



2 April 2015

PRESS SUMMARY

Nzolameso (Appellant) v City of Westminster (Respondent) [2015] UKSC 22
On appeal from [2014] EWCA Civ 1383

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Reed, Lord Hughes and Lord Toulson

BACKGROUND TO THE APPEAL

The question arising in this appeal is whether it is lawful for a local housing authority to accommodate a homeless person a long way away from the authority's own area where the homeless person was previously living.

Local authorities have a statutory duty to provide accommodation in their own area 'so far as reasonably practicable' under section 208(1) Housing Act 1996 ('the 1996 Act'). The accommodation must be suitable to the needs of the homeless person and each member of the household, and the location can be relevant to its suitability. Regard must be given to any guidance given by the Secretary of State for Communities and Local Government. While out of borough placements are not prohibited, the Homelessness (Suitability of Accommodation) (England) Order 2012 ('the 2012 Order') requires authorities to take into account the distance of the accommodation being offered from its district and the disruption to caring responsibilities or the education of any member of the household. The obligation to secure accommodation as close as possible to where the household had previously been living was strengthened by *Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012* ('the Supplementary Guidance'), including the need to seek to retain established links with schools, doctors, social workers and other key services and support.

The appellant is a single mother of five children aged between 8 and 14. She has serious health problems. In 2012 she was evicted from her privately rented home, in which she had been living since 2008, following the introduction of a cap on housing benefit, which left her unable to pay the rent. The respondent housing authority ('Westminster') accepted that she was unintentionally homeless and that it owed a duty to provide her with suitable accommodation. It offered her temporary accommodation in a house in Bletchley, near Milton Keynes, with a brief explanation that due to a severe shortage of accommodation it was not reasonably practicable to offer her a home in Westminster, but that this house was suitable in view of her circumstances. The children were not of GCSE age so Westminster considered it suitable for them to move schools.

The appellant refused the accommodation and Westminster served notice that its duty to house her had come to an end. Her application for a review of the decision was unsuccessful. Her appeals to the County Court and Court of Appeal were also dismissed.

JUDGMENT

The Supreme Court unanimously allows the appeal and quashes Westminster's decision that it had discharged its duty to house the appellant because she had refused suitable accommodation. Lady Hale gives the only judgment.

REASONS FOR THE JUDGMENT

The 1996 Act and Guidance

Local authorities have a statutory duty to accommodate persons within their area so far as this is reasonably practicable. Reasonable practicability imports a stronger duty than simply being reasonable. Where it is not reasonably practicable to accommodate ‘in borough’ they must generally try to place the household as close as possible to where they were previously living. The combined effect of the 2012 Order and the Supplementary Guidance has changed the legal landscape when dealing with ‘out of borough’ placement policies [19]. As an aspect of the suitability of the accommodation being offered, a decision to place an applicant out of borough falls within the grounds on which a review can be sought under section 202 of the 1996 Act [20].

The children’s welfare

The exercise of the local authority’s functions under the 1996 Act is subject to section 11(2) of the Children Act 2004, which requires it to have regard to the need to safeguard and promote the welfare of children. Welfare encompasses physical, psychological, social, educational and economic welfare [23] and the duty applies both to the formulation of general policies and practices and to their application in an individual case [24]. The duty is clearly relevant to the question of the suitability of the accommodation being offered [27]. It does not, however, require that the children’s welfare should be the paramount or even a primary consideration [28]. There will almost always be children affected by decisions about where to accommodate households to which the main homelessness duty is owed, and invidious choices between them must sometimes be made, but this points towards the need to explain the choices made, preferably by reference to published policies [30].

Evidencing and explaining the authority’s decisions

The Secretary of State intervened in the case to emphasise the duties on local authorities to evidence and explain their decisions [31]. It must be clear from the decision that proper consideration has been given to the relevant matters required by the 1996 Act and accompanying Code. The courts below were too ready to assume that Westminster had properly complied with its statutory obligations, which had the effect of immunising from judicial scrutiny automatic decisions to house people far from their home district [35].

This case

The decision made in the appellant’s case suffers from these defects and more. No enquiries were made to assess the practicability of moving the family to Bletchley or as to the children’s needs, and no consideration seems to have been given to the duty to offer accommodation as close by as possible or explanation given [36]. It follows that Westminster still owes the appellant a duty to secure suitable accommodation.

Guidance

Ideally each local authority should have an up to date publically available policy for securing sufficient units of temporary accommodation to meet the anticipated demand for the coming year, reflecting its obligations under the 1996 Act and the Children Act 2004. It should also have a policy for the allocation of those units to individual homeless households, to which reference would be made in explaining any decisions to accommodate a household out of the area [39]. This way decisions will be properly evidenced and explained, and can be challenged if required [41].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>