

Number 11

## Healthcare or Residential Care: The Assessment of Care Needs

Assessment of care needs continues to be a difficult area. In addition to the obvious care issues, it also impacts on funding.

Decisions on care needs by public authorities are susceptible to challenge by judicial review and have recently been considered by the Court <sup>1</sup>.

### The Facts

The Claimant was an elderly resident of a care home. Her needs were assessed following a fall. The local authority initially assessed her as requiring nursing rather than residential care, but the matter was referred to the continuing health and social care panel. Having considered reports from the various services and the representations of the family (since they were not permitted to attend the panel meeting), the panel concluded that the Claimant had nursing needs that could be met in a nursing home.

A community care assessment subsequently concluded the Claimant was “residential care fit”. The home was of the opinion it could meet the Claimant’s needs if resources were made available. A further assessment was therefore commenced, but the Claimant was not informed of this or given the opportunity to make representations.

The Claimant sought judicial review claiming that, having regard to the agreement between local authorities on continuing care needs and policy guidance concerning the NHS Community Care Act 1990, there had been procedural flaws in the assessment of her needs given that the only proper assessment had been undertaken after the decision had been made, she had not seen reasons for this and she had not been permitted to attend. She contended that decisions should only be made based on fully completed assessments and that carers should be involved in the process.

The local authority contended that although there had been procedural defects, these had been cured by a subsequent meeting once the Claimant’s contentions had been brought to its attention.

### Court Decision

The Court refused judicial review. It accepted that there had been procedural flaws but the meeting had cured these. Furthermore, it was held that the guidance did not entitle the carer to attend the panel meeting and it was apparent on the evidence that she had been “involved” in the assessment to the extent necessary. The Court did however criticise the process on the basis that the panel had not had a full community needs assessment and reasoning had not been provided to the Claimant. Nevertheless, the subsequent meeting after proceedings had been issued had dealt with these points.

<sup>1</sup> R (on the application of Goldsmith) v Wandsworth London Borough Council [2003] All ER (D) 100

CARE HOMES BRIEFING

RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

info@rlb-law.com  
www.rlb-law.com

## Charges for Residential Accommodation<sup>2</sup>

A new circular has brought in regulations on the assessment of resources. In summary this circular:

- 1 Announces a new savings disregard into the financial assessment for residential accommodation, which came into force on 6 October 2003.
- 2 Announces a disregard of cash in lieu of concessionary coal for temporary residents into the financial assessment for residential accommodation, which also came into force on 6 October 2003, and deals with other matters linked to the introduction of Pension Credit.
- 3 Announces a disregard of payments under paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 into the financial assessment for residential accommodation, (in force from 6 October 2003), and covers other matters.
- 4 Reminds councils of how the financial assessment for home care and other non residential care services deals with the introduction of Pension Credit.

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For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

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<sup>2</sup> National assistance (assessment of resources) amendment (2) (England) Regulations 2003

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RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

[info@rlb-law.com](mailto:info@rlb-law.com)  
[www.rlb-law.com](http://www.rlb-law.com)