

**R v Wandsworth London Borough Council, ex parte Beckwith**

**HOUSE OF LORDS**

**LORD GOFF OF CHIEVELEY, LORD GRIFFITHS, LORD JAUNCEY OF TULLICHETTLE, LORD BROWNE-WILKINSON AND LORD HOFFMANN**

**6 NOVEMBER, 14 DECEMBER 1995**

*Local authority - Residential care home - Elderly persons - Closure of local authority home - Statutory duty to make arrangements for providing residential accommodation for old people in need of care and attention - Nature of such arrangements - Whether local authority can discharge statutory duty entirely by means of arrangements made with third parties - Whether local authority required to maintain some accommodation for old people in premises under its own management - National Assistance Act 1948, ss 21(1)(4), 26.*

On the true construction of ss 21(1)<sup>a</sup> and (4) and 26<sup>b</sup> of the National Assistance Act 1948 (as amended by the National Health Service and Community Care Act 1990 and the Community Care (Residential Accommodation) Act 1992), which provide that a local authority is under a statutory duty to make 'arrangements for providing residential accommodation for [old people] in need of care and attention' and that such arrangements 'may include arrangements made with a voluntary organisation or with any other person who is not a local authority', a local authority is entitled to discharge its statutory duty entirely by means of arrangements made with third parties and is not required to maintain some accommodation for the elderly in premises under its own management (see p 130 *c* to *e* and p 131 *j* to p 132 *b j*, post).

<sup>a</sup> Section 21, so far as material, is set out at p 130 *j* to p 131 *c*, post

<sup>b</sup> Section 26, so far as material, is set out at p 131 *c*, post

**Notes**

For arrangements for provision of accommodation by local authority, see 33 *Halsbury's Laws* (4th edn) para 919.

For the National Assistance Act 1948, ss 21, 26, see 40 *Halsbury's Statutes* (4th edn) 23, 30.

**Appeal**

William Beckwith appealed with leave of the Appeal Committee from the decision of the Court of Appeal (Nourse, Simon Brown and Swinton Thomas LJ) delivered on 27 June 1995 allowing the appeal of the respondent, Wandsworth London Borough Council, from the decisions of (i) Popplewell J delivered on 11 April 1995 quashing the decision of the council made on 7 December 1994 inter alia to close George Potter House, a home for the elderly managed by the council, and (ii) Potts J delivered on 24 May 1995 granting a declaration that the decision to the same effect of the social services committee of the council made on 2 May 1995 and the confirmation of that decision by the council on 10 May 1995 were unlawful. The facts are set out in the opinion of Lord Hoffmann.

*Richard Gordon QC and Alan Maclean (instructed by Gabrielle O'Connor, Wandsworth Law Centre) for Mr Beckwith.*

*Alan Wilkie QC and Sean Jones (instructed by Martin Walker, Wandsworth) for the council.*

*Their Lordships took time for consideration.*

**14 December 1995. The following opinions were delivered.**

**LORD GOFF OF CHIEVELEY.**

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Hoffmann. For the reasons he gives I too would dismiss this appeal.

**LORD GRIFFITHS.**

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Hoffmann. For the reasons he gives I too would dismiss this appeal.

**LORD JAUNCEY OF TULLICHETTLE.**

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Hoffmann. For the reasons he gives I too would dismiss this appeal.

**LORD BROWNE-WILKINSON.**

My Lords, for the reasons given in the speech of my noble and learned friend Lord Hoffmann I too would dismiss the appeal.

**LORD HOFFMANN.**

My Lords, the appellant, Mr Beckwith, is 75. He lives in George Potter House in Battersea High Street. This is one of four homes for the elderly in the London Borough of Wandsworth. The borough council, which is respondent to this appeal, has a statutory duty to make arrangements for providing residential accommodation for old people in need of care and attention. Until recently the council managed the four homes itself. But on 7 December 1994 it decided to transfer the other three homes into private ownership, subject to arrangements for their continued use as homes for the elderly, and to close down George Potter House altogether. Mr Beckwith objected. He applied for judicial review on the ground that the council was under a legal duty to maintain some accommodation for the elderly in premises under its own management. Popplewell J accepted this submission and quashed the council's decision. Potts J quashed a later decision to the same effect. The Court of Appeal disagreed. It held that the council was entitled to discharge its statutory duty entirely by means of arrangements made with third parties. Mr Beckwith now appeals to this House.

My Lords, the appeal turns on a very short point of construction of ss 21 and 26 of the National Assistance Act 1948.

These sections have been amended a number of times, most recently by the National Health Service and Community Care Act 1990 and the Community Care (Residential Accommodation) Act 1992. These amendments came into force on 1 April 1993 and in consequence the relevant provisions of the two sections now read as follows:

'21.--(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

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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; and (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them ...

(4) Subject to the provisions of section 26 of this Act, accommodation provided by a local authority in the exercise of their functions under this section shall be provided in premises managed by the authority or, to such extent as may be determined in accordance with the arrangements under this section, in such premises managed by another local authority as may be agreed between the two authorities and on such terms, including terms as to the reimbursement of expenditure incurred by the said other authority, as may be so agreed ...

26.--(1) ... arrangements under section 21 of this Act may include arrangements made with a voluntary organisation or with any other person who is not a local authority where--(a) that organisation or person manages premises which provide for reward accommodation falling within subsection 1(a) or (aa) of that section, and (b) the arrangements are for the provision of such accommodation in those premises ...'

By Local Authority Circular LAC (93) 10, which came into force on the same date as the amendments to the Act, the Secretary of State directed 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.'

This direction triggered the statutory duty on which Mr Beckwith relies. The question is how that duty may be discharged. Section 26 says that arrangements under s 21 'may include' arrangements made with voluntary organisations or any other person. Mr Gordon QC, who appeared for Mr Beckwith, argued that 'may include' means that private sector arrangements may form part of a larger whole. It does not mean 'may wholly consist of'. If that had been intended, the Act would have used the expression 'may consist of or include' as it does in s 30 and other places.

In my view this argument does not allow for the many subtly different techniques which are open to the draftsman. If the Act had said that the accommodation to be provided by the council 'may include' homes in the private sector, I would have seen some force in Mr Gordon's argument. It could be argued that 'accommodation' was a collective noun for the homes which the council had to provide and that ordinarily something 'included' in a collective is a part rather than the whole. I do not say that even in this case the argument would have carried the day, because 'include' can mean 'consist of' and one might have adopted this construction rather than supposing that Parliament had meant something less than the whole without providing any clue about what proportion it should be.

In this case, however, the draftsman has adopted a different technique. The duty of the council under s 21 is to make 'arrangements' for providing residential accommodation for certain classes of people. Subsection (4) says that the accommodation must be managed by the local authority or by some other local

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authority. But this is expressed to be subject to s 26, which says that 'arrangements under section 21 of this Act' (not, notice, *the arrangements made* under section 21 of this Act) may include arrangements with the private sector. The draftsman is therefore not saying that homes in the private sector may be included in the collective of homes which the council has to provide. He is saying that the *concept* of 'arrangements' which has been used to define the council's duty in s 21 is to include arrangements with the private sector. This produces an altogether different result: it extends the

meaning of the concept by which the council's duty is defined. Any arrangements which fall within the extended definition will satisfy the council's duty.

Mr Gordon attempted to support his construction by reference to the legislative pedigree of ss 21 and 26 and the policy guidance issued by the Department of Health. The legislative history was interesting but ultimately unhelpful. The earlier Acts, which say expressly that private sector accommodation may be provided in lieu of directly managed council homes, do not use the same drafting technique and one cannot therefore compare like with like. The policy guidance was issued under s 7 of the Local Authority Social Services Act 1970, which says:

'Local authorities shall, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, act under the general guidance of the Secretary of State.'

One source of such guidance was a booklet called *Community Care in the Next Decade and Beyond* issued by the Department of Health to accompany the coming into force of the amended sections on 1 April 1993. It contains a number of references to a 'mixed economy of care' and it encourages local authorities to make more use of the private sector in arranging for the provision of social services. Mr Gordon says that wholly private provision can hardly be described as a mixed economy. But I find this phrase too vague to offer much help on the construction of the Act. What constitutes in this context a mixed economy? The government could hardly have supposed that local authorities would be able to hand over all their care services to the private sector. The guidance contemplated that the move to greater private provision would take some time. It does not follow, however, that local authorities had to retain direct control of some unspecified proportion of every service. This would have been imposing a duty to make direct provision which had not existed before the amendments and which seems to me contrary to the general thrust of the government's policy. It is true that para 4 of Local Authority Circular LAC (93) 10 says:

'... It is the view of the Department that the amendments introduced into the 1948 Act by section 1 of the Community Care (Residential Accommodation) Act 1992 will require authorities to make some direct provision for residential care under Part III of the 1948 Act.'

The opinion of the department is entitled to respect, particularly since I assume that the Act was drafted upon its instructions. But in my view this statement is simply wrong. I would therefore dismiss the appeal.

*Appeal dismissed.*

Celia Fox Barrister.