HOMELESSNESS

Priority need

■ **Hotak v Southwark LBC**
■ **Kanu v Southwark LBC**
■ **Johnson v Solihull MBC**

[2015] UKSC 30,
13 May 2015,[3]
(2015) Times 25 May

Craig Johnson was a single homeless man with a history of drug abuse and incarceration. Sifatullah Hotak and Patrick Kanu were homeless disabled men dependent on the help of other members of their households. Applying the *Pereira* test (*R v Camden LBC ex p Pereira* (1998) 31 HLR 317, CA), the councils decided none of the men was 'vulnerable': HA 1996 s189(1)(c). On their three appeals from the Court of Appeal against the dismissal of challenges to those decisions, the Supreme Court decided that the *Pereira* test did not correctly state the law on vulnerability. In practice, it had led to statistical comparisons between applicants and street homeless people.

The correct question to ask was simply whether an applicant was at greater risk of harm than an ordinary person who might become homeless. That had nothing to do with statistical material or a council's own pressures on resources. Everyone might be expected to suffer some harm if they became homeless, so 'vulnerable' simply meant a greater degree of harm than that which an ordinary person in normal health might experience.

If the applicant was disabled or had another protected characteristic, the council also had to take into account the public sector equality duty under the Equality Act 2010 in making its assessment.

On such assessment, a council was entitled to have regard to the availability of help on which the applicant could call (whether from his family or otherwise).

Johnson's appeal was dismissed on the facts. Kanu's appeal was allowed. The court agreed to receive further submissions on the correct disposal of the Hotak appeal.

Intentional homelessness

■ **Haile v London Borough of Waltham Forest**

[2015] UKSC 34,
20 May 2015

In October 2011, while pregnant, Saba Haile surrendered her tenancy of a bedsit in a hostel for single people and moved to other insecure accommodation. In November 2011, she was asked to leave because of overcrowding. She then applied to Waltham Forest for homelessness assistance. In February 2012, she gave birth to a baby daughter. In August 2012, the council decided that she had become homeless intentionally. In January 2013, a reviewing officer found that she had surrendered her tenancy of the room in the hostel and, in consequence, had ceased to occupy accommodation which was available for her occupation, and which it would have been reasonable for her to continue to occupy until she gave birth: HA 1996 s191. Appeals were dismissed by the county court and the Court of Appeal ([2014] EWCA Civ 792, 13 June 2014; July/August 2014 *Legal Action* 55).

On a further appeal to the Supreme Court, Haile argued that the birth of her baby broke the chain of causation between her deliberately leaving the hostel and her state of homelessness when her application was considered. She invited the court, if necessary, to depart from the House of Lords' decision in *Din v Wandsworth LBC* [1983] 1 AC 657.

The Supreme Court held that *Din* had been correctly decided and remained good law but there must be a continuing causal connection between the deliberate act satisfying the statutory definition of 'intentional' homelessness, and the homelessness existing at the date of the council's decision. In this case, the appeal was allowed by a majority (4:1) because the reviewing officer did not consider whether the cause of Haile's current state of homelessness was her surrender of her tenancy. The birth of the baby had meant that she would be homeless, at the time her application was considered, whether or not she had surrendered the tenancy. It was actual events which had materialised post-dating departure from the last accommodation that were important.

HOUSING AND COMMUNITY CARE

■ **R (Whapples) v Birmingham Crosscity Clinical Commissioning Group**

[2015] EWCA Civ 435,
29 April 2015

The claimant was a tenant of Midland Heart (a housing association) in Birmingham. She was severely disabled. Her flat was no longer suitable for her needs. She wished to move to larger accommodation (sufficient to accommodate a carer) in a different part of the country. The clinical commissioning group (CCG) was willing to co-operate with her landlord and with local housing authorities to facilitate a move to alternative rented accommodation but the claimant contended that it was for the CCG to provide her with free accommodation under National Health Service Act 2006 s3(1)(b), which provides that:

A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility ...

(b) other accommodation for the purpose of any service provided under this Act.

It was common ground that 'other accommodation' could include ordinary private residential accommodation for which the NHS would have the power to pay but the CCG denied that, on the facts, it was under a duty to provide such accommodation itself. Sales J dismissed an application for a judicial review of that decision ([2014] EWHC 2647 (Admin), 30 July 2014; September 2014 *Legal Action* 50) and the claimant appealed, relying on the *National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care 2012* (Department of Health, November 2012).

The Court of Appeal dismissed the appeal. It held the relevant statutory guidance did not dictate the outcome for which the appellant contended. The duty claimed under the NHS Act 2006 was not made out. Burnett LJ said:

Effectively there has been a standoff brought about by the appellant. She has declined offers of assistance in seeking alternative accommodation unless the offer includes an acceptance on the part of the CCG to provide it or fund it. In the meantime, and contrary to her own best interests, she has continued to decline any assistance with her care. As the judge observed, in these circumstances the CCG was entitled to conclude either that the appellant has no reasonable requirement for accommodation provided or funded by the NHS, or that it is not necessary to provide it (or both). There is every reason to suppose that, with the appellant's co-operation, suitable alternative accommodation will be found for her (para 42).

1 www.judiciary.gov.uk/subject/contempt-of-court/
2 Jo Holden, solicitor, Holden and Co, Hastings.
3 See also Supreme Court redefines vulnerability in homelessness cases, page 21.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London, and a recorder. They would like to hear of relevant housing cases in the higher or lower courts. The authors would like to thank the colleague at note 2.