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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT  
**[2020] EWHC 1193 (Admin)**



No. CO/1400/2020

Royal Courts of Justice

Thursday, 7 May 2020

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE QUEEN  
ON THE APPLICATION OF  
TIEMO

Claimant

- and -

LAMBETH LONDON BOROUGH COUNCIL

Defendant

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MR J. HITCHENS (instructed by Osbornes Law) appeared on behalf of the Claimant.

MR MCDERMOTT (instructed by Legal Services Department) appeared on behalf of the Defendant.

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**J U D G M E N T**

MR JUSTICE MARTIN SPENCER:

- 1 This is an application by the claimant to enforce an order of Julian Knowles J made on 16 April 2020, whereby he required the defendant to provide “interim suitable accommodation” for the claimant and her son pending determination of the claimant’s judicial review claim that the defendant had failed to comply with its obligations to her arising under the Housing Act 1996.
- 2 The background facts are that the claimant was born on 24 November 1970 in Nigeria and has a son born on 19 December 2003 (Arnold). She has been in this country for about ten years and on or about 18 February 2020 she became entitled to have recourse to public funds. Until then, she had not received any kind of state benefit and, indeed, did not have a national insurance number.
- 3 Since the summer of 2019, she has been living with a friend, a Ms Waldropt. However, on 9 April 2020, the claimant was told by Ms Waldropt that she had to leave the property by the following day. It may well be, although I do not have full details, that the effect of the Government restrictions arising out of the COVID-19 pandemic made the lockdown situation at Ms Waldropt’s property unbearable, given that Ms Waldropt has three minor children living with her, and it was in those circumstances that she asked the claimant and Arnold to leave.
- 4 The result was that as at 9 April the claimant faced the prospect of becoming street homeless the following day without the means to do anything to find somewhere to live. She instructed Messrs Osbornes, and they took emergency steps to secure accommodation for her through the defendant housing authority and an out-of-hours application to Goose J was forestalled when the local authority were able to accommodate the claimant and her son in a hotel.
- 5 Thereafter, under pressure from Osbornes, the local authority addressed the immediate s.188 needs of the claimant and her son pending their making the usual inquiries and assessment under the Housing Act 1996 and managed to find for the claimant and her son accommodation at Flat 2, 51 Albert Road, London, SE25 4JD and the claimant was able to move into that accommodation on 14 April 2020.
- 6 The local authority used a firm called DSN and it would appear that DSN provided the claimant with the usual documentation upon her taking up residence at that property, which in some regards was inappropriate, but this has been addressed by the defendant since and they have made it clear that their position is not strictly as set out in that documentation and, in particular, in relation to the question of the payment of rent and the pursuance of arrears.
- 7 There was a dispute between Osbornes and the local authority as to the ongoing suitability of the property and, as the application and claim form for judicial review makes clear, there were a number of matters of which complaint was made, including in relation to the lack of hot water in the bathroom, the lack of a kettle and other such matters; all those have now been resolved.
- 8 On 16 April 2020, an application was made to Julian Knowles J and it was arising out of that application that he made the order that he did on 16 April, which is at p.A22 of the bundle. In that order, he stated that the defendant must provide the claimant with interim suitable accommodation within seven days of the order to accommodate the claimant and her son until further order, but otherwise he denied an application for expedition and ordered that the usual judicial timetable would apply. In his reasons, he stated as follows:

“Given the application for urgency is dated 10 April and the claimant and her son were due to become homeless on that date, I am not clear why it has only come before me after hours on 16 April. That said, the claim appears to be arguable and the balance of hardship comes down in favour of granting interim relief in the form of an accommodation order. Given that there is no need for expedition, I refuse that aspect. I have allowed the defendant seven days to find accommodation, given the current situation.”

By “given the current situation” I assume he meant the COVID-19 situation and all the problems which that has entailed for local authorities in fulfilling their statutory duties. I have to say that the impression I have from reading that order is that Julian Knowles J was unaware of the property with which the claimant had been provided on 14 April, two days before. He certainly makes no reference to that property in his order or, indeed, to the issue as to why that property was unsuitable.

- 9 Be that as it may, the order was made and the issue which is now before me is whether the property is unsuitable and, therefore, not in compliance with the order that Julian Knowles J made because it is unaffordable. In that regard, Mr Hitchens, who represents the claimant, has referred me to the Homelessness Code of Guidance for Local Authorities at para.17.45, art.2 of the Homelessness Suitability of Accommodation Order 1996 and the decision of the Supreme Court in *Samuels*. Together he says those authorities establish that in considering whether a property is suitable, affordability is one of the issues in question and that a housing authority must take into account whether accommodation is affordable, including taking account of the financial resources available to the person in question, that is all forms of income, and then the costs of the accommodation, including but not limited to, payments by way of rent, council tax and other various payments which might be required. There is also reference to a person’s means if they are under a court order to make periodical payments to a spouse or child.
- 10 The Homelessness Code at para.17.46 provides:

“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.”

In that regard, a calculation has been made which suggests that, given the claimant’s needs, there is a shortfall of at least £281.44 per week between the claimant’s guaranteed income and her weekly living expenses, of which the rent forms a large part. With such a shortfall, it is submitted that the property provided is unsuitable because it is not affordable and an order is required or sought that the court require the local authority to provide accommodation which is affordable and, therefore, suitable within those criteria.

- 11 The defendant disputes that the accommodation which they have provided is in any way unsuitable and Mr McDermott, who has represented the defendant in the hearing before me, has drawn to my attention letters written to the claimant’s solicitors by the defendant housing authority in which they have set out their position. Thus, on 22 April, Lambeth Legal Services wrote to the claimant’s solicitors in the following terms:

“It is worth pointing out that your client’s s.188 accommodation is, by nature, temporary. The accommodation is booked by the council on a nightly basis. Your client is not responsible for bills and council tax and the council would

only enforce rent collection when her benefits application comes through. The council does not penalise occupants, especially in the current situation of the COVID-19 pandemic, for non-payment of rent when they are not able to pay it, but the council would, of course, expect housing benefit payments to be backdated if your client's benefits application is successful. The rent for this type of accommodation is also of a standard level and is affordable for people on benefits."

That letter was backed up by an email from Mr Riyaz Gheewala of the Lambeth Legal Services Department on 24 April, in which he said:

"We have also made it clear to you that action will not be taken for non-payment of rent whilst your client's benefits claim is pending, particularly in the current circumstances."

- 12 In those circumstances, Mr McDermott submits that the suggestion that the property is unaffordable and, therefore, unsuitable is, at the moment, purely hypothetical. Only were it to be the case that the claimant made an application for housing benefit and for reasons which were not her fault the housing benefit did not cover the rent dating back to 14 April and therefore she was in arrears would there be any question of the property being unaffordable, combined, of course, with the assumption that the housing benefit would cover the ongoing rent in the future. He therefore submits that this application at this stage is misconceived and is premature.
- 13 Mr McDermott also points out that there is a power to backdate housing benefit to one month before the application for housing benefit is made and therefore if the application is made at any time before 14 May then the backdated one ought to cover the full period of occupation.
- 14 Mr Hitchens, for the claimant, argues that this is simply not good enough for a person in this claimant's position. In particular, it is not acceptable, he submits, that she should run the risk of running up arrears of rent which are then not covered by housing benefit when eventually it is made - if it is made - and thereby put herself and her son in jeopardy as a result of such arrears of being evicted and, indeed, being deemed to be intentionally homeless. He submits that the obligation of the council is to provide accommodation which is affordable by reference to the claimant's present means, not hypothetical means, upon the basis of potential housing benefit. He argues that the rules in relation to affordability and, therefore, suitability, are the same whether one is talking about emergency housing being provided under s.188 of the Housing Act or, indeed, the local authority's more long-term legal obligations when it comes to providing accommodation for those who qualify for it under the usual schemes and under the legislation.
- 15 It seems to me that Mr McDermott is right that this application is premature. It may be that the claimant will be able to make an application for housing benefit which will have the effect of covering all rental payments from 14 April and her ongoing liability to pay rent until the council's assessment is complete and that the fears of the claimant will thereby dissipate completely. This is certainly the expectation of the defendant and of Mr McDermott in his submissions. However, I understand the concerns of the claimant and the predicament in which she might find herself by being liable to pay even the notional rent which is presently being charged but not being enforced. The real difficulty in the present case seems to me to be that no application for housing benefit has yet been made because the claimant has not obtained a national insurance number and there seems to be a considerable amount of confusion about the entitlement to a national insurance number, whether emergency or

otherwise, the relationship between that and her application for housing benefit and what the problem is to hold up her application for housing benefit.

- 16 I am told today that she cannot apply for housing benefit without a national insurance number and she has not been able to obtain a national insurance number because the promises made in relation to the obtaining of one have not been fulfilled, despite the best efforts of various agencies acting on her behalf. However, that does not seem to me to be consistent with a report I have seen from the Child and Family Assessment Unit of the defendant where reference is made to an interview with the claimant and in that interview she is recorded as having told the interviewing officer that she had started an application for housing benefit, that it had not been completed because she had no internet at home and no printer, but that she should complete the application by 21 April 2020, that is the day after this interview which was on 20 April 2020. What is striking is the deafening absence of any reference in that interview to there being a problem with the making of an application for housing benefit because of the lack of a national insurance number.
- 17 Also, as I have indicated in the course of the hearing, I am surprised that, despite having the assistance of solicitors since 9 April, if indeed it is the case that the obtaining of a national insurance number is the key to the making of an application for housing benefit and therefore the securing of funds to pay for the occupancy of the property in question, the solicitors have made no effort, so far as I am aware, to assist in the obtaining of such a national insurance number: the fact that they do not appear to have done so somewhat supports the position which appears from the assessment of the Child and Family Assessment Unit that the lack of a national insurance number is not, in fact, the significant problem and that the claimant could and should have already made her application for housing benefit. The fact is that, at the moment, the position is somewhat obscure.
- 18 In those circumstances, and on the basis of the reassurances that the local authority have given in the letters to which I have referred, and in particular the letter of 22 April 2020, and given that all the other issues relating to the suitability of the property which originally formed part of the application have since fallen away, I am not going to make an order today, but I am going to adjourn the matter for the question of housing benefit, the arrears, the back-payment of housing benefit and the extent to which, once that has happened, the claimant is or is not in arrears to come back before the court and the court will then be in a better position and more informed position to decide whether or not, in the circumstances, the local authority have complied with their duty to provide suitable accommodation, including affordable accommodation.
- 19 It may well be that if it turns out that the claimant has done all she could reasonably be expected to have done, that she has acted reasonably and despite all her best efforts and the efforts of those representing her, whether legally or charitably, she has been unable to secure the benefits required to cover the rent, then I would expect the local authority to take a benign view of her in those circumstances in accordance with the spirit of the letter of 22 April, to which I have referred. Everything which I have seen in this correspondence and the history of this matter inclines me to believe that this particular local authority will do so, because it has behaved, in my judgment, reasonably and properly to date in relation to this particular claimant.
- 20 In the circumstances, I would hope that the matter will resolve itself in the light of what I have said and any further developments, but if it does not then the matter should come back before the court before a further hearing and further consideration of whether the order of Julian Knowles J has been complied with. It seems to me that, in an effort to avoid any arrears building up significantly, but to give sufficient time for the matter to be sorted out, the

appropriate date on which this should come back before the court should be in four weeks' time, although I will hear submissions about that if either counsel believe that that is an inappropriate period to adjourn.

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**CERTIFICATE**

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge.