R (Moseley) v LB Haringey [2014] UKSC 116

Factual Background

Mrs Moseley challenged the consultation which led to a decision by Haringey Council to adopt a scheme for Council Tax support requiring even the poorest residents to pay around 20% of their Council Tax bill, unless they were disabled people or pensioners. The decision affected around 36,000 households.

The Court found that the fundamental problem with the consultation materials, was that they failed to recognise that Haringey had a choice to make and strongly suggested that the Council were required to pass on the shortfall in Council Tax support funding created by the abolition of the national Council Tax Benefit scheme to the poorest residents of the borough. In fact it was open to Haringey to meet the shortfall in a number of ways – for example by requiring wealthier residents to pay more or by using its reserves - the existence of these alternative options was not set out.

Approach to the duty to consult

The well-known criteria put forward in the cases of *R v Brent London Borough Council ex p Gunning* and then adopted by the Court of Appeal in *R v North and East Devon Health Authority ex parte Coughlan* were approved,. These state that consultations must:

(i) take place at a 'formative stage', i.e. sufficiently early in the decision making to influence the outcome;

(ii) provide 'sufficient reasons for any proposal to permit of intelligent consideration and response';

(iii) allow 'adequate time' for consideration and response; and

(iv) ensure that the 'product' is 'conscientiously taken into account' in the final decision.

The central issue in *Moseley* was the second of these criteria – whether Haringey had given '*sufficient reasons*' for its proposals, and in particular whether in the circumstances they were obliged to tell consultees about the other options which had been considered and rejected. Three principles around this were set out:

- the ‘degree of specificity’ which fairness requires in relation to consultation materials varies according to the identity of the consultees. Members of the public may require more specific and detailed information than technical experts;
- the demands of fairness are likely to be greater ‘when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit’; and
- fairness may require that ‘*interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options*’. This of course was not what Haringey had done.

Outcome of the appeal

Applying the above principles, Lord Wilson reached the inevitable conclusion that the consultation was unfair and unlawful. He explained the principle reason why as being:

> *Those whom Haringey was primarily consulting were the most economically disadvantaged of its residents. Their income was already at a basic level and the effect of Haringey’s proposed scheme would be to reduce it even below that level and thus in all likelihood to cause real hardship, while sparing its more prosperous residents from making any contribution to the shortfall in government funding. Fairness demanded that in the consultation document brief reference should be made to other ways of absorbing the shortfall and to the reasons why (unlike 58% of local authorities in England: Haringey had concluded that they were unacceptable.*

This recent decision puts the spotlight on proper consultations being carried out and may be useful for providers where they are consulted, for example on fee reductions, poorly and without comprehensive details being provided.

If you have any queries on this briefing note, please contact Emma Young on 0121 212 7402 or at emma.young@anthonycollins.com.