



Hotak, Kanu and Johnson

Matt Hutchings

Introduction

Thanks to HLPAs for inviting me to speak here tonight

This talk aims merely to set the scene for others to explore the implications of the SC judgment in more detail

As Baroness Hale stated, the SC has substantially modified the *Pereira* test

I would suggest that it has reinstated the intended meaning of “a person who is vulnerable...”



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The Problems

1. Comparator

- The *Pereira* test invited a comparison with the “ordinary homeless person”
- Statistics show that actual homeless people suffer from poor mental and physical health
- Any test that involves comparison with the OHP produces a super-vulnerability test: more vulnerable than the vulnerable; more ill than the seriously ill

2. Lack of effective review

- (i) The illusive comparator
- In *Tetteh* the CA stated that the characteristics of the OHP could be based on the local experience of a housing officer
 - It was impossible to challenge that evidence base
- (ii) *Puhlhofer*
- A threshold of obvious perversity means that cursory decisions are upheld

3. The Hotak point

- Broadly, the relevance of third party support to an assessment of vulnerability
- From one perspective, if the applicant will be protected from harm when homeless, does this issue of itself give rise to a major policy concern?
- Is social care on a park bench an acceptable alternative to housing?



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Discussion of the Issues

Comparator



- We had come a long way from the ordinary meaning of “a person who is vulnerable”
- But we are all susceptible to harm from homelessness; the Act did not intend all homeless persons to qualify as vulnerable
- Meaning in context is a slippery slope
- Hence holding the line: no comparator
- Fallback position: an ordinary person
- Timing: before or after a period of homelessness?

Intensity of review



- *Puhlhofer*: the sacred cow of homelessness
- Cf. *KM v Cambridgeshire* “close scrutiny”
- PSED requires “conscientious attention”
- Is it right to have a two tier system for assessing people all of whom are claiming to be vulnerable?

Third party support



- On the one hand, the legislation does not confer a discretion as to how to meet an assessed need, priority need
- On the other, consider two powerful arguments:
 - The “magic pill”
 - No man is an island



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The Answers

In summary



- Comparator is OP not OHP ([58]-[59])
- Test is significantly more V than OP ([53])
- DM must “pay close attention to the particular circumstances” and EA cases require “very sharp focus” on effects of disability ([38], [78])
- Practical help from any source including family taken into account – caveats: (i) has to be consistent and predictable and (ii) have to consider very carefully whether support removes V ([64]-[65], [70]-[71])



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Future Issues

Battle lines 

- What does “significantly more” mean? More than *de minimis* or substantial?
- How V is OP? Empirical or hypothetical?
- Charitable & other support – what are the logical limits of this?



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