



Press Summary

10 August 2023

R (on the application of Worcestershire County Council) (Appellant) v Secretary of State for Health and Social Care (Respondent)

[2023] UKSC 31

On appeal from: [2021] EWCA Civ 1957

Justices: Lord Reed, Lord Hamblen, Lord Leggatt, Lord Burrows and Lord Richards

Background to the Appeal

In March 2014, 'JG' was detained under section 3 of the Mental Health Act 1983 (the **Act**) for treatment in hospital in Worcester (the **first detention**).

Under section 117 of the Act, local authorities have a duty to provide '*after-care services*' for people, such as JG, who leave hospital after a period of compulsory detention. '*After-care services*' are healthcare and social care services, often including accommodation, which meet a person's needs arising from their mental disorder and which aim to reduce the risk of being readmitted to hospital. The duty is imposed on the local authority for the area in which the person concerned was '*ordinarily resident*' immediately before being detained (see section 117(3)(a)).

JG was '*ordinarily resident*' in Worcester before her first detention and Worcestershire County Council (**Worcestershire**) was therefore obliged to provide her with after-care services on her discharge from hospital in July 2014 (the **first discharge**).

JG was assessed as lacking capacity to decide where to live on discharge. Following consultation with her daughter and others involved with her care, it was considered in JG's best interests for her to live near her daughter. Worcestershire therefore placed JG in a residential care home in Swindon.

In June 2015, as a result of deteriorating mental health, JG was detained again under section 3 for treatment in hospital, but this time in Swindon (the **second detention**).

When JG left hospital in August 2017 (the **second discharge**), a dispute arose between Worcestershire and Swindon Borough Council (**Swindon**) as to which of them was responsible for providing her with after-care services.

Worcestershire and Swindon referred the dispute to the Secretary of State who decided that Worcestershire was responsible [17]-[19]. Worcestershire sought judicial review of this decision. At first instance, the High Court decided that Swindon was responsible: [2021] EWHC 682 (Admin). The Court of Appeal reached the opposite conclusion: [2021] EWCA Civ 1957. Worcestershire now appeals from that decision to the Supreme Court. The Secretary of State cross-appeals seeking to uphold the decision of the Court of Appeal on a different ground from that which the Court of Appeal gave [20]-[21].

Judgment

The Supreme Court unanimously allows Worcestershire's appeal and rejects the Secretary of State's cross-appeal. It declares that, following the second discharge, Swindon, and not Worcestershire, had a duty to provide after-care services for JG under section 117 of the Act. Lord Hamblen and Lord Leggatt, with whom the other Justices agree, give the court's judgment.

Reasons

(i) Worcestershire's appeal

It was common ground that, following the first discharge, the duty to provide after-care services for JG was owed by Worcestershire because JG had been '*ordinarily resident*' in Worcestershire '*immediately before being detained*' [26]. Under s. 117(2), the duty exists '*until such time as*' the relevant authorities '*are satisfied that the person concerned is no longer in need of such services*'. At no time did Worcestershire make a decision that JG was no longer in need of after-care services [27]. On this basis, the Secretary of State argued, and the Court of Appeal accepted, that the duty of Worcestershire to provide after-care services for JG continued even after the second detention and second discharge and that this prevented such a duty from being imposed upon Swindon [35].

By contrast, Worcestershire submitted as its primary case that, upon the second discharge, Swindon owed a duty to provide after-care services for JG because JG had been '*ordinarily resident*' in Swindon immediately before the second detention, and it was agreed that, where there has been more than one period of detention, the words '*immediately before being detained*' must refer to the most recent period of detention [28]. Worcestershire further submitted that, in these circumstances, its own duty must be taken to have ended when Swindon's duty arose upon the second discharge [32]-[33].

The court did not accept either conclusion. Neither party's analysis explained why the first (Worcestershire's) or the second (Swindon's) duty should oust the other. Each party's case rests on no more than an assertion that its preferred duty trumps the other without identifying any basis in the language of the statute for reaching this conclusion [40]. Further, the court was unpersuaded that the possible practical difficulties of either approach were of any assistance in interpreting the relevant statutory provision [43].

However, the court considered that Worcestershire's alternative case provided the answer. This is that the duty to provide after-care services ends when an individual is compulsorily detained in hospital for treatment [44].

This interpretation is grounded in the language and purpose of section 117: (i) upon a person's second detention, he/she is no longer a person who has '*ceased to be detained*' but a person who is detained and is in hospital; (ii) it is implicit in the concept of '*after-care*' that the duty

does not apply to people who are currently detained receiving treatment in hospital but only to persons who have left hospital; and (iii) the purpose of after-care, to reduce the risk of readmission, makes no sense in the context of a person who has already been readmitted to hospital [45]-[53].

Therefore, Worcestershire's duty to provide after-care services ended upon JG's second detention. Upon her second discharge a new duty to provide such services arose. Which local authority owed that duty depends on where JG was '*ordinarily resident*' immediately before the second detention. Both courts below held that this was Swindon but the Secretary of State challenged that conclusion by his cross-appeal [54].

(ii) The Secretary of State's cross-appeal

The Secretary of State argued that Worcestershire's placement of JG in a care home in Swindon did not change, as a matter of law, where she was '*ordinarily resident*' which at all times remained Worcestershire [23].

'*Ordinary residence*' must be (i) voluntarily adopted i.e. not enforced presence by reason of, for example, kidnapping or imprisonment; and (ii) for settled purposes: *R v Barnet London Borough Council, Ex p Shah* [1983] 2 AC 309, 343 [56].

Although JG lacked mental capacity to decide where to live, the decision to live in Swindon was still made voluntarily as it was the result of a choice made by those with the power to make decisions on her behalf. Further, her residence in Swindon was also adopted for settled purposes. Thus, on its plain meaning, JG was '*ordinarily resident*' in Swindon before her second detention [58].

The Secretary of State argued that the words '*ordinarily resident*' in this context do not bear their usual meaning but are subject to a special rule of law that, if the accommodation in which a person is living is provided by a local authority for the purpose of performing its statutory duty under section 117 of the Act, then residence in that place should be disregarded in determining where he/she is '*ordinarily resident*' for the purpose of section 117 [59]. This rule was said to follow from the decision of the Supreme Court in *R (Cornwall County Council) v Secretary of State for Health* [2015] UKSC 46, [2016] AC 137 [60]-[69].

The Court rejected this argument on grounds that: (i) the *Cornwall* decision should not be extended beyond the specific statutory context under review in that case [70]; (ii) there is nothing in section 117 of the Act to suggest that the term '*ordinarily resident*' should be given anything other than its usual meaning [71]; and (iii) the argument is contrary to the decision of the Court of Appeal in *R (Hertfordshire County Council) v Hammersmith and Fulham London Borough Council* [2011] EWCA Civ 77 and nothing in *Cornwall* or the amendment of section 117 by the Care Act 2014 cast doubt of the correctness of that decision; indeed they confirm it [72]-[86].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)