Hotak, Johnson & Kanu one year on

A report[1] recently published by *Crisis*, the charity for single homeless people, says this in relation to the May 2015 ruling of the Supreme Court in the conjoined appeals of *Hotak v Southwark LBC; Johnson v Solihull MBC & Kanu v Southwark LBC* [2015] 2 W.L.R. 1341

> "*This ruling should have marked an important development in terms of defining vulnerability, but its impact appears to be limited. The last release of statutory homelessness statistics showed that the proportion of applicants accepted as homeless and deemed vulnerable remained fairly steady at 26 per cent. As part of the latest Homelessness Monitor England 2016 report, local authorities were asked about the implications of the ruling, and whether it is likely to mean that a higher proportion of their single homeless applicants will be accepted as being in priority need as a result. Just over half of councils anticipated that the ruling would have little impact on their practice (51%), while about one third (34%) felt that it would make some slight impact.*"

This is unsurprising. The *ratio decidendi* of the Supreme Court's decision on the correct approach to identifying vulnerability appears at paragraphs 53 and 58 of the judgment of Lord Neuberger PSC:

> "[*53] … I consider that the approach consistently adopted by the Court of Appeal that 'vulnerable' in section 189(1)(c) connotes 'significantly more vulnerable than ordinarily vulnerable' as a result of being rendered homeless, is correct …*
>
> *[58] … I consider that, in order to decide whether an applicant falls within section 189(1)(c), an authority or reviewing officer should compare him with an ordinary person, but an ordinary person if made homeless, not an ordinary actual homeless person.*"

The Supreme Court thus approved the comparative approach to assessing vulnerability, though with some modification to the comparator to be applied. Moreover, by refraining from further defining the test, or giving any colour to the adverb "significantly", the Court clearly intended this to remain what Lord Walker of Gestingthorpe had described in *Runa Begum v Tower Hamlets LBC* [2003] 2 A.C. 430 as "*an exercise, and sometimes … a very difficult exercise, of evaluative judgment*" for local authorities.

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[1] The homelessness legislation: an independent review of the legal duties owed to homeless people http://www.crisis.org.uk/data/files/publications/The%20homelessness%20legislation,%20an%20independent%20review%20of%20the%20legal%20duties%20owed%20to%20homeless%20people.pdf

Consequently, local authorities now have to decide, by reference to a person who becomes homeless, whether the applicant's vulnerability is significantly greater or not. In substance that is not so far removed from a test which requires the authority to compare the applicant with a person who is "less vulnerable".

Kelvin Rutledge QC