HOUSE OF LORDS

Lord Bingham of Cornhill Lord Browne-Wilkinson Lord Steyn Lord Hope of Craighead Lord Millett

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT

IN THE CAUSE

HALLAM AND ANOTHER

(APPELLANTS)

v.

CHELTENHAM BOROUGH COUNCIL AND OTHERS

(RESPONDENTS)

ON 22 MARCH 2001

[2001] UKHL 15

LORD BINGHAM OF CORNHILL

My Lords,

1. Mrs Smith, the second appellant in these proceedings, contracted with the Cheltenham Borough Council to hire the Pittville Pump Rooms in Cheltenham for a reception following the wedding of her daughter the first appellant (now Mrs Hallam) on 16 August 1997. The contract was signed well in advance, on the council's standard terms. Mrs Smith indicated that there would be about 150 guests.

2. The husband of Mrs Smith and father of Mrs Hallam is of Romany gipsy origin, and so by descent is Mrs Hallam. The police in Gloucestershire had had some trouble with gipsies in the early months of 1997, and became concerned that there might be disorder at the reception which Mrs Smith was holding for her daughter. They communicated their concerns to the council. It is plain that the police had misunderstood some of the information which they had received, and the information which they gave the council was by no means accurate. But the council, sharing the fear of the police that the reception might attract large numbers of gipsies from all over the country, with a risk of disorder and serious damage to persons and property, sought to minimise the risk by unilaterally imposing new contract terms on Mrs Smith. One new term in particular Mrs Smith resented, a condition that entry to the reception should be restricted to those holding pre-issued tickets. She was unwilling to accept these terms and treated the council's conduct as repudiatory. The reception was held elsewhere.

3. The appellants draw attention in particular to a meeting held on 1 July 1997 when officers of the council were seeking to decide, in the light of the information which they had received from the police, what action they should take. Police Constable Avery, the second respondent, attended this meeting and reiterated the concerns of the police. At the meeting the officers of the council, with the help of their legal adviser, reviewed the standard conditions of hire of the Pump Rooms, and it was provisionally decided to cancel the booking. Second thoughts however prevailed, and it was instead decided to impose the new

conditions already mentioned on Mrs Smith, which she was invited to accept at a meeting on 3 July. These conditions were communicated to her in writing on 11 July 1997, but it seems clear that by then she had already rejected the conditions and made alternative arrangements elsewhere, thereby plainly accepting the council's conduct as repudiating the contract.

4. The appellants, as plaintiffs, accordingly issued proceedings in the Bristol County Court against the council as first defendant and three police officers. The first claim was made by Mrs Smith against the council for breach of the hiring contract. This claim was upheld at trial by Judge Rutherford, who awarded damages for the breach. His finding has not been challenged and gives rise to no continuing dispute. The second claim was made by both appellants against the council claiming damages for unlawful racial discrimination under sections 20 and 21 of the Race Relations Act 1976: they contended that the council had treated them less favourably than they would have treated other persons on grounds of their racial or ethnic origin as gipsies. This claim was also upheld. The judge awarded damages to both appellants against the council and this finding has not been challenged. The third claim was made by both appellants against the three police officers. This was advanced under section 33(1) of the 1976 Act: the appellants claimed that the police officers had knowingly aided the council to discriminate against them in the manner described, and so were to be treated for purposes of the Act as themselves doing an unlawful act of the like description. The judge dismissed the claim against the third of these police officers, Detective Constable Hogg, on the ground that he had played very little part in the events in question and had been no more than a conduit between the police and the council. This finding has not been challenged. It is the liability of the other two police officers (to whom I shall refer as "the police officers") which is in issue on this appeal.

5. In paragraph 54 of his reserved judgment, to which I would pay respectful tribute, the judge said:

> "Both police officers undoubtedly aided the council by providing them with information but that is not, in my judgment, enough. The Act requires them to have *knowingly* aided the council *to do an act* made unlawful by the Act. It seems to me that there needs to be some element of joint enterprise - an active assistance of the council to do the act in question."

The judge's reason for rejecting the appellants' claim against the police officers was expressed in paragraph 57 of his judgment:

> "Here neither officer was a party to the decision taken by the council. They were not involved in that decision. I have come to the conclusion, with some hesitation, that the actions of these two defendants do not fall within section 33 of the Act and that therefore the claims against them must fail."

The judge was critical of the police officers' conduct in this matter, but acquitted them of any overtly racist motive and found that they had acted in what they thought to be the public interest.

6. The appellants challenged this decision in the Court of Appeal, whose judgments are reported at [2000] 1 WLR 966. The argument in that court centred on the expression "knowingly" in section 33(1) of the 1976 Act: the appellants contended that the judge should have found that condition to be met; the police officers sought to uphold the judge's decision, and did not challenge his finding that the police officers had aided the council within the meaning of the subsection. The leading judgment was given by Judge LJ who, in paragraph 37 of his judgment, said:

> "In my judgment the conclusion that the officers contributed to the decision made by the council to break their contractual arrangements with the plaintiffs is inescapable. It is true that they did not seek to urge, persuade or induce the council to do so, and equally true that it remained open to the council, notwithstanding the information from the police, to permit the wedding to go ahead in any event, or even subject to conditions which might have been suggested in such a way as to be acceptable to the plaintiffs. Nevertheless, although the process was not irreversible or inevitable, without the information provided by the officers and their assumption that information from such a source was accurate, the council would not have begun to lose confidence in or eventually to review their contractual arrangements. So, although ultimate responsibility for the decision rested with the council alone, and not the police officers, of itself that did not provide a sufficient justification for the conclusion that liability was not established."

Judge LJ dismissed the appeal because he held that the police officers were not shown to have had the knowledge required for liability under section 33(1). Hale LJ (in her judgment at paragraph 47) was of opinion that what the police officers had done had undoubtedly aided the council in their decision to impose less favourable terms upon the appellants, but she upheld the judge's conclusion that the police officers were not shown to have had the requisite knowledge. Lord Woolf MR agreed with both judgments.

7. Before the House the police officers sought leave to challenge the trial judge's finding (not specifically challenged in the Court of Appeal) that they had aided the council to do an act made unlawful by the 1976 Act. Your Lordships granted such leave, which was not opposed. In this appeal, and in the appeal heard immediately before it (*Anyanwu v South Bank Student Union*) the House has had occasion to consider the effect of section 33(1) and the meaning of "aids" in that subsection, and it is unnecessary to repeat in this opinion what is there said. The opinions of the House in that case should be read in conjunction with the opinions in this.

8. It is first necessary to ask: what is the act made unlawful by the 1976 Act which the council did? The answer is that the council denied to the appellants, because they were gipsies, the use of the Pump Rooms on the same terms as would have been available to others who were not gipsies and therefore treated the appellants less favourably than they would have treated others on racial grounds. Such conduct was made unlawful by sections 20 and 21 of the Act. So much is uncontroversial.

9. The second question is: did the police officers aid the council to do that unlawful act? The appellants submit that the judge, in paragraph 54 of his judgment (quoted above), has found in their favour on that issue. I do not for my part so read that paragraph. The judge there recognised, as was obviously true, that the police officers were, in a general sense, being helpful to the council. They had supplied the council with information to alert it to what the police officers considered a serious potential problem, and their general relations with the council were friendly and co-operative, as one would hope. But the judge was at pains to point out that section 33(1) required more than a general attitude of helpfulness and co-operation. As he accurately put it, "The Act requires them to have *knowingly* aided the council *to do an act* made unlawful by the Act." The judge there highlighted the important point that it is aid to another to do the unlawful act in question which must be shown, and this is what the appellants had failed to establish against the police officers. The judge concluded in paragraph 57 of his judgment, although with hesitation, that the appellants had failed to show that the police officers had aided the council to do the unlawful act in question because neither officer was a party to or involved in the making of the council's decision. There were plainly a number of different ways in which the council could have reacted to the

information supplied by the police officers, if the council chose to react at all, several of which responses would have been lawful. The judge's decision was open to him on the evidence, and there are no grounds on which the House could properly disturb it.

10. It does not follow from this conclusion that where a party gives information to another on which that other relies in doing an unlawful discriminatory act the first party can never be liable under section 33(1). That would be to treat the judge's factual conclusion, based on a correct legal self-direction, as if it were itself a legal proposition. It is not, and the judge's hesitation makes plain that there was room for a conclusion other than that which he reached. Subject always to a correct understanding of the subsection, the outcome of cases such as this will almost always turn on the facts properly found.

11. This conclusion makes it unnecessary to address the issue which most exercised the Court of Appeal and to which most of the argument in the House was directed: the extent of the knowledge which an aider must have so as to be liable under section 33(1). It is tempting to offer guidance on that question, and I would not wish to be understood as approving the Court of Appeal's guidance. But it does not appear, from the paucity of decided cases, that the problem is one which often arises in practice and it may be that in most cases (as in *Anyanwu v South Bank Student Union)* there will be little doubt that aid was given knowingly if it is found to have been given at all. Any observations that the House might make would, in the circumstances, be unauthoritative, and would further have the vulnerability of observations not rooted in the facts of a particular case. On balance I consider that this issue should be left to be decided when it arises.

12. I would dismiss the appeal with costs.

LORD BROWNE-WILKINSON

My Lords,

13. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. For the reasons he gives I would dismiss the appeal with costs.

LORD STEYN

My Lords,

14. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. For the reasons he gives I would dismiss the appeal with costs.

LORD HOPE OF CRAIGHEAD

My Lords,

15. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. I agree with it, and for the reasons which he has given I too would dismiss the appeal.

LORD MILLETT

My Lords,

16. I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Bingham of Cornhill. I agree with it, and I too would dismiss this appeal on the short ground that the police did not do anything which could properly be described as aiding the council to commit a repudiatory breach of its contract with Mrs Smith.

17. I accept, of course, that the giving of information to another on which that other relies in doing an unlawful act may amount to aiding that other to do that act. I would take a simple example. Suppose a gang of youths, brandishing weapons and shouting racist abuse, find a suitable victim and chase after him. He evades their pursuit and finds a place to hide. Suppose too that a bystander, seeing what is happening and realising what the youths intend, betrays the victim's hiding place to them. In those circumstances I have no doubt that the bystander would be aiding the youths to do their victim injury, if that is what they do.

18. But this shows the importance of correctly identifying the act of the principal which the accessory is alleged to have aided. In the present case the police provided information which helped the council to reach a decision what to do about the situation; but this is not the act which the statute makes unlawful. The information which the police provided did nothing to help the council to carry out their decision, whether to cancel the reservation of the Pump Room for the wedding reception or to impose conditions on entry. That was the act which the statute made unlawful, and in doing it the council neither needed nor obtained the aid of the police. The distinction may appear narrow and even technical, but it is neither. The man who helps another to make up his mind does not thereby and without more help the other to do that which he decides to do. He may advise, encourage, incite or induce him to do the act; but he does not aid him to do it. As I said in *Anyanwu v South Bank Student Union*, aiding requires a much closer involvement in the actual act of the principal than do either encouraging or inducing on the one hand or causing or procuring on the other.