

FIREPROOF DECISIONS

Chair:

RANJIT BHOSE

Speakers:

WAYNE BEGLAN

KULJIT BHOGAL

CLARE PARRY

OUTLINE

- ❑ Overview of Part VII: Clare Parry
- ❑ Caselaw update: Kuljit Bhogal
- ❑ Practical problems: Wayne Beglan

INQUIRIES

- What is “necessary” to the decision
- BAYANI: scope and scale for LHA
- CRAMP: inquiries on the review? What is suggested?
- Detailed inquiries allow clear reasons to be provided

INQUIRIES 2

- Practical points:
 - Who made the note;
 - legible notes;
 - times dates recorded;
 - persons spoken to
- Interviews: Q&A format can be useful
- Can they reasonably be relied upon?

INQUIRIES 3

- Is there a conflict on the factual material
- If so, what needs to be put?
 - “confidential material” from third party
 - Anything on which applicant could be expected to respond on facts
- How to do it? Interview?

INQUIRIES 4

- Doubts =/ conflict on facts
- Conflict on facts can be resolved.
- Can make reasonable inferences
- Reasons need to display logic in inferences

INQUIRIES 4

- So can **reject** evidence which is **probably wrong**
- **Essential difference between assumption and weighing conflicting evidence**
- **Set out reasons with clarity – check essential points have been put**

INQUIRIES 5

- Regulation 8(2)
- HALL
- Need for prejudice
- Reviewer can look at fairness of procedure

INTENTIONALITY

- A deliberate act or omission (or series)
- Causation – AJAYI: for authority
- Multiple causes – WATCHMAN: mortgage / job
- Ceasing to occupy “accommodation” – the limits
 - KHAN
 - LEE-LAWRENCE

PRIORITY NEED

- Vulnerability: PEREIRA
- The OHP: YETER / TETTEH – infirmities
- OSMANI
- GRIFFIN – risk of serious harm may= det.

PRIORITY NEED (2)

- Treatment of medical evidence
- Reasons from CMA: §§38-42

REFERRALS

- OZBEK
- BETTS: “real connection”
- So e.g. presence of family association not, per se, enough

INTERIM HOUSING – S.188(1)

- S.188(1)
- Hard to challenge
- “Reason to believe”
- Some material – v. low threshold

INTERIM HOUSING – S.188(3)

- S.188(3)
- Only required to exercise on request: WALTHAM FOREST
- Much easier to defend that s.188(1)
- MOHAMMED / NACION
- Can say will only provide in exceptional case
- LUMLEY

INTERIM HOUSING - S.188(3)

- MAIN 3 CONSIDERATIONS

- Merit of case on review

- New information

- Personal circumstances

INTERIM ACCOMMODATION - S.204A

- NACION
- New gateway condition: substantial prejudice in appeal
- Unlikely to be new information of relevance

APPEAL – S.204

- Powers limited to error of law
- Can uphold if error makes no difference
- Supervisory role, not appellate

WITNESS STATEMENTS

- Can be used to make reasons clear:
ERMAKOV
- Can be used to say what was taken into
account: HIJAZI
- Can be used to provide additional reasons:
HOBBS

END OF SESSION 1

SESSION 2 – CASELAW UPDATE

OSEI [2007]

- IH case - surrender of tenancy in Spain
- No real security in premises in England
- LHA held IH - court upheld
- Reminds can TIA status of premises in England in determining RTCTO

DENTON [2007]

- IH case - twenty something failing to obey reasonable “house rules”
- Can ignore “misbehaviour” of the applicant in deciding RTCTO
- Restatement of 4 requirements of IH (§§3-5). Ex parte P approved (§§24-25)

WATCHMAN

- IH – multiple causes
- For LHA to choose effective cause
- Ws entered into unsustainable mortgage and Mr W later lost job
- LHA held job “accelerated” HLN. Appeal dismissed

RJM [2007]

- Concerned payment of disability premium whilst accommodation available - RJM became homeless and SoS decided not to pay the premium
- Being a rough sleeper is not a “personal characteristic”
- And so cannot found A14, A8 claim

GILBY [2007]

- IH – settled accommodation
- 3 years in accommodation on informal licence
- LHA found not settled. Appeal dismissed

STEWARD [2007]

- IH – settled accommodation – other break in chain
- S left residential accommodation to live in caravan on various plots of land for 6 years
- LHA held no break in chain. Appeal dismissed.

SHALA [2007]

- PN – approach to medical evidence
- CA gave general guidance. See notes
- Suggest form for preparation of reports
- Emphasises need for good reasons and careful treatment of medical evidence

ABDI [2007]

- Section 184 decision
- Same officer made s.188(3) decision on interim housing
- Appeal dismissed

AHMED [2007]

- S.193(7) offer
- Challenge to whether “reasonable to accept”
- A feared racial violence – whether reasonable fear
- Reviewer gathered material not available to APP
- Held he could rely on that material

WILLIAMS [2007]

- Whether accommodation suitable
- Whether further enquiries necessary:
applied Cramp
- Decision upheld, appeal dismissed

OMAR [2007]

- S. 193(7) offer
- Offer did not state it was a final offer for the purposes of s.193(7)
- CA held the letter was very clear as to the status of offer and consequences of refusal, ‘literal and slavish repetition’ of the exact words of the subsection were not required

EREN [2007]

- IH
- Failure to mention previous homeless application to different authority
- LHA's appeal allowed

NEXT SLIDES

- CASES FROM 2005 – 2006

ROBINSON [2006]

- Cannot postpone making decision
- 17 year old shortly to be 18
- LHA suggested mediation knowing would probably turn 18 in meantime
- Unlawful
- Potentially wide implications in prevention

M v H&F LBC [2006]

- 17 year old child
- Presented and dealt with pursuant to HA
- Argued she was CA child in need
- Rejected: nothing in circs to say was “looked after” and t.f. Not “eligible” or “relevant” child
- No disability – nothing to suggest unwell

CONVILLE [2006]

- Intentionality - length of provision under s.190(2)
- Length cannot depend on factors peculiar to authority
- LHA resources – demands irrelevant
- Must be “subjective” assessment

DESNOUSSE [2006]

- Accommodation under s.188(1)
- Whether attracts PfEA protection
- Majority followed MANEK v RBKC
- No: because not “occupied as a dwelling under a licence”

LEE-LAWRENCE [2006]

- Intentionality - requirement of “occupation”
- “Occupation” of less than 1 month
- No evidence of physical occupation
- Payment of rent, council tax, completion of benefit forms etc. can be used in support without evidence of physical occupation

OZBEK [2006]

- Local connection - referral under s.199(6)
- Treatment of “family associations”
- LHA entitled to follow the referral guidelines
- Must retain “open mind”
- “Model letter”

GRIFFITHS [2006]

- Suggestion that fixed term AST could not be used for s.193(5) accommodation based on HA 2002 amendments
- Rejected
- Restated that temporary accommodation may be temporary accommodation

DEUGI [2006]

- LHA withdrew a difficult decision
- Q whether appeal can continue
- CA said yes
- Everyone now pursuing variations on that basis
- Argue restricted to WEDNESBURY cases

CROSSLEY [2006]

- Reasons case – former drug user
- Fact sensitive case
- Review case essentially a “special reasons” case
- CA held that letter did not really acknowledge let alone GRAPPLE with that issue

SLAIMAN [2006]

- Extending time for review
- May be required to address merits where they are obviously strong
- But apart from that not bound to do so
- Generally wise to
- Along with level of delay, reasons for the delay etc.

AW-ADEN [2005]

- Relevant facts – s.191(2)
- OBEID approved (c.f. O'CONNER):
 - "The effect of those judgments, as I understand them, is that an applicant's appreciation of the prospects of future housing or future employment can be treated as 'awareness of a relevant fact' for the purposes of this subsection, provided it is sufficiently specific (that is related to specific employment or specific housing opportunities) and provided it is based on some genuine investigation and not mere 'aspiration'."

BADU

- S.185(4)
- Declaration of incompatibility
- No change to statutory scheme
- Approach to s.17, s.2, s.193(2)

KHATUN v NEWHAM [2005]

- Suitability case
- Held: No right to hearing under Part VII
- Subjective view of applicant is not relevant to suitability per se
- Can depart from guidance with good reason – here moving people from B&B in quickest possible time
- Policy “not so oppressive as to be perverse”

END OF SESSION 2

SESSION 3 – PRACTICAL TIPS

RECONSIDERATIONS

- Can do it: DEMETRI
- Be ready to consider
- Make clear nature of revisit
- Early concession can save costs: BOXALL

REASONS

- PANACEA: TIA / fTIA / inquiries / perversity
- INTELLIGIBLE
- ADEQUATE
- GRAPPLE with the points made.

REASONS 2

- But can be given shortly
- Are entitled to a “reasonably liberal” reading
- And to read as whole – do not need to X-refer
- See notes for suggested rough format

REASONS 3

- Use or adopt paragraph numbers / subheadings
- Return to test at end of letter in summary and show *application* of test
- In PN remember to focus on what if HL
- Re-read a letter – get a colleague to proof

REASONS 4

- CRAMP: Can focus on representations
- O'CONNOR: But do not forget s.191(2)
- Re-read file to see if anything obvious but not in representations

REASONS 5

- Remember ability to use evidence if necessary
- ERMAKOV / HIJAZI
- Don't:
 - Include throwaway remarks
 - Be overelaborate
 - Forget you are the decision maker

INTENTIONALITY

- In temporary accommodation
- But has to be RTCTO at point of act / omission
- AWUA

RELEVANT FACTS

- S.191(2)
- Broad “any relevant fact”
- “good faith”: O’CONNER
- Wilful disregard is enough to fall outside
- Mere aspiration or hope not inside: OBEID
- Power of LHA as finder of fact

LAST WORD

- In PN see HALL / BELLOUTI
- In IH take care re 3Ps / inferences

ACCEPTING REFERRALS

- OZBEK – model letter
- BETTS – real local connection
- Practical points: clarity of communication
- Don't accept until sure – limited ability to re-open

EVIDENCE

- Opinion
- Assertion
- Evidence
- Weight: logic

END OF SESSION 3