

Court of Session decides council must offer accommodation to homeless man

by Joseph Anderson Local Democracy Reporter

The City of Edinburgh Council has lost a court case raised against them by a homeless Sudanese man, after it “failed in its statutory obligation” to help him and his family.

Adbelwahab-Kaba Dafaalla was refused help by the council in March 2020, despite being homeless and being particularly vulnerable to Covid-19 due to diabetes.

The council said that because it had previously offered Mr Dafaalla permanent housing in the past, which he had refused, it had fulfilled its statutory obligations to him.

Mr Dafaalla, 64, and of no fixed abode, was granted indefinite leave to remain in the United Kingdom in 2014, and his wife and six children joined him in November 2015.

In May 2015, Mr Dafaalla made an application for accommodation and assistance to the council, and in November of that year they housed Mr Dafaalla and his family in temporary accommodation in Wester Hailes Park.

In 2016, the council decided Mr Dafaalla was homeless which meant the local authority had an obligation to find the family permanent accommodation. The council then made two accommodation offers to Mr Dafaalla, both of which were refused.

In October 2016, the council decided it had fulfilled its statutory obligation to Mr Dafaalla, and began eviction proceedings to recover the temporary accommodation in West Hailes Park.

Nearly three years later, in March 2020, the council was granted an order to recover possession of the property.

Before evicting the family, the council was contacted by agents acting on behalf of Mr Dafaalla, and the local authority agreed to make another offer of permanent accommodation, which it did in August 2019.

This was again refused by Mr Dafaalla. In January 2020, Mr Dafaalla and his family were finally evicted.

In March 2020, at the beginning of the Covid-19 lockdown Mr Dafaalla again asked for assistance from the council, and instructed his agent to email the local authority but the council refused to help the family at that point.

Now the Court of Session has ruled that by refusing to help Mr Dafaalla and his family during the pandemic, and by not investigating his current circumstances, the council had failed in its statutory obligations to provide accommodation and assistance to people who are experiencing homelessness.

Lawyers acting on behalf of Mr Dafaalla, who suffers not only from diabetes, but also functional dyspepsia and osteoarthritis in his left knee, argued in a petition for judicial review that his medical conditions put him at an increased risk of severe illness should he contract coronavirus.

They also stated that Mr Dafaalla and his family had been forced to stay where they could find accommodation from night to night, and that the family was in urgent need of accommodation to protect Mr Dafaalla from contracting coronavirus.

The council argued it had fulfilled its obligations the first time Mr Dafaalla applied for assistance, and the emails it received from his agent in March 2020 did not constitute new information that might compel them to do offer any new assistance.

But the lawyers for Mr Dafaalla said that if the council had addressed the two questions required by law it would have been bound to find that the Covid-19 pandemic and Mr Dafaalla's increased risk of severe illness due to his diabetes were "new facts" which did not exist at the time when his previous application was determined. It would have been bound to find that these news facts were neither "trivial" nor "fanciful".

Lord Brailsford said in his [opinion](#): "It is plain from the terms of the response that the refusal to accept the application is based upon a consideration of the contents of the email without any investigation as to any aspect of those contents.

"I pause to observe that the follow-up emails did contain additional information in the form of various medical reports.

"I do not consider that the bare consideration of the email of 24 March without any further inquiry or investigation in relation to what was disclosed therein would entitle the respondents (the council) to take the position they did in their response.

"I note further that they offer no explanation in the response as to any reasoning behind the decision they reached.

"The terms of the response amount in my view to no more than

an assertion that there was nothing further to consider.

“Having regard to the foregoing I am satisfied that the respondents have failed to perform their statutory duties under sections 28 to 31 of the [Housing (Scotland) Act] 1987 Act.”

The judge also said that the council must now offer accommodation and assistance to Mr Dafaalla in terms of the legislation.



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