9 May 2013

PRESS SUMMARY

SL (Appellant) v Westminster City Council (Respondent) [2013] UKSC 27
On appeal from [2011] EWCA Civ 954

JUSTICES: **Lord Neuberger (President), Lady Hale, Lord Mance, Lord Kerr, Lord Carnwath**

BACKGROUND TO THE APPEAL

This case concerns the scope of the obligation of local authorities under s.21(1)(a) of the National Assistance Act 1948 to provide accommodation to individuals who, by reason of age, illness, disability or any other circumstance, are in need of care and attention which is not otherwise available to them. According to s.21(1A) of that Act, accommodation may not be provided under s.21(1)(a) to persons subject to immigration control if their need for care and attention has arisen solely because they are destitute or because of the physical effects, or anticipated physical effects, of destitution.

SL is a failed asylum-seeker from Iran. He arrived in the UK in 2006 and became homeless in October 2009. He was admitted to a psychiatric hospital following an attempted suicide in December 2009. SL was diagnosed as suffering from depression and post-traumatic stress disorder. Upon discharge from hospital in April 2010, SL was assessed as needing regular sessions with mental health professionals and counselling groups, and also weekly meetings with a social worker.

Westminster City Council says that it has no duty under s.21(1)(a) of the 1948 Act to provide SL with accommodation. It argues that he is not in need of "care and attention" for the purposes of that provision because his weekly meetings with a social worker are only a means of monitoring what, if any, "care and attention" he may need in the future. The council also argues that any assistance that SL may need is, in any event, "otherwise available" for the purposes of s.21(1)(a) because it is available to him regardless of his accommodation arrangements. The National Asylum Support Service (NASS) accepted that, if s.21(1)(a) was not applicable in this case, it would have an obligation to provide SL with accommodation.

SL brought a claim for judicial review of the council's refusal to provide him with accommodation under s.21(1)(a). The High Court dismissed the claim, but the Court of Appeal reversed that decision. The council has accommodated SL pending the resolution of these proceedings. SL has since been granted indefinite leave to remain, which entitles him to a wider range of state benefits. However, the appeal was heard because it raises important questions of principle regarding s.21(1)(a).

JUDGMENT

The Supreme Court allows the appeal, concluding that the Council does not owe a duty to provide SL with accommodation under s.21(1)(a) of the 1948 Act. Lord Carnwath gives the only judgment.

REASONS FOR THE JUDGMENT

- There are three cumulative conditions which must be satisfied before s.21(1)(a) of the 1948 Act is applicable and accommodation must be provided thereunder: (i) the person in question must be in need of "care and attention"; (ii) the need must arise by reason of age, illness, disability or other circumstances; and (iii) the care and attention which is needed must not be available otherwise than by the provision of accommodation under s.21. The Council was reasonably entitled to take the view that the first and third of those conditions are not satisfied on the facts of this case **[7, 39]**.

- The support available from NASS is intended to be a last resort. In determining whether the conditions in s.21(1)(a) are satisfied, a local authority must disregard the support which might hypothetically be available from NASS **[9]**.

- The phrase "care and attention" means "looking after", i.e. doing something for a person which he cannot or should not be expected to do for himself. It does not, however, cover all forms of social care and practical assistance. "Care and attention" for the purposes of s.21(1)(a) does not include the mere provision of physical things, even things as important as food and accommodation. The meaning of the words "care and attention" must take some colour from its association with the duty to provide residential accommodation. It is not confined to care and attention that can only be provided at specialised residential accommodation. However, something well beyond merely monitoring an individual is needed. The council was, therefore, entitled to conclude that the services it provided to SL do not qualify as "care and attention" **[41-44]**.

- The words "not otherwise available" in s.21(1)(a) govern "care and attention" not "accommodation". The council was entitled to conclude that the services provided to SL were available otherwise than by the provision of accommodation under s.21 because they were entirely independent of SL's accommodation arrangements; the assistance could have been provided to SL in the same place and in the same way whether or not he had accommodation of any particular type, or at all. The Court of Appeal was wrong to read the word "available" in s.21(1)(a) as meaning not merely available in fact but also available in a manner that is reasonably practicable and efficacious. The acceptance of such a loose and indirect link with the provision of accommodation is not justified by the wording of s.21(1)(a). Whether the criterion of "not otherwise available" is satisfied in any particular case is best left to the judgment and common sense of the local authority concerned **[8, 45-49]**.

References in square brackets are to paragraphs in the judgment