mr Hargreaves to feel the full benefit of respite care he needs Beryl to be away from home.*

- A (b) *Support could be provided within the Department's resources, eg, the Adult Placement Scheme within the Selby area.*

We recommend exploration of appropriate facilities more locally to enable Beryl to have a greater knowledge of what is available to meet her needs.

- B The last page of the assessment is headed 'Area of Disagreement'. The area of disagreement is identified as being:

Where Respite could be provided – service and locality.

The view attributed to the service user is as follows:

- C *Beryl does not wish to stay in York as it holds bad memories of past experiences.*

The view attributed to the carer, Mr Hargreaves is:

Mr Hargreaves feels that the Winged Fellowship Trust and the John Groom Association are the only establishments that can meet Beryl's needs as referred to in letter dated 16.9.93 attached.

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The Assessor's views are described in these terms:

The Care Manager believes Beryl's needs could be appropriately met within the Adult Placement Scheme in Selby, with the emphasis on social contact and individual support to maximise her skills towards independent living.

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She recommends this be explored further with Beryl.

The Applicant's response to this document appears in his letter of 13th October. He wrote:

- F *... Neither Beryl and I want anything to do with your Adult Placement Scheme. Such a scheme by its very nature is a long term proposition and as Carer, Brother and Authorised Representative for Beryl, it is a scheme with absolutely no potential for Beryl but flawed with dangers.*

- G On 24th October he wrote again, saying that the assessment 'ignores our needs, choices and pleadings'.

On 2nd November, the Respondent wrote to the Applicant formally offering six weeks' respite care. Mr Ransford said that although it would be possible to provide a package of support to Miss Hargreaves in her own home, this would not offer the Applicant the peace of mind that he sought. Accordingly, Mr Ransford offered the Adult Placement Scheme or residence at Dormary Court in York. He also indicated that Miss Hargreaves could be considered for a new scheme (the Acorn House scheme) which would be established in Selby early in 1994. These offers were rejected by the Applicant on 10th November. On 16th December 1993, the Complaints Review Panel gave its decision. By this time, the dispute which was being adjudicated upon by the Panel had been refined to a dispute as to how and where the agreed six weeks' respite care should be provided. The Panel recommended as follows:

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C. . . . The Panel is of the opinion that the Department policy has done what is needed in law by offering local, community based respite care appropriate to Beryl's assessed needs. However, it is clear to the Panel that the impasse between the Department and Mr Hargreaves and Beryl needs to be resolved somehow and that as an acknowledgment of this and in an attempt to plan for Beryl's long term future the Panel recommends that a transitional arrangement be agreed.

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D. The Panel therefore recommends that Beryl is offered a package of ten

weeks' respite care in 1994/95, six weeks at either the Jane Hodge Hotel or the Winged Fellowship and four weeks in alternative placements such as the Adult Placement Scheme or the Residential Respite scheme in Selby. It is not recommended that the six weeks be offered in these establishments unless Mr Hargreaves is willing to work with Beryl and the Department towards developing suitable local facilities for her.

In this way Beryl and Mr Hargreaves will have some security over the next year to fifteen months and there will be an opportunity for all concerned to concentrate on a more positive relationship in the future.

These arrangements should be reviewed throughout the course of the year.

Having received the report of the Panel, Mr Ransford communicated the Respondent's decision on 29th December 1993. He noted that the Panel had stated that the Department's policy was not illegal and that the arrangements offered in Miss Hargreaves' case were reasonable. In order to resolve the impasse that had arisen, he wrote:

That assessment identified the need for six weeks' respite care . . . [he was there referring to the assessment made by Miss Swain] . . . and I note that has been agreed by all concerned. Therefore, it seems to me illogical for the Panel to recommend that ten weeks should be provided in 1994/95. The dispute is not about the amount of respite care to be funded by the Department, but the location in which it is offered. You have consistently argued for the provision of particular placements which you say are established by previous usage, whereas the Department considers that Beryl's needs, and your understandable need for respite, can be provided for more locally.

Therefore, in the spirit of trying to establish a reasonable resolution to this long-standing dispute, and accepting the Panel's recommendation to establish a transitional period, I am offering the following arrangement to resolve your complaint. The Department is willing to fund the following arrangement –

1994/95 Four weeks in a Winged Fellowship residential placement, or at the Jane Hodge Hotel, and two weeks in an alternative placement such as the Adult Placement Scheme or the Residential Respite Scheme in Selby.

1995/96 Two weeks at the Winged Fellowship or Jane Hodge Hotel and four weeks in a local facility.

1996/97 Six weeks in a local facility.

This proposal provides a transitional period which is longer and more gradual than the fifteen months recommended by the Panel. However, it is offered on a similar understanding, namely that on behalf of your sister you express your willingness to work with officers of the Department towards developing suitable local facilities for her care.

Statutory Framework

Section 29(1) of the National Assistance Act 1948 provides:

A local authority may, with the approval of the Secretary of State, and to such extent as he may direct in relation to persons ordinarily resident in the area of the local authority shall make arrangements for promoting the welfare of persons to whom this section applies, that is to say persons aged 18 or over who . . . suffer from mental disorder of any description.

It is conceded by the Respondent that Miss Hargreaves is a person to whom section 29 applies.

A Section 47(1) of the National Health Service and Community Care Act 1990 provides:

Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority –
B *(a) shall carry out an assessment of his needs for those services; and*
(b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.

C Section 46(3) of the 1990 Act defines ‘community care services’ as meaning, *inter alia*, ‘services which a local authority may provide or arrange to be provided under . . . Part III of the National Assistance Act 1948’.

Section 29 of the 1948 Act is contained in Part III.

Finally, section 7(1) of the Local Authority Social Services Act 1970 provides:

D *Local authorities shall, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, act under the general guidance of the Secretary of State.*

Guidance as to the Assessment of Needs for Community Care Services

The general guidance given by the Secretary of State includes the following:

E ***Policy Guidance***

3.16 The individual service user and normally, with his or her agreement, any parents should be involved throughout the assessment and care management process. They should feel that the process is aimed at meeting their wishes. Where a user is unable to participate actively it is even more important that he or she
F *should be helped to understand what is involved and the intended outcome.*

Then paragraph 3.25:

The aim shall be to secure the most cost-effective package of services that meets the user's care needs taking account of the user's and the carer's own preferences. Where supporting a user in a home of their own would provide a better quality of life, this is to be preferred to admission to residential or nursing home care. However local authorities also have a responsibility to meet needs within the resources available and this will sometimes involve difficult decisions where it
G *will be necessary to strike a balance between meeting the needs identified within*
H *available resources and meeting the care preferences of the individual . . .*

Then paragraph 31 of the Laming letter includes the following:

The care plans of all users should be subject to regular review. For frail people in the community frequent reviews and adjustments of their care plans are likely to be needed. Before any changes in the services are made for existing users, they
I *should re-assessed.*

The Challenge to the Decision of 29th December 1993

Mr Gordon submits the decision should be quashed on the grounds that:

J (i) the assessment which formed the basis of the decision did not follow the general guidance contained in paragraphs 3.16 and 3.25 of the Policy Guidance and/or paragraph 31 of the Laming letter; accordingly, the decision as to the provision of respite care was made in breach of section 7(1) of the Local Authority Social Services Act 1970 and is unlawful. Alternatively, he submits
K that by failing to discover what Miss Hargreaves' preferences were as between

local placements and residence at one or other of the Applicant's preferred establishments, the Respondent disabled itself from properly evaluating her needs as to respite care, so that the assessment of those needs was unlawful. Mr Gordon put his case in a number of ways, but his principal point is that the Respondent did not take Miss Hargreaves' preferences into account because it never ascertained what they were;

- (ii) the decision is irrational in the *Wednesbury* sense ([1948] 1 KB 223) because on the face of the evidence the Respondent has given conflicting accounts as to the reasons for the decision;
- (iii) the decision should be quashed because it departed from the recommendations of the Complaints Review Panel without any good reason: Mr Gordon relies on *R v Avon County Council, ex parte M* [1994] 2 FCR 259.

For the Respondent, Mr Peddie submits as follows. In relation to (i), he accepts that the Respondent was under a statutory duty to act under the general guidance of the Secretary of State as contained in the Policy Guidance document and the Laming letter, and that on that account and in any event it was required to take account of the preferences of both Miss Hargreaves and the Applicant. He says, however, that the Respondent did its best to ascertain the preferences of Miss Hargreaves in difficult circumstances, succeeded in doing so and took them into account. As regards (ii) he says that upon a proper analysis there is no conflict as to the reasons given by the Respondent for its decision. As regards (iii) he submits that the departures from the recommendations of the Complaints Review Panel were minor, and he distinguishes the *ex parte M* case on its facts.

Were Miss Hargreaves' Preferences Taken into Account?

Mr Peddie relies on the affidavit evidence of Miss Swain to which I have earlier referred as showing that she had ascertained Miss Hargreaves' preferences and that they coincided with those of the Applicant. He also relies on the letters written by the Applicant in September and October 1993, particularly his letter of 13th October, in which he described himself as her authorised representative, saying that neither he nor Miss Hargreaves wanted anything to do with the Adult Placement Scheme. At one stage of the argument I was disposed to agree that it was reasonable for the Respondent to conclude that Miss Hargreaves' preferences were the same as those of the Applicant, simply because he was her spokesman, and Miss Swain was clearly having difficulties in communicating with Miss Hargreaves. I have been persuaded by Mr Gordon, however, that when one examines the evidence more closely the Respondent was not entitled to assume that her preferences were the same as his. Miss Swain deposes that Miss Hargreaves did not communicate her views or preferences at all because the Applicant would not allow her to do so. Yet, Miss Swain did elicit from Miss Hargreaves that she did not wish to stay in York and did not want domiciliary care: see Miss Swain's assessment. Moreover, the last page of the assessment entitled 'Area of Disagreement' implies clearly that the views of the Applicant and Miss Hargreaves are not coincidental. As Mr Gordon points out, that page attributes to the Applicant, not to Miss Hargreaves, the view that the Winged Fellowship Trust and the John Groom Association are the only establishments that can meet Miss Hargreaves' needs. There may be circumstances in which it is quite impossible to ascertain the preferences of the user and/or carer, for example, if there is wilful lack of co-operation or if the user or carer suffers from a disability which prevents communication. That is not however this case. It is not suggested that Miss Hargreaves is incapable of communicating her wishes. As I have said, she did so in at least two respects. Miss Swain says that Miss Hargreaves did not expressly indicate her

- A preferences as between Winged Fellowship and Jane Hodge Hotel, on the one hand, and the local offers, on the other hand, because (i) she was satisfied that if Miss Hargreaves had disagreed with the Applicant she would have said so (paragraph 4 of the affidavit) and (ii) Miss Hargreaves was not permitted to make contributions at the meetings (paragraph 9). As Mr Gordon points out, there is a conflict between these two paragraphs. They cannot both be right. If the first explanation is correct then, in my view, Miss Swain should have satisfied herself by direct questioning of Miss Hargreaves that she agreed with what the Applicant was saying (paragraph 3.16 of the Policy Guidance). I find the second explanation in any event difficult to accept, not only because it is in conflict with the first explanation but because it is disproved by the fact that Miss Hargreaves did communicate some of her preferences to Miss Swain. I should add that in his affidavit the Applicant deposes that he never observed any of the Respondent's representatives enquiring of Miss Hargreaves as to her preferences regarding the facilities afforded by the Winged Fellowship Trust and Jane Hodge Hotel as compared with those available locally. That evidence has not been challenged.

It follows that I am not satisfied that Miss Hargreaves did communicate her preferences on this important issue or that the Respondent could reasonably have thought that she had done so. It is instructive to see what Mr Ransford says at paragraph 54 of his affidavit. He said:

- E . . . *With regard to the Applicant's assertion that his sister will not use Selby Day Centre, the Respondent has largely been unable to ascertain her views on this and a number of other issues, because of the Applicant's insistence that he is the only person able to decide her best interests, and his refusal over several years to allow Social Services to discuss Miss Hargreaves' needs with her.*

- F In argument, Mr Peddie emphasises the word 'largely' and submits I should conclude on the basis of the evidence of Miss Swain that Miss Hargreaves' preferences on the issue in question coincided with those of the Applicant and that this was made known to and taken into the account by the Respondent. For the reasons I have already given, I cannot accept this and my interpretation of the evidence is supported by paragraph 54 of Mr Ransford's affidavit.

- G Accordingly, I decide that the Respondent made its decision without taking into account the preferences of Miss Hargreaves on the issue in question. It must follow that the decision was unlawful in the sense that it was made in breach of paragraphs 3.16 and 3.25 of the Policy Guidance. Mr Peddie does not dispute that if I find that the Respondent did not take account of Miss Hargreaves' preferences, the decision should be quashed. I would not wish it to be thought that I am being in any way critical of Miss Swain. She was in a very difficult situation. For understandable reasons the Applicant was very protective of Miss Hargreaves and had for a long time been in dispute with the Respondent. The task facing Miss Swain was extremely challenging and no doubt she thought that the Applicant was obstructing her ability to communicate with Miss Hargreaves. This readily explains why Miss Swain did not ascertain Miss Hargreaves' preferences on the crucial issue. In my judgment, however, it did not discharge the Respondent from the obligation of discovering what those preferences were.

- J As regards Mr Gordon's argument based on paragraph 31 of the Laming letter, it is unnecessary for me to reach any conclusion about it. To a large extent this argument stands or falls with the arguments based on paragraphs 3.16 and 3.25 of the Policy Guidance. Additionally, however, it has to be shown that the proposal to provide respite care locally is a 'change in circumstances' for 'existing users'. On the evidence, I rather doubt whether it can properly be said that when Miss

Hargreaves had attended the Winged Fellowship or Jane Hodge Hotel in the past, she was using services provided by the Respondent. It is, however, unnecessary to reach a decision on this point.

Was the Decision Irrational?

In view of my decision on the first issue, I can deal with this issue and the third one quite shortly. Mr Gordon submits that the Respondent has given conflicting reasons for the decision of 29th December 1993. He points out that Miss Swain is recorded as being of the opinion that the level of support provided by Winged Fellowship and the Jane Hodge Hotel is greater than that required to meet Miss Hargreaves' needs. On the other hand, as he points out, at paragraph 50 of his affidavit Mr Ransford says:

With regard to paragraph 1(6) of the Form 86A, the Respondent has not based its decision as to the provision of respite care on any suggestion that the level of care provided at Winged Fellowship and Jane Hodge Hotel exceeds Miss Hargreaves' needs. The Respondent has based its decision upon its considered view, in the light of the assessment, that Miss Hargreaves' needs can be better met in local facilities or in domiciliary care, having regard to the likely benefit to her of maintaining her contact with the local community.

In my view, this is a hopeless submission. There is no conflict. It is a perfectly coherent and consistent position to adopt to say that although a decision could be taken for reason X, it is in fact taken for reasons Y and Z.

Departure from the Complaints Review Panel Recommendation

This too, in my view, is a submission without foundation. The essential part of the decision of the Panel was the expression of its opinion that the offer made by the Department on 2nd November 1993 was lawful. The reference to the Panel was in the event primarily concerned with the validity or the reasonableness of that offer. It is true that the Panel went on to recommend transitional arrangements and that those arrangements should be reviewed throughout the year. The decision letter of 29th December 1993 accepted the principle of transitional arrangements and modified them in a number of respects. It is unnecessary to examine the modifications. I am satisfied that they were ones which the Respondent was entitled to put forward. Since the modifications were relatively minor I do not consider that the Respondent was obliged to give reasons for them. In fact it did give a reason for reducing the period in 1994/95 from ten weeks to six. Mr Gordon relies on *R v Avon County Council ex parte M* to support his argument. In my judgment, that decision does not establish any general principle of universal application in relation to the rejection by local authorities of Review Panel recommendations. That case was decided on *Wednesbury* principles. It was, on its facts, very different from the present case. The Review Panel had recommended that the Applicant should go to a certain accommodation at Milton Keynes. The issue between the Applicant and the local authority was whether he should be placed in Milton Keynes, as the Applicant wished, or in other accommodation. The Panel reached its decision after conducting a fact-finding exercise, hearing expert evidence and so on. As the Judge said, the evidence had been largely one way, that is in favour of Milton Keynes, and yet the local authority rejected the Panel's recommendations without giving any, or any adequate reasons, for doing so. In the present case, the Review Panel had endorsed the Respondent on the subject of complaint, namely the offer of 2nd November 1993. In the *ex parte M* case the Panel had decided the complaint in favour of the Applicant. All that Henry J was saying was that where a Panel has given a carefully

- A reasoned decision adverse to the local authority on the subject of complaint, and the local authority rejects the Panel's recommendation without itself giving a rational reason for doing so, then there is a strong *prima facie* case for quashing the local authority's decision as unlawful. That is, as I say, no more than an application of the *Wednesbury* principle. In my judgment, it would be quite wrong to
- B apply that approach to the mere refusal by the local authority to accept in full recommendations made by the Panel not on the subject of complaint but on a collateral matter, namely the proposed transitional arrangements put forward by the Panel in order to mitigate the consequences for the Applicant and Miss Hargreaves of the essential decision of the Panel to endorse the Respondent's position
- C on the subject matter of complaint.

For the reasons given in relation to the first issue, however, the decision communicated by the Respondent's letter of 29th December 1993 must be quashed.