

Supreme Court gives last word on NHS' funding responsibility for nursing care in care homes

04/08/2017 (*Public Law*)

On 2 August 2017 the Supreme Court handed down its judgment in *R (Forge Care Homes Ltd) v Cardiff and Vale University Health Board* [2017] UKSC 56. The case concerned the division of funding responsibilities for nursing care in care homes between the NHS and local authorities, which is governed by section 49 of the Health and Social Care Act 2001.

Lady Hale, giving the sole judgment of the Court, held that the Welsh Local Health Boards (acting on behalf of the NHS) had misinterpreted section 49 by refusing to pay for certain categories of nursing time. In particular, the Health Boards had failed to pay for time spent on tasks which are “ancillary to”, “closely connected to” or “part and parcel of” the care provided by nurses ([44]). The Health Boards’ decision to pay £128.61 per resident per week for nursing care was therefore quashed.

Lady Hale’s analysis means that section 49 has now been given multiple different interpretations in the course of the proceedings - one by five Supreme Court judges, another by two judges in the Court of Appeal, another by Elias LJ (partially dissenting in the Court of Appeal) and another by Hickinbottom J at first instance.

The financial impact of the judgment is likely to be substantial, as it is estimated that the cost of the NHS’ previous interpretation of section 49 to local authorities in Wales alone was £7-13 million. The judgment will also affect the funding of nursing care in England, which is governed by the same provision.

The judgment is [here](#).

Richard Gordon QC, Emily MacKenzie and Tom Pascoe represented the local authorities, instructed by Ceredigion County Council on behalf of all the Welsh local authorities.

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