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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2

Friday, 8 November 2002

B E F O R E:

MR JUSTICE PITCHFORD

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THE QUEEN ON THE APPLICATION OF CUMPSTY

(CLAIMANT)

-v-

RENT SERVICE

(DEFENDANT)

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MR JAN LUBA QC AND MR ADAM FULLWOOD (FOR JUDGMENT MISS HARRIS) (instructed by The Thrasher Walker Partnership, The Old Bank, 112 Heaton Moore Road, Heaton More, Stockport, SK4 4 AN) appeared on behalf of the CLAIMANT

MR G FETHERSTONHAUGH (instructed by Treasury Solicitor) appeared on behalf of the DEFENDANT

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J U D G M E N T

(As Approved by the Court)

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1. MR JUSTICE PITCHFORD:

THE CLAIM FOR JUDICIAL REVIEW

The claimant, Mr Robert Cumpsty, holds an assured tenancy of 1 Silent Valley Cottage situated between the villages of Lymm and High Legh in Cheshire. His is a private landlord. His monthly contractual rent is £550. Since 18th September 1996, Mr Cumpsty has been in receipt of housing benefit. On 22nd January 2002 the Rent Service, by their rent officer, Mr Duncan Turner, redetermined his Local Reference Rent for the purposes of Article 3 and Schedule 1 paragraph 4 of the Rent Officers (Housing Benefit Functions) Order 1997 in the sum of £525 per month.

2. The claimant was on financial grounds entitled to housing benefit at the maximum rate, in this case £525, leaving a shortfall to be found from his income support of £25 per month. The claimant seeks a review of the Rent Service decision on two grounds:

(1) Mr Turner misdirected himself in law by applying the wrong test of locality by which to arrive at the Local Reference Rent; and

(2)(a) the redetermination was procedurally unfair contrary to the rules of natural justice; and/or

(b) in breach of the claimant's Article 6 right to a fair trial in the determination of his civil rights.

As to ground (2) it is accepted that if the process is Article 6 compliant then ground (2) falls in its entirety.

THE STATUTORY FRAMEWORK

3. The presence of ground (2) requires me to describe in some detail the statutory framework which caused the Rent Service to make its redetermination. The framework I am considering is now out of date, but I am asked to express views which may be of more general application in Housing Benefit cases.
4. Housing benefit is a non-contributory earnings related benefit payable by local authorities and not by the Department of Social Security. Its cost is met, however, wholly or largely from government funding by reimbursement to the paying authorities. There are two forms of benefit: rent rebate, paid by the local authorities to their own tenants; and rent allowances, provided by local authorities for the benefit of the tenants of others. I am concerned in this case with the latter.
5. In the event that the tenant's contractual rent is not met by housing benefit, the local authority has a statutory discretion to provide further financial assistance to meet housing costs. Mr Cumpsty has received such payments but they do not feature in the analysis required for this review.
6. By section 130(1) Social Security Contributions and Benefits Act 1992:

"A person is entitled to housing benefit if-

(a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;

(b) there is an appropriate maximum housing benefit in his case, and

(c) either

(i) he has no income, or his income does not exceed the applicable amount, or

(ii) his income exceeds that amount but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) (below) provides is named."

By subsection (2):

"Payments in respect of a dwelling means such payments as may be prescribed."

By subsection (4):

"Regulations shall prescribe the manner in which the appropriate maximum housing benefit is to be determined in any case."

And by section 137(1):

"'Prescribed' payments are those specified in or determined in accordance with regulations."

7. Section 34(1) Social Security Act 1998 reads:

"(1) Regulations shall provide that, where a person claims-

(a) housing benefit ...

the authority to whom the claim is made shall notify the person of its determination of the claim.

(2) Any such notification shall be given in such form as may be prescribed ...

(4) Regulations shall make provision for reviews of determinations relating to housing benefit ...

(5) Regulations may make provision as respects matters arising out of the revision on review of such determinations."

8. The legislation deals also with Council Tax Benefit, a subject with which we have not been concerned in this review. The regulations relevant here are the Housing Benefit (General) Regulation 1987, as amended. By section 122(1) of the Housing Act 1996 the Secretary of State may, by order, require rent officers to carry out functions in connection with housing benefit and rent allowance. By subsection (3) regulations made under section 130 of the Social Security Contributions and Benefit Act 1992 may, in particular, provide for the benefit to be limited by reference to determinations made by rent officers in exercise of such functions. The maximum rent (to which reference is made in the Act of 1992) is defined by Regulation 11 paragraphs 1 and 5, save in circumstances which do not apply here, as the Local Reference Rent determined by the rent officer.

#### THE APPLICATION

9. The application for housing benefit is made on a prescribed form (now NHB1HB). In it the claimant is required to give particulars of himself or herself, any partner, any children living in the household, allowances, the property in respect of which rent is payable and arrangements for payment of such rent. The presence of non-dependent adults in the home may have an impact upon the amount of housing benefit granted.

10. The application is processed either by a local government officer or by an employee acting on behalf of an agent of the local authority. By regulation 12A of the 1987 Regulations a local authority must apply to a rent officer for a determination when it receives a claim for a rent allowance, or a notification of any change relating to a rent allowance. For the purpose of enabling the rent officer to make his determination, the local authority is required to provide information. The referral to the rent officer must be made within three days, or as soon as practicable after receiving the claim or notification of change. The rent officer's determination must be made on the facts as they were on the date of the referral.

#### THE DETERMINATION

11. The functions of the rent officer are defined by the Rent Officers (Housing Benefit Functions) Order 1997. The rent officer must in reaching his determination comply with Article 3 paragraph 1, which provides:

"Subject to articles 5 and 6, where a local authority in accordance with regulations made under section 136(2) or (3) of the Social Security Administration Act 1992, applies to a rent officer for determinations in respect of a tenancy of a dwelling, a rent officer shall-

- (a) make the determinations in accordance with Part I of Schedule 1 (Determinations)
- (b) complied with Part II of Schedule 1 when making the determinations (Assumptions et cetera), and
- (c) give notice in accordance with Part III of schedule 1 (Notifications)."

12. Part I of Schedule 1 requires the rent officer to determine: (1) whether the contractual rent is significantly higher than the rent the landlord could reasonably have been expected to obtain and, if so, determine what was the reasonable rent; (2) whether the subject exceeds the size criteria and, if so, to determine an adjusted rent; (3) whether the contractual rent is exceptionally high and, if so, to determine what rent the landlord might reasonably have been expected to obtain. Each of these three determinations must be reached according to criteria which need not concern this review; (4) determine the Local Reference Rent.
13. Paragraph 4(1) of Schedule 1 provides:

"The rent officer shall make a determination of the Local Reference Rent in accordance with the formula  $R = \frac{H + L}{2}$  divided by 2 where R is the Local Reference Rent, H is the highest rent in the rent officer's opinion -

- (a) which a landlord might reasonably have been expected to obtain at the relevant time for an assured tenancy of a dwelling which meets the criteria in subparagraph (2) and,
- (b) which is not exceptionally high rent

And L is the lowest rent in the rent officer's opinion -

- (a) which a landlord might reasonably have been expected to obtain at the relevant time for an assured tenancy of a dwelling which meets the criteria in subparagraph (2), and
  - (b) which is not an exceptionally low rent.
- (2) The criteria are-

- (a) that the dwelling under the assured tenancy (i) is in the same locality as the dwelling; (ii) is in a reasonable state of repair, and (iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or in a case where the dwelling exceeds the size criteria for the occupiers) accords with the size criteria..."

As I have noted above, by Regulation 11 paragraph 5 the Local Reference Rent becomes the maximum rent payable for housing benefit purposes.

#### NOTIFICATION

14. Part III paragraph 9 of Schedule 1 requires the rent officer to give notice of his determination to the local authority within five working days. If, however, the tenancy is already in existence and he intends to inspect the property, that period is 25 working days. By Regulation 77(1) of the 1987 Regulations:

"An authority shall notify in writing any person affected by a decision made by it under these Regulations-

- (a) in the case of a decision on a claim, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter,

and every notification shall subject to paragraph 2 include a statement as to the matters set out in schedule 6."

Paragraph 4 reads:

"A person affected to whom an authority sends or delivers a notification of a decision may by notice in writing signed by him, request the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice."

15. Part I of Schedule 6 includes paragraph 2, which provides:

"Every decision notice shall include the statement as to the right of any person affected by that decision to request a written statement under regulation 77(4) (requests for statement of reasons) and the manner and time in which to do so."

Part II paragraph 9 provides:

"Where a person on income support or an income-based jobseeker's allowance is awarded housing benefit, the decision notice shall include a statement as to ...

- (b) his weekly eligible rent if any ...
- (e) the normal weekly amount of rent allowance or rent rebate as the case may be, to which he is entitled; and
- (f) in the case of a rent allowance and a rent rebate paid as if it were a rent allowance, the day of payment, and the period in respect of which payment of that allowance is to be made; and
- (g) the first day of entitlement to an allowance or rebate; and
- (h) the date on which his benefit period will end if not terminated earlier; and
- (i) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty owed under regulation 75 (duty to notify changes of circumstances)) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge."

Part III paragraph 10 provides:

"Where a person is not on income support or an income-based jobseeker's allowance but is awarded housing benefit, the notice of decision shall include a statement as to-

- (a) the matters set out in paragraph 9..."

#### REDETERMINATION

16. By Regulation 12B of the 1987 Regulations the local authority has the right to apply to the rent officer for a redetermination either after receipt of the rent officer's determination or of a redetermination requested by the applicant under Regulation 12CA. By regulation 12C factual errors in the determination can be corrected when discovered by the local authority or by the rent officer. Regulation 12CA reads:

"(1) This paragraph applies where-

- (a) a person affected makes written representations which are signed by him, to a relevant authority concerning a decision which it makes in relation to him;
- (b) those representations relate, in whole or in part, to a Rent Officer's determination or redetermination in exercise of the Housing Act functions; and
- (c) those representations are made no later than six weeks after the day on which the person affected was notified of the decision by the relevant authority."

Paragraph 2:

"... where paragraph (1) applies, the relevant authority shall, within 7 days of receiving the representations, apply to the Rent Officer for a redetermination or, as the case may be, a further redetermination in exercise of the Housing Act functions and a copy of those representations shall accompany the local authority's application."

Thus the local authority is bound to pass to the rent officer any written submissions that the claimant wishes to make in support of the redetermination requested.

17. It seems that the claimant has two opportunities to challenge a determination and the local authority one. The defendant's invariable practice, although the regulations do not so provide, is to assign a redetermination to a different rent officer than that who decided the determination.
18. Schedule 3 to the 1997 Order requires the rent officer when making the determination to apply the facts as they were at the date of the original determination, to obtain and have regard to advice of one or two other rent officers before reaching a redetermination and to give notification within 20 days of receipt of the application for redetermination to the local authority.

### APPEAL

19. Section 68 and Schedule 7 of the Child Support, Pensions and Social Security Act 2000 make provision for appeals by any person affected against a Housing Benefit decision. That appeal is to an appeal tribunal (in fact the Social Security Appeals Tribunal), thereafter on a point of law to a commissioner and from the commissioner to the Court of Appeal. However, by Schedule 7 paragraph 6(2)(c):

"so much of any decision of a relevant authority as adopts a decision of a rent officer under any order made by virtue of section 122 of the Housing Act 1996..."

May not be the subject of appeal. In other words, the rent officer's determination or redetermination may not be the subject of appeal to a tribunal. A claimant aggrieved by the rent officer's redetermination of his Local Reference Rent has only a right to a further redetermination and/or a right to apply for judicial review on the grounds of an error of law.

### CHRONOLOGY

20. On 18th September 1996 Mr Cumpsty's tenancy at 1 Silent Valley Cottage (whose postal address is: off Mag Lane, High Legh) commenced at a rent of £475 per calendar month. That rent was increased to £489 per calendar month on 18th September 1998. On 14th August 2001 the local authority applied to the rent officer for a determination. On 17th August 2001 the Local Reference Rent was determined in the sum of £498.33 per calendar month upon a proposed rental at that date of £550 per calendar month.
21. Notification of that decision was given to Mr Cumpsty on 23rd August 2001. On 18th September 2001 the rent was increased to £550. On 4th October the local authority requested a redetermination on behalf of Mr Cumpsty, and on 12th October awarded Mr Cumpsty a discretionary housing payment. On 25th October, following a visit to the property by Mr Cannon, who was the first redetermination officer, the redetermination named the Local Reference Rent at £498.33 and thereby perpetuated the shortfall of £51.76 per calendar month.
22. Mr Cumpsty entered into correspondence with both the local authority and the Rent Service. The local authority on 27th December 2001 requested a further redetermination. On 14th January 2002 Mr Duncan Turner, the further redetermination officer, sent a notification that he would carry out that task. On 21st January 2002 Mr Turner visited and inspected Mr Cumpsty's property and a conversation between them occurred. The following day, 22nd January 2002, his further redetermination specified the Local Reference Rent as £525 per calendar month, a shortfall of £25 per calendar month against the contractual rent.
23. The further redetermination was carried out from the Central Administration Office which is situated in Leeds. Although not required by the Regulations to do so, the reasons for the further redetermination at £525 were addressed to Mr Cumpsty. Mr Turner described the accommodation details. The location he described as:

"...a rural location with farmland surrounding it. Local shops are available approximately 1 mile

away in High Legh with major shopping in nearby Lymm."

The market evidence he described as follows:

"Re-determination Officers base their valuations on rents other people pay without the help of housing benefit. We regularly gather this information from letting agents, private landlords and tenants as well as other sources such as newspapers and shop windows."

They look at any other relevant information, this includes other Housing Act benefit valuations as well.

24. He stated that he did not think that Mr Cumpsty paid more by way of rent than a reasonable market rent, and under the heading "Local Reference Rent" he said:

"The local reference rent is the general level of rent in your locality for a home with three rooms. I have looked at a range of reasonable rents from £300.00 to £750.00 in *Lymm, High Legh and the surrounding areas* and have decided that your local reference rent is £525.00 per calendar month."

25. Under the heading "Further Information" he continued:

"Under the provisions of the Rent Officers Order I have to look at all of the determinations. Other than those I have specifically mentioned in this report I have confirmed the other determinations (if any), or they are equal to or more than the Local Reference Rent.

My valuation of your home has to follow housing benefit rules and we are not able to change these, whatever your personal circumstances ... If you have any further questions about our decisions or these reasons, please contact our office at the address on the first page."

26. Mr Cumpsty did indeed have some further questions about the basis for Mr Turner's redetermination, and a prolonged correspondence occurred between 24th January 2002 and 11th April 2002, on which latter date a letter before action was sent to the defendant by Mr Cumpsty's solicitors. The claim form was issued on 22nd April 2002.

#### THE FURTHER REDETERMINATION

27. Mr Turner was required by paragraph 4 Schedule 1 of the 1997 Order to identify the highest and lowest rents a landlord might reasonably be expected to obtain for an assured tenancy in the same locality as Mr Cumpsty's dwelling. In ascertaining those figures he had to consider properties in a reasonable state of repair, having the same number of bedrooms and living rooms as did Mr Cumpsty's home. He would discard rents which he regarded as exceptionally high or exceptionally low. Mr Turner was engaged in an exercise of comparison in that limited sense between the rent being demanded by Mr Cumpsty's landlord and rents generally available in the market within the "locality."

#### LOCATION OF THE CLAIMANT'S HOME

28. 1 Silent Valley Cottages is situated in the countryside on the outskirts of Lymm. From the description of Mr Turner in his redetermination, it is either a substantial village or a small town. Lymm is located between the town centres of Warrington to the north west and Knutsford to the south east. Exhibit DT4 to Mr Turner's third witness statement of 1st November 20002 is a computer generated print of a map of the location. Mr Cumpsty's home, as so identified, is about 1 mile east of the intersection between the M56 and M6 motorways and (using the scale from the map) about 5 miles as the crow flies from the centre of Warrington. Knutsford is about 7 miles to the southeast. Altrincham, on the outskirts of the Manchester conurbation, is approximately 5 miles to the east/northeast. The village of Ashton in Makerfield to the south of Wigan, is about 12 miles northwest of Lymm along the M6 from the intersection with the M56. Northwich, a substantial town is about 8 miles south. Leftwich and Moulton, both villages, are between 10 and 12 miles south of Lymm.

#### MR TURNER'S APPROACH

29. Marked upon DT4, within the general area I have described, are the 90 properties which Mr Turner used as his comparables. They are listed by address in exhibit DT2 at page 103 of the trial bundle, exhibited to the second witness statement of Mr Turner dated 30th August 2002. This is a schedule which discloses the postal district in which the property resides; the type of property in general terms; the number of rooms, and other details. It is a schedule generated from the database kept and updated by the Rent Service.

30. In his first statement of 6th July 2002, Mr Turner explained:

"I have been employed by the Rent Service since 1974. I was appointed to the post of Rent Officer in 1980 and became a senior Rent Officer in 1989. During my service I have always been based in the West Yorkshire area, but have worked throughout the northern area. Since February 2000, I have been seconded to the Northern Region Re-determination Unit of the Rent Service. I am currently a Fellow of the Chartered Institute of Housing. I made the re-determination, which is the subject of these proceedings..."

31. Mr Turner described the nature of the task which he was required to perform, some details of the property of which he was concerned, the fact of his instruction, and his visit to the premises on 21st January 2002, where he listened to points put forward by the claimant relating to the lack of available suitable accommodation in the locality at rents as low as the Local Reference Rent. He continued at paragraph 5:

"Following the inspection I subsequently consulted with Mr E A Harrison, Re-determination Manager in the Stockport Office of the Rent Service who is himself a Rent Officer; this I am required to do under schedule 3 paragraph 2 of the Order. Mr Harrison accepted my view that the referred rent of £550 per calendar month, was not significantly above a reasonable rent for a similar property in the area. Mr Harrison also agreed with me that the rent of £550 per calendar month was not Exceptionally High, and that the dwelling did not exceed the Size Criteria under the Order. When considering the Local Reference Rent, I noted that the area used by the Rent Officer and the First Re-determination Officer, was the whole of the Cheshire County and I considered this area too large. My decision to use a smaller area was accepted by Mr Harrison. After discussing the high and low parameters with Mr Harrison, he accepted my view that the local reference rent was £525 per calendar month, a difference of £26.67 per calendar month."

At paragraph 7:

"The Rent Service maintains a database of market rental values and this is used as a tool to assist with valuations. The database contains details of tenancies and can be searched by a number of criteria ... In re-determining the local reference rent, I considered 90 pieces of information extracted from the database relating to tenancies at rents ranging from £300.00 to £750.00 per calendar month. I did not consider any of these rents to be exceptionally high or exceptionally low and the figures of £300.00 and £750.00 per calendar month were those used in the calculations. The mid point between those figures is £525.00 per calendar month and this was the figure at which I re-determined the Local Reference Rent. All the evidence which I looked at, related to the time of the original application for a determination and fulfilled the criteria set out in paragraph 4(2) of schedule 1 to the Order."

Paragraph 8:

"High Legh itself is a very small village with limited facilities. The locality used to determine the local reference rent comprises High Legh, Lymm, East Warrington, Knutsford, Altrincham and all villages within those areas. I looked at this area because it provides a critical mass of evidence which enabled me to produce a Local Reference Rent. I was satisfied that this area was justified because it forms a homogeneous locality for the purposes. It is an area which, taken together, is well served by public transport and good links for private transport providing access to a choice of schools, hospitals, recreational facilities, shops and financial institutions. Taken as the locality, it gives access to a wide range of facilities and from a valuer's viewpoint it provides a good range of residential lettings and a variety of types and tenancies."

Paragraph 9:

"This locality is a much smaller area than that chosen by the original Rent Officer, and I believe it to be in line with the judgment of the 'Dinsdale' case dated 26 October 2001.



The 'Dinsdale' (or Saadat) case is one to which I shall refer later.

32. Mr Turner gave a further explanation in his second witness statement, dated 30th August 2002, which amplifies his first. At paragraph 3 he said:

"... In fact the 90 pieces I extracted from the database ranged from £215 to £1100 per calendar month. However, in determining the LLR in accordance with paragraph 4 of Schedule 1 to the Rent Officer (Housing Benefit Functions) Order 1997, I discounted 3 pieces of evidence above £750.00 which in my judgment were exceptionally high rents and 5 pieces of evidence below £300 which, in my judgment were exceptionally low rents. After discounting these exceptional rents, the range of evidence which I used to determine the LLR was, as I said in my first witness statement, between £300 and £750 per calendar month..."

33. Mr Turner produced a graphic in order to demonstrate what he meant by removing the exceptionally high and exceptionally low rents, and the point at which he drew the median. His first version of that graphic is contained at paragraph 111 of the bundle and his second, which is in colour, is at page 106L.

34. Mr Turner had this to say about the database at paragraph 7:

"Mr Cumpsty makes an important point regarding data. I emphasise that the database from which the relevant material was drawn both by myself and Mr Cannon was exactly the same database. Rent Officers exercise professional judgment, and in doing so, they take into account legislation, case law and Rent Service guidance and quality assurance procedures. These factors ensure that there is a fair degree of consistency both in the procedures and processes used by Rent Officers to make Housing Benefit determinations. There are a number of reasons, however, why the LLR redetermination may differ from Rent Officer to Rent Officer. First, it may be that Rent Officers' individual views of the locality may vary, thus causing the extracts from the database in any given case to be different. Secondly, although the extracted material from the database may be identical in any given case, it may be that individual Rent Officers would draw the high and low cut-off points at different places. In this case, as far as I can ascertain, my LLR redetermination differed from that of Mr Cannon because I considered, in accordance with the Dinsdale case, that the size of the locality used previously had been too large an area. The locality from which I drew the evidence was somewhat smaller, thus resulting in a different determination of the exceptionally high and exceptionally low figures, which produced the different LLR."

35. As to the quality of the database, Mr Turner says at paragraph 9:

"... I consider that the evidence held on the Rent Service database is of the highest quality. It has been collated by Rent Officers who use their professional judgment to decide whether the information in question is transactional (that is to say, taken from an actual transaction between landlord and tenant) or whether it is merely supporting data (that is to say, based, for example, on an advertisement in the local press or newsagents' windows). The evidence used in the LLR redetermination is based upon transactional data, and is interpreted with the assistance of the supporting data. In addition to the use of the Rent Officer's own professional judgment and guidance from Senior Rent Officers, there are detailed quality assurance checks in place to make sure that the data is accurate, as well as checks by internal audit and the Rent Service's Quality Inspectorate. I am therefore fully confident that the information used in this case was representative of the market for properties of the requisite size in the locality."

I should interpose here in connection with Mr Turner's reference to "Rent Service Guidance", I have been shown two examples of such guidance. However, there was not, for the particular period with which this review is concerned, specific guidance in written form as to the application of the case to which Mr Turner refers as the Dinsdale case.

36. At paragraph 10, Mr Turner continued:

"... The first stage of my approach to the gathering of information was to assess the locality of Mr Cumpsty's property. I have already described that process in my first witness statement. It is important that the locality in question should be large enough to yield a critical mass of evidence upon which the LLR averaging calculation can then be based. A small sample of transactions would not enable that exercise to be carried out in any meaningful way.

11. The locality used for local reference rent calculations can be bigger than that used for significantly high rent or other Housing Benefit related determinations. I first looked at the post code area WA13, but then widened my search to include WA14, WA16, WA3, WA4 and CW9 postcodes. I looked at this wider area because it provided a critical mass of evidence which enabled me to produce a reliable LLR. I was satisfied that this area was a locality in that it is well served by public transport and gives access to a wide range of facilities. From a valuer's perspective it gives a wide range of residential lettings with a variety of different property types..."

37. Mr Turner gave further information about the evidence that he had used from the database in a third witness statement of 1st November. At paragraph 10 he said:

"...Just over 40% of the market evidence data used for the LLR determination in Mr Cumpsty's case was classed as transactional or 'confirmed' evidence. These comparables are the first 37 items listed on the table at 'DT2'. Importantly they include both the High and Low rents used in the formula to calculate the LLR. The remainder of the items on my list at 'DT2' are non-confirmed pieces of evidence."

38. At paragraph 22 Mr Turner gives further information about the nature of the task he was performing. He expresses the view:

"...Valuation is not an exact science and must include individual valuation skills and judgement. The criteria will be different in urban areas than in rural ones. A Rent Officer or Redetermination Officer considers travel times for the most appropriate form of transport. In rural areas public transport is limited but roads are generally less congested. A larger area is needed than for a conurbation to ensure that the LLR is effective.

23. The areas I included in the locality include rents that fall within similar ranges. There is no distinct area within the locality I used in which the range of rents is significantly different from another within the same locality."

At paragraph 27 Mr Turner confirmed that he had excluded no property satisfying the criteria within the locality which he had chosen for his consideration.

39. An expert was commissioned by the claimant to comment on matters which were relevant to the review, and having read the report Mr Turner carried out an exercise, which he describes in paragraph 11 of his third witness statement:

"Having considered Mr Cumpsty's and Mr Kershaw's comments, I have explored purely hypothetical alternative localities which I might have used had I not decided to extend my search to include a wider range of evidence. Mr Kershaw contends I should have used the Lymm and Knutsford areas only as the locality - the WA13 and WA16 postal code districts. There are 26 pieces of market evidence for these areas. Only 14 of these are transactional items. Limiting the locality would have resulted in a higher LLR for 1 Silent Valley Cottage. But, for example I might equally have used only WA13 (Lymm's postal code area) and the immediately adjacent WA4 (south Warrington) area to the west. Capital values in Knutsford are generally higher than those in Lymm and it is arguable that Lymm has more in common socially and economically with the south Warrington area. Using WA13 and WA4 would have generated a total of 23 pieces of evidence, including 14 transactional items, from our database. Discounting one rent as exceptionally high would have resulted in a range of rents from £320 to £650 and a lower LLR of £485. In my view this illustrates the need for a wider area to provide a range of evidence and a critical mass of more than 14 pieces of transactional evidence."

#### GROUND 1: MISDIRECTION OF LAW

40. The meaning of the term "locality" as used in paragraph 4(2) of Schedule 1 to the 1997 Order was the subject of appeals heard in the Court of Appeal, as Mr Turner observed, on 26th October 2001: R (Saadat and others) v The Rent Service [2001] EWCA Civ 1559, [2002] HLR 613. In those cases the rent officers concerned had, when selecting the locality from which to draw their comparables, chosen the whole of the town of Stockport. The effect of doing so was to produce a significantly lower lowest rent reasonably obtainable than would have been the case if "locality" had been more narrowly construed.

41. Mr Fetherstonhaugh, who appears for the Rent Service in this review, submitted to the Court of Appeal in Saadat that the rent officer was entitled to settle upon any area which could not be described as irrational, including the whole of Stockport. Mr Luba QC, who represents the claimant before me, contended before the Court of Appeal for a much narrower area formulated upon a construction of the word "locality" similar to that contemplated in the preceding paragraphs of Schedule 1, particularly paragraphs 2 and 3.
42. Sedley LJ in giving a judgment with which Mummery and Kennedy LJJ agreed, recognised the policy which lay behind the 1997 Order, namely the capping of housing benefit. He continued at paragraph 12 (page 620 HLR):

"To decide whether ... it is on any view large enough to encompass the whole of Stockport, it is necessary to consider the policy and objects of this Order in its amended form. We are not concerned with here with policy in the sense of what ministers hoped or intended to achieve in financial terms, but with what the amended Order itself (which by section 122(6)(a) of the Housing Act 1996 was subject to negative resolution in Parliament) displays as its essential objective. This, in my judgment, is to limit the housing benefit which is otherwise payable on grounds of reasonable individual need to the median point between the upper and lower ends (excluding exceptional cases) of the local market in dwellings with similar living space (actual or assumed) and in a reasonable state of repair. To this extent, but no more, its purpose is to intervene in the market. It is not to drive people who have had to fall back on housing benefit out of more affluent areas where the benefit rules would otherwise have enabled them to remain and into poorer areas. If that were desired, it would require clear provision - for example by a recasting of paragraph 3, which is designed to avoid subsidising market-priced but excessively comfortable accommodation. It cannot fairly be deduced from the terms of paragraph 4.

13. It follows that it offends the purposes of the Order to take the relevant locality an area so large that the poorer dwellings in it will inexorably bring the median, and with it the cap, down to a level which drives out or pauperises otherwise eligible housing benefit claimants. The fundamental purpose of the housing benefit scheme is the very opposite: it is to ensure that people who are not under-occupying property and not overpaying rent are not made homeless through genuine inability to pay. This is the context in which the purpose of the local reference rent has to be established. While, as a limiting procedure, it undoubtedly qualifies the basic purpose, it is not designed to negative it. Its objective, in its context, is that a rent should not be subsidised above the median or average level (the two are mathematically the same here) for the locality. That in turn implies a necessary geographical and demographic restraint on what can be legitimately regarded as the locality. Just as the court will intervene if too narrow an area is taken to accommodate the statutory purpose (*Metropolitan Property Holdings Ltd v Finegold* [1975] 1 WLR 349, DC), so it must intervene if too large an area is taken."

43. The effect upon the appellants in the Saadat case, of taking the whole of Stockport, was to bring within the area for comparison a population of 300,000. It produced a shortfall between the contractual monthly rents payable by the appellants and the Local Reference Rent of £60, £76, £147 and £236 respectively.
44. Sedley LJ continued at paragraphs 16 and 17 (HLR 621):

"...I would hold that in none of the first four paragraphs of Schedule 1 to the Order as amended does 'locality' necessarily refer to a particular geographical or administrative area, and that in all of them it signifies an area no greater than will enable the rent officer reliably to make the specified calculations and judgments. In each case this will depend on the character of the area in which the dwelling is located and on the data available there; but in none of the four paragraphs, for the reasons I have given, can it lawfully be an area as diffuse or as arbitrarily related to the subject dwelling as the administrative borough of Stockport.

17. For this reason the four material decisions must be quashed. Beyond this point, the court should heed what has been said more than once about the importance of letting expert decision-makers such as rent officers form their own view about the precise extent of a locality so long as they stay within the law: see *Metropolitan Property Holdings v Finegold* (above, 353-4). It will be for the rent officer service to redetermine the local reference rent in each of these four cases in accordance with the judgment of this court."

45. I have considered particularly those passages with a view to reaching a conclusion what are the admissible criteria for selection of a locality for the purposes of paragraph 4 Schedule 1 to the 1997 Order. I conclude that they include the following:

(1) Rent officers need not be concerned solely or even mainly with the concept of a geographical or administrative area. (2) They should look at the character of the area in which the dwelling is situated and select a "locality" which is fairly representative of that character and will enable them reliably to make the specified calculations and judgments.

(3) The locality selected should not have the effect of distorting the median which the Local Reference Rent is supposed to represent.

(4) If the selection of a locality has the effect of defeating the fundamental purpose of the legislation (namely to ensure that people who are not under-occupying property and not over paying rent, are not made homeless through genuine inability to pay) then it is outside the rent officer's powers under paragraph 4.

46. In reaching their conclusions in accordance with these criteria, rent officers retain the ability to exercise an expert judgment which the court will respect. That judgment would certainly be exercised when establishing a sufficient number of comparables to make a market when defining the boundary of the locality which they choose.
47. Submitted on behalf of the claimant are two reports from Mr John Kershaw, fellow of the Royal Institute of Chartered Surveyors, and sole principal of his firm in Manchester. He has extensive experience in building and property management, acting for both landlords, tenants, owners and lenders. He has not been a rent officer and does not claim particular expertise in that field.

His first report of 9th October 2002 appears at page 115 of the trial bundle. He describes High Legh as:

"... a small village in a rural area surrounded by farmland.

The closest town to it is Lymm, about three miles to the north west.

Lymm is large enough to contain a range of shopping, education and health facilities.

The next closest town is Knutsford, some 4½ miles south east of High Legh.

Like Lymm, it is sufficiently large to contain a full range of facilities."

48. Mr Kershaw then endeavoured to apply a test of "neighbourhood" to the subject dwelling which had been recently introduced by 2001 Regulations rather than the "locality" test which applied as at the date of the determination and redetermination in this case.
49. He then expressed the view that the comparables presented by Mr Turner were substantially different in character and remote from High Legh. He suggested that the comparables from the Warrington area encompassed a number of run-down densely populated urban districts, completely different in character from the subject property and remote from them. He says:
- "The Rent Officer attaches weight to the number of transactions reviewed: in any typical market valuation however the number of transactions is less important than the quality of the information. A true reflection of market worth might be found from one very similar market letting than from several dis-similar ones. Using the area which I suggest as appropriate for the LRR the Rent Office still has approximately 25 comparables on which to calculate its figure which should in my opinion be more than adequate."
50. It is noticeable that Mr Kershaw does not refer to the specific test required by paragraph 4 of Schedule 1. Mr Turner was not looking for market worth in the usual sense. He was applying a lowest and highest rent test upon the factual assumptions required by the Order. He was not searching for average rent but for a median, calculated having applied the highest and lowest rents reasonably obtainable.
51. Mr Kershaw included three plans which illustrated his opinion. The first was an extract from an ordinance survey map of North Cheshire and South Lancashire on which he noted subject property. Unfortunately, he located it in the wrong place, on the wrong side of the M56 and almost 2 miles further away from Lymm than it should have been. That was an understandable error because Mr Kershaw said he had very limited time available and he made an assumption from the postal address as to the location of the property he was considering. That fact does, however, mean that his assessment of locality was based upon a false factual premise and casts doubt on his ability to make any reliable comparison of character from one district to another.

52. His second plan showed diagrammatically the spread of Mr Turner's comparable information. On the third, the shaded area, which he considered met the definition of "locality" and within which it seemed to him reasonable to use the comparable data supplied. It is noticeable that he does not explain why he believed that the shaded area was the locality. He did not explain why he went outside Lymm and High Legh, and did not explain why he included Knutsford and went no further.
53. Had Mr Cumpsty's home been properly located on the ordinance survey map, a shift of the centre of gravity, of what came to be called during argument the "footprint", would have moved the locality a significant distance to the northwest of Lymm. That would have removed Knutsford and incorporated at least the east side of Warrington.
54. In a supplementary report dated 1st November 2002, Mr Kershaw explained the error in location of the subject property and arrived at these figures:

"The 25 comparables referred to in my report are highlighted on the attached table taken from the Rent Officer's evidence. (Appendix A)

The average of all those highlighted rents is £629.20.

If all rents over £700 and above are excluded as being particularly high, the average rent reduces to £581."

I am not sure why Mr Kershaw has provided us with that average, he does not seem to have considered calculation of the median under paragraph 4 Schedule 1 at all. I am bound to say I have not derived any assistance from Mr Kershaw's reports. Certainly, they do not approach a meaningful and informed criticism of Mr Turner's redetermination. I turn to Mr Luba's submissions which, it is noticeable, do not depend upon support of Mr Kershaw's reports, at least not to any extent.

55. Mr Luba submits that while Mr Turner correctly discerned the error made by the rent officers making the original determination and first redetermination, in selecting the whole of Cheshire, he then proceeded on a manifestly wrong basis. Instead of commencing his research by considering the character of the immediate area in which Mr Cumpsty lived and selecting the boundary of the locality as soon as reliable market evidence emerged, he went on a trawl well beyond what could realistically be called the "locality". Furthermore, it is submitted that Mr Turner seems to have been guided not by character but by postal district, a consideration of virtually no relevance to his task.
56. Thirdly, had Mr Turner begun his study in the Lymm/High Legh area he would have found the criteria were met by taking properties within what he described as the local footprint. During his submissions in reply, Mr Luba went so far as to suggest (in common with Mr Kershaw I note) that one or two comparable properties in the area should have been enough.
57. Fourth, Mr Luba submitted that a reliable test whether Mr Turner's approach was rational and lawful is to ask the questions: what reason has Mr Turner given for drawing the boundaries of the locality as he did? Why did he not stop at Lymm? And why did he stop at the roughly rectangular boundary demonstrated by his exhibit DT4? There is no explanation, submits Mr Luba, because there is none to give which does not expose irrationality or unlawfulness. Mr Turner's use of the phrase "a need to provide a critical mass" simply begs the question posed by the Court of Appeal in Saadat and others.
58. Mr Fetherstonhaugh supports Mr Turner's redetermination by pointing to what his evidence does establish. First, there is no doubt that his inquiries centred upon the area in and around 1 Silent Valley Cottages; second, he was guided by the character of the area in which Mr Cumpsty lived. Third, he included comparables outside the immediate area to establish his database, but chose properties on the outskirts of towns. Several were in built-up areas, but there is no satisfactory evidence that any particular property was of such a different character that it ought to have been excluded from his consideration.
59. Mr Fetherstonhaugh has submitted that the need to repose in the rent officer a measure of discretion is demonstrated by the fact that the claimant himself believes that only the immediate area of his home, Lymm and High Legh, should be included, when, on the contrary, it was the view of his expert that Knutsford should be included. One might also add that the rhetorical questions posed by Mr Luba, in an attempt to attack Mr Turner's approach, were not answered by his own expert any more than they were by Mr Turner.

60. Given the state of the evidence, submits Mr Fetherstonhaugh, who criticised Mr Kershaw's reports for reasons to which I have already in summary referred, it is not demonstrated that Mr Turner acted unlawfully or irrationally in selecting the area he did for his location.
61. Applying my understanding of the Saadat test to Mr Turner's redetermination, I reach the following conclusions:
- (1) Mr Turner did begin with the subject property and its immediate surrounds. He did assess the character of those surrounds. That is the evidence.
- (2) He did utilise a database by reference to postal codes, but that was not because there was any magic in the labels, that was simply the means by which an area was described. Had the database been dependent upon some other unit of measurement he would have had to use that instead.
- (3) Mr Turner had in mind the Saadat judgment when deciding to draw his comparables from areas outside Lymm and High Legh. That also is the evidence. How far Mr Turner went was essentially a matter for his judgment, provided he bore the Saadat criteria in mind when forming that judgment.
- (4) Mr Luba's rhetorical questions do not ultimately assist. Mr Turner explained that what he was seeking was a reliable database of comparables. Precisely the point at which he stops is essentially a matter for his experience and expertise and hardly measurable against fixed and immoveable criteria.
62. As I have observed, the other expert who has provided evidence for my purposes, did not attempt the proposed explanation either.
63. In order to test the proposition put by Mr Luba, I have considered what would be the result if only those properties in the Lymm area had been included. They are those highlighted by Mr Kershaw in his copy of DT2, but I have removed the Knutsford and mere properties.
64. There are in Mr Turner's schedule 12 such properties in and around Lymm, 9 of which are transactions, 3 of which are supporting evidence. Monthly rent ranged from £450 to £1100. The bulk of those properties attracted a rent between £500 and £600. The rent of £1100 is so out of kilter with the other figures that it is difficult to see how it could escape severance from the calculation of highest rent. The lowest rent, £450, is not, however, so low that it seems likely it would have been severed, and certainly would not have been under the test adopted by Mr Turner. If the £1100 rent is removed the next highest rent is £625. The calculation does not require an average but a median. The median between £425 and £625 is £537.50.
65. Mr Turner himself has said that if he shifted Mr Kershaw's footprint as required upon relocation of Mr Cumpsty's home and confined his study to the Lymm and South Warrington areas, he would have taken £320 as his low and £650 as his high rents producing a median figure of £485.
66. If Mr Turner should also have included the western outskirts of Altrincham the range was £295 to £795, most were in the range £400 to £500. Assuming a low of £400 and a high of £650 as before, the median is £525.
67. I do not use these illustrations for the purpose of reaching my own view of the appropriate Local Reference Rent, that is preeminently the task of the expert. My purpose has been only to seek an answer to the questions posed by Sedley LJ in Saadat: has the selection of the locality produced a false result? Has the net been drawn so widely that it has caught rents so low by comparison with the highest that their use has the effect of defeating the fundamental purpose of the legislation? It has not been demonstrated to me that this has occurred. On the contrary, on Mr Cumpsty's own case, the probable difference between the median rent in Lymm and the locality chosen by Mr Turner is £12.50 per month.
68. While I do not belittle the effect of £150 per annum upon a man in Mr Cumpsty's situation, I cannot conclude that Mr Turner got it manifestly wrong by choosing a wider area, or was irrational, or applied the wrong test.

## GROUND 2: PROCEDURAL UNFAIRNESS

### LOCAL AUTHORITIES

69. Local authorities have the task of administering the Housing Benefit Scheme. It is the local authority which receives the claim on a standard form obtained from a local Social Security office or County Council, Borough Council, City Council, Unitary Authority or London Borough. The form can now be downloaded from the internet. It is processed by the appropriate local authority. Once the rent officer's determination has been made, the local authority notifies the claimant of the award of Housing Benefit granted.

#### RENT SERVICE

70. The Rent Service is an agency of government. Formerly under section 63 Rent Act 1977 rent officers were appointed by the local authority for the registration district concerned. They were paid by the local authority, housed and funded by the local authority, and could be dismissed by the proper officer of the local authority. This state of affairs changed on 1st October 1999 with the Administration of the Rent Officer Service (England) (Order) 1999 (SI 1999/2403), introduced pursuant to powers granted by section 64B Rent Act 1977 an amendment made by the Housing Act 1988 schedule 14 Part II.

71. The preamble to the Order reads:

"... whereas, with respect to registration areas in England, it appears to the Secretary of State for the Environment, Transport and the Regions that it is no longer appropriate for the appointment, remuneration and administration of rent officers to be a function of local authorities..."

There then follows the order which provided that the functions duties formerly exercised by the local authority were to be performed by the Secretary of State. The Rent Service has become therefore an agency of government independent of the client seeking its services.

72. In the year 2000/01 the Rent Service carried out 688,641 housing benefit determinations; 71,323 pre-tenancy determinations and 11,152 redeterminations. Both counsel have drawn to my attention the notable feature that in only 1.4 per cent of total cases was the Rent Service making a redetermination. Mr Fetherstonhaugh says these statistics demonstrate two things: first, the vast workload undertaken by the Rent Service in a field in which the legislation requires rapid delivery of the service; second, the scheme is working. Mr Luba observed that if a restructuring of the scheme by introduction of an appeal tribunal was required to produce Article 6 compliance, the evidence suggests the likely number of cases in which it would be utilised would be comparatively small.
73. Mr Luba identifies several features of the Housing Benefit scheme which he contends cumulatively result in procedural unfairness and are thus contrary to natural justice at common law, and in breach of Article 6 European Convention on Human Rights.
74. Mr Luba identifies the procedure by means of a series of steps.

Step 1: when the application is referred by the local authority to the rent officer under Regulation 12A of the 1987 Regulations, that step does not engage the claimant at all says Mr Luba. He is not provided with a reference notice and he will not know the nature of the issue which the rent officer will determine.

Step 2: the obligation is on the rent officer to notify the local authority of its determination but not to notify the claimant. The claimant does not receive, as a matter of course, the detailed reasons why the rent officer arrived at the Local Reference Rent he did.

Step 3: the local authority is under an obligation to notify the claimant of the result of his claim and must include the details to which I have referred. But it is not under a duty to set out the detailed grounds upon which the rent officer reached his determination.

Step 4: the claimant is entitled under regulation 12CA to make written representations, but unless (like Mr Cumpsty in this case) he makes himself informed, he does not know how and why the rent officer reached his decision and, accordingly, his written representations may be completely irrelevant.

Step 5: Mr Luba concedes that while it is not the claimant himself who seeks the redetermination of a rent officer, the local authority is bound to seek that redetermination if the claimant so requests.

Step 6: a rent officer makes a redetermination by the criteria required under paragraph 4 in the 1997 Order. But Mr Luba submits there is no statutory obligation on the rent officer to consider the claimant's written representations. There is no requirement for him to visit the subject property, and there is no requirement for

him to interview the claimant or to receive them in some other form, only a power to do so. There is no right to an oral hearing. There is not a discovery of the material on the database used by the rent officer. There is no procedure by which the rent officer can indicate his preliminary view and invite comment. The effect of not giving the claimant reasons at an earlier stage might be that unwittingly the claimant seeks a redetermination, and upon redetermination runs a risk that his Local Reference Rent will be redetermined at a lower figure than that which the determination originally decided.

Step 7: again the requirement is for the rent officer to notify the local authority not the claimant. There is no obligation to give reasons.

Step 8: the local authority has an obligation to notify the claimant of the result of the redetermination, but Mr Luba submits that it is not entirely clear whether there is a duty to notify a claimant if the redetermination simply confirms an earlier decision.

Step 9: even if both the claimant and the local authority are dissatisfied after their statutory right to seek redeterminations, there can be no appeal or review to a statutory tribunal. There is no statutory obligation to provide reasoning for a decision by a rent officer even on request. All that is left is:

Step 10: Judicial review.

75. It is common ground that I should first consider the impact of Article 6 upon the process I have just described because that decision may well be determinative of the application on Ground 2.

#### CIVIL RIGHTS AND OBLIGATIONS

76. In its material part Article 6(1) of the ECHR provides:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

I first have to consider whether the decisions of the local authority and/or Rent Service involve a determination of the claimant's civil rights. It is not disputed by the Rent Service that the grant or refusal of housing benefit is a determination of a civil right. What is in dispute is the position of the rent officer in that process.

77. Mr Fetherstonhaugh's submissions are conveniently summarised in his skeleton argument: at paragraph 5(a) he says:

"The Redetermination Officer does not carry out a judicial function. His task is to carry out an expert determination, not to arbitrate.

(b) The only rules governing the way in which the Redetermination Officer is to discharge the task given to him are set out in the Order. There is no provision whatsoever for a hearing to take place; for representations to be supplied; or for expert evidence to be entertained. That is to be contrasted with the position under the Rent Act 1977 (which allows for appeals from Rent Officers to Rent Assessment Committees, which expressly have such powers); and housing benefit decisions (which formerly were the subject of review by tribunal under the Housing Benefit (General) Regulations).

And at paragraph 6 he says:

"... Article 6 is not engaged at all, for the reason that the Claimant's civil rights and obligations are not being determined by the Redetermination officer."

78. Mr Luba submits that it is precisely upon the work of the rent officer that the determination of the civil right depends. All that the local authority does is to administer the financial and other personal conditions for qualification. Once they are met, section 130 Social Security (Contribution and Benefits) Act 1992 entitles the claimant to an award of housing benefit. It is the determination of the rent officer which governs the decision whether the claimant will receive financial assistance sufficient to meet his housing costs. The local authority is bound to act upon that determinations when providing notification of housing benefit under rule 77 and Schedule 6 of the 1987 Regulations.



79. Several decisions in the European Court of Human Rights have held that decisions upon social security entitlements, even non-contributory in form, granted unilaterally by the State, with the full cost being borne by the public purse, attract the description "determination of civil rights": see in particular Salesi v Italy [1993] 26 EHRR 187; Lombardo v Italy [1992] 21 EHRR 188.
80. Having considered some equivalent provisions relating to the grant of accommodation under the Housing Act 1996 and, in particular the recent analysis by Laws LJ in Runa Begum v Tower Hamlets London Borough Council [2002] EWCH Civ 239; [2002] 2 All ER 668 (see paragraphs 18 - 25), I conclude that the local authority were involved in the determination of a civil right in which the decision of the rent officer was critical. I conclude that so critical was the rent officer's decision that it too amounted to the determination of a civil right within the meaning of Article 6, or was an integral part of it. The result of the rent officer's determination was decisive in defining the claimant's civil right to housing benefit; compare Robins v United Kingdom [1997] 26 EHRR 527 at paragraphs 28 and 29; and see R (Alconbury Developments Limited and Others (and Secretary of State for the Environment, Transport and the Regions)) [2001] UKHL 23; [2001] 2 WLR 1389 at paragraph 150. The determination by the rent officer is an inseparable element of the process which results in the award.

#### INDEPENDENT AND IMPARTIAL TRIBUNAL

81. Having concluded that the exercise by the rent officer of his powers amounts to a determination of civil rights, the second question I must consider is whether the rent officer is an independent and impartial tribunal within the meaning of Article 6. As Laws LJ pointed out in Runa Begum at paragraph 28: "The Strasbourg jurisprudence is clear and consistent." He continued:

"Purely by way of example, the court stated in *Findlay v United Kingdom* (1997) 24 EHRR 221 at 244- 245 (para 73)

'in order to establish whether a tribunal can be considered 'independent', regard must be had *inter alia* to the manner of appointment of its members and their term of office. The existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. As to the question of 'impartiality', there are two aspect to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. The concepts of independence and impartiality are closely linked..."

82. What then are the relevant considerations here? First, the rent officer is independent of the local authority. He is certainly employed by an agency which is funded by government, but he is not answerable to the body required to seek his determination. He has no allegiance and the contrary was not argued before me. Second, it is the invariable practice of the Rent Service to assign redeterminations to a separate rent officer. He must take advice from at least one further rent officer. In Runa Begum's case the reviewing officer was herself an employee of the local authority which had the duty to make the decision which determined the applicant's civil rights. She did not meet the standard required for "objective guarantee" against the risk of bias. I shall return to the concept of "independent and impartial tribunal" later when considering the judicial review end of the process. Even if I am wrong in my judgment of the objective impartiality of the rent officer, that is not necessarily fatal to the concept of independent and impartial tribunal.

#### FAIR AND PUBLIC HEARING

83. The rent officer does not hold a hearing at all. Neither does he at the determination stage receive representations from the claimant or the local authority. A rent officer is supplied with the claimant's written representations when invited to make a redetermination, and those written representations cannot be educated unless on request, or otherwise the detailed reasons for the first determination have been provided. I am informed that it is the invariable practice of the Rent Service to provide such reasons if asked, and that it is the aspiration, not yet realised, of the service to provide reasons as a matter of course.
84. I do not accept Mr Luba's criticism that the rent officer is under no obligation to consider written representations at the redetermination stage if made. It seems to me implicit in the terms of regulation 12CA(2) of the 1987 Regulations and of the rent officer's duty to redetermine in accordance with the terms of Schedule 1 Part I of

1997 Order that he is bound to consider representations which go to the application of the criteria in paragraphs 1 - 4 of the Schedule.

85. At the determination stage the tenant or prospective tenant has little or no interest in the way in which the rent officer will proceed, only in the outcome. If the housing benefit award is, as a result, too low to meet the rent he will have to pay, then he will be interested to know why the rent officer determined the Local Reference Rent as he did. The stage at which the claimant needs the information on which to judge the merits is consideration of an application for redetermination. Provided that he is supplied with reasons sufficiently detailed to make that judgment the process meets, it seems to me, the requirements of fairness.
86. In any case in which by the terms of Schedule 1 Part III paragraph 9 of the 1997 Order the rent officer is required only to give notice that the Local Reference Rent is equal to or more than the contractual rent, that is the information the tenant requires to make a decision whether the appeal should be to a Social Security Tribunal rather than seeking a redetermination. If on the other hand the rent officer is required to give notice of the paragraph 4 determination because the Local Reference Rent falls below the contractual rent, it seems to me elementary that the claimant should receive notice not only of that fact but of the reasons for the decision.
87. The Regulations which I am considering, that is the 1997 Order and Schedule 6 of the 1987 Regulations, do not require either the rent officer or the local authority to give those reasons. In order to be compliant with ordinary standards of fairness, it is my view the claimant should be informed of a right to seek and obtain detailed reasons why the amount of his normal weekly rent allowance falls below his contractual rent. And those reasons will include, it seems to me, the geographical area drawn for the purposes of locality under the 1997 Order or of vicinity, or such other expression in the regulations which have superseded those terms.
88. The fact the rent officer does not hold a hearing does not dispose of the question whether the claimant has a right to a fair and public hearing under this procedure. Laws LJ said in Runa Begum at paragraph 31 (687H):

"...The approach in Strasbourg to cases where a first instance decision-maker does not of itself satisfy Article 6(1), but it is claimed that the defect is as it were cured by a right of appeal to or review by an independent court, is to ascertain whether in the circumstances the court possesses what has been called 'full jurisdiction'. The genesis of this expression is I think to be found in *Albert v Belgium* (1983) 5 EHRR 533. That was a case in which doctors suspended from practice by a disciplinary tribunal complained of violations of Article 6(1). It is convenient to refer to the relevant passage as it is quoted by Lord Hoffman in *R (on the application of Alconbury Development Limited) and Secretary of State for the Environment, Transport and the Regions* [2001] 2 All ER 929 at paragraphs 86 to 88, where it is followed by reasoning to which with respect I would attach considerable importance in the context of the present case.

'86 In ... *Albert v Belgium* (1983) 5 EHRR 533 at 542 (para 29 ) ... the court said, that although disciplinary jurisdiction could be conferred upon professional bodies which did not meet the requirements of Article 6(1) (eg because they were not 'established by law' or did not sit in public) - 'Nonetheless, in such circumstances the Convention calls at least for one of the two following systems: either the jurisdictional organs themselves comply with the requirements of Article 6(1), or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6(1).'

87. The reference to 'full jurisdiction' has been frequently cited in subsequent cases and sometimes relied upon in argument as if it were authority for saying that a policy decision affecting civil rights by an administrator who does not comply with Article 6(1) has to be reviewable on its merits by an independent and impartial tribunal. It was certainly so relied upon by counsel for the respondents in these appeals. But subsequent European authority shows that 'full jurisdiction' does not mean full decision-making power. It means full jurisdiction to deal with the case as the nature of the decision requires.' ..."

89. In considering whether the review jurisdiction of the county court in the Runa Begum case was Article 6 compliant Laws LJ examined further the speech of Lord Hoffman in the Alconbury case, from which the term "Bryan Composite Model" seems to have emerged, and the Court of Appeal decision in Adan and Newham London Borough Council [2001] EWCA Civ 1916; [2002] 1 All ER 931. At Paragraph 37 (page 688) Laws LJ concluded:

" 37... These decisions ... seem to me to reflect an important truth about the relationship between the 'first instance' decision and the decision of the court on appeal or review, in this class of case where it is said that the later court process guarantees ECHR Article 6 compliance where that is not satisfied by the earlier determination. We have seen that in such cases the later court must possess 'full jurisdiction' (see *Albert v Belgium* (1983) 5 EHRR 533), and that this means 'full jurisdiction to deal with the case as the nature of the decision requires' (the *Alconbury Development* case [2001] 2 All ER 929 at 87). But what 'the nature of the decision requires' is by no means limited to a consideration of the question whether, in the light of the subject matter of the case, a court compliant with Article 6 standards must possess the power to investigate and decide the facts for itself. Assuming only that in any particular milieu disputes of fact may arise, it is necessary also to confront the question whether the 'first instance' decision-maker - internal review, review board, whatever it may be - is established and constituted in such a way that it may be expected to arrive at fair and reasonable decisions. That may be a live and real question even though, for want of sufficient independence, or publicity, or any other factor, such a first instance decision-maker does not itself satisfy Article 6. Its failure to meet the Article 6 standards by no means closes off the relevance of its processes or the *overall* judgment that has to be made which takes account also of the second stage review or appeal in an independent court."

90. Commencing at paragraph 39, Laws LJ (page 689) continued:

"... The critical question, then, is this: in these two-tier cases, what are the conditions which determine whether the court process at the second tier, taken with the first instance process, guarantees compliance with Article 6(1)?

40. As I have shown, the extent to which the first instance process may be relied on to produce fair and reasonable decisions is plainly an important element. But it is not to be viewed in isolation. The matter can only be judged by an examination of the statutory scheme as a whole; that is the necessary setting for any intelligent view as to what is fair and reasonable. Where the scheme's subject matter generally or systematically involves the resolution of primary fact, the court will incline to look for procedures akin to our conventional mechanisms for finding facts: rights of cross-examination, access to documents, a strictly independent decision-maker. To the extent that procedures of that kind are not given by the first instance process, the court will look to see how far they are given by the appeal or the review; and the judicial review jurisdiction (or its equivalent in the shape of a statutory appeal on law) may not suffice. Where however the subject matter of the scheme generally or systematically requires the application of judgment or the exercise of discretion, especially if it involves the weighing of policy issues and regard being had to the interests of others who are not before the decision-maker, then for the purposes of Article 6 the court will incline to be satisfied with a form of inquisition at first instance in which the decision-maker is more of an expert than a (I use the terms loosely), and the second instance appeal is in the nature of a judicial review. It is inevitable that across the legislative board there will lie instances between these paradigms, sharing in different degrees the characteristics of each. In judging a particular scheme the court, without compromise of its duty to vindicate the ECHR rights, will pay a degree of respect on democratic grounds to Parliament as the schemes author."

91. What then is the task of the rent officer? It is, by using his experience and expertise, to apply a statutory formula to produce a Local Reference Rent. He is not engaged in a consideration of conduct, nor of the claimant's personal circumstances. He is not comparing the needs of the claimant with the needs of others. He does not set or consider priorities. There is little scope for challenge of his application of the statutory formula in which he is the expert. He is involved in the study of the database prepared by the Rent Service from material gathered by the Service itself. It is the rent officer's judgment of the application of comparables which produces his determination or redetermination. Mr Luba says that the time devoted in this hearing to argument upon the rationality of the rent officer's determination serves to demonstrate there is much scope for opinion, argument and expertise. I agree. But it is the policy of the statutory process to give the rent officer the duty to make the value judgments upon which the determination depends by using his expertise, and by not considering the expertise of somebody else. It could not be more specific. The determination is the product of the rent officer's expertise.
92. In my view, the rent officer's first instance stage (encompassing determination and redetermination) falls squarely within Laws LJ's description of a process for which judicial review rather than a full rehearing of the facts completes the appropriate ECHR model.

93. In exercising their judgment, Mr Turner and his colleagues enjoyed the margin of discretion described by Sedley LJ in Saadat. All that remains, if required, is the question whether in exercising it they acted rationally and directed themselves properly as to the law. It follows that I conclude that, subject to the provision of sufficient reasons by the rent officer or the local authority to the claimant, the statutory scheme, together with the right to judicial review, does provide the claimant with a fair and public hearing before an independent and impartial tribunal.
94. I need lastly to consider whether Mr Cumpsty did receive such a hearing in this case. He is a man with a lively inquiring mind and strong views about the merit of his own case. He demanded reasons from the Rent Service and he received them. He entered into a lengthy and pertinent correspondence in which he made the main points considered in Saadat and in this review. He was visited by Mr Turner at the commencement of his redetermination and used that opportunity to reinforce his argument. Mr Turner was aware of Mr Cumpsty's views about local rents before he made his redetermination.
95. Those views have received a full airing at this review with the benefit of all the material required to decide the Saadat issue. I have found that Mr Turner did not act unlawfully or irrationally in reaching the view which he did.
96. I conclude that Mr Cumpsty did, in fact, receive a full and fair hearing before an independent and impartial tribunal. Since I have reached the view that his hearing was Article 6 compliant, I need not proceed further to consider common law rules of natural justice. The decision made on redetermination is not, in my view, vitiated by procedural unfairness.
97. For the reasons I have given the application must, therefore, be dismissed.
98. MR FETHERSTONHAUGH: My Lord, I am very much obliged. My Lord, I would ask that the claimant pay the defendant's costs in such amount -- the usual community funding order?
99. MR JUSTICE PITCHFORD: No to be enforced?
100. MR FETHERSTONHAUGH: The formula is to pay the defendant's costs in such amount as may be determined hereafter pursuant to -- my Lord, that was the order which I agreed with Mr Luba last time round in relation to Saadat which was acceptable to him then and he should know -- if there is any tweaking that needs to be done, my Lord, perhaps my learned friend and I can do it between ourselves.
101. MR JUSTICE PITCHFORD: Yes, certainly. Miss Harris, do you have any instructions?
102. MISS HARRIS: My Lord, I have a suggested wording which I think completes what my learned friend has suggested that the determination of his liability to pay would be made pursuant to section 11 of the Access to Justice Act 1999 and that costs should be subject to a detailed assessment. My Lord, I would also ask for a detailed assessment of costs incurred on the claimant's public funding certificate?
103. MR JUSTICE PITCHFORD: Yes, I think we have the certificate, have we not, in the file? Yes, there will be an order for costs in those terms.
104. MISS HARRIS: My Lord, I have an application for permission to appeal in relation to the Article 6 point?
105. MR JUSTICE PITCHFORD: You shall have it.
106. MISS HARRIS: I am grateful.
107. MR JUSTICE PITCHFORD: Sorry, Mr Fetherstonhaugh, I have not given you an opportunity to respond to that but it seems to be obvious.
108. MR FETHERSTONHAUGH: I take it your Lordship will make the same order whether or not he hears from me?
109. MR JUSTICE PITCHFORD: Do you have anything to say?
110. MR FETHERSTONHAUGH: Well, my Lord, just this, I think your Lordship heard that Runa Begum's petition for appeal was granted and there is going to be a hearing in January next year. My Lord, all these issues are then going to be live then in the House of Lords. My Lord, that might be a more appropriate and rather more

immediate forum for these questions to be discussed rather than in an appeal from this case. My Lord, that is all I was going to say.

111. MR JUSTICE PITCHFORD: With this reservation, that we are dealing with a rent officer and each of these tribunals, as it were, has to be considered on its own merits, and I think it is for that reason that I am going to give leave. Not as to whether the reasoning behind the Runa Begum case is right or wrong, which the House of Lords will have to decide.
112. MR FETHERSTONHAUGH: My Lord, so be it.
113. MR JUSTICE PITCHFORD: Thank you.