

Ngnoguem v Milton Keynes Council [2021] EWCA Civ 396

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In *Ngnoguem v Milton Keynes Council* [2021] EWCA Civ 396 the Court of Appeal held that a late review decision is not merely a “purported” decision, but a decision which supersedes the original decision and becomes the authority’s subsisting decision. Accordingly, as there can only be one effective decision of the authority at any time, there is no right of appeal under s.204(1)(b) against the original decision, and where such an appeal has been issued before the review decision, that appeal is academic.

Iain Colville appeared on behalf of Milton Keynes Council.

In January 2018 Ms Ngnoguem approached the Council from a refuge in Merton having fled DV from her marital home in Woolwich. Ms Ngnoguem deliberately chose to apply to Milton Keynes as she felt she will be safe there. The Council accepted they owed Ms Ngnoguem the main housing duty and she had a local connection with their district.

Ms Ngnoguem requested a review. On 9 November 2018, the Council upheld their original decision. On 20 November 2018 Ms Ngnoguem issued an appeal against the original decision and on 29 November 2018 she appealed against the review decision “without prejudice to [her] contention that the review was completed out of time and is therefore only a purported review, and of no effect”.

On 24 May 2019 HHJ Melissa Clarke dismissed both appeals. Ms Ngnoguem appealed against the dismissal of the appeal against the original decision. There was no appeal against the dismissal of the appeal against the review decision.

In dismissing Ms Ngnoguem’s appeal, Stuart Smith LJ (with whom Macur, Arnold LLJ agreed) stated as a matter of statutory construction s.204 gave two rights of appeal compendiously; the words “as the case may be” indicate that there is a binary choice to be made, as to whether to challenge a review decision if the applicant is dissatisfied with it, or to challenge the original decision if the applicant is not notified of the review decision within the prescribed time. Since even a review decision issued outside the prescribed time is, from the date of its notification, the effective decision on the applicant’s case, the words of s. 204(1)(a) and “as the case may be” indicate that once a review decision has been issued, that is the proper target for any challenge and not the now-superseded original decision. Where an applicant has already issued a challenge to the original decision relying upon s. 204(1)(b) before a review decision is issued, the effect of the late review decision is to render those proceedings academic, save in exceptional circumstances. A principled approach will readily identify who is responsible for the costs after properly issued proceedings having become academic.

The Court concluded:

- i) Where an applicant is dissatisfied with an original decision, their primary remedy is to request a review decision;
- ii) If such a request is duly made, the authority is under a mandatory obligation to review its original decision and to notify the applicant of its decision in the light of that review;
- iii) Where the authority provides a review decision, it becomes the authority’s sole effective and operative decision whether the review decision is provided within time (as specified in the regulations or as extended by agreement in writing) or is provided late;
- iv) Where the applicant has requested a review and is not notified of the review decision within time then, provided a (late) review decision has not been notified before the appeal is brought, the applicant has 21 days from the date on which it should have been notified to bring an appeal to the County Court on any point of law arising from the original decision. If the authority provides a review decision after such an appeal to the County Court has been commenced, it will render the appeal academic save in exceptional circumstances;

- v) Where the applicant has requested a review and is not notified of the review decision within time *but* a (late) review decision has been provided before the appeal is brought, the applicant's remedy is to appeal to the County Court on any point of law arising from the review decision (if so advised);
- vi) An appeal to the County Court against the original decision should not be commenced after notification of a review decision, whether that notification was in time or late.

Iain Colville

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