



29 October 2014

PRESS SUMMARY

R (on the application of Moseley (in substitution of Stirling Deceased)) (Appellant) v London Borough of Haringey (Respondent) [2014] UKSC 56
On appeal from [2013] EWCA Civ 116

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Clarke, Lord Wilson, Lord Reed

BACKGROUND TO THE APPEALS

Until 1 April 2013 central government operated a Council Tax Benefit (“CTB”) scheme whereby residents in local authority areas in England were granted relief from paying council tax on a means-tested basis, for which the local authorities were reimbursed in full [4]. For the year 2013-2014, reimbursement to each local authority was fixed at 90% of the sum it had received in the previous year [6] and each local authority was required to devise its own Council Tax Reduction Scheme (“CTRS”) to provide relief from council tax to those whom it considered to be in financial need [7]. It was a requirement that each local authority consult interested persons on its CTRS in draft form before deciding on a final scheme: Paragraph 3(1)(c) of Schedule 1A of the Local Government Finance Act 1992 (added by Paragraph 1 of Schedule 4(1) to the Local Government Finance Act 2012) provides that “*Before making a scheme, the authority must... consult such other persons as it considers are likely to have an interest in the operation of the scheme.*”.

The Respondent published a draft CTRS on 29 August 2012 under which it was proposed that the shortfall in central government funding would be met by a reduction in council tax relief of between 18% and 22% for all CTB claimants in Haringey other than pensioners [9-10]. The consultation document for Haringey residents explained the reduction in funding, and stated “*That means that the introduction of a local [CTRS] in Haringey will directly affect the assistance provided to everyone below pensionable age that currently receives [CTB].*” There was no reference to other options for meeting the shortfall, for example by raising council tax, reducing funding to council services or deploying capital reserves [19]. The consultation document also included a questionnaire asking how the reduction in relief should be distributed as among CTB claimants [21]. Following the consultation exercise, the Respondent on 17 January 2013 decided to adopt a CTRS under which the level of council tax relief was reduced by 19.8% from 2012-2013 levels for all claimants other than pensioners and the disabled [14].

The Appellant is a resident of Haringey who until 1 April 2013 had been in receipt of full CTB, and thereafter had to pay 19.8% of full council tax. She was not originally a claimant in the judicial review proceedings which were brought by two other similarly-circumstanced Haringey residents to challenge the Respondent’s consultation process. Underhill J dismissed their application for judicial review on 7 February 2013. One claimant, Ms Stirling, appealed to the Court of Appeal and that appeal was dismissed on 22 February 2013. Ms Stirling subsequently became ill and the Appellant was by consent substituted for the purposes of this appeal. Ms Stirling has since sadly died [3].

JUDGMENT

The Supreme Court unanimously allows the appeal and declares that the consultation exercise was unlawful [31]. However, it declines to order the Respondent to undertake a fresh consultation exercise because this would be disproportionate in the circumstances [33].

Lord Wilson (with whom Lord Kerr agrees) gives the main judgment. Lord Reed gives a concurring judgment. Lady Hale and Lord Clarke agree with both judgments.

REASONS FOR THE JUDGMENT

Lord Wilson considers that where a public authority has a duty to consult before taking a decision, whether such duty is generated by statute, as in this case, or arises as a matter of common law, the same common law requirements of procedural fairness will inform the manner in which the consultation should be conducted [23]. The requirements of a fair consultation are as summarised in the case of *R v Brent London Borough Council, ex p Gunning*, (1985) 84 LGR 168: “*First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, ... that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.*” [25]. Fairness may require that interested persons be consulted not only upon the preferred option but also upon discarded options [27].

In this case, fairness demanded that the consultation document should briefly refer to alternative methods of absorbing the shortfall in government funding and to the reasons why the Respondent had concluded that they were unacceptable [29]. In fact, the purported consultation was premised on the assumption that the shortfall would be met by a reduction in council tax relief and no other option was presented [17, 18, 21]. Neither was it reasonably obvious to those consulted what other options there may have been and the reasons why such options had been discarded. Indeed, only an infinitesimal number of responses to the consultation (approximately 20 out of 1287 responses) alluded to other ways of meeting the shortfall. Therefore, the consultation exercise was unfair and unlawful [31]. However, it was not unlawful that the Respondent had failed to consult on the possible adoption of a Transitional Grant Scheme announced by central government only 5 weeks before the completion of the draft CTRS consultation [32].

Lord Reed allows the appeal for slightly different reasons. In cases such as this where the duty to consult is imposed by statute, the scope of the duty varies according to the statutory context [36]. The purpose of this particular statutory duty was to ensure public participation in the local authority’s decision-making process [38]; it was not to ensure procedural fairness as under the common law. Meaningful participation in these circumstances required that those consulted be provided with an outline of the realistic alternatives [39]. In the absence of specific statutory provision, reference to alternative options will be required where this is necessary in order for the consultees to express meaningful views on the proposals [40].

Lady Hale and Lord Clarke give a brief joint judgment agreeing with both Lord Wilson and Lord Reed’s judgments [44].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html