



Housing & Community Services

Mimi Konigsberg

Director

Housing Needs Division
London Borough of Hounslow
The Civic Centre Lampton Road
Hounslow TW3 4DN

Ms. M Hussain
c/o Warnapala Solicitors
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Middlesex
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Your contact is: R Chhetri
Direct Line: 020 8583 3893
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Our ref: HND/RL/RC/75981
Your ref: H/SS/H1408
Date: 24 May 2010

BY FAX: 020 8571 9597
(with original to follow in post)

Dear Ms. Hussain

MS. M HUSSAIN – NOTIFICATION OF DECISION UNDER SECTION 202 HOUSING ACT 1996 (AS AMENDED BY HOMELESSNESS ACT 2002) (THE ACT)

1 I write with reference to your request for a review of the decision made by this Council on 14 April 2010 (the **Decision**) which concluded that you are not in priority need for housing assistance under the legislation and guidance.

2 The review has been carried out in accordance with the Homelessness Code of Guidance for Local Authorities (**Code of Guidance**) by an independent Review Officer, who was not involved in making the original section 184 decision.

3 I have upheld the decision that you are not in priority need for housing.

4 As an independent Review Officer I have conducted the review as a fresh assessment of the matter and for that reason I will take the opportunity to briefly summarise the factual background of your case below.

5 In carrying out the review I have given consideration to all the information on your housing file, a copy of which was sent to your solicitors, Warnapala & Co. Solicitors on 26 April 2010.

RELEVANT LEGISLATION, CASE LAW AND GUIDANCE

Legislation

6 The main homeless duties in s.193(2) and s.195(3) of the Act apply only to applicants who have a priority need for accommodation. Section 189(1) of the Act and the Homelessness (Priority Need for Accommodation) (England) Order 2002 provide a list of categories of applicants who have a priority need for accommodation. The category relevant to your case is:

"(iii) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason [...]"

7 Your case was assessed against this category.

Code of Guidance

8 Chapter 10 of the Code of Guidance provides some guidance to local authorities when assessing priority need and I have given regard to this.

Case law

R v Camden LBC ex p Pereira [1999] 31 HLR 317, CA

9 Upon review of your factual circumstances and background, I gave particular consideration to s.189(1) (c) of the Act and paragraphs 10.12, 10.12, 10.14 and 10.16 of the Code of Guidance together with the general test in *R v Camden LBC ex parte Pereira (Pereira)* as set out below:

"The Council must ask itself whether [the applicant] is when homeless less able to fend for himself than the ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects."

Tetteh v Kingston-upon-Thames [2005] HLR 21

10 A local housing authority is not obliged to identify precisely the characteristics of the 'ordinary homeless person' against whom the applicant is being measured

Osmani v Camden LBC [2004] EWCA Civ 1706

11 Vulnerability is not exclusively nor even necessarily a medical question. Although authorities should look for and pay close regard to medical evidence, it is for an authority to determine whether an applicant is vulnerable.

12 Furthermore, the assessment of whether a person is vulnerable must be carried out on the assumption that the person has or will become street homeless.

R v Newham LBC ex p Lumley [2001] 33 HLR 11

13 Vulnerability must be assessed on an assumption that a person is or will become street homeless, not on his ability to fend for himself while still housed.

Shala v Birmingham City Council [2007] EWCA Civ 624

14 Decisions upon the questions of vulnerability and priority need are for the local housing authority to make, not for medical advisers. There is nothing to prevent a doctor advising on the implications of other doctors' reports without examining the patient. If this is done the authority must take into account the absence of examination.

BACKGROUND

- 15 You moved to the UK as a refugee some time in 2007. Upon your arrival you were placed in Links House Cardiff under the National Asylum Support Service (NASS) and thereafter moved to 73b Risca Road, Newport, NP20 4HY under the NASS scheme. You were subsequently granted with Indefinite Leave to Remain and as such, your NASS accommodation came to an end. Since then you have been staying with a number of friends. You moved to Hounslow one and a half years ago.

MEDICAL CIRCUMSTANCES

- 16 The following enquiries have been made and the below information has been considered in an attempt to establish your medical needs:

- 4 Ways Healthcare ultrasound report dated 05 May 2009
- Letter from the Chestnut Practice dated 11 May 2009
- Letter from West Middlesex University Hospital dated 08 July 2009
- Letter from the Chestnut Practice dated 17 February 2010
- District Medical Officer (DMO) opinion dated 12 January 2010¹
- Letter from Chestnut Practice dated 25 February 2010
- Notes taken from your interviews with the Housing department
- Information submitted by your solicitors
- Information submitted by you
- Letter from the Chestnut Practice dated 24 May 2010

- 17 This Council have carried out all such enquiries as can be expected from any reasonable local authority that are necessary to satisfy themselves of the main facts of your case.

- 18 I have established the following from the information received from your solicitors, the enquiries made to, and responses received from, various medical professionals and from the information submitted by you as listed above:

Depression

- 19 You suggest, and your GP confirms, that you suffer from depression which manifests in aches and pains in your body and low mood and negative outlook. Your GP states that you have never had any thoughts of intentional self harm. Furthermore, your GP does not consider your depression serious enough to warrant a referral to the Hounslow Community Mental Health Team as, in his opinion, you do not need a consultant's input.

- 20 Your depression is being treated with 20mg of Fluoxetine.

- 21 The DMO reviewed the information on your file in respect of your depression and concluded "[your] depression has not necessitated psychiatric referral and has been

¹ I appreciate that the DMO has provided his opinion without having physically examined you. I have therefore taken the absence of examination into account when balancing the DMO's opinion.

treated at basic level only". The DMO did not feel that your depression hinders your ability to fend for yourself without injury or detriment when street homeless.

- 22 I am of the opinion that your depression does not render you less able to fend for yourself than the ordinary homeless person so that injury or detriment to you will result when a less vulnerable man would be able to cope without harmful effects.

Small gall bladder stone

- 23 I note the 4 Ways Healthcare letter dated 06 May 2009 which confirms that examinations show that your "GB [gallbladder] is partially distended and contains a small stone, it measures 3mm. The GB wall is normal in calibre."

- 24 In a letter dated 11 May 2009, your GP, Dr. Vipin Patel, confirms that your ultrasound scan revealed that you have a small stone in your gallbladders. He goes on to suggest that this could be the cause of your tummy ache. Dr. Patel concludes this letter by stating "**please do not panic, this is not urgent**".

- 25 In a letter dated 08 July 2009, Mr. Ramesh, Consultant General and Colorectal Surgeon notes that you and your brother explored options of ultrasound guided lithotripsy which he confirmed was not a suitable technique for management of gallstones. Mr. Ramesh also states that he did not arrange any follow up but will see you again if the need arises.

- 26 The DMO examined your medical reports and records in this regard and concluded that "the gallstones are minor or treatable problem only".

- 27 I am of the opinion that your gallstones does not render you less able to fend for yourself than the ordinary homeless person so that injury or detriment to you will result when a less vulnerable man would be able to cope without harmful effects.

High blood pressure

- 28 I note in a letter dated 25 February 2010 that your GP, Dr. Vipin Patel, confirms that whilst you suffer from hypertension (raised blood pressure), you are taking oral medication (Amlodipine) and as such your blood pressure is "**adequately controlled**".

- 29 I am of the opinion that your high blood pressure does not render you less able to fend for yourself than the ordinary homeless person so that injury or detriment to you will result when a less vulnerable man would be able to cope without harmful effects.

Aches and pains

- 30 I note from your GPs letter that you are suffering from aches and pains which are due to your depression. You are taking a pain killer, Solpadol, to help alleviate or manage this pain. Furthermore, these aches and pains do not hinder your mobility. On your housing application you suggest that you can walk up a maximum of one flight of stairs without lift assistance.

31 I am of the opinion that your aches and pains do not render you less able to fend for yourself than the ordinary homeless person so that injury or detriment to you will result when a less vulnerable man would be able to cope without harmful effects.

Mobility

32 You suggest that you can walk short distances between bus stops and buses but are unable to walk long distances as this makes you dizzy and prone to falls.

33 Your GP confirms that you attend his surgery "on a frequent basis, a minimum of at least once every fortnight" which is demonstrative of the fact that your mobility is not hindered to the extent to refrain you from attending regular and frequent appointments.

34 I am of the opinion that your minor mobility issues do not render you less able to fend for yourself than the ordinary homeless person so that injury or detriment to you will result when a less vulnerable man would be able to cope without harmful effects.

COMPOSITE ASSESSMENT

35 You are a 30 year old single woman with no dependants and a number of friends and support network within the community. I note also that your brother has, in the past, accompanied you to a hospital appointment – which is demonstrative of the support available to you. You have a good knowledge of your entitlements and are literate and numerate. You also have a basic knowledge of the housing market and the ways in which this Council, together with other agencies, can support you. You attend your GP surgery regularly and keep abreast of your housing application.

36 I have taken all of your circumstances into consideration and have looked at your case:

37 *Contextually* – your situation and ability to cope when homeless;

38 *Comparatively* – your ability to fend for yourself when compared against the same ability of the 'ordinary homeless person'.

39 *Compositely* – considering all of the facts of your case

Contextual

40 I have considered your medical circumstances, as summarised above, and your ability to cope when homeless, i.e. without the prop of accommodation.

41 I am of the opinion that whilst you do suffer from low moods and negative outlook which leads to depression, this is being adequately treated through oral medication. I appreciate that your uncertain housing situation may lead you to feel upset and depressed but I do not feel that this will hinder you from managing your daily affairs when street homeless.

42 Your small gallstone and high blood pressure are treatable and minor by your GP's admission, are being treated. In my opinion, these do not render you unable to deal with daily tasks, even without the prop of accommodation.

43 Whilst the stress of being street homeless may raise your blood pressure, I am of the opinion that this can be treated through a higher dosage of medication and alternative measures.

Comparative

44 I have established your basic daily and medical needs and have compared your ability to carry out these activities against that of the ordinary homeless person' to ascertain whether you will suffer injury or detriment as a result.

45 Your basic needs are to eat, wash, and sleep.

46 Your medical needs are to obtain and take your medication and attend any appointments with your GP or other medical services.

47 When compared to the ordinary homeless person, you are not able to walk far distances as you become dizzy and prone to falls. However, even in light of this, your mobility is not hindered to such an extent so as to render you completely unable to move around. You can, and currently do, use public transport to get from place to place and even between short distances and this mode of transport will continue to be available to you if street homeless.

48 For most of the time, you are able to wash and cook independently. You suggest that your friends buy groceries for you because you often suffer from back pain and are unable to carry your groceries. On some occasions, your friends help you wash and get into and out of the bath/shower. I am of the opinion that this support network will continue to be available to you even if you were street homeless. Furthermore, you are able to utilise public transport to get to and from your appointments. When compared to the ordinary homeless person, I am of the opinion that you can carry out daily activities to meet your basic needs.

49 Whilst the ordinary homeless person will not need to visit the GP, or other medical professional as frequently as you require, I do not believe that this, in comparison, will significantly hinder your ability to cope on a daily basis. You have demonstrated an ability to visit your GP surgery regularly and I believe that you can continue to do so without the prop of accommodation.

Composite

50 I have taken all of your circumstances into consideration and have given regard to the general factors (as directed by the Code of Guidance):

51 a) The nature and extent of your disability which may render you vulnerable;

52 I note that you suffer from depression, small gallstone and high blood pressure. However, these are all being treated adequately. Your mobility issues have been addressed above. I do not believe that your conditions will worsen when you are street homeless as they can be adequately treated through increased medication and support which will continue to be available to you when you are street homeless.

- 53 b) The relationship between your disability and your housing difficulties;
- 54 I note from your previous accommodation history that your housing has always been tumultuous – it has varied from NASS accommodation to staying with various friends.
- 55 Whilst you suffer from depression, negative outlook, aches and pains and high blood pressure, this has not prevented you from taking proactive steps and looking into your various housing options and indeed, seeking legal and housing advice by attending appointments.
- 56 I have also considered the effect that your traumatic past has had on your current life and the way you manage. I am of the opinion that your past does effect your moods and outlook on life and I do not underestimate the trauma you have suffered in the past. However, I am of the opinion that you have a large support network, both social and medical, which can allow you to re-build your life and I conclude that you are able to do so without the prop of accommodation.
- 57 I do not believe that your disability/medical conditions are directly or solely attributable to your housing difficulties and neither does your housing difficulty directly derive from your disability/medical conditions.
- 58 c) The relationship between your disability and other factors
- 59 I understand that you are taking medication to alleviate your pain and have been referred to physiotherapy.
- 60 In relation to your depression, I note that you are taking medication to help control the symptoms and you have the support of a network of friends and family. There are also counselling services available should you require. These will continue to be available if you are street homeless.
- 61 It has been recommended that high blood pressure sufferers change their diet and engage in exercise, which I conclude are lifestyle changes.

CONCLUSION

- 62 Taking all of the circumstances of this case into account and looking at each of these factors both separately and all together, I find that you are not in 'priority need' according to the legislation and that this Council owe you no housing duty. The Council will however, provide you with advice and assistance. If you wish to seek the Council's advice and assistance please telephone: 020 8583 3842.

This letter represents the Council's decision on review and, under the Act, concludes all internal review processes. If you are dissatisfied with this decision, you may appeal to the county court on point of law relating to this decision under section 204 of the Act. Should you wish to do so, please note that such appeal must be made within 21 days of the date of service or receipt of this letter. For the avoidance of doubt, this notice is deemed served on 26 May 2010, being 2 days from the date of this letter if posted, and/or on the same day if hand delivered or served by electronic means, i.e. by fax or

email. This letter has been sent to your solicitors by fax (with the original to follow by post for their records).

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'R' followed by a horizontal line that ends in a small upward tick.

Ms. R Chhetri
Legal and Review Officer

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