

**PETERS v EAST MIDLANDS SHA and
NOTTINGHAM CITY COUNCIL**

Judgment in the Court of Appeal

A nail in the coffin of the Defendant's argument that the public purse should pay

On 3rd March 2009 the Court of Appeal handed down judgment in the case of *Peters*. This case has again raised the issue of how the availability of public funding affects what can be recovered from a Defendant for care costs.

Chantelle Peters was seriously brain damaged as a result of the Defendant's negligence. She is a protected party subject to the Court of Protection. She requires full time care which was being provided in a home and paid for by the local authority (Nottingham City Council) under s.21 National Assistance Act 1948. On her behalf it was asserted that, despite the availability of public funding, she was entitled to seek full recovery of care costs from the tortfeasor Defendant. That was resisted by the Defendant who maintained that since public funding of her future care needs was available there was no loss recoverable under this head.

The Court of Appeal held:-

1. In assessing whether a person had the means to pay for or contribute towards their care costs, the disregard in respect of "damages for personal injury" applied to all damages received and not just those for pain suffering and loss of amenity.
Firth v Geo Ackroyd Junior Ltd [2001] PIQR Q4 affirmed
2. A Claimant who wishes to opt for self-funding and damages in preference to reliance on the statutory obligations of a public authority is entitled to do so as a matter of right.
3. Questions of mitigation of loss do not arise in these circumstances. A Claimant would not be required to obtain damages from one co-Defendant to reduce the liability of another. The position is the same here; a Defendant cannot require a Claimant to reduce that Defendant's liability by seeking a contribution towards a loss from an innocent party.
Sowden explained.
4. Even if mitigation of loss was relevant, a Claimant was entitled to take into account the uncertainties of public funding and the possibility that rules for contribution may change in deciding to opt to be self-funding.

5. The potential problem of double recovery can be met in a Court of Protection case by an appropriate limitation on the Deputy's authority from the Court of Protection to seek public funding for care. The Court of Protection could thus police what public funding of care could be claimed following an award.
6. It was no part of the duty of a Deputy to seek public funding of care when a full award in respect of care had been made against a Defendant.
7. Whilst not entirely satisfactory, it was sufficient for a Judge to find that there would be no double recovery sought by or on behalf of a Claimant.

Comment

The Court of Appeal has made it clear that a Defendant cannot require a Claimant to make herself dependant on public funding so as to reduce the costs to the Defendant. The Claimant is entitled to choose to take the whole of her assessed care needs from the tortfeasor. In future where a Defendant seeks to insist on a s.47 assessment and credit for local authority funding the Claimant is entitled to say "No, I want you to pay".

The problem of double recovery remains. A Court will want to be satisfied that a Claimant will not recover for care costs from a Defendant and then claim public funding of care as well. In Court of Protection cases that can be achieved by careful drafting of the terms of the Deputy's authority from the Court. In *Peters* the possibility of future for public funding of care was left open on an appropriate application to the Court of Protection to allow that – with the opportunity for the Defendant to make representations.

Neutral Citation Number: [2009] EWCA Civ 145.

To see the full judgment please click here - <http://www.7br.co.uk/uploads/chantelle-peters-judgment.pdf>

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