

# Child's housing needs not taken into account

## **Regina v Westminster City Council, Ex parte Bishop**

Before Lord Justice Nourse, Lord Justice Farquharson and Lord Justice Rose

[Judgment May 7]

A decision by a local housing authority that an applicant was intentionally homeless for the purposes of Part III of the Housing Act 1985 that was arrived at in part by relying on an unreasoned report from the authority's medical adviser and which failed to take proper account of the position of the applicant's young daughter was a flawed decision and could not be allowed to stand.

The Court of Appeal so held in judicial review proceedings dismissing an appeal by Westminster City Council from the judgment on February 9 of Mr Robert Carnwath, QC, sitting as a deputy judge of the Queen's Bench Division, whereby he ordered that decision letters from the council stating that the applicant, Patricia Bishop, was intentionally homeless be quashed.

Part III of the 1985 Act imposed duties on local authorities to homeless persons having a priority need except where such persons become homeless intentionally.

Section 60 provides: "(1) A person becomes 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."

Section 75 provides: "... accommodation shall be regarded as available for a person's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him."

Mr Clive H. Jones for the council; Mr Terence Gallivan for the applicant.

LORD JUSTICE ROSE said that the applicant, a single parent with a daughter born in 1983, was the tenant of a council flat on the Mozart Estate, West London. After 1988 she began having problems arising from crime and drugs on the estate and her daughter suffered from bullying and on more than one occasion men had indecently exposed themselves to her.

The applicant additionally had had problems from a former boyfriend; he would come to the flat and was said to be prone to violent behaviour.

The applicant said that those factors led to her life being "a living hell". Her account was supported by letters from her doctor and letters from her daughter's school stated that the child showed signs of emotional disturbance. As a consequence, the daughter lived more and more away from the flat at her grandparents' home.

The applicant's case for a transfer had been considered three times by the council: assessed as category B20, her prospects of being rehoused were low.

Matters had come to a head in May 1991. The applicant said she had been assaulted by the boyfriend and there was a police drugs raid on a flat along the corridor. The applicant left the flat and handed the keys to the council.

In October the council gave their decision that the applicant was homeless and in priority need but that she was intentionally homeless.

The judge had quashed that decision for one reason only: the council's failure to take proper account of certain relevant considerations, namely the daughter's position.

The judge had found that consideration of her by the council was based on written reports from their medical adviser who had not seen the applicant or her daughter

and had not said why he regarded the accommodation as still suitable, at least for the daughter.

The judge went on to state that where there was "no indication of the process of reasoning of the medical adviser, it does not seem to me to be sufficient for the determining officer simply to say, 'this matter has been dealt with by the medical adviser'. Where one has strong and apparently unchallengeable evidence that the daughter's living conditions were causing severe effects on her health and, in particular, her school work, proper consideration by the authority must involve some assessment of that matter and a conclusion on it."

The judge's decision was unassailable. By virtue of section 75 of the Act the applicant's accommodation was to be regarded as "available for her occupation" for the purposes of section 60(1) only if both she and her daughter could reasonably be expected to occupy it.

The daughter's position was of great significance. If it was reasonable for her to leave and live with her grandparents then it could not be held reasonable for the applicant to remain in occupation alone.

There was no indication that the council, save by their medical adviser, had ever properly addressed that matter.

Cases of homelessness were difficult and anxious. They put a heavy burden on local authorities. Here the council had clearly taken considerable care in the enquiries regarding many aspects of the case. But in one important respect, the position of the applicant's daughter, their approach was seriously flawed.

Lord Justice Nourse and Lord Justice Farquharson agreed.

Solicitors: Mr G. M. Ives, Westminster; Alan Edwards & Co, Notting Hill.