



26 January 2011

PRESS SUMMARY

Yemshaw (Appellant) v London Borough of Hounslow (Respondent) [2011] UKSC 3

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown

BACKGROUND TO THE APPEAL

The issue in this case is what is meant by the word “violence” in section 177(1) of the Housing Act 1996. Is it limited to physical contact or does it include other forms of violent conduct?

Under section 193 of the 1996 Act, where a local housing authority are satisfied that an applicant is homeless and did not become homeless intentionally, they must make accommodation available for the applicant, unless they refer the application to another local housing authority.

Section 175(1) provides that a person is homeless if he has no accommodation available for his occupation. Section 175(3) provides that a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy. Section 177(2) states that in determining whether it is reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the local housing authority district. Section 177(1) states that it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against him or other members of his household.

The effect of section 177(1), which has been called a “pass-porting” provision, is that a person who is at risk of the violence to which it applies is automatically homeless, however reasonable it might in other respects be for her to remain in the accommodation. Questions of local housing conditions or shortages do not come into it. Another important consequence of section 177(1) is that the person cannot be treated as intentionally homeless.

Section 198 provides that one of the conditions for referral to another local housing authority is that neither the applicant nor other members of his household will run the risk of domestic violence in the other district. In the case of *Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404, [2007] 1 WLR 69, the Court of Appeal held that “violence” in the context of section 198 involved some sort of physical contact, and the word “violence” on its own did not include threats of violence or acts or gestures, which lead someone to fear physical violence.

In August 2008, the Appellant left the matrimonial home in which she lived with her husband, taking her two young children with her, and sought the help of the local housing authority. In interviews with housing officers, she complained of her husband’s behaviour, which included shouting in front of the children, and stated that she was scared that if she confronted him he might hit her. The officers decided that she was not homeless as her husband had never actually hit her or threatened to do so. On a review, the panel noted that the root cause of her homelessness was not that she had fled after a domestic incident. The panel believed the probability of domestic violence to be low. They concluded that it was reasonable for her to continue to occupy the matrimonial home. The Respondent local

authority accepted that the housing officers and review panel had applied the *Danesh* meaning when deciding that the appellant was not homeless within the meaning of the 1996 Act.

JUDGMENT

The Supreme Court unanimously allows the appeal and sends the case back to be decided again by the local housing authority. Lady Hale gives the leading judgment. The Court holds that “domestic violence” in s. 177(1) of the 1996 Act includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.

REASONS FOR THE JUDGMENT

“Physical violence” is not the only natural meaning of the word “violence”. Another natural meaning is “strength or intensity of emotion; fervour, passion”. [19]

By the time of the 1996 Act, both international and national governmental understanding of the term “domestic violence” had developed beyond physical contact. There is certainly no doubt that the understanding of “domestic violence” has moved on now, as demonstrated by the definitions used in a 2005 Home Office publication ‘Domestic Violence: A National Report’ and in the 2006 Homelessness Code of Guidance for Local Authorities. [20] – [24]

“Violence” is not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time. The essential question is whether an updated meaning is consistent with the statutory purpose. The purpose is to ensure that a person is not obliged to remain living in a home where she, her children or other members of her household are at risk of harm. A further purpose is that the victim of domestic violence has a real choice between remaining in her home and seeking protection from the criminal or civil law and leaving to begin a new life elsewhere. [27]

The purpose of the legislation would be achieved if the term “domestic violence” were interpreted in the same sense in which it is used by the President of the Family Division, in his *Practice Direction (Residence and Contact Orders: Domestic Violence) (No 2)* [2009] 1 WLR 251, para 2, suitably adapted to the forward-looking context of sections 177(1) and 198(2) of the Housing Act 1996: “Domestic violence’ includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.” [28]

Lord Rodger could see no reason why Parliament would have intended the position to be any different where someone will be subjected to deliberate conduct, or threats of deliberate conduct, that may cause her psychological, as opposed to physical, harm. To conclude otherwise would be to play down the serious nature of psychological harm. [46]

Lord Brown indicated his very real doubts that Parliament intended “domestic violence” to extend beyond the limits of physical violence but did not feel sufficiently strongly as to the proper outcome of the appeal to carry these doubts to the point of dissent. [48], [60].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html