Case No: C1/2016/4491

Neutral Citation Number: [2017] EWCA Civ 1704
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT (AT MANCHESTER)
HIS HONOUR JUDGE STEPHEN DAVIES (Sitting as a judge of the High Court)
[2016] EWHC 2855 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/11/2017

Before:

THE MASTER OF THE ROLLS
THE RIGHT HONOURABLE LORD JUSTICE LONGMORE
and
THE RIGHT HONOURABLE LORD JUSTICE IRWIN

- -

Between:

DAMIEN TINSLEY (BY HIS LITIGATION FRIEND AND PROPERTY AND AFFAIRS DEPUTY HUGH JONES)	**Claimant/ Respondent**
- and -	
MANCHESTER CITY COUNCIL	**Defendant/ Appellant**
-and-	
SOUTH MANCHESTER CLINICAL COMMISSIONING GROUP	**Interested party**
-and-	
LOCAL GOVERNMENT ASSOCIATION	**Intervener**

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- -

Mr Hilton Harrop-Griffiths (instructed by **City Solicitor, Manchester City Council**) for the **Appellant**
Ms Jenni Richards QC & Mr Adam Fullwood (instructed by **Hugh Jones Solicitors, Manchester**) for the **Respondent**
The Interested Party did not attend and was not represented
Mr Stephen Knafler QC who made written submission on behalf of The Intervener

Hearing date: 10th October 2017

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Judgment

Lord Justice Longmore:

Introduction

1. The question in this appeal is whether a person who has been compulsorily detained in a hospital for mental disorder under section 3 of the Mental Health Act 1983 ("the 1983 Act") and has then been released from detention but still requires "after-care services" is entitled to require his local authority to provide such services at any time before he has exhausted sums reflecting the costs of care awarded to him in a judgment in his favour against a negligent tortfeasor.

2. The claimant, Damien Tinsley, was travelling on a bicycle when he was hit by a car in a road traffic accident on 26th May 1998 which left him with an organic personality disorder which in turn led to his being compulsorily detained in hospital under s.3. After being discharged pursuant to the decision of a Mental Health Tribunal he spent time in a mental health nursing home, Harnham House, funded by Manchester City Council ("Manchester") under s.117 of the Act. In the meantime he had brought proceedings against the driver involved in the accident who admitted 90% liability for the accident. The trial of the quantum of his claim came on before Leveson J (as he then was) and, in a judgment given on 18th February 2005, Tinsley v Sarkar [2005] EWHC 192, he assessed those damages in a total sum approaching £3.5 million, of which £2,890,257 represented future care.

3. In so doing Leveson J rejected a submission by the defendant, Mr Sarkar, that, because the relevant authorities were obliged to provide for the claimant's future care needs under s.117 of the Act, no award should be made against the defendant for the costs of such care, since they were not going to be incurred by the claimant himself. He held, applying Court of Appeal authority, that the relevant authorities were entitled to have regard, when deciding how the claimant's needs were to be met, to the resources available to them, and he concluded that they would not fund either a care regime which the claimant was prepared to accept (namely, accommodation at home) or even the care regime which the judge found to be reasonable. Mr Tinsley was therefore entitled to recover the reasonable cost of private care from Mr Sarkar.

4. Following that judgment the claimant left the nursing home funded by the authorities and since then the cost of his accommodation and after-care services has been paid for by him, (or, more accurately, by his deputy appointed by the Court of Protection to manage his property and affairs) from the damages received in the personal injury action. He first moved to a Transitional Rehabilitation Unit in Haydock where he remained until June 2006. He was discharged from there to short-term accommodation and then moved to a house in Blackley which he had himself purchased. He later moved to further houses in Trafford and Salford where he has lived since 2010.

5. In 2009 his current deputy was appointed after concerns that his previous deputy had mismanaged his financial affairs. The current deputy, Mr Hugh Jones, is of the view that the claimant is unable to sustain the cost of funding his existing care arrangements and has, since 2010, sought to require Manchester as the relevant local social services authority to comply with what he contends is its duty to provide social care as an after-care service under s.117. Although there have been protracted discussions, the defendant's final communicated position has been that, since it has no

reason to believe that the claimant cannot continue to pay for his own care using funds derived from the damages which he received for future care in the personal injury claim, it does not consider itself to be under any duty to provide after-care services under s.117. Mr Tinsley's position is that Manchester has always been obliged to provide him with appropriate after-care services. He sought an order that it do so in the future and that it pay him "damages" for failure to provide such services since 2005. HHJ Stephen Davies (sitting in the High Court) decided to resolve the question, whether it was lawful for Manchester to refuse to provide after-care services on the basis that Mr Tinsley had no need for such provision because he could fund it himself from his personal injury damages, as a preliminary issue. He decided it was unlawful and gave permission to appeal.

Outline of the Law

6. Section 117 of the 1983 Act (as currently in force) provides:-

> "(1) This section applies to persons who are detained under section 3 above … and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.
>
> (2) It shall be the duty of the clinical commissioning group ["CCG", previously the Primary Care Trust, "PCT"]… and of the local social services authority to provide or arrange for the provision of, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the clinical commissioning group or … and the local social services authority are satisfied that the person concerned is no longer in need of such services …
>
> …
>
> (6) In this section, "after-care services", in relation to a person, means services which have both of the following purposes –
>
> (a) meeting a need arising from or related to the person's mental disorder; and
>
> (b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder)."

7. Section 47 of the National Health Service and Community Care Act 1990 ("the 1990 Act") (as currently in force) provides:-

> "**47 Assessment of needs for community care services**
>
> 1) Subject to subsection (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision [of services under section 117 of the Mental Health Act 1983 …] may be in need of any such services, the authority-

a) shall carry out an assessment of his needs for those services; and

b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services."

8. In the case of R v Manchester City Council ex parte Stennett [2002] 2 AC 1127 the House of Lords held in clear terms that relevant authorities providing after-care services under s.117 were not entitled to charge for those services. Lord Steyn (with whom Lords Slynn, Mackay, Hutton and Millett agreed) held that this was so as a matter of construction of s.117. They rejected an argument that it produced an anomalous result when the position of such a person was compared with someone who had been admitted informally to hospital and then discharged, who could – subject to a means assessment – be charged for such services in respect of accommodation pursuant to section 22 of the National Assistance Act 1948. Lord Steyn agreed with Buxton LJ who had observed in this court that "it would be surprising, rather than the reverse, if they [the claimants] were required to pay for what is essentially a health-related form of care and treatment".

9. There is no evidence that the claimants in Stennett were in receipt of awards of damages for personal injury which would lead to them, for that reason, being able to finance their own requirements for after-services. The current position on that (as it has been since 1st April 1993 at any rate in relation to residential accommodation) is that an individual's capital may in general be considered to be available for charging purposes pursuant to the Care Act 2014 and regulation 18 of the Care and Support (Charging Assessment of Resources) Regulations 2014 (SI 2014/2672) subject to the disregards contained in Schedule 2 to the Regulations. Those disregards include:-

i) capital contained in any trust fund established to administer sums received for personal injury (para 15);

ii) payment made in consequence of a personal injury, except a payment specifically identified by a court to deal with the cost of providing care (para 16); and

iii) any sum administered on behalf of a person by the Court of Protection derived from an award of damages for personal injury (para 25).

The second and third of those disregards would thus be applicable to the award of damages if Mr Tinsley had had to rely on the provisions of the Care Act 2014 rather than section 117 of the 1983 Act.

The submissions

10. Ms Jenni Richards QC for Mr Tinsley submitted successfully below, that Manchester's refusal to provide after-care services unless it was satisfied that the damages awarded had run out, was unlawful in the light of Stennett's construction of the 1983 Act. Mr Harrop-Griffiths submitted below and in this court (1) that on the true construction of s.117 of the 1983 Act, Manchester was not obliged to provide after-care services if the claimant had been awarded damages for future care and (2) that to allow such a claim would offend against the principle against double recovery which has been established in the decided cases in the personal injury field, most

notably by the Court of Appeal in Crofton v NHSLA [2007] 1 WLR 923 and Peters v East Midlands Strategic Health Authority [2010] QB 48.

Construction of s.117 of the 1983 Act

11. Manchester submits that the mere fact that an obligation is imposed on it by s.117 to provide after-care services to persons compulsorily detained pursuant to section 3 of the Act does not require it to provide, or arrange for the provision of, such services if a claimant has funds available for that purpose provided by a tortfeasor. Manchester accepts that the fact that a claimant is personally wealthy would not justify a refusal to provide the services; it is the fact that money has become available from the tortfeasor that is said to make all the difference.

12. This is an impossible argument. As Ms Richards pointed out, a refusal to pay for such services is effectively the same as providing such services but charging for them. The House of Lords has made it clear in Stennett that charging persons such as the claimant is impermissible. Manchester is effectively seeking, in the teeth of the express obligation to provide s.117 services, to recover by the back door what it cannot recover by the front.

13. Manchester's argument apparently extends to cases where funds are provided for after-care by any third party, not just by a tortfeasor. But to deny the right to after-care services in cases where funds have been provided by voluntary donation would be against all reason. Nor does Manchester's argument cater for a situation where a case settles (with or without a discount for contributory negligence) for a global unapportioned sum – as happens with great frequency.

14. Manchester's submission is, moreover, as Mr Harrop-Griffiths recognised, contrary to the decision of this court in Crofton v NHSLA on which he sought to rely for his submissions about double recovery. It is true that in that case (which was not a s.117 case) the court was concerned to avoid, at the point of awarding damages against a negligent health authority, the position where a claimant recovered damages from the tortfeasor but would, in fact, rely on the local authority to provide for his care needs. But in order to determine that question it was first necessary to decide (as a "threshold question") whether, in a case where the claimant is awarded substantial personal injury damages, the local authority could be satisfied, pursuant to section 2 of the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act"), that it was unnecessary to make arrangements to meet the claimant's needs at all. A second question would then arise whether, if the local authority could be so satisfied, it could have regard to the damages awarded in deciding how the care services should be provided.

15. Although the claim was brought pursuant to the provisions of section 29 of the National Assistance Act 1948 and section 2 of the 1970 Act (relating to services other than accommodation), the position under s.117 of the 1983 Act is not materially different. This court held (paras 63 and 66-67) that under the relevant charging provisions a capital sum represented by an award of damages for personal injuries which was administered by the Court of Protection could not be taken into account by a local authority. Relevantly for the present case this is now confirmed by regulation 18 and paragraph 25 of Schedule 2 to the 2014 Regulations as referred to above. The court then held that such an award could not be taken into account at the threshold

stage either. It gave six reasons including (para 66) that "a system which requires personal injury damages to be taken into account at the threshold stage but disregarded at the means test stage makes little sense". At para 72 it concluded that in deciding the threshold question personal injury damages administered by the Court of Protection had to be disregarded. It follows that, if an application is made to a local authority for after-care services in general, it cannot take into account, when considering that application, the fact that a claimant has been awarded personal injury damages which are being administered by the Court of Protection.

16. It would be in the highest degree anomalous if such damages had to be disregarded for mentally ill patients who had not been compulsorily admitted to hospital but had to be taken into account for patients who had been compulsorily admitted.

17. Mr Harrop-Griffiths tentatively suggested that, pursuant to section 47 of the 1990 Act, a local authority, when it came to carrying out an assessment of a claimant's needs for its services and then deciding whether his needs "call for" the provision by them of any such services, could accept there was a "need" for such services pursuant to section 117 but then decide that his "needs" did not "call for" provision of those services by reason of the award of the damages for his personal injury. This argument ascribes to the word "needs" a different meaning from "need" in the first part of the sub-section and in section 117 itself (where it must mean "medical need") and is, again, an impossible argument. If the draftsman had intended section 47 to enable local authorities to charge for their services or take account of damages awards in deciding whether to provide services for which, ex hypothesi, there was a need, the section would inevitably have been drafted very differently. The section was referred to by the Court of Appeal in Stennett but the House of Lords made no reference to it at all.

18. It is also relevant that section 117 of the 1983 Act (although not section 47 of the 1990 Act in its currently amended form) imposes the duty to provide after-care services not merely on local authorities but also on clinical commissioning groups ("CCGs"). It is accepted that CCGs cannot charge for their services or take patients' means into account when deciding what services to provide. It would, as Buxton LJ implied, be odd if the local authorities could decide not to make provision for after-care services by reason of any personal injury award but local authorities could so decide in relation to "what is essentially a health-related form of care and treatment". This consideration is also supported by paragraph 64 of the judgment of Langstaff J in Doncaster MBC v Secretary of State for Health [2011] EWHC 3012 (Admin).

19. The Local Government Association in its written submissions argued that section 117 of the 1983 Act was merely a "residual provision" which could not be construed as preventing local authorities from declining to make provision for those who have personal injury awards. This is very similar to the "gateway" submission made by the local authorities in Stennett and must be rejected for the same reason.

Bennion on Statutory Interpretation

20. Mr Harrop-Griffiths relied on section 264 and 265 of Bennion on Statutory Interpretation (6th edition):-

> "**Section 264 Law should serve the public interest**

> It is the basic principle of legal policy that law should serve the public interest. The court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which is in any way adverse to the public interest.
>
> **Section 265 Law should be just and fair**
>
> It is a principle of legal policy that law should be just, and that court decisions should further the ends of justice. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. The courts nowadays frequently use the concept of fairness as the standard of just treatment."

21. He submitted that Ms Richards' construction of section 117 of the 1983 Act would be adverse to the public interest and would not further the ends of justice because it would lead to potential double recovery by the claimant and unnecessary depletion of (or prejudice to) scarce public funds.

22. The best authority Mr Harrop-Griffiths could find in support of this bold proposition was Welwyn Hatfield BC v Secretary of State for Communities and Local Government [2011] 2 AC 304 in which a builder who had obtained planning permission to construct a hay barn on condition that it was to be used only for storage of agricultural products in fact constructed a dwelling-house which had the external appearance of a hay barn and lived there undetected with his wife for over four years. He then applied for a certificate of lawfulness of the existing use as a dwelling house and relied on the four year time limit for enforcement against a breach of planning control contained in section 171B(2) of the Town and Country Planning Act 1990. The local planning authority unsurprisingly refused the certificate but the Secretary of State by his inspector allowed the builder's appeal on the basis that the section made no exception for cases where the planning authority was unaware of the breach even if that unawareness was brought about by deception on the part of the builder. The Supreme Court agreed with the planning authority.

23. The facts of this case may to some extent justify Mr Bennion's proposition but are so far from the facts of the present case as to provide no guidance to the construction of section 117 of the 1983 Act. As Ms Richards said, Welwyn v Hatfield was a case in which the court relied on the principle that a claimant cannot benefit from his own wrong. Lord Mance JSC (with whom on this point the other members of the court agreed) referred to section 264 of Bennion and said (para 46) it was related to three legal principles of which the first was that a person should not benefit from his own wrong and the third was that a grant generally carried an implication that it should not include anything unlawful or immoral. Lord Mance went on to say (para 51) that the only reason why the builder could say that he satisfied the literal language of the relevant statutory provisions was that

> "he successfully deceived the council into giving him planning permission to build a hay barn, into thinking that he intended to build and was building such a barn, and into thinking for more than four years that he had done so."

24. There was nothing approaching that deceit in the present case. Mr Harrop-Griffiths submitted that it was "immoral" for the claimant and his deputy to make the claim against Manchester or that it showed a lack of high principles (to use another of Mr Bennion's concepts referred to at pages 729-730 of his book under section 265). But I do not consider it to be immoral or low principled to claim a benefit to which Parliament had made clear Mr Tinsley is entitled. This is especially the case if Parliament has already made clear that funds administered by the Court of Protection are to be specifically disregarded in respect of claimants who are entitled to make claims pursuant to Acts other than the 1983 Act. The same considerations apply to the somewhat unfocused case of estoppel, espoused in the submissions of the Local Government Association. There is, moreover, no suggestion that Mr Tinsley did not genuinely believe, at the time his case was before Leveson J, that he would access private care rather than state care.

25. Unless therefore there is some specific inhibition on deputies appointed by the Court of Protection arising from the risk of double recovery, there is no reason why Mr Tinsley should not now claim the benefit to which he may be entitled under s.117 of the 1983 Act.

Double Recovery

26. It is, of course, the case that courts will seek to avoid double recovery by a claimant at the time they assess damages against a negligent tortfeasor. If therefore it is clear at trial that a claimant will seek to rely on a local authority's provision of after-care services, he will not be able to recover the cost of providing such after-care services from the tortfeasor. Crofton is itself authority for that proposition. It does not follow from this that, if a claimant is awarded damages for his after-care he is thereafter precluded from making application to the local authority. Mr Harrop-Griffiths appeared to accept that, if Mr Tinsley's funds had indeed run out, then Manchester would have to provide after-care services, although such provision might well not be a continuation of his present standard of after-care services or be as generous as Mr Tinsley or his deputy might wish. It seems to be Manchester's position that they need to be satisfied that Mr Tinsley's funds have indeed run out (or are about to run out). But there also seems to be some concern that Mr Tinsley's funds may have been mismanaged. The question is whether those concerns entitled Manchester to refuse to consider Mr Tinsley's application at all. If Ms Richards' submissions are correct, Mr Tinsley could have required Manchester to consider his application at any time after Leveson J had given judgment in his favour. No doubt if a claimant were to do that just after judgment, the truth of his evidence that he intended to make private arrangements for his after-care could be called into question and the case against the tortfeasor might be able to be re-opened. But short of such an extreme case, is the local authority to be liable even if an applicant has funds still available from his award?

27. Mr Harrop-Griffiths submitted that this could not be the position and enunciated what he called the Peters principle derived from Peters v East Midland Strategic Health

Authority. This was that Mr Tinsley's deputy had no duty to make a claim on Mr Tinsley's behalf and therefore should not do so until the funds from the award are about to run out. He accepted that this principle was "special" to Court of Protection cases and would not apply in what he said was likely to be a minority of cases where the funds derived from a personal injury award were available to a s.117 claimant whose funds were not administered by the Court of Protection, or indeed to other claimants who would take advantage of the personal injury trust fund (paragraph 16) provision of the 2014 regulations.

28. In Peters both the defendant tortfeasor and the local authority were represented at the time the award of damages was made. It was not a section 117 case but the claimant was entitled to claim that the local authority should make arrangements for residential accommodation for those (such as herself) who were "in need of care and attention which is not otherwise available to them". In determining whether care and attention was "otherwise available", the local authority had to disregard resources specified in regulations. The relevant (1992) regulations provided (as do the 2014 regulations) that sums deriving from a personal injury award were to be disregarded if administered by the Court of Protection as was the position with Ms Peters. The defendant health authority submitted, since the claimant was entitled, pursuant to the provisions of the National Assistance Act 1948, to recover the cost of her care and accommodation from the local authority, she could not recover that cost from the defendant. Butterfield J held that the claimant could recover the costs of private care (if she was going to use it) rather than rely on the local authority provision to which she had a statutory right and that, in assessing her contribution to any cost of her care and accommodation provided by the local authority, all sums awarded for her personal injury had to be disregarded. This court upheld that decision holding that a claimant could either recover her costs of care against the tortfeasor or rely on local authority provision and that it was reasonable for the claimant to self-fund by suing the tortfeasor in preference to relying on local authority provision.

29. The judge was concerned about the possibility of double recovery before he awarded the costs of future care to be paid by the tortfeasor, but expressed himself satisfied that, provided he ordered the tortfeasor to meet the costs of future care, Ms Peters' deputy (Mrs Miles) would not require the local authority to provide that care

> "at any rate in the absence of some wholly unexpected development which compels her to abandon her stated intention to rely on private funding." (para 20 of the judgment of Dyson LJ)

He accordingly awarded the claimant the full cost of care.

30. This court held that the judge had been right to be concerned about the risk of double recovery and, if necessary, would have upheld his finding that there was in fact no such risk. The court wanted, however, to make the position somewhat more watertight, before upholding the judge's decision to award the full costs of care. Dyson LJ (with whom Sir Anthony Clarke MR and May LJ agreed) said (para 62f) :-

> "…We can see, however, that this is not an entirely satisfactory way of dealing with the possibility of double recovery. Take the present case. For example, what would happen if (contrary

to the judge's expectation), Mrs Miles or her successor(s) did seek provision of care and accommodation from the council in circumstances which were not "wholly unexpected"? What is a "wholly unexpected development"? Who would be the judge of whether a wholly unexpected development had occurred? It is not at all obvious how this would be policed and what right of recourse, if any, the defendants would have if Mrs Miles or her successor(s) did seek provision from the council in circumstances which were not "wholly unexpected".

63. But during the course of argument in this court, it became clear that there is an effective way of policing the matter and controlling any future application by Mrs Miles for the provision of care and accommodation by the council. It can be achieved by amending the terms of the court order pursuant to which she is acting. The Court of Protection order made on 28 January 2006 sets out in considerable detail the scope of her authority. Paragraph 6 of the order provides that the receiver (now deputy) is not authorised to do any of the acts or things stated in sub-paragraphs (a) to (p) "unless expressly authorised to do so by the court by further order, direction or authority".

64. Mrs Miles has offered an undertaking to this court in her capacity as deputy for the claimant that she would (i) notify the senior judge of the Court of Protection of the outcome of these proceedings and supply to him copies of the judgment of this court and that of Butterfield J; and (ii) seek from the Court of Protection (a) a limit on the authority of the claimant's deputy whereby no application for public funding of the claimant's care under section 21 of the 1948 Act can be made without further order, direction or authority from the Court of Protection and (b) provision for the defendants to be notified of any application to obtain authority to apply for public funding of the claimant's care under section 21 of the 1948 Act and be given the opportunity to make representations in relation thereto.

65. In our judgment, this is an effective way of dealing with the risk of double recovery in cases where the affairs of the claimant are being administered by the Court of Protection. It places the control over the deputy's ability to make an application for the provision of a claimant's care and accommodation at public expense in the hands of a court. If a deputy wishes to apply for public provision even where damages have been awarded … the requirement that the defendant is to be notified of any such application will enable a defendant who wishes to do so seek to persuade that the Court of Protection should not allow the application to be made because it is unnecessary and contrary to the intendment of the

> assessment of damages. The court accordingly accepts the undertaking that has been offered.
>
> 66. In these circumstances, we do not see the risk of double recovery as a reason for rejecting the judge's decision to award the claimant the full cost of care and accommodation. We therefore uphold his conclusion on the second issue."

It appears therefore that, although the law report merely records the appeal as "dismissed", Mrs Miles' undertakings as set out at para 64 must have been incorporated in the order and were, no doubt, complied with. Mr Harrop-Griffiths has not sought a similar undertaking in this case but submits that the logic of the Peters decision is that no claim can be made against Manchester unless it is shown that Mr Tinsley's funds are about to run out.

31. Four initial comments may be made about Peters. First, the court's judgment on this point was obiter, since they upheld Butterfield J's finding of fact that there was no risk of double recovery, prefacing their remarks with the words "If it were necessary to do so". Secondly the court did not consider the position under section 117 of the 1983 Act but only the position under the 1948 Act where the words "otherwise available" were of critical importance. Thirdly the undertakings were taken by the court at the time of the award of damages in order to ensure that the tortfeasor was not subjected to the risk that the claimant would make a double recovery against both it and the local authority. The undertakings were not inserted to protect the local authority but the tortfeasor. Fourthly, there does not appear to have been any argument addressed to the court similar to that made by Ms Richards in this case, to the effect that there is a right on the part of the claimant, after an award has been made, to look to the local authority if he or she prefers to do so. On the different wording of the 1948 Act any such argument might be debateable but it was never made.

32. More broadly, however, I doubt if it can be right, by requiring the deputy to give undertakings of the sort proffered by Mrs Miles, to transfer the burden of deciding whether a claimant is entitled to claim local authority provision to the Court of Protection. That court looks after the interests of its patients and is not (usually) required to decide substantive rights against third parties. Indeed it could be said that to decide that a local authority is not obliged to provide after-care services would not be to promote the interests of the patient.

33. It is noteworthy that in the one decision of the Court of Protection to which we were referred (Re Reeves of 5th January 2010), Judge Lush also thought that the matter should be decided by the Administrative Court rather than by him. If it is the law that a section 117 claimant can only claim against a local authority for after-care services once any award for such services against a tortfeasor has been (or is about to be) exhausted, it is for the Administrative Court to say so. For the reasons I have given I do not believe that is the law and the Administrative Court came to the correct conclusion in this case.

34. One understands that local authorities are concerned about the potential implications of the Administrative Court's decision especially sinceSchedule 4 to the Care Act 2014 applies sections 31 and 32 of that Act to the provision of after-care services, so

that direct payments can be made instead, to those who have capacity to ask for them and to an authorised person on their behalf if they do not. That concern may, however, be overstated. Few claimants who have been awarded the costs of private care will voluntarily seek local authority care while the funds for private care still exist. If they ask for direct payments, the provisions of the Care Act will have to be considered. Any argument about such provisions is for another day.

35. As it is, I would dismiss this appeal.

Lord Justice Irwin:

36. I agree.

Master of the Rolls

37. I agree also.