

**IN THE CENTRAL LONDON COUNTY COURT**

Thomas More Building  
Strand  
London  
WC2A 2LL

BEFORE:

**HIS HONOUR JUDGE PARFITT**

BETWEEN:

**THOMAS**

**APPELLANT**

**- and -**

**LAMBETH BC**

**RESPONDENT**

**Legal Representation**

Nick Bano [counsel] on behalf of the Appellant  
Clare Parry [counsel] on behalf of the Respondent

**Judgment**

Judgment date: 16<sup>th</sup> March 2017  
Transcribed from 00:36:27 until 01:00:00 &  
00:00:00 to 00:02:19

Reporting Restrictions Applied: No

NOTE: The draft transcript was sent to the Judge for approval on 31.8.17, some 6 months after the judgment was given. The quotations within the judgment have not been checked in the absence of the papers in the case.

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**His Honour Judge Parfitt:**

1. This is my judgment in respect of an appeal under Section 204 of the Housing Act 1996 of a review decision dated the 25<sup>th</sup> October 2016. The issue is whether or not the Appellant was vulnerable for the purposes of the Respondent Local Authority of London Borough's housing duty.
2. Section 189 of the Housing Act 1996 provides that a person has a priority need for accommodation if they are vulnerable as a result of...mental illness or handicap.
3. The test for whether or not someone is vulnerable for the purpose of Section 189 can be found in *Hotak v Southwark* [2015] UKSC 30, in summary:
  - a) **Assessing whether someone is vulnerable involves looking at their situation in the round, and**
  - b) **the meaning of vulnerable denotes significantly more vulnerable than ordinarily vulnerable as a result of being rendered homeless, and**
  - c) **the correct comparison for the purposes of deciding whether someone is significantly more vulnerable is an ordinary person if made homeless.**
4. What is required is an intense focus upon the characteristics of the person under consideration and to see whether or not those characteristics would render that person more vulnerable relative to a normal person if that person was made homeless ("normal" in this context means a person without the particular characteristic(s) which make the comparison relevant).
5. The relevant characteristics of this Appellant are that she is a person with a history of depression which had on occasion manifested itself in suicidal thoughts and deliberate self-harm who at the material time was on an anti-depressant Sertraline. The Appellant was under the care of her GP regarding her condition.

6. The gist of Appellant's case is that in the decision of the 20<sup>th</sup> October 2016 the reviewer failed to have adequate regard to those characteristics because the reviewer ignored relevant evidence (or did not give it sufficient weight) and/or took into account irrelevant evidence (or accorded it too much weight). There are a number of grounds of appeal but ground 1, which I regard as most promising, focuses on the medical evidence.
7. On 11<sup>th</sup> August 2015 a Dr MacKay wrote a letter regarding the Appellant in which he said:

*This 31 year old woman is a patient of our Practice and has given us written consent to share her records. I understand she is applying for rehousing. I have met her once and have fully reviewed her medical records. It is clear that she is a vulnerable young woman, who has been a victim of personalised aggression, which has inevitably exacerbated likely predispositions to depression and anxiety. She has attended our Surgery this week with suicidal thoughts and a ramping up of her anxiety. There are prominent problems for her in getting out into any social context, with signs of hyper alertness, hyper arousal and exaggerated fear of people, whether strange or familiar. As a consequence, her coping strategies are significantly compromised at present and she will not cope with being homeless. There is a very high likelihood of a further deterioration in her mental health due to homelessness.*

8. And then in bold:

*Events in her history inevitably mean that both housing quality and a specific location are more than usually relevant in her symptoms and also please note her risk of harm.*

9. The Respondent Local Authority referred the Appellant's application to a group called Now Medical, who are said to be independent of the Respondent and provide medical reporting services. Now Medical provided a series of brief letter type reports which were relied upon in reaching the review decision under appeal.

10. I bear each of those letters in mind but I will not read them all out because they are in similar terms. The first is dated the 11<sup>th</sup> August 2015, it identifies the Appellant as the subject of the report, it refers to homelessness and vulnerability on medical grounds. It then lists the information considered, which for this first one on the 11<sup>th</sup> August, was the Appellant's declaration and an earlier letter from another Doctor familiar with the Appellant's file (and to similar effect of the later letter) that was dated 1<sup>st</sup> October 2014.

11. The conclusion of the Now Medical report expressed as follows:

**“The issues are DEPRESSION. The Applicant has a history of depression and I note has a history of suicidal thoughts and acts in deliberate self-harm. She has been treated with Sertraline 50mg, the standard anti-depressant in low dose, and has been referred for counselling which would be considered standard treatment. There is nothing to suggest that she has required urgent psychiatric intervention and there is no evidence in this case of a severe or enduring underlying mental illness such that would significantly affect her cognition or rational thought. Whilst I note that she has had suicidal thoughts, there is no evidence of significant concerns regarding intent in this case. There are no other relevant medical issues.”**

12. And then in summary:

**“For the reasons given above, I do not think the medical issue rendered the Applicant significantly more vulnerable than an ordinary person and I make no grounds for recommendations on specific medical grounds.”**

And then:

**“We will review this case with any updated information regarding the current mental state when it becomes available.”**

13. I have two immediate comments on that report, which apply equally to the other Now Medical reports relied upon in this case.

14. The first is that the conclusion expressed in those reports about the Applicant not being significantly more vulnerable than an ordinary person is not something which is within the reference points for the expert: it is a matter for the decision maker to reach their own conclusion upon based on the evidence.
15. The second point is that it is unhelpful for these reports to identify problems that the Appellant is not alleged to be suffering from (here a condition requiring urgent psychiatric intervention and/or a condition which would significantly impair her capacity) and then reach a conclusion based on the absence of those factors.
16. There is a sliding scale as to the ways in which potential depression might impact a person. Obviously, at one end of that scale are circumstances where a person will be significantly impaired in terms of their cognition or rational thought or have psychotic episodes. But just because somebody is not at the most serious end of the scale, does not mean that they may not be vulnerable as a result of how their particular condition impacts on them in particular circumstances.
17. None of these reports from Now Medical address the particularity of the Appellant's circumstances. Their logic is (a) to refer to what the Appellant's doctors say about her depression and suicidal ideation; (b) to say that what the Appellant is suffering from is not serious psychotic episodes or inability to have rational or cogent thought; (c) to conclude that because the Appellant is not within (b) that she is not more vulnerable than an ordinary person.
18. It is unfortunate and I think made the job of the Reviewing Officer much more difficult, that the Reviewing Officer was not given the benefit of a medical opinion which actually addressed the particular circumstances and particular consequences to the Appellant of her condition. It might have helped had someone from Now Medical taken the time to see the Appellant or indeed considered her medical records.
19. There were further reports from Now Medical but they did not take the quality of the evidence any further.
20. For example, on 18<sup>th</sup> August, a different doctor, Dr Thakore from Now Medical, updated the previous report taking into account the letter from Dr MacKay. The updated was in very similar terms to the earlier report and suffered the same faults:

*The evidence does not suggest that urgent community mental health team psychiatric intervention is required. No evidence of unstable psychotic tendencies or actual suicidal thoughts. With the proper emergency or acute psychiatric care, within the Applicant's ability to think rational, coherent thought processes will not be appear to be significantly abated.*

21. There were further reports from Now Medical but all contained the faults which I have already identified.
22. There was no medical evidence – other than that from the Appellant's doctors – which addressed the actual circumstances of the Applicant so as to provide helpful and material information to feed into the decision-making process for the Reviewing Officer.
23. This difficulty is reflected in the reasoning at page 5 of the decision letter.

*“You take 150mg of Sertraline as opposed to 50mg of Sertraline which was mentioned in the previous documentation and in the subsequent report. The normal range of treatment for Sertraline is 50 to 250mg daily. This lady is said to be still within the normal range of treatment for this medication. No other information has been provided that indicates you are otherwise significantly impaired cognition or rational thought. Nor to be suffering from any severe or enduring underlying medical condition. The reasons given above was it was thought the medical issues [and I summarise as I read], so the reasons given above, it was thought the medical issues do not render you significantly more vulnerable than an ordinary person. No housing recommendations were made on specific medical grounds. Having considered your health problems, along with all the medical advice provided, I still go back to the original decision, I do not feel that your medical condition so affects you in a way that you require support with daily activities. She was satisfied that you are independent in all areas of functioning, and capable of being able to find accommodation in the private sector.*

*You are observed to be in receipt of benefits, which also qualifies you for Housing Benefit assistance to pay the rent. Having given regards to your*

*contentions, medical report and independent advice, and carefully considering the reasoning of the original decision, I am not satisfied that you are vulnerable as a result of your health issues or circumstances as you contend. I am aware that relevant vulnerability may include but is not limited to, an inability to obtain housing when aided by the Housing Authority. Yes I have [inaudible] embraces any homelessness context in which the Applicant may significantly suffer, the level of injury or detriment which would not befall the ordinary person in a position of homelessness. I have also placed emphasis on the consideration of the assessment process does not a purely theoretical one, but intensely fact sensitive and practical for the purpose of identifying you to have a priority need for an allocation of accommodation from this Council's resources.*

24. And then there is reference to *Hotak*, and then the Reviewing Officer says:

*“If the effect of the evidence is that your circumstances are such that I am satisfied that you will not suffer significantly more than an ordinary person who is homeless, I can lawfully conclude that you are not vulnerable for the purposes of Section 189. At the present time, this is the conclusion I am minded to reach. I acknowledge your diagnosis of depression and you are taking medication to control the symptoms, which includes low moods and suicidal thoughts. Your report found you had difficulty trusting people though you were not [inaudible] yourself in public. You also reported a lowering of anxiety in seeking services as a result of your housing problems but your GP viewed that to cause significant attempt on social funding to be detrimental to your mental health. You are said to have been referred for counselling, which is considered the standard treatment.*

*However there is nothing to suggest that you require urgent psychiatric intervention or evidence of suffering a severe or enduring underlying mental illness such that would significantly affect your cognition or rational thought. I also note that you were [inaudible] to self-harming in the past by taking an overdose, but was rescued by your friend, although you did not require immediate medical attention to report it. Whilst noting suicidal thoughts, there was no evidence of significant concerns regarding*

*your intent in this case. Neither is there evidence that you suffer with a psychiatric condition such as psychotic illness. And then having to carefully consider medical reports with the difficulty with regards your diagnosis and the likely effect of your condition on homeless, I am not of the opinion that you would be significantly more vulnerable than an ordinary person who is homeless.”*

*“There is nothing to suggest from the information form that you require urgent psychiatric intervention. There is no evidence in the medical report that you suffer from severe or enduring underlying mental illness subsequently significantly affect reasonable, rational thought. Although you are said to have suicidal thoughts, there is no evidence of particular concern by your health providers regarding intent to pursue this.”*

25. The gist of the reasoning for upholding the decision is that the information provided by the Appellant’s own doctors do not show that she is suffering from substantial cognitive impairment or a psychotic condition and that accordingly, she is not vulnerable. I consider that that approach, which is formed directly from the Now Medical opinions, is fundamentally flawed. And it is flawed because it fails to address directly the Appellant’s medical evidence which was specifically, that (a) she had depression, (b) the consequences of that depression would be exacerbated by the threat of homelessness and (c) those consequences were likely to include an increased risk of suicide and/or self-harm.
26. There is no specific addressing of those circumstances by the Reviewing Officer (or by Now Medical) and it was those circumstances which were said to make the Appellant more vulnerable than a person who did not have those circumstances. In order to carry out a compliant review it was necessary to address those circumstances: was the Appellant more vulnerable than somebody who did not have that pre-existing depression with the related consequence or potential consequences, supported by the Appellant’s own medical evidence. It was that question that had to be addressed to provide a fair decision as to whether she was vulnerable within Section 189.
27. It is notable that the review letter does not specifically address at all Dr MacKay’s opinion that:

*“there is a ramping up of her anxiety as a result of the threat of her homelessness that she was under at that time. That as a result of those things, her coping strategies are significantly compromised and she will not cope if homeless. And a very high likelihood of a further deterioration in her mental health because of that homelessness”.*

28. It is those specific views of the Appellant’s doctor that she was entitled to have weighed in the balance and taken account of in order for a fair decision to be made about whether or not the Appellant was vulnerable for the purpose of section 189.
29. For those reasons I will allow this appeal and I will set aside the review decision.

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This Transcript has been approved by the Judge.

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