

# R v North Yorkshire CC ex p Hargreaves (No 2)

Queen's Bench Division

Latham J

16 May 1997

*The duty of '... facilitating the taking of holidays by' a disabled person under Chronically Sick and Disabled Persons Act 1970 s2(1)(f) requires a local authority to consider funding the entire cost of a holiday when the need for the holiday is directly referable to disability, and not just the additional costs of taking the holiday attributable to the disability.*

## Facts

The respondent local authority decided in relation to the applicant's sister that as 'she is unable to organise her own holidays and structure her own recreation outside her home, she needs regular holidays and a supportive environment away from her home'. The respondent authority's policy in relation to the funding of holidays under Chronically Sick and Disabled Persons Act 1970 s2(1)(f) was to provide financial assistance in order to meet 'the additional costs [of the holiday] attributed to the client's disability'. Accordingly, the respondent authority decided to provide financial assistance only in respect of the applicant carer's holiday costs but not to provide financial assistance towards his sister's basic holiday costs. It stated that:

*You will note that the Section relating to holidays specifically uses the word 'facilitate', whereas the other duties imposed upon Local Authorities by that Section specifically refer to 'provide' or to arranging for a resource to be provided. It is therefore the policy of the Council not to meet the basic cost of a holiday which would be incurred in any event irrespective of disability . . .*

## Held:

- 1 If a local authority has determined, as in this case, that the need for a holiday arises as a result of disability, then the cost of the holiday to the disabled person must be capable of being an additional cost which is the result of the disability, although the question may well arise as to whether in any particular case it is necessary, in order to facilitate the holiday, to assist with that cost.
- 2 The respondent authority's policy unlawfully fettered its discretion in that it prevented the respondent from considering as a matter of discretion, in a case where the need for a holiday was directly referable to disability, whether provision should be made for the funding of any expenses over and above normal living expenses, in order to make it easier for the need for a holiday to be met. The respondent authority's decision, based upon that policy, was flawed and must be quashed.

## Cases referred to in judgment:

*R v Gloucestershire CC ex p Barry* (1997) 1 CCLR 40; [1997] 2 All ER 1; [1997] 2 WLR 459, HL.

## Legislation/guidance referred to in judgment:

Chronically Sick and Disabled Persons Act 1970 s2 – Community Care (Direct Payments) Act 1996 – Health and Social Services and Social Security Adjudications Act 1983 s17 – National Assistance Act 1948 s29 – National Health Service and Community Care Act 1990 s47.

**A This case also reported at:**

(1997) *Times*, 12 June, QBD.

**Representation**

J Richards (instructed by Crombie Wilinon) appeared on behalf of the applicant.

- B** R McCarthy (instructed by North Yorkshire County Council) appeared on behalf of the respondent.

**Judgment**

- MR JUSTICE LATHAM:** In these proceedings the applicant is the brother of a disabled lady, Beryl Hargreaves, who became mentally and physically handicapped after neurosurgery in 1967. He has cared for her since 1985. There is an unhappy history of conflict between him and his sister on the one hand and the North Yorkshire County Council on the other in relation to the provision to them of services and assistance by the Council. The present dispute relates to the extent of assistance which the Council has been prepared to provide in order to enable Beryl Hargreaves to take holidays. Put shortly, the Council have adopted a policy, which was reaffirmed in June 1994, in which the principle to be applied where a relevant need was established was that financial assistance would be provided in order to meet 'the extra costs of the holiday attributed to the individual's disability'. In practical terms, the Council has been prepared to meet what have been described as the additional costs of a holiday which are the results of the disability, for example the extra costs of transport for the disabled person, and the costs of a carer to travel with and look after the disabled person. The Council is not prepared, pursuant to the policy, to assist with the disabled person's costs of the holiday itself, save and in so far as they are referable to special equipment or special accommodation necessitated by the disabilities.

- In accordance with that policy, the Council decided on 15th March 1995 to make financial assistance available to the applicant for a holiday in Llandudno consisting of the applicant's full costs of board, as carer, his travel costs to Llandudno, and a contribution to the overall travel costs of the holiday. No assistance was provided in relation to Beryl Hargreaves's basic holiday costs, that is, her hotel expenses. The applicant challenges the policy and the decision on the grounds that the Council has misunderstood the statutory provisions.

- The relevant statutory provisions are as follows. Section 29 of the National Assistance Act 1948 provides as follows:

- (1) 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, and other persons . . . who are substantially and permanently handicapped by illness, injury or congenital deformity . . .*

Section 2 of the Chronically Sick and Disabled Persons Act 1970 provides:

- (1) Where a local authority having functions under section 29 of the National Assistance Act 1948 are satisfied in the case of any person to whom that section applies who is ordinarily resident in their area that it is necessary in order to meet the needs of that person for that authority to make arrangements for all or any of the following matters, namely . . .*
- (f) facilitating the taking of holidays by that person, whether at holiday homes*

*or otherwise and whether provided under arrangements made by the authority or otherwise . . .* A  
*it shall be the duty of that authority to make those arrangements in exercise of their functions under the said section 29.*

Section 47 of the National Health Service and Community Care Act 1990 provides:

(1) . . . 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 regards to the results of that assessment, shall decide whether his C  
 needs call for provision by them of any such services.

‘Community care services’ include, by virtue of Section 47(3) of that Act, services under the Chronically Sick and Disabled Persons Act 1970. There are other statutory provisions to which I shall refer in the course of this judgment, but the foregoing are those which make the dispute most readily understood. D

In November 1991, the Council made an assessment of Beryl Hargreaves’ needs. There is some uncertainty as to whether this was a formal assessment under Section 47 of the National Health Service and Community Care Act 1990. Whether it was or it was not, is in my view irrelevant. The document was divided into 2 columns, a statement of ‘needs’ in 1 column, and ‘action’ in the other. The relevant entry in the ‘needs’ column was: E

*As she is unable to organise her own holidays and structure her own recreation outside her home, she needs regular holidays and a supportive environment away from her home.* F

The entry in the ‘action’ column was:

*To agree the frequency of these holidays with Beryl and her brother. To agree the best place for these holidays. To examine how these holidays are to be funded.* G

The decision of the Council as to funding was given in the letter of 15th March 1995, the relevant parts of which read as follows:

*The Social Services Department has previously carried out an assessment of Miss Hargreaves’s needs for holiday provision. The assessment is currently that she requires 2 weeks holiday per year . . . Your client is already aware that the policy of North Yorkshire County Council is to facilitate such holidays by meeting the additional costs attributed to the client’s disability. In your letter you make reference to Section 2 of the Chronically Sick and Disabled Persons Act. You will note that the Section relating to holidays specifically uses the word ‘facilitate’, whereas the other duties imposed upon Local Authorities by that Section specifically refer to ‘provide’ or to arranging for a resource to be provided. It is therefore the policy of the Council not to meet the basic cost of holiday which would be incurred in any event irrespective of disability . . .* H I

The short point taken on behalf of the applicant is that the Council, having identified that the relevant need was the requirement for a 2 week holiday, the obligation to ‘facilitate’ that holiday should include consideration of making some provision for the basic cost of that holiday. In other words, if the need for the holiday itself is directly referable to the disability, it may be necessary to consider the provision of funding for any expenses over and above normal living J K

A expenses in order to make it easier for that need to be met. The applicant accepts that the word 'facilitate' means: 'to make easy or easier, to promote or help forward, to lessen the labour of, to assist': see the new *Shorter Oxford English Dictionary*.

B He accepts therefore that this is an obligation which gives a discretion to the Council which would not be the case if the obligation was to 'provide' a holiday, which is the word used in relation to other services identified in Section 2(1) of the Chronically Sick and Disabled Persons Act 1970. He submits, however, that by excluding the basic cost of the holiday to the disabled person, the Council have unlawfully fettered their discretion.

C The Council contend that the policy provides generous support to enable a disabled person to have a holiday in terms which precisely meet the purpose of the statutory provisions. It is pointed out that the intention of Parliament was not to relieve poverty which is the province of other statutory provisions, but to relieve disabled persons so far as possible of the added financial burden imposed by their disability. Indeed Section 29(6) of the National Assistance Act 1948 provides:

*Nothing in the foregoing provisions of this Section shall authorise or require:*

*(a) The payment of money to persons to whom this section applies . . .*

E It follows, it is said, that the Council's obligations cannot include an obligation to 'facilitate' by the provision of the ordinary cost of a holiday which any person, whether disabled or not, would be expected to meet out of their own funds. If it were otherwise, it is said, proper effect would not be given to the use of the verb 'facilitate' in Section 2(1)(f) of the Chronically Sick and Disabled Persons Act 1970, and the other requirements of the Sub-section which can be exemplified by Section 2(1)(a) which requires the Council 'to make arrangements for . . . the provision of practical assistance for that person in his home.'

F The applicant's argument, it is said, would effectively result in the Council being required to provide for the cost of the holiday, which is not what the Sub-section says.

G In my judgment, the applicant's submission is correct. The respondent's principal argument, namely that the legislation was not intended to provide relief from poverty, but relief from the extra expense of disability begs the question. If the Council have determined, as in this case, that the need for the holiday is a result of the disability, then the cost of the holiday to the disabled person must be capable of being an additional cost which is the result of the disability, although the question may well arise as to whether in the particular case it is necessary, in order to facilitate the holiday to assist with that cost. I am reinforced in this view by the fact that the paragraph envisages that a holiday may be 'facilitated' by being 'provided' under arrangements made by the Council. In other words the statute envisaged a situation in which the statutory obligation could be met entirely out of the Council's own resources. By Section 17 of the Health and Social Services and Social Security Adjudications Act 1983, the Council would be empowered to recover the reasonable costs of that provision, subject to Sub-section 3, which provides:

*If a person –*

*(a) avails himself of a service to which this section applies, and*

K *(b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,*

*the authority shall not require him to pay more for it than appears to them that it is reasonably practicable for him to pay.*

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It follows that if provision were to be made by a Council, the Council could only recover the cost of the holiday if the means of the recipient of this service were sufficient to meet that cost. The corollary must be that if the holiday is arranged by or on behalf of the disabled person himself, that person's means should be a relevant factor in any decision as to whether or not to provide funding for the holiday, in the same way, as by statute, they are a relevant factor in determining the charges to be made by a Council making the provision itself.

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It follows that the policy adopted by the Council unlawfully fetters its discretion, and the decision based upon that policy is flawed and must be quashed. However, this will not inevitably result in any different decision in relation to Beryl Hargreaves. The Council may well wish to reassess her needs, both because of the passage of time, and the decision of the House of Lords in *R v Gloucestershire County Council Ex parte Barry* (1997) 1 CCLR 40; [1997] 2 WLR 459.

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The Council sought to persuade me that, whatever my views about the proper construction of Section 2 of the Chronically Sick and Disabled Persons Act 1970, and the lawfulness of their policy, the Community Care (Direct Payments) Act 1996 provided a practical solution to the problem which made the problem academic. This Act empowers Local Authorities to make direct payments for those in need of community care services in order to enable them to pay for the services themselves. However, the Act makes no change to the criteria which are to apply in determining what services are 'needed'. It follows that, unless I quash, as I do, the decision of the Council, and more particularly declare that the Council's policy in relation to the provision of financial assistance for holidays for disabled persons is unlawful, which I do, the Council's mistaken approach to their statutory obligation to Beryl Hargreaves, and the argument between the applicant and the Council, could be perpetuated.

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I order accordingly.

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