R v Secretary of State for Health ex p M and K

Court of Appeal
Sir Christopher Staughton and Beldam and Mummery LJJ
27 July 1998

National Assistance Act 1948 s21 does not empower local authorities to make cash payments to service users.

Facts

The applicants were asylum-seekers who failed to claim asylum on arrival and as a result were not eligible for income support, housing benefit or homelessness assistance. They were, moreover, completely destitute. As the result of the decisions of Collins J, and then the Court of Appeal, in *R v Hammersmith and Fulham LBC and Others ex p M, P, A and X* (1997) 1 CCLR 69, QBD, and *R v Westminster CC and Others ex p M, P, A and X* (1997) 1 CCLR 85, CA, the applicants had become eligible for, and entitled to, residential accommodation provided by local authorities under National Assistance Act 1948 (NAA) s21. On 5 March 1997 the House of Commons approved Special Grant Report No 24 providing for reimbursement by central government, up to £165 per week, of:

> *. . . expenditure lawfully incurred by local authorities in providing accommodation under s21 . . . for any asylum seeker unaccompanied by children who would not have been provided with that accommodation but for the judgment of the High Court . . . [*in *R v Hammersmith and Fulham LBC and Others ex p M, P, A and X* (1997) 1 CCLR 69].

However, in LAC(97)6 *Asylum Seekers Accommodation Special Grant (ASAG) Report No 24* the Secretary of State for Health stipulated that expenditure would not be regarded as lawfully incurred if it related to 'any provision of cash payments'. The appellants (and, at first instance, Hammersmith and Fulham LBC) challenged the lawfulness of that part of the circular and filed evidence indicating that if local authorities were not permitted to make cash payments then inconvenience and hardship resulted.

Held:

1 NAA 1948 s21(1) empowers, and in some cases requires, local authorities to 'make arrangements for providing . . . residential accommodation' for certain types of person. There is no hint or suggestion that the arrangements may be to provide such persons with cash which they may spend on acquiring accommodation from any source which they choose, or, if they please, spend on some other commodity. That would be inconsistent with the ordinary meaning of the words in the statute. The same meaning must apply to additional benefits to be made available under NAA 1948 s21, ie, board and other services, amenities and requisites provided in connection with accommodation.

2 Statutory language should be given its ordinary meaning unless that would produce an inconsistency, an absurdity or an inconvenience so great as to convince the court that the intention could not have been to use words in their ordinary meaning: *River Wear Commissioners v Adamson* (1877) 2 App Cas 743. There has in more recent years been some relaxation in the degree of absurdity or inconvenience which is required to justify departure from the ordinary meaning of the language used, especially when that ordinary meaning is not

consistent with the purpose of the Act as a whole. It is a question of degree on a sliding scale. The more absurd or inconvenient the result, or the more obvious the failure of the Act to achieve its purpose, then the clearer the ordinary meaning must be if it is to prevail. It was not absurd, however, for Parliament to intend destitute persons in receipt of assistance under NAA 1948 s21 to receive benefits in kind providing for the necessities of life, but no cash, which they might spend on other commodities or services. A degree of inconvenience resulted to local authorities from the inability to make cash payments but it arose as a result of having to set up new systems to deal with destitute asylum-seekers and did not justify straining the language of the statute. The purpose of NAA 1948 could be achieved both with the provision of cash and without the provision of cash, albeit with some administrative difficulty: but not sufficient to justify departing from the language of the statute.

Cases referred to in judgment:

R v Islington LBC ex p Rixon (1998) 1 CCLR 119; [1997] ELR 66; (1996) 32 BMLR 136; (1996) *Times*, 17 April, QBD.

R v Secretary of State for Health ex p Hammersmith and Fulham LBC, M and K (1997) 1 CCLR 96; (1997) *Times*, 31 July, QBD.

R v Wandsworth LBC ex p Beckwith (No 1) [1996] 1 WLR 60; [1996] 1 All ER 129; [1996] 1 FCR 504; 94 LGR 77; (1996) 30 BMLR 105; (1996) Admin LR 242; (1996) 93(2) LS Gaz 28; (1996) 140 SJLB 27; (1995) *Times*, 15 December; (1995) *Independent*, 21 December, HL.

R v Westminster CC and Others ex p M, P, A and X (1997) 1 CCLR 85; (1997) *Times*, 19 February, CA.

River Wear Commissioners v Adamson (1877) 2 App Cas 743.

Green v Twinsectra Ltd [1996] 1 WLR 1587.

Legislation/guidance referred to in judgment:

Asylum and Immigration Act 1996 – Children Act 1989 s17 – Community Care (Direct Payments) Act 1996 s1 – Health Services and Public Health Act 1968 s45 – Local Authority Social Services Act 1970 s7 – Local Government Act 1972 s111 – Local Government Finance Act 1988 s88B – National Assistance Act 1948 Part III and ss21, 26 and 29 – National Health Service Act 1977 Sch 8 – Secretary of State's Approvals and Directions under s21(1) of the National Assistance Act 1948 at Appendix 1 to LAC(93)10 – LAC(97)6 *Asylum Seekers Accommodation Special Grant (ASAG) Report No 24 – Community Care in the Next Decade and Beyond* (LASSA guidance, November 1990) (The Policy Guidance) para 3.25.

This case also reported at:

(1998) *Times*, 9 September, CA.

Representation

Richard Gordon QC and Stephen Knafler (instructed by Hammersmith and Fulham Community Law Centre and Hackney Community Law Centre) appeared on behalf of the appellant applicants.

Nigel Pleming QC and Steven Kovats (instructed by Office of the Solicitors, Department of Health) appeared on behalf of the respondent.

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Judgment

SIR CHRISTOPHER STAUGHTON: This is the judgment of the Court.

The surviving appellants in these proceedings, who are known for some reason as K and M, have claimed asylum in this country. But their claim was not made when they first arrived. In consequence they have no right to income support or housing benefit, or to accommodation under the homeless persons legislation: see the Asylum and Immigration Act 1996. But this court has held in *R v Westminster City Council and Others ex parte A* (1997) 1 CCLR 85 that if these people would otherwise be destitute, they have a claim upon their local authority under Section 21(1) of the National Assistance Act 1948.

That is the present state of the law. The House of Lords has granted leave to appeal in the *Westminster City Council* case, but the appeal has not been heard. As things stand a local authority is bound to make arrangements for providing destitute asylum claimants with accommodation, and with board and other services, amenities and requisites provided in connection with the accommodation. The Secretary of State for Health has been making a substantial contribution to the cost which falls on local authorities in this way. But he takes the view that local authorities are entitled only to provide or arrange the provision of those commodities *in specie*, and not to give the asylum claimants money to spend for themselves. The Secretary of State's view of the legislation was reflected in a Local Authority Circular issued in February 1997 [LAC(97)6], dealing with the funds which his department was to provide to local authorities. It said [at para 15]:

> *Expenditure will not be regarded as relevant expenditure if it relates to . . . any provision of cash payments . . . for which there is no provision in s21 of the National Assistance Act.*

The Circular continued:

> *Authorities should be aware that giving vouchers with a cash face value equates to giving cash. Section 21 however would allow for arrangements to be made with a provider (e.g. a supermarket chain) to enable asylum seekers to obtain by pre-arrangement food and other necessities not provided in their accommodation.*

At or about the time when the Circular was issued, the Secretary of State laid a special grant report before the House of Commons, pursuant to Section 88B(5) of the Local Government Finance Act 1988; and the report was approved by the House of Commons.

The two present Appellants challenged the Secretary of State's interpretation of the National Assistance Act in judicial review proceedings, They were joined in that challenge by the London Borough of Fulham and Hammersmith. Leave to apply for judicial review was granted by Laws J, but the same judge dismissed the substantive application on 9 July 1997.

Since then there has been a second special grant report, which was presented to the House of Commons in February 1998 and again approved. The Local Authority Circular remains in force. Now the two individuals appeal against the decision of Laws J, by leave of Hirst LJ. The London Borough of Fulham and Hammersmith do not appeal.

The problem is a simple one of statutory interpretation, but as commonly happens we have been provided with a good deal of other material besides the critical section of the National Assistance Act. We propose to consider it in the following order: (1) the wording of the statute, (2) updating the statute, (3)

absurdity or inconvenience, (4) other statutory provisions, (5) the Secretary of State's approvals and directions.

(1) The wording of the statute

Section 21 of the National Assistance Act 1948, as amended, has these provisions:

21. – (1) [Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State and to such extent as he may direct shall, make arrangements for providing] –

(a) residential accommodation for persons [aged 18 or over] who by reason of age, [illness, disability] or any other circumstances are in need of care and attention which is not otherwise available to them;

. . .

(4) [Subject to the provisions of section 26 of this Act] accommodation provided by a local authority in the exercise of their [functions under this section] shall be provided in premises managed by the authority or, to such extent as may be [determined in accordance with the arrangements] under this section, in such premises managed by another local authority as may be agreed between the two authorities and on such terms, including terms as to the reimbursement of expenditure incurred by the said other authority, as may be so agreed.

(5) References in this Act to accommodation provided under this Part thereof shall be construed as references to accommodation provided in accordance with this and the five next following sections, and as including references to board and other services, amenities and requisites provided in connection with the accommodation except where in the opinion of the authority managing the premises their provision is unnecessary.

Also relevant is section 26(1):

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

(a) that organisation or person manages premises which provide for reward accommodation falling within subsection (1)(a) or (aa) of that section, and

(b) the arrangements are for the provision of such accommodation in those premises.

So a local authority is to make arrangements for providing accommodation; the accommodation may be in premises managed either by the local authority or by another local authority, or by a voluntary organisation, or by any other person who provides that kind of accommodation for reward. This choice of provider is controlled by the local authority under its arrangements; the receivers are to be persons such as are mentioned in section 21(1). There is no hint or suggestion that the arrangements may be to provide those persons with cash which they may spend on acquiring accommodation from any source which they choose, or if they please spend on some other commodity. That would in our judgment be inconsistent with the ordinary meaning of the words in the statute.

If that is the right interpretation of the provisions as to accommodation, the same meaning must apply to the additional benefits to be made available under section 21(5) – board and other services, amenities and requisites provided in connection with the accommodation. Indeed the case may be a little stronger that there is no power to provide cash in lieu of those benefits, for they are restricted to what the authority managing the premises may consider necessary.

That does not seem consistent with the beneficiary having the option, or even the opportunity, to spend money as he pleases.

Mr Pleming for the Secretary of State provided us with an interesting explanation as to how the word 'arrangements' came to be in the section. As originally enacted section 21(1) provided:

> *21. – (1) It shall be the duty of every local authority, subject to and in accordance with the provisions of this Part of this Act, to provide –*
> *(a) residential accommodation for persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them . . .*

The section was in Part III of the Act; it was (and still is) headed 'Provision of Accommodation', The word 'arrangements' first appeared in section 26(1), which at that time provided:

> *26. – (1) Notwithstanding anything in the foregoing provisions of this Part of this Act, a scheme under section twenty-one thereof may provide for the making by a local authority, in lieu or in supplementation of the provision of accommodation in premises managed by them or another local authority, of arrangements with a voluntary organisation managing any premises for the provision of accommodation in those premises.*

It is common ground that as the Act was enacted in 1948 there was no power in the local authority to provide cash; their duty was, in terms, to *provide* accommodation and the other benefits under section 21(6). It would be surprising if Parliament meant to change that merely by transferring the first reference to arrangements from section 26(1) to section 21(1).

(2) Updating the statute

It is undoubtedly the law that an Act of Parliament is not to be confined to those situations which were covered by its wording when it was first enacted. One could not, for example, say that a nineteenth century enactment dealing with 'infection' or 'disease' did not apply to Aids, which (as far as we know) did not then exist. In that sense almost all Acts are 'always speaking', to use the phrase quoted from *Bennion on Statutory Interpretation* (2nd ed) p686 by Lord Woolf MR in the *Westminster City Council case* at p90. We do, however, pause at Mr Bennion's view that:

> *Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed.*

Can it be said that when a new mischief or new circumstances arise, Parliament by leaving the Act on the statute book intends it to be read as applying to the new problem? To us that seems doubtful. So too it must be regarded as doubtful that Parliament intends an Act to be interpreted to cure whatever mischief may arise in the future, however unforeseen and unforeseeable when it was enacted. We do not feel able to give wholesale approval to Mr Bennion's five propositions in section 288, p686.

In any event, we do not find the concept of continuous updating of any assistance in the present appeal. The question is whether local authorities can only provide accommodation and other benefits in kind to a needy person, or whether they can provide cash instead. What change since 1948 has affected the treatment of that question in the National Assistance Act? True there are now a great many more people seeking asylum than there were in 1948, and it also true that those

who in the past would have summarily been refused entry by the Home Secretary now have the advantage of an international convention and an elaborate system of adjudication and appeal. But the real change lies in the deprivation of benefits imposed by the Asylum and Immigration Act 1996. It was that Act which created a new need. If Parliament had intended it to be resolved by rewriting the National Assistance Act, it had only to say so.

(3) Absurdity or inconvenience

As long ago as 1877, in *River Wear Commissioners v Adamson* (1877) 2 App Cas 743 at p764, Lord Blackburn said that the words of the statute should be given:

> *. . . their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks that the words can bear.*

At bottom, that is still good law today. As one of us has written elsewhere, the test is whether the reader says to himself: Parliament cannot have meant that! Mr Gordon, who appeared for the Appellants, was content with that test as a starting point.

However, there has been some relaxation in the degree of absurdity or inconvenience which is required to justify departure from the ordinary meaning of the language used, especially when that ordinary meaning is not consistent with the purpose of the Act as a whole. In truth this would appear to be another instance where there is a question of degree, a sliding scale. The more absurd or inconvenient the result, or the more obvious the failure of the Act to achieve its purpose (as, for example, in *Green v Twinsectra Ltd* [1996] 1 WLR 1587), the clearer the language must be if it is to prevail.

There is a good deal of evidence in this case, both from the Appellants and their solicitors and from the London Borough of Fulham and Hammersmith, directed to absurdity or inconvenience. The affidavit of Mr M says that he has been diagnosed as having post traumatic stress syndrome. It continues:

> *9. I am most concerned at the thought that cash payments will be withdrawn. My overriding concern is that without these I will be unable to heat my flat and thus be forced to leave and go into hostel accommodation. This would be disastrous, as not only would I lose my home, but I would be forced to reside in close and cramped conditions. This would be uncomfortably reminiscent of my confinement in my native country, and coupled with my experiences of homelessness in this country and being forced to beg and sleep in emergency shelters I feel that I will not be able to bear it. The very prospect has made my anxiety attacks, nightmares and flashbacks worse. I feel that being able to live in a degree of privacy is the only thing that will help.*
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> *10. In addition, I am accustomed to a diet which relies heavily on African ingredients and root staples, which are difficult to come by and I purchase these from market stalls and small African shops. I will find it very difficult to cope with an institutionalised diet.*
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> *11. Additionally, I suffer from the cold and need to purchase warm clothing. I also need to be able to travel to see my immigration solicitor (whose offices are outside my Borough, in Forest Hill), and no doubt in due course to visit the Home Office in Croydon. I will also be forced to travel once I have managed to find an agency able to provide me with treatment for my post traumatic stress.*

Then there are a myriad incidentals such as toilet paper, toiletries, stationery supplies and stamps (the latter for me to keep in contact with my family in Kenya and my legal advisers). These are important to me, but I doubt that Hackney will be able to provide for these comprehensively or adequately.

12. For these reasons I feel that the withdrawal of cash payments will endanger my health and make it difficult for me to pursue my asylum claim effectively. I respectfully request that the Honourable Court grants my application for leave.

It has to be said that much of this concern appears to be directed at the quality of the accommodation he can expect, and the limited extent of the benefits that he will receive in addition to accommodation, rather than to the issue of cash or kind. Those problems which he faces are more the result of the Asylum and Immigration Act than of the Secretary of State's view of the effect of the National Assistance Act, unless it is said that at least cash payments would enable M to buy the commodities and services which he wants, rather than what the Council consider necessities. It must also be noted, from the evidence of M's solicitor and a letter from The Refugee Council, that there is concern about 'loss of dignity and lack of independence in the asylum seeker', and that 'people's levels of self-esteem are falling as they are increasingly unable to fend for themselves'.

Having said all that, we do not doubt that these people have a fairly miserable existence, separated from their friends and family and provided only with the necessities of life, with little choice as to what they shall be.

There is also evidence from Hammersmith & Fulham, which remains part of the material before us although they are no longer appellants. Their Director of Social Services says this in an affidavit:

6. The bed and breakfast accommodation used generally has facilities for residents to cook their own meals with food purchased by themselves, but the bed and breakfast establishments themselves would not normally be willing or able to engage in the provision of meals other than breakfast, nor in the supply of toiletries. We have considered setting up soup kitchens, or delivering meals to the bed and breakfast accommodation. Either of these courses would be both logistically difficult and expensive (probably to the extent that the cost would exceed the £165 per week maximum which will be reimbursed by central government). There is the further problem that the asylum seekers come from a great variety of cultural backgrounds, and have widely varying dietary needs. It is therefore extremely difficult to organise the direct mass provision of meals in any satisfactory way. I understand from the Council's Legal Advisers that asylum seekers have taken or threatened legal action against other authorities over the deficiencies in meals provided in this way.

8. The Department of Health has indicated that it is prepared to accept as lawful a scheme under which the Council would make a prior arrangement with a supermarket whereby the Council would issue vouchers to the asylum seekers for redemption at that supermarket against food and toiletries to a cash value stated on the face of the voucher. Clearly, this is a better option than direct provision of meals, and the Council intends to pursue it if cash payments are not lawful and has made arrangements to introduce a voucher scheme with effect from 2nd April 1997. However, it is still less satisfactory than making payments in cash: it is more time-consuming and costly in administration terms, and it leads to a problem if the bed and breakfast accommodation is not located near to the relevant supermarket; further, it reduces the asylum seekers' range of choice of foodstuffs to what (if cash payments are lawful) is no good end.

A

9. Finally, I should say that, from conversations I have had and correspondence I have read, other Local Authorities have found this an equally vexing problem. At a recent meeting of the Leaders' Committee of the Association of London Government, a motion was passed indicating the overwhelming support of the majority of other London Boroughs for this application.

B

Summing up this part of the case, we can see nothing that is absurd in Parliament providing that asylum claimants, or any other destitute people, should receive benefits in kind but not cash. There could be at least one reason for a provision to that effect – to ensure that destitute people are relieved by providing the necessities of life, rather than giving them money which they may spend on other commodities or services.

C

There is, however, a degree of inconvenience, certainly for the local authorities who have to do the providing. But their problem arises, as Mr Pleming argued, because they have not in the past had to provide the necessities of life for asylum claimants. They have established systems for the old and disabled, for the mentally ill, and for children. Now they are required to set up a system for asylum claimants. Assuming, as we have to assume, that the legislation is here to stay, they must go about the task of setting up such a system. That does not, in our judgment, involve such a degree of inconvenience as to justify straining the language of the statute.

D

E

As to the purpose of the enactment, this was (we suppose) that no person who by reason of age, illness, disability or any other circumstances is in need of care and attention should lack accommodation, board, or other services, amenities or requisites, except when the authority managing the accommodation considered this provision unnecessary. That purpose can be achieved without the provision of cash to asylum claimants, although with some administrative difficulty. It could also be achieved by the provision of cash, if the local authority is prepared to supervise the way it is spent or if the asylum claimants can be relied on to spend it in the way intended. As with inconvenience, it does not seem to us that purposive construction would justify departing from the language of the statute in this case.

F

G

(4) Other statutory provisions

Mr Gordon relies on section 29(6) of the National Assistance Act:

H

(6) Nothing in the foregoing provisions of this section shall authorise or require –

(a) the payment of money to persons to whom this section applies, other than persons for whom work is provided under arrangements made by virtue of paragraph (c) or paragraph (d) of subsection (4) of this section or who are engaged in work which they are enabled to perform in consequence of anything done in pursuance of arrangements made under this section . . .

I

It is said that section 29(1) is in very similar terms to section 21(1), yet there is no prohibition of cash payments in section 21. Hence we should infer that cash payments are permitted under that section.

J

We cannot accept that argument. Section 29(1) is in materially different terms to section 21(1). It provides that a local authority may, or shall (as the case may be):

K

. . . make arrangements for promoting the welfare of persons to whom this section applies.

That is wider than section 21(1), under which the local authority is to make arrangements for *providing* accommodation and other benefits. The absence of a prohibition of cash payments in section 21, and its presence in section 29(6), can arguably be treated as supporting the view that section 21(1) does not allow cash payments in any event. We certainly do not regard it as an argument for the opposite interpretation.

Exactly the same arguments arise under the Health Services and Public Health Act 1968. Section 45(1) provides:

> *A local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for promoting the welfare of old people.*

Then there is subsection (4):

> *No arrangements under this section shall provide –*
> *(a) for the payment of money to old people except in so far as the arrangements may provide for the remuneration of old people engaged in suitable work in accordance with the arrangements . . .*

The section is again in wider terms than section 21 of the National Assistance Act, with the result that the prohibition on cash payments is necessary.

So too National Health Service Act 1977 in Schedule 8 para 2 deals with a local authority making arrangements:

> *. . . for the purpose of the prevention of illness and for the care of persons suffering from illness and for the after-care of persons who have been so suffering . . .*

Subparagraph (2) contains a restriction on the payment of money to the persons for whose benefit the arrangements are made. The same arguments apply.

On the other hand the Children Act 1989 has this provision:

> *17. – (1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) –*
> *(a) to safeguard and promote the welfare of children within their area who are in need, and*
> *(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,*
> *by providing a range and level of services appropriate to those children's needs.*

There, as in the National Assistance Act, the local authority are to make arrangements to *provide* services. One then finds subsection (6):

> *(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include giving assistance in kind or, in exceptional circumstances, in cash.*

If the Children Act 1989 can be used to interpret the National Assistance Act 1948 (as to which we express no view), this is strong support for the view that a power to provide services does not include the provision of cash, unless there is an express enactment to the contrary. It certainly provides no support whatever for the view that section 21 of the National Assistance Act authorises the payment of money.

A similar point arises under section 1 of the Community Care (Direct Payments) Act 1996.

(5) The Secretary of State's approvals and directions

It is, we would have thought, an elementary proposition that laws are made by Parliament. They are not made by ministers, except and to the extent that Parliament has delegated its legislative power. The point is well illustrated by Lord Hoffmann in *R v Wandsworth London Borough Council ex parte Beckwith* [1996] 1 WLR 60 at p65. He referred to a local authority circular which said:

> *It is the view of the Department that the amendments introduced into the Act of 1948 by section 1 of the Community Care (Residential Accommodation) Act 1992 will require authorities to make some provision for residential care under Part III of the Act of 1948.*

Lord Hoffmann said:

> *The opinion of the Department is entitled to respect, particularly since I assume that the Act was drafted on its instructions. But in my view this statement is simply wrong.*

Clearly it may be helpful for local authorities to be told what the department thinks is the meaning of legislation which they have to operate. For our part, we do not consider that courts of law should be provided with that information, unless there are special reasons. If it is provided, it is not to be summarily brushed aside; it is entitled to respect, since it very probably contains or includes the opinion of a qualified lawyer. But that is all. We would not be allowed to be told the opinion of Queen's Counsel acting for the Secretary of State; should we nevertheless give weight to the views in house of the government legal service?

In the present case section 21(1) provides for approval and direction by the Secretary of State. Such approvals and directions are delegated legislation. They cannot, as Lord Woolf MR said in the *Westminster City Council case* (at p91), change the proper interpretation of section 21. The creature is not greater than its creator. Lord Woolf adds:

> *They are however revealing as to how the Secretary of State considers section 21 is to be applied.*

We were referred to the case of *R v Islington London Borough Council ex parte Rixon* (1998) 1 CCLR 119. That case was concerned with the obligation imposed on local authorities by section 7 of the Local Authority Social Services Act 1970 to act under the general guidance of the Secretary of State in their social services functions. The case does not show that guidance can add to or reduce the powers conferred on local authorities by Parliament.

The material which Mr Gordon relied on under this head came from two sources. First he referred to the Approvals and Directions under section 21(1) (LAC(93)10 App1), and in particular to paragraph 4:

> *4. The Secretary of State hereby directs local authorities to make arrangements in relation to persons provided with accommodation under section 21(1) of the Act for all or any of the following purposes –*
> *(a) for the welfare of all persons for whom accommodation is provided;*
> *(b) for the supervision of the hygiene of the accommodation so provided;*
> *(c) to enable persons for whom accommodation is provided to obtain –*
> *(i) medical attention,*
> *(ii) nursing attention during illnesses of a kind which are ordinarily nursed at home, and*
> *(iii) the benefit of any services provided by the National Health Service of which they may from time to time be in need,*

but nothing in this paragraph shall require a local authority to make any provision authorised or required to be provided under the National Health Service Act 1977;

(d) for the provision of board and such other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority managing the premises their provision is unnecessary;

(e) to review regularly the provision made under the arrangements and to make such improvements as the authority considers necessary.

It is said that paragraph 4(a) is in the same terms as section 29(1) of the National Assistance Act, which would (as Mr Pleming accepts and so do we) permit the payment of cash if it were not prohibited by section 29(6). We apologise if we have abbreviated unduly the sophisticated argument on this point. In our view the Secretary of State did not purport to increase the powers of local authorities by that paragraph; and in any event he could not do so.

Secondly Mr Gordon relies on the general guidance to local authorities, and in particular on the obligation cited as paragraph 3.25 in *Rixon's* case (at p124):

The aim should be to secure the most cost-effective package that meets the user's care needs, taking into account the user's and carer's own preferences.

That would no doubt be the aim, in these days, of any local authority, without the benefit of guidance. We do not see that it can alter the powers which Parliament has conferrred.

Conclusion

The Appellants no longer rely on section 111 of the Local Government Act 1972. For the reasons that we have given, this appeal is dismissed.

ORDER: Appeal dismissed.
Order nisi against the Legal Aid Board.
Legal aid taxation of the appellant's costs.