



Note following the Supreme Court judgment in the matter of R (on application of Cornwall Council) v Secretary of State for Health and Others ["Cornwall"]¹

On 8 July 2015 the Supreme Court delivered its judgment in R (on the application of Cornwall Council) v Secretary of State for Health & Ors ("Cornwall"). For people who lack capacity to make decisions about their accommodation, and for children transitioning into adult social care services, the judgment in the case is appropriate because a person's lack of mental capacity may mean that they are not able to voluntarily adopt a particular place of residence.

The Supreme Court held that a child who had been placed in foster care in local authority A, which had been arranged by local authority B under the Children Act 1989, continued to be OR in local Authority B on the date he reached 18 and required adult social care. The Supreme Court set out that the underlying purpose behind provisions in both children's and adult legislation is that "an authority should not be able to export its responsibility for providing the necessary accommodation by exporting the person who is in need of it. The Supreme Court found that it would be highly undesirable for there to be a hiatus between the deeming provisions of the Children Act 1989 and those of the National Assistance Act 1948. The Department of Health is currently considering the policy implications in relation to the determination of OR disputes in light of the judgment of the Supreme Court. Further guidance will be available in due course.

¹ Note preceding the judgement in Cornwall:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390383/Note_regarding_Cornwall_2014.pdf