Fresh facts or "more of the same"? Repeat homelessness applications

Zoë Whittington considers the recent High Court decision of R (on the application of Hoyte) v London Borough of Southwark [2016] EWHC 1665 (Admin) and the impact for authorities considering repeat homelessness applications which are similar to earlier applications.

In a judgment handed down on 8 July 2016, the High Court found that the decision of a local housing authority (LHA) not to accept a woman's third homelessness application within the space of a year was irrational.

In R (on the application of Hoyte) v London Borough of Southwark [2016] EWHC 1665 Admin the authority's refusal to consider Ms Hoyte's further homelessness application had been on the basis that, in the authority's view, the facts of her case had not changed since its earlier decision that she was not in priority need and the application was essentially "more of the same". The Court disagreed and found that the authority's conclusion that the application was based on the same facts was irrational in the Wednesbury sense. The evidence from Ms Hoyte's GP had been relied on heavily by the local authority in its earlier decision to make a finding (contrary to the evidence of a clinical psychologist instructed on Ms Hoyte's behalf) that she had, at that time, no active suicide plan or risk. By the time of the third application, however, the opinion of the GP had clearly changed. That being so, the new application could not be considered by any reasonable authority to be based on "exactly the same" facts, as was required following R v Harrow LBC Ex p. Fahia [1998] 1 WLR. Crucially, the local authority could not rely on facts which, although raised by the applicant in her previous application, had been rejected by the authority to now argue that 'the facts' on the new application were the same. That was irrational. The decision not to consider the application was therefore quashed, with the consequence that the authority would be required to consider the application as a fresh application in the usual manner.

Facts

Ms Hoyte, a 58 year old woman, had a history of mental health problems and diagnosis of depression. She was homeless and had been temporarily 'sofa surfing' between the homes of her two daughters. In June 2015 she made a homelessness application to the London Borough of Southwark and, following inquiries, she was found not to be in priority need as she was not significantly more vulnerable than someone ordinarily vulnerable as a result of being homeless (applying Hotak v Southwark LBC, Kanu v Southwark LBC and Johnson v Solihull MBC [2015] UKSC 30). The decision was upheld on review. At that stage there were references to depression and self-neglect but nothing regarding suicidal ideation.

Ms Hoyte subsequently obtained a report from a clinical psychologist who diagnosed Ms Hoyte as having a major depressive illness that was quite severe and provided the opinion that Ms Hoyte was "quite a high suicide risk". This was used to support a second homelessness application by her in October 2015. The local authority obtained a report from its own medical adviser who disagreed with the psychologist's opinion and the local authority preferred their adviser's opinion and found again that Ms Hoyte was not in priority need. On review, further records were obtained from the GP covering the period both before and after the psychologist's report. In upholding the decision on review, the local authority placed reliance on the fact that the GP had noted that Ms Hoyte had no thoughts or plans to self-harm and the reviewing officer preferred this view of the GP and the authority's own medical adviser to that of the psychologist. The authority's conclusion was that there was no

active suicidal ideation or planning and Ms Hoyte was not in priority need.

Following that decision, on 23 February 2016 Ms Hoyte received advice that she could not appeal the review decision and on 24 February 2016 she made plans to commit suicide. Those plans were intercepted and she instead saw her GP who concluded that she had "clear suicidal ideation" and made an urgent referral to mental health services. The mental health nurse who saw Ms Hoyte on 25 February found that she had "active suicidal thoughts with plausible evidence of plan and intent". A third homeless application was made by Ms Hoyte relying on the evidence of the GP and the mental health nurse. The local authority refused to accept the further application on the basis that it said there had been no material change in the facts which had led to the earlier decision because it had already been known to the authority when it made that decision that Ms Hoyte had depression and a history of suicidal ideation.

Ms Hoyte applied for judicial review of that decision, arguing that it was irrational to describe her application as factually identical to the earlier one because there was now active suicidal ideation as demonstrated by the new GP and mental health nurse evidence.

The Court's decision

The Court found that the local authority's decision – which was in essence a decision that the applications were factually identical - was irrational. In making that finding, the Judge found that the authority could not argue, as it tried to, that because the applicant had previously provided assertions of suicide risk that meant that the facts of the applications were the same. That was because the local authority had previously expressly rejected that those assertions by Ms Hoyte and not accepted that she was a suicide risk. On the contrary, it had specifically concluded that there was no significant suicide risk based on the GP's views at that time combined with its own medical adviser's opinion. That had been a decision which the authority was entitled to make but it could not then go back and refer to facts which Ms Hoyte had asserted as part of her application but had been rejected in the authority's decision. The Judge said that a person who has been presented with evidence but rejected it cannot reasonably then say that they had been aware of the facts which that evidence related to when they are presented with new evidence of the fact that was alleged. It was held, following Begum (Rikha) v Tower Hamlets LBC [2005] EWCA Civ 340, that the facts behind an application had to refer to the facts that were in the decision maker's mind at the time of the decision and not merely the facts that were asserted but were not accepted by the decision maker.

The events of 24 February 2016 together with the new medical evidence resulting of those events were not simply new evidence of an existing situation but new facts and required fresh consideration. Further, since the local authority had previously placed significant reliance on the GP's views, it was irrational of the local authority to say that the facts were exactly the same when the GP's views had clearly changed.

Comment

Anecdotally it seems that repeat homelessness applications are becoming an increasing problem for LHAs. The impact of them on the already strained resources of all authorities, and especially those in the London area (as in this case), cannot be underestimated. Each separate application requires considerable resources in order to complete the necessary interviews and inquiries on the application, as well as to deal with the reviews if a negative decision is given and the individual exercises his or her right to seek a review. This pressure of authorities formed part of the respondent authority's submissions, however it is clear from the judgment that local housing authority's must be very careful to ensure that any decision not to consider a further application is

properly one where the facts are genuinely not new. Applications may seem very similar to earlier ones but the test of being factually identical would appear to be quite a high one and authority's need to be mindful of any changes at all. Crucially, this decision makes it clear (and perhaps clarifies a point which was not clear from the previous case) that what matters when it comes to making this decision is how the authority treated the asserted facts in its previous decision and not merely the fact that the applicant asserted them previously. If, as here, the authority has rejected in an earlier decision some fact asserted by the applicant, the authority will not be able to rely on that asserted 'fact' as the basis of saying that the application is based on the same facts as previously.

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