

Number 14

The Transfer of Assets and Availability of Public Funding

CARE HOMES BRIEFING

A recurrent theme when considering the financing of care for the elderly is their ability to obtain public funding when they have assets which have recently been transferred, often to a member of the family.

The Court has recently had to consider this in the context of the Human Rights Act¹.

The claimant transferred his house to his son as a gift after suffering a stroke in 1997. He lived there for a further two years but was then assessed by the local authority as requiring residential care.

A formal application was therefore made by the claimant's son on behalf of his father for financial assistance with the cost of that residential placement. The local authority however took the view that by transferring the house to the son, the claimant had deprived himself of an asset which could have funded his residential care placement².

The claimant's son made a complaint under the local authority's complaints procedure which escalated to the third stage of that procedure which comprised a review by a panel of two councillors and one independent member. Their recommendation was that there had indeed been a deprivation of assets.

The claimant sought judicial review and the decision of the local authority was quashed. The Secretary of State appealed against this as the Judge had concluded in part that the decision under Regulation 25 gave rise to a determination of the claimant's civil rights under Article 6 of the European Convention on Human Rights³, and that there was lack of independence and impartiality in the procedure (because only one member of the panel was required to be independent).

The Court allowed the appeal. The Court accepted that such cases would engage an individual's human rights because they affected where he would live as his home. The parties all accepted that the recommendations of the panel were not sufficiently independent and impartial because only one of them was an independent member.

However, in considering whether the decision making process as a whole was in compliance with the Human Rights Act, and given the availability of judicial review, the Court was not satisfied that the procedure was flawed. In this particular case no evidence was provided that the panel could not or would not have reached a fair and reasonable decision and if there was no reason to question this aspect of the process, whatever might be said about its appearance, the fact that there was always the prospect of an application for judicial review meant that there was no breach of the claimant's human rights.

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¹ R (on the application of Beeson) v Dorset County Council [2002] EWCA Civ 1812

² See Regulation 25 of the National Assistance (Assessment of Resources) Regulations 1992

³ The right to a fair trial

The Court therefore held that the procedure was not unlawful and accordingly the decision that the claimant had deprived himself of an asset in breach of the Regulations stood.

Comment

Because of the impact of the cost of nursing home fees, steps are often taken to attempt to preserve family assets and obtain state funding. However, local authorities are alive to this and care is required to consider the detail of any process undertaken to see if it is likely to be effective. What is now clear, is that where the local authority challenges this, its complaints procedure is not set up in a way that contravenes the Human Rights Act.

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Detention in Hospital Booklet Published

The Department of Health have just published a booklet providing information on detentions under the Mental Health Act. The booklet provides a summary of the detention provisions and statistics on the use of these. It is available on the Department of Health website at <http://www.publications.doh.gov.uk/public/inpatients2003.htm>

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

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

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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