Neutral Citation Number: [2021] EWCA Civ 897

Case No: B5/2020/1651

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
His Honour Judge Saunders

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/06/2021

Before :

LORD JUSTICE LEWISON
LORD JUSTICE ARNOLD
and
SIR NICHOLAS PATTEN

- -

Between :

Suleman Patel	**Appellant**
- and -	
London Borough of Hackney	**Respondent**

- -
- -

Edward J. Fitzpatrick and **Matthew Ahluwalia** (instructed by **Hackney Community Law Centre**) for the **Appellant**
Emma Godfrey (instructed by **London Borough of Hackney**) for the **Respondent**

Hearing dates : 26 May 2021

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Approved Judgment

"Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am 21st June 2021."

Sir Nicholas Patten:

1. The appellant, Mr Suleman Patel, challenges a review decision by the London borough of Hackney ("the Council") dated 2 August 2019 that he had become homeless intentionally and was not therefore owed more than the limited housing duty prescribed by s.190 (2) of the Housing Act 1996 ("HA 1996").

2. In October 2008 Mr Patel was granted a tenancy of privately owned accommodation comprising Flat 9, 28 Upper Clapton Road, London E5 ("the flat"). He lived there with his wife and children until June 2018 when he was evicted under an outright order for possession based on rent arrears totalling £7,920, which had risen to £11,400 by the date of eviction. Shortly before the warrant for possession was executed on 25 June he made a homelessness application to the Council and was placed in interim accommodation pending a s.184 determination of his application.

3. Mr Patel completed a Homelessness Affordability and Accommodation Suitability Questionnaire together with an expenditure form in which he stated that he was in receipt of welfare benefits totalling some £302 per week (including housing benefit of £63) and that he earned £100 per week working as a self-employed taxi driver and a further £80 per week from work for his local mosque. He estimated his expenses to be £1405 per month including rent and car insurance plus a further £129 per week which was made up of sundry expenses including household shopping, fuel and telephone charges.

4. Section 184(1) HA 1996 provides:

> "*If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves—*
>
> *(a) whether he is eligible for assistance, and*
>
> *(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.*"

5. The Council issued its s.184 decision on 2nd May 2019 finding that although Mr Patel was eligible for assistance, homeless and in priority need, he had become homeless intentionally because of his failure to pay the rent due. The consequence of this was that the full housing duty imposed on the Council by s.193 HA 1996 to secure that accommodation is available for occupation by the applicant does not apply (see s.193 (1)(a)(ii)) and the Council's duty is confined to securing that accommodation is available for his occupation for such period as the Council considers will give him a reasonable opportunity of securing accommodation for his occupation and to the giving of advice and assistance: see s.190 (1), (2) HA 1996.

6. The definition of intentional homelessness is contained in s.191 HA 1996. This provides:

> *"(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of*

> *which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.*
>
> *(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.*"

7. It is not in dispute that a failure to pay rent leading to eviction may amount to intentional homelessness within the meaning of s.191(1). But the Secretary of State both by regulation and in the 2018 Homelessness Code of Guidance for Local Authorities ("the 2018 Code") has provided further guidance on what will constitute intentional homelessness in the case of someone whose failure to pay the rent is the result of financial difficulties at the relevant time.

8. Article 2 of the Homelessness (Suitability of Accommodation) Order 1996 (SI 1996/3204) ("the Order") provides:

> "***Matters to be taken into account***
>
> *In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation and in determining whether accommodation is suitable for a person there shall be taken into account whether or not the accommodation is* ***affordable*** *for that person and, in particular, the following matters:*
>
> *(a) the financial resources available to that person including, but not limited to:*
>
> *(i) salary, fees and other remuneration;*
>
> *(ii) social security benefits;*
>
> *(iii) payments due under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child;*
>
> *(iv) payments of child support maintenance due under the Child Support Act 1991;*
>
> *(v) pensions;*
>
> *(vi) contributions to the costs in respect of the accommodation which are or were made or which might reasonably be expected to be, or have been, made by other members of his or her household;*
>
> *(vii) financial assistance towards the cost in respect of the accommodation, including loans, provided by a local authority, voluntary organisation or other body;*

> *(viii) benefits derived from a policy of insurance;*
>
> *(ix) savings and other capital sums;*
>
> *(b) the costs in respect of accommodation, including but not limited to:*
>
> *(i) payments of or by way of, rent …*
>
> *(c) payments that the person is required to make under a court order …*
>
> *(d)* ***that person's other reasonable living expenses***."
>
> [Emphasis Added]

9. An assessment of whether accommodation was affordable for the applicant and whether it would have been reasonable for him to continue to occupy it for the purposes of s. 191 (1) HA 1996 therefore requires an investigation into the cost of the accommodation measured against the net income and other financial resources of an applicant after deducting any charges or payment of the kind specified under article 2 of the Order. That assessment is historical in nature in the sense that it is concerned to establish the circumstances in which the applicant came to give up possession of the accommodation and whether his failure to pay the rent was due to his personal financial circumstances having regard to what he was also required to spend in order to maintain and support himself and his family. In the present case it is common ground that the Council's assessment of affordability was directed to the period leading up to the family's eviction in June 2018. Much of the argument on this appeal has focused on what is meant by "other reasonable living expenses" in article 2 of the Order. There is no further guidance in the legislation as to how this should be interpreted and applied but the 2018 Code does have something to say about it.

10. Paragraph 9.18 (in the section dealing with intentional homelessness) sets out the broad principle that:

> "*An applicant's actions would not amount to intentional homelessness where they have lost their home, or were obliged to sell it, because of rent or mortgage arrears resulting from significant financial difficulties, and the applicant was genuinely unable to keep up the rent or mortgage payments even after claiming benefits, and no further financial help was available*".

11. Again this does not suggest what type or level of general expenditure should be taken into account in making a calculation of affordability but this issue is addressed in paragraphs 17.45 and 17.46. Paragraph 17.45 does no more than set out the terms of article 2 of the Order but paragraph 17.46 states:

> "***Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to their circumstances. Housing***

> ***costs should not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet these essential needs.*** *Housing authorities may be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but should ensure that the wishes, needs and circumstances of the applicant and their household are taken into account. The wider context of the applicant's particular circumstances should be considered when considering their household expenditure especially when these are higher than might be expected. For example, an applicant with a disabled child may have higher travel costs to ensure that the child is able to access additional support or education that they require and so this should be taken into account when assessing their essential needs, and the income that they have available for accommodation costs*". (emphasis added)

12. The guidance contained in the 2018 Code is not of course statutory and does not displace the provisions of HA 1996 or of article 2 of the Order. But local housing authorities are required by s. 182 HA 1996 to have regard to such guidance when exercising their statutory functions in relation to homelessness and paragraph 17.46 of the guidance was obviously intended to provide some directions as to how the issue of affordability should be addressed in terms of what the applicant should be able to provide for himself and his family out of his available income and other financial resources whilst still continuing to pay the rent.

13. Part of the argument advanced in support of Mr Patel's appeal has majored on there being an inconsistency between the language of article 2 ("reasonable living expenses") and the references in paragraph 17.46 of the 2018 Code to the applicant being left with a residual income sufficient to meet the "essential needs" of him and his family. I am not convinced about this. It seems to me that paragraph 17.46 is no more than an elaboration of what level of expenditure it should be reasonable to take into account in deciding whether the accommodation was affordable. The statutory criterion of reasonable living expenses directs an enquiry into the needs of the particular applicant and his family and imposes an objective standard for determining whether any expenditure relied on to prove that the accommodation was unaffordable should be taken into account. Loss of accommodation through the non-payment of rent requires an explanation which must satisfy a test of reasonableness. This cannot be satisfied simply by reference to how the applicant has chosen to spend the money available to him at the relevant time. The statutory test requires the local housing authority to determine what in the particular case was a reasonable level of expenditure and the guidance in the Code suggests that this should be measured by what the applicant requires in order to provide as a minimum standard the basic essentials of life.

14. The formulation of the test in these terms can be found in the 2006 Code of Guidance and also in a number of the authorities dealing with affordability in the context of intentional homelessness. We were referred to the decision of Kennedy J in *R. v London Borough of Hillingdon ex p. Tinn* (1988) 20 HLR 305 at p.308 where the judge says this:

> "*As a matter of commonsense, it seems to me that it cannot be reasonable for a person to continue to occupy accommodation when they can no longer discharge their fiscal obligations in relation to that accommodation, that is to say, pay the rent and make the mortgage repayments, without so straining their resources as to deprive themselves of the ordinary necessities of life, such as food, clothing, heat, transport and so forth*."

15. This observation was approved by this court in *R. v Wandsworth LBC ex p. Hawthorne* [1994] 1 WLR 1442 where Nourse LJ accepted that the applicant's inability to pay the rent must be taken into account in determining whether his failure to pay was deliberate for the purposes of the definition of intentional homelessness in what is now s. 191 (1) HA 1996. Similarly in *R. v Brent LBC ex p. Baruwa* (1997) 29 HLR 915 this court again referred to the applicant needing to be left with sufficient money to cover the necessities of life whilst emphasising that the test was case specific. Schiemann LJ at p. 920 said:

> "*Before looking at what the authority did it is important to note a number of matters.*
>
> *1. What are the necessities of life may vary from family to family – to take an obvious example a family of blind people will have greater needs than a similar family of sighted people.*
>
> *2. What are for any particular family to be regarded as necessities of life is a matter which permits a very substantial margin of appreciation.*
>
> *3. It is the authority, not the court, which is charged with making that appreciation. The court will only quash on normal judicial review grounds. Lord Brightman put it thus in R. v. Hillingdon London Borough Council ex p. Pulhofer [1986] 1 AC at p.518 in a judgement with which each of their Lordships agreed:*
>
> *'where the existence or non-existence of a fact is left to the judgement and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of fact to the public body to whom Parliament has entrusted the decision making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely. '*
>
> *The authority is, by virtue of section 62, obliged to make certain inquiries before coming to a decision. In the context of the present case the council was under a*

> *duty to make "such enquiries as are necessary to satisfy themselves as to whether [s]he was intentionally homeless." Having made those inquiries the Authority is charged with coming to a decision. In principle the court will only review the adequacy of the inquiries or of the authority's decision on the usual judicial review grounds*."

16. In *Balog v Birmingham City Council* [2014] HLR 14 the appellant challenged a review decision that he was intentionally homeless where the review officer had accepted that for a time the appellant's expenditure had exceeded his income when housing benefit had not covered the full rent. The officer had however concluded that the appellant would have been able to reduce his expenditure so as not to "sacrifice essential amenities" in order to pay the rent and that the accommodation had therefore been affordable. This court rejected the challenge to the decision. The review officer (whilst not referring in terms to what was then paragraph 17.40 of the 2006 Code of Guidance) was held to have carefully analysed the appellant's income and expenditure in accordance with the guidance it contained. In his judgement Kitchin LJ quoted from the guidance contained in paragraph 17.40 with its references to the applicant not being deprived of the basic essentials and said (at [21]):

> *"This particular aspect of the guidance therefore contains two elements: first, a recommendation 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 apposite level of income support or income-based jobseekers' allowance; and second, a reminder that housing authorities must consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials.*"

17. In *Farah v Hillingdon LBC* [2014] HLR 24 the appellant's homelessness application had been rejected on grounds of intentional homelessness because various items of expenditure relied on to establish that the rent was not affordable were deemed either to be non-essential or to be exaggerated in amount. On a review no explanation was given as to which items of expenditure were treated as exaggerated or non-essential or as to how the review officer had responded to the applicant's own explanations for the arrears of rent. It was therefore a challenge which succeeded because of the complete lack of reasons given for the decision under appeal. The housing authority was in breach of its duty to give reasons under s.203 (4) HA 1996.

18. On the other hand, some latitude is appropriate in relation to the reasons which are given. In *Holmes-Moorhouse v London Borough of Richmond upon Thames* [2009] UKHL 7 Lord Neuberger of Abbotsbury emphasised the need for courts to avoid adopting an unfair or unrealistic approach in their consideration of review decisions in s.204 appeals:

> "*47. ... A judge should not adopt an unfair or unrealistic approach when considering or interpreting such review decisions. Although they may often be checked by people with legal experience or qualifications before they are sent out, review*

> *decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment.*
>
> …
>
> *50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions*."

19. As I said at [22] in *Farah* the reasons given for the review decision should be sufficiently detailed, specific and intelligible so as to enable the applicant to know why the review has been unsuccessful and why any points raised by the applicant have been rejected.

20. The most recent case in which the issue of affordability has been considered is the decision of the Supreme Court in *Samuels v Birmingham City Council* [2019] UKSC 28. The applicant in that case was entirely dependent for her income on Social Security benefits which amounted to £1,897.84 per month including housing benefit of £548.51. Her solicitors submitted a revised schedule of non-housing expenditure totalling £1234.99 per month. Her rent was £700 per month which therefore exceeded the housing benefit she received and left an overall shortfall of income over expenditure of about £37 per month.

21. The council in its review decision said that it regarded the amounts claimed for food and household items (£173 per week) as excessive and that as "a matter of normal household budgeting… you would manage your household finances in such a way to ensure that you were able to meet your rental obligation. I cannot accept that there was not sufficient flexibility in your overall household income of in excess of £311 per week to meet a weekly shortfall in rent of £34."

22. Much of the argument in the Supreme Court centred on what guidance was available to local housing authorities to assist them in determining the reasonableness of living expenses in accordance with article 2 of the Order. As already mentioned, this was a case where the totality of the applicant's income consisted of different types of welfare benefit so that any flexibility of the kind relied on by the council would have to come from savings made out of those payments. The assessment of affordability was also complicated by the fact that the applicant had learning difficulties which had prevented her from giving details of the precise amounts of her expenditure.

23. Paragraph 17.40 of the 2006 Code of Guidance, as mentioned earlier, recommended that local housing authorities should not regard accommodation as 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 applicable to that applicant. In the Court of Appeal the applicant's counsel had submitted that welfare benefits were generally set at subsistence levels and did not therefore allow any flexibility in spending without diminishing what was a very basic standard of living. But this submission was rejected. In the Supreme Court however Lord Carnwath emphasised (at [34]) that the assessment of what living expenses were reasonable requires to be carried out objectively and cannot depend simply on the subjective view of the case officer. But he went on:

"*35. Guidance is provided by paragraph 17.40, where the Secretary of State "recommends" authorities to regard accommodation as unaffordable if the applicant's residual income would be less than the level of income support (para 6 above). Even if that recommendation 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. As the authorities referred to by Mr Stark (para 26 above) show, benefit levels are not generally designed to provide a surplus above subsistence needs for the family. If comparison with the relevant benefit levels is material to the assessment of the applicant, it is difficult to see why it should be any less material in assessing what is reasonable by way of living expenses in relation to other members of the household. Relevant also is the duty under section 11(2) of the Children Act 2004 to promote and safeguard the welfare of children. The guidance makes clear, as one would expect, that amounts will vary "according to the circumstances and composition of the applicant's household". Further, it is to be noted that, immediately after the reference to the household, there is a reference to "a current tariff … in respect of such benefits" (plural), which suggests 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.*

36. That was not how the review officer dealt with Ms Samuels' case. He asked whether there was sufficient "flexibility" to enable her to cope with the shortfall of £151.49 between her rent and her housing benefit. However, the question was not whether, faced with that shortfall, she could somehow manage her finances to bridge the gap; but what were her reasonable living expenses (other than rent), that being determined having regard to both her needs and those of the children, including the promotion of their welfare. The amount 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). In the absence of any other source of objective guidance on this issue, it is difficult to see by what standard that level of expenses could be regarded as other than reasonable."

24. The appeal in *Samuels* therefore succeeded because on the information available to the council the shortfall in rent could only be met by a reduction in the standard of living set by the level of welfare benefits received by the applicant. Unless this could be shown to be more than was necessary to provide what paragraph 17.40 referred to as the basic essentials then the council was bound to conclude that the rent was unaffordable. Lord Carnwath accepted in [36] that no other source of objective guidance was available to support the council's decision and he did not therefore need to consider whether there was a difference between the applicant's reasonable living expenses as specified in article 2 and the "basic essentials" referred to in the Code of Guidance. Nothing however which he did say suggests that he regarded the two as inconsistent.

25. Against this background I can now turn to consider the way in which the Council determined the s. 184 application in the present case.

26. The housing officer, Ms Jenny Dearn, took into account the contents of the expenditure form and the suitability questionnaire together with bank statements and interview notes taken at earlier meetings. But she considered that not all of the applicant's income and essential expenses had been included in the forms which he had prepared. She therefore recalculated his weekly income including benefits as amounting to £565.42. She also recalculated his weekly expenses (including rent) by adding £32 for the replacement of white goods and by increasing the estimate for household shopping and clothing by £58. On this basis his total weekly expenditure was £539.70. The accommodation had therefore, she concluded, been affordable.

27. Mr Patel requested a review of the homelessness decision under s. 202 HA 1996 and submitted a revised list of his income and expenditure. This calculated his income as £455.43 per week and his expenditure as £604.62. In this revised statement of expenditure Mr Patel adopted the figures for the replacement of white goods, clothing and increased shopping costs which Ms Dearn had included but increased his estimate of fuel and other costs associated with his car by almost £70.

28. On 10th July 2019 the review officer sent Mr Patel a letter pursuant to r.7(2) of the Homelessness (Review Procedures etc) Regulations 2018 indicating that he was minded to uphold the section 184 decision. He set out the housing benefit received by Mr Patel in the period up to June 2018 and his calculation of the shortfall created by the reduction of housing benefit after September 2017. He then went on to consider the revised figures which Mr Patel had submitted for income and expenditure. The review officer increased the amount of his weekly earnings as a taxi driver to £150 based on calculations derived from Mr Patel's bank statements; disregarded the additional £50 which Mr Patel had claimed as part of his fuel allowance; and excluded the housing officer's allowance of £32 per week for the replacement of white goods because, as he put it, "I do not believe this to be an essential expense". After including the cost of gas and electricity and a TV licence the review officer calculated that Mr Patel's weekly expenditure amounted to £545.62 against income of £548.97. The review officer said that he believed that with careful budgeting the accommodation was therefore affordable.

29. Mr Patel wrote to the Council on 19 July 2019 taking issue with the review officer's calculation of rent and the reasons for the arrears had built up. In relation to income

and expenditure he complained about the deduction of the £32 allowance for the replacement of white goods stating that:

> *"… you have disregarded the 'white goods' (£32), I want you to note that it was JD who introduced it, not me, having said that, you cannot disregard it totally because for example with our washing machine and fridge we could not afford to buy a new one, so we bought 2nd hand ones, and they don't last as long as a new one, it is difficult to place an amount weekly, but some allowance has to be made.*."

30. The Council issued its review decision on 2nd August 2019. In his letter to Mr Patel, Mr Garrib, the review officer, set out his calculation of the shortfall between the rent for the accommodation and the housing benefit paid to Mr Patel together with his calculations of Mr Patel's income and expenditure. He explained how and why he had amended the figures of £455.43 and £604.62 contained in Mr Patel's revised statement. As indicated in his "minded to" letter Mr Patel's earnings as a taxi driver were increased from £66 to £150 per week and the additional sums of £50 for fuel and £32 for the replacement of white goods were excluded. In relation to the latter he said:

> "*I have also disregarded the "white goods – replacing" as I do not believe this to be essential expense. I have included gas/electricity TV licence.*
>
> *I refer to your representations dated 19th July 2019 where you assert that I cannot disregard the "white good-replacing" totally as it was introduced by the DM. You have further stated that you could not afford new washing machine and fridge and therefore bought second-hand ones which do not last as long as new ones. As I have previously stated, I do not believe this to be essential expense and remain of this view. I believe that there is sufficient flexibility in your weekly expenditure to cater for such eventualities*."

31. On the basis of these adjustments the review officer calculated Mr Patel's income as £548.97 per week and his weekly expenditure as £545.62. This included a figure of £220 per week for rent although the rent actually payable was £880 per month which equates to £205 per week. The increases made by the housing officer for shopping were left in place.

32. Re-calculations of income and expenditure of this kind are routine in many homelessness applications. They must be evidence-based and have regard to the points raised by the applicant but in many cases there will be inadequate or incomplete documentation to support particular items, or the amounts claimed will be inconsistent with some of the documentation which is disclosed. The present case is no exception. Mr Patel's own assessment of his income was found to be too low when compared with the bank statements; some of his estimates of expenditure were rejected as excessive; but others were in fact increased by the housing officer who considered them to be too low and unrealistic. Provided that the officer making the assessment has paid due regard to the relevant guidance and has reached a conclusion open to him or her on the material available then there are no grounds for interfering

with the decision which is reached. It is not for the County Court on a statutory appeal on a point of law under s. 204 HA 1996 to review the multifactorial assessment which the housing or the review officer has carried out. Unless it can be shown that the officer materially misdirected himself or failed to take relevant matters into account there is no error of law.

33. In the present case it is said that the review officer was wrong to have excluded the £32 allowed for white goods in its entirety on the basis that this could not be regarded as an essential expense within the meaning of the 2018 Code. But like HH Judge Saunders who dismissed the s. 204 appeal I think that this is too narrow a reading of what the review officer was saying. His reference to there being sufficient flexibility in Mr Patel's weekly expenditure to cater for a possible need to replace white goods is a recognition that such expenditure might be both necessary and reasonable but that it would be occasional. The original decision maker had allowed £32 per week for the replacement white goods but it is difficult to see how this was calculated. Mr Patel made no claim at all for the replacement of white goods and has never suggested that he needs to spend £32 per week on that. Any weekly allowance in respect of white goods must represent an amount which the applicant might be expected to put aside against future expenditure. The March 2017 guidance on the cost of living published by the Association of Housing Advice Services (AHAS 2013/2017) calculates that for families on universal credit a total white goods allowance of £8 per week would be appropriate on the basis that the sum can be put aside against future replacement costs. Given that even on the review officer's calculation of expenditure there was an overstated weekly liability for rent and that the allowance for shopping had been considerably increased over what Mr Patel had originally claimed, it seems to me that the review officer's assessment that there was sufficient flexibility in the family budget to cater for occasional expenditure on the replacement of white goods was a conclusion which was properly open to him on the information which he had. I am not therefore persuaded that his decision discloses any error of law.

34. I would therefore dismiss the appeal.

Arnold LJ:

35. I agree.

Lewison LJ:

36. I also agree.