ESSENTIAL HOMELESSNESS CASE LAW

SAFER RENTING **BEN REEVE-LEWIS**

1

WHY IS IT IMPORTANT?

- It is a homelessness officer's ability to understand, utilise and research case law that allows them to make robust decisions that withstand challenge.
- The person with the best understanding usually wins the argument.

2

THE TRIGGERING OF AN APPLICATION

3

AB V LEICESTER CITY COUNCIL 2009 – *BURDEN OF PROOF ON THE AUTHORITY NOT THE APPLICANT.*

- AB made a homeless application but refused to supply any documentation to the authority, who understandably said "On your bike" but reference was made to the fact that it is up to the council to prove or disprove the case, not the applicant.
- It went to court of appeal where she offered the argument that that unless an authority could be positively satisfied that an applicant was not eligible it had to proceed on the basis that she was eligible and then provide her with assistance. The court of appeal actually adjourned her appeal to allow her to get different advice because they felt in refusing to cooperate she was harming her case. Further results in this matter seem to have dropped off the radar.

4

R(KHAZAI & OTHERS) V BIRMINGHAM CITY COUNCIL [2010] – *GATEKEEPING IN EXTREMIS*

- An email was sent to all staff by managers in the council stating "With immediate effect all single homeless who are presenting as homeless/roofless and domestic violence victims requiring refuge must be referred to the appropriate funded support service. We should not be completing a homeless application."
- Mr Khazai was one of the people affected by the email which was enough to land Birmingham CC before the High Court who were called upon to determine whether or not there was actually a case of misfeasance in public office, a very serious charge indeed.
- The council narrowly escaped, the High Court deciding that the email was more the result of poor draftsman ship although the council were found to have unlawfully failed to take a homelessness application

5

R V CHILTERN DC EX P ROBERTS 1991 – *A TRIGGER CAN COME FROM ANYWHERE, NOT JUST AN APPLICATION*

- In this case Chiltern rejected the applicant's letter from his solicitor to open a homelessness case. The courts said that authorities cannot require applications to be made in any particular form.

6

GIBBONS V BURY MBC [2010] - *APPLICATION TRIGGERED BY HOUSING WAITING LIST APPLICATION.*

- Court of Appeal decided that the council had failed to recognise that a homeless application had been made at the point of which Mr Gibbons had completed a Part VI allocations application form on the basis that he and his daughter were about to become homeless and were seeking the council's assistance. The Court of Appeal held that although it was an application through the allocation scheme and not expressed as an application under Part VII of the Housing Act 1996, it was still sufficient to trigger the duty to investigate.

7

HANTON-RHOULIA V WESTMINSTER CITY COUNCIL [2010] EWCA CIV 1334. – *DEPOSIT AND RENT IN ADVANCE TO SECURE ACCOMMODATION WAS SUFFICIENT TO CLOSE CASE.*

- Mrs Rhoulia was offered interim accommodation which she turned down as unsuitable so the council helped her secure a PRS property with deposit and rent in advance, at which point the council wrote to her saying 'Not homeless'.
- She argued that she had not been advised that her homeless application would be cancelled if she accepted the private tenancy, Council's decision upheld on review and it ended up in the court of appeal who decided that the council were entitled to conclude that in accepting the offer she was no longer homeless on the facts and as long as an applicant had been properly advised of the consequences of accepting the accommodation.

8

INVALID S21 THEREFORE NOT THREATENED HOMELESS

9

CHALMISTON PROPERTIES LTD V. BOUDIA (2015) – INVALID S21 WHERE DEPOSIT NOT CLEARED BY BANK.

- Chalmiston had protected the deposit and on the 10th February 2015 contacted the DPS and told them to return the deposit.
- They then served a s21 on the 12th February 2015 after the DPS confirmed that the money had been returned that day.
- The money didn't appear in the tenant's bank account until the 16th.
- Court decided s21 served before deposit paid back to tenant so s21 was invalid.

10

EEA NATIONALS WORKING

11

BARRY V. SOUTHWARK LB (2008) – *PREVIOUS SEASONAL WORK CAN COUNT AS EMPLOYMENT*

- Applicant was a Dutch national. Although he was unemployed and injured through an accident. Southwark deemed not eligible because his last employment was under minimum wage at Wimbledon tennis tournament for only the two weeks duration of the event, whilst also receiving job seekers allowance, which he should not have done.
- The council argued that the Immigration (EEA) Regulations 2006 SI 1003 regulation 6 (2) b (ii) sets out that a former worker is not eligible for homelessness assistance if they had a continuous period of unemployment of 6 months.

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BARRY V. SOUTHWARK LB (2008) – *PREVIOUS SEASONAL WORK CAN COUNT AS EMPLOYMENT*

The court of appeal overturned the council decision on the following basis:-

- The work had been genuine and effective, he paid PAYE on his wages.
- It was of economic value to his employer at that time.
- The work, although short in duration was not marginal or ancillary in nature.
- Even wrongful receipt of benefits did not take away the fact that Barry had been a worker.

13

JESSY SAINT PRIX V. DEPARTMENT FOR WORK AND PENSIONS (2014) – *PREGNANCY WILL NOT DISBAR FROM BEING A WORKER*

- In its judgment the ECJ found that ***a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth, retains the status of 'worker'*** **under EU law.**

14

KONODYBA V. KENSINGTON & CHELSEA RLB (2012) – FORMER WORKERS UNABLE TO WORK IN FUTURE NOT ELIGIBLE

- Ms K was a Polish national who worked variously as employed and self-employed in the UK but who at the time was temporarily unable to work because of illness.
- The council took a different view of her illness and decided that she would unlikely work again in the future and therefore did not fit any of the treaty rights criteria.
- The CA dismissed her appeal, saying the council was right to take the view that there were ***no realistic prospects of her returning to work***.

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HOMELESSNESS

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REGINA (B) V. SOUTHWARK LBC 2003 – *MADDEST DECISION IN THE WORLD*

- B was sentenced to 8 months in prison but was released early on an electronic tag. He applied as homeless. The council said that he was not homeless because he was still technically accommodated in prison.
- The court held that B was homeless as he had no right to occupy that was enforceable at law and it was not reasonable to continue to occupy a cell when eligible for early release.

17

REGINA V. LB NEWHAM EX PARTE SACUPIMA 2000. – *BEING EXPECTED TO WAIT UNTIL THE BAILIFFS WARRANT*

- Ms Sacupima, a single parent with 6 children, was to be evicted by court order from private rented accommodation, applied to the council as homeless. The council told her to wait until the day of eviction and then approach the council's offices.
- The court of appeal said that occupation ***"by virtue of an enactment or rule of law, restricting the right of another person to recover possession" includes the period between expiry of the possession order and the execution of the bailiff's warrant***. ***Therefore a person does not become homeless until the warrant has been executed by the bailiff.*** However, 28 days before the eviction date, the household would be threatened with homelessness.

18

REGINA V. NEWHAM LB EX PARTE KHAN 2000 – *COUNCIL SHOULDN'T JUST WAIT UNTIL EVICTION TAKES PLACE*

- The council advised the applicant to stay in the property until evicted. In this case it was obvious that once the landlord gained possession the applicant would be homeless
- The council were wrong to do nothing but wait until eviction took place. At the very least the council should have been in a position, if suitable accommodation came up before eviction, to offer it to the applicant.

19

REGINA V. NEWHAM LB EX PARTE UGBO 1994 – *APPLICANT FOUND IH FOR LEAVING BEFORE THE WARRANT*

- The applicant left an Assured Shorthold Tenancy after 2 months notice without waiting for the possession order. The council made an intentionality decision saying that it was reasonable for the applicant to have remained in occupation.
- The decision was quashed as the authority had not considered the legal effect of an Assured Shorthold Tenancy, insofar as once it had been brought to an end by a valid notice the tenant would have no defence to possession proceedings, nor had the council considered the general approach outlined in the code of guidance

20

REGINA V. LB CROYDON EX PARTE JARVIS 1994 – *COUNCIL CAN EXPECT TO WAIT IF THEY CONSIDER ALL ANGLES*

- Ms Jarvis received 2 month's notice to terminate her Assured Shorthold Tenancy and applied to the council as homeless. They told her to remain until the possession was granted, ignoring the fact that she had no defence and would be liable for costs.
- On judicial review it was held that it was not necessarily wrong for authorities to require an applicant to remain in possession until a court order is made but they must recognise that this goes against the code of guidance. The court acknowledged that the same decision may not be applicable if it had concerned a decision on intentionality.
- The council's decision letter showed they had regard to the tenant's position, the landlord's position ***and*** the council's position re available accommodation.

21

KHADIJA ALI V BRISTOL CC (2007) – *CIRCUMSTANCES IN DISTRICT TAKES INTO ACCOUNT NOT JUST OVERCROWDING BUT 3 BED NEED*

- The applicant was on Income Support and lived in a private rented property on an assured shorthold tenancy; she was so overcrowded that she needed 3 more bedrooms and the Council served a prohibition order on the landlord as the overcrowding created a Category 1 hazard under HHSRS
- The Council stated on review that it had taken into account housing conditions in the Borough, in particular the fact that there were 3400 overcrowded households; this was not the correct comparator – the Council should have looked at how many households were 3 bedrooms lacking;

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PRIORITY NEED

23

REGINA V. LAMBETH LBC EX PARTE VAGLIVIELLO 1990.- *NOT NECESSARY FOR A CHILD TO WHOLLY RESIDE*

- The child spent three and a half days a week with each parent with no defining court order on the matter. The father applied as homeless and was refused priority because the child was not in his full time care.
- The courts quashed Lambeth's decision, stating that they applied the wrong test on dependency. The judge said that it was ***not necessary for a child to be "Wholly dependent" or to "Wholly reside with" the parent***.

24

REGINA V. PORT TALBOT EX PARTE MCCARTHY 1990 – *WISH TO HAVE SHARED RESPONSIBILITY IS NOT THE SAME AS HAVING IT*

- The McCarthy child lived with the mother but the father visited him 3 days a week.
- The council was entitled in this case to presume that the child resided with the mother. ***A wish to have shared residence with the child is not the same as actually having it.***

25

R HOLMES-MOORHOUSE V RICHMOND UPON THAMES LBC 2009: - *FAMILY COURT ORDER NOT BINDING ON COUNCIL DECISION OVER DEPENDANTS*

- Mr Holmes-Moorhouse was ordered to leave the family home. The family court order stipulated that each parent was to have custody of the children on alternate weeks.
- Holmes-Moorhouse made a homeless application but was turned down as not being in priority need. He argued that the court order gave him joint custody and therefore he was responsible for dependant children.
- The council said only in exceptional circumstances could children be expected to reside with 2 parents.
- House of Lords who finally found in their favour. It clarified the point that ***an investigating authority is not bound by the terms of a family court order on joint residence*** and can make it's own decision independently after considering all positions

26

HOTAK V SOUTHWARK LBC : KANU V SOUTHWARK LBC : JOHNSON V SOLIHULL MBC [2015] – *VULNERABILITY PULLED APART AND PUT BACK TOGETHER AGAIN.*

- In **Hotak v. Southwark** a man with PTSD and other psychological problems was sleeping rough but his brother had a home and made sure he took his medication and let him in to have showers and a change of clothes.
- Southwark council decided he was not vulnerable because the support from his brother was sufficient enough to help him cope living on the street.

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HOTAK V SOUTHWARK LBC : KANU V SOUTHWARK LBC : JOHNSON V SOLIHULL MBC [2015] – *VULNERABILITY PULLED APART AND PUT BACK TOGETHER AGAIN.*

- **Kanu v Southwark** was a case revolving around a homelessness officer's duty to consider public sector equalities issues where a person has a recognised disability. This requirement comes courtesy of S149 Equalities Act 2010.
- Mr Kanu suffered from psychotic depression backed up by two psychiatrist's reports but as with Hotak, Southwark decided Kanu could cope when homeless with the support of his family.

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HOTAK V SOUTHWARK LBC : KANU V SOUTHWARK LBC : JOHNSON V SOLIHULL MBC [2015] – *VULNERABILITY PULLED APART AND PUT BACK TOGETHER AGAIN.*

- In **Johnson v. Solihull** the decision revolved around the interpretation of the phrase used in Pereira "Ordinary homeless person"
- Mr Johnson was a 37 year old depressed heroin addict. The council decided he wasn't vulnerable in Pereira terms because the 'Ordinary homeless person' would also likely to have drink, drug or mental health problems anyway, so he was no different or vulnerable than anyone else.
- This interpretation was upheld at Court of Appeal.

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INTENTIONAL HOMELESSNESS

30

REGINA V. WANDSWORTH LBC EX PARTE HAWTHORNE 1994. – *HUSBAND LEFT MEANT APPLICANT SHORT OF THE RENT NOT IH*

- The council decided that Ms Hawthorne was intentionally homeless after she approached them following eviction for rent arrears. She contended that after her husband had left her she was in a position where she had to choose between feeding her child and paying the rent. The council held that because she had deliberately chosen not to pay her rent, this gave rise to intentionality. The court upheld the applicant. Stating that ***the decision that there was a considered decision not to pay did not address the reasons for the decision having to be made. The true question being "What caused the decision***"?

31

DENTON V SOUTHWARK LBC [2007] – IGNORING MUM'S HOUSE RULES

- Denton was a 20 year old thrown out of the family home for persistently failing to follow his mum's house rules. Southwark deemed Denton to be IH and the court of appeal agreed.

32

REGINA V L.B. TOWER HAMLETS EX PARTE KHATUN (ASMA) 1993. – *WIFE CULPABLE IF SHE LEAVES DECISIONS UP TO HUBBY*

- Mrs Khatun and her husband lived in a single room in her husband's brother's house. Family rows resulted in Mr Khatun taking the decision to move his family out and apply for homelessness assistance. Tower Hamlets told him he was intentionally homeless so Mrs Khatun applied and received a similar decision.
- The Court of Appeal found for the council. Judge Gibson saying ""If a wife was content in a marriage to leave decisions to her husband, then she may properly be treated as having '***Joined' in the decision to move".***

33

F V. BIRMINGHAM CC 2006. – *A CASE OF SHUTTING YOUR EYES TO THE REALITY*

- F was 18 with a small baby. She moved into a council flat but after 2 months gave it up and moved into more expensive and larger private rented accommodation, which she could not afford.
- She argued that she had been told and had believed that housing benefit would cover the full rent. Birmingham made an intentionality decision and her permission to appeal was refused.
- She had been advised that it was unaffordable and had given up accommodation that was sufficient for her needs. The decision was one of ***'Wilful ignorance'*** in that she had shut her eyes to the situation and kept her fingers crossed.
- The judge held "(The applicant) thus at best ***proceeded on a wing and a prayer,*** so that s191(2) did not arise for consideration…***Wilful ignorance, or shutting one's eyes to the obvious,*** could not amount to acting in good faith…in human terms this is a profoundly sad conclusion which does not address the plight of the applicant and her children. But within the confines of the 1996 Act…I consider it to be the correct analysis."

34

R V LB HAMMERSMITH & FULHAM EX PARTE P (1989) – *BUT FOR THE APPLICANT'S CRIMINAL BEHAVIOUR IT WOULD HAVE BEEN REASONABLE TO CONTINUE TO OCCUPY*

- Three families in Northern Ireland were guilty of regular criminal and anti-social activities, including burglary, robbery, GBH and taking cars. Their neighbours sought vigilante assistance to deal with them.
- They were given 72 hours to leave or they would be killed. As a result of the threat, they left without seeking any assistance from either police or housing department, came to London and applied as homeless.
- It was held that, with the exception of one family, their anti-social and criminal behaviour directly caused the loss of their accommodation and but for such behaviour it would have been reasonable for them to continue to occupy their accommodation. ***The relevant time for determining whether the accommodation was reasonable to continue to occupy was the date at which the alleged deliberate act or omission took place***

35

DIN V. WANDSWORTH LBC (1983) – *ACT THAT CAUSES HOMELESSNESS IS POINT AT WHICH IT WAS GIVEN UP*

- Mr and Mrs Din fell into rent arrears and trouble with rates. The council said they could not assist until a possession order was granted. The couple received a distress warrant regarding the rates, panicked and gave up the property, moving in with a relative which was overcrowded.
- The arrangement fell apart and they made a homeless application.
- IH decision went to the House of Lords who found for Wandsworth, saying the act that caused the IH was leaving the property, not losing the relatives home because of overcrowding.
- The court in Din considered the point at which the accommodation was lost and emphasised that the fact that it may have been lost at a later date anyway was irrelevant

36

HAILE V. WALTHAM FOREST LB (2014) - – *DECISION OF IH AT TIME HOME WAS LOST & ALSO WHETHER IT WOULD HAVE BEEN LOST ANYWAY*

- Haile was a refugee in ahousing association room in a hostel for 6 months. The property was designated for a single person only.. In June 2011 she became pregnant and gave up the room in October 2011, citing unpleasant smells as her reason for vacating.
- Upon making a Part VII application in November 2011 she was placed in temporary accommodation and gave birth in February 2012, which breached the requirements of that particular temporary accommodation.
- Council found her IH from the original bedsit and it ended up in the Supreme court where Ms Haile also argued that the birth of her baby broke the chain of causation between her deliberately leaving the hostel, and her state of homelessness when her application was considered.
- The Supreme Court held that Din had been correctly decided and remained good law but it also decided that there must be a continuing causal connection between the deliberate act satisfying the statutory definition of "intentional" homelessness, and the homelessness existing at the date of the council's decision., in this case, the appeal was allowed by a majority (4:1) because the reviewing officer did not consider whether the cause of Ms Haile's current state of homelessness was her surrender of her tenancy.
- The birth of the baby had meant that she would have been homeless, at the time her application was considered, whether or not she had surrendered the tenancy.

37

HAILE V. WALTHAM FOREST LB (2014) - – *DECISION OF IH AT TIME HOME WAS LOST & ALSO WHETHER IT WOULD HAVE BEEN LOST ANYWAY*

- Andrew Arden QC comments in the latest edition of Homelessness and Allocations *"It is not easy to square this decision with Din in particular. It is extremely difficult, if not impossible to distinguish the reasoning adopted in Haile from the homeless person's submissions which were rejected in Din"*

38

SAMUELS V. BIRMINGHAM CC (2019) – ERROR WHERE DECISION MAKER WORKS ON WHAT THEY THINK MONEY SHOULD BE SPENT ON

- The Order requires the local authority to take into account all sources of income – including all social security benefits.
- The applicant's income must then be compared with her "reasonable living expenses". This has to be assessed objectively and on the assumption that the last settled accommodation would have continued to be available for the applicant's occupation indefinitely.
- It is necessary to consider the needs of the household as a whole – including any children.
- A helpful "starting point" for assessing what an individual applicant's "reasonable living expenses" might be is the level of income support (now, under the new Code of Guidance, the standard allowance of Universal Credit). Where there are children in the household, the amount of child tax credit should be taken as a starting point for their expenses.
- The correct approach to assessing affordability is to simply work out whether or not the applicant's income exceeded her (and her household's) reasonable living expenses

39

OVER TO YOU…

- What is your local authority / organisation doing in this area of work?
- What do you see as the biggest challenges you need to overcome?
- How do you plan to overcome these challenges?
- How do you think this work will improve service for your customers?
- What support or guidance would help you to do this?

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