

Abdikadir v. Ealing LBC [2022] EWCA Civ 979

Toby Vanhegan and Stephanie Lovegrove

4-5 Gray's Inn Square

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The Court of Appeal held an out of area placement was unlawful because the local housing authority had not searched for accommodation in accordance with their procurement policy. Mr Toby Vanhegan and Ms Stephanie Lovegrove represented the successful appellant, instructed by Polpitiya Solicitors.

The appellant applied for homelessness assistance to Ealing. They accepted that they owed her the full housing duty under section 193(2) of the Housing Act 1996 ("the Act"). In July 2020 Ealing offered her 10 Whitehorn Avenue, West Drayton in the London Borough of Hillingdon. She refused the offer. Ealing notified her of their decision that their duty had ceased, and she requested a review. Ealing upheld that decision on review. The appellant appealed to the county court.

The appeal to the county court was dismissed and the appellant appealed to the Court of Appeal. She was granted permission for two grounds.

First, she argued that the review was unlawful because Ealing had not notified Hillingdon of the placement there in breach of section 208(2) of the Act. The Court held that the duty to notify arose on the date of the offer. However, because she refused the offer, the section 193(2) duty ceased before the 14 days ended during which Ealing had a duty to notify. Accordingly, at the date of the discharge decision, it was not in breach of section 208(2), and

so the lack of notification did not vitiate that discharge decision. Had the appellant accepted the offer, and actually moved in, then the duty to notify might have had greater significance.

Her second ground of appeal was that Ealing had not complied with their procurement policy. This was not a point raised in the representations on review. The Court held that where a statutory duty arises, in this case the duty "so far as reasonably practicable" to make an in borough offer, the decision maker must take such steps as are reasonable to inform himself of the practicability of an in borough placement even though the point has not been explicitly raised. It is not for the applicant to raise a red flag in circumstances where they have no input.

In this case, the Court held that Ealing's procurement policy was lawful and required that acquisition officers liaise with accommodation providers and check relevant websites on a daily basis for new supply. There was no evidence that that had been done, and so Ealing was in breach of their policy.

Whether a search for private sector rental property in Ealing would have revealed a suitable and affordable property available on the date of the offer may be a matter of speculation. The Court was unable to find that had Ealing complied with its policy, the result would have inevitably been the same. Therefore, the appeal was allowed on this ground.

Lewison LJ gave the leading judgment, with which LJJ King and Asplin agreed.

Toby Vanhegan and Stephanie Lovegrove

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