Editorial review

The majority of cases in this edition focus on the services and assessments that must be provided to vulnerable people, and exactly which bodies are responsible for making the provision. But the first case looks at the payment of carers delivering care packages. *Royal Mencap Society v Tomlinson-Blake and others* [2021] UKSC 8, (2021) 24 CCLR 153, considered the question as to whether care workers should be paid the minimum wage when they are employed to do sleep-in shifts when they are rarely called upon during the night? Long-running litigation reached the Supreme Court which decided, on the correct interpretation of the relevant legislation, that there was no such entitlement. The Court was assisted by reports of the Low Pay Commission going back to 1998, which recommended that workers should receive an allowance for a sleep-in shift, but not the national minimum wage: good news for care providers but not, of course, for carers themselves.

What are the rights of a party in a Court of Protection case to remain a party? This was the question for the Court of Appeal in *In the matter of P (discharge of party) AA v London Borough of Southwark* [2021] EWCA Civ 512, (2021) 24 CCLR 177. AA was the mother of a vulnerable (adult) young woman and was a party in proceedings designed to establish whether P had capacity to decide matters such as contact and residence, and how those issues should be resolved. The Court of Protection was provided with information, not disclosed to AA, which, it thought, strongly suggested that contact between AA and P was not in P's best interests. The Court's response was to remove AA as a party to the proceedings without notice. The Court of Appeal found that that was too drastic a reaction in the circumstances, and was not fair or just, although suspending contact and/or withholding material may have been appropriate. The Court of Appeal also appointed a special advocate to consider the withheld material and to make representations on AA's behalf and the Court made it clear that this would also have been an option open to the Court of Protection.

Two cases dealt with issues which it was said might be academic before they came to court. *R (L, M and P) v Devon County Council* [2021] EWCA Civ 358, (2021) 24 CCLR 201, concerned the statutory timetable for local authorities to complete Education, Health and Care (EHC) plans for children with special needs. By time of the high court hearing the EHC plans had been completed and the judge declined, therefore, to decide the outstanding issue of statutory construction. The Court of Appeal said that the judge had taken the wrong approach in deciding whether the cases were academic. That gave the Court of Appeal a reason to re-consider the issue, emphasising the fact that the court does have discretion to hear 'academic' cases, especially in cases such as this which concerned statutory interpretation affecting large numbers of children.

R (Ncube) v Brighton and Hove City Council [2021] EWHC 578 (Admin), (2021) 24 CCLR 217, was a case which had become academic because the claimant had received accommodation from the local authority before the case was heard. However, as in the *Devon* case, the outcome of the litigation - whether it was unlawful for a local authority to provide even temporary accommodation to rough sleepers with no recourse to public funds - affected many people. The court held that the Covid lockdown and tier systems triggered emergency powers of the local authority under section 138 of the Local Government Act 1972 to alleviate the effects of the emergency. This could include provision of accommodation to people with no recourse to public funds (because of their immigration status) under s2B of the National Health Service Act 2006, which

relates to the provision of services to improve public health (even though there is no mention of accommodation in that section.

The most straightforward case in our selection is *R (AA) v London Borough of Hackney* [2021] EWHC 674 (Admin), (2021) 24 CCLR 263. The claimant was a failed asylum-seeker with long-term physical and mental health conditions, and the local authority carried out a needs assessment under the Care Act 2014. This concluded that the claimant's needs arose from his immigration status and his housing situation, and therefore he was not eligible for services under the 2014 Act. The high court emphasised the importance of not interfering with the discretion exercised by the assessor so long as the correct legal questions had been asked and answered during the assessment which, in this case, they had. The result can be compared with the outcome in the *AK* case discussed below where an assessment in a different context did not comply with what was required.

Although the court often expresses displeasure about the expense incurred when two public authorities fail to agree as to which is responsible for paying for a service, such cases continue to arise. In *R (Worcestershire County Council) v Secretary of State for Health and Social Care* [2021] EWHC 682 (Admin), (2021) 24 CCLR 273, two local authorities were in dispute about which one was responsible for providing aftercare services under section 117 of the Mental Health Act (MHA) 1983. Worcestershire further was at odds with the Secretary of State's decision, aimed at resolving the issue, that it was responsible. However, Worcestershire prevailed and the decision of the Secretary of State was quashed. The judgment primarily deals with the issues as to where a patient will be ordinarily resident (which will often determine who pays) in cases of a number of admissions and subsequent discharges under the MHA 1983, in what has become a surprisingly complicated area of law.

Yet another case concerning MHA 1983 s117 and aftercare provided thereunder is included in this issue: *R (AK) v London Borough of Islington and North Central CCG* [2021] EWHC 301 (Admin), (2021) 24 CCLR 311. This time the court had to consider whether a discharge assessment for a 16 year old girl, with a range of mental health issues, complied with the MHA Code of Practice at a time when the claimant was being discharged from a secure psychiatric hospital to a specialist residential placement. The judge undertook a detailed analysis of the assessment that had been carried out to ensure that if did its job and complied with the Code. The court found that the assessment did not provide the essential bridging link between the two placements, to enable the claimant's care to be properly planned, and the court made a mandatory order that such an assessment should be prepared, even though the new placement had already commenced.