

Local Authorities Social Services Letter

LASSL (97)13 Responsibilities of Local Authority Social Services

Department: Implications of Recent Legal Judgments

1. The purpose of this letter is to advise you of the latest position following judgments in two judicial review cases: *R v Gloucestershire County Council and the Secretary of State, ex parte Barry* (the 'Gloucestershire Judgment'); and, *R v Sefton Metropolitan Borough Council, ex parte Help the Aged and Others* (the 'Sefton Judgment').

Section 2 of the Chronically Sick and Disabled Persons Act 1970: the Gloucestershire judgment.

2. Local authorities' responsibilities under section 2 of the Chronically Sick and Disabled Persons Act 1970 (the CSDP Act) were the subject of a judgment in the House of Lords in March this year (*R v Gloucestershire County Council and the Secretary of State ex parte Barry*).

3. Section 2 of the CSDP Act places authorities under a duty to arrange certain services for individual disabled people where they are satisfied that that is necessary to meet their needs. The services concerned include practical assistance in the home; recreational facilities; assistance in travelling to services; assistance in arranging adaptations to the home, or the provision of additional facilities designed to secure greater safety, comfort or convenience; facilitating the taking of holidays; the provision of meals; and the provision of a telephone and any special equipment necessary to enable the disabled person to use it.

4. It has been the understanding of successive governments that local authorities are able to take their resources into account in assessing a person's need for the services listed in section 2 of the CSDP Act; deciding what services to arrange; and arranging those services. The circular issued shortly before the Act came into force in August 1970 stated:

Criteria of need are matters for the authorities to determine in the light of resources. (Circular 12/70, paragraph 7).

5. The view that authorities could take resources into account in assessing needs and deciding what services to arrange was challenged in a judicial review case brought against Gloucestershire social services in 1995. The challenge was upheld by the Court of Appeal in 1996, but the House of Lords overturned the Court of Appeal's interpretation of the law in a judgment given on 20 March 1997. That is to say, the legal position has been confirmed to be that which the Department of Health, since 1970, has believed to apply: authorities may take their resources into account in assessing the needs of a disabled person and deciding whether it is necessary to make arrangements for the matters listed in section 2 of the CSDP Act.

6. The Department of Health is aware that disabled people, and the organisations which represent them, have expressed concern about the effect of the House of Lords ruling. It therefore wishes to emphasise the following:

- the judgment does not give authorities a licence to take decisions on the basis of resources alone.

Authorities must still take account of all other relevant factors. Pressure on resources cannot be used as an excuse for taking arbitrary or unreasonable decisions.

In particular, it was confirmed in the course of the judicial review cases that

A *an authority cannot arbitrarily change the services which it is arranging for a disabled person merely because its own resource position has changed. It needs to reconsider what needs it will meet (ie what its eligibility criteria will be), and reassess the individual against those redefined needs.*

B • nor does the judgment mean that local authorities are not under any duty towards disabled people. Once a local authority has decided that it is necessary, in order to meet the needs of a disabled person, for it to arrange a service listed in section 2, then it is under a duty to arrange it.

7. Local authorities will wish to consider the implications of the *Gloucestershire* judgment in relation to all community care services (including residential accommodation provided under the National Assistance Act, which is discussed further below). They are also advised to seek their own legal advice.

Residential accommodation and capital resources: the Sefton judgment

D 8. The legislation regarding Part III residential accommodation provides for authorities to assess under section 21 of the National Assistance Act 1948 whether anyone requiring care services is 'in need of care and attention *which is not otherwise available to them*'. Under section 22 of that Act, and the National Assistance (Assessment of Resources) Regulations 1992, where people are provided with residential accommodation, those whose capital exceeds the upper limit of £16,000 must pay the full cost of accommodation. If their capital falls below that limit then, subject to income, they may be assessed to pay a lower rate.

E 9. It has been the common practice of local authorities, when making the needs assessment under section 21, not to take account of a person's capital below £16,000. However the High Court held in the *Sefton* case that a person's capital may be taken into account even if below that limit, so that (subject to the circumstances of each case) a person with capital below that amount could be considered to have 'care and attention otherwise available to them' and be refused accommodation.

F 10. Help the Aged successfully appealed against that judgment, which was overturned by the Court of Appeal (Lord Woolf MR, Lord Justice Roth and Lord Justice Henry). The Court of Appeal confirmed, in the light of the *Gloucestershire* judgment, that a local authority may have regard to its financial resources in deciding whether a person is 'in need of care and attention' under the provisions of the National Assistance Act 1948.

G 11. In relation to the issue of whether care and attention are 'otherwise available', the Court of Appeal held that:

The statutory scheme rests upon the assumption that care and attention is not to be regarded as 'otherwise available' if the person concerned is unable to pay for it according to the means test regime provided for in Section 22. Section 22(5) requires Sefton to give effect to the Regulations and this Sefton has not done . . . Any other approach is incompatible with the language of the relevant statutory provisions.

H 12. There may be a case for amending the National Assistance Act to ensure the situation is made clear in the legislation itself. For this reason the Government will give its full backing to a Private Members Bill introduced by Marsha Singh MP and scheduled for second reading on 28 November, which is aimed at amending the National Assistance Act 1948 to this effect.

I 13. Authorities should note the position as stated in the Court of Appeal judgment.