

Case law

Case Details

National ID: 2004 EWCA Civ 55

Member State: United Kingdom

Common Name: Khatun & Others v Newham LBC

Decision type: Other

Decision date: 24/02/2004

Court: Court of Appeal Civil Division

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1](#), 1. Unfair Contract Terms Directive, [Article 2](#)

Headnote

1. The Unfair Terms in Consumer Contract Regulations 1999 apply to contracts relating to land and to public authorities in the exercise of functions pertaining to a "trade, business or profession". Homeless persons seeking accommodation were "consumers" and the local authority a "supplier" in the terms of the Regulations and Council Directive 93/13/EEC.

2. A local authority policy of requiring homeless persons applying for accommodation under Pt VII of the Housing Act 1996 to decide whether or not to accept accommodation offered to them without having seen the accommodation was not unlawful.

Facts

Three individuals applied to the council for accommodation as homeless persons under Part VII of the Housing Act 1996. It was the policy of Newham LBC to require an applicant to accept offered accommodation without viewing it. If the accommodation was refused, the applicant's bed and breakfast accommodation could be cancelled and the council considered its obligation to them at an end. One applicant, Mrs Khatun, accepted the accommodation offered, while the other two declined it on the grounds that they had not been offered a viewing on which to base their decision.

All three applicants brought judicial review proceedings of the local authority's policy, alleging that homeless persons had a right to view accommodation offered to them before deciding whether to accept it. Mrs Khatun also alleged that the Unfair Terms in Consumer Contract Regulations 1999 and Directive 93/13/EEC applied to the terms on which the accommodation was let.

Newman J in the administrative court agreed with both contentions. Only the latter decision was upheld by the Court of Appeal judges in the present case: the 1999 Regulations applied to the local authority policy, but the policy was not unlawful as homeless applicants did not have a right to view offered accommodation.

Legal issue

Decision

Issue 1: Do homeless persons have a right to view accommodation offered to them before deciding whether to accept it?

An applicant for Pt VII accommodation could derive an enforceable right to view property offered by a local authority before deciding whether to accept it: (1) from statute; (2) implicitly by demands of procedural fairness; (3) from the local authority's duty to perform its functions reasonably according to the Wednesbury principle.

There is no statutory right to be heard in this situation, and so (1) does not apply. Nor does (2), as this is an 'application' case (one in which a decision will grant or withhold a benefit not previously enjoyed, and in which there is merely an entitlement to apply), where an applicant enjoys only the right to benefit from a decision in his favour, and has no right to be heard as such. Similarly for (3), denying an applicant opportunity to view a property does not disable the Council from an appreciation of all the factors relevant to its decision as to the suitability of the property.

Issue 2. Do the Directive and Regulations apply in this case?

Three questions were considered and answered in the affirmative: (1) Do the Directive and Regulations apply to contracts relating to land?; (2) Do the Directive and Regulations apply to public authorities such as the Council?; (3) Is the Council a "seller or supplier" and are the respondents "consumers" within the meaning of the regulations and the Directive?

(1) The Directive's dominant purpose (and thus also the Regulations) is consumer protection. There is no justification for excluding contracts relating to land from the scope of "goods and services": to do so would be to cut across the grain of the Directive's aim to provide a high level of protection.

While English common law recognises a distinction between real and personal property, other language texts of the Directive use terminology that refers to immovable goods as readily as movables. "European legislation has to be read as a single corpus of law binding across the member states". [at 78] Further, the text and travaux préparatoires of the Directive indicate that the drafters attached no significance to the difference between land and other transactions and proceeded on the basis that the Directive would apply to both. Such materials powerfully suggest that if there were to be exclusions from the scope of the Directive, they would have been specifically provided for.

(2) The Council is not taken out of the Directive's scope solely due to its status as a public or governmental body. Bettercare Group Ltd ([2002] C.A.T. 7)

considered, the true question is “do the Council’s Pt VII functions fall within the meaning of ‘trade, business or profession’ in Art 2(c) of the Directive”? Albany International ([1999] E.C.R. I-5751) considered, as the activity engaged in centrally could be carried on by a private undertaking in order to make a profit (the grant of a tenancy for rent) the answer is yes.

(3) Given the conclusion to question (2), it is clear that the Council is a “seller or supplier” and the respondents are “consumers” within the meaning of the Regulations and the Directive.

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