Admin Court sets aside housing allocation condition of ten years' residence in borough set by local authority on grounds of race discrimination and breach of children's rights (R (on the application of TW and others) v London Borough of Hillingdon)

18/07/2018

Local government analysis: The Administrative Court has quashed a ten-year local residency housing allocation requirement. It was held indirectly discriminatory on the grounds of race as well as contrary to children's rights. The court indicated that it might have endorsed a shorter period justified by a clear equality impact assessment and evidence. Written by Adam Heppinstall, barrister at Henderson Chambers.

R (on the application of TW and others) v London Borough of Hillingdon (Equality and Human Rights Commission) [2018] EWHC 1791 (Admin)

What are the practical implications of this case?

While the court had no problem with a local authority aiming to provide housing for local people, a requirement that an applicant for a housing allocation should have lived in the borough for at least ten years did not find favour with the court. The court found unjustified indirect race discrimination inherent in the policy. The local authority could not point to sufficient evidence to establish the proportionality of the measure. Two and five-year residency conditions are common, but ten years was simply too long. If a local authority wishes to impose such an onerous condition it needs to be ready with a significant and weighty evidence base to demonstrate why such a policy is justified. The wording of the policy is also important. The court in this case found a measure which gave priority to working families was justified because it had been carefully targeted at those in work but who could not afford permanent housing.

What was the background?

The claimants were all Irish travellers, moving from place to place but now seeking to settle down, not least for the benefit of their children. The council admitted that they had the protected characteristic of race. The first claimant was a single parent who could not read and write with a seven, a four and a two-year-old children, the youngest of whom was the second claimant. The family was moved off a caravan site within the borough and placed in appalling emergency accommodation. The other claimant was a disabled 60-year-old father and care giver to a 40-year-old son and two daughters aged 35 and 23, all three of whom are disabled. They lived in temporary accommodation until forced to leave and in the father's van until the council's severe weather policy provided them with some temporary accommodation.

In addition to race, the first defendant claimed the protected characteristic of sex, the third claimant that of disability and the second claimant claimed the protection of section 11 of the Children Act 2004 (CA 2004) which required the local authority to ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children. Indirect discrimination was admitted, in respect of both the residency and working policies and the case turned on whether or not those policies could be justified.

What did the court decide?

Supperstone J did not find that the council could justify the ten-year residency policy. He found that the local authority could not provide any evidence of even considering how such a policy might affect a group such as Irish travellers. Indeed, officers of the council had pointed out the negative effect of the policy on all outsiders, and had suggested a lesser number of years but the elected politicians pressed ahead with the ten-year policy. Supperstone J found:

> 'no consideration has… been given as to whether the council has struck the correct balance between disadvantage to Irish travellers and the aims of the residence requirement… there is no evidence that the council sought to assess the extent of disadvantage on Irish Travellers or considered whether it was justified or what might be done to reduce it. Further, there is no evidence from the council to show that a short period than ten years would undermine their stated objectives.'

The judge therefore was reminding local authorities to be ready to provide strong and weighty evidence to justify rules which restrict access to public housing to those of particular ethnic groups. Again, with the CA 2004 challenge, the local

authority could point to no evidence that the s 11 duty had even been considered when the residency policy was being set. The court found that it had a very bad effect on Irish traveller children.

However the position was different with the working family condition, where the council could point to a good evidential base, a proportionate and well drafted policy and specific consideration of children's rights. Thus, the court found the discrimination caused by the working families policy to be lawful and justified. The contrast in the judge's treatment of this policy demonstrates the care which local authorities must go to when setting such policies, particularly when overriding the warnings and advice of its officers.

Case details

- Court: Queen's Bench Division, Administrative Court (London)
- Judge: Supperstone J
- Date of judgment: 13 July 2018

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