Fresh homelessness applications and changes of circumstances (R (on the application of Ibrahim) v Westminster CC)

This analysis was first published on Lexis®PSL on 18 October 2021 and can be found here (subscription required):

Local Government analysis: The claimant challenged by way of judicial review (i) the defendant's refusal to treat an application for housing dated 30 October 2020 as a new application (ground 1), and (ii) the defendant's decision not to withdraw a section 202 of the Housing Act 1996 (HA 1996) decision dated 28 August 2020 (grounds 2 and 3). A breach of the public sector equality duty (PSED) was also asserted (ground 4). Ground 1 succeeded and thereby the other grounds fell away. However, the court held that grounds 2 and 3 did not provide a sufficient basis for relief to be granted although a breach of the PSED was found. The evidence was that a report from a psychiatrist regarding the circumstances of why the claimant could not have reasonably been expected to remain in accommodation in Middlesbrough had been provided to the defendant. That report had not been considered and was held to provide new facts, and thereby a fresh application for assistance fell to be considered. Written by Ian Peacock (who appeared for the defendant authority) and Anneli Robins; both barristers at 4-5 Gray's Inn Square.

R (on the application of Dora Ibrahim) v Westminster City Council [2021] EWHC 2616 (Admin)

What are the practical implications of this case?

An applicant can make a second application for homelessness assistance unless the second application is based on exactly the same facts as the first application when it was disposed of.

When crucial medical evidence or relevant material has either not been considered, or not been considered in the context of the statutory test under HA 1996, s 191 ('Becoming homeless intentionally'), in an authority's decision, an applicant may be entitled to make a fresh application even if the material relates to events prior to the disposal of the previous application. Whether an application is based on exactly the same facts is a decision for the authority but the court can intervene on conventional public law grounds.

Further, local authorities should consider medical evidence as it applies directly to the test of whether it is reasonable to continue to occupy a particular property under HA 1996, s 191. They should take an all-round approach, and may need to think beyond the submissions made by claimant representatives.

What was the background?

The claimant is a national of the Democratic Republic of Congo, her husband was the body guard to a General who raped and threatened to kill her in August 2013. Her husband and parents were then killed. She fled the country believing her life was in danger and was granted leave to remain in the UK.

From 5 June 2017, she held a tenancy of a one bedroom flat in Middlesbrough. One morning a male occupant of an adjoining property entered her flat through her bedroom window, went into her bathroom and found her naked. He was arrested, but later released. She then saw him outside his front door. She left the property approximately a month later in mid-August 2017.

On 5 December 2017 and 6 February 2018 psychiatric reports were obtained which concluded she suffered from PTSD and serious depression and that the invasion of her property had worsened her condition and reminded her 'so greatly of her original trauma'.

The claimant applied as homeless and was provided with interim accommodation under HA 1996, s 188 in Westminster where she still remains.

On 5 August 2018, the defendant decided the claimant had become homeless intentionally pursuant to HA 1996, s 191. The claimant sought a review of that decision. The defendant upheld their decision and no appeal was brought against that decision. In January 2019, the claimant made a fresh application for assistance. She included further medical evidence. On 2 January 2020, the defendant rejected her application because they were of the view that there had been no change in the facts since her previous application. The defendant again decided that the claimant had become homeless intentionally.

The claimant instructed solicitors to seek a review. A further psychiatrist's report was obtained on 11 February 2020 stating, 'it is obvious that she could not have remained in the property in Middlesbrough'. The claimant's evidence was that this was delivered by hand to the defendant's offices, but it never reached the housing file.

On 26 June 2020, the claimant's solicitors were informed that the defendant was minded to uphold the decision of 2 January 2020. They were asked for any further submissions to be given by 3 July 2020. An extension of time until 29 July 2020 was sought and agreed. By 18 August 2020, no submissions had been made. A further minded to find letter was sent asking for representations by 25 August 2020. No submissions were received.

On 28 August 2020, the defendant decided to uphold their decision. The claimant learnt of this decision by an email dated 17 September 2020 whereby she was informed by her solicitors that they were closing their housing department and the deadline to appeal to the County Court was the next day. The claimant sought assistance promptly from various organisations until ultimately Osbornes opened a file on her behalf on 15 October 2020. Counsel advised that no application to extend time for a HA 1996, s 204 appeal should be made.

Instead, Osbornes requested, in the alternative, on the 30 October 2020:

- the defendant withdraw the decision of 28 August 2020, or
- accept a new homelessness application

On 3 November 2020, the defendant decided not to withdraw their decision, and on 17 November 2020 not to accept a new application. The claim for judicial review was issued on 27 January 2021.

What did the court decide?

Mr Justice Soole found:

- the expert evidence of 11 February 2020, which had not been considered, went directly to the question of whether it was reasonable for the claimant to continue to occupy the property
- *R v Harrow LBC, ex p Fahia* [1998] 1 WLR 1396 and *R v Borough of Tower Hamlets, ex p Begum* [2005] EWCA Civ 340 should be read to mean that there should be 'a comparison between the facts and circumstances known to the authority at the date of the original decision and those identified in the purported new application'
- the defendant when considering whether it was reasonable for the claimant to continue to occupy the property had concentrated unduly on the nature of the accommodation, its affordability, and HA 1996, s 177 (risk of violence or domestic abuse), rather than the claimant's history of trauma and associated mental state as it applied to that statutory test

• although the point had not been raised by the claimant's various representatives, it was a sufficiently obvious point to have required consideration

• this amounted to a breach of the PSED because there was no 'sharp focus' on how the accepted disability related to her decision to leave the property

• no reasonable authority could have concluded that a new application for homeless assistance had not been made

• as ground 1 succeeded the remaining grounds fell away

• however, there was not a sufficient basis to allow the challenge under grounds 2 and 3 of the defendant's refusal to undertake a further review. That would require a truly exceptional case and the claimant's alternative remedy of seeking permission to appeal out of time could not be disregarded

Case details:

- Court: Administrative Court, Queen's Bench Division, High Court of Justice
- Judge: Mr Justice Soole
- Date of judgment: 1 October 2021

Ian Peacock (who appeared for the defendant authority) and Anneli Robins are both barristers at 4-5 Gray's Inn Square. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact caseanalysiscommissioning@lexisnexis.co.uk.