

# *R v Macclesfield Borough Council Housing Benefit Review Board, ex parte Tamsamani*

## *Background to this case*

- 1 The case involved a claimant, who, together with his wife and five dependant children, moved from a four-bedroom house in Manchester to a property of a similar size in Styal one of the more desirable locations in the Borough of Macclesfield. Prior to the move the claimant applied for a Pre-tenancy Determination (PTD). The rent officer (RO) determined that the rent for the property was not significantly high, and did not determine a local reference rent (LRR).
- 2 Macclesfield LA restricted the amount of rent eligible for the calculation of HB in accordance with regulation 10(6B) of the HB regulations. In doing so the LA considered what was regarded as suitable accommodation in the Borough and what rent was being charged for such accommodation. The LA also took into account that the family had no connections with the area and the children were attending the same schools they attended before the move.
- 3 The claimant exercised his right to review of the decision and the matter came before Macclesfield Borough Council Housing Benefit Review Board (HBRB) on 4<sup>th</sup> March 1998. The HBRB confirmed the decision of the LA. As a result of further representations made to the HBRB, it was decided to have a fresh hearing into the matter. A second hearing took place on 21<sup>st</sup> May 1998. It was the decision which resulted from the second hearing which led to the application for Judicial Review. The decision was that HB should be restricted.
- 4 At Judicial Review the claimant contended that
  - regulation 10(6B) does not permit the HBRB to make a comparison with alternative accommodation, it requires consideration of the particular property, in considering what is the reasonable rent for the purposes of HB
  - the HBRB had failed to consider relevant and material factors when reaching its decision
  - the HBRB had failed to give proper and rational reasons for departing from the decision of the rent officer that the rent was not unreasonably high

## *The judgement*

- 5 The judgement found that regulation 10(6B) clearly confers a wide discretion upon the LA to consider all the circumstances of the case. The judge decided that this included an ability to have regard to suitable alternative accommodation and the rent being charged for such alternative accommodation, particularly accommodation in the general locality of the property in question.
- 6 The second challenge was based on the written reasons of the HBRB. The contention was that the HBRB reasons for its decision failed to give details of the suitable alternative accommodation. The judge concluded, from the evidence, that while the written determination of the HBRB did not give a detailed account of each of the comparable properties, it should not be inferred that the relevant details were not available to, or not considered by the HBRB.
- 7 In the last challenge, the claimant contended that the HBRB had failed to give proper and rational reasons for departing from the determination of the RO. The judge found that the HBRB made it clear that they were not bound to accept the RO's PTD when deciding what was an appropriate level of HB for rental of suitable property by the applicant in the borough. The Court accepted the argument that it would not be a prudent expenditure of public money to pay HB at a level which would enable claimants to occupy properties in desirable areas at expensive rents when perfectly suitable properties were available at lower rents. The judge found that this was not a case where there was such an inadequacy in giving reasons as to create a flaw in the lawfulness of the decision making process. Consequently he dismissed the application.

## *The effect of the judgement*

- 8 The judgement confirms that:
- you must act reasonably in determining a reasonable eligible rent;
  - you must identify and establish the relevant facts in the particular case, such as what is the current rent, do any of the occupants have any special housing related needs, etc
  - you must have regard to all the circumstances of the case and evidence of rents to substantiate your decision where alternative accommodation has been considered, such as dated advertisements for comparable properties, whether such properties would be available to HB claimants, the nature of the tenancy and the location, details of current applications for HB in respect of comparable properties, etc
  - you must be able to substantiate your determination, as to why the eligible rent is considered greater than is reasonable and why the restricted rent is considered appropriate; this would depend on the evidence gathered to demonstrate that comparable accommodation is available to the claimant