

HOMELESS IMMIGRANTS: LORD DENNING'S DECISION ON AN ETHIOPIAN WOMAN AND HER DEPENDENT CHILD

NOTE BY THE DEPARTMENT OF THE ENVIRONMENT

1. The Housing (Homeless Persons) Act, 1977, lays a duty on housing authorities to secure accommodation for people who are homeless and in priority need, and who have not become homeless intentionally. Broadly speaking "priority need" means families with dependent children, the elderly and the disabled.

Implications of Lord Denning's latest judgment

2. The implication of Lord Denning's recently published decision in the case of Hillingdon London Borough, an Ethiopian woman (Mrs Streeting) and her dependent child, is that housing authorities cannot refuse to provide housing under the Act to any lawfully admitted refugee on the grounds that the refugee is intentionally homeless. NB The judgment has implications only for those who could be considered refugees.

3. It does not mean that Mrs Streeting, or any other refugee who is both homeless and in priority need, is now entitled to a council house, since under the Act the authority is only required to secure accommodation, not to provide it. Thus those accepted as homeless under the Act can be offered bed and breakfast accommodation for example (though ultimately in the absence of any other arrangements being made a permanent housing obligation falls on the authority).

4. The Hillingdon decision must also be considered in the context of an earlier decision by Lord Denning, involving Crawley District Council and two Italian families, that foreigners who become homeless in this country because they have failed to make appropriate advance arrangements for their long-term accommodation needs, may be treated as intentionally homeless and therefore not entitled to permanent rehousing. The Ethiopian refugee and her son were "exempted" from this ruling essentially because of their refugee status which precluded them making advance arrangements to obtain housing in this country.

Review of the Housing (Homeless Persons) Act

5. As part of the Government's review of the Act all the local authority associations have now made submissions. As recently as March the associations were unanimous in advocating no change to the legislation. The ADC have subsequently reiterated this view, though adding a somewhat contradictory expression of support for Michael Shersby's Bill (which he withdrew) which would have the effect of excluding from the provisions of the Act those people with no local connection in the UK. The AMA still stand by their views of March. However the LBA will probably decide on 23 July (with Labour representatives dissenting) to endorse proposals for extensive amendment to the Act. This reflects the fact that the additional rehousing obligations that have resulted from the Act have fallen particularly on London boroughs, especially on those near the main airport and rail termini.

6. Ministers are still considering their recommendations arising from the review and a considerable number of recent court cases. It is clear

however that to amend the Act in such a way that it would exclude those arriving in this country from overseas is highly problematical and raises potential conflicts with both EEC and Race Relations legislation. (A Note on the Options is attached as an Annex).

Ministers aim to reach decisions on the review during the Recess and to announce their conclusions in the Autumn.

EXTRACT FROM DOE NOTE ON OPTIONS FOR ACTION UNDER THE
HOUSING (HOMELESS PERSONS) ACT 1977 TO DEAL WITH
HOMELESS IMMIGRANTS

Alternative approaches to removing the burden of securing accommodation, must all depend upon more or less radical methods of relieving housing authorities from their duties under the Homeless Persons Act towards those arriving from overseas. These range from measures involving discrimination (direct or indirect) in the operation of domestic legislation, to measures designed to shut off pressure at source by denying or discouraging travel to Great Britain.

Citizens of Ireland have free access under the Ireland Act 1949. Also on accession to the EEC, the UK came within the ambit of EEC Regulation 1612/68 which is legally binding on all member States. The regulation gives all nationals of member States (and their families) the right to take up employment in another member State with the same priority as citizens of that State. They are entitled to travel in search of work and, having obtained a job, to enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the houses they need and the right to be put down on the housing lists in the region where they are employed. Article 189 of the Treaty of Rome makes every regulation "binding in its entirety and directly applicable to all member States". For practical purposes, therefore, a regulation has direct effect and becomes an integral part of the law of each member State, over-riding any inconsistent statute, and capable of being invoked by an aggrieved individual either in the national courts or in the European Court of Justice.

If the Homeless Persons Act was amended in such a way as to conflict with the 1968 EEC Regulation, the community law would be held to prevail and over-ride the statute. Amendment of the Act of 1977 to remove all duties towards EEC nationals could certainly be seen as involving such a conflict.

Race Relations

The Race Relations Act 1976 is binding on local authorities and prohibits both direct and indirect discrimination on the grounds of colour, race, nationality or ethnic or national origins, unless provided for by primary or secondary legislation. Amendment of the 1977 Act to sanction such discrimination would be very controversial.

Limiting entitlements other than by national origin

An approach which sought to limit the entitlement of applicants by reference to characteristics other than their national origins might avoid some of these difficulties, but in doing so, it would be extremely difficult to avoid penalising groups of British nationals sharing the chosen characteristics.

For example, the Act might be amended to require residence in the UK for the previous year, as a pre-condition of claiming help under the Homeless Persons Act. This would diminish the extent of discrimination on the grounds of racial origin since it would catch not only foreigners but also British people such as contract workers and emigrants and ex-servicemen returning from abroad. If, in an attempt to avoid penalising British subjects, the qualifying year was defined to include any continuous 12 month period of UK residence during the applicant's lifetime - a criterion which almost any British applicant could satisfy - this would result effectively in discrimination on grounds of national origin.

Alternatively an applicant might be excluded from help under the Homeless Persons legislation if he is unable to establish a local connection within the area of the authority to whom he applies, (the idea behind Mr Michael Shersby's Private Member's Bill). This would need major changes to the Act, altering the sequence of enquiries and duties, and elaborating the definition of local connection. Though in practice nearly all British residents must have a local connection somewhere, and would therefore

probably be able, though with difficulty, to gain access to the benefits of the homelessness legislation, this device would be less clearly discriminatory since it could be presented as protecting authorities from people moving around Great Britain. However British subjects who had been highly mobile in the previous five years could find themselves excluded and real hardship could be caused to some British people through being passed from one authority to another. Any attempt to avoid these problems by defining the local connection criterion in such a way as to disqualify only people with no local connection anywhere in Britain would again involve discrimination on grounds of national origin.

The problem is essentially that once foreigners gain legitimate admission to this country, attempts to treat them differently from the indigenous population would involve fundamental conflict with both domestic race relations and community legislation. If it is accepted that the prospect of securing major changes in that legislation is unpromising, it follows that further reductions in the responsibilities to foreign nationals alone under the homelessness legislation must depend upon securing reductions in the number of foreign nationals admitted.

Warnings to immigrants and denial of entry

At present, prospective immigrants from territories with a British High Commission are given a leaflet which warns of housing difficulties in the UK. This could be strengthened to say that immigrants must make their own arrangements for housing and cannot expect help from public authorities. A more specific warning that anyone who does not make adequate arrangements in advance may be declared intentionally homeless would be doubled edged: it might help local authorities in specific cases, but it would also draw attention to the existence of the "benefits" available under the 1977 Act. Consultation would be needed with the FCO.

The immigration rules on conditions of entry, which apply to most permit holders, specify that they should not have "recourse to public funds" and stipulate, for a majority of those seeking entry, that they should "be able to maintain and accommodate (themselves) and any dependents". At present, "public funds" is taking to include supplementary benefit but not, generally,

housing - because the occupant is assumed to pay for this. It would appear possible for immigration officials to tighten up the operation of these rules to deny entry (or refuse extension of stay) where an application as homeless seems likely to arise on entry or shortly thereafter. This would be controversial and could lead to difficult legal arguments. Consultations would be needed with the Home Office.

Neither device would have any impact upon the volume of arrivals from the Republic of Ireland or EEC member States, who have virtual freedom of entry. But most of these may be assumed to be caught by the Crawley decision.

Scale of the "homeless immigrant" problem

It should be remembered that in each of the last two years, 1978 and 1979, only 2% of those accepted as homeless had been living abroad a month before becoming homeless.



DEPARTMENT OF THE ENVIRONMENT

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MINISTER FOR HOUSING AND CONSTRUCTION

16 July 1980

Mike Pattison Esq
Private Secretary
10 Downing Street
London SW1

Dear Mike,

Following your request last Friday the Minister has asked me to send you the attached note for the Prime Minister on the implications of the Streeting judgement and state of play on the Homeless Persons Act Review.

Yours sincerely

Pam Alexander

PAM ALEXANDER
Private Secretary

RESTRICTED



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10 DOWNING STREET

From the Private Secretary

21 July 1980

Thank you for your letter of 16 July, with which you enclosed a note for the Prime Minister on the implications of the Streeting judgement and on the state of play on the Homeless Persons Act Review.

The Prime Minister has noted this, and the covering letter from Mr. Stanley. She would be grateful to be kept informed as discussions progress.

M. A. PATTISON

Ms. Pam Alexander,
Department of the Environment.

JS



10 DOWNING STREET

Prime Minister

Homeless Persons Act-

This note from Mr Stanley sets out possible options in the annex. At this stage, this is simply internal DOF thinking.

MS.

MPD
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DEPARTMENT OF THE ENVIRONMENT



MINISTER FOR HOUSING AND
CONSTRUCTION

July 16

Dear Prime Minister

You will want
to know that there has
as yet been no
discussions with Ministers
in Other Departments
of the sensitive issues
raised in the Annex
to the Note

I hope this is helpful.
Yours etc, John.