R v Kirklees MBC ex p Good

Queen's Bench Division
Popplewell J
2 September 1996

The Carers (Recognition and Services) Act 1995 does not require local authorities to make disabled facilities grants in respect of premises occupied by carers; Chronically Sick and Disabled Persons Act 1970 s2 does not require local authorities to carry out works of adaptation to premises occupied by carers.

Facts

Mr and Mrs Good senior were elderly and disabled. They lived on the ground floor of a three-bedroomed house and were in dire need of a bath and other facilities. Mr and Mrs Good junior lived on the floor above with their four children. They looked after Mr and Mrs Good senior. Mr Good junior had given up his job in order to be able to provide care more effectively. The local authority had agreed to make a disabled facilities grant under the provisions of Local Government and Housing Act 1989 Part VII in respect of the ground floor accommodation for the direct benefit of Mr and Mrs Good senior. It declined to make a grant in respect of the upstairs accommodation, which would indirectly benefit Mr and Mrs Good senior in that Mr and Mrs Good junior would be considerably less affected by the stressful conditions they lived in and therefore enabled to provide better care.

Held (refusing the application):

1 Carers (Recognition and Services) Act 1995 s1 requires the local authority to have regard to more than the ability of the carer to care, in terms of physical fitness, intelligence and so forth. There is a wider purpose of ensuring that a carer is not living in such conditions that s/he is unable to carry out the duties of carer properly. The Act does not, however, require the local authority to take any action on the basis of any resulting assessment and, specifically, in this case did not require the local authority to make a disabled facilities grant available to Mr and Mrs Good junior in respect of their premises in the upstairs part of the house.

2 Chronically Sick and Disabled Persons Act 1970 s2 does not impose any duty on a local authority to provide carers with adaptations to their premises. There would therefore have been no point in assessing Mr and Mrs Good junior in relation to that Act.

3 It was true that Mr and/or Mrs Good senior had not been assessed under National Health Service and Community Care Act 1990 s47(1) and that they had not been assessed under Chronically Sick and Disabled Persons Act 1970 s2 or Disabled Persons (Services, Consultation and Representation) Act 1986 s4. On the facts of this case that omission had led to no practical disadvantages. No such assessments had ever been requested and the authority did not in fact consider that Mr and Mrs Good had any unmet needs. Having regard to the foregoing and the fact that the scope and scale of assessments is in any event a matter for the authority to determine no relief would be granted.

4 This application was in any event doomed to failure because of the alternative remedy contained at Local Authority Social Services Act 1970 ss7B to 7D.

Cases referred to in judgment:

R v Gloucestershire CC and Secretary of State for Health ex p Barry; R v Lancashire CC ex p Royal Association for Disability and Rehabilitation and Gilpin (1997) 1 CCLR 19; [1996] 4 All ER 421; [1996] COD 387; (1996) 93(33) LS Gaz 25; (1996) 140 SJLB 177; (1996) *Times*, 12 July; *Independent*, 10 July, CA.

Legislation/guidance referred to in judgment:

Carers (Recognition and Services) Act 1995 s1 – Chronically Sick and Disabled Persons Act 1970 s2 – Disabled Persons (Services, Consultation and Representation) Act 1986 s4 – Health Services and Public Health Act 1968 – Local Authority Social Services Act 1970 ss7B to 7D – Local Government and Housing Act 1989 – Mental Health Act 1983 – National Assistance Act 1948 – National Health Service Act 1977 – National Health Service and Community Care Act 1990 ss46 and 47.

This case also reported at:

Not elsewhere reported.

Representation:

J Friel (instructed by Ridley & Hall) appeared on behalf of the applicant.

T Straker QC (instructed by the Legal Department of Kirklees MBC) appeared on behalf of the respondent.

Judgment

MR JUSTICE POPPLEWELL: The facts of this case are sad. The applicants, Mr and Mrs Good senior, are an elderly married couple who have disabling medical conditions. It is not necessary to set them out and they have been getting very much worse.

They live in a house on the ground floor where the conditions are such that it is quite inappropriate that they should go on living there in those conditions, unless some steps are taken to provide them, among other things, with a bath and other facilities.

Living on the floor above them are Mr and Mrs Good junior, as they have been described. They have four children. It is a small three-bedroomed house and they are living in a degree of considerable discomfort. Mr and Mrs Good junior are full-time carers for Mr and Mrs Good senior and Mr Good has given up his job in order to act as a full-time carer and they are much to be commended for their loyalty and devotion to the Good seniors.

The issues which now arise in this case are really twofold: there has been an application under the Housing Act for a grant to improve the condition of this house. The dispute between the parties now, although this dispute had been going on for a long time, is not as to the ground floor, where it is now agreed that a grant should be given for the benefit of Mr and Mrs Good senior and to some extent that will alleviate their position, the argument is whether the Council should not provide a grant so that Mr and Mrs Good junior and their children can have improved conditions so that, as it is put, Mr and Mrs Good can more tenderly care for Mr and Mrs Good senior and, therefore, that they should provide a grant to Mr Good so that he can obtain a mortgage, because he is not able to work, he is unable to keep the premises.

At a late stage it is further submitted by Mr Friel that, in fact, what the local authority should do is to provide some more community care services so that Mr Good junior can go out and work, either full or part-time, and thus assist the

A Good seniors. The latter point has not been raised either in the amended 86A or anywhere else and I do not propose to deal with it.

The question of the liability of the Council to assist the Good juniors is said to arise under the Carers Act which is a recent piece of legislation. It is called the Carers (Recognition and Services) Act 1995. It is an Act that provides for the B assessment and ability of carers to provide care and for connecting purposes. Section 1 is headed 'Assessment of ability of carers to provide care: England and Wales':

> *(1) Subject to subsection (3) below, in any case where –*
> C *(a) a local authority carry out an assessment under section 47(1)(a) of the National Health Service and Community Care Act 1990 of the needs of a person ('the relevant person') for community care services, and*
> *(b) an individual ('the carer') provides or intends to provide a substantial amount of care on a regular basis for the relevant person,*
> D *the carer may request the local authority, before they make their decision as to whether the needs of the relevant person call for the provision of any services, to carry out an assessment of his ability to provide and continue to provide care for the relevant person; and if he makes such a request, the local authority shall carry out such an assessment and shall take into account the results of that assessment in making that decision.*

E It is submitted on behalf of the Council that that is only designed to have regard to the actual ability of a carer, that is to say to make sure they are fit enough, intelligent enough and so on, to carry out the job of caring.

Looking at the basis upon which the Act was brought, it seems to me to have F somewhat wider purpose and that is to say to ensure that for instance a carer who is not living in such a condition that he or she is not able to carry out the duty of carer properly.

However, it is clear that simply making an assessment does not get anyone anywhere. Unless there is power under this Act to make the sort of provision G which it is suggested should be made for the Good juniors, there is nothing in the Act which appears to me to require the local authority to give a grant in respect of the premises upstairs.

The request, it is clear, has been made under the Carers Act. It is clear from s1 of the Carers Act that the provisions relate to community care services which have H the meaning given by s46(2) of the National Health Service and Community Care Act 1990. It is equally clear that those provisions mean services which may be made under the National Assistance Act, the Health Services and Public Health Act, National Health Service Act and the Mental Health Act. None of those are relevant to the instant application.

I The application for the grant is under the Local Government and Housing Act. In my judgment, the argument which the local authority have put forward, namely, that the Carers Act is not relevant to the present exercise is a correct one.

It is sought to be said by Mr Friel that s2 of the Chronically Sick and Disabled J Persons Act 1970 had an application in the instant case. Section 2 reads as follows:

> *(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*
> K *meet the needs of that person for that authority to make arrangements for all or any of the following matters, namely –*

(a) the provision of practical assistance for that person in his home;

. . .

(e) the provision of assistance for that person in arranging for carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience; . . .

I do not read s2 as putting or casting any duty on the local authority to provide the Good juniors with an adaptation for their premises, which no doubt, will provide greater safety, comfort and convenience to them as obligating the local authority to provide that circumstance to the Goods themselves, that is to say, that while they are under an obligation to secure the adaptation for the benefit of the Good seniors they are not under any obligation to secure the adaptation of the premises which the Good juniors presently occupy.

Accordingly, it seems to me that although there is an interesting academic argument that the local authority are under a duty if requested to carry out an assessment of Mr and Mrs Good junior, in the instant case such an assessment would be no practical use whatsoever. That is the first point.

The second matter is this: that it is submitted that Mr and Mrs Good have not been assessed under either s2 of the Chronically Sick and Disabled Persons Act 1970 or under s4 of the Disabled Persons (Services, Consultation and Representation) Act 1986. Section 4 reads:

When requested to do so by –

(a) disabled person

. . .

a local authority shall decide whether the needs of the disabled person call for provision by the authority of any services in accordance with 2(1) of the 1970 Act.

Section 47 of the National Health Service and Community Care Act 1990 makes express provision that:

(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 –

(a) shall carry out an assessment of his needs for those services . . .

Those express words are absent from s4 and it is submitted that therefore an assessment is not necessary. It seems to me, having regard to the decision of the Court of Appeal in *R v Gloucester County Council ex parte Barry* (1997) 1 CCLR 19, if there is a request under s4 and indeed under s2 some form of assessment must be carried out, that is to say you cannot make a decision where the needs of the disabled person call for the provision of any services without making the assessment as to whether there is any need for the provision of those services.

It is clear from the policy document that the nature of the assessment may vary. It may be complicated, in which case a full scale enquiry will need to be put in hand and a written document provided and so on. There may be other cases where it is so simple that a decision can be made with the conclusion being reached that nothing needs to be done. In effect that is a matter for the local authority to determine the extent of the assessment.

In the instant case it is asserted that Mrs Good has been assessed under the carer provisions, but has not been assessed under the disabled provisions. The effect of that or one of the practical effects of that is that she is presently attending Saint Luke's Hospital for respite care, which is in an inappropriate place because

A it is a place for those mentally impaired and she wants to go to the Chadwick Unit. The Chadwick Unit is apparently part of the same hospital and what was submitted was that s2 required the local authority not merely to carry out an assessment, but to provide the facilities for travelling to the unit. As it is perfectly clear that the travelling arrangements to Saint Luke's, where she presently goes, would be B identical to those arrangements to go to the Chadwick Unit, there seems to me absolutely nothing in that point.

It is clear that as early as January this year the local authority had decided that she should go to the Chadwick Unit. She is not going to the Chadwick Unit. Why that is, nobody is able to say nor what happens at the Chadwick Unit. It may well C be, as I believe is the case, that the nature of the application which was fully amended and allowed to be amended has given rise to a point which the respondents have not had a full opportunity to consider. But having agreed that she should go to the Chadwick Unit from January there does not seem to be any good reason why she should not go there, the transport which is required being D identical.

So far as an assessment is concerned, there is nothing that I can see from the papers, nor has it been suggested in argument, which requires any additional assessment. Mr Friel says that an assessment, and he is right, under the Disabled Act may well be different from an assessment under the Community Care Act. E This is not an academic case. This is a case that ought to deal with practicality and at the moment I cannot see anything which has not been considered by the local authority which should have been considered.

So far as Mr Good is concerned, it is pointed out that there are various obligations under s47 about giving the disabled person a right to make application. F Section 47(2) provides:

> *If at any time during the assessment of the needs of any person . . . it appears to a local authority that he is a disabled person, the authority –*
>
> *(a) shall proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services, Consultation and* G *Representation) Act 1986 without his requesting them to do so under that section; and*
>
> *(b) shall inform him that they will be doing so and of his rights under that Act.*

H What is said on Mr Good's behalf is that either there has not been assessment or if there has been assessment it does not comply with s47(2). So far as Mr Good is concerned, the affidavit of Mr Westwell says that they have kept the Goods under regular review. In the case of Mr Good he says his needs have been assessed and the conclusion reached is that they are being met and that the needs are being I met in terms of respite care arranged for him and his wife.

Mr Massey says this:

> *With regard to Mr Good (Senior) I am advised that at no time was an assessment ever requested for him by any person, nor was it ever felt by any person in the employ of the Council's Social Services Department that Mr Good suffered from* J *any unmet needs in his own right sufficient to require a formal assessment. Services such as respite care and transport referred to in the Affidavit of Mr Good can easily be met as one off matters, without necessitating community care assessment.*

K It may well be that there ought to have been an assessment in the sense of a regard to what is needed, but that has occurred even if not formally demanded, it

seems to me to be clear. There is nothing that I can see which flows from any absence of an assessment so far as Mr Good is concerned. I have dealt with Mrs Good's position in relation to Saint Luke's. A

Finally, there is a further point taken by the local authority, namely, that by the Local Authority Social Services Act 1970, ss7B to 7D, there is provision made whereby if the local authority fail to carry out their statutory duties the Secretary of State may cause an enquiry to be held and if he is satisfied that a local authority has failed to comply with any of their duties they may make an order declaring the authority being at fault which is the same power that this court has. B

It is submitted on behalf of the local authority that in compliance with the well known cases that if there is an alternative remedy judicial review should not lie, that this application in any case is doomed to failure. C

That last point seems also to me to be decisive of this case in addition to the points that I have already made. I fear I have not done full justice to all the arguments that have been put before me, but in the end the points come down to very simple ones and whatever sympathies one may have with the young Goods in their situation, I am sorry to say that these applications must be dismissed. D