



Neutral Citation Number: [2014] EWCA Civ 41

Case No: B5/2012/3364

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM BIRMINGHAM COUNTY COURT
Ms Recorder Mountfield QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/01/2014

Before :

LADY JUSTICE RAFFERTY
LORD JUSTICE BEATSON

and

SIR ROBIN JACOB

Between :

Solihull Metropolitan Borough Council
- and -
Shamina Khan

Appellant

Respondent

Catherine Rowlands (instructed by **Solihull Metropolitan Borough Council**) for the
Appellant

The Respondent did not appear and was not represented

Hearing date: 21 January 2014

Approved Judgment

Lord Justice Beatson :

1. This appeal concerns the obligations of a local housing authority under section 193 of the Housing Act 1996 (“the Act”) when deciding whether its duty to secure accommodation is available for occupation by a homeless person has been discharged because the homeless person has refused a final offer of accommodation by the authority.
2. In an order dated 5 December 2012 in the Birmingham County Court, Ms Recorder Mountfield QC allowed an appeal under section 204 of the Act by Ms Shamina Khan against a review decision by Solihull Metropolitan Borough Council (“the Council”) dated 22 June 2012. The Council’s review decision was that it had discharged its duty to Ms Khan under section 193(2) of the Act by an offer of accommodation at 17/5 Wingfield Close, Chelmsley Wood, Birmingham made on 18 March 2012 which Ms Khan refused. The learned Recorder held that the Council erred in law and quashed the review decision.
3. Ms Khan has taken no part in this appeal. In a letter dated 5 April 2013, Eric Bowes & Co, the solicitors who acted for her before the learned Recorder, informed the Council that she had obtained accommodation in the private sector and that they were no longer acting for her. The Council, which has lost contact with Ms Khan, pursues the appeal for two reasons. The first is that, as a result of the Order, it potentially remains under a duty to her under section 193(2) and wishes to ensure that it is no longer bound to secure accommodation for her. The second is that the argument successfully advanced on behalf of Ms Khan before the Recorder is being advanced on behalf of other appellants in the Birmingham County Court. Having heard Miss Rowlands on behalf of the Council, we announced our decision to allow the appeal, and said that we would give our reasons subsequently in writing. These are my reasons for allowing the appeal.
4. The issue before this court is a narrow one, but it is of importance, both to local authorities and to homeless persons. It concerns the position of a local authority, when reviewing a decision to offer a homeless person accommodation in an area in which that person has stated he or she did not wish to be accommodated. In considering whether that person has unreasonably rejected an offer of accommodation, is the Council required to take into account the homeless person’s state of knowledge about the Council’s rejection of the person’s reasons for stating he or she did not wish to live in a particular area?
5. In the present case, Ms Khan stated in her application for housing as a priority need, made on 21 December 2011, that she could not live in Chelmsley Wood because of her fear of attack in that area from a gang associated with her husband. She gave as her preferred areas, Shirley, Solihull, Monks Path and Olton. As a result of investigations by the Council, it concluded that Ms Khan’s fear of attack in Chelmsley Wood was unfounded and the accommodation was suitable. Ms Khan’s case was that, despite being told by an officer of the Council that inquiries would be made about the gang, no one told her until after the review decision that the Council did not believe she had reasonable grounds for fearing living in Chelmsley Wood. The argument accepted by the Recorder was that where the person offered accommodation did not know that the reasons for excluding an area had been rejected by the Council, it was

not open to the Council to conclude that that person's rejection of the offer was unreasonable.

6. **The statutory framework:** The relevant provisions can be summarised briefly. By section 193(2) of the Act, a housing authority "shall secure that accommodation is available for occupation by..." persons with priority need who are not intentionally homeless, unless it refers their application to another local housing authority. The housing authority must (see section 193(7F)) be satisfied that the accommodation offered in a "final offer" is suitable and that it is reasonable for the homeless person to accept the offer. As the Recorder observed (judgment, [42]), *Ravichandran v Lewisham LBC* [2010] EWCA Civ 755 at [24] and [35(4)] makes it clear that that is a different question to whether the offer was one which it was reasonable for the housing authority to make. The Recorder also referred to the statement of Ward LJ in *Slater v Lewisham LBC* [2006] EWCA Civ 394 that suitability and reasonableness address different questions and cannot be dealt with compendiously. In assessing whether it was unreasonable for a homeless person to refuse an offer of suitable accommodation, Ward LJ stated (at [34]) that "the decision-maker must have regard to all the personal characteristics of the applicant, her needs, her hopes and her fears, and then, taking account of [those individual subjective factors], ask whether it is reasonable, an objective test, for the applicant to accept". The test, he stated, "is whether a right-thinking local housing authority would conclude that it was reasonable that *this applicant* should have accepted the offer of *this accommodation*".
7. By section 202(1A) of the Act a homeless person who has been offered accommodation has the right to request a review of the suitability of the accommodation. Where the homeless person refuses such a "final offer", if he or she has been told (a) that the possible consequence of refusal is that the housing authority's duty to secure accommodation will cease, and (b) of his right to request a review of the decision, section 193(7) provides that the housing authority's duty is discharged.
8. By section 204 of the Act a person who has requested a review and is dissatisfied with the decision on the review has an appeal on a point of law to the county court. The court can only interfere with the housing authority's decision on grounds similar to the well-known public law grounds for judicial review: see, for example, *Begum v Tower Hamlets LBC* [2003] UKHL 5 at [99].
9. **Statutory Guidance:** Housing authorities are required by section 182 of the Act to have regard to such guidance as is given by the Secretary of State. The provision of the Homelessness Code of Guidance for Local Authorities (2006), paragraph 6.15, states:

"The obligation to make enquiries and satisfy itself whether a duty is owed rests with the housing authority, and it is not for applicants to 'prove their case'. Applicants should always be given the opportunity to explain their circumstances fully, particularly on matters that could lead to a decision against their interests, for example, a decision that an applicant is intentionally homeless."
10. **The material facts:** What follows is primarily taken from [9] – [26] of the Recorder's judgment, but I also refer to a number of the documents before the Recorder.

11. At the material time Ms Khan was married with two young children. The matrimonial home was in Hall Green. Her husband was a violent and abusive alcoholic and drug user and she sometimes went and stayed with her brother in Shirley. In April 2011 Ms Khan's husband was assaulted at the matrimonial home, she was threatened, and her car windows were broken. At some time in the autumn, as a result of domestic violence, mortgage arrears and an alleged threat of repossession by the mortgagee, Ms Khan and her children left the matrimonial home and sought refuge with her brother, his wife and four children in Shirley. This meant that her brother's house was overcrowded.
12. I referred (at [5]) to Ms Khan's application on 21 December to be housed as a matter of priority and to her statement that she was not able to live in Chelmsley Wood and the reason for this. A note of her interview by a Council housing officer at the time of or shortly after the application records *inter alia* that Ms Khan feared "reprisals from her husband and his associates, who are known as the Hutton Crew" and the interviewer's statement that the Council "will be getting further information from the police".¹
13. In a letter dated 15 February 2012, from Mrs K Mitchell, a Housing Advisor, the Council accepted that Ms Khan was in priority need and that it had a duty to secure that accommodation was made available to her and her children.
14. When the Council investigated Ms Khan's claim to be at risk from the Hutton Crew, it concluded that she would not have been at risk because officers from community housing had no information about a gang named "the Hutton Crew" and because she was unable to provide any details of people associated with the gang or evidence of links between Chelmsley Wood and her husband and his associates. In her statement, Kim Holmes, a Housing Options and Homeless Manager employed by Solihull Community Housing Ltd, described the system which gives the homeless person two opportunities to make a bid for properties that are available, after which bids are placed on behalf of that person by the homeless officer. Ms Holmes' evidence is that Ms Khan exercised her personal bids, albeit unsuccessfully, on two properties in Chelmsley Wood, and stated that, in the light of this, she found it difficult to understand why Ms Khan claimed that the north of Solihull is an unsuitable area for her.
15. The next development was a further letter from Mrs Mitchell, dated 18 March 2012, offering Ms Khan 17/5 Wingfield Close. The letter stated that "acceptance of this offer would discharge the Council's duty under homelessness law", that an officer would be contacting her shortly to arrange a viewing of the property, and (highlighted by being underlined):

"This offer is the **final offer**, and it is considered that the accommodation is suitable and reasonable to accept. Therefore, should you refuse this final

¹ Paragraph 7 of Ms Rowlands' skeleton argument states that Ms Khan "alleged, for the first time, that [her husband] had links to a gang called 'the Hutton Crew' after she refused the offer of accommodation at 17/5 Wingfield Close in March 2012, but this cannot be correct:- (1) the index to the Appeal Bundle prepared by the Council's solicitor states the interview took place on 21 December 2011, and (2) the Recorder found (at [16]) that a Council officer told Ms Khan on 15 February 2012 that it would undertake enquiries about the Hutton Crew. Nothing turns on this but, in my assessment, 21 December is the more probable of the dates canvassed.

offer of accommodation, I must advise you that the duty to provide accommodation under homelessness legislation may cease.”

A document described by the Recorder as the final page of the letter dated 18 March contains a statement by the Council “on choice or the opportunity to express preference for accommodation”. It contains the following advice (in bold):

“If you are not sure of your position it is very important that you ask your Housing Adviser or Homelessness Officer before making any hasty decisions”.

16. Ms Khan did not follow that advice. She informed the Council that she did not wish to view the property and had decided to refuse the offer due to its location in Chelmsley Wood. The Recorder (judgment, [18]) stated that Ms Khan refused the offer because she did not consider the property was suitable. “She feared that she would be at risk from her husband’s violent associates in that area, and felt that she could not cope with living there without the emotional and practical support of her family”. The Recorder also stated that Ms Khan supported her reasons for refusal with a sympathetic letter from her GP.
17. In its decision letter dated 20 March 2012, the Council considered the reasons Ms Khan gave for refusing 17/5 Wingfield Close, and stated that it was nevertheless satisfied that the offer was a suitable offer of accommodation and “given the difficulty of availability and other demands on the housing stock, it was reasonable for [Ms Khan] to accept the property”. Accordingly, the Council’s housing duty ceased and no further offers of accommodation would be made.
18. As to Ms Khan’s fear from the Hutton Crew that she stated operated in the Birmingham and North Solihull areas, the letter stated that she was not able to provide names of the people who were allegedly a threat to her or contact details, and that Mrs Mitchell and colleagues, and a police officer based at North Solihull police station in Chelmsley Wood and his colleagues did not recognise the name, so that the Council was unable to verify the information supplied by Ms Khan.
19. In a letter dated 5 April 2012, Ms Khan’s then solicitors sought a review of the decision in accordance with section 202 of the Act. That review was conducted by Minos Perdios, who invited representations.
20. In the representations submitted by Eric Bowes and Co on behalf of Ms Khan, the decision was challenged on a number of grounds. Those relating to the issues in this appeal are grounds 2 and 5. Ground 2 referred to the domestic violence suffered by Ms Khan at the hands of her husband, who was stated to be “known to many gangs and the police” and to have “associates who reside in the north of the Solihull borough”. The fifth ground stated: “our client’s former partner clearly has associates and a network in the north of the borough. Our client feels intimidated and is genuinely afraid of him and reporting any trouble to the authorities”. Neither of these grounds specifically relate to fears of violence by the gang as opposed to by her husband. The focus of the challenge (see grounds 4, 8 and 9) concerned Ms Khan’s family and support network in the Shirley/Solihull area, the location of the school attended by her older daughter, the fact that the younger daughter had been offered a place in the nursery there, and her vulnerability and personal circumstances. She stated that the property offered was located too far from the family who provided her

with support and childcare, and that the property was located too far from her daughter's school.

21. In a letter dated 3 June, Mr Perdios informed the solicitors that he was minded to recommend that the offer of 17/5 Wingfield Close was suitable and reasonable for Ms Khan to accept and that the Council had met its duties to her under the Act. He invited representations to be made by 13 June. As to the matters that are germane to these proceedings, the Recorder summarised the decision letter at [23] and [26] of her decision. Mr Perdios rejected the assertion that the "Hutton Crew" gang existed or that any such gang was located in north Solihull. He stated that the fact that neither Council officials nor the West Midlands Police had any information about such a gang and that Ms Khan was unable to provide any names or contact details was clear evidence that no gang exists, and also showed that there was no evidence of links between Chelmsley Wood and Ms Khan's husband and his associates. He concluded that he was satisfied that, had she accepted the offer, she would not have been at risk of violence. The letter stated that the information before the reviewing officer showed that there was a threat to Ms Khan in south Solihull, and in particular the area of Shirley, because she lived with her husband within close proximity of that area and he knew the area very well and was aware of where Ms Khan's family live. The officer therefore rejected the assertion that Ms Khan felt safer in Shirley than in other parts of Solihull and in particular Chelmsley Wood.
22. Mr Perdios also stated (paragraph 18) that, although it would have been ideal for Ms Khan to be located very near to her family, had she accepted the offer made she would have been able to maintain all those links, and that he was therefore satisfied that it was reasonable for her to accept. He recognised that Ms Khan subjectively felt the property was not reasonable but, in the light of the decision in *Ahmed v Leicester City Council* [2007] EWCA Civ 843, he concluded that, since the evidence allowed him to consider that her beliefs were not objectively reasonable, he was entitled to find the property was reasonable for her to have accepted.
23. It is not clear whether further representations were made but, in a letter dated 22 June, the decision challenged, Gemma Thompson, of the Council's Housing Strategy, Policy and Spatial Planning Services, stated that the Council accepted Mr Perdios' recommendation, and that the Council had therefore discharged its statutory duties to her as a priority homeless person. The letter is in similar terms to Mr Perdios' "minded to recommend" in relation to the threat of violence, the existence of a gang called the Hutton Crew, the rejection of Ms Khan's assertion that she felt safer in Shirley than in other parts of Solihull, what was said about family support, and Ms Khan's subjective view that the property was not a reasonable one for her.
24. **The decision below:** I have referred to the Recorder's acceptance of the submission on behalf of Ms Khan that, because, before concluding that she had unreasonably rejected the offer, the reviewing officer and the Council did not make enquiries about what the Council had told Ms Khan about her fears, the Council had erred in law. The case put on behalf of Ms Khan was that, before she refused the offer, she did not know that the Council had made enquiries and rejected her case as to why she felt scared to live in Chelmsley Wood, or that the Council had taken the view that she would be physically unsafe if she lived in Shirley. The Recorder stated that Ms Khan had not been told this, either in the "final offer" letter or in any oral or written

communication before she had to decide whether to accept or reject the offer: judgment, [24].

25. The Recorder relied in particular (see judgment, [38] and [43]) on the judgment of Pill LJ in *Ahmed v Leicester City Council* [2007] EWCA Civ 843 at [18], [22] and [23] and on paragraph 6.15 of the Statutory Code which I have set out at [7]. In *Ahmed's* case, Pill LJ stated at [23] that “there may be cases where matters which arise on the review are such that they can only fairly be resolved if there is some dialogue between the reviewing officer and the [individual involved]”. The Recorder considered (judgment, [43]) that this was such a case. She stated (at [45]) “an important personal characteristic of [Ms Khan] was what she knew, or did not know, about the outcome of the [Council’s] enquiries into the factual basis for her fear for her personal safety in Chelmsley Wood, and hence her knowledge as to the [Council’s] state of mind in making an offer of accommodation in an area for which she had not expressed a preference, as a result of an internally generated ‘bid’”. The absence of a dialogue between the Council and Ms Khan on the outcome of the Council’s enquiries into the factual basis for her fear for her safety in Chelmsley Wood before that was used to determine an issue as to suitability against her interests was also, stated the Recorder (judgment, [45]), contrary to paragraph 6.15 of the Statutory Code.
26. The Recorder concluded (judgment, [43]) that, before reaching a decision on the objective reasonableness of Ms Khan’s decision to refuse the offer of accommodation, the Council’s reviewing officer “ought to have asked more questions”. By failing to do so, she stated that he “left out an important element of his enquiry into the objective reasonableness of [Ms Khan’s] refusal, namely her state of knowledge when she refused the offer”, which state of knowledge “was highly material to the objective reasonableness of her subjective state of mind”. Accordingly, (see judgment, [43]) “he failed to equip himself properly to have regard to all relevant considerations”.
27. **Analysis:** Miss Rowlands argued before this court, as she had before the Recorder, that to accept the submission made on behalf of Ms Khan would undermine the decision of this court in *Akhtar v Birmingham City Council* [2011] EWCA Civ 383. In that case, this court (see [46]) rejected the submission that, as a matter of principle, every offer letter should give reasons explaining why the offered property is considered to be suitable and reasonable for the applicant to accept. Etherton LJ, with whom Maurice Kay and Rimer LJ agreed, did so because it was implicit in any offer of accommodation that the housing authority did consider the questions of suitability and that it was reasonable for the homeless person to accept the offer. The Recorder does not expressly explain why she rejected this submission. It is possible that she considered that her decision was not inconsistent with the decision of this court in *Akhtar's* case because of the recognition by Pill LJ in *Ahmed's* case of the need for dialogue in some cases.
28. If that was her reason, in my judgment it overlooks the importance of Etherton LJ’s statement at [47] of *Akhtar's* case. He there rejected the submission that the homeless person was entitled as a matter of fairness to an explanation of the limited basis upon which a review had been successful, absent which he was allowed to assume that the housing authority had made a simple error in its subsequent offer of another property. He stated that was not a reasonable assumption for the homeless person to make because that person “could easily have obtained confirmation...by speaking to a responsible employee of [the housing authority]...”.

29. Applying that reasoning to the present case, if Ms Khan considered that, in view of her expressed fears about living in Chelmsley Wood, the Council had simply made a mistake in offering her accommodation there, the onus was on her to raise the point with the Council rather than simply to refuse the offer. I have referred to the prominent warning and advice to Ms Khan in the letter dated 18 March 2012 containing the “final offer”. The advice, in bold type, was that “if you are not sure of your position, it is very important that you ask your housing advisor or homelessness officer before making any hasty decisions”. The prominent warning was of the consequences of refusing a final offer. The letter also contained an explicit statement that Ms Khan could accept the offer but still challenge it by way of review. These are all safeguards designed to protect the homeless person and to avoid any potential unfairness to that person.
30. Accordingly, notwithstanding the careful and well-structured consideration by the Recorder of the position, I consider that she erred because the effect of her decision is substantially inconsistent with the decision of this court in *Akhtar*’s case. Its effect, in substance, would be to introduce an obligation to give reasons for the property offered, at least where the property offered is in an area which the homeless person has stated she does not wish to live.
31. The absence of a duty to give reasons in an offer and the consequent need for the homeless person who thinks that an offer is made in error to contact the housing authority and make enquiries before making a decision was said by Miss Rowlands to have an additional advantage. It enabled a hard-pressed housing authority to act more expeditiously because it was able to make its final offers in a standard format rather than in individually-crafted letters. In view of the particular pressures on Councils at the present time, this is indeed a practical advantage. Its benefits should, however, not be pressed too far lest housing authorities believe that they do not need to give individual attention to the particular position of the homeless person with a priority need. That person will have, as Ms Khan had, indicated needs and preferences in the initial application. The housing authority must take those into account, even if it is ultimately not able to meet them, whether because of scarcity of available housing in a particular area or, as in this case, because the factual premise for the needs and preferences has been rejected. In this case, however, it is not suggested that the Council failed to consider Ms Khan’s individual case.

Sir Robin Jacob:

32. I agree.

Lady Justice Rafferty:

33. I also agree.