42 Bedford Row | London WC1R 4LL | T 020 7831 0222 | clerks@42br.com | www.42br.com

42 BEDFORD ROW

Housing Law BULLETIN

"How should the courts assess whether a homeless applicant is vulnerable and in priority need of housing, with reference to the Housing Act 1996 s.189 (1)(c)?"

Hotak v Southwark LBC, Kanu v Southwark LBC, Johnson v Solihull MBC [2015] UKSC 30

Angela Piears

What is the case about?

The court considered the three appeals against decisions that the appellants were not in priority need of accommodation as vulnerable people, within the meaning of the Housing Act 1996 s. 189(1)(c), which states:

(1) The following have a priority need for accommodation –

(c) A person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside.

Mr Hotak had learning disabilities and lived with his brother. Mr Kanu suffered physical and mental health problems and lived with his wife and son. Mr Johnson claimed to have physical and mental health issues and used heroin.

Their local authorities had rejected applications for housing because they were deemed not to be vulnerable.

Southwark refused Mr Hotak and Mr Kanu because they had continuing support from their families. Solihull refused Mr Johnson because they were not satisfied about his mental health issues and did not consider his physical and drug problems prevented him looking after himself if homeless.

The Court of Appeal had upheld these decisions.

What did the court decide?

In the Supreme Court Mr Hotak's appeal was dismissed on the basis that he did have support, although flaws in the review letter may lead to further submissions if the Council does not reconsider its decision.

Mr Kanu's appeal was allowed because the wrong comparator had been used.

Mr Johnson's appeal was dismissed because although mistakes had been made with regard to the comparator and statistics, the basis for the actual decision was not wrong.

Why is it important?

The Supreme Court gave the following clarification when considering whether an applicant is vulnerable in accordance with s. 189(1)(c):

1. When assessing vulnerability, with whom should an applicant be compared?

   The comparison should be with *an ordinary person who was made homeless*, **not** someone who *was actually homeless*. To be declared vulnerable, an applicant must be significantly more vulnerable than many others in the same position. The test in the case of Pereira (whether the applicant would be less able to fend for himself than the ordinary homeless person) should be treated with caution, and references to 'street homeless' (not in the 1996 Act) and 'fend for himself' (not a statutory test) should be avoided because their meanings were open to interpretation.

2. When assessing vulnerability, should family support be considered?

   Yes. Family support should not be ignored, but it has to be consistent and predictable. Support would not mean an application would fail, but the application had to be considered including the support. Each case would turn on its own facts and evidence, not presumptions.

3. Does the Public Sector Equality Duty of s.149 of the Equality Act 2010 have any impact upon s.189 (1) (c) of the Housing Act 1996?

   It is complementary. It must be borne in mind at each stage of the decision-making process and exercised in substance, with rigour and an open mind. It is fact sensitive and dependent on individual judgment. The Duty requires very sharp focus, for example when conducting a section 202 review, on whether the applicant has a disability or other relevant characteristic, the extent of such disability, its likely impact and whether or as a result the applicant was vulnerable.

Angela Piears is a member of the 42 Bedford Row Property Team and specialises in all aspects of Housing Law