

Editorial review

In *R (Naureen and Hayat) v Salford City Council* [2012] EWCA Civ 1795, (2013) 16 CCLR 21 the Court of Appeal (Moore-Bick, Etherton, Jackson LJ) held that the Judge had been entitled to decline to award costs against the local authority after the judicial review claim had become academic because it was not clear that the claimants would have succeeded (in establishing that they were entitled to residential accommodation). The fact that the claimants had secured interim relief did not mean that their substantive claim would have succeeded.

In *DM (a person under disability) acting by his next friend, Kathleen McCollum, for judicial review* [2012] NIQB 98, (2013) 16 CCLR 39 the High Court in Northern Ireland (Horner J) held that a Health and Social Services Trust had erred in law, when refusing to make direct payments, by not following the approach in *R (KM) v Cambridgeshire CC* [2012] UKSC 23, (2012) 15 CCLR 375. The Trust had been required to ask (a) what DM's needs were, (b) whether it was necessary to make arrangements for the provision of any services in order to meet those needs, (c) if so, the nature and extent of those services, (d) what was the reasonable cost of securing provision of those services. The Trust had not asked what M's needs were at the outset and had not carried out a detailed, up-to-date assessment. It seemed to have rolled up questions (b) and (c) and considered them together, taking into account its resources in deciding whether to provide services which it had previously considered necessary for DM. Furthermore, the trust had not asked question (d) and thus had not made any assessment of the costs.

In *AJ v Calderdale BC and Calderdale Primary Care Trust (interested party)* [2012] EWHC 3552 (Admin), (2013) 16 CCLR 50, the High Court in England (HHJ Pelling QC) held that it was not necessarily incompatible with regulation 4 of the Public Contract Regulations 2006 for service users, carers and/or family members to sit on evaluation panels that select successful bidders for supported living services.

In *R (KA) v Essex County Council* [2013] EWHC 43 (Admin), (2013) 16 CCLR 63, Mr Robin Purchas QC, sitting as a Deputy High Court Judge, held that the local authority was required to continue to support a destitute Nigerian family, under section 17 of the Children Act 1989, because although their applications for leave to remain in the United Kingdom had been refused they had stated that they would appeal any removal directions to the FTT, on Convention grounds that were not manifestly hopeless or abusive. The local authority has obtained permission to appeal and the appeal has been listed for 18 June 2013.

In *R (Cornwall) v Secretary of State for Health and (1) Wiltshire Council, (2) South Gloucestershire Council, (3) Somerset County Council (interested parties)* [2012] EWHC 3739 (Admin), (2013) 16 CCLR 82, the High Court (Beatson J) held that the Secretary of State did not err in law in concluding that PH's need for residential accommodation under section 21 of the National Assistance Act 1948 arose on his 18th birthday and that PH was ordinarily resident on that date in Cornwall, for the purposes of local authority responsibility, because, although he was physically resident elsewhere, PH lacked capacity to determine his place of residence, his parents and family lived in Cornwall and that was truly his 'base', given his frequent visits home and his parents' important decision-making role in relation to him. The Court applied *R v Waltham Forest LBC ex p Vale*, 25 February 1985.

In *Commissioner of Police for the Metropolis v ZH (a protected party, by GH his litigation friend), Liberty and EHRC (interveners)* [2013] EWCA Civ 679, (2013)

16 CCLR 109, the Court of Appeal (Lord Dyson MR, Richards and Black LJ) held that the Mental Capacity Act 2005 did not impose strict liability in relation to acts done in connection with the care or treatment of others; it required only what was reasonable, practicable and appropriate. What that entailed depended on all the circumstances of the case and might differ according to whether there was time to reflect and take measured action, or whether it was reasonable to believe that there was an emergency. However, the police treatment of ZH, a severely autistic and epileptic young man, when trying to remove him from a swimming pool, had breached Articles 3, 5 and 8 ECHR and the Disability Discrimination Act 1995.

In *RP and others v United Kingdom*, Application no 38245/08, (2013) 16 CCLR 135, the European Court of Human Rights held that it had not been in breach of Article 6 ECHR for the Official Solicitor to represent RP, who lacked capacity because of a learning disability, in care proceedings, even though the Official Solicitor conceded the proceedings, in RP's best interests, but against her wishes.