R. v. Wandsworth L.B.C., ex p. Dodia

Queen's Bench Division

July 18, 1997

Jowitt J.

Introduction

1. Prior to the commencement of the Housing Act 1996, the duties of local authorities towards the homeless were contained in Part III of the Housing Act 1985 (*Encyclopedia*, para. 1–0117 *et seq.*). For the purposes of Part III, a person became homeless intentionally "if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy": Housing Act 1985, section 60(1) (*Encyclopedia*, para. 1–0126). This definition of intentional homelessness is replicated in section 191(1) of the Housing Act 1996 (*Encyclopedia*, para. 1–1799/814).

2. In order to establish whether a person was intentionally homeless within section 60(1), the authority were obliged to carry out inquiries in accordance with section 62 of the 1985 Act (*Encyclopedia*, para. 1–0142; now, Housing Act 1996, section 184(1) *Encyclopedia*, para. 1–1799/985). The onus of carrying out the inquiries is on the authority; it is not for the applicant to prove his case: see *R. v. Woodspring District Council, ex p. Walters* (1984) 16 H.L.R. 73, QBD and *R. v. Barnet London Borough Council, ex p. Babalola* (1995) 28 H.L.R. 196, QBD.

3. Once an authority had concluded their inquiries into whether a person was homeless, in priority need and not intentionally homeless, they were required to inform the applicant of their decision in writing and—if it was adverse to the applicant—to give reasons: section 64 (*Encyclopedia*, para. 1–0151; now, Housing Act 1996, section 184(3) *Encyclopedia*, para. 1–1799/785). In *R. v. London Borough of Croydon, ex p. Graham* (1993) 26 H.L.R. 286, CA, Sir Thomas Bingham M.R. said:

> "I readily accept that these difficult decisions are decisions for the housing authority and certainly a pedantic exegesis of letters of this kind would be inappropriate. There is, nonetheless, an obligation under the Act to give reasons and that must impose on the council a duty to give reasons which are intelligible and which convey to the applicant the reasons why the application has been rejected in such a way that if they disclose an error of reasoning the applicant may take such steps as may be indicated."

(See also *R. v. Islington London Borough Council, ex p. Hinds* (1995) 28 H.L.R. 302, CA).

Facts

The applicant, an Indian woman, applied to the respondent authority as a homeless person. The applicant claimed that while she was living in India she had been left

by her husband who had fraudulently obtained a number of loans. His creditors harassed her to the extent that her health deteriorated. Consequently, she decided to leave India. The applicant provided a number of medical reports indicating that she had suffered from a depressive illness over a period of seven years.

The authority decided that the applicant was intentionally homeless. In the decision letter, the authority referred to a number of interviews which had taken place. The letter stated:

> " . . . it is clear that you have given contradictory and varying information in both the interviews and via details provided through your solicitors. As a result, we have had difficulty establishing which, if any, version of events can be relied upon as accurate. We have chosen to take your most recent version of events given to us in the interview of 12th November 1996 as being the correct version."

The letter also addressed the medical evidence submitted by the applicant:

> "Whilst the Council accepts that the information available indicates that you were subjected to some harassment at your home after your husband left in 1989, it is not satisfied that this harassment continued to the same degree up until your departure in May 1996 and that it was unreasonable for you to continue to reside in the family home as a result."

The applicant sought judicial review of the decision.

Held (allowing the application):

(1) The respondent authority had chosen to take the applicant's most recent version of events as the one on which her case should be judged, but the authority's duty was to consider all the material before them and reach a conclusion on that material; there may have been unfavourable material in the chosen version which was affected by favourable material not in the chosen version; unless the chosen version was accepted as truthful and, if there were parts of the other accounts which were favourable to the applicant on points on which the chosen version was unfavourable, there were reasons why those favourable accounts had been rejected, simply choosing one version in this way flawed the decision;

(2) Once an applicant has raised a reason for leaving a home, it is for the authority to satisfy themselves on the balance of probabilities whether the applicant is intentionally homeless; in the decision letter, the authority had reversed the burden of proof;

(3) If the authority rejects any medical evidence, they must so state in clear terms and give reasons.

Robert Latham for the applicant, instructed by Wandsworth & Merton Law Centre Ltd, London.

Ranjit Bhose for the respondents, instructed by Judge & Priestly, Bromley, Kent.

JOWITT J.: This is an application for judicial review pursuant to leave granted by Popplewell J. of the respondent housing authority's decision that the applicant, who applied for housing as a homeless person, was intentionally homeless.

The challenge is directed to the decision letter which is said to be flawed in that it does not give proper reasons or make findings of fact which are necessary in order

for it to be regarded as a letter which complies with the requirements of the section in the Act which says that reasons have to be given.

Before me is, if I may say, an excellent skeleton argument from Mr Bhose which shows that there is, in fact, an abundance of material, if Mrs Dodia was not believed, which would have justified a properly constructed decision letter. There are, in my judgment, difficulties with the decision letter. I start with the second paragraph:

> "First, with respect to our interviews on June 4, 1996, June 17, 1996, July 2, 1996, August 2, 1996 and November 12, 1996, and additional details provided on your behalf by Wandsworth and Merton Law Centre, it is clear that you have given contradictory and varying information in both the interviews and via details provided through your solicitors. As a result, we have had difficulty establishing, which, if any, version of events can be relied upon as accurate. *We have chosen to take your most recent version of events* given to us in the interview of November 12, 1996 *as being the correct version.*" (My emphasis)

That last sentence seems to me to be ambiguous. It may mean that not knowing what version to consider the respondent has decided to take the most recent version as that upon which the applicant wishes her case to be judged. On the other hand, it may mean that the final version at the interview of November 12, has been accepted as the truth. Probably, it is in the former sense that this sentence is to be understood, but it is not clear. If it is the latter reading, then, of course, if that version is accepted to be true it is not appropriate then to undermine it, as Mr Bhose's skeleton does, and, indeed, as Miss Randall's second affidavit does, by other conflicting material. If, on the other hand, the sentence is to be understood in the former sense, there is this problem. It is one thing to decide to act on a version which is wholly favourable to an applicant, ignoring other matters which are inaccurate. However, that does not really deal with this point, that it is the respondent's duty, under the Act, to consider all the material before it and reach a conclusion upon all of the material. There may, for instance, be material which is unfavourable in the chosen version but which is potentially affected by other material not chosen which, on the particular matter, is favourable.

This seems to me to illustrate the flawed basis which is created when there is simply a version chosen as being the one upon which an account should be judged, unless that version is accepted as truthful and there are reasons why, if there are other parts of other accounts which are favourable to the applicant on points on which the chosen version is unfavourable, it is explained why those favourable accounts had been rejected in favour of the unfavourable accounts in the chosen version. That would be enough to mean that the decision letter is sufficiently flawed for the matter to be reconsidered.

However, there are two further points. First, this is an applicant who claims that in India, after her husband had decamped, owing a very great deal of money obtained by him fraudulently, she was hunted by his creditors and harassed to the extent to which her health suffered. According to the case put forward by her, she was still suffering at the time she decided to leave her home and to leave India, and that the harassment with the health problems it caused was the reason for her leaving home. The degree of harassment and its continuance and effects, therefore, loom large in the case.

The fourth paragraph of the letter says this:

> "Whilst the Council accepts that the information available indicates that you were subjected to some harassment at your home after your husband left in 1989, it is not satisfied that this harassment continued to to the same degree up

> until your departure in May 1996 and that it was unreasonable for you to continue to reside in the family home as a result."

Taken at its face value, those words seem to put the onus of proof upon the applicant whereas, in fact, it is for the respondent to satisfy itself that the applicant is intentionally homeless. I entirely accept that there may be an evidential burden upon an applicant to raise an issue, but once the issue is raised by way of an excuse for leaving a home so that it is said that the person was not intentionally homeless, then it is for the local authority to be satisfied on the balance of probabilities that there is intentional homelessness in the sense of there being no proper reason for it. That particular phrase "is not satisfied" seems, as I have said, to have reversed the burden of proof.

On the following page, in the second paragraph, there is a reference to the medical evidence. Briefly, the medical reports which were furnished to the respondent speak of a depressive illness which had persisted over a period of seven years, back to the time when Mrs Dodia (the applicant) was in India. Like many psychiatric reports, the diagnosis will be largely dependent upon the input from the patient.

If Mrs Dodia was rejected as a witness of truth, that would seriously undermine the value of any medical evidence; particularly so here, in that the doctors speak of a present mental illness but ascribe that to the present conditions under which Mrs Dodia is living. The respondent's case, if they were rejecting the medical evidence, is strengthened by the fact that when examined by a doctor for the British High Commission before she was able to come to this country, Mrs Dodia made no reference to any depressive illness.

However, these are not matters which really can be said to be properly spelt out in the second paragraph of the decision letter. If there is a rejection of any medical condition that needs to be said so, and that needs to be said in clear terms and the reasons for the rejection given. This is sadly one of those cases which often come before the court because the decision letter has not really dealt properly with the matters which have to be looked at, partly (and I make no criticism of the decision-maker) out of a wish not to be hurtful and to say that someone who is considered to be untruthful has been untruthful. Sometimes kindness of that nature obscures the true finding which has been made. If the view was taken that on essential matters Mrs Dodia was not telling the truth that should have been spelt out in the decision letter in clear terms with an explanation as to how that bore on the reasons for the findings of fact which were made.

In those circumstances, it seems to me right that I should quash the decision which has been made and direct a reconsideration of the applicant's claim to be housed by the respondent authority.

It would be desirable that someone other than Miss Randall should consider this matter. I do not say that by way of criticism of her, but so that it should not be said or thought by Mrs Dodia or said on her behalf that someone looked at the matter who has already formed a view and is, therefore, biased.

There is another matter to which I think it appropriate to refer and it is this: there is a greater stress, perhaps, on the need to give reasons than was formerly the case. That does add to the difficulties of those who have to write decision letters. Of course, a decision letter should not be scrutinised as though it were the judgment of a judge being looked at by the Court of Appeal, though one could be forgiven for thinking that sometimes that is the approach of those who seek to criticise decision letters. Nonetheless, there is a certain knowledge required as to what matters should be dealt with in decision letters. Provided the distinction is clearly observed between the decision-maker's role which is to decide where the truth lies, to decide on the

relevant facts and to provide the reasons for those decisions and any assistance given in formulating a decision letter in a way which deals with clarity with the decision and the reasons for it, I can see no objection to a decision-maker receiving advice in the drafting of the decision letter, provided, I stress, that division of labours is observed: the boundary between a decision-maker's decision and his or her reasons for it and assistance then about how the decision letter should be drawn so that it can properly fulfil the duty under the Act to give reasons. Indeed, Mr Latham accepts that provided that the boundary between the two roles is observed there can be nothing objectionable in that practice being followed.

I, therefore, quash the decision and direct that the application be reconsidered.