

4-5 Housing

E-Flash

Mrs Michelle Biden v Waverley Borough Council

[2022] EWCA Civ 442

Macur, Asplin and Coulston L.JJ1 April 2022

The Court of Appeal has held that a local authority, when considering suitability of a final offer of accommodation under s.189, Housing Act 1996, was entitled to make inquiries of a PCSO rather than a specialist liaison officer as to whether an area was safe for members of the transgender community. Whilst the inquiries that were required to be made were those necessary fairly to make a decision regarding the suitability of accommodation, parallels should not be drawn with medical inquiries where an applicant has a disability.

Timothy Straker QC and Annabel Heath of 4-5 Gray's Inn Square appeared for the Appellant.

Facts

Mrs Michelle Biden is a disabled transgender woman who lives in Farnham under an assured shorthold tenancy agreement. Her family and wider support network are in the Wokingham area. Mrs Biden was served with notice to leave her accommodation by her current landlord and presented to the respondent local housing authority as homeless. The authority made Mrs Biden a final offer of accommodation under s.189B, Housing Act 1996 which Mrs Biden refused as she said it was unsuitable. In particular Mrs Biden felt she did not feel safe in the area and felt at risk of transphobic abuse. Following the refusal of the offer, the authority discharged its duty to Mrs Biden.

Mrs Biden sought a review of the decision that the accommodation was suitable and also the decision to discharge duty.

On review, when making her inquiries as to whether the accommodation was suitable for Mrs Biden, the review officer consulted the local PCSO to determine whether the area was safe for members of the LGBT community (although there was no indication that the PCSO had any training in LGBT hate crimes). The PCSO stated the area would be safe for a trans woman to move into and he would have no concerns for her safety in the surrounding area. There was no evidence of LGBT+ hate crime in the area and he was not aware of any individual harbouring any grudges towards any member of the LGBT + community. The review officer was therefore satisfied the area was safe for Mrs Biden.

Additionally the original decision maker concluded that private landlords may discriminate against a trans woman making it harder for her to find accommodation than someone without the protected characteristic and therefore felt it appropriate to refer Mrs Biden to accommodation managed by a social landlord which had ethical and social values.

On the unsuccessful appeal to the County Court, it was argued that the accommodation was not suitable on a number of grounds..

The second appeal was argued on narrow grounds - that the inquiries to the PCSO were not sufficient, rather inquiries should have been made to a specialist officer. The Court was invited to apply by analogy *Shala v Birmingham City Council* (2007) EWCA Civ 624 (regarding obtaining specialist medical evidence). Further the Court was invited to apply by analogy *Pieretti v Enfield LBC* [2010] EWCA Civ 1104, i.e. that there was a heightened duty of inquiry where the applicant was disabled and transgender.

Dismissing the appeal, the Court held the authority had made sufficient inquiries. The Court declined to draw parallels between either *Shala* or *Pieretti*. The review officer had complied with PSED, in particular the selection of accommodation had borne in mind that private landlords may positively discriminate against transgender individuals.

Written by Annabel Heath

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