12 November 2014

PRESS SUMMARY

R (on the application of ZH and CN) (Appellants) v London Borough of Newham and London Borough of Lewisham (Respondents) [2014] UKSC 62
On appeal from [2013] EWCA Civ 804 and 805

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Carnwath, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEALS

Local housing authorities have statutory obligations under Part VII of the Housing Act 1996 ('the 1996 Act') to provide assistance to people who are homeless in certain circumstances. When an application for such assistance is received, the authority will carry out investigations under s.184 of the 1996 Act to ascertain whether the applicant qualifies for local authority housing. Under s.188 of the 1996 Act, the authority must provide the applicant with interim accommodation ('s.188 accommodation') during the time it takes to carry out these investigations **[1]**.

The two appellants in this case were children of families provided with s.188 accommodation while their housing applications were considered. CN's mother JN was granted a licence to occupy a privately-owned property by the London Borough of Lewisham ('Lewisham') in November 2011 **[2]**. From November 2012, ZH and his mother FI occupied s.188 accommodation, in the form of a flat owned by a private company, under a licence granted by the London Borough of Newham ('Newham') **[6]**. Both JN and FI's substantive housing applications were refused, at which point the obligation on Lewisham and Newham ('the authorities') to provide s.188 accommodation ended and JN and FI were told to vacate the properties; JN in May 2012 **[5]** and FI in March 2013 **[6]**.

CN and ZH commenced separate judicial review proceedings challenging these evictions **[9]**. They argued that even after the s.188 duty ceased, the authorities could not lawfully evict them from their s.188 accommodation without first giving notice and obtaining a court order. They relied on ss.3(1) and 3(2B) of the Protection from Eviction Act 1977 ('PEA') which together provide that "*in relation to any premises occupied as a dwelling under a licence, other than an excluded licence"*, where the licence has come to an end but the occupier continues to reside in the premises "*it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises"*. Section 5(1A) PEA further provides that no less than four weeks' written notice must be given to end "*a periodic licence to occupy premises as a dwelling*", other than an excluded licence **[19]**. The "excluded licences" not protected by ss.3 and 5 are listed at s.3A PEA; the list does not include s.188 accommodation **[18]**.

The two judicial review claims were given permission in the High Court and transferred to the Court of Appeal, where they were heard together **[8]**. On 11 July 2013 the Court of Appeal dismissed the claims **[9]**.

JUDGMENT

The Supreme Court dismisses the appeal by a majority of five to two. It holds that Newham and Lewisham are entitled to evict the appellants from s.188 accommodation without first obtaining a court order. Lord Hodge (with whom Lord Wilson, Lord Clarke and Lord Toulson agree) gives the

main judgment. Lord Carnwath gives a concurring judgment. Lord Neuberger and Lady Hale give dissenting judgments.

REASONS FOR THE JUDGMENT

Is s.188 accommodation "*occupied as a dwelling under a licence*" for the purposes of ss.3 and 5 PEA?

Lord Hodge holds that the word "dwelling" does not have a technical meaning but suggests a greater degree of settled occupation than "residence" and can be equated with one's home **[45]**. It bears the same meaning in PEA as in predecessor legislation (the Rent Acts) **[26]**. On an assessment of the legal and factual context, a licence to occupy s.188 accommodation is not granted for the purpose of using the premises "as a dwelling". First, the statutory context is inconsistent with such a purpose; s.188 imposes a low threshold duty on a local housing authority to provide interim accommodation (not a home or fixed abode) for a short and determinate period only **[33]**. Secondly, such a licence is granted on a day-to-day basis allowing the authority to transfer the applicant to alternative accommodation at short notice **[34]**. Thirdly, (although this is not of itself determinative) to hold otherwise would hamper the operation of the 1996 Act by introducing delays for court proceedings to effect evictions from accommodation needed for other homeless applicants **[35]**. Further, the absence of an express exclusion in s.3A PEA for s.188 accommodation does not mean that such accommodation falls within s.3 PEA **[49]**. Parliament sought confirm excluded tenancies and licences for the avoidance of doubt but did not intend to thereby extend protection to accommodation that would not have classified as a "dwelling" under the Rent Acts **[47]**. Lord Carnwath adds that settled practice may, in appropriate circumstances, be an aid to statutory interpretation **[95]**; were the issues more finely balanced, the fact that the Court of Appeal's statutory interpretation in *Mohammed v Manek* (1995) 27 HLR 439 has been adopted in departmental guidance would be an additional reason to dismiss the appeal **[98]**.

In dissenting judgments, Lord Neuberger **[128]** and Lady Hale **[158]** hold that in the context of PEA 1977 "dwelling" has at least as broad a meaning as "residence". Lord Neuberger considers that Sections 3 and 5 PEA should be accorded a wide rather than a narrow effect as they reflect a policy that people who have been lawfully living in premises should not be summarily evicted **[135]**. Premises may be occupied as a dwelling notwithstanding said occupation is short term, provisional or precarious **[136]**. This interpretation is supported by the absence of a specific exclusion in s.3A PEA **[139]**.

Does Article 8 ECHR require the authorities to obtain court orders before carrying out evictions?

The parties were in agreement that the appellants' Article 8 rights were engaged **[60]**. Lord Hodge (with whom Lord Neuberger, Lord Wilson, Lord Clarke, Lord Carnwath and Lord Toulson agree) holds that the interference with the appellants' Article 8 rights was objectively justified. The termination of an unsuccessful applicant's licence to occupy s.188 accommodation is in accordance with the law and pursues the legitimate aim of *inter alia* accommodating other homeless applicants **[67]**. Recovery of possession is proportionate to that aim because in the context of limited resources there can generally be no justification for preferring those whose claims have been investigated and rejected **[68]**. The procedural safeguards contained in the 1996 Act, the Children Act 1989, and by way of judicial review, together afford fair procedure such as to comply with the requirements of Article 8 **[64]**; there is no need to impose the additional hurdle of obtaining a court order **[68]**. (As Lady Hale finds for the appellants as a matter of statutory interpretation, in her judgment the Article 8 issue does not arise **[168]**.)

References in square brackets are to paragraphs in the judgment

NOTE

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