

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE APPEAL COURT

B E T W E E N:

R

(on the application of)

BARBARA

Respondent

– and –

BROCKWELL INN

Appellant

In view of the extremely cold winter approaching (where temperatures are expected to drop to at least –10 Celsius), Tealstock Council (the “**Council**”) decides that it must take steps to house people experiencing homelessness in its area.

The Council considers that it is under a duty to do so under section 1 of the (fictional) Extreme Weather Act 2020 (the “**Act**”) which provides that:

1. Duties on local authorities as to protection from extreme weather

(1) Where extreme weather occurs or is imminent or there is reasonable ground for apprehending such extreme weather, and a local authority is of the opinion that the extreme weather is likely to affect the whole or part of their area or all or some of its inhabitants, the local authority must:

(a) make reasonable arrangements or take reasonable action to avert or alleviate in their area or among its inhabitants the effects or potential effects of the extreme weather.

(2) the arrangements or actions referred to at subsection (1)(a) may include providing residential accommodation for persons aged 18 or over, where such people are destitute.

“Extreme weather” is defined in the Act as including “temperatures on average dropping to or below – 10 Celsius for 3 days or more”. The Act applies and is in force throughout England and Wales, Northern Ireland and Scotland.

The Council decides to build a set of temporary accommodation shelters (the “**Shelters**”) on one Council-owned site of unused land. The Council approaches Brockwell Inn (the “**Inn**”), a charity that runs hostels and night shelters in the area. The Council enters into a contract with the Inn (the “**Scheme**”) under which the Inn will run the Shelters and the Council will provide the Inn with a fixed amount of funding (£30) per person per night that the Inn houses in the Shelters. The funding is calculated to cover the costs the Inn incurs in housing people. Under the Scheme the Inn must house people as directed by the Council.

The Shelters are built and ready to receive residents by the end of October and, pursuant to the Scheme, the Inn starts running the Shelters and housing people. There is enough room to receive all of the people experiencing homelessness in the area, with lots of beds to spare.

Barbara is one of the people experiencing homelessness who is housed under the Scheme in one of the Shelters.

During the Inn's preparation for the arrival of residents under the Scheme, the Inn manager writes up a short agreement, to be signed by the Scheme residents (the "**Agreement**"). The Agreement states that the Inn has the right to refuse to continue to house anyone under the Scheme who, in its opinion, has been involved in anti-social behaviour. There is a right of appeal against the Inn's decision to the Inn's Board of Trustees. At both the decision stage and the appeal stage, the person concerned is entitled to a written statement of reasons. Barbara signs a copy of the Agreement upon her arrival at the Shelter she is staying in.

The Scheme appears to work well for all parties for a number of weeks. However, in mid-December, Barbara starts to make threatening comments towards other Scheme residents and staff, about which the Inn receives several complaints. On 23 December, after he attempts to intervene in one of these exchanges, Barbara assaults one of the Inn's cleaners.

On the day following the assault, the Inn manager decides in a meeting with Barbara that, pursuant to the Agreement, the Inn will no longer provide Barbara with accommodation. It is not in dispute that the incidents in which Barbara was involved amount to anti-social behaviour.

Barbara leaves the meeting feeling dejected as nothing, other than the incidents of anti-social behaviour, is discussed when deciding to remove her from the Inn. Had she been asked, Barbara would have told the Inn manager that she struggles with impulse control, which leaves her less able to control violent thoughts. Barbara finds that her impulse control issues are exacerbated over the festive period. If asked, Barbara would have said that her problems with impulse control have affected her ability to secure more permanent accommodation.

That evening, the Inn manager gives Barbara a document entitled "Statement of Reasons for Eviction", which narrates the incidents of anti-social behaviour. There is a sentence at the bottom stating that Barbara has a right of appeal, and that she must request such an appeal within one day of being given reasons for the decision.

Barbara decides to appeal the decision, and an appeal panel drawn from the Board of Trustees is convened the following day. The appeal panel discuss at length with Barbara the incidents of anti-social behaviour and her personal circumstances, and Barbara feels she is able to put across her issues around impulse control. However, at the end of the meeting, the appeal panel confirms the original decision.

Immediately after the appeal meeting, Barbara is transported by the Inn manager to the site on the high street where she normally sleeps. As he leaves, the Inn manager hands Barbara another document entitled "Statement of Reasons for Eviction". It is identical to the first document Barbara was given but, by the time she realises, the Inn manager has already driven away. It is Christmas Day, and the temperature is – 11 Celsius.

Assisted by a local law centre, Barbara decides to challenge the Inn's decision through judicial review.

Both the first instance and appeal courts hold in Barbara's favour. Both courts hold that:

- section 1 of the Act applied throughout the period in question and the Scheme was lawful and met the Council's duties under that Act (this being common ground between the parties);

- the Inn is exercising “functions of a public nature”, and thus a “public authority”, for the purposes of section 6 of the Human Rights Act 1998 when housing individuals under the Scheme;
- the decision to remove Barbara from the Shelters was an unlawful interference with Barbara’s rights under Article 8; and
- the Inn was not required to seek a court order for Barbara’s removal (this point has not been appealed).

The Inn now appeals on the following issues:

- (1) Whether it is a “public authority” for the purposes of the Human Rights Act 1998; and
- (2) Whether its decision to remove Barbara amounts to a violation of her rights under Article 8.