

## Case Briefing

### **Giving reasons to homeless applicants – Akhtar -v- Birmingham CC [2011] EWCA Civ 383 (Kay V-P, Rimer & Etherton LJJ)**

#### Background

Birmingham accepted that the Appellant was homeless, eligible for assistance, in priority need and not intentionally homeless so that they owed a duty to secure that accommodation becomes available for their occupation – s.193(1) and (2) of the Housing Act 1996 (“the Act”). The duty continues until it ceases by virtue of any of the exhaustive list of provisions in the rest of s.193, including where the applicant is are refuses a final offer of accommodation under Part VI of the Act – s.193(7).

The local housing authority may not make such an offer unless they are satisfied that the accommodation is suitable and that it is reasonable to accept the offer – s.193(7F) of the Act.

There must be a proper inquiry into suitability before a determination is made that particular accommodation is suitable and the question of suitability must be addressed at the time when the accommodation is provided – *R (Best) v Oxford CC* [2009] EWHC 608 (Admin).

The Act imposes a duty on a local housing authority to provide reasons for decisions under ss.184(3), 203(4)(a) and 203(4)(b) of the Act but not as to why an authority regards offered accommodation as suitable or reasonable to accept in accordance with s.193(7F).

The governing principle as to when the common law will impose a requirement to give reasons was set out by Lord Bridge in *Lloyd -v- McMahon* [1987] AC 325 at 702-703, quoted by Lord Donaldson MR in *R -v- Civil Service Appeal Board ex p Cunningham* [1992] ICR 816 at 826E-G:

“the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

#### Facts

Birmingham accepted a duty to secure suitable accommodation for the Appellant and her 7 children. They made five offers, the first four of which they accepted on review were not suitable. The last of those first four offers was in the Kingstanding area of Birmingham. The

Appellant had objected to the location and assumed that that was at least part of the reason why her review was successful. In fact, Birmingham had decided that the offer was too small for her large family but they did not tell her that at that time.

When the fifth offer was also in Kingstanding, the Appellant thought she could refuse it for the same reason. It was only after the offer was no longer open that Birmingham informed her of the true reason why they had upheld the previous review. By that time, it was too late to correct her mistake. She argued this was unfair and Birmingham should have given reasons:-

- a. In the letter upholding the review on the fourth offer. The true reasons for upholding the review had been recorded in a very brief file note which could easily have been put in the letter.
- b. In the letter making the fifth offer which also stated that Birmingham regarded the offer as suitable and reasonable to accept. Birmingham had a duty to assess suitability at this point and so could have put their conclusions from that assessment in their letter. HHJ Worster held in the County Court that Birmingham had actually failed to comply with this duty and so had not carried out the relevant assessment.

The county court appeal was rejected and the Appellant appealed to the Court of Appeal.

#### Held

The Court of Appeal rejected the appeal. Etherton LJ gave the sole judgement:-

1. Counsel for the Appellant made five propositions that counsel for the Respondent (and, by implication, the court) accepted [26]:-
  - a. there is no general duty to give reasons for administrative decisions;
  - b. in an appropriate case, a duty to give reasons will be implied at common law where necessary to ensure fairness;
  - c. the categories of case in which the common law will imply such a duty are not closed or fixed;
  - d. there is no general principle other than fairness to determine whether reasons should be given; and
  - e. it is necessary to look at the features of each case to see whether there is a duty or not.
2. This appeal was a second appeal. It raised issues of sufficiently wide significance to warrant permission to appeal pursuant to CPR 52.13. [38]
3. The only issue on the appeal was whether the facts of the present case were such that the omission of reasons from the two relevant letters of was so unfair as to be in breach of the Respondent's duty at common law. The Court of Appeal agreed with the County Court judge, substantially for the reasons he gave, that the facts of the present case were incapable of giving rise to such a duty. [39 & 40]

4. A favourable review decision which fails to address adequately or at all one of the grounds submitted for the review is not capable of appeal to the county court under s.204 of the Act because:
  - a. the review officer is not obliged to deal with every objection to the property [42],
  - b. there is no authority on the subject [43],
  - c. it is trite that an appeal is against an adverse order [44],
  - d. s.203(4)(b) of the Act (duty to give reasons when confirming a previous decision to refer an applicant to another authority) refers to the resolution of a review against the applicant, not to the confirmation of a decision which plays no part in the resolution of the review in favour of the applicant [45].
5. It would serve no purpose to require every offer letter to give reasons explaining why the offered property is considered to be suitable and reasonable for the applicant to accept. [46]
6. The particular features of the present case did not require a specific explanation as to why the offered property was considered suitable. The Appellant's assumption that she had been successful in all of her objections to the previous property was not a reasonable one. [47]
7. Any unfairness to the Appellant was avoided by the prominent warnings in various letters of the consequences of refusing a final offer and by notification of her ability to accept the offer and still challenge it on review. [48]

#### Analysis

This decision does not entirely close the door on the argument that a local housing authority is obliged to give reasons for homelessness decisions where there is no specific statutory duty to do so but it comes very close. It would take an exceptional set of unfair circumstances to be able to imply a duty to give reasons.

One of the arguments in favour of giving reasons in an offer letter was that this would be the only mechanism for enforcing the local housing authority's duty to make an assessment of suitability at the time of making the offer. The Court of Appeal did not address this point.

This case confirms the point already known to experienced homelessness practitioners that applicants should be advised, if they are considering rejecting an offer of accommodation, to accept the offer and challenge its suitability later.

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