

Regina v London Borough of Tower Hamlets

NO: CO/3921/99

High Court of Justice Queen's Bench Division Crown Office List

12 June 2000

2000 WL 774941

Before: Mr Justice Scott Baker

Monday 12th June 2000

Representation

Mr P Stagg (instructed by TV Edwards Solicitors) appeared on behalf of the Applicant.
Mr K Routledge (instructed by Treasury Solicitor) appeared on behalf of the Respondent.

Judgment

Monday 12th June 2000

Mr Justice Scott Baker:

1 The applicant seeks judicial review of a decision of the Housing Benefits Review Board of 21st June 1999, which refused to alter the London Borough of Tower Hamlets' earlier decision that he did not come within [paragraph 27 of Schedule 5 of \(1\) the Housing Benefit General Regulations 1987](#) and (2) the [Council Tax Benefit General Regulations 1992](#) . I shall refer to these Regulations as the 1987 and the 1992 Regulations respectively.

2 Briefly, the background circumstances are these. The applicant and his late wife and his family used to occupy 103 Bow Road in East London, which the applicant has owned since 1965. In about 1983 the applicant's wife registered her right of occupation under the Matrimonial Homes Act 1967 . About the same time she obtained an injunction excluding the applicant from the house. She remained living in the house until she died in November 1996.

3 Thereafter, one of the sons lived there until April 1997, or thereabouts. From that time the house has been empty and it has become increasingly unfit for habitation. It now requires extensive work in order to make it habitable. Notwithstanding this, the value of the house is said to be in the region of £240,000.

4 For some time the applicant has lived at 7 Callingham Close, initially as a tenant of the local authority, but he has recently exercised his right to buy that house under the relevant legislation — presumably at a discount from its true value. The purchase was completed in May 2000.

5 The present dispute comes about because the applicant, who was in receipt of various income benefits, did not tell the council that he was the owner of a 103 Bow Road, a valuable capital asset. He says that in not telling the council there was no malice or bad faith on his part because he fully believed that the council was well aware that he actually lived there. It is unnecessary for me to go into the rights and wrongs of that.

6 I turn next to the relevant legislation. [Section 123\(1\) of the Social Security Contributions and Benefits Act 1992](#) makes provision for income-related benefits, including Housing Benefit and Council Tax benefit. Claimants are excluded from these benefits if their capital exceeds the prescribed amount — this is £16,000, per [regulation 37](#) of the 1987 Regulations and [regulation 28](#) of the 1992 Regulations.

7 [Regulation 38\(2\)](#) of the 1987 Regulations and [regulation 29\(2\)](#) of the 1992 Regulations provide that any capital specified in Schedule 5 of each set of Regulations is to be disregarded in calculating a claimant's capital. This application concerns [Schedule 5, paragraph 27](#) , which excludes:

"Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out ..."

8 The applicant's case is that he has for some time been intending to make No 103 habitable by carrying out essential repairs. As he put it in a letter of 7th August 1998 to the Benefits Section:

"You are also aware that the property you are considering is dilapidated and uninhabitable. It needs extensive repair work and for that Builder's estimates your Office had called for on the 'Schedule of Works' were submitted on 2nd April 1998. So long as the property remains vacant for repairs and uninhabitable its value is ignored."

9 The council's response at page 65 of the bundle from the Area Benefits Manager, Mr Livingstone, in a letter written to the applicant's solicitors, was:

"I have now reviewed our decision and, in light of the above, am confirming that Mr Kapur is not entitled to Housing or Council Tax Benefit because his capital is too high ([Regulation 37 of the Housing Benefit \(General\) Regulations 1987](#)).

Mr Kapur may appeal further and have his case heard by a Review Board ..."

10 Earlier in the letter the Benefits Manager had mentioned the value of No 103 as "£240,000".

11 This was responded to by a letter from the applicant's solicitors on 9th October 1998 in which they said that they submitted:

"1. Between 21st October 1991 and 6th July 1998 our client has been entitled to Housing Benefit and Council Tax Benefit because he has been in receipt of Income Support.

2. In any event, our client is entitled to Housing Benefit and Council Tax Benefit because of the rules relating to disregarded capital. We refer you in particular to Rule 27, Schedule 5 ..."

12 and then the relevant provision that I have already read is set out.

"Our client applied for a Housing Renovation Grant in November 1996, the same month that his wife died and Mr Kapur became entitled to the property. A decision on the Renovation Grant was received in July 1998, which was a negative decision and our client is appealing against that decision. He is also making efforts to obtain alternative funding for the necessary

renovations. We therefore submit that our client comes within Rule 27 and remains entitled to Housing Benefit.

Please reinstate and backdate Housing Benefit and Council Tax Benefit in accordance with the Regulations.”

13 The rest of the letter is not material.

14 The decision letter in respect of which this application for judicial review is made is dated 1st July 1999. In the course of the letter the author recites:

“You accepted the facts summarised in the Authority's chronology of events and in its statement which were based on the documents submitted to the Board.”

15 Neither of those documents has actually been exhibited in this application, but I do not think that anything turns on them.

16 There is also a reference to having notified the board that the applicant had started DIY works, ie the rewiring of 103 Bow Road in April 1999.

17 Then the letter continues a little later:

“The Board noted that following your wife's death in November, 1996 you formed the intention to reoccupy 103 Bow Road as your principal residence provided that you could raise the necessary finances from mortgage lenders, or any other source(s);

103 Bow Road, the Board accepted was not habitable until essential repairs had been undertaken to make it fit for occupation.

The Local Authority did not dispute and the Board accepted that 103 Bow Road was unfit for occupation at all material times since November 1996.”

18 Then, having made mention of the relevant values, the letter continues:

“The issue that the Board had to determine was at what date, if any, for the purposes of Paragraph 27 of Schedule 5 of both the Council Tax and Housing Benefit Regulations, that you first took steps to effect repairs as defined in the Regulations.

We found that unless and until you were able to finance repairs you were not be in a position to take steps to effect them. The Board acknowledged that you could not do the repairs yourself.

In the context of the Regulations, it appeared to the Board that the disregard could only apply from the point when you were in a position to actually effect the repairs. Further the Board were of the view that the wording of the paragraphs which created the disregard made it clear that it was the period during which the repairs are carried out which is to be disregarded and did not include the period when you were seeking finance and/or engaged in preparatory investigations as to whether or how the repairs should be effected, which could be, as the

Board considered, open ended in this case. The Board found that 103 Bow Road and your interest in it could not be disregarded.”

19 That last paragraph is the kernel of the Board's decision and I shall return to it in a moment.

20 Mr Stagg's argument for the applicant runs along the following lines. The disregard under [paragraph 27](#) applies “from the date on which the claimant first takes steps to effect those repairs or alterations”. It is not, he argues, the first physical act on the premises that matters; it is the setting of the wheels in motion. He relies particularly on the phraseology “first takes steps to effect those repairs”. Thus, for example, signing a contract with a builder would clearly fall within the provision, notwithstanding the work might not actually be done until some time later.

21 Mr Stagg goes on to contend that steps to effect those repairs or alterations can include necessary preparatory steps before the works are actually commenced, such as the drawing up of schedules of works, liaison with local authority officials and attempts to obtain finance, whether from a mortgagee, from a local authority grant or some other source. He points out that the wording of [paragraph 27](#) is apt to include preparatory steps because it begins with the words “first takes steps”.

22 Also Mr Stagg draws attention to the preceding paragraphs in [Schedule 5](#) , namely [paragraphs 24 to 26](#) . [Paragraph 24\(1\)](#) reads:

“Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date he ceased to occupy that dwelling or where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.”

23 It is unnecessary to read [subparagraph \(2\)](#) .

24 [Paragraph 25](#) reads:

“Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.”

25 And [paragraph 26](#) :

“Any premises which the claimant intends to occupy as his home, and in respect of which he has taken steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.”

26 [Schedule 5, paragraph 1](#) is the base provision that exempts a person's home from being taken into account as relevant capital. [Paragraphs 24–27](#) are, it seems to me, looking at interim situations where the premises were the claimant's home or are about to be his home and it would be inequitable in the

meantime to require the capital tied up in it to be taken into account. It is true that paragraph 25 does not relate to his home as such, but is looking at a situation where it may take time to dispose of premises and so obtain possession of the capital. It seems to me that one should look at these paragraphs as a group because they give some assistance as to the purpose of the legislation. Most recipients, argues Mr Stagg, of income-related benefits will not have sufficient resources to enable essential repairs to be carried out. Their financial status, like that of the applicant, will often make it difficult to obtain finance. If the respondent's argument is right, the claimant would be excluded from payment of rent on his alternative property and from all forms of Income Support during any period when he was trying to raise money for the repairs. This would be quite contrary to the philosophy of [paragraphs 24–27](#) .

27 Mr Stagg also drew attention to the Adjudication Officer's Guide, the contents of which were in evidence before the court, and in particular the paragraphs headed "the steps" and "the date a person first takes steps to get the premises repaired or altered". This guidance provides under "the steps":

"The steps are what a person must do to get the premises repaired or altered and can include:

- (1) getting a grant or loan to pay for them;
- (2) employing an architect;
- (3) getting planning permission;
- (4) finding someone to do the work."

28 Under the section headed "the date a person first takes steps to get the premises repaired or altered" there is this guidance:

"The date a person first takes steps to get the premises repaired or altered is the first date the person does something to get the work done and can include the date a person first:

- (1) asks about a grant, a loan or planning permission; and
- (2) contacts an architect or someone to do the work."

29 In my judgment, this guide is a legitimate aid to the interpretation of [paragraph 27 of Schedule 5](#) : see Bennion, 3rd edition, page 232.

30 In my judgment, the interpretation advanced by Mr Stagg — and I accept that there is considerable force in his arguments — does not give an open-ended opportunity for the capital in a claimant's house to be disregarded. It has to be noted that the basic period of disregard is 26 weeks and then there follows "or such longer period as may be determined by the authority".

31 The local authority will form a view whether realistically the repairs are going to be carried out and the case is in truth as advanced by the claimant in the particular case.

32 In my judgment — and here I accept the argument of the respondent as advanced by Mr Rutledge:

"Any local authority faced with a paragraph 27 issue is going to have to resolve as a matter of fact the date, if there be one, on which the claimant first took steps to effect the essential

repairs or alterations.”

33 I emphasise this is a question of fact; and provided the local authority approaches the question properly its decision cannot, in my judgment, be assailed if the factual conclusion is one that could reasonably have been reached on the facts before it.

34 The difficulty in the present case is that the Board appeared to have concluded that the disregard in [paragraph 27](#) could only bite from the moment the claimant was in a position actually to effect the repairs, ie that the money was there. Indeed, the penultimate paragraph at page 71 of the bundle in the decision letter suggests that it is the period during which the repairs are carried out which falls to be disregarded and not any earlier period. That, in my judgment, is not what [paragraph 27](#) says. The Board, in my judgment, misdirected itself and approached the matter under consideration on the wrong basis.

35 It is to be noted that the guidance to which I have referred at bundle A, page 9, says that the date on which a person first takes steps to get the premises repaired could include — and I emphasise the word could — the date he first asks for a loan. This emphasises that each case must be considered on its own facts.

36 If in the present case the Board had had in mind that the attempts to raise finance could have fallen within the time span of [paragraph 27](#), they might nevertheless have come to the conclusion that on the particular facts before them in this case they did not, but unfortunately they did not approach the problem in that way.

37 Obviously, first taking steps to effect repairs is something that must be looked at and construed on the facts of each case sensibly and realistically. If a person puts aside a little money each year with the intention years hence in doing the repairs, it is difficult to see how the condition in the paragraph could be satisfied. On the other hand, taking preliminary steps to put oneself in a position to carry out work that one intends to do right away does seem to me to fall foursquare within it.

38 Accordingly, notwithstanding the argument of Mr Rutledge, who is seeking to persuade me that the matter was properly considered by the Board on the facts of this case and that therefore the decision should be upheld, I have come to the conclusion that there is force in Mr Stagg's arguments about the true construction of [paragraph 27](#) and that the Board did misdirect itself in the circumstances of this case.

39 The second point that is taken relates to [regulation 83\(4\)](#) of the 1987 Regulations. That section is headed “Decisions on further review” and (4) reads:

“The Chairman of the Review Board shall—

(a) record in writing all its decisions; and

(b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.”

40 What he contends in this case is that there was evidence before the Board that the applicant had notified it that he had started DIY works, namely rewiring, in April 1999. He contends that the Board

made no finding whether they accepted that evidence or not and whether, if they did accept it, that might be regarded as a triggering factor for effecting the repairs under [paragraph 27](#) .

41 Mr Rutledge answers that point in this way:

“The function of the Review Board was to decide to confirm or revise the relevant determination. The relevant determination in this case was that of the Benefits Section made on or around 30th July 1998, namely that the applicant should repay the benefits he had wrongly received between 4th November 1996 and 25th January 1998. Accordingly, for the purposes of [Schedule 5, paragraph 27](#) , any period of disregard would have arisen between those dates or at the least at the latest up until July 1998 when the applicant's Income Support was discontinued.”

42 In my judgment there is force in that point. Anything that was being done in April 1999 was nothing to the point with regard to the decision that the Review Board had to review.

43 I come therefore to the question of discretion. Mr Rutledge argues that, notwithstanding any finding that his clients have acted unlawfully, I should exercise my discretion and not remit the case for further consideration because the applicant, on any fresh hearing, is bound to fail.

44 I do not accept that he is bound to fail. The fact that the applicant has another property that he owns is not necessarily fatal to this claim. There is nothing to stop him selling the other property, and, if he does so, he would lose any discount or part of any discount that he obtained in purchasing the property. The Review Board, in my judgment, misdirected itself and should consider the situation afresh. It may be that this is one of those cases where the whole situation is ripe for compromise rather than a fresh hearing. It is difficult to see how in any circumstances the applicant can avoid having to make some repayment to the local authority, because, as it seems to me, the period in respect of which the local authority is seeking recovery of benefits is significantly longer than any period that might be caught within the ambit of [paragraph 27 of Schedule 5](#) .

45 MR STAGG: My Lord, I am grateful for your Lordship's judgment. In terms of the relief I seek, it is at page 2 of the bundle.

46 MR JUSTICE SCOTT BAKER: Yes.

47 MR STAGG: I am seeking certiorari to quash the court's decision.

48 MR JUSTICE SCOTT BAKER: Yes.

49 MR STAGG: And an order of mandamus. I will not press the application for mandamus, but what I would say is that it would be appropriate in the circumstances of this case that the Board be constituted with different counsel as to that which sat the first time so that they could approach it with fresh minds, as it were.

50 MR JUSTICE SCOTT BAKER: Yes.

51 MR STAGG: But, subject to that, if my learned friend is able to say that that will take place, I do not press my application for mandamus.

52 MR JUSTICE SCOTT BAKER: Yes.

53 MR ROUTLEDGE: Sorry, I was taking instructions.

54 MR JUSTICE SCOTT BAKER: Yes.

55 MR ROUTLEDGE: In my submission, certiorari is the appropriate remedy — simply to quash the decision, which means that there is an extant request for review so that the local authority would have to convene a new Review Board.

56 MR JUSTICE SCOTT BAKER: Yes.

57 MR ROUTLEDGE: There will be no difficulty about having a fresh Board. But bearing in mind my Lord's comments towards the end of his judgment about the possibility of the parties achieving some compromise, I would invite the court not to grant mandamus, but to leave the local authority to deal with the matter according to the Regulations.

58 MR JUSTICE SCOTT BAKER: I think that may be right, is it not, Mr Stagg?

59 MR STAGG: As I say, I shall not press it. The other orders I would seek are an order that the respondent pay the costs of this application and I would ask for an order for legal aid taxation of my costs.

60 MR JUSTICE SCOTT BAKER: Yes. Is there any objection?

61 MR ROUTLEDGE: No.

62 MR JUSTICE SCOTT BAKER: You can certainly have that. I do emphasise that, although you won the battle on the construction point, I am far from convinced that you are going to win the war.

63 MR STAGG: I hear your Lordship's comments.

64 MR JUSTICE SCOTT BAKER: So that is why it seems to me that, looking at the whole position in the round, there ought to be some measure of compromise on this.

65 MR ROUTLEDGE: My Lord, I hesitate to rise, special permission to appeal — I think these days we are obliged to raise it.

66 MR JUSTICE SCOTT BAKER: Yes, you are.

67 MR ROUTLEDGE: Obviously the point of general importance is the true meaning and the effect of [paragraph 27](#) . My Lord has found helpfully said, if I may say so with respect, that that it is largely a question of fact for the authority.

68 MR JUSTICE SCOTT BAKER: Yes.

69 MR ROUTLEDGE: But in so far that it is plainly a difficult area, there is no decided case on it—

70 MR JUSTICE SCOTT BAKER: Yes.

71 MR ROUTLEDGE: — it may be that it raises matters of general importance, and if the local authority, on reflection, feel they ought to take it further it is appropriate for me to make my applications now.

72 MR JUSTICE SCOTT BAKER: Yes. What do you say about that, Mr Stagg?

73 MR STAGG: It is a matter for your Lordship. I have no point to make.

74 MR JUSTICE SCOTT BAKER: This is largely a question of construction, is it not? I am going to give you leave. Whether you feel you are better off as you are on the question of fact remains to be seen.

75 MR ROUTLEDGE: I am grateful.

76 MR JUSTICE SCOTT BAKER: Yes. Does that cover everything?

77 MR STAGG: That covers everything now, thank you.

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