

Number 28

## Stop Press: Appeal Court Confirms Liability To Pay For Accommodation

The Court Appeal has just given judgment in the appeal by four local authorities - Manchester, Redcar and Cleveland, Harrow and Richmond - against the previous decision that it was unlawful to charge patients who had been detained under the Mental Health Act for accommodation after they were discharged from hospital.

The Court of Appeal upheld the previous decision and dismissed the appeal. It has been estimated<sup>1</sup> that local authorities face an £800 million bill to refund people charged unlawfully since 1993. It is thought that about half of all local authorities levied such charges.

The law therefore remains unchanged following the decision last year. The local authorities concerned are however apparently considering applying for permission to appeal to the House of Lords.

In each of the appeals before the Court, the local authorities challenged the decision of the lower Court which had allowed the application of various patients who had previously been subject to detention under Section 3 of the Mental Health Act 1983. The judicial review applications of those patients had required the Court to review the decisions of the local authorities in question, to charge the patients for the provision of residential accommodation provided under S.117 of the 1983 Act.

The Judge in the lower Court had held that the Authorities were under a duty to provide the Applicants with accommodation under S.117 (2) of the 1983 Act and, as such, the Authorities were not entitled to charge for such accommodation.

The local authorities had argued that "aftercare services" were not defined in the 1983 Act and S.117 was a "gateway" section which imposed a duty to provide, inter alia, residential accommodation, under S.21 of the National Assistance Act 1948. The power to charge for such services was derived from S.22 of the National Assistance Act 1948, which imposes a duty to charge for residential accommodation according to means. The Authorities also argued that Parliament's intention, evident from other legislation, was that the local authorities were to charge for residential accommodation in all "financially appropriate cases".

The Court of Appeal did not accept the arguments put forward by the local authorities and dismissed their Appeals. The Court held that the local authority would only be permitted to charge for the "aftercare" services if there was statutory authority to do so, but no such authority existed. S117 was held to be, in accordance with the Judgment of the lower Court, a "free standing duty" to provide aftercare services. Accordingly, the local authorities failed in their argument that S117 was a "gateway" section to the 1948 Act which incorporated a right for local authorities to recover monies incurred in connection with the provision of accommodation from the recipient.

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The Court of Appeal was clear in the rejection of various "policy" arguments made on behalf of the local authorities, which included a suggestion that there was a "perverse incentive" to patients who would want to be compulsory detained under the 1983 Act to enable them to benefit from S117 when their compulsory detention ended! The Court of Appeal's decision rested on the construction of the relevant legislation and it is doubtful whether the rather dubious policy arguments put forward by the Authorities would convince the House of Lords to take a different view, assuming the Law Lords adopt an approach to S117 similar to that of the lower Courts.

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