

[2008] All ER (D) 171 (Nov)

## **\*R (on the application of C) v Birmingham City Council**

QUEEN'S BENCH DIVISION, ADMINISTRATIVE COURT

CHARLES J

18 Nov 2008

*Local authority — Accommodation — Provision of accommodation — Claimant from Jamaica applying for accommodation support for herself and her four children — Claimant's eldest child born in Jamaica and three youngest children born in United Kingdom — Local housing authority refusing application — Parties at issue in respect of whether authority required to take into account certain policy issued by Secretary of State and reasons underlying that policy — Whether authority erring in approach to determining application — Children Act 1989, ss 17, 20.*

Section 17 of the Children Act 1989, so far as material, provides: '(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) - (a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs... (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include [providing accommodation and] giving assistance in kind or, in exceptional circumstances, in cash.'

Section 20 of the Children Act 1989, so far as material, provides: '(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of... (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care... (3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.'

The claimant was a Jamaican national. She gave birth to her first child, X, in Jamaica, in 1994. In December 2000, she came to the United Kingdom with X as 'visitors' to the country. Asylum applications were refused, and subsequent appeals against those decisions were dismissed. Nothing was done to remove either the claimant or X from the UK thereafter. Between 2004 and 2006, the claimant gave birth to three more children. They had stayed, initially, with the father of the claimant's three youngest children; but by 2007, lived with an aunt. In March 2008, the claimant and her children were rendered 'homeless'. Accordingly, the claimant applied to the defendant local housing authority (the authority) for accommodation support for herself and her four children, pursuant to ss 17 and 20 of the Children Act 1989 (the 1989 Act). Following an assessment, an officer of the authority refused the application. An offer of assistance, pursuant to s 17(6) of 1989 Act, was made; but, in the event, that was rejected by the claimant and an application for judicial review was brought.

The claimant submitted that the authority had erred in its approach to determining her application for the provision of accommodation support. In particular, she argued that there had been a failure by the authority to take into account a policy (DP 5/96), which had been issued by the Secretary of State, containing a presumption that no enforcement action would be taken against 'immigration families' who had been resident in the UK for a period of seven years. The authority accepted, inter alia, that the claimant's eldest child had been in the UK for more than seven years and, further, that its officer had not had regard to the policy. Issues also arose as to: (i) whether the reasons underlying the policy, as set out in case law (see [2008] All ER (D) 409 (Jul)), should have been taken into consideration by the authority; and (ii) the effect which a decision not to provide accommodation support had on the claimant's rights under the European Convention on Human Rights, particularly art 8 which guaranteed the 'right to private and family life'.

The application would be allowed.

As a matter of law, a local housing authority had to have regard not only to the terms of policy DP 5/96, but also to the reasons underlying that policy, in deciding whether to provide accommodation support (on applications made pursuant to ss 17 and 20 of the 1989 Act) to persons not lawfully resident in the United Kingdom.

There had to be a measure of consistency between different local authorities in respect their decision-making; particularly, on the question of whether art 8 of the Convention would be breached, for instance, as a result of a decision not to provide accommodation support to children who had been resident in the UK for seven years but whose immigration status had not yet been determined.

In the instant case, the authority had erred in its approach to determining the claimant's application for the provision of accommodation support to herself and her children. The presumption in the policy, and the reasons underlying that policy, should have been taken into account.

Accordingly, the authority's decision would be set aside. Furthermore, the authority would be required to reconsider its position on the matter.

*R v Secretary of State for Social Security, ex p Joint Council for the Welfare of Immigrants* [1996] 4 All ER 385 *R (on the application of Kimani) v Lambeth London Borough Council* [2003] All ER (D) 16 (Aug) *R (on the application of Grant) v Lambeth London Borough Council* [2004] All ER (D) 269 (Dec) *R (on the application of Ireneschild) v Lambeth London Borough Council* [2007] All ER (D) 286 (Mar) *Blackburn-Smith v Lambeth London Borough Council* [2007] All ER (D) 64 (Apr) *Huang v Secretary of State for the Home Department; Kasmiri v Secretary of State for the Home Department* [2007] 4 All ER 15 *Beoku-Betts v Secretary of State for the Home Department* [2008] All ER (D) 335 (Jun) *NF (Ghana) v Secretary of State for the Home Department* [2008] All ER (D) 409 (Jul) considered.

Nadine Finch (instructed by Birmingham Law Centre) for the claimant.

Jonathan Cowen (instructed by Mirza Ahmad) for the authority.

ROBERT CHAN - Barrister.