

A IN THE HIGH COURT OF JUSTICE

CO/1402/91

QUEEN'S BENCH DIVISION

Royal Courts of Justice,

Monday, 13th April, 1992.

B Before:

MR. JUSTICE SCHIEMANN

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C Crown Office List

THE QUEEN

-v-

D THE LONDON BOROUGH OF HARINGEY

Ex parte AZAD AYUB

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E (Computer-aided Transcript of the Stenograph Notes of Marten Walsh
Cherer Ltd., Midway House, 27-29 Cursitor Street, London,
EC4A 1LT. Telephone No: 071-405 5010. Shorthand Writers to
the Court.)

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F MR. RUDOLF RUSSELL (instructed by Messrs Kofteros & Co, London, N4)
appeared on behalf of the Applicant.

MR. MARTYN BARKLEM (instructed by Ms. Julia C. Lomas, The Borough
Solicitor, London Borough of Haringey) appeared on behalf of
the Respondent.

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G J U D G M E N T
(As approved by Judge.)

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A MR. JUSTICE SCHIEMANN: The Social Security Act 1986 makes
provision for the payment of various income related benefits,
one of which is known as housing benefit. A person is
entitled to housing benefit if he is liable to make payments
B in respect of a dwelling which he occupies as his home and he
has an income of less than a prescribed amount. Where he is
occupying privately rented accommodation the housing benefit
takes the form of a rent allowance funded and administered by
C the appropriate local authority. The respondent is the
appropriate local authority who administers the rent allowance
system in its area. I shall refer to it as "the Council".
Regulations, which I will need to look at in detail later in
D this judgment, prescribe to whom the payment of the rent
allowance is to be made and what is to be done in the event of
an overpayment.

E The applicant for judicial review, Mr. Ayub, is one of
the largest private landlords in Haringey supplying
accommodation to some 1000 persons at any one time. I shall
refer to him as "the landlord". As such he is, either
F directly or indirectly, the recipient of very substantial sums
paid out as rent allowance by the Council. His complaints in
the present proceedings relate to the way the Council carries
out its functions in administering the rent allowance system.
G At the time that proceedings were commenced he was, according
to him, owed a very substantial amount of money by way of rent
allowance for tenants whom he had housed but from whom he had

A received no rent. Since then much has been paid to him but I
have not been taken by the parties through the detail since
they are primarily concerned to obtain from the court various
B rulings as to the proper construction of the Housing Benefit
(General) Regulations 1987 as amended.

The landlord's complaints are as follows:

1. The Council has not been dealing with claims for
housing benefit fast enough and this has adversely affected
C his cash flow. He claims it is in breach of its duty to
determine claims within the timescale set by Regulation 76(3).

2. He claims that, having determined claims, the
Council is in breach of its duty to make payment of rent
D allowance within the timescale set by Regulation 88.

3. He claims that, where it is impracticable for the
Council to determine a claim for rent allowance, it is under a
duty, by virtue of Regulation 91, to make payments on account
E of rent allowance but has failed to do so.

4. He claims that, in breach of its duty in certain
circumstances to make payments to the landlord, the Council
has often made them to tenants, some of whom then decamp
F before passing the money on to him. This claim involves
Regulations 92, 93 and 94.

5. He claims that the Council has misconstrued the
G nature of its discretionary power under Regulation 94 to make
payments to the landlord.

6. The Council, relying on overpayments made to him in

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respect of claims by some tenants, has made deductions from rent allowance which should have been paid to him in respect of other tenants. He claims that it is not entitled so to do. The court's ruling on this question will involve looking at Part XIII of the Regulations.

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The Council does not accept that any of these claims are well founded and further seeks to argue that, in relation to some of them, the relevant duty is owed to the tenant rather than the landlord and the latter does not have sufficient standing to make those particular complaints.

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Before ruling on the submissions made to me as to the nature of an authority's rights and duties I shall set out the relevant provision of the Regulations under various heads so as to indicate in outline their layout.

D

The scheme under the Regulations

Claims

E

In principle the person entitled to housing benefit is the tenant not the landlord -- see section 20(7) of the Social Security Act 1986. Thus the claimant for housing allowance is the person liable to pay rent rather than his landlord -- see Regulation 71.

F

The making and lodging of the claim is dealt with by Regulations 72 and 73. The claim is to be made on an approved form accompanied by evidence showing the claimant's entitlement to housing benefit. If it is not so made it is defective. Those regulations also contain provisions for

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A dealing with defective claims and for dealing with claims
which do not in the authority's opinion contain enough
material to enable the authority with confidence to decide
whether or not the claimant is entitled to housing benefit.
B Where a claimant for housing benefit is also claiming income
support, he may send his claim to the Department of Health and
Social Security; otherwise he must in general send it to the
C authority. Where the claim is sent to the DHSS, the DHSS must
forward the claim for housing benefit to the authority "within
two working days of either the date of determination of the
claim for income support or the receipt of the claim at the
appropriate DHSS office, whichever is the later, or as soon as
D reasonably practicable thereafter".

The determination of questions

E The determination of questions in relation to housing
benefit is dealt with in Part XI of the Regulations. They
address the following matters -- who is to make the
F determinations and the possibilities for review and appeal,
the time span within which the determinations are to be made
and the manner in which they are to be notified. The position
is as follows:

There is no obligation to determine any application

a. if the claim has not been properly made on the
G appropriate forms at the appropriate time prescribed by or
under Regulation 72; or

b. if a claimant has failed to satisfy the provisions

A of Regulation 73. These concern the furnishing of such information and evidence as may reasonably be required by the authority in order to determine the claimant's entitlement to housing benefit.

B Subject to two other matters not presently relevant,
"Every claim shall be determined by the appropriate authority within 14 days of the provisions of Regulations 72 and 73 being satisfied or as soon as reasonably practicable thereafter." -- see Regulation 76(3).

C Regulation 77 provides:

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

D (a) in the case of a determination on a claim, forthwith or as soon as reasonably practicable thereafter;

(b) in any other case, within 14 days of that determination or as soon as practicable thereafter,

E and every notification shall include a statement as to the matters set out in Schedule 6."

Regulation 80 provides:

F "(1) A person to whom an authority sends a notification of determination may request in writing the authority to provide a written statement setting out the reasons as to its determination of any matter set out in the notice.

(2) The [notice given under] paragraph (1) shall be sent to the person requesting it within 14 days or as soon as is reasonably practicable thereafter.

G Reviews and further reviews of determinations

Under Regulation 79(2):

"..... if a person makes written representations to

A an authority concerning a determination which it makes in relation to him within 6 weeks of the date of notification to him of the determination, the authority shall review the determination in the light of those representations."

Regulation 81 provides:

B (1) A person who has made representations under Regulation 79(2) may give to the appropriate authority written notice requesting a further review of the determination within 4 weeks of the date on which the determination on those representations was sent to him.

C (2) The notice given under paragraph (1) shall set out the grounds on which a further review is requested.

(3) The further review shall be conducted by a Review Board appointed by the appropriate authority".

D The procedure on further review by the Review Board is set out in Regulation 82. It is provided by Regulation 83 that upon further review the Review Board shall decide whether to confirm or revise the determination of the appropriate authority. Regulation 84 provides that where a Review Board decides that a determination should be revised the authority is to alter its determination in accordance with that decision with effect from the date of the original determination.

E Regulation 79 provides for a review by the authority of the determination and decisions of the Review Board in rather limited circumstances. At first blush it is surprising that the claimant can find himself going from the authority to the Review Board and then back again to the authority. However an examination of the limited circumstances in which this can be done shows the good sense of that provision.

A Payments: the normal regime

B The making of payments is dealt with in Part XII of the Regulations. The regime is complicated in that it makes provisions for circumstances in which there can be payments on account (Regulation 91), circumstances in which payments can be made to persons other than the claimant which circumstances include payments to the landlord, and circumstances in which the authority is entitled to withhold payment of benefit. The normal regime is as follows:

C Subject to the cases where payment is to be made to the landlord or payment is withheld, payment of any rent allowance to which a person is entitled shall be made to that person -- Regulation 92.

D "Subject to Regulations 91 to 96 (payment on account of rent allowance, payment provisions) every authority shall make the first payment of any housing benefit awarded by it within E 14 days of the receipt by it of the claim or, if that is not reasonably practicable, as soon as possible thereafter." Regulation 88(3).

F Payments on account: Regulation 91

G "(1) Where it is impracticable for the appropriate authority to determine a claim for rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information [etc.] as the authority reasonably requires and has requested, the authority shall make a payment on account of any entitlement to a rent allowance

H (2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain

A a notice to the effect that if on subsequent determination of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.

B (3) Where on subsequent determination the amount of rent allowance payment differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.

C Payments to landlords: Regulations 93 - 95

D These regulations set out circumstances in which payment to the landlord is obligatory, circumstances in which payment to the landlord is optional, and circumstances in which the authority is entitled temporarily to withhold payment of benefit. Regulation 93 provides, so far as presently relevant.

"A payment of rent allowance shall be made to a landlord

E (b) where the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent".

Regulation 94 reads:

F "Where Regulation 93 does not apply, a payment of a rent allowance may nevertheless be made to a person's landlord where --

(a) the person has requested or consented to such payment;

(b) payment to the landlord is in the interest of the claimant and his family;

G (c) the person has ceased to reside in the dwelling in respect of which the allowance was payable and there are outstanding payments of rent

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Regulation 95(2) provides:

"..... an authority may withhold payment of a rent allowance where it is satisfied that the person entitled to that allowance is not paying regularly the rent to which that allowance relates.

B

(3) A payment withheld under paragraph (2) shall be retained by the authority until such time as it is satisfied that --

(a) the claimant has discharged his liability to his landlord; or

(b) the claimant will discharge his liability to his landlord if payment is made to him; or

C

(4) Where it appears to an authority that a question has arisen in relation to a person's entitlement to housing benefit or to payment of that benefit, it may withhold payment of that benefit in whole or in part pending the determination of that question on review under regulation 79.

D

(5) Where it appears to an authority that a question has arisen whether any amount paid to a person by way of, or in connection with a claim for housing benefit, is recoverable under section 29 of the Act or Part XIII of these Regulations, it may withhold any payment of arrears of benefit to that person, in whole or in part, pending the determination of that question."

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Overpayments: Section 29 of the Act and Part XIII of the Regulations

Section 29(4) provides:

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"Except where regulations otherwise provide, any amount of housing benefit paid in excess of entitlement may be recovered in such manner as may be prescribed

G

(6) An amount recoverable under this section is in all cases recoverable from the person to whom it is paid; but, in such circumstances as may be prescribed, it may also be recovered from such other person as may be prescribed.

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(7) Any amount recoverable under this section may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits."

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Regulation 98 provides:

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"In this Part 'overpayment' means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations and includes any amount paid on account under Regulation 91 which is in excess of the entitlement to housing benefit as subsequently determined.

Regulation 99 provides:

"Any overpayment, except one to which paragraph (2) applies, shall be recoverable."

C

[(2) deals with overpayments resulting from official errors. I can ignore them for present purposes.]

Regulation 101(1) provides:

"Subject to paragraph (2) a recoverable overpayment shall be recoverable from either --

D

(b) in any case, the claimant or the person to whom the overpayment was made."

Regulation 102 provides:

E

"Without prejudice to any other method of recovery, an authority may recover any recoverable overpayment from any person referred to in regulation 101 by deduction from any housing benefit to which that person is entitled"

F

Those are the most relevant statutory and regulatory provisions. Having set them out at some length I now turn to rule on the submissions made to me as to the nature of an authority's rights and duties under the regulations.

Duty to make payments on account

A. to tenants

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The scheme of the regulations is that, leaving aside cases where there are arrears of rent to landlords, a claimant who has done all that he should is to be paid something within

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A 14 days of a claim for housing allowance being made. If the
position is clear, then he should be paid housing allowance --
see Regulation 76(3) and 88(3). If the position is not clear
and the lack of determination of his claim does not arise out
B of his failure to do that which he ought to have done then the
authority must make a payment on account. The Regulations
envisage that he should not be kept out of pocket for more
than 14 days while a claim is being determined if the lack of
C determination is not his fault. A claim for rent allowance is
in substance a claim for the payment of such an allowance
within 14 days or in the alternative a payment on account. I
reject the submission made on behalf of the Council that if a
D claimant wishes to receive a payment on account of rent
allowance then he must first expressly apply for such a
payment on account.

B. to landlords

E The duty under Regulation 93 to make payment of rent
allowance to a landlord is limited to rent allowance and does
not extend to payments on account of rent allowance.

F Under Regulation 91 however there may be a duty to "make
a payment on account of any entitlement to a rent allowance".

It is clear that a landlord is never entitled to a rent
allowance.

G However, in my judgment a payment can be made to a
landlord on account of a tenant's entitlement to rent
allowance. The authority can be under a duty to pay to a

A landlord rent allowance (to which, in principle, the tenant, not the landlord, is entitled). It can also be under a duty to make to the landlord a payment on account of the tenant's entitlement to a rent allowance. I note in this context that Regulation 91(2) provides for the recovery of overpayments on account, not from the person entitled but from "the person to whom the payment on account was made". This shows that the framer of the Regulations envisaged that payment on account might be made to someone other than the person entitled. I reject the submission on behalf of the Council that in no circumstances can a landlord be entitled to a payment on account of rent allowance.

D The duty to make a payment on account to the landlord only arises where both (a) the tenant is eight weeks in arrears and (b) the conditions in Regulations 91 are fulfilled.

E I reject the submission made on behalf of the landlord that, absent a request from the landlord, the authority can be under a duty to determine whether the circumstances are such as to place them under a duty to make payments on account to the landlord.

F Where there is a dispute as to whether the tenant is eight weeks in arrears then the landlord can ask the authority to determine that dispute under Regulation 76 and ask it to review it under Regulation 79(2) and ask for a further review under Regulation 81. Until such time as that dispute is

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determined I do not think that the authority is under any duty to make a payment to a landlord.

Duty to pay rent allowance

A. to tenants

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There is no duty to pay a rent allowance until the claim has been determined. I have in mind the provisions of regulation 88(3) and consider that the opening words of that sub-paragraph are in accord with the scheme of the regulations, namely that, pending a determination of the claim, payments on account are to be made.

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B. to landlords

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No duty to pay a rent allowance to a landlord can arise until the authority has determined a claim for rent allowance. Prior to that time, at best there is a duty to make a payment on account.

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It is clear that a duty to make to a landlord a payment of rent allowance can rise under Regulation 93 once a tenant is eight weeks in arrears with his rent.

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Whether or no this is in fact the case cannot be known to the authority unless it be furnished with the appropriate material by someone. I reject the submission made on behalf of the landlord that, absent a request by the landlord, the authority is under a duty to consider whether or no the circumstances be such as to oblige the authority to make payment of rent allowance to the landlord.

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Where the landlord asserts this to be the case and the

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A tenant accepts that he is in arrears there is no problem.
Payment must be made to the landlord until the authority is
notified that the tenant is no longer eight weeks in arrears.

B Where there is uncertainty as to whether or no the
tenant is eight weeks in arrears the authority may withhold
payment of rent allowance under 95(4) pending the
determination of that question. In my judgment, a landlord
C who asserts that he is entitled to payment of the rent
allowance under Regulation 93 is entitled to ask the authority
to determine this question under Regulation 76, to be notified
under Regulation 77 of that determination and is entitled to
seek a review of that determination under Regulation 79 and a
D further review under Regulations 81 - 83.

Discretionary Payments to Landlords: Regulation 94

E At first there appeared to be a dispute between the
parties as to the nature of the Council's duties in
circumstances where Regulation 93 does not apply but where the
tenant has requested or consented to the payment of rent
allowance to the landlord. This arose because of some
unfortunate wording in the Council's instructions to those who
F administer the payment of rent allowances. As the hearing
progressed it became clear that there was not a dispute
between the parties in relation to the legal position. Both
G agree that that the Council has a discretion rather than a
duty to pay rent allowance to a landlord where the tenant so
requests. No further ruling can usefully be given by me.

A Deduction of overpayments

On 17th April 1991 an officer of the Council wrote to
Mr. Ayub:

B "Our Finance Department has advised me that as a
result of a number of overpaid housing benefit direct
payments you owe Haringey Council £64,193.58 as at
21.2.91. The overpayment is a result of you not telling
us that your tenants had left or had a change in their
circumstances.

C We have notified you in the past of this overpaid
housing benefit by sending you a bill for each
individual housing benefit direct overpayment.

C As the debt has not been paid, or any arrangements
(or previous arrangements kept) to clear the debt. (sic)
I must inform you that this amount will be deducted from
your next and subsequent (if necessary) payments due to
you, until the debt is recovered."

D I have not been taken through the reasons in the various
cases for the making of these alleged overpayments. There is
no allegation that the applicant has been fraudulent. In
general, the applicant accepts that he was often overpaid by
the Council. At times this may have been the fault of the
E claimant, at times the applicant's fault and at times the
fault of the Council. He does not assert that he has sought a
review of any determination that he has been overpaid. Before
F me his counsel has proceeded on the basis that there may have
been overpayments as alleged by the Council. However, he
denies that the Council is entitled to make the deductions in
the summary manner which it has adopted.

G A typical situation in which this has arisen is where
the payment of a rent allowance to which the Council thought
tenant A was entitled has, pursuant to Regulation 93 or

A Regulation 94, been made to tenant A's landlord. It then
turns out that tenant A was not entitled to that rent
allowance and that in consequence there has been a recoverable
overpayment. In principle that recoverable overpayment is,
B pursuant to regulation 101(1)(b), recoverable from the
landlord. This much is common ground.

The dispute centres on the method of recovery which has
been adopted by the Council. Had the Council chosen to sue
C there would have been no argument in principle. But what the
Council has done is:

1. to total the amounts of rent allowance to which
tenants B - Z are entitled but which the Council is obliged by
D virtue of Regulation 93 to make to the landlord and

2. to subtract from that total the amount of
overpayments which have been made to the landlord in respect
of rent allowance to which tenant A claimed wrongly to have
E been entitled.

This, as Mr. Barklem (who appeared for the respondents)
accepts, is not sanctioned by Regulation 102. However, he
submits that the Council are entitled to do this as a matter
F of general law. In support of this proposition he only made
two points:

1. He tells me that many authorities do this and that
G it is very convenient for those authorities to proceed in this
manner. I have no reason to disagree with him but that does
not amount to any justification in law or equity.

A 2. He submits that in this type of situation tenants B
- Z are debtors of the landlord and the authority would be
entitled to garnish their debt. I rather doubt whether one
B can ever talk of an entitlement to garnish a debt prior to a
court order, but one thing is clear, namely that there can be
no question of garnisheeing any debt until the Council has
obtained judgment against the landlord and the debtor whose
C debt it is sought to garnishee has been given an opportunity
to address the court. None of that has happened in the
instant case.

 It seems to be implicit in Mr. Barklem's submission that
the authority can set off against anything which it is obliged
D to pay to the landlord by virtue of Regulation 93 anything
which the landlord is obliged to pay to the authority --
whether it be in arrears of rates, damages for a broken
window, or overpayments of housing allowances. In my judgment
E the principles of set off are not wide enough to embrace any
of these situations. When a Council is making a payment to a
landlord under Regulation 93 or 94 of rent allowances to which
tenants B - Z are entitled it is in effect acting as the agent
F of those tenants and paying their rent for them. Upon such a
payment being made the tenant's liability to the landlord is
pro tanto extinguished and the latter cannot thereafter sue
the former for more payment of that rent or repossess the
G property on the basis of non-payment of that rent. The
authority is not allowed to use a tenant's rent allowance in
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A order to extinguish any liability of the landlord to the
authority. That is not a purpose for which Parliament has
authorised the payment of rent allowance. The general right
of set off for which the authority contend would leave it
B totally unclear as to which unfortunate tenant's rent
allowance is to be used for this purpose and indeed whether
the choice of the unlucky tenant is to be in the hands of the
landlord or in those of the authority. No such general right
C of set off exists and in my judgment the manner in which the
Council has proceeded is unlawful.

Standing

D As appears from what I have already said, in my judgment
the Council has misconstrued the statutory scheme in several
respects. I consider that the landlord has sufficient
interest to obtain declarations to that effect.

Relief Sought

E At the hearing Mr. Russell sought leave to amend his
notice of motion in relation to the relief sought. It was
agreed that some of the relief sought was now no longer
needed, that some other relief might be needed, and that it
F would be wrong for me to embark on any consideration of the
damages issue until I had ruled on the other issues. In
general all disputes of detail between the Council and the
G landlord ought to be resolved in the course of the lengthy
review process to which reference has been made earlier in
this judgment. Judicial review is not appropriate for that as

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opposed to making declarations as to the proper construction of the regulations and powers of the parties. The parties agreed that it would be convenient if I gave some rulings in principle and I have done so.

B

Gentlemen, I am prepared to hear argument as to the nature of the relief which I should grant in the light of the foregoing judgment, but what I would suggest is that you take away with you a copy of the judgment that I have just read, peruse it in the course of the next hour or two and come back at 2 o'clock and see what you make of that. Does that seem a sensible course?

C

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MR. RUSSELL: My Lord, I am in some personal difficulty in the matter. I was doing public duty at Wood Green last week and I said I would be back at 2 o'clock.

MR. JUSTICE SCHIEMANN: I follow.

MR. RUSSELL: My Lord, I can always make known to those who deal with these matters that I shall not be available.

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MR. JUSTICE SCHIEMANN: I have the morning free. You can address me now, but I do not think it will be sensible or fair on either of you. My general feeling is that the matters of detail, which quite frankly I have not mastered because you did not expose them to me, are not ones suitable for this court anyhow. I suspect what you want at the end of the day, and what will suffice either party for the purposes of an appeal, is appropriate declarations. It may be that the best course is for the two of you to get together and draw up a draft order in the light of my judgment. If that is acceptable to you, I will no doubt be perfectly content to initial it in due course.

F

G

MR. RUSSELL: My Lord, I would respectfully submit that appropriate declarations coupled with a liberty to apply, if need be, and a suitable order for costs, whatever is right, at this stage would be all that I would wish to ask your Lordship for.

MR. JUSTICE SCHIEMANN: If that is suitable for you, I am sure it will be suitable for the authority.

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A MR. BARKLEM: My Lord, yes, save as to the question of costs.

MR. JUSTICE SCHIEMANN: The question of costs you can probably argue now.

B MR. RUSSELL: May I also say this with regard to the relief. I think it is the present one, the order of certiorari. That relates to the decision to make the deductions, but I might wish to submit that the applicant is entitled to that ----

MR. JUSTICE SCHIEMANN: Yes. I cannot at the moment see any answer to that in the light of my judgment.

MR. RUSSELL: -- and to some declaration in relation to (4).

C MR. JUSTICE SCHIEMANN: I do not think I would be making a declaration talking about irrationality or unfairness. I simply say they are not entitled to do it.

MR. RUSSELL: That is all I ask. The other words are put there in case the legal position does not get me home.

D MR. JUSTICE SCHIEMANN: You do not need to do that.

MR. RUSSELL: I would not, as I indicated on the last occasion, seek at this stage any order for mandamus, having regard to happenings in the meantime. My Lord, in relation to (5), I do not know whether your Lordship on the facts is able to find whether the Council has made determinations within the Regulations.

E MR. JUSTICE SCHIEMANN: I am disinclined to do that because you have not started, if I remember the facts correctly, the review process. The Regulations lay down a procedure for the landlord to ask for reviews if the wrong decisions are made. You are saying here that no decisions were made. That is the problem.

F MR. RUSSELL: The question is whether a review process is available when the Council has done nothing at all. My Lord, there are circumstances of course which justify the Council in doing nothing.

MR. JUSTICE SCHIEMANN: That is the difficulty. I am not clear. The reason the Council has done nothing, if I can put it that way, I suspect is that it adopted the set off process.

G MR. RUSSELL: My Lord, no.

MR. JUSTICE SCHIEMANN: Is that not right?

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A MR. RUSSELL: The reason the Council, in my respectful submission,
has done nothing is because it was overworked and
understaffed, and there may be different explanations for
different cases of course. My Lord, what I was ultimately
submitting to your Lordship on the last occasion was in
relation to the cases which have been outstanding for a year
where payment, the Council says, has now been made and where
no explanation as to delay was given. I was going to submit
B that in relation to those cases I had made out a prima facie
case that the Council had not put forward any explanation why
it took a year.

MR. JUSTICE SCHIEMANN: I think this ought to be dealt with under
liberty to apply, if at all.

C MR. RUSSELL: Yes, if your Lordship takes that view. My Lord, I
think the same might apply to (6), not in relation to payments
but in relation to payments on account. On your Lordship's
ruling I am not entitled to any declaration in relation to
payments, because the landlord is not entitled to have any
payments until there is a determination. There is no
explanation why no payments of account -----

D MR. JUSTICE SCHIEMANN: Again one is there descending to the arena
of detail. I would prefer to leave that with the liberty to
apply because it seems to me, given my judgment, subject to
any appeal of course, that the Council has guidelines, as it
were, in how to deal with it.

MR. RUSSELL: My Lord, yes.

E MR. JUSTICE SCHIEMANN: I suspect that you will be able to sort it
out.

MR. RUSSELL: My Lord, (7) is the question of damages, which your
Lordship has said your Lordship does not at this stage wish to
deal with. The matters which I have already told your
Lordship are no longer live are 8, 9 and 10. They were the
matter in relation to which the interim proceedings were
F taken. My Lord, (11) is the matter -----

MR. JUSTICE SCHIEMANN: I think the dispute went away at the end
of the day -----

G MR. RUSSELL: As to the wording of the new guideline given to
officers. That deals with all the relief that is sought here.
My Lord, that, I think, is all I would wish to say at this
stage.

MR. JUSTICE SCHIEMANN: On the face of it I would be minded to
give an order for certiorari as asked for in (1) -- a
declaration in rather different terms is asked for under (4)

A -- and to reserve liberty to apply in relation to paragraphs (5) and (6).

MR. RUSSELL: My Lord, what about (7)?

B MR. JUSTICE SCHIEMANN: Paragraph (7) is a problem in this sense, in that it raises substantial questions of law in itself which are not suitable to be dealt with in a detailed liberty to apply.

MR. RUSSELL: Your Lordship could adjourn the question of (7) for the parties to have leave to restore it if they wish to.

MR. JUSTICE SCHIEMANN: I think that may be more convenient. What do you say, Mr. Barklem? I have not called on you much.

C MR. BARKLEM: My Lord, so far as certiorari is concerned that follows your Lordship's clear judgment. The balance of the relief sought was in respect of determinations and the Council's alleged supposed duty to determine 107 cases. That has been the bulk certainly of the material of the evidence. The question of the £64,000 was always clear-cut and very brief. Your Lordship has found as your Lordship has, and clearly the relief follows from that. The remainder of the case deals with individual cases. Your Lordship's judgment does not go anything so far as to say that the Council has a duty to positively determine in Mr. Ayub's favour the outstanding cases, because it has no material before it on which it can make those determinations.

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E My Lord, so far as (7) is concerned, in so far as (7) relates to the loss of interest on the £64,000, clearly the Council will say that if that is to be turned in to some form of conventional Queen's Bench action it would seek to counterclaim the totality of the monies (the overpayments) owed to it by Mr. Ayub, which includes this self-same £64,000, and argue that he has had no loss anyway because we would be counterclaiming the same interest.

F MR. JUSTICE SCHIEMANN: Yes, I follow that.

G MR. BARKLEM: So far as that is concerned, and given what your Lordship said to Mr. Russell, I apprehend that we will have no trouble in formulating an order. The only question is as to costs. I would say that in fact the applicant has succeeded only in respect of one aspect. The remainder of the case has resulted in some extremely useful guidelines being given on the construction of the Regulations. That came out, as it were, in the round and did not necessarily follow the individual cases which the voluminous evidence in this case canvassed.

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My Lord, I would submit that clearly in respect of the £64,000, or the overpayments question, I have not succeeded, but so far as the remainder of the case is concerned neither has the applicant. I would submit that perhaps no order as to costs, or some other order that reflects the totality of the situation, ought to be made, because clearly if your Lordship had dealt solely with the question of the overpayment the matter would have been over in the morning perhaps.

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MR. JUSTICE SCHIEMANN: I follow the point you are making, Mr. Barklem, but I think, in substance, here the whole proceedings were effectively stimulated in the first place by this withholding of £64,000 and that it is right in these circumstances for me to grant the applicant the costs of the whole proceedings, although I appreciate that it may be that some of the points that were put in front of me cannot be resolved by me. They only came out, it seems to me, as part of that process. I think it would be right to give him the costs of the whole action.

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MR. RUSSELL: My Lord, in those circumstances would your Lordship wish to see us at 2 o'clock or would your Lordship leave it to us to submit a draft and to come back if there is any problem.

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MR. JUSTICE SCHIEMANN: I would much rather that you submitted a draft in those circumstances. I shall be sitting tomorrow and the next day, provided all that remains to be done will take less than a quarter of an hour. I do not doubt I shall be able to fit you in. If there is nothing other than my signing, there is no point in your coming at all. You may send it through the usual channels and I will initial it.

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MR. RUSSELL: My Lord, I am very grateful.

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