

R v Wigan MBC ex p Tammadge

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Queen’s Bench Division  
Forbes J  
30 July 1998

*A local authority is entitled to take resources into account to a limited extent in assessing whether and if so what need exists under National Assistance Act 1948 s21. Once, however, it has assessed a need as existing (or accepted the finding of a Social Services Complaints Review Panel to that effect) it has a duty to the applicant to make provision for that need and it is not lawful to refuse to perform that duty, inter alia, because of a shortage of or limits upon its financial resources.*

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Facts

The applicant was the mother of, and looked after, three boys aged 19, 15 and 13 who were severely mentally handicapped and had behavioural problems. She also had a 10-year-old daughter. The family home had only four bedrooms and was not very large generally. By 1994 it was clear that the applicant’s home was no longer appropriate to meet the needs of the applicant and her family. A number of health and social services professionals expressed the view that larger accommodation should be provided but the respondent authority’s social services department refused to pay the cost of purchasing a larger property, or converting suitable smaller properties. The applicant made a formal complaint. The respondent authority rejected her complaint, principally on the ground that the applicant would not be likely to look after her sons for much longer because she would be unable to cope and because it was normal for children who grew into adults to move into adult-supported accommodation. The applicant and her children wanted to remain living together. The applicant referred her complaint to a Social Services Complaints Review Panel (SSCRP).

After hearing evidence and argument, the SSCRP concluded that the applicant was in need of a larger property for the foreseeable future and recommended that the respondent authority investigate the possibility of ascertaining and adapting a suitable property for the applicant and her family. An officer of the respondent authority visited the applicant and made it clear that the respondent authority’s social services department accepted the findings and recommendations of the SSCRP. A subsequent multi-disciplinary meeting concluded that everyone accepted that the applicant needed a larger property and that the respondent authority should look at the options available and costings. This was done, it being ascertained that the most cost-effective method entailed knocking together two adjacent three-bedroomed houses. However, at a subsequent meeting attended by senior officers of the respondent authority’s social services and housing departments the decision was reached that it was not appropriate for the respondent to provide larger accommodation, *inter alia*, because ‘the potential benefits . . . do not justify the significant costs’.

Held (allowing the application):

- 1 Notwithstanding the decision in *Re T (A Minor)* (1998) 1 CCLR 352; [1998] 2 All ER 769, HL, the court was bound by *R v Sefton MBC ex p Help the Aged and Blanchard* (1997) 1 CCLR 57, CA, to conclude that the respondent authority was entitled to take its financial resources into account, to a limited extent, when assessing the needs of Mrs Tammadge.
- J  
K

- A 2 The SSCRP did not merely find that the applicant would benefit from larger accommodation. It found as a fact that the applicant had a need for larger accommodation. That finding was consistent with the expressed views of the respondent authority's professionally qualified staff. It could not be ignored or overruled without substantial reason and without giving the SSCRP's decision appropriate weight: *R v Avon CC ex p M* [1994] 2 FLR 1006, QBD. In fact, the respondent authority had accepted the findings as to need made by the SSCRP.
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- 3 From the date it accepted the SSCRP's finding that the applicant needed larger accommodation the respondent authority had been under a duty to the applicant to make provision of such accommodation to her and her family and it was not lawful of the respondent to refuse to perform that duty because of a shortage of or limits upon its financial resources or for any of the other reasons put forward.
- C

**Cases referred to in judgment:**

- D *R v Avon CC ex p M* [1994] 2 FCR 259; [1994] 2 FLR 1006; [1995] Fam Law 66, QBD. *R v Bristol CC ex p Penfold* (1998) 1 CCLR 315, QBD. *R v Gloucestershire CC and Secretary of State for Health ex p Barry* (1997) 1 CCLR 40; [1997] 2 All ER 1; [1997] 2 WLR 459, HL. *R v Sefton MBC ex p Help the Aged and Blanchard* (1997) 1 CCLR 57; (1997) *Times*, 23 August, CA.
- E *T (A Minor), Re*; sub nom *R v East Sussex CC ex p Tandy* (1998) 1 CCLR 352; [1998] 2 All ER 769; (1998) *Times*, 21 May, HL.

**Legislation/guidance referred to in judgment:**

- F Children Act 1989 s17 and Sch 2 – Chronically Sick and Disabled Persons Act 1970 s2 – National Assistance Act 1948 s21 – National Health Service and Community Care Act 1990 ss46 and 47 – Secretary of State's Approvals and Directions under section 21(1) of the National Assistance Act 1948 at Appendix 1 to LAC(93)10 para 2.
- G

**This case also reported at:**

Not elsewhere reported.

**Representation**

- H Richard Gordon QC and Stephen Knafler (instructed by Stephenson's) appeared on behalf of the applicant.
- Frances Patterson QC and M Carter (instructed by the Borough Solicitor to Wigan Metropolitan Borough Council) appeared on behalf of the respondent.
- .....

**Judgment**

**MR JUSTICE FORBES:** The applicant in these proceedings, Mrs Lorraine Tammadge, seeks relief by way of judicial review of the decision of Wigan Metropolitan Borough Council ('Wigan') contained in letters dated 30 July and 28 August 1997, whereby Mrs Tammadge's request to be provided with larger accommodation was refused.

*The Legal Regime*

- In general terms, this application is concerned with Wigan's assessment of the needs of the applicant and her family for community care services (in particular, the provision of larger accommodation for the applicant and her family) and with what is said to be the failure of Wigan to carry out its statutory duty to make
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appropriate provision for those needs once they had been assessed. It is common ground that an appropriate statutory duty on the part of Wigan, to carry out an assessment of the community care needs of the applicant and her family, can be found in both Section 47 of the National Health and Community Care Act 1990 ('the 1990 Act') and Section 17 of the Children Act 1989 ('the 1989 Act'). Although Section 47 of the 1990 Act is concerned with the provision of Community Care Services to an adult, whereas Section 17 of the 1989 Act is concerned with making suitable provision for children in need, it was accepted that, on the particular facts of this case, the relevant provisions of either statute could be applied to the circumstances of Mrs Tammadge and her family and that there are no relevant distinctions of principle to be considered by reason of the application of one set of statutory provisions as opposed to the other. In effect, on the facts of this case, the relevant statutory provisions of the 1990 Act and the 1989 Act run parallel to each other, an expression which was used by Mr Gordon in the course of this case and which I gratefully adopt.

Section 47 of the 1990 Act provides, so far as material, as follows:

- (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; and*
  - (b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.*

By Section 46 of the 1990 Act, community care services are defined so as to include the provision of accommodation pursuant to Section 21 of the National Assistance Act 1948 ('the 1948 Act') which, so far as material, provides as follows:

- (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 eighteen 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 . . .*
  - (2) In making any such arrangements a local authority shall have regard to the welfare of all persons for whom accommodation is provided, and in particular to the need for providing accommodation of different descriptions suited to different descriptions of such persons as are mentioned in the foregoing subsection.*

By a number of Approvals and Directions which came into force on 1 April 1993 the Secretary of State gave (*inter alia*) the following Direction under Section 21(1)(a) of the 1948 Act [see LAC(93)10 App 1 para 2]:

***Residential accommodation for persons in need of care and attention***

- (1) The Secretary of State hereby –*

*. . .*

- (b) directs local authorities to make arrangements under Section 21(1)(a) of the Act in relation to persons who are ordinarily resident in their area and other persons who are in urgent need thereof, to provide residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstance are in need of care and attention not otherwise available to them.*

On behalf of the applicant, Mr Gordon QC made the uncontroversial point that

- A the Secretary of State's foregoing direction under Section 21(1)(a) of the 1948 Act has imposed a duty on local authorities to provide residential accommodation in appropriate circumstances of need. Equally, Miss Patterson QC, who appeared on behalf of the Respondent, did not dispute Mr Gordon's further submission that
- B 'normal' or 'bare' accommodation (ie accommodation without the provision of board and services) could, in an appropriate case, amount to a community care service, within the meaning of Section 47 of the 1990 Act and Section 21 of the 1948 Act: see *R v Bristol CC ex parte Penfold* (1998) 1 CCLR 315 at pages 316 and 327.

Section 17 of the 1989 Act imposes a general duty upon a local authority to make provision of services for children in need, as follows:

- C *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*
- D (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.*

Schedule 2 to the 1989 Act provides as follows:

- E *PART 1 PROVISION OF SERVICES FOR FAMILIES*  
*Identification of children in need and provision of information*  
*1.-(1) Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.*  
 ...
- F *Assessment of children's needs*  
*3. Where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at the same time as any assessment of his needs is made under –*
- (a) *the Chronically Sick and Disabled Persons Act 1970;*
- G (b) *Part 3 of the Education Act 1993;*  
 (c) *the Disabled Persons (Services, Consultation and Representation) Act 1986; or*  
 (d) *any other enactment.*

- As I have said, for the purposes of this case there is no material distinction to be drawn between the two statutory regimes. Furthermore, it was accepted by Miss Patterson that, once a local authority has assessed a person and/or family as having a need for larger accommodation, whether as a community care service or as a service to children in need, the local authority will then be under a duty to make suitable provision of such accommodation. As it seems to me, therefore, the central issue in this case is whether such a final assessment of need in respect of Mrs Tammadge and/or her children was made in this case. I therefore now turn to give a general outline of the factual circumstances of this case.

#### *The Facts*

- Mrs Tammadge is the mother of four children who live with her at 56 Thornburn Road, Norley Hall. Of Mrs Tammadge's four children, three are her sons named Wayne, Kerry and Conan, aged respectively 19, 15 and 13. Mrs Tammadge's three sons are severely mentally handicapped and have behavioural problems, resulting in aggressive and sexualized behaviour towards each other. Mrs Tammadge's other child is a daughter named Precious, who is now aged almost
- K 11. Mrs Tammadge married Mr Michael Tammadge on 7 November 1997. Accordingly, since most of the relevant correspondence and other documentation in this

case pre-date that marriage, Mrs Tammadge is referred to in those documents by her former name of Mrs Lorraine Clarke. However, except where quoting from such a document, throughout this judgment I shall refer to the applicant as Mrs Tammadge.

The family home at 56 Thornburn Road ('No 56') is not very large and has only four bedrooms. By 1994, it was clear that No 56 was no longer appropriate to meet the needs of Mrs Tammadge and her family: see the undated letter, written on behalf of Wigan's Department of Social Services in 1994, which is in the following terms:

*To whom it may concern*

*Re Mrs Lorraine Clarke, mother of:*

*Wayne McGrail Severe Mental Disability DOB 18.07.79*

*Kerry McGrail Severe Mental Disability DOB 22.10.82*

*Conan McGrail Severe Mental Disability DOB 10.07.85*

*Precious McGrail DOB 04.09.87*

*Please can this family be considered for larger accommodation. The house they live in at the moment is not appropriate to meet their needs. Mrs Clarke has three children in the family, who have a severe mental disability. Each need their own bedroom as their behaviour is such that they need protection from one another, and also to enable Mrs Clarke to maintain some semblance of order.*

*Precious, the only daughter of the family, should also have a room of her own. Large accommodation would give the family much more freedom and the separate bedrooms for the boys would give Mrs Clarke peace of mind. Mrs Clarke is under considerable strain in looking after her family and if they were housed in more suitable accommodation this would lessen the strain considerably and also improve the quality of life for her children.*

In a letter dated 29 November 1994, the School Medical Officer wrote as follows:

*This family is in urgent need of more appropriate accommodation.*

*The three boys are severely mentally handicapped and their behaviour is such as they need to have separate sleeping accommodation in order for Mrs Clarke to maintain some semblance of order and to protect them from one another.*

*It should go without saying that Precious should have a room of her own.*

*This is obviously a big demand in terms of accommodation but Mrs Clarke's task in looking after this family is colossal.*

Miss C Laithwaite, a Health Visitor with Wigan Leigh Health Services wrote in similar terms on 19 December 1994.

During the spring of 1995, Mrs Tammadge was admitted to hospital suffering from serious anxiety and depression. A planning meeting was subsequently arranged by Wigan to look at ways of supporting Mrs Tammadge and her family and to formulate a suitable care package to coincide with her discharge from hospital. The planning meeting took place on 1 June 1995. Present at the meeting were representatives of all relevant departments and agencies concerned with the welfare of Mrs Tammadge and her children, including Wigan's Social Services Department. The minutes of the meeting record that there was unanimous agreement that (*inter alia*) assistance from the Housing Department for more appropriate accommodation for Mrs Tammadge and her family was considered to be of prime importance: see page 6 of the minutes.

Despite the acknowledged importance of the provision of more appropriate accommodation for Mrs Tammadge and her family having been identified and

- A agreed at the planning meeting in June 1995, no such accommodation was, in fact, provided. Various properties were identified, which were suitable for conversion, but Wigan's Social Services Department refused to pay the costs of adaptation. As a result, Mrs Tammadge made a formal complaint to Wigan about the failure of the Social Services Department to meet the costs of the necessary adaptations which would enable her and her family to be rehoused in appropriate accommodation.

- B  
C In January 1996 Mr McHale, a team manager in Wigan's Social Services Department visited Mrs Tammadge to discuss her complaint. In a letter dated 16 January 1996 Mr McHale recorded the effect of those discussions (*inter alia*) as follows:

*Following my visit to discuss your complaint, I wish to confirm the following issues were considered:*

- D *1. The provision of bigger accommodation would not enable you to provide a better quality of care for your children.*

*...*

*2. That I did not feel that you would be able to continue caring for your children much longer because as they get bigger and stronger you will be physically unable to cope with them.*

- E *...*

*3. That you should not have to cope with the children particularly in light of your recent depressive illness.*

*...*

- F *4. Finances – I agreed that finances were a minor consideration in the final decision but the cost effectiveness of any investment by Social Services has to be part of the overall decision making process . . .*

- G Following Mr McHale's visit, Mrs Tammadge's complaint was given further consideration by Mr John Young, acting as Investigating Officer, who produced a written 'Complaint Investigation Report' dated 15 April 1996, which contained, *inter alia*, the following passages:

*First stage*

*SUMMARY OF COMPLAINT*

- H *Mrs Clarke was informed at a planning meeting on Thursday, 1.6.95, that a move of house was a priority for her and her family. She had been previously admitted to the hospital suffering from severe depression and this was her discharge meeting.*

- I *Properties have been subsequently identified, however the Social Services Department have refused to pay the costs of adaptation. Mrs Clarke's complaint is that Social Services is failing in its duty to pay for adaptations so that she and her family may be rehoused.*

*EXPECTATIONS*

- J *Mrs Clarke would like the Social Services Department to agree in principle to pay for adaptations so that, if a property is found, she and her family can move as planned.*

*METHODOLOGY*

- K *I interviewed Mrs Clarke at my office on 11.3.96, in company with her partner, Mike Tammadge. I subsequently interviewed Marie Carroll the family Social Worker on 19.3.96, together with Dave McHale, Team Manager. I viewed the case papers on that day. At Mrs Clarke's request I spoke with Peter Dahistron, Head*

*Teacher of her sons' school on 22.3.96 and with Charlotte Laithwaite, the family's Health Visitor, by telephone on 25.3.96. I interviewed Peter Srivastava, Mrs Clarke's Mental Health Social Worker on 25.3.96, together with his Team Manager, Marjorie Webster. I was also invited to Mrs Clarke's home that afternoon where I met her family and she showed me round her home as she wished me to see their circumstances first hand.*

...

*In spring 1995, Mrs Clarke was admitted to hospital suffering from depression for personal reasons and as stated above, on her discharge it was felt to be important that she move to larger property if her problems were not to recur. The adjacent properties were subsequently identified, however the Housing Department had made it clear in a letter to the Social Services Department dated 28.7.95 that they would expect them to finance all associated costs.*

*The family currently occupy a four bedroomed property which was previously extended by the Social Services Department to allow more space. In the evenings the family sit together in the rather cramped rear living room. . . . She would accept a five bedroomed house (so that each family member has their own bedroom) but would prefer six as she intends her sons to either stay with her all of their lives or wish to revisit if they moved out. She anticipates needing a carer to live in and assist her with this task or to come in if she was ill or there was a breakdown in her sons' situation, etc. She states that she would be willing to accept any area.*

*It is important to note that everyone interviewed agreed that Mrs Clarke and/or her family would benefit from a move if one were possible as it is clearly preferable that the family should live in larger accommodation. The issue for the children and family division of the Social Services Department is whether or not the move should be underwritten by the Department as they have a number of reservations about Mrs Clarke's future plans and analysis of the current situation.*

*Firstly, they feel there is no necessity for Mrs Clarke to pursue her intention of caring for her sons ad infinitum. Whilst no-one would wish to see the family separated permanently it is a natural course of events for young people to leave the family home, and the Adults Services Division of the Department have a number of schemes where people with a learning disability can live independently, nearby and with the full support of their family. Mrs Clarke feels, and is supported in this view by some of the interviewees, that a larger home would prevent a deterioration in her own health but the Children and Family Division contend that this is by no means certain and there is a high risk in their establishing this for her if she is not then well enough to cope.*

...

*Finally, and by common consent, the least important factor is that of funding.*

...

...

*A potential compromise suggestion to split one bedroom into two is not acceptable to Mrs Clarke and she informs me not practical. In responding to a draft of this report Mrs Clarke stated that she had formed the impression that her Family Social Worker felt the move to be a temporary measure but she sees it as a permanent way forward. She also wished it to be recorded that she is becoming increasingly frustrated as time goes by. She also feels she is having to repeat herself to a number of different people to no effect.*

A MAIN FINDINGS

B *There is little to add under this heading than previously stated. Mrs Clarke and the Wigan Area Team are at an impasse with regard to her housing move and there appears to be little room for compromise. The role of the Investigating Officer is therefore to decide which of the two positions has the most merit and to*  
C *inform the other party accordingly. Whilst it is impossible to be unsympathetic to Mrs Clarke's circumstances I concur with the Area Team's view that it is not viable for the Department to fund major alterations to a property for a family where some of the children are mid to late teenagers and might be moving on. I also agree that (whilst Mrs Clarke feels that a housing move resolves all*  
D *problems) there are certain problems which will move with the family if they are not tackled, whatever their housing circumstances. I therefore do not uphold Mrs Clarke's complaint as I feel the Area Social Work Team have taken a balanced view and come to a reasonable decision even if it is one that does not suit Mrs Clarke.*

E In my view, it is clear from the terms of his report, that the Investigating Officer accepted that Mrs Tammadge and/or her family would benefit from a move to larger accommodation. It is also clear that his decision, to concur with Wigan's Social Services Department's opinion that the necessary conversion of a suitable property was not a viable option, was not because of funding problems as such, but because some of the children were at an age where they could be expected to move on in the near future.

F Not surprisingly, Mrs Tammadge was dissatisfied with the outcome of these initial investigations of her complaint. She took appropriate steps to refer her complaint to a Complaints Review Panel, whose terms of reference were (*inter alia*) as follows:

G *1.1 The Complaints Review Panel is established to comply with the requirements of the NHS and Community Care Act 1990 and the Children Act 1989. It is required to consider representations or complaints in relation to the discharge of, or any failure to discharge, any of the local authority's Social Services functions in relation to the complainant. The panel may also consider complaints and representations in relation to the authority's function under part 3 of the Children Act 1989.*

H *1.2 The panel must make written recommendations to the local authority who must then consider what action (if any) it ought to take. The panel has no power to take executive action in respect of any complaints considered.*

I Prior to the hearing before the Complaints Review Panel (whose full title was 'Social Services Complaints Review Panel' – hereafter 'the SSCRP'), the Deputy Director of Wigan's Social Services Department submitted a written report dated 16 September 1996, by way of response to Mrs Tammadge's complaint. The conclusion expressed in that report was in the following terms:

J *It is accepted that Mrs Clarke has significant difficulty in caring for her three sons who have learning disabilities and that a big house would make life more comfortable for her. Liaison with the Housing Department led to the understanding that the only practical way a five bedroomed house could be obtained is if two properties were converted into one and the Social Services Department would have to bear the cost of such a conversion.*

K *The Social Services Department does not believe that the payment for a house conversion is an appropriate use of scarce resources on the grounds that:*



- (i) *such a move would not resolve all the problems experienced by Mrs Clarke – indeed most of the practical problems would remain.* A
- (ii) *it is not reasonable to assume as does Mrs Clarke, that all the children will remain with her permanently and that Precious will take over the care of her brothers when Mrs Clarke can no longer do it herself. The Department believes that the three sons should be given the opportunity to live in supported accommodation in the community at the appropriate time and that Precious should also have the opportunity to pursue her own life. This is consistent with the policy objectives of the Department.* B

In my judgment, it is clear from the terms of the conclusion expressed in the Deputy Director's report to the SSCRP that an important factor in Wigan's decision, that the cost of the appropriate house conversion was not justified, was the Social Services Department's belief that her three sons and daughter would not always continue to live with Mrs Tammadge in the future. C

The hearing took place before the SSCRP on 24 September 1994. Before coming to the conclusions and recommendations which were reached by SSCRP, it is instructive to refer to the following passages in the minutes of those proceedings: D

*A statement of case was submitted by the Management of the Social Services Department prior to the meeting . . .* E

*The complainant submitted her case and drew the panel's attention to section (ii) of page 2 of the report of the Deputy Director of Social Services dated 16 September 1996 and stated that she had never in fact stated that her daughter would take over the care of her brothers in later life, but may assume the role. She stressed that as her sons needed support why should they be moved out of the family home and into supported accommodation in the community at the appropriate time as she was of the opinion that the boys would need supervision and was prepared to undertake that supervision for as long as she was able.* F

*The complainant stated that there had been a suggestion to split one of the existing bedrooms, but that she had been told by one of the Occupational Therapists that the room was not big enough to start with and also that a representative from the Housing Department had stated that this action would be unsuitable.* G

*The Complainant's Representative stated that if the Complainant was rehoused into a larger property this would alleviate some of the problems although she appreciated that it would not solve them all. She was of the opinion that the family on the whole would experience a better quality of life if the move was to take place.* H

*The Chairman asked why the quality of life would be better and the Complainant's Representative referred to the existing internal arrangements within the home and of the restrictions on the boys due to the inadequate size of the property. The Complainant's Representative commended the Social Services Department on the assistance already provided to the family and stated that certain problems would still remain as the home was too small.* I

*. . .*

*The complainant stated that it was essential for the children to have separate rooms. At this point the Chairman asked Management for questions, there were none.* J

*. . .*

*A Representative of Management submitted his case by advising the Panel that the Social Services Department were sympathetic towards the problems but were of the opinion that the Department had responded appropriately and in line* K

A *with Council policy. He advised the Panel that the Service Manager (Support Services) from within the Department had been approached to be the Investigating Officer who in turn had visited the Complainant and was to be called as witness number two.*

B *A Representative of Management stated that the reason for the Panel was that the Complainant was dissatisfied that the Social Services Department were unable to fund the cost of converting two properties into one for the family concerned. He reported the least important factor was that of funding and that it would have to be decided how cost effective the adaptations would be given the finite budget, together with the long term beneficial outcome for either the family or the Department. He also reported that it was not the intention of the Social Services Department to force the children out of the family home, but to encourage Service Developments as an option.*

...

D *At that point the Chairman clarified the statements made by the Team Manager as follows:*

- E
- (1) *that a bigger house would be of no benefit because the problems would not be alleviated;*
  - (2) *that it was unfair on the Complainant and her daughter to expect them to take on board the support for the boys themselves; and*
  - (3) *that the resources needed to adapt the 2 houses would not be cost effective given the finite budget of the Social Services Department.*

...

F *A Panel Member asked the Team Manager if in his opinion a larger house would benefit the family at the present time and the Team Manager stated that he did not believe that it would.*

G *After duly considering all the evidence and arguments which had been presented by Mrs Tammadge and Wigan Social Services Department, the SSCRP came to the following conclusions and recommendations:*

- H
- (1) *The Panel were not of the opinion that the Social Services Department had failed to discharge its function in relation to the Complainant.*
  - (2) *Notwithstanding paragraph (1) above the Panel were of the opinion that the Complainant was in need of a larger property for the foreseeable future; and*
  - (3) *The Panel commended the Complainant on the admirable way in which she has coped in the past given the stressful situation she has been under.*

***Specific Recommendations of the Social Services Complaint Review Panel:***

I *That in respect of (2) above the Director of Social Services be requested to investigate the possibility of ascertaining and adapting a suitable property in order that the complainant and her family can be rehoused in order to alleviate some of the problems referred to.*

J *Following the hearing before the SSCRP, Mr Ellis of Wigan's Social Services Department prepared a briefing note which acknowledged that 'Multi Agency Planning Meetings appear to have supported the suggestion of having a bigger house and commented on the importance of this to the family'. The briefing note concluded as follows:*

K *A specific recommendation was made that the Director of Social Services be requested to investigate the possibility of ascertaining and adapting a suitable*

property in order that the Complainant and her family can be rehoused in order to alleviate some of the problems referred to.

... it would appear that the Panel have accepted that the Department had discharged its function (therefore presumably the complaint is not founded) but have still suggested that we should try and provide a bigger house (presumably meeting costs incurred). It became clear during the presentation of the Department's case that staff were on the one hand saying that a move to a bigger house was necessary but that we should not pay for it. The reasons why we should not pay were in total contradiction with written evidence from Mrs Clarke (presented on the day) from staff saying how crucial the move was. In that sense, like the Panel, the Department was wanting to eat its cake and keep it.

#### Required Action

...

(4) The provision of a larger house should be discussed further with Housing.

(5) If Housing will not provide a bigger house or insist on our Department meeting costs, then our decision in respect of this should be reviewed...

On 14 October 1996, Wigan's Director of Social Services, Mrs Jo Williams, wrote to Mrs Tammadge concerning the conclusions and recommendations of the SSCRP as follows:

*I am now writing to advise you of my response to the conclusions and recommendations of the Panel. The first conclusion was that Department had not failed to discharge its functions in relation to yourself and I am obviously pleased to accept this as vindication of Departmental action. The Panel then suggests that you are in need of a larger property and commend you on the admirable way you have coped in the past. Whilst endorsing the way you have cared for your children and demonstrated your commitment to them, I am left with some reservations about whether a larger property will resolve as many problems as you hope. The Panel made a specific recommendation that I 'investigate the possibility of adapting a suitable property in order that the Complainant and her family can be rehoused in order to alleviate some of the problems referred to'.*

*In the light of this recommendation I now intend to consider again the issue of finding a suitable larger property. I have asked Mrs K Nelson (Service Manager) to initiate a meeting of appropriate people, most importantly yourself, to discuss requirements in detail. I have no doubt that it is now necessary to look in detail at the needs of yourself and your children as part of this process. It is not enough just to consider a bigger property. Any possible property must meet your family's specific needs and identify how problems will be resolved and what resources will be required in order for you all to live comfortably.*

On 22 October 1996, Mr Ellis visited Mrs Tammadge to discuss with her Mrs William's letter of 14 October. He made it clear to Mrs Tammadge that the Social Services Department had accepted the findings and recommendations of the SSCRP and was prepared to pursue the possibility of moving to a larger house, despite its reservations: see Mr Ellis' attendance note of 22 November 1996.

The meeting which had been promised in Mrs William's letter on 14 October was held on 15 November 1996. One of those who had been invited to attend was Dr Chambers, a Staff Grade paediatrician at Wigan and Leigh Health Services NHS Trust. Because he was unable to attend the meeting, Dr Chambers wrote to Wigan Social Services Department on 13 November as follows:

- A *As far as Mrs Clarke's request for a bigger house is concerned, I feel that if she is to continue to care for the three boys, then she undoubtedly needs a bigger house. These three boys are extremely difficult to manage in many ways and cause considerable disruption to family life. The problems during the night are especially difficult to manage. It is particularly important that Precious has as much*
- B *privacy as possible in order to allow her to feel that she has some value as an individual. However, I do not believe that a bigger house will, in itself, solve all the problems. Mrs Clarke will need a lot of support and very considerable respite both for her own good and that of Precious.*

- C Representatives of all Wigan's Departments and agencies who were concerned for the community care needs of Mrs Tammadge and her family were present at the meeting of 15 November. The meeting was chaired by Mrs Kath Nelson, who summarised the meeting in the following terms (see page 4 of the minutes):

- D *Mrs Nelson believes that everyone is accepting that a larger property is required for this family and the Department now needs to look at the options available and also the costing of this.*

Following the meeting of 15 November 1996, Mrs Kath Nelson wrote a detailed report concerning the needs of Mrs Tammadge and her family. It is instructive to quote the introduction of Mrs Nelson's report, which is in the following terms:

- E 1 Introduction

- F *This report presents information derived from the inter agency discussions in relation to Mrs Clarke's request for this family to be rehoused to larger accommodation. The needs of Mrs Clarke and her four children have been appropriately assessed and specific comments as to need and how these are being met are contained within the report. To be consistent with the purpose of the report specific comment is included as to how the provision of larger accommodation relates to those needs. Finally, options in respect of obtaining larger accommodation including inherent costs, are detailed, prior to a conclusion being presented.*

- G Mrs Nelson's report then summarised the circumstances and needs of each of the individual members of the family and dealt with the shortcomings of their present accommodation and the options for and cost of larger accommodation, before expressing her main finding as follows:

- H *Mrs Clarke and her four children have diverse needs and in meeting these needs they receive significant input from various professional and service providers. It is clear that all these professionals agree that the family would benefit from larger accommodation as this would reduce the stress upon Mrs Clarke, allow all the individuals more space, including an individual bedroom and facilitate service provision.*

- I *Larger accommodation would not in itself alleviate all the family's problems and a considerable resource commitment underpinning present service provision would continue, wherever Mrs Clarke and her children are accommodated. Successful implementation of social work plans for the boys would result in Wayne having an adult family placement and Conan and Kerry a foster placement. This would in itself reduce the stress within the home. However, Mrs Clarke firmly insists that she requires a home that can accommodate all her children appropriately as they will remain a family unit (in) the long term.*

- K *Various options in relation to achieving larger accommodation for the family are offered but, realistically, this could only be achieved by the conversion of two properties which would be a costly operation.*

(7) Recommendation

*This report has addressed the needs of Mrs Clarke and her family and has noted the current response of the Social Services Departments and other agencies to meet these needs. Mrs Clarke's request for rehousing which would on balance meet some of the family's identified needs, could only be achieved with considerable resource implications. To this end, therefore, I recommend the reconvening of the Senior Officer Group which requested this report so that consideration can be given as to whether Mrs Clarke's request can be approved and how this can be funded.*

On 24 April 1997, Wigan's Director of Social Services, Mr Bernard Walker, wrote a memorandum to Mrs Nelson, thanking her for her report and requesting (*inter alia*) a description of the nature of the conversion thought necessary to meet Mrs Tammadge's needs and its likely cost. Mrs Nelson duly prepared an addendum to her original report dated 27 May 1997, which contained details of an appropriate 'simple conversion' of two properties (when such properties became available) at an approximate cost of £7,000 plus 12.5% for professional fees: see page 4 of the addendum to Mrs Nelson's original report.

However, at a meeting which was held on 24 July 1997 and attended by senior officers of Wigan's Social Services and Housing Departments, together with three Councillors from the relevant committees (the Chair and Vice Chair of the Housing Committee and the Vice Chair of the Social Services Committee), the following decision was reached (see the notes on that meeting):

*After reviewing all the information about this case and discussing alternative courses of action that could be pursued, the three Councillors agreed that it was not appropriate to commit the Authority to the purchase or adaptation of a larger property to meet the request of Mrs Clarke. Support was given to officers in the action taken, provided they continued to support Mrs Clarke as far as possible and continued to look at practical ways in which her present accommodation could be fully utilised to meet the needs of the family.*

So it was that on 30 July 1997, Mr Walker wrote to Mrs Tammadge in the following terms:

*Further to my letter of 13 June 1997, I am writing to confirm that your situation has now been discussed in detail by Senior Managers in this Department and the Housing Department. I am now able to advise you of the outcome of those discussions.*

*I must apologise for the delay in doing so, but considerable time was spent collating details about your case to ensure all relevant information was taken into consideration. Amongst the issues discussed were the present support provided to you and your family, the cost of the present care package, your income, the potential cost of conversion of new property and the plans of your existing property. I wanted to ensure that we discussed all relevant information and gave your request for a new property all the attention it deserved.*

*After a great deal of discussion, I regret to inform you that the decision that has been reached is not to support your request to be provided with a larger property. Whilst being sympathetic to your situation, senior colleagues and myself cannot support your request. We believe:*

- (1) Better use could be made of the accommodation in your existing home.*
- (2) A new property would not lead to all the benefits you claim for it.*
- (3) The potential benefits from a new property do not justify the significant costs that would be incurred.*

A *I understand that this decision will come as a great disappointment to you but the Department will continue to provide the comprehensive package of support as at present. I will also ask your Social Worker to discuss possible ways of making better use of your existing property with you . . .*

B It is to be noted that all three reasons, given by Mr Walker in his letter of 30 July, for Wigan's refusal to provide Mrs Tammadge and her family with larger accommodation, were all matters which Wigan had advanced as part of its case to the SSCRP which had, nevertheless, decided that Mrs Tammadge and her family were in need of larger accommodation.

C *Issues and Submissions*

Mr Gordon structured his submissions around what he described as 'five core propositions' which he stated as follows:

- D (1) *It is incontestable that Mrs Tammadge needs larger accommodation. This has been assessed by both Wigan and the SSCRP, whose conclusions were accepted by Wigan.*
- (2) *As the result of the foregoing assessment of Mrs Tammadge's needs, Wigan is under an absolute duty to provide larger accommodation.*
- E (3) *It is not now open to Wigan to fail to follow the SSCRP's finding that Mrs Tammadge is in need of a larger property for the foreseeable future, without clear admissible reasons for doing so.*
- (4) *Wigan's care plan and entire decision making process were contrary to the binding guidance issued by the Secretary of State and therefore unlawful.*
- F (5) *If, contrary to Mr Gordon's primary submission, Wigan had a discretion to provide larger accommodation following its assessment of Mrs Tammadge's needs to that effect, then such a discretion has been exercised unlawfully.*

I turn to deal with Mr Gordon's first three core propositions, which can be taken together and which conveniently encompass the central issue in these proceedings (see above), namely, whether a final assessment of need in respect of Mrs Tammadge and her children was made – 'the assessment of needs point'.

G *The assessment of needs point*

Mr Gordon referred to the decision of the House of Lords in *R v Gloucestershire CC ex parte Barry* [1997] AC 584; (1997) 1 CCLR 40, the decision of the Court of Appeal in *R v Sefton Metropolitan Borough Council ex parte Help the Aged* (1997) 1 CCLR 57 and the decision of the House of Lords in *Re T (a minor)* (1998) 1 CCLR 352. He submitted that, on a proper analysis of those decisions, it was now clear that *ex parte Barry* was, in effect, restricted to the particular statutory provision which was the subject matter of that particular case (ie Section 2 (1) of the Chronically Sick and Disabled Persons Act 1970, as amended). He therefore submitted that, despite the decision of the Court of Appeal in *ex parte Sefton*, the process of assessing need under Section 21 of the 1948 Act was 'resource free' ie that the local authority's financial resources were irrelevant to the assessment of need. In *ex parte Sefton* the Court of Appeal came to the conclusion that, having regard to the reasoning of Lord Nicholls and Lord Clyde in *ex parte Barry*, there was a limited subjective element in making an assessment as to whether a person has a need for care and attention for the purposes of Section 21 of the 1948 Act and, accordingly, the local authority was entitled to have regard to its limited financial resources in deciding whether applicants seeking residential accommodation were in need of care and attention. In giving the principal judgment, Lord Woolf MR said this [see (1997) 1 CCLR 57 at pp58K–59B and p67G–I]:

*As both parties acknowledge this is a test case which is of considerable significance for both elderly members of the community and local authorities. It raises three issues:*

- (1) *whether a local authority in deciding if an elderly person is in need of care and attention, in which case it will be required to make arrangements for residential accommodation to be made available for her, is entitled under Section 21(1) of the National Assistance Act 1948 (as amended) (the 1948 Act) to have regard to its limited financial resources.*

...  
*As Mr Drabble QC submits on behalf of Mrs Blanchard, there cannot be any doubt that she is in need of care and attention. While I fully accept in accordance with the decision in Barry, that it is possible to perform a cost benefit analysis in relation to a person's need for services listed in Section 2(1) and then decide if they are necessary, taking into account the resources of the authority, I find it very much more difficult to perform the same exercise when deciding whether a person is in need of care and attention. However, having regard to the reasoning of Lords Nicholls and Clyde I am compelled to conclude that there is a limited subjective element in making the assessment of whether the ailments of the persons concerned do or do not collectively establish a need for care and attention. I therefore determine the first issue in the affirmative.*

Lord Justices Roch and Henry agreed with the judgment of Lord Woolf.

Despite Mr Gordon's attractively presented submissions as to the impact of the House of Lords in *Re T* on the decision of *ex parte Barry* and thus on the decision of the Court of Appeal in *ex parte Sefton*, I am satisfied that I am bound by the decision of the Court of Appeal in *ex parte Sefton*. In my judgment, therefore, Wigan was entitled to take its financial resources into account to a limited extent, when assessing the needs of Mrs Tammadge and her family. The crucial question is whether an assessment was made that Mrs Tammadge and her family were in need of larger accommodation, thus triggering the statutory duty on the part of Wigan to make provision of such accommodation.

Mr Gordon submitted that the SSCRP had made a clear finding that Mrs Tammadge was in need of larger property for the foreseeable future and that this was entirely in keeping with the assessment of Mrs Tammadge's needs which had already been made by Wigan's professionally qualified staff. He argued that, in order to reach that conclusion, the SSCRP had manifestly rejected the case, which Wigan had put forward, that there was no need to provide Mrs Tammadge with a larger property. So far as concerns the SSCRP's specific recommendation that Wigan investigate the possibility of ascertaining and adapting a suitable property for Mrs Tammadge and her family, it was Mr Gordon's submission that this specific recommendation was parasitic upon the SSCRP's findings of fact that the need for larger accommodation had been established. Mr Gordon stressed the importance of the SSCRP's findings that Mrs Tammadge was in need of larger accommodation for the foreseeable future. Mr Gordon submitted that, whilst it was for Wigan to decide what Mrs Tammadge's needs were, Wigan could not ignore or overrule the SSCRP's decision that Mrs Tammadge was in need of larger accommodation, without a substantial reason for doing so and without giving the SSCRP's decision appropriate weight. He argued that the SSCRP had properly reached its decision on the evidence before it and the strength, coherence and apparent persuasiveness of that decision had to be addressed 'head on' if it was to be set aside and not followed by Wigan: see *R v Avon County Council ex parte M* (1994) 2 FLR 1006, per Henry J, as he then was, at p1019, where he said this:

- A *But the making of the final decision did not lie with the Review Panel. It lay with the Social Services Committee. I would be reluctant to hold (and do not) that in no circumstances whatsoever could the Social Services Committee have overruled the Review Panel's recommendation in the exercise of their legal right and duty to consider it. Caution normally requires the court not to say 'never' in any*
- B *obiter dictum pronouncement. But I have no hesitation in finding that they could not overrule that decision without a substantial reason and without having given that recommendation the weight it required. It was a decision taken by a body entrusted with the basic fact finding exercise under the complaints procedure. It was arrived at after a convincing examination of the evidence, particularly the expert evidence. The evidence before them had, as to the practicalities, been largely one way. The Panel had directed themselves properly in law and had arrived at a decision in line with the strength of the evidence before them. They had given clear reasons and they had raised the crucial factual question with the parties before arriving at a conclusion.*
- C *The strength, coherence and apparent persuasiveness of that decision had to be addressed head on if it were to be set aside and not followed. These difficulties were not faced either by the Respondent's officers in their paper to the Social Services Committee or by the Social Services Committee themselves. Not to face them was either unintentional perversity on their part or showed a wrong appreciation of the legal standing of that decision. It seems to me that you do not properly reconsider a decision when, on the evidence, it does not seem that the decision was given the weight it deserved. That is, in my judgment what the Social Services Committee failed to do here. To neglect to do that is not a question which merely, as I suggested in one of the papers, impugns the credibility of the*
- D *Review Panel but instead ignores the weight to which it is prima facie entitled because of its place in the statutory procedure and further, pays no attention to the scope of its hearing and clear reasons that it had given. It seems to me that anybody required, at law, to give their reasons for reconsidering and changing such a decision must have good reasons for doing so and must show that they gave that decision sufficient weight and, in my judgment, it is that that Social Services Committee have failed to do.*
- E
- F
- G

- Mr Gordon submitted that *ex parte M* was very much in point in this case. He argued that, although Wigan purport to have investigated the possibility of
- H *adapting a suitable property, in accordance with the SSCRP's specific recommendation, Wigan have completely failed to consider the SSCRP's clear and unambiguous finding as to Mrs Tammadge's need for larger accommodation and/or have failed to give that finding sufficient weight and/or understand the importance of that finding which was, in the event, accepted by them: see Mr Ellis' attendance note of 22 October 1996. Mr Gordon submitted that, whatever may have been the significance or status of the views which had been expressed by Wigan's various social workers and other skilled advisers about the needs of Mrs Tammadge and her family prior to the hearing before the SSCRP, once Wigan had accepted the SSCRP's finding that Mrs Tammadge had a need for larger accommodation, her need for the provision of that particular community care service was thus established. Mr Gordon submitted further that, having regard to the conclusions reached by meeting of 15 November 1996 and the contents of Mrs Kath Nelson's report, if Wigan had considered the SSCRP's finding as to Mrs Tammadge's needs, it would have been very difficult for Wigan to reject or*
- I *take issue with that finding of the SSCRP.*
- J
- K

On behalf of Wigan, Miss Patterson submitted that the SSCRP's apparent



finding, as to Mrs Tammadge's need for larger accommodation, was not a final assessment of a community care service which was needed by Mrs Tammadge or the children. Miss Patterson argued that this particular finding was, in effect, an acknowledgement by the SSCRP that Mrs Tammadge would benefit from larger accommodation and Miss Patterson accepted that Mrs Tammadge would indeed benefit from the provision of larger accommodation. However, she submitted that the essential decision, which had been reached by the SSCRP, was the specific recommendation that the possibility of adapting a suitable property should be investigated. Miss Patterson argued that it was clear from the specific recommendation that the SSCRP had accepted that the process of assessing the needs of Mrs Tammadge and/or her children for community care services had still not been completed. In those circumstances, Miss Patterson submitted that Wigan was not under any absolute duty to provide larger accommodation for Mrs Tammadge and, in accordance with the decision of the Court of Appeal in *Sefton*, it had still been open to Wigan to take its financial resources into account when assessing whether Mrs Tammadge had a need for larger accommodation.

I have come to the firm conclusion that Mr Gordon's submissions are correct. In my view, SSCRP's finding as to Mrs Tammadge's need for larger accommodation is perfectly clear from the wording in which that particular conclusion is expressed. Moreover, that conclusion is entirely in keeping with views of Wigan's own professionally qualified staff and advisers, as expressed both before and after the hearing before the SSCRP. I am therefore satisfied that, by a date no later than 22 October 1996 (when it was acknowledged that Wigan had accepted the SSCRP finding: see above), Mrs Tammadge's need for larger accommodation was established. I reject Miss Patterson's submissions to the contrary. As a result, from that date Wigan have been obliged to make provision of such accommodation to Mrs Tammadge and her family: see *ex parte M* at pages 1009–1010. Once the duty had arisen in this way, it was not lawful of Wigan to refuse to perform that duty because of a shortage of or limits upon its financial resources or for any of the other reasons expressed in Mr Walker's letters of 30 July and 28 August 1997: see *ex parte Sefton* at page 58 and also at page 671–J, where Lord Woolf said this:

*However, in this case it is clear from the evidence that Sefton accepted that Mrs Blanchard met its own threshold as a person in need of care and attention. What it was seeking to do was to say that because of its lack of resources notwithstanding this it was not prepared to meet the duty which was placed upon it by the Section. This it was not entitled to do.*

Accordingly, for those reasons, I have come to the firm conclusion that Wigan's decision not to provide Mrs Tammadge with larger accommodation is unlawful and must be quashed. Having regard to my conclusion on the central issue in this case and to the present length of this judgment, I do not propose to say anything further about Mrs Gordon's submissions on his core propositions four and five, except to acknowledge the compelling nature of his submissions with regard to core proposition four, which submissions are fully set out in his helpful written skeleton argument.

### *Conclusion*

For the foregoing reasons, I have come to the conclusion that this application succeeds. I will hear further submissions from counsel as to the appropriate form of order to be made in the light of this judgment.

After hearing argument from counsel, the following order was made:

- A (1) The decision of the Wigan Metropolitan Council contained in the letters of 30 July and 28 August 1997 be hereby quashed by Order of Certiorari.
- (2) The Respondent to provide accommodation to the Applicant in accordance with the SSCRP's findings dated 24 September 1996 and in accordance with the specific proposals set out in the report of Kath Nelson, Social Services Manager, undated at pages 162–166 of the trial bundle.
- B (3) The provision of such accommodation shall be by way of a two-stage process as follows:
- C (a) a three months' consultation period during which the Respondent shall identify an appropriate property in consultation with the Applicant as to any specific requirements she may reasonably have;
- (b) thereafter the property shall be made available to the Applicant for occupation within three months of the accommodation being identified.
- D (4) The applicant's costs be paid by the Respondent to be taxed on a standard basis if not agreed.
- (5) Legal aid taxation of the applicant's legal aid costs.
- (6) There be liberty to apply generally as to the implementation of the terms of this order.
- E