12 June 2019

PRESS SUMMARY

Samuels (Appellant) v Birmingham City Council (Respondent)
[2019] UKSC 28
On appeal from: [2015] ECA Civ 1051

JUSTICES: Lady Hale (President), Lord Carnwath, Lady Black, Lord Lloyd-Jones, Lord Kitchin

BACKGROUND TO THE APPEAL

The appellant, Ms Samuels, was an assured shorthold tenant of a property in West Bromwich, Birmingham, where she lived with four children. In July 2011, having fallen into rent arrears, she was given notice to leave. She later applied to the respondent council to be treated as homeless under Part VII of the Housing Act 1996 ('the 1996 Act').

A local housing authority becomes under a duty to secure accommodation to a person found homeless if certain conditions are satisfied. One condition is that they are not satisfied that the person "became homeless intentionally". That depends on whether she deliberately did or failed to do anything which caused her to leave accommodation that was available and would have been reasonable for her to continue to occupy.

Article 2 of the Homelessness (Suitability of Accommodation) Order 1996 provided that, in determining whether it would be reasonable for a person to continue to occupy accommodation, the local authority will take into account whether that accommodation is affordable. That includes consideration of the financial resources available to that person, including "social security benefits", and consideration of the person's "other reasonable living expenses".

The local authority is required to have regard to guidance given by the Secretary of State, which at the time was the Homelessness Code of Guidance for Local Authorities ('the Code') issued in 2006. Paragraph 17.40 of the Code stated:

> *In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. […]*

The council decided that Ms Samuels was intentionally homeless, on the grounds that the accommodation in West Bromwich was affordable and reasonable for her to continue to occupy, and that its loss was the result of her deliberate act in failing to pay the rent. In concluding that the accommodation was affordable, the council found that the shortfall in rent could have been met by greater flexibility in the household budgeting.

Ms Samuels's appeal to the County Court against the council's decision was dismissed and her further appeal was dismissed by the Court of Appeal. The central issue in her appeal to the Supreme Court is

whether the council adopted the correct approach in determining that the accommodation was "affordable" for the purposes of the 1996 Act.

JUDGMENT

The Supreme Court unanimously allows the appeal and quashes the council's decision. Lord Carnwath gives the judgment of the court.

REASONS FOR THE JUDGMENT

The 1996 Order requires the authority to take into account all sources of income, including all social security benefits. There is nothing in it to require or justify the exclusion of non-housing benefits of any kind. It also requires consideration of the applicant's "reasonable living expenses", which necessitates an objective assessment, not simply the subjective view of the case officer **[34]**.

Even if the recommendation in paragraph 17.40 of the Code in respect of income support is not interpreted as extending to benefits for children, the lack of a specific reference does not make the level of those benefits irrelevant. Benefit levels are not generally designed to provide a surplus above subsistence needs for the family. If comparison with relevant benefit levels is material to the assessment of the applicant, it should not be any less material in assessing what is reasonable by way of living expenses in relation to other members of the household. The duty to promote and safeguard the welfare of children under the Children Act 1989 is also relevant **[35]**.

As one would expect, the guidance makes clear that the amount of an applicable benefit will vary "according to the circumstances and composition of the applicant's household". It also refers to the "current tariff…in respect of such benefits" (plural), implying that the tariff may be looked at in respect of benefits other than income support, and is at least a good starting point for assessing reasonable living expenses **[35]**.

The review officer in Ms Samuel's case asked whether there was sufficient "flexibility" to enable her to cope with the shortfall between her rent and her housing benefit. But the question ought to have been what her reasonable living expenses were (other than rent), to be determined having regard to both her needs and those of the children. The total expenses shown in the schedule provided by her solicitors (£1,234.99) was well within the amount regarded as appropriate by way of welfare benefits (£1,349.33). It is difficult to see by what standard those expenses could be regarded as unreasonable **[36]**.

The appeal is therefore allowed, and the review decision quashed. In light of the information available to the Court, Lord Carnwath finds it hard to see on what basis the finding of intentional homelessness could be properly upheld. He therefore hopes that on reconsideration the council will be able to accept full responsibility under Part VII of the 1996 Act for Ms Samuels and her family **[37]**.

References in square brackets are to paragraphs in the judgment

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html