

### **Allocation and funding panels**

3.188 Many local authorities use ‘panels’ of various types (sometimes termed ‘allocation panels’, ‘funding panels’ or ‘purchasing panels’) as a means of rationing services. In effect they constitute a non-statutory ‘post service provision decision’ hurdle that applicants must traverse. *R v Wigan MBC ex p Tammadge*<sup>1</sup> (para 3.171 above) is an example: objectively the authority had made a decision that the applicant’s presenting needs called for the provision of services. However, the individual officers were unable to progress this, since the local authority’s procedures stated that only a panel meeting was able to make a formal decision on resource allocation; a meeting at which the assessing social worker had little or no role. This is not untypical of the procedures adopted by many local authorities. In response to judicial and ombudsmen doubts concerning the legality of these panels, some authorities have endeavoured to project these panels as ‘quality control’ mechanisms – namely to ensure that their social workers have completed the assessment correctly.<sup>2</sup> Not infrequently the panel will refer a funding application back for further analysis or paperwork to be completed. The effect of this is to create delay, which arguably is the whole point of the exercise: the protection of resources by (among other things) deferring service provision. Occasionally however, as in *R v South Lanarkshire Council ex p MacGregor*,<sup>3</sup> the panel is more blatant: in that case it openly restricted access to residential care solely on the basis of the authority’s budget.

3.189 Commenting upon this ‘unfortunately commonplace’ and ‘unlawful practice’ in evidence to the Joint Committee on Human Rights,<sup>4</sup> the charity Help the Aged explained that it persisted because:

Individual cases are settled to avoid threatened litigation, but the widespread use of funding panels to ration care continues. Individuals then find themselves unable to access essential services they have been assessed as needing, thus forcing them to live in conditions which, in some cases, may be sufficiently severe as to constitute inhuman and degrading treatment within the meaning of Article 3 and potentially put their lives at risk. There is, as far as we know, no monitoring of how many people die in their homes or following emergency admission to hospital because they have been denied a service they were assessed as needing.

3.190 Panels create a fault line between the data collection phase of the assessment process and the service provision decision. In so doing they reduce a person’s needs to the bare words of the assessment paperwork or to scores on a

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1 (1998) 1 CCLR 581.

2 Many of those authorities that suggest their panels are quality control mechanisms commonly have difficulty in sustaining this argument, when their council’s minutes are reviewed. Not unusually it can be shown that the panel was created as a response to a budgetary problem – rather than as a response to a concern about the quality of social workers’ assessments. Indeed if this were the problem one would assume that the logical response would be to improve the quality of their training.

3 (2001) 4 CCLR 188.

4 Memorandum from Help the Aged contained in the Appendices to the Sixth Report of the Joint Committee on Human Rights, *The Case for a Human Rights Commission*, 19 March 2003. Report together with Proceedings of the Committee HL 67-I; HC 489-I.

spreadsheet: they sideline (or remove completely) the assessing social worker from the decision making process and with him or her the element of discretion that is essential to any informed decision on such personal questions as the extent of human need. In effect they represent the end game in Michael Lipsky's analysis of street-level bureaucracy (see para 3.3 above), where without the knowledge of the disabled person the 'human judgment that cannot be programmed and for which machines cannot substitute' is in fact removed from the process. In *R(Goldsmith) v Wandsworth LBC*<sup>5</sup>, a service provision decision was overturned, inter alia, because the panel had not even had the community care assessment before it - an assessment the Court of Appeal found impressive by its thoroughness

- 3.191 The local government ombudsmen have considered many complaints concerning panel decisions. A frequent scenario concerns disabled people with complex needs which require potentially expensive care packages and in relation to which a social worker will have undertaken considerable research and recommended a particular care plan. The care plan is then considered by a panel and rejected – essentially the social worker being required to trim the assessment of need to fit the budget (to paraphrase Sedley J<sup>6</sup>) – even though no suitable alternative exists.
- 3.192 A 2005 ombudsman's report<sup>7</sup> is illustrative in this respect. It concerned the placement of a learning disabled adult in a series of inappropriate care homes. His social worker had undertaken a detailed assessment of needs and identified a suitable placement 'after a long, careful process over many months'. However her plan was rejected by the council's Care Purchasing Panel relying on advice from an acting manager who 'barely knew' the service user (he had observed him at most on three occasions in a day centre). The alternative care package proposed proved to be unsuitable and ultimately – once the ombudsman had become involved – a suitable placement was secured. In the ombudsman's opinion:
- Having correctly prepared a detailed assessment in accordance with the statutory guidance, it was wrong for the Council to dismiss all the information gathered in that process, and make a decision on the basis of [the acting manager's] assurance. The decision flew in the face of the assessment.
- 3.193 Even where a panel accepts that a specific care plan is required, it not infrequently defers funding, essentially to address the authority's cash flow demands (as occurred in *R v South Lanarkshire Council ex p MacGregor*<sup>8</sup>). A 2001 complaint against Essex<sup>9</sup> concerned such a practice. A council social worker had assessed the complainant's mother as in need of residential care and prepared a care plan naming an appropriate care home. This came before the 'purchasing panel' which accepted the plan, but decided that the need was not of sufficient

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5 (2004) 7 CCLR 472.

6 Sedley J referred to 'trimming the assessment of need to fit available provision' in *R v Islington LBC ex p Rixon* (1996) 1 CCLR 119 at 129B.

7 Complaint no 04/A/10159 against Southend on Sea BC, 1 September 2005.

8 (2001) 4 CCLR 188 – see para 3.178 above.

9 Complaint no 00/B/00599, 3 September 2001.

priority to justify immediate funding and so her name was placed on a waiting list. The local government ombudsman considered that this amounted to maladministration; that there was 'no justification for the council's use of a waiting list for funding care which is otherwise available and which only comes into operation *after* the council has decided that it will provide a service to meet particular needs'.

- 3.194 Whilst the widespread use by local authorities of funding panels has attracted criticism, this is not to say that all 'panels' are unlawful. There is nothing inherently objectionable about a panel of social care experts being called upon to make a decision concerning the necessary elements of a complex care package (where of course it has the necessary expertise to discharge such a role). Thus in *R (Rodriguez-Bannister) v Somerset Partnership NHS and Social Care Trust*<sup>10</sup> the court found not unreasonable the role of a panel whose primary task was to determine the kind of accommodation that was required, 'whether residential, supported living or other', and not to make recommendations about the necessary levels of support in any particular setting.

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10 [2003] EWHC 2184 (Admin); (2004) 7 CCLR 385.