

A **R v Newham LBC ex p Plastin (Vadim)**

Queen's Bench Division
Keene J
10 April 1997

B
It was not perverse to conclude that a man who was physically well, legally entitled to work, able to find work and entitled to public housing assistance was not a person in need of 'care and attention' for the purposes of National Assistance Act 1948 s21 even though he had no financial resources and was not currently eligible for income support.
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Facts

The applicant was a British citizen, aged 51, who had lived most of his life in Russia and did not speak English. He entered the United Kingdom on 23 December 1996 and went to live at a night centre until it closed down. He was not eligible for social security benefits because he would have failed the habitual residence test, had no employment and no financial resources. The respondent authority carried out an assessment of the applicant's needs for residential accommodation under National Assistance Act 1948 (NAA) s21. The respondent authority concluded that the applicant did not require 'care and attention' as the result of any of the statutory criteria: he was able-bodied and physically and mentally well; although he had no money he was legally entitled to work, with work experience as a cook and a ship's captain; and he was eligible for assistance as a homeless person under the provisions of Housing Act 1996 Part VII.
E

F **Held** (refusing leave to apply for judicial review):

- 1 Although a need for food and accommodation could in the case of asylum-seekers lead to a need for care and attention within the meaning of NAA 1948 s21, it was notable that destitute asylum-seekers were excluded from social security benefits and public housing assistance and were not permitted to work. The applicant was eligible for public housing assistance; he was also entitled to work and although it might be difficult for him to find work he did have relevant work experience as a cook, an area where language difficulties often mattered little; and he was mentally and physically well at the time of the assessment. The respondent authority had considered all of the applicant's relevant circumstances and its decision that the applicant did not have an urgent need of care and attention was not perverse.
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- 2 Paragraph 2(1)(b) of the Secretary of State's Approvals and Directions under section 21 of the National Assistance Act 1948 at Appendix 1 to LAC(93)10 contains a direction imposing a duty on local authorities in respect of persons who are in 'urgent need', irrespective of whether they have a settled residence or where such settled residence might be: providing such persons come within the criteria of paragraph 2(1) of the Approvals and Directions as a whole.
I

J **Cases referred to in judgment:**

Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 KB 223; [1947] 2 All ER 680; 45 LGR 635, CA.
R v Hammersmith and Fulham LBC ex p M; *R v Lambeth LBC ex p P and X*; *R v Westminster CC ex p A* (1997) 1 CCLR 69; (1996) 93(42) LS Gaz 28; (1996) 140 SJLB 140 222; (1996) *Times*, 10 October; *Independent*, 16 October, QBD.
K

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

Legislation/guidance referred to in judgment:

Housing Act 1996 s185 – National Assistance Act 1948 s21 – Secretary of State's Approvals and Directions under s21 of the National Assistance Act 1948 at Appendix 1 to LAC(93)10. B

This case also reported at:

(1998) 30 HLR 261. C

Representation:

Mr Arkhurst (instructed by Andersons) appeared on behalf of the applicant.
Mr Rutledge (instructed by the Legal Department of the London Borough of Newham) appeared on behalf of the respondent. D

Judgment

MR JUSTICE KEENE: The Applicant in this case seeks leave to quash a decision of the London Borough of Newham, dated 20th March 1997, whereby that authority refused to provide him with accommodation and other assistance under section 21(1)(a) of the National Assistance Act 1948. E

The Applicant is aged 51. He is a British citizen and holder of a British passport and has the right of abode in the United Kingdom. However, he has lived most of his life in Russia and does not speak English. He came to the United Kingdom on 23rd December 1996.

It is said, and for present purposes I am prepared to work on the basis that it is true, that he is not eligible for social security benefits because he would not be classed as habitually resident in the United Kingdom. He was, until recently, residing at the Newham Night Centre in London but that centre closed on 1st April 1997. F

Prior to its closure its manager wrote to the Respondent authority, on his behalf, seeking assistance under section 21(1)(a) of the National Assistance Act 1948, which I will simply refer to henceforth as 'the Act'. That letter was written on 13th March 1997. According to affidavits in these proceedings, sworn by Mr Mohan Singh and Mr Charles Clerke and filed on behalf of the Respondent, the Applicant was interviewed on 19th March. That interview resulted in an assessment form being completed which noted that the Applicant was of the age of 51; it recorded him as speaking Russian; and it also noted a lack of DSS benefits. It recorded him in addition as being homeless. However, it also noted that he was able-bodied, fully aware of his situation and without physical disabilities, apart from a problem with his teeth which could be dealt with under normal NHS provision. It also recorded that he was on no medication and had previously worked as a ship's captain and also as a cook. It concluded that the Applicant did not meet the criteria under the 1948 Act for assistance. G H I

Mr Clerke, on behalf of the Respondent, wrote on 20th March 1997 refusing such assistance. He was then asked by solicitors for the Applicant to review his decision and he did so, but he reached the same conclusion as before and he telephoned that decision through to them on 27th March. The application for leave to seek judicial review came before Latham J on 2nd April. It was then adjourned for seven days on the Respondent undertaking to provide accommodation and sustenance in the meantime pending this hearing. J K

- A Section 21(1) of the National Assistance Act 1948, in so far as it is material in the present case, provides:

[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] –

- B (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 then I need not read beyond that point.

- C The Secretary of State has, in fact, made approvals and directions under that subsection. Paragraph 2 of those approvals and directions reads as follows:

2–(1) The Secretary of State hereby –

- D (a) *approves the making by local authorities of arrangements under section 21(1)(a) of the Act in relation to persons with no settled residence and, to such extent as the authority may consider desirable, in relation to persons who are ordinarily resident in the area of another local authority, with the consent of that other authority; and*

- E (b) *directs local authorities to make arrangements under section 21(1)(a) of the Act in relation to persons who are ordinarily resident in their area and other persons who are in urgent need thereof,*

to provide residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstance are in need of care and attention not otherwise available to them.

- F It is submitted in this case, on behalf of the Applicant, by Mr Arkhurst that those provisions create a duty on the part of the local authority to provide assistance to those unable to fend for themselves, at any rate if they are in urgent need of such assistance. On behalf of the Respondent Mr Rutledge contends that there is only a power and not a duty which is imposed upon a local authority when faced with
G subparagraph (b). Mr Rutledge says that is difficult to construe it as imposing a duty to non-residents because it would appear to conflict with subparagraph (a) which expressly provides only a power and not a duty in relation to persons who are with no settled residence. I, for my part, do not find any difficulty in construing that provision as a matter of law. It seems to me that subparagraph (a) does
H deal therefore generally with persons who have no settled residence and generally, in relation to them, the local authority has a power but is not under a duty. However, where such persons with no settled residence, or indeed any other persons, are in urgent need within the terms of subparagraph (b), then I am in no doubt that a duty arises on the part of the local authority in relation, of course, to
I those persons who come within the particular criteria set out in paragraph 2(1) as a whole. They are therefore to be persons in urgent need of care and attention in the circumstances provided for.

- Those provisions have been the subject of recent judicial pronouncement in the case of *R v Westminster City Council and Others, ex parte M*. I have been
J provided with the transcripts of the judgments of Collins J [(1997) 1 CCLR 69], at first instance, and of the Court of Appeal [(1997) 1 CCLR 85] whose judgment was handed down on 17th February 1997. That case was concerned with asylum seekers who, as the Court observed, are in a particularly difficult situation because they are not entitled to public housing assistance or social security
K benefits and are not allowed to take employment. The Court of Appeal held in that case that a need for food and accommodation could, in the case of asylum

seekers, lead to a need for care and attention within the meaning of section 21(1) of the 1948 Act. A

On behalf of the Applicant it is submitted that the decision in the present case by the proposed Respondent was perverse, in that they were dealing here with a person who does not speak English and therefore, although he was legally entitled to seek work, would find it very difficult to obtain work, who would not be able to obtain benefits because he was not habitually resident here and that, given all the circumstances referred to, no reasonable authority properly directing itself could have arrived at the decision which it did. That argument of perversity, or *Wednesbury* unreasonableness, is not expressly spelled out in the grounds provided in the Form 86A but, for the time being, I am prepared to proceed on the basis that that is the way in which this matter would be sought to be canvassed, were leave to be granted today. B C

For the proposed Respondent Mr Rutledge argues that the authority did not fail to consider the Applicant's circumstances, as is alleged in the grounds, and he refers to the assessment done by officers of the Council. He distinguishes the Applicant's case from the position of asylum seekers in the *Westminster* case because he points out that the present Applicant, unlike asylum seekers, does not have the added stress of being a refugee, or at least an alleged refugee, and he emphasises that asylum seekers as a class are not entitled to work for the first six months of their stay in the United Kingdom whereas the Applicant is. And he also contends that while asylum seekers are excluded from the homelessness legislation because of section 185 of the Housing Act 1996, the present Applicant is entitled to seek accommodation as a homeless person under the Housing Act. Consequently he contends that the decision of the local authority was one which was open to them in the circumstances and was not arguably perverse. D F

There is no possible argument in this case that the local authority failed to take into account the Applicant's circumstances which is the way in which the matter was put in the typed grounds of application. It is clear to me that the Authority here did consider the Applicant's circumstances and it is not arguable that they left out of that consideration any material matter. It is also clear that there is no automatic right to assistance under the 1948 Act merely because someone is lacking money and accommodation. That was made very clear by the Court of Appeal in the *Westminster* case where it clarified part of the judgment of Collins J at first instance and emphasised that section 21(1)(a) does not provide a safety net on which anyone who is short of money and/or accommodation can rely. The Court of Appeal there said: G H

Section 21(1)(a) does not have this wide application. Asylum seekers are not entitled merely because they lack money and accommodation to claim they automatically qualify under section 21(1)(a). I

In my view the proper test is to consider whether on the grounds indicated in that section a person is in 'need of care and attention' and in the case where a duty is alleged and relied upon, as here, whether that person is in urgent need of care and attention.

It is with that background that I turn to consider the principal plank of the Applicant's case which is the argument on perversity, that is to say, that no reasonable Authority properly directing itself on the law could have arrived at the decision which it did. It is true that the Applicant in this case has no money or home, does not speak English and currently has no job. I can accept that his prospects of obtaining a job will be made more difficult by the fact that he does not speak English. On the other hand, he is legally entitled to work and to seek J K

A work. He has a background of being a cook and it is common knowledge that there are persons in this country who have difficulty speaking very much English and who nonetheless do obtain employment in that sort of capacity.

B I take the view that he is entitled to seek assistance as a homeless person under the housing legislation. I construe section 185 of the 1996 Housing Act as excluding those who are subject to immigration control, as section 185 indicates, and it seems to me that the present Applicant is not within the description of 'a person from abroad who is ineligible for housing assistance' within the meaning of that particular provision.

C In addition the Applicant is, according to the assessment before me, able-bodied. He is 51 years old and still therefore of working age and he is not under any physical or mental disability. I sit here not as someone making a decision as to whether he truly is a person in need of care and attention and in urgent need, but exercising a supervisory jurisdiction. I have to decide whether it was perverse of this local authority to reach the conclusion that he was not in such need. I take
D the view that there was a choice available to the local authority here on the facts which they could properly exercise.

E In my judgment the Authority was clearly entitled to reach the conclusion which they did, namely that he was not in urgent need of care and attention, given the facts to which I have referred. In my judgment, it is not arguable otherwise and it must follow from that that leave in this case will be refused.