

The Unorthodox Quashing of the Pre-Existing Nullity (*R(MV) v London Borough of Lewisham* [2025] EWHC 280)

Written by Annabel Nuttall Heath, barrister, and Isabella Taylor, pupil barrister at 4-5 Gray's Inn Square.

The unorthodox disposal of the judicial review in *R(MV) v London Borough of Lewisham* [2025] EWHC 280 arose because the Claimant did not amend their claim appropriately in light of an evolving procedural and factual matrix which ultimately led the court to quash a decision that no longer existed (at [32]).

BACKGROUND

The Claimant applied to the Defendant under Part 6 of the Housing Act 1996, wishing to be placed in Band 1 – emergency housing – under the Defendant's allocation policy due to anti-social behaviour perpetrated by tenants in the flat above. In a letter dated 22 November 2022, the Defendant placed the Claimant in Band 3 under its allocation policy ("the 2022 Decision").

Permission for judicial review of that decision was granted by Michael Ford KC on 1 November 2023, on the sole ground that the Defendant failed to allocate the Claimant into Band 1 of its allocation policy, in the reasons for granting permission he stated:

"I consider it arguable that the Defendant has not properly applied its own allocation policy on band 1, has not adequately dealt with the Claimant's request and/or has reached an unreasonable conclusion." (at [15])

The 2022 Decision was voluntarily withdrawn by the Defendant in December 2023 as the Defendant had not applied the 2022 allocation policy which had come into force one month prior to the 2022 Decision. Instead of applying the 2022 policy, the Defendant had applied the previous version (see [6]). A new decision on the claimant's housing allocation was made under the correct policy ("the 2023 Decision").

THE HEARING

The Claimant, appearing in person throughout, did not amend his claim to challenge the new decision prior to the hearing. Following the hearing the Judge invited written submissions including if the Defendant objected to a late amendment. In response, by those written submissions the Defendant outlined why that amendment was opposed, not least because it would amount to rolling judicial review. In any event, the Defendant informed the judge that they would withdraw the 2023 Decision and make a fresh decision on the Claimant's housing needs in order to move matters forward. At no point was the 2023 Decision found to be unlawful (see [61]).

Notwithstanding the Claimant's position that he was not seeking damages from the Defendant, in his written submissions, in response to the Defendant's, the Claimant asserted that he should be awarded damages.

THE DECISION

Quashing the 2022 Decision

The Court resolved the dispute by formally quashing the 2022 Decision on the basis it was made under the wrong policy, which the Defendant invited them to do as a formality. The judge

expressed hesitation about this at [32], as the decision no longer existed and was ultimately already a nullity prior to being quashed.

There is precedent for quashing administrative decisions that were already nullities in order to prevent public confusion (*R. v Peak District National Park Authority Ex p. Bleaklow Industries Ltd* [2000] J.P.L. 290 at 296). Given the quantity of allegations made by the Claimant against the Defendant it was prudent, if unorthodox (especially as it was at the invitation of the Defendant), to make such an order.

Compensation

In a similar spirit, the judge took particular care to identify the Claimant's essential case, amidst 'voluminous' evidence about the behaviour of his upstairs neighbours (at [26]) and multiple allegations of tortious, administrative and criminal culpability against the Defendant.

The judgment contains a concise and careful consideration of the way in which compensation becomes available to claimants in judicial review, in particular light of Article 8 and Article 14 of the Human Rights Act 1998. Additionally, the judge expands on the claimant's allegations of misfeasance in public office and helpfully summarises the elements needed to establish tortious liability before finding no such allegations were made out against the Defendant.

Unsurprisingly, the judge held that he saw no evidence that the London Borough of Lewisham has, or has ever had, its own personal criminal gang (see [27]), nor did he see any evidence that the Defendant was persecuting the Claimant.

Other Remedies

After quashing the 2022 Decision, the judge considered remedies. The judge declined to make a mandatory order that the Claimant be placed into band 1 and rehoused, because though it was undisputed the Claimant had suffered distress as a result of their neighbours, the court was not satisfied that the Defendant's decision was so unreasonable that no reasonable authority could have taken that course ([39]-[40]).

Comment

The judgment in *R(MV)* showcases the judiciary taking care to distil the essential case of an unrepresented party and consider that case at its highest, but nonetheless ensuring that the boundaries of the powers and duties of a local authority are precisely identified before determining whether that case is made out.

Annabel Nuttall Heath appeared on behalf of the London Borough of Lewisham, instructed by Amy Evans of Penningtons Manches Cooper LLP.