



24 May 2017

PRESS SUMMARY

R (on the application of Coll) (Appellant) v Secretary of State for Justice (Respondent)
[2017] UKSC 40
On appeal from [2015] EWCA Civ 328

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Hodge, Lord Toulson

BACKGROUND TO THE APPEAL

It can be a condition of release from prison of certain medium or high risk prisoners that they must live at ‘Approved Premises’ (‘APs’). APs are single sex establishments. There are 94 APs for men, distributed around England and Wales including several in London. There are only 6 APs for women, who constitute 5% of the prison population, and none of them is in London or in Wales. This means that women are much more likely than men to be placed in an AP which is far from their homes and communities.

In 2004 the appellant was sentenced to life imprisonment with a tariff of 11 years and 3 months, which was due to expire in November 2015. She anticipated that on her release she would be required to live at an AP, which would necessarily be at a considerable distance from her family in London. In 2013 the appellant brought proceedings seeking a declaration that the current provision of APs amounted to unlawful sex discrimination, contrary to the Equality Act 2010 (‘the EA’) and her rights protected by articles 8 and 14 of the European Convention on Human Rights, and that the Secretary of State had acted in breach of the public sector equality duty (‘PSED’) under section 49 EA by failing to have due regard for the need to eliminate discrimination against women in the provision of APs.

In the High Court, Cranston J dismissed the discrimination claim but granted a declaration that the Secretary of State had failed to discharge the PSED. The Secretary of State has not appealed that declaration. The appellant’s appeal against the finding of no discrimination was dismissed by the Court of Appeal. Since that time, she has been released from prison and required to live in an AP in Bedford. The appellant has brought a discrimination claim in the county court which has been stayed pending the outcome of these proceedings.

JUDGMENT

The Supreme Court unanimously allows the appellant’s appeal to the extent of granting a declaration that provision of APs constitutes direct discrimination against women which is unlawful unless justified, and that the Secretary of State has yet to show such justification. Lady Hale, with whom all the other Justices agree, gives the only judgment.

REASONS FOR THE JUDGMENT

APs are commissioned rather than directly provided by the Secretary of State. However, under s 29(6) EA, a person exercising a public function such as this must not ‘do anything that constitutes discrimination, harassment or victimisation’. It is not necessary for the appellant to show that every female prisoner required to live at an AP has suffered the detriment of being placed at an AP far from her home in order to establish a case of direct discrimination on grounds of sex [29-31]. Nor are there differences between the circumstances of male and female prisoners required to live in APs, which are material to the issue of accommodating them close to home. In this respect their circumstances are comparable, and the risk of being placed far from home is much greater for women than for men [32]. The reason for this is not any deliberate desire to treat the women less favourably than the men but a function of the much smaller numbers of female offenders and the policy decision that the particular vulnerability of women required to live in an AP means that all APs should be single sex [33]. The appellant’s case is one of direct rather than indirect discrimination [43].

Direct discrimination can only be justified in certain limited and defined circumstances, including those set out in paragraph 26 of Schedule 3 to the EA. Paragraph 26(2) relates to the provision of separate and different services for men and women, and provides that these will not contravene s 29 if (a) a joint service for persons of both sexes would be less effective, (b) it is not reasonably practicable to provide a service which is not different, and (c) the limited provision is a proportionate means of achieving a legitimate aim [24, 34].

There is no dispute that in relation to APs, providing a joint service would be less effective. The appellant also accepts that the much lesser extent to which women require APs makes it ‘not reasonably practicable’ to provide the same number of APs for each sex [38]. The crucial question is whether the limited provision for women is a proportionate means of achieving a legitimate aim [39]. Saving cost is a legitimate objective of public policy but if a benefit is to be limited to save costs it must be limited in a non-discriminatory way [40]. The appellant accepts that in principle the different provision for men and women might be justified but the Ministry of Justice has never properly addressed its mind to the problem of providing sufficient and suitable places in APs for women which achieve, so far as is practicable, the policy of placing them as close to home as possible. There are other options which could have been considered, such as replacing large women’s APs with smaller units more widely spread, or replacing one or more of the existing women’s APs with APs closer to the areas where many women offenders have their homes, or considering alternative forms of accommodation for women released on licence [41]. It is for the Secretary of State to show that the discrimination is justified and, in the light of the breach of the PSED, she has so far failed to do this [42].

The Supreme Court therefore allows the appeal to the extent that it makes a declaration that the provision of APs in England and Wales constitutes direct discrimination against women contrary to s 13(1) EA, which is unlawful unless justified under paragraph 26 of Schedule 3 to the EA. No such justification has yet been shown by the Secretary of State. Individual women who are less favourably treated as a result of the provision of APs may bring sex discrimination claims in the county court but it will be open to the Secretary of State to resist such claims on the ground that the provision is justified under paragraph 26 [45].

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:

<http://supremecourt.uk/decided-cases/index.html>