



Press Summary

28 November 2023

R (on the application of Imam) (Respondent) v London Borough of Croydon (Appellant)

[2023] UKSC 45

On appeal from [2022] EWCA Civ 601

Justices: Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Richards, Lord Burnett

Background to the Appeal

The issue in this appeal is whether, and if so in what way, a local authority’s lack of financial or other resources should be taken into consideration when a court is deciding whether to grant a mandatory order against the local authority to enforce its statutory duty towards a homeless individual under section 193(2) of Part 7 of the Housing Act 1996 (the “Act”).

The respondent, Ms Imam, is disabled and has to use a wheelchair. She has three children. In 2014 she applied to the local housing authority, London Borough of Croydon (“LBC”), for assistance as a homeless person. Part 7 of the Act makes provision for assistance to be provided to the homeless by local housing authorities. Section 193(2) sets out the main housing duty owed to persons with priority needs who are not homeless intentionally. LBC has provided Ms Imam with temporary accommodation comprising a three-bedroom house (the “Property”) since September 2014 under Part 7 of the Act. LBC accepts that (a) the Property is not suitable accommodation, having regard to Ms Imam’s disability, and (b) it is in breach of section 193(2) of the Act by not offering her suitable alternative accommodation. Part 6 of the Act is concerned with allocation of housing accommodation on a secure, non-temporary basis. Ms Imam is on the waiting list for re-housing in a wheelchair adapted property under Part 6.

Ms Imam brought a claim for judicial review of LBC’s conduct in relation to her. She sought a mandatory order to require LBC to secure suitable accommodation for occupation by her and her household under Part 7 (ground 1); declaratory relief and damages for breach of the Equality Act 2010 (ground 2); and an order requiring LBC to reassess her priority on its housing register under Part 6 (ground 3). The High Court allowed the claim in part on ground 3 but dismissed it on grounds 1 and 2. The Court of Appeal granted permission to appeal on ground 1 only. It allowed her appeal on the basis that the High Court had considered budgetary constraints to which LBC was subject to be a valid excuse for LBC’s non-

compliance with its statutory duty under section 193(2); it was for LBC to demonstrate reasons why a mandatory order should not be granted against it to require it to comply with its duty to provide Ms Imam with suitable accommodation; and it was appropriate to remit the case to the High Court for that issue to be examined in greater detail. LBC now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. The case is to be remitted to the High Court for further consideration with fresh evidence. Lord Sales gives the only judgment, with which the other Justices agree.

Reasons for the Judgment

The starting point is that LBC is subject to a public law duty imposed by Parliament by statute which is not qualified in any relevant way by reference to available resources. The substance of a duty imposed on a public authority might be undermined if, when breached, courts routinely declined to enforce performance through a mandatory order on the ground of insufficient resources. However, remedies in public law are discretionary and the court should only grant a mandatory order where that course is properly justified [39]-[43]. The court takes a number of factors into account, including the availability of alternative remedies, whether compliance with a mandatory order would be impossible, and the additional impact of a mandatory order such as its potential to disrupt existing plans for the allocation of the authority's resources [44]-[52].

Where a housing authority like LBC is in breach of its duty under section 193(2) the onus is on the authority to explain to the court why a mandatory order should not be made to compel it to comply with its duty [53]. LBC in its evidence has not sufficiently explained its situation regarding suitably adapted properties it might have in its portfolio to allow a court to assess whether a mandatory order requiring it to provide such a property should be refused [57]. If LBC in fact held such properties in its portfolio, it had a choice whether to assign them for allocation under Part 6 of the Act or to use them to meet its duties under Part 7. In making this choice, it is relevant that allocation of suitable accommodation under Part 7 in a case like that of Ms Imam is a matter of binding legal obligation whereas to make properties available for the purposes of allocation under Part 6 is a matter of discretion, so priority should be given to meeting obligations under Part 7 [55], [57]. Where Parliament imposes a statutory duty on a public authority to provide a specific benefit or service, it generally does so on the footing that the authority must be taken to have the resources available to comply with that duty. A court is not entitled to absolve an authority in any general way from complying with such a duty by reason of unparticularised claims that the resources available to it are insufficient [59].

On the other hand, for reasons to do with the democratic authority and institutional competence which a housing authority enjoys by comparison with a court, the Supreme Court rejects the further submission by Ms Imam that a mandatory order should be made even if it transpires that LBC has no suitable property currently available which it could use to house Ms Imam and her family, so that it would be required to buy in such a property. Such an order would have the practical effect of requiring an authority to divert funding from allocations already made in its annual budget across the whole range of functions imposed on it by Parliament which it has to fulfil, and such a degree of disruption of the authority's decision-making would not be justified [60]-[62].

The Supreme Court gives guidance in relation to the exercise of a court's discretion as to remedy in this kind of case. First, if there is a general contingency fund to deal with

unexpected calls for expenditure, LBC should explain why this cannot be used to meet its legal obligation to Ms Imam [66]. Second, it is relevant for a court to consider the length of time an authority has been on notice of, and failed to take the opportunity to react to, a problem in relation to the non-performance of its duty. A court cannot provide encouragement for what would amount to a settled position of the authority to act in disregard of the duty imposed on it by Parliament [67]. Third, a court should consider the extent of the impact on the individual to whom the duty is owed. The less serious the impact on the individual from non-compliance, the less compelling will be the grounds for making an immediate mandatory order with potentially disruptive effect [68]. Fourth, if there is no sign that the authority is moving to rectify the situation and satisfy the individual's rights, that is a factor pointing in favour of the making of a mandatory order [69]. Fifth, a court should take care not to give a claimant undue priority over others who may have an equal or better claim compared to the claimant. In this respect, however, it remains important to draw a distinction between a mere discretion to allocate property under Part 6 and the statutory duty owed under section 193(2) of Part 7. Upon remittal of the case to the High Court, further evidence should be provided by LBC and Ms Imam. LBC should submit proposals to the court on how to proceed in respect of any competition for suitable properties between individuals, including Ms Imam, who are owed a duty under section 193(2) [70].

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: [Decided cases - The Supreme Court](#)