R v Coventry CC ex p Coventry Heads of Independent Care Establishments (CHOICE) and Peggs

Queen's Bench Division
Kay J
13 February 1998

A dispute, between a local authority and owners of residential and nursing homes with whom the local authority had made arrangements under National Assistance Act 1948 s26, as to whether rates of payment were as high as provided for by the terms of the agreement between the parties, is a private law contract dispute and does not raise public law issues.

Facts

Between 1994 and 1996 the respondent authority purchased private sector residential and nursing home places at the same rate as that paid by the Department of Social Security (DSS). In 1997, however, difficulty arose because while DSS payments for 1997/98 increased by 2.5%, the respondent authority's funding increase was only 1.5%. Additionally, the respondent authority had to take steps to avoid a projected social services overspend of £2.7 million. Accordingly, it resolved not to increase its rates of payment for private sector residential and nursing accommodation for 1997/98 beyond the rates it paid for 1996/97. Owners of homes affected by the decision applied for judicial review.

Held:

1 There were binding agreements in force between the respondent authority and the applicant home-owners. What separated the parties, on analysis, was a straightforward contractual dispute over whether the terms of the relevant agreements obliged the respondent authority to increase its rates in line with increases in DSS rates. Even if the respondent authority was in breach of the agreements, which was highly doubtful, such breach did not give rise to public law rights because National Assistance Act 1948 s26 only obliges local authorities to make arrangements which 'shall provide for the making by the local authority to the other party thereto of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements'. The section imposes no public law obligation thereafter to make the payments, because such a provision would be unnecessary as once the arrangements have been made the ordinary law of contract comes into play.

2 The applicants did not have a legitimate expectation of being consulted before the respondent authority made its decision. The contract made no provision for consultation and the applicants were free to refuse to discontinue service provision if not satisfied with the price. Further, if consultation resulted in increased rates for home-owners that money would have to be found by reducing the allocation of resources elsewhere. Accordingly, any consultation exercise would have to involve all service providers across the whole range of the respondent authority's social services, which would be a quite unreasonable exercise in all the circumstances and even if it was carried out would be unlikely to place the authority in any better position to make the tough decisions that had to be made.

3 The respondent authority had taken into account relevant considrations, namely that rates set too low might cause there to be too few beds or lead to lower home standards.

Cases referred to in judgment:

Chief Adjudication Officer v Quinn; Chief Adjudication Officer v Gibbon [1996] 1 WLR 1184; [1996] 4 All ER 72; (1996) 146 NLJ Rep 1150; (1996) 93(37) LS Gaz 27; (1996) 140 SJLB 207; (1996) *Times*, 8 August, HL.

Legislation/guidance referred to in judgment:

National Assistance Act 1948 ss21, 22 and 26.

This case also reported at:

Not elsewhere reported.

Representation

E Laing (instructed by Nabarro Nathanson) appeared on behalf of the appellants.
R McCarthy (instructed by City of Coventry Secretary) appeared on behalf of the respondent.

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Judgment

MR JUSTICE KAY: The applicants apply for judicial review of a decision of the respondent's Social Care and Health Policy Co-ordinating Committee made on 21 February 1997. The first applicant is an association of owners of care homes for the elderly. The second and third applicants are joint owners of two such homes and members of the first applicant. The respondent secures the provision of accommodation for elderly residents in homes, which include those of the members of the first applicant, paying a weekly fee in respect of each resident. The challenged decision was one not to increase the weekly rate for the year 1997–98 from that which had operated in 1996–97.

The present system for purchasing community care commenced on 1 April 1993. Until that date the Department of Social Security had been responsible for paying for such residential accommodation. Such funding was provided by way of Income Support. From 1 April 1993 responsibility for funding new residential placements was transferred to local authorities, whilst those already in such accommodation at that date continued to be paid for by the Department of Social Security.

Those people in the latter category have 'preserved rights' to income support at a rate that meets the whole notional cost, known as the 'higher rate'. This money is owed to and paid directly to the home owner.

People placed in residential accommodation after 1 April 1993 are not entitled to the 'higher rate' of income support receiving only various living expenses which exclude the cost of accommodation – 'the lower rate'. Responsibility for the provision of accommodation for such persons now falls on the local authority under s21 of the National Assistance Act 1948 and by virtue of powers contained in s26 of that Act the local authority may make arrangements with 'a voluntary organisation or with any other person' to fulfil its responsibilities under s21.

In anticipation of the change of system, the respondent advertised in local papers inviting owners of homes to tender for places and by a letter dated 21 December 1992 wrote to 'all owners and managers of independent residential homes for older people' inviting tenders. That letter included:

The financial background to the tender process is that the Government will fund Coventry Social Services with the current equivalent of the DSS rates of income support payment, i.e. £175 for Residential Care Homes and £270 for Nursing Homes.

On 14 January 1993 a follow-up letter pointed out that the figure of £175 was incorrect because a central government increase of £10 had already been agreed.

In March 1993 those owners whose applications were successful were informed that they had been included in the respondent's Standby List of Contractors. The letter continued:

It was made clear to all home owners throughout the tendering process that there is not going to be any extra money available to buy places. However, although we are looking to spend at present DSS rates, we decided to tender for prices to ensure that all owners had the opportunity to consider their own position. Tenders were, however, invited on the basis that you needed to bear in mind DSS rates. Another option was to impose rates of payment which a number of other authorities have done. This would give no flexibility for home owners and set our relationship off to an adverse start . . .

When we wrote to you on 21 December 1992, we again advised you that the financial background to the tender process was that the Government will fund Coventry Social Services with the current equivalent of the DSS rates of income support payment and that this had now been confirmed by the Social Services Committee as the basis on which places will be bought. Clearly however, from your response, you are expecting the Local Authority to be able to pay considerably more for places than DSS levels. It therefore seems that although we have addressed a number of owners' concerns, our own position in having to provide care for those who need it has not been fully appreciated . . .

Although tenders have closed, you may wish to submit a revised price close to DSS levels taking into account the points that we have covered. However, as we have pointed out, at your present prices, placements will only be made with you where a person has a third party top up available.

A subsequent letter in April 1993 explained what payments would be made:

Where your charge is above DSS rates, the price to be paid by the Council will be based on DSS rates as set out in the Special Conditions of Contract. The balance will be paid to you under contract by either the resident or a third party acting on their behalf. The actual amounts will be as set out in the appendix to each individual Care Plan. May I remind you that as set out in the Special Conditions of Contract, the Contract will only commence once the first user placement is made.

In each of the years commencing 1 April 1994, 1995 and 1996 the respondent agreed to and did increase its rates in accordance with the rate being paid by the DSS in respect of those who had been in residential accommodation before 1 April 1993.

Although a substantial part of the argument in this case has turned upon the terms of the agreements between the parties, it is greatly to be regretted that the documentation placed before the court in this matter was completely inadequate for the purpose. A document purporting to be the agreement was exhibited to an affidavit filed on behalf of the applicants but it transpired that it contained pages from different versions of the contract making it unintelligible. By the end of the

A argument I had been supplied with a copy of what is agreed to be the agreement which was in force by the year 1996/97.

That contract included the following relevant provisions.

12. Price

B *The price payable by the Council to the contractor for the service under the Contract will be as set out in the placement agreement for each service user and the document entitled 'Assessment of Residential Accommodation' which will be forwarded to the Contractor for each placement made.*

The price payable by the Council will be reviewed annually in April of each year. Any review of price by the Contractor shall take effect from the same date and 6 weeks' written notice of any increase will be given by the Contractor to the Council. The price will include all care-related services required by the service user. The Contractor may not seek additional payments for care services used direct from the service user or his/her family or from the personal expenses allowance of the service user.

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13. Payment to the Contractor

Details of the method of payment by the Council to the Contractor will be set out in Appendix 1 to the conditions of the contract.

The auditing requirements of the Contractor will be as notified by the Director from time to time.

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and:

23. Termination

(a) *The Council and the Contractor have the right to terminate the Contract by giving four weeks' notice in writing to the other party at any time.*

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Appendix 1 includes:

This document together with the 'Assessment of Residential Accommodation' form produced separately for each resident and up-dated from time to time forms part of the Contract between Coventry Social Services and the Contractor.

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and:

Revisions

H *Revisions to the weekly charge will be agreed by the Care Manager to cover:*

- *Annual increases in DSS Benefit Levels;*
- *Financial Reassessment of the Service User;*
- *Residents who meet the criteria for the higher rate of payment for Residential Care.*

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The Contractor must inform the Care Manager of any changes that affect the rate of payment (for example hospitalisation) by the end of the working day following the change.

J In accordance with the provisions for an annual review of the payments to be made by the respondent, a letter was sent to home owners dated 18 December 1996 headed 'April 1997 Price Review' and commencing:

In order that revised changes can be implemented promptly, please complete and return the attached form no later than 17 February 1997. It will not be possible to effect any change until it has been received.

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The form required details of the charges to be made by the home owners for the year 1997/98.

Also in the same month the respondent wrote to all organisations having a contract with its social services department pointing out that it would have a projected overspend of £2.7 million for the financial year 1996/97 and explaining how it intended to avoid such an overspend in that year.

On 12 February 1997 the respondent's Director of Social Services and City Treasurer wrote a report for its Social Care and Health Policy Co-ordinating Committee which was due to meet on 21 February 1997. The report made budgetary proposals for the forthcoming year. The proposals included 'cash limiting the level of payments to independent residential and domiciliary care organisations to their current 1996/97 levels' which it was said would result in savings of £250,000. The proposal was explained in an Appendix to the report:

> Purchasing Budgets – Cash Limit Payments to Independent Sector to Current Levels
> *Since the introduction of Community Care some four years ago, your Committee has paid independent sector residential homes at the former DSS levels of payment, and each year has increased these payments by the Government's increases in benefits levels for the coming year. For 1997/98, the increase in benefit levels is 2.5%. However, the amount by which Social Services' own funding is increased is limited by the size of the increase in the City Council's cap, i.e. 1.5% for 1997/98. Given the difficult year which your Committee is facing, and given that in-house services have taken the brunt of savings requirements since the introduction of Community Care, it is proposed to cash limit the payments to independent residential and domiciliary care organisations for community care services to their current 1996/97 levels.*

On 14 February the respondent wrote again to all organisations having a contract with its social services department explaining that it was necessary to develop 'a package of proposals' to avoid an overspend in 1997/98. The letter dealt with the position of residential and nursing home places:

> *In previous years, residential and nursing home places have been purchased on the basis of DSS levels of support. A number of other authorities have already moved away from this and some have also frozen their support levels. Regrettably, in company with some other Social Services Departments this year, it is necessary to introduce such measures in Coventry for 1997/98. This means that there will not be any increase in support levels and the DSS rates which were introduced in April 1996 will remain in force until April 1998.*

The letter indicated that a councillor, Councillor Chater, would be happy to meet with providers 'to explain our approach and the financial constraints on Social Services which have necessitated these actions'.

At the meeting of the Social Care and Health Policy Co-ordinating Committee on 21 February 1997, the recommendations made in the report were adopted.

Arising from the offer made in the letter of 12 February 1997, Councillor Chater met any of the residential and nursing home owners who wished to attend on 17 March 1997.

The second applicant in her affidavit says of this meeting:

> *I gained the impression that there was no room for us to negotiate or even object to the proposal.*

It is not suggested that that assessment of the position is wrong.

A On 7 April 1997 the respondent wrote to residents of the homes explaining their position as a result of the decision:

> *One of the decisions taken was to freeze prices paid for residential and nursing care services.*
>
> B *This means that the price being paid by Social Services for your care will remain at the same level as last year. This will* only *have implications for you if your home is* unwilling *to accept this situation.*
>
> *Our contract with your home requires that the weekly charge covers all costs relating to care. This means that the only extra costs that you should have to pay are for things which are* not *part of care services, such as newspapers, hairdressing, clothes, outings etc.*
>
> C *Also, our contract does not allow homes to ask for any further payments for care services from you or your family in addition to what was agreed when you entered the home.*
>
> D *With regard to personal allowances I can reassure you that the personal expenses allowance for people living in residential or nursing homes will increase and the new rate of allowance paid to you from 7 April 1997 will be £14.10.*
>
> *If your home does not accept the price being paid by Social Services it may be necessary to find you an alternative home. The home should give you a minimum of 4 weeks' notice.* If this happens or if you are asked to pay any additional
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> E amounts of money for your care please contact your social worker as soon as possible.

Against that factual background, I turn to the challenge to the decision of 21 February 1997.

F At the forefront of the original argument was an allegation that the respondent was charging residents more than it paid to the home owner in fees. That submission was based on a misunderstanding of the relevant funding provision and was clearly wrong. It has not been pursued.

The challenge is therefore confined to three other contentions:

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(i) that the respondent was not paying fees to service providers in accordance with the terms of the agreement and since it was obliged so to do by s26 of the National Assistance Act 1948, it was acting *ultra vires*;

(ii) that the respondent had failed to take into account relevant considerations in reaching its decision; and

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(iii) that the decision was flawed for lack of consultation with the applicants.

In summary form the respondent refutes the suggestion that the decision was in breach of the terms of the agreement, denies that it failed to take into account all relevant considerations and contends that it was under no duty to consult the I applicants. Further the respondent points to delay in the making of this application and to an alternative remedy which it says was open to the applicants. It invites the Court in the exercise of its discretion to refuse relief even if satisfied that relief otherwise should be given.

The Ultra Vires *Challenge*

J Miss Laing on behalf of the applicants bases her argument that the decision was *ultra vires* on the provisions of s26 of the National Assistance Act 1948. The relevant parts provide:

> *(1) Subject to subsections (1A) and (1B) below, arrangements under section*
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> K *21 of this Act may include arrangements made with a voluntary organisation or with any other person who is not a local authority . . .*

(2) Any arrangements made by virtue of . . . this section shall provide for the making by the local authority to the other party thereto of payments in respect of the accommodation provided at such rates as may be determined by or under the arrangements . . .

It is argued that the terms of the contract provided for an annual increase at least of the level of the increase which the DSS would make in respect of those who were in residential accommodation before 1 April 1993. Miss Laing argues that Appendix 1 to the contract where it provides:

Revisions to the weekly charge will be agreed by the Care Manager to cover:

– Annual increases in DSS Benefit Levels; . . .

binds the respondent to make such increases. She contends that since the respondent was resolving not to pay 'at such rate as may be determined by or under the arrangements', its decision was *ultra vires* and unlawful.

Mr McCarthy QC on behalf of the Respondent answers these submissions in a number of ways. First he argues that under s22 of the National Assistance Act 1948, the respondent is obliged to fix 'a standard rate' for accommodation in which a person is placed and that is so whether or not the local authority is exercising its powers under s21 to place a person in accommodation which it manages or under s26 in accommodation pursuant to an arrangement with a third party. The standard rate he contends requires agreement between the parties and until such time as agreement is reached s26(2) has no effect.

Section 22 provides:

(1) Subject to section 26 of this Act, where a person is provided with accommodation under this Part of this Act, the local authority providing the accommodation shall recover from him the amount of the payment which he is liable to make [in accordance with the following provisions of this section].

(2) Subject to the following provisions of this section, the payment which a person is liable to make for any such accommodation shall be in accordance with a standard rate fixed for that accommodation by the authority managing the premises in which it is provided and that standard rate shall represent the full cost to the authority of providing that accommodation.

The applicants contend that s22 has no relevance to a placement pursuant to the powers given by s26. It is pointed out that s22 is expressly said to be 'subject to section 26' and that section 26 makes quite separate provision for the recovery of money from the person for whom accommodation is provided.

Section 26(3) provides:

Subject to subsection (3A) below, a person for whom accommodation is provided under any such arrangements shall, in lieu of being liable to make payment therefor in accordance with section twenty-two of this Act, refund to the local authority any payments made in respect of him under the last foregoing subsection.

Provision is then made for circumstances where the person for whom the accommodation is provided cannot afford to pay the full amount as indeed there is similar provision in s22(3) to (5). The provision in s26 is by reference to the three subsections of s22.

I am satisfied that the applicants' arguments in this respect are correct. It seems to me clear from the inclusion of 'subject to section 26' in s22 and the reference to 'in lieu of being liable to make payment therefor in accordance with section twenty-two' in s26, that the Act provides two separate and distinct schemes for

A the refund of the cost of providing the accommodation and that the concept of a 'standard rate' has no bearing on the situation where accommodation is provided in premises run by a third party where the relevant cost is the contract price.

The proposition that there needs to be an enforceable agreement between the parties as to the payments that will be made by the local authority in B respect of the accommodation provided is, however, clearly right. Without such an agreement there can be no s26 placement in force (see *Chief Adjudication Officer v Quinn* [1996] 1 WLR 1184, particularly Lord Slynn of Hadley at p1192F).

The applicant's argument is that there was such an agreement in place, namely C that the rate would be that which was paid by the DSS for those for whom they were responsible, and hence there was a continuing s26 placement.

The respondent contends that the rate for 1996/97 was clearly fixed and agreed. The contract provided for an annual review, and failing any agreement on the review then the contract continued at the existing 1996/97 rate unless either party D chose to exercise its rights under clause 23 of the contract to terminate the contract.

It seems clear to me that whichever is the correct interpretation of the contract, there was a binding agreement that made provision for payment in accordance with s26. Thus the respondent's argument in this regard advances the matter no E further.

At the end of the day in this regard, what separates the parties is a straightforward contractual dispute as to the terms of the agreements.

A further argument advanced on behalf of the respondent is that it is wholly inappropriate to seek to resolve a straightforward private law claim for breach of F contract under the guise of a claim for judicial review.

I have to say that I consider that there is merit in that submission. The way in which the evidence has been placed before the court, which I have already described as wholly unsatisfactory, would I am quite satisfied not have occurred if the parties were contesting a simple breach of contract action. The correct docu- G mentation would have been viewed as essential. I have little doubt that the history of how the contract came to reach its present form would have been covered in evidence. Other documents such as the earlier versions of the contract would have been produced.

Equally consideration of issues such as delay and alternative remedy would H have no place in a breach of contract dispute.

With those initial reservations, it is perhaps pertinent to see how it is said that the respondent's decision is *ultra vires*. The contention is that because the Act requires that payments shall be made in accordance with the agreement, for the respondent to decide to make payments other than in accordance with the I agreement is *ultra vires* and unlawful.

In point of fact s26 places no obligation on a local authority to make payments. The obligation is to make arrangements which 'shall provide for the making by the local authority . . . of payments . . .' Once the local authority has made such an agreement it has complied with the requirements of s26. The section imposes no J obligation thereafter to make the payments. That is, of course, because it is wholly unnecessary for the section to make such provision because once the agreement has been made the ordinary law of contract comes into play and a failure to pay in accordance with the terms of the contract amounts to a breach of contract giving the service provider the right to sue for breach of contract.

K It seems to me that when this analysis of the position is considered, it becomes quite clear that the court is not being asked in this regard to deal with a public law

right at all. However, if it was clear that the respondent was in breach of contract, then there would be clear merit in saying so but despite the submissions made on behalf of the applicants I do not view it as clear cut in the way suggested. As Mr McCarthy points out the document Appendix 1 only comes into being as a result of Clause 13 which provides 'details of the *method* of payment by the Council . . . will be set out in Appendix 1'. Clause 12, on the other hand, which makes provision for the price makes no reference to Appendix 1. It provides that the price shall be as set out in the placement agreement for each service user. Variation is then provided for by reference to the annual review and there is no provision made that the price should always rise each year to match increases in the rates paid by the DSS for those for whom they were responsible.

Whilst the part of Appendix 1 upon which reliance is placed might, if viewed in isolation, be capable of the interpretation placed upon it by the applicants, I find it wholly impossible to say that that is the case when I look at the contractual documents as a whole. In circumstances where the parties had always reached agreement on the basis of matching DSS payments, one can readily see why in considering the *method* of payment provision might be made for such increases but I find it impossible to accept from the contract as a whole that the parties were intending that this should mean that in every future year the review procedure should be subject to the pre-determined provision that at least the DSS rise would be paid.

In a contractual dispute where there is room for doubt as to the meaning of the provisions of the written document, it may be proper to look at other evidence to interpret the agreement at which the parties arrived. Such evidence might include oral evidence, evidence of how the parties themselves acted in the performance of the contract and so on. Clearly any such exercise is ill-suited to the confines of a public law challenge. Such evidence as is before me tends to suggest that none of the parties actually considered that there was a binding agreement that each year the increase in DSS payments would be reflected by increased payments. It may not be without significance that the original application did not take this point at all and that it was only by way of amendment that the suggestion that there was a legally binding contract to make such increases in payments was made.

In any event I am entirely satisfied that it would be wrong for the Court to intervene and set aside the decision of the respondent on this basis. If there is any remedy open to the applicants, which I have made clear I very much doubt, it is by way of pursuing their rights under the various agreements.

Failure to Consult

The next challenge to be considered relates to the failure to consult the applicants before a decision was made. It is submitted that because of all the circumstances particularly the fact that in each previous year residential care services had been purchased in line with DSS units of payment, 'the applicants enjoyed a legitimate expectation that payment for residential care services would continue to be increased in line with DSS levels of support unless and until they were notified in good time and controlled in respect of any proposed charge to that arrangement'.

On behalf of the respondent it is contended that there was no duty to consult. The mechanism provided by the agreement required the payments to be reviewed annually. It makes specific provision for the service provider to indicate what price he requires and for the respondent to review what payment it will make. At the end of the day the service provider has the ultimate sanction that he or she can decline to continue the agreement into the next year by giving four

A weeks' notice, if agreement cannot be reached for an acceptable increase. No provision of any other kind is made for any consultation process.

In any event the respondent argues that the suggestion of consultation is wholly impractical in the circumstances. Without needing to recite the respondent's evidence in this regard which I accept, the respondent was in the process of
B allocating its limited resources to its varying social service commitments. If more was spent on one aspect of such commitments, then less would be available to be spent on others. On any view, the respondent was obliged to make difficult decisions that were going to impact on the services it provided or upon those who provided its services. It is argued, as I see it with force, that if there was a consult-
C ation exercise, it would necessarily have to involve all service providers across the whole range of its services. That would be a quite unreasonable exercise in all the circumstances and even if it was carried out, it would be unlikely to place the respondent in any better position to make the tough decisions that had to be made.

D No proper basis has been advanced in my judgment to establish that there was a duty to consult before this decision was made.

Failure to Consider Relevant Considerations

It is argued that relevant considerations were not taken into account in making
E the decision. First it is said that the committee did not consider the terms of the agreement with the home owners before making its decision. This limb of the argument raises exactly the same issues as those I have already ruled inappropriate in this sort of challenge.

As far as the respondent was concerned the agreements provided for payment
F to the review date and there was no binding agreement for any increase beyond that date. It is only if their contention is right about the contractual dispute that the applicants can succeed but if they are right in that regard it matters not whether the respondent's committee considered the terms or not. This is in my judgment a further attempt to dress up a contractual dispute in the guise of a
G public law challenge and as such is one that the Court should not entertain for the reasons given earlier.

The second way in which it is argued that relevant considerations were not considered is put in the following way by the applicant:

> *. . . there is no evidence to suggest that:*
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> *a. the impact of the decision on independent sector care homes; or . . .*
> *b. the impact in long term availability of residential care places,*
> *c. the impact on recipients of community care in relation to the services which they receive*
>
> I *was investigated and/or considered in any way. In [these respects] the decision was unlawful.*

This challenge is in my judgment fully met in the evidence filed on behalf of the respondent. In his affidavit Mr Hendley the respondent's Director of Social
J Services says:

> *13. The collective experience of the members of the SCHPCC in the implementation of Community Care would have given them an in-depth knowledge of the complex issues involved in setting fees for residential placements including the need to set the fees at a rate which would ensure that sufficient numbers of*
> K *suitable beds were available. I am quite sure with 'polling' individual Members that it was and would have been obvious to each and every one of them and they*

would appreciate that to set fees too low might cause there to be too few beds or to lead to lower home standards whereas to set them too high would lead to a limitation in the number of people who could be placed in residential homes.

14. I have expressed the views in paragraphs 11–13 with such confidence because the same has been true both in the City Council and in the other authorities for whom I have worked during my career. It is the inevitable consequence of the way in which Social Services Departments are run. Social Services business is handled by a special lead Committee (The Social Services Committee) whose members have a particular interest in that area.

Because I accept that which is said in this passage and in the rest of the affidavit, this challenge too must fail.

Delay and Alternative Remedy

It follows that I consider that none of the challenges brought against this decision should lead to the relief sought. It therefore becomes unnecessary to consider the issues of delay and alternative remedy and in the circumstances I do no more than say that there was undoubtedly delay in the making of this challenge, significant parts of which are not satisfactorily explained. I find it impossible to say whether in all the circumstances that would in itself have justified a decision not to grant relief since I have reached a clear conclusion on the merits against the applicants and find it impossible to say how I would have exercised my discretion in a different hypothetical situation. I was not persuaded however that the alternative remedy suggested would in itself have justified a refusal of relief since the issues raised, if properly raised, were matters likely ultimately to lead to a challenge in the courts.

However, in the circumstances on the merits and for the reasons already given I reject the applicant's application for judicial review.