

“What is meant by “ordinarily resident” for the purposes of the National Assistance Act 1948?”

R (on the application of Cornwall Council) v Somerset CC [2015] UKSC 46



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On 8 July 2015 the Supreme Court determined the meaning of "ordinary residence" in sections 24(1) and 24(5) of the National Assistance Act 1948 for the purposes of determining which local authority was responsible for providing ongoing support and accommodation in circumstances where a severely incapacitated person reached the age of 18 and had spent his childhood on placements in different counties.

The facts

PH had severe physical and learning disabilities and could not speak. He lacked capacity to make independent decisions about where to live. From the age of four he received accommodation and support from the local authority. In December 2004 he was living with foster parents in South Gloucestershire. On reaching the age of 18 he moved into a care home in the Somerset area. Whilst there was no dispute that PH was entitled to support from the local authority, the questions as to which local authority should bear the financial burden became the key question in the case.

The answer to the question turned on where, immediately prior to his placement in Somerset, he was 'ordinarily resident' for

the purpose of sections 24(1) and (5) of the 1948 Act. There were three possible answers: Wiltshire, as the authority for the area where he was living with his family when he first went into care, and which remained responsible for him under the 1948 Act; Cornwall, where his family had lived since 1991; or South Gloucestershire, where he lived with his foster parents from the age of four until his move to Somerset.

The court considered three authorities which had shaped the construction of the words "ordinarily resident": *P (GE) (An Infant), Re [1965] Ch. 568* (a question arising under the Guardianship of Infants Act 1925) had introduced the concept of the parental home being the "base" of a child at boarding school; *R. v Barnet LBC Ex p. Shah [1983] 2 A.C. 309*, (a case focusing on the provision of education grants) focused on "a man's abode in a particular place", citing the importance of "a degree of settled purpose" and indicating that the place must have been "voluntarily adopted" by the person living there; and *R. v Waltham Forest LBC Ex p. Vale Times, February 25, 1985*, (under the National Assistance Act 1948) an incapacitated person was deemed to have the same ordinary residence as his parents until he reached majority.

The decision

Wiltshire was responsible for supporting and accommodating PH during his adulthood. The ordinary residence of an incapacitated adult should be determined in the same way as a child's habitual residence under EU law, with the inquiry focusing on the place of integration in a social and family environment.

Why is this relevant to housing lawyers?

Those of us who are used to dealing with applications under Part VII of the Housing Act 1996 (homelessness) will be well versed in the passing off of mainly 16 - and 17-year-olds and victims of domestic violence between local authorities where they have resided in one authority's catchment for a period and then apply as homeless to another.

This decision certainly fits within the reasoning applied in the leading cases of *Mohamed v Hammersmith and Fulham LBC* [2002] All ER 176 and *Osmani v Harrow LBC* [2003] 2 All ER 1 and accordingly advisors may wish to add *R(Cornwall CC) v Somerset CC* to that list. Although I suspect it will only be helpful in the most idiosyncratic of such cases, advisors may well wish to note this case for such an occasion.

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