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42 BEDFORD ROW Housing Law BULLETIN

BULLETIN No7

When is a decision to refuse a final offer of accommodation under s193(7) Housing Act 1996 on grounds of psychological distress reasonable?

Poshteh v Royal Borough of Kensington and Chelsea [2015] EWCA Civ 711

The Facts

Ms Poshteh had engaged in dissident activity in Iran, and had as a result endured two periods of imprisonment during which she was tortured by the Iranian authorities. As a consequence, she subsequently suffered depression and Post Traumatic Stress Disorder. She was granted indefinite leave to remain in the UK in 2009, and was placed in temporary accommodation by Kensington and Chelsea in accordance with their homelessness duty.

In November 2012 Ms Poshteh was made a final offer of accommodation in accordance with s193(7) Housing Act 1996. On viewing, the property reminded her of the prison where she had been detained, which caused a panic attack. Her principal concern arose from a round window in the living room, which reminded her of the prison windows. A review of the decision to end Kensington and Chelsea's homelessness duty occurred following Ms Poshteh's subsequent refusal of the flat.

The reviewing officer considered medical evidence from Ms Poshteh's own physicians and an opinion from the council's own expert based on her medical history. A face to face interview with Ms Poshteh was also conducted. The decision maker found that

a. Ms Poshteh had indicated that the flat would be suitable as temporary accommodation,

b. The round window was significantly larger than those present in the prison,

c. There was an additional large square window in the living room; and

d. The medical evidence indicated that a small dark flat, a flat without a view, or one with a lift would be unsuitable for Ms Poshteh.

He concluded

> "I cannot accept as objectively reasonable your assertion that the size or design of the window in the living room was reminiscent of a prison cell or that the windows or layout of the living room is such that it recreated the conditions of confinement or incarceration that is likely to have a significant impact on your mental health."

An appeal to the County Court under s204 Housing Act 1996 against the negative outcome of that review failed, and Ms Poshteh appealed to the Court of Appeal. Two grounds of appeal were advanced:

1. it was irrelevant to the decision that Ms Poshteh's fears were not objectively reasonable; and
2. the decision maker had erred in finding that Ms Poshteh's objection was to windows that were round and small as opposed to round or small, and had a duty under s149 Equality Act 2010 to seek specific clarification from Ms Poshteh's GP.

The Decision

McCombe LJ delivered the leading judgment, with which Moore-Bick LJ agreed. In respect of ground (1) the decision maker had considered all of the available medical evidence, and he drew his conclusions from the wider context. The decision maker was entitled to find that the property would not have the consequences that Ms Poshteh had described on her mental health. The approach in *Holmes-Moorhouse v Richmond-upon-Thames LBC* [2009] UKHL 7 was applied - an irrelevant or trivial error in the reasoning does not render a decision invalid.

In respect of ground (2) the decision maker was clearly aware of his duty under the Equality Act, and had weighed the evidence regarding it in the round. He had considered if Ms Poshteh's disability affected whether it was reasonable for her to accept this offer of accommodation. *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 applied - so long as the decision maker had properly focused on the question of whether the equality duty was complied with, the appellate court should not displace the decision maker's conclusions as to how much weight to place on relevant factors.

Elias LJ dissented. While the decision maker could reasonably have inferred unreasonableness of refusal from Ms Poshteh's initial concerns about space for her furniture and her acceptance that the flat would be suitable for temporary accommodation, this was not how he chose to analyse the facts. The decision maker had instead concluded that because objectively this flat did not resemble the conditions of Ms Poshteh's incarceration, the panic attacks could be ignored or would be sufficiently trivial as to be unlikely to affect her mental health. This mistake lay at the core of the decision maker's reasoning, and was therefore unable to support the conclusion reached.

Why is this relevant to housing lawyers?

This case serves as a reminder that s193(7) decisions which do not consider fully the s149 Equality Act 2010 local authority equality duty or which do not consider sufficient medical evidence are likely to be open to challenge on these grounds. However, the court will not interfere with the weight that a decision maker places upon any factor if it is satisfied that all pertinent factors have been properly considered.

Their lordships appear agreed that the decision maker was wrong to have placed weight on the fact that he did not consider it objectively reasonable that Ms Poshteh should find the window reminiscent of a prison cell. However the majority were satisfied that it was not irrational to conclude that her subjective distress would not have been likely to have a significant impact on her mental health. While the mental distress of the prospective tenant should be considered subjectively, the decision maker is permitted to conclude that that distress would not reasonably prevent them from accepting an offer of accommodation so long as the available evidence supports that conclusion.

This note was produced by Christi Scarborough, who is currently undertaking pupillage at 42 Bedford Row