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Aster Healthcare v Shafi (The Estate of) [2014] EWCA CiV 1350

On 24 October 2014, the Court of Appeal upheld the High Court's ruling that the estate of a deceased man (S) who had been placed in a residential care home at a time when he lacked mental capacity was not liable to pay the care home's fees because:

- S did not have a deputy with whom the London Borough of Brent (which made the arrangements for placing him with the claimant) could arrange for the payment of those fees directly from S to the claimant, under section 26(3A) of the National Assistance Act 1948. The purported contract between the claimant and S was either unsigned or unenforced because S lacked capacity.

- S was not liable to pay the fees under section 7 of the Mental Capacity Act 2005, which allows a provider of goods or services to recover the costs of provision to an incapacitated person, because it was not clear that the claimant provided the services to S on terms that he was to pay for them. As it was not possible to determine whether the claimant intended S, S's wife or the council to meet the fees, the claimant could not rely on section 7 of the MCA 2005 to recover the fees.

Instead, the court found that the council, which was not party to the proceedings, was at least arguably liable under the National Assistance Act 1948 (Act) for S's care home fees, despite the fact that S had sufficient capital to pay the fees himself, because the council had a duty under section 21 to arrange residential accommodation for S and no-one had been appointed as his deputy or to act on his behalf.

Although the authority was not a party to these proceedings, the court made it clear that it could be liable for the fees both under contract and under the National Assistance Act 1948. The case therefore highlights the importance to local authorities and care providers of ensuring that, in respect of individuals who can self-fund but who lack capacity, they identify an appropriate person to make arrangements directly with the care provider, or under a section 26(3A) arrangement with the authority and provider.

A care provider cannot rely on section 7 of the MCA 2005 to recoup its costs unless it is clear that it provided those services with the intention that the incapacitated person, and not the local authority, would pay for them.

If you have any queries on this briefing note, please contact Emma Young on 0121 212 7402 or at emma.young@anthonycollins.com.