Samin v Westminster – Supreme Court Judgement 27 Jan 2016

Mr Samin was born in Iraq in 1960. He successfully sought asylum in Austria in 1992, together with his wife and children, and was given Austrian citizenship. He became estranged from his wife and children, and came to the UK in December 2005, and he has lived in this country on his own. During the ten months following his entry into the UK, he had some paid employment on occasions, often part-time, but he has not worked since some time in 2006, and has not been looking for work since 2007.

Mr Samin is socially isolated and suffers from poor mental health, mainly from clinical depression and post-traumatic stress disorder.

Mr Samin applied to Westminster City Council as a homeless person. The Council decided that he was “a person from abroad who is not eligible for housing assistance” within the meaning of section 185(1) of the Housing Act, because he did not have the right of residence in the UK under the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) (“the EEA Regulations”).

Westminster found Mr Samin is no longer a qualified person as set out in 6(1) nor does he meet any of the exceptions in 6(2). i.e. his incapacity to work is not temporary.

Having decided his incapacity to work is permanent the council noted that he failed condition 5(3) because he had not resided in the UK for at least 2 years at the point at which he had become permanently incapable of work.

In reaching that decision the council had regard to the case of Konodyba v RBKC where the Court of Appeal dismissed the appeal. It held that if a person is unlikely to be able to work in the foreseeable future there are no realistic prospects of them being able to return to work. The reviewing officer had made no error of law in deciding the applicant is permanently incapable of work.

The first point considered in the Supreme court was:

* Do the domestic Regulations infringe the appellants’ TFEU (treaty on the functioning of the EU) rights?

The court decided the answer is no.

“A significant aim of the measures set out in the EU treaties was to ensure that EU nationals from one member state should not be able to exercise their rights of residence in another member state so as to become an unreasonable burden on the social assistance system. Further, any right of residence after three months can be subject to conditions, and EU nationals can be refused social assistance where appropriate”.

The second point considered in the Supreme Court was:

* Do decision makers have to assess proportionality in each case when refusing social assistance to ineligible persons?

The court decided the answer is no.

“Where a national of another member state is not a worker, self-employed or a student and had no, or very limited, means of support and no medical insurance, it would undermine the whole thrust of the EU Directive if proportionality could be invoked to entitle that person to have the right of residence and social assistance in another member state, save perhaps in extreme circumstances.

 It would also place a substantial burden on a host member state if it had to carry out a proportionality exercise in every case where the right or residence or the right against discrimination was invoked. “

Samuels v Birmingham 2015

Ms Samuels was an assured short hold tenant living in accommodation with her 2 children and niece and nephew residing at the home.

Her rent was £700 per month and she received LHA of £549 a month.

There was as shortfall of £151 per month between LHA received and the amount of rent Ms Samuel had to pay. Ms Samuels said she could not afford the shortfall.

When initially asked she informed the council that her monthly income was as follows:

Tax credits £815, IS £290.33 and CB £240. A total of £1345.33

She also confirmed her monthly expenditure as:

Food £150, Electricity £40 Gas £60 and phone £20 plus other miscellaneous costs adding up to £360.

Her solicitors later revised this monthly figure to £750 for food and household items.

The review officer assessed the new expenditure figure of £750 and deemed it as excessive and concluded that Ms Samuels’s income would cover her household costs plus the shortfall in her rent. The s202 decision concluded the accommodation was affordable.

In the court of appeal Ms Samuels argued that the LA was wrong to include IS and Child Tax Credit and CB as they are not income intended to be used as rent.

The court referred to Article 2 of the Homelessness (Suitability of Accommodation) Order 1996, and which make it clear that in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, account should be taken of whether the accommodation is affordable and, in particular, regard given to all forms of income (including social security benefits of all kinds) and of relevant expenses (including rent and other reasonable living expenses).

It does not suggest that benefits income is to have any special status or treatment when assessing the affordability of accommodation.

There was also reference to the Homelessness Code of Guidance for Local Authorities 2006 which does recommend that authorities regard accommodation as not being affordable if the applicant would be left with a residual income less than the level of income support or income-based jobseekers allowance.

The court found the review officer had assessed that Ms Samuels could afford her rent **without being deprived of basic essentials** **and was right to take into account income benefits**.

Edwards & Ors (on the application of) v Birmingham 2016

Four cases were brought before the High Court with 16 supporting cases attached in evidence. Relief was sought on the basis that Birmingham had systemic failings in how it managed its homeless applications i.e. duty to accept a Part VII application, and provide suitable interim accommodation. Each claimant had been ‘homeless at home’.

Before each case was addressed, the Judge considered the law and what it says in regards to triggering s184 enquires. Whilst it was made clear that the duty to make enquiries is ‘lightly triggered’ it is practical and lawful for authorities to interview the application and make some enquiries with the applicant, before deciding if there is reason to believe a person is homeless or threatened with homelessness.

* *Does not mean that every housing complaint to an authority will necessarily require the authority to make s184 enquiries.*
* *If roofless, then the authority is entitled to ask him questions to clarify his housing status as such.*
* *If homeless at home, the authority is entitled to clarify whether, in fact, there is reason to believe that the accommodation occupied by that person is such that it may not be reasonable for him to continue to occupy it.*
* *Not the case that every complaint about the condition of a property gives rise to such a reason to believe, despite the lowness of the threshold.*

There was some criticism in the claim about the length of time between the trigger of an application and the date of the homeless interview appointment. Birmingham accepted that in some cases the intervening period in some cases was long. However it was noted that the Council has a broad discretion as to how it complies with its obligations under Part VII.

*“As long as the period between the Council first having reason to believe that an applicant is homeless and the homeless interview at which an HNO completes the electronic homeless application form is reasonable, in my view, the Council's practice of arranging an appointment at a future date is not arguably unlawful. Whilst, upon the reason to believe criteria being satisfied, the duty to make inquiries arises immediately, the statute does not require the inquiries to take any particular course. Indeed, to have all substantive homeless interviews on the day that an applicant makes contact with an HAC (usually, of course, without notice) would be impracticable in terms of deployment of staff and other resources.”*

The court made it clear that any initial assessment or appraisal of an approach to the authority must take into account interim duties under s188. The court noted that Paragraph 6.16 of the Code of guidance stresses that:

*…”the initial appraisal is important for the purposes of section 188. It suggests that authorities should "aim" to carry out an "initial interview and preliminary assessment on the day an application is received. An early assessment will be vital to determine whether the housing authority has an immediate duty to secure accommodation under section 188…".*

The court found Birmingham’s procedure of ensuring that those who may be entitled to interim accommodation – and who take an informed decision that they wish to avail themselves of it – are the subject of a homeless interview on the day they present to an Housing Advice Centre, whilst those who do not are the subject of an appointment system, is entirely consistent with LGO recommendations and the findings in R (IA) v Westminster.

On the matter of providing interim accommodation the judge made it clear that if the applicant preferred to remain homeless at home pending inquiries, then the authority did not have to assess that current accommodation in terms of suitability. The authority can rely on the “applicant’s ‘self-certification’ that the accommodation is such that the applicant can reasonably be expected to stay there temporarily

The judgement goes into detail about the pressures and demand faced by Birmingham and also goes into detail over their assessment processes and use of electronic forms. It’s worth reading the judgement in full to see the finer details of the case.

<http://www.bailii.org/ew/cases/EWHC/Admin/2016/173.html>

As for the 4 claims brought to the court each case failed. Whilst Birmingham acknowledged some error and misjudgement on their part, the individual claims did not show systemic failings in how Birmingham managed its homeless cases. The evidence they relied on by the claimants appears to have been unreliable and vague in places.

Barrett v Westminster 2015

Ms Barrett applied to Westminster in April 2015. She was interviewed and she advised interviewing officer of her medical issues.

Ms Barrett confirmed that she is not registered with a GP, anywhere in the UK, and that she does not take medication as she claimed to be violently allergic to conventional medicine.

Ms Barrett stated that she had chosen the path of alternative medicine and homeopathic remedies. She was therefore unable to provide any documents outlining her medical issues or give any medical contacts who could confirm her medical issues.

Ms Barrett highlighted to Westminster that the burden of proof rests on this authority and that it was the council’s duty to investigate her medical issues, and as such we should have reason to believe she is in priority need due to the information she had told us. Westminster advised in return that they are unable to take a client’s verbal explanation of medical issues and would require some sort of medical documentation in order to trigger reason to believe that she is in a priority need.

Westminster concurred that the burden of proof rests on the local authority but she had not provided a single point of information or evidence for the authority to investigate with. Ms Barrett had confirmed during her interview that she is not in receipt of any secondary or specialist medical treatment and thus Westminster are unable to make enquiries.

The authority consulted their in-house Medical Advisor regarding the medical issues highlighted by Ms Barrett.  The Medical Advisor confirmed that there is no reason to believe that her health would make her significantly vulnerable.

A s184 non priority decision was issued.

Ms Barrett submitted a review and a request for TA pending through her solicitor.

They outlined her medical conditions in more detail and emphasised how her health would be affected whilst street homeless.

Westminster refused to provide accommodation pending review. A ‘Mohammed’ decision was issued. Under merits of the case the decision maker simply relied on the s184 decision:

“The background to this case is set in full in the Council’s original decision. I am of the view that the reasoning in this letter is perfectly clear and that the decision is entirely lawful.”

A Second request for TA was submitted and this time included an OT report. This was dismissed by Westminster as having no new information that had not already been considered in the s184 decision and also in the previous Mohammed Decision.

A final request for accommodation was made this time arguing the test of vulnerability had changed and had therefore been wrongly applied in the original s184 decision. This was again dismissed in another Mohammed decision.

*“I have considered the totality of the evidence on the housing file in light of the new test for priority need and am satisfied that the merits of Ms Barrett’s case on review are not in her favour.”*

Ms Barrett sought relief in the high court.

* S184 decision was considered Lawful by the High Court.
* The Council made it very clear that albeit they accepted that the general burden of proof rested on them, they were effectively unable to make inquiries as to her vulnerability.
* The court not criticise Westminster for not making further inquiries when they sought to make them. The Claimant for whatever reason was unable or unwilling to allow them to do so
* The court noted that “strong  and convincing review and TA request from client’s solicitor” had been submitted. Including later on an OT report.
* The Council’s 3 separate Mohammed responses were considered unlawful.
* Westminster gave ‘lip service’ to the Merits of the case.
* The decisions did not represent the work of someone who is carrying out the conscientious requirements under the public sector equality duty.
* Neither did the Mohammed decisions address the extreme set of medical conditions set out by the appellant or the fact that she has been a rough sleeper.

Niema Abdusemed v London Borough of Lambeth 2016

Ms Adbusemed approached Lambeth Council in October 2015. She has claimed asylum in the UK and upon receipt of leave to remain she left her NASS accommodation in Norwich and came to London. Ms Adbusemed claimed she never had accommodation in London and is homeless.

The applicant completed a self- assessed medical form and supplied supporting letters from her GP. These were sent to the Council’s Independent Medical Officer for assessment and recommendation. Ms Adbusemed informed the council that she suffers from Abdominal and Lower Back pains as a result of two surgeries that related to an ectopic pregnancy in June 2015.

Ms Adbusemed also notified the council that she had suffered from depression, and in submissions by her solicitor, it was suggested she may have post traumatic stress disorder because she is a refugee.

Lambeth issued a s184 decision, applying Hotak, Johnson and Kanu, and rejected Ms Adbusemed’s application as non-priority.

Ms Adbusemed’s solicitor submitted a review and also a request for accommodation pending review. In a letter to the council it was suggested the council had misapplied the new test of vulnerability and had applied too high a threshold.

Lambeth refused TA pending review, taking into consideration the ‘Mohammed’ criteria. The merits of the case were set out and no significant new information had been presented that would contradict the s184 letter.

Ms Adbusemed’s solicitor sought relief in the high court. The application was declined.

In January a further request for accommodation pending review was made. Further submissions were made in regards to Ms Adbusemed’s health, her sleeping on her friend’s floor and also a possible assessment regarding PTSD. Again Lambeth declined the request for accommodation pending review in a 2nd decision letter.

Undeterred, more submission were made outlining the fact that Ms Adbusemed was now sleeping on a salon floor and has been doing so since Lambeth ended its temporary accommodation on 21 December 2015. It was suggested the floor of the salon is causing back pain and is a cold environment for Ms Adbusemed to sleep in. There is neither electric nor heating during the hours that Ms Adbusemed remains on her friend’s salon floor and she only has towels and a small blanket to keep her warm. Ms Adbusemed is forced to leave the salon at 6am each day and is not permitted to eat there, nor return until the last customer has left for the day, which can be between 10-11pm each night.

Lambeth responded and said they did not doubt or question the trauma that sleeping in this situation causes Ms Adbusemed, but need to look at her situation based on what is exceptional in this case compared with another person in housing need.

“I do not agree that this brings Ms Adbusemed into priority need, nor do I believe it warrants temporary accommodation pending the outcome of her review, nor do I agree that it is a change to Ms Adbusemed’s circumstances, all of which have been taken into account in the first and second Mohamed letters issued by Lambeth refusing to exercise our discretion during the s202 review of the non-priority decision reached.”

On the 9th February Ms Adbusemed’s solicitor wrote a further letter. It referred to a Psychiatric report submitted to the council.

Lambeth noted the report referred to Ms Abdusemed as being very capable of expressing herself albeit through an interpreter and there was no evidence of ‘psychomotor retardation’ and she only suffered from low mood. The report confirmed there were no evidence of psychotic symptoms and her cognitive and intellectual functions were “grossly normal”.

The report said Ms Adbusemed has “moderately severe to severe” PTSD. In regards to any depressive illness the report considered her to at best be suffering from “low mood”. Lambeth said this does not satisfy the test for vulnerability under the Housing Act.

The psychiatric report refers to Ms Abdusemed’s condition being exacerbated if made street homeless, for example, she may become suicidal. However Lambeth dismissed the psychiatric report and noted that Ms Abdusemed own assertion was that she is not suicidal.

Ms Abdusemed sought relief once again in the high court. The application was refused. The court stated that the claimant has been unable to establish any arguable error of law in the defendant’s decision. The defendant has considered the claimant’s position with care on a number of occasions, and provided a rational and reasonable response.

Andrew Carter March 2016

AHAS Legal Briefing