

# McCue (as guardian for Andrew McCue)(AP)(Appellant) v Glasgow City Council (Respondent)(Scotland)

Date:11 January 2023

## Justices

Lord Kitchin, Lord Sales, Lord Stephens

## Background to the Appeal

This appeal is concerned with the effect of the Equality Act 2010 (the "Equality Act") in relation to the provision of community care services to disabled persons pursuant to the Social Work (Scotland) Act 1968 (the "1968 Act") and the charges made for such provision. The appellant is Mrs Terri McCue, acting as guardian for her son, Andrew ("Mr McCue"). At the time of the hearing, Mr McCue was 27 years old. He has Down's Syndrome and lives with his parents. He is disabled within the meaning of section 6 of the Equality Act. As a result of his disability, he is provided with community care services by the respondent, Glasgow City Council (the "Council"). Mr McCue is in receipt of income by way of various social security payments. Under section 87 of the 1968 Act, the Council has assessed Mr McCue's means and levied charges for the community care services provided to him. The amount of the charges is affected by the amount of Mr McCue's means. The greater his means, the more he will be liable to pay, and vice versa. The Council has to calculate what means are available to Mr McCue to meet any charges. In doing so, it has to make certain deductions in assessing the available amount. The higher the deductions made, the lower the charges and the more money Mr McCue retains to spend on other things. Over several years, starting in 2012, the appellant made representations to the Council on Mr McCue's behalf that higher amounts should be deducted in the calculation of his available means in relation to expenditure relating to his disability. Save to a small extent, the Council was not persuaded by these representations. Therefore, the charges levied for the services have not been lowered as the appellant contends they should have been. In these proceedings, the appellant claims that by failing to make greater deductions for disability related expenditure, the Council unlawfully discriminated against Mr McCue on grounds of his disability, within the meaning of section 15 of the Equality Act. She also submits that the Council acted in breach of its duty under section 20 of the Equality Act, which requires it to make reasonable adjustments to take account of Mr McCue's disability. The claim was dismissed at first instance and the Inner House of the Court of Session dismissed the appellant's appeal. The appellant now appeals to the Supreme Court.

## Judgment

The Supreme Court unanimously dismisses the appeal. Lord Sales gives the only judgment, with which the other Justices agree.

## Reasons for the Judgment

### *The operation of section 87 of the 1968 Act: levying of a charge for community care services*

Where a local authority provides services under the 1968 Act, then by virtue of section 87(1) it has a discretion whether to charge the recipient for those services and at what level any charge should be set [42]. By virtue of section 87(1A), if the individual satisfies the authority that his means "are insufficient for it to be reasonably practicable for him to pay" the amount which would otherwise be due, then the authority may not charge more "than it appears to them that it is practicable for him to pay". The onus is on the individual to satisfy the local authority that his means are insufficient to the extent that it is not "practicable" for him to pay [43].

The relevant question under section 87 is whether the Council is satisfied that Mr McCue, by his expenditure

on the various items in dispute, has shown that his means are insufficient for it to be reasonably practicable for him to pay for the community care services provided to him by the Council, such that it is not "practicable" for him to pay a charge calculated without deduction of those items [46].

In relation to the disputed items of disability related expenditure, the Council's assessment under section 87 was that they had not affected his means in such a way that would reduce what was practicable for him to pay by way of charges [52]. The Council had properly applied section 87(1) and (1A) and it was not contended that the Council had acted irrationally or in any way unlawfully, according to the usual general obligations arising under public law [46].

### ***Section 15 of the Equality Act: unfavourable treatment***

The principal question here was whether the Council had treated Mr McCue "unfavourably" because of something arising in consequence of his disability, within the meaning of section 15(1)(a) of the Equality Act.

A comparison is required between two states of affairs: what has happened to the complainant in fact and what would have happened to him in a counterfactual world without the treatment alleged to have been unfavourable. It is not necessary to identify a non-disabled comparator to find that there has been unfavourable treatment [55]. The comparison raises two simple questions of fact: what was the relevant treatment and was it unfavourable to the claimant? [57]

The relevant treatment in the present case was the Council's application of section 87 of the 1968 Act in deciding that Mr McCue should be charged something for the services provided to him and its evaluation as to what deductions should be made in calculating Mr McCue's available means and what sum it was practicable for Mr McCue to pay [58].

The Council charges both disabled and non-disabled persons according to the same basic scheme, applying section 87 of the 1968 Act to both groups [59]. The Council extends this general approach in a way which is more generous to disabled persons to take account of disability related expenditure, being costs over and above those which non-disabled persons must bear. The Council's approach could not therefore be said to be unfavourable to disabled persons: in fact, it is favourable to them, since it allows for a greater range of possible deductions to be made in calculating their available means when the Council assesses the charges which it is practicable for them to pay [60]. The true nature of the appellant's complaint was therefore that the treatment of Mr McCue was not generous enough, even though it benefits persons with disabilities; this is not a proper ground of complaint under section 15 [61].

### ***Section 20 of the Equality Act: duty to make reasonable adjustments***

In order to make good the claim under section 20, the appellant needed to show that a provision, criterion or practice of the Council put Mr McCue at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, in order to be able to say that it must take reasonable steps to avoid the disadvantage [65].

The court was willing to infer from the parties' written statements of case that the Council had adopted a practice according to which expenditures are rejected if they do not relate to disability; or if, while relating to disability, a person receives a benefit to meet the cost in question; or if the expenditure represents discretionary spending and are not necessary to meet the disabled person's needs [73]. The practice did not put a disabled person at a disadvantage in comparison with non-disabled people for the simple reason that the practice only applies to disabled people. It does not allow for any comparison to be made with the treatment of non-disabled persons, so there is no scope for the application of section 20(3). Alternatively, one could also say that the practice of allowing the deduction of some, but not all, disability related expenditure confers an advantage on disabled people [74].

### ***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 online. [Decided cases](#)