

R v Newham LBC ex p Medical Foundation for the Care of Victims of Torture and Others

Queen's Bench Division

Moses J

12 December 1997

'Residential accommodation' under National Assistance Act 1948 (NAA) s21 can include ordinary accommodation in flats, houses, bed-and-breakfast hostels; ancillary services under NAA 1948 s21 need not be provided inside the accommodation.

Facts

The seven individual applicants in this case were single, destitute asylum-seekers. The respondent authority accepted that it was under a duty to make arrangements to provide them with residential accommodation within the meaning of NAA 1948 s21: see *R v Hammersmith and Fulham LBC and Others ex p M, P, A and X* (1997) 1 CCLR 69, QBD, and *R v Westminster CC and Others ex p M, P, A and X* (1997) 1 CCLR 85, CA. The respondent authority had, however, adopted a policy whereby the only residential accommodation made available for single asylum-seekers was a hotel in Eastbourne. Such accommodation was offered to single asylum-seekers on a 'take it or leave it' basis. Evidence filed by and on behalf of the applicants demonstrated the importance to asylum-seekers of remaining close to supportive community groups, found in the London/Newham area but not in Eastbourne.

It emerged that the respondent authority had decided to offer single asylum-seekers residential accommodation only in Eastbourne because of legal advice. The advice was that the only accommodation local authorities could provide under NAA 1948 s21 was accommodation in which it is possible to provide all ancillary care or other services considered necessary to be provided (which in the case of asylum-seekers normally amounts to food, laundry and personal hygiene facilities). Since there was a dearth of such accommodation in the Newham area, the respondent authority had been compelled to look elsewhere.

The applicants contended, but the respondent authority did not accept, that NAA 1948 s21 authorises local authorities to provide residential accommodation in the form of 'ordinary' or 'bare' accommodation in bed-and-breakfast hostels or in private sector flats or houses; that other services such as meals or meal vouchers can be provided separately; further, that the National Assistance Act (Choice of Accommodation) Directions 1992 require local authorities to give effect to applicants' preferences for ordinary, private sector accommodation in their area.

Held:

- 1 'Residential accommodation' is a place where a person lives, normally with a degree of permanence. It need not have any institutional quality. It is plain from the construction of NAA 1948 ss21(5), 26(1A) and 26(1B) that residential accommodation can as a matter of law be accommodation at which there is no provision of board or other s21(5) services, no nursing care and no personal care. *R v Westminster CC and Others ex p M, P, A and X* (1997) 1 CCLR 85, CA, shows that temporary (ordinary) accommodation under Secretary of State's Approvals and Directions under s 21(1) NAA 1948 para 2(2) is not *ultra vires*. That case and NAA 1948 s21(2) also demonstrate that a wide range of accommodation must be contemplated by NAA 1948 s21(1), suitable for different types of person, including those whose need arises as a result of

- A destitution. Accordingly provision of residential accommodation in ordinary bed-and-breakfast or private sector accommodation was not *ultra vires* NAA 1948 s21.
- 2 The words of NAA 1948 s21(5) require that board and other services which the local authority considers it necessary to provide must be provided 'in connection with' the provision of residential accommodation, not 'in' the residential accommodation (contrasted with NAA 1948 s21(7)(b) which expressly provides that different types of service must be provided 'on' the premises). There is no requirement in NAA 1948 to provide board or any other service within the accommodation provided.
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- C 3 Bare accommodation rented from a landlord is not outside the scope of NAA 1948 s21 by virtue of the requirement in NAA 1948 s21(4) that residential accommodation is managed by the local authority: arrangements can be made under NAA 1948 s26.
- 4 Accordingly, full effect can be given to Policy Guidance para 3.24 so that arrangements made for asylum-seekers by local authorities should as far as possible 'preserve or restore normal living'.
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- 5 Further, the National Assistance Act (Choice of Accommodation) Directions 1992 did apply to ordinary or bare accommodation chosen by asylum-seekers in the Newham area as an alternative to the accommodation offered to them in Eastbourne.
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Cases referred to in judgment:

R v Newham LBC ex p Gorenkin and Others (1997) *Times*, 9 June, QBD.

R v Wandsworth LBC ex p Beckwith (No 1) [1996] 1 WLR 60; [1996] 1 All ER 129;

- F [1996] 1 FCR 504; 94 LGR 77; (1996) 30 BMLR 105; (1996) 8 Admin LR 242; (1996) 93(2) LS Gaz 28; (1996) 140 SJLB 27; *Times*, 15 December; *Independent*, 21 December, HL.

R v Westminster CC ex p M, P, A and X (1997) 1 CCLR 85; (1997) *Times*, 19 February, CA.

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Legislation/guidance referred to in judgment:

Children Act 1989 s17 – Local Authority Social Services Act 1970 s7 – Local Government Act 1972 – National Assistance Act 1948 ss21–24 and 26 – National Health Service and Community Care Act 1990 s47 – Asylum-seekers

- H Accommodation Special Grant Report (No 24) – *Community Care in the Next Decade and Beyond* (LASSA guidance, November 1990) (The Policy Guidance) – National Assistance Act 1948 (Choice of Accommodation) Directions 1992 – Secretary of State's Approvals and Directions under s21(1) of the National Assistance Act 1948 at Appendix 1 to LAC(93)10.

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This case also reported at:

Not elsewhere reported.

Representation

- J S Knafler (instructed by Clore & Co) appeared on behalf of the applicant.
J Presland (instructed by the Head of Legal Services, Newham London Borough Council) appeared on behalf of the respondent.
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Judgment

MR JUSTICE MOSES: The individual applicants are asylum seekers who are destitute. The Respondent Council, 'Newham', accept that they are under a duty to make arrangements to provide the individual applicants with residential accommodation within the meaning of section 21 of the National Assistance Act ('the 1948 Act'). As a result of legal advice, Newham has adopted a policy whereby it offers single asylum seekers accommodation in a hotel in Eastbourne. Asylum seekers with families are considered under section 17 of the Children Act 1989 and are not concerned with this policy. Newham contends that the only accommodation which, under section 21, they are permitted to offer is accommodation in which a package of services such as food, laundry and facilities to maintain personal hygiene can be provided. Such accommodation, it says, cannot be found in Newham and thus it is compelled to offer the accommodation in Eastbourne. The applicants wish to remain in Newham. In that borough, to the enormous credit of the borough, volunteers and local residents, they have received support from community groups and are able to find comfort from both strangers and those in a like situation. In Eastbourne, they say, their plight will be exacerbated by isolation. They contend that there is no warrant in the legislation for excluding the provision of accommodation such as small flats and bed and breakfast accommodation of a kind more readily available in or near Newham rather than hotels in which a package of services can be provided. They assert that it is lawful for Newham to provide accommodation by, for example, obtaining leases from private individuals, a type of accommodation which has been called before me 'bare' or 'ordinary' accommodation. Other services, such as meals or meal vouchers, can be provided separately by the Council.

The issue in this case is whether the Council's interpretation of their duties under section 21 of the 1948 Act is correct in law. The case is not about the distressing circumstances in which these applicants find themselves, exacerbated though it is likely to be by having to live away from the community to which they can relate and from whom they can draw solace. Section 21 of the National Assistance Act 1948 as amended reads:

(1) Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing –

(a) residential accommodation for persons [aged eighteen or over who by reason of age,] illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; and

(aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.

(b) ...

(2) In making any such arrangements a local authority shall have regard to the welfare of all persons for whom accommodation is provided, and in particular to the need for providing accommodation of different descriptions suited to different descriptions of such persons as are mentioned in the last foregoing subsection.

(3) [Repealed.]

(4) Subject to the provisions of section 26 of this Act, accommodation provided by a local authority in the exercise of their functions under this section shall be provided in premises managed by the authority or, to such extent as may be determined in accordance with the arrangements under this section, in such premises managed by another local authority as may be agreed between the two

- A *authorities and on such terms as to the reimbursement of expenditure incurred by the said other authority, as may be so agreed.*
- B (5) *References in this Act to accommodation provided under this Part thereof shall be construed as references to accommodation provided in accordance with this and the five next following sections, and as including references to board and other services, amenities and requisites provided in connection with the accommodation except where in the opinion of the authority managing the premises their provision is unnecessary.*
- C (6) *References in this Act to a local authority providing accommodation shall be construed, in any case where a local authority agree with another local authority for the provision of accommodation in premises managed by the said other authority, as references to the first-mentioned local authority.*
- (7) *Without prejudice to the generality of the foregoing provisions of this section, a local authority may –*
- D (a) *provide, in such cases as they may consider appropriate, for the conveyance of persons to and from premises in which accommodation is provided for them under this Part of the Act;*
- (b) *make arrangements for the provision on the premises in which accommodation is being provided of such other services as appear to the authority to be required.*
- E (8) *Nothing in this section shall authorise or require a local authority to make any provision authorised or required to be made (whether by that or by any other authority) by or under any enactment not contained in this Part of this Act, or authorised or required to be provided under the National Health Service Act 1977.*
- F By Section 26 which has the rubric:
- Provision of accommodation in premises maintained by voluntary organisations*
- G (1) *Subject to subsections (1A) and (1B) below, arrangements under section 21 of this Act may include arrangements made with a voluntary organisation or with any other person who is not a local authority where –*
- (a) *that organisation or person manages premises which provide for reward accommodation falling within subsection (1)(a) or (aa) of that section, and*
- H (b) *the arrangements are for the provision of such accommodation in those premises.*
- (1A) *Subject to subsection (1B) below, arrangements made with any voluntary organisation or other person by virtue of this section must, if they are for the provision of residential accommodation with both board and personal care for such persons as are mentioned in section 1(1) of the Registered Homes Act 1984 (requirement of registration), be arrangements for the provision of such accommodation in a residential care home which is managed by the organisation or person in question, being such a home in respect of which that organisation or person –*
- I (a) *is registered under Part I of that Act, or*
- J (b) *is not required to be so registered . . . by virtue of the home being managed or provided by an exempt body;*
- and for this purpose ‘personal care’ and ‘residential care home’ have the same meaning as in that Part of that Act.*
- K (1B) *Arrangements made with any voluntary organisation or other person by virtue of this section must, if they are for the provision of residential accommodation where nursing care is provided, be arrangements for the provision of such*

- accommodation in premises which are managed by the organisation or person in question, being premises –* A
- (a) in respect of which that organisation or person is registered under Part II of the Registered Homes Act 1984, or*
- (b) which, by reason only of being maintained or controlled by an exempt body, do not fall within the definition of a nursing home in section 21 of that Act.* B

The resolution of the issue depends upon the correct construction of the phrase 'residential accommodation' in the context of Part III of the 1948 Act. Mr Presland's essential submission on behalf of Newham is that the word 'residential' when interpreted in accordance with subsection (5) compels the conclusion that the only accommodation which a local authority is empowered to provide is accommodation in which the board and other services to which subsection (5) refers can be provided. The paradigm of such premises is a residential home. He says it must be something akin to that or to a hall of residence. Thus, he says, there is no power under the statute merely to make arrangements for the provision of ordinary or bare accommodation and to provide the services which are needed separately. C

The starting point must be the meaning of the word 'residential' in the context of these provisions. Normally, it connotes some degree of permanence. 'Residential accommodation' is a place where a person lives, although those more fortunate than these applicants may have more than one residence. When the 1948 Act was first enacted, it was clearly used by way of contrast to temporary accommodation. Section 21 originally read: D

- (1) It shall be the duty of every local authority, subject to and in accordance with the provisions of this Part of this Act, to provide –* F
- (a) residential accommodation for persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them;*
- (b) temporary accommodation for persons who are in urgent need thereof. . .* G

But that is of no assistance after the amendments made by the Local Government Act of 1972 which remove the possibility of drawing the original distinction. One would not expect there to be any degree of permanence in accommodation provided for an expectant mother (see section 21(1)(aa)). Paragraph 2(2) of the approvals and directions made under section 21 of the 1948 Act read: H

Without prejudice to the generality of sub-paragraph (1), the Secretary of State hereby directs local authorities to make arrangements under section 21(1)(a) of the Act to provide temporary accommodation for persons who are in urgent need thereof in circumstances where the need for that accommodation could not reasonably have been foreseen. I

Whilst those directions of course cannot alter the proper interpretation of the section, the Court of Appeal in *R v Westminster City Council, ex parte M, P A and X* (1997) 1 CCLR 85 held that the directions were not *ultra vires* (see page 95D) . J

Mr Presland, in the light of those considerations, suggested that the fact that the word 'residential' remains in place in the section indicates that the accommodation referred to is of the type for which he contends, accommodation with an institutional quality. In my judgment, no such reliance can be placed upon the use of the word 'residential'. It means no more than accommodation where a person lives. K

- A The foundation for Newham's arguments rested upon subsection (5). Subsection (5), in my view, demonstrates the flaw in that argument. It is plain that an authority may form the opinion that the board and other services to which the subsection refers are unnecessary, yet the obligation to make the arrangements for the provision of residential accommodation remains. That accommodation is still residential accommodation within the meaning of section 21. So too under section 26(1A) and (1B). Those provisions contemplate the provision of residential accommodation by third parties which does not include board and personal care (see section 26(1A)) or nursing care (section 26(1B)). I note the use of the word 'if' in those subsections. Accommodation where no such services are provided is still residential accommodation.

- C Moreover, as *R v Westminster County Council* teaches, the other circumstances which give rise to the need for care and attention by the provision of residential accommodation are not *ejusdem generis* with age, illness and disability. Those other circumstances may cover many causes for destitution (see pages 93F to 94C). Subsection (2) of section 21 requires the local authority to have regard to the welfare of all persons who become destitute for any of the reasons described in subsection (1). They must have regard to the need for providing different descriptions of accommodation according to the wide variety of needs of those falling within subsection (1). Thus, a wide range of accommodation must be contemplated. In my judgment, the wording of subsection (5) provides no warrant for the proposition that, in cases where the local authority does not form the opinion that board and other services are unnecessary, such services must be provided in the accommodation as part of a package. The services must be provided in connection with, not in, the accommodation. I contrast that with the wording of subsection 7(b) of section 21 which states that:

... a local authority may ... make arrangements for the provision on [my emphasis] the premises in which accommodation is being provided of such other services as appear to the authority to be required.

- G Subsection (5) may be likened to a dictionary for use in this part of the Act. Where the words 'accommodation provided under this part of the Act' are used, for example, in section 21(7)(a), section 22(1), section 23(1) and section 24(1), those words will include the provision of the services referred to in subsection (5).

- H Counsel also relied upon section 21(4) in contending that since the premises must be *managed* by the local authority, bare accommodation rented from a landlord would be outwith the section. I record that it was not contended that subsection (5) applied to subsection (4) since the words used are 'accommodation provided' and not 'accommodation provided under this part of the Act'. The focus of subsection (4) is on the requirement of management. This is of no avail to Newham because it was accepted that section 26 empowered a local authority to make arrangements with others, provided those others manage the premises and if the third person is not a voluntary organisation that the third party does so for reward. Local authorities are under no duty to provide any accommodation themselves: see *R v Wandsworth Borough Council, ex Parte Beckwith* [1996] 1 WLR 60.

- J They may authorise others to enter and inspect the property under section 26 (5). For these reasons, I am compelled by the wording of this part of the Act to conclude that there is no requirement in the statute to provide board or other services within the accommodation provided. Such a conclusion leads to the result that full effect can be given to the guidance under which local authorities must act pursuant to section 7 of the Local Authority Social Services Act of 1970. Paragraph 3.24 of the Policy Guidance reads:

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Once needs have been assessed, the services to be provided or arranged and the objectives of any intervention should be agreed in the form of a care plan. The objective of ensuring that service provision should, as far as possible, preserve or restore normal living implies the following order of preference in constructing care packages.

Paragraph 3.25 reads:

The aim should be to secure the most cost-effective package of services that meets the user's care needs, taking account of the user's and carer's own preferences.

It will be recalled that an assessment under section 47 of the National Health Service and Community Care Act 1990 may require consideration, during the course of assessment, of the power to make arrangements under section 21.

Under the Asylum Seekers Accommodation Special Grant Report No 24 of February 1997 it is said at paragraph 13 under the rubric 'Relevant Expenditure':

13. That relevant expenditure means expenditure incurred in providing accommodation including board under section 21(1)(a) of the National Assistance Act for any adult asylum seeker . . .

14. Expenditure that will be regarded as reasonably incurred may involve (a) the provision of accommodation and board or accommodation only with meals or food provided separately either in the form of groceries where cooking facilities are available or by other means e.g. meals on wheels.

The conclusion that I have reached also renders the directions as to choice of accommodation (the National Assistance Act 1948 (Choice of Accommodation) Directions 1992) effective. By paragraph 2 of those Directions the local authority is enjoined to make arrangements which will take into account the wishes of the person who is to be accommodated, subject, under paragraph 3, to conditions which relate to expense and otherwise. None of those considerations can alter the true construction of the section but it is at least of some comfort that the widespread practice of providing bed and breakfast accommodation or private lettings need not cease (as has already started to occur in a number of authorities and not just this borough).

Reference was made to a decision of Carnwath J in *R v Newham London Borough Council ex parte Gorenkin and Others* (unreported), a decision of 13th May 1997 (CO/1564/97) which suggested that there was no power to provide such services separately. But it was agreed by both sides that this point was not in issue in this case. The issue in that case was whether food vouchers could be provided without accommodation.

Mr Knafler argued that any other conclusion which I might have reached would be inconsistent with the Court of Appeal in *R v Westminster City Council*. The point in this case was not in issue. I do not think that that decision is of assistance, save that the directions as to temporary accommodation were held not to be *ultra vires*. Such accommodation will typically be of a type which Newham now says it is not lawful to provide.

My conclusion is that it is lawful for Newham to provide accommodation, if it is available, which is suitable to the needs of these applicants. Other services may be provided from outside that accommodation. The applicants do not need to be moved away for the provision of services within the hotel at Eastbourne.