



R (S) v Social Security Commissioner, Secretary of State & Walsall MBC [2009] EWHC 2221 (Admin)

Case law

Case law date	03/09/2009
Commission/Judge	Sir Thyne Forbes (Sitting as a Judge of the High Court)

Challenge to R(H) 2/07 by way of judicial review – the substantive decision

This was the substantial hearing of the claimant's judicial review of the Commissioner's refusal to grant permission to appeal in CH/2751/2007, in which the claimant argued that the phrase "on behalf of" in the definition for "exempt accommodation" had a broad meaning than that the narrow construction given in R(H) 2/07 was wrong.

The Court dismissed the claim for judicial review after concluding that "on behalf of" should be given a narrow meaning. The Court gave the following reasons for its conclusion:

- The provision of accommodation by Rivendell was an entirely distinct requirement to the provision of care, support or supervision by Lifeways. Rivendell's involvement was not necessary in order to enable Walsall to discharge its statutory obligation to provide the claimant with care, support or supervision.
- The joint venture Agreement between Rivendell and Lifeways showed where the respective boundaries of their responsibilities lay but otherwise its legal effect was very limited.
- On a proper analysis, Rivendell did not derive any benefit from the provision of care, support or supervision by Lifeways to the claimant. For if Lifeways had not provided those services, Walsall would have been obliged to provide them. The benefit was only felt by the claimant (as the recipient of those services) and Walsall (as the authority whose statutory duty to provide those services was thereby discharged)
- The legislative history also provided support for the conclusion that a narrow construction should be applied to the phrase "*on behalf of*" and that it should be construed as meaning "*in its place*" or "*instead of*".

At the end of his judgment Sir Thyne Forbes observed that whilst the relevant HB legislation "has created difficulties" this was currently being examined by the Secretary of State and any policy and/or legislative development that may result from this was a matter for the Secretary of State rather than the Court.