



IN THE CENTRAL LONDON COUNTY COURT

Case No: K40CL060

Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 04/02/2024

Before :

HHJ RICHARD ROBERTS

Between :

VIVIANE SONIA AKE	<u>Appellant</u>
- and -	
LEWISHAM BOROUGH COUNCIL	<u>Respondent</u>

Mr Daniel Grütters of Counsel (instructed by **Morrison Spowart**) for the **Appellant / Claimant**
Mr Mathew McDermott of Counsel (instructed by **London Borough of Lewisham Legal Services**) for the **Respondent / Defendant**

Hearing date: 1 February 2024, and handed down on 20 February 2024

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

Introduction

1. This is the Appellant's statutory appeal pursuant to s.204 of Housing act 1996 (the Act) of the Respondent's review decision dated 27 February 2023¹. The review decision upheld the Respondent's decision that the accommodation it had secured for the Appellant at 15 Malmesbury Road, London, E3 2EB (15 Malmesbury Road), pursuant to s.193(2) of the Act was suitable.
2. Mr Grütters of Counsel appears for the Appellant. I am grateful for his skeleton argument, dated 8 May 2023, and schedules of the Appellant's monthly income and expenditure. Mr McDermott of Counsel appears for the Respondent. I am grateful for his perfected skeleton argument, dated 25 September 2023, which is based upon the original skeleton argument of Ms Niamh O'Brien of Counsel, dated 5 June 2023.
3. There is a bundle of documents of 236 pages. References to page numbers in this judgment are to this bundle. There is also an authorities bundle of 125 pages.

Background

4. The Appellant, who was born on 25 July 1977, has two children. Her daughter, Fatim, was born on 26 July 2005, was aged 17 at the date of the review decision, and is now aged 18. He attends Southwark College, 25 The Cut, London SE1 8LF. Her daughter, Jade, was born on 11 December 2014, was aged 8 at the date of the review decision and is now aged 9. She attends St George's Primary School, Perry Vale, London SE23 2NE.
5. From January 2013, the Appellant lived at 18 Pikethorne, South Road, SE23 2UH London. In October 2020, the Appellant's landlord served notice, pursuant to s.21 of the Housing Act 1988. The Appellant approached the Respondent for assistance with obtaining accommodation.
6. On 28 October 2020, the Respondent accepted the prevention duty towards the Appellant, pursuant to s.195 of the Act. On 23 March 2021, the Respondent wrote to the Appellant to notify that it had terminated the prevention duty. This was because the Appellant had signed a 12-month assured shorthold tenancy for a three-bedroom property at 33A Morley Road.
7. On 27 May 2022, the Appellant again approached the Respondent for assistance with obtaining accommodation as she was facing eviction from 33A Morley Road on 21 July 2022. In a letter dated 27 May 2022², and sent by email on 30 June 2022, the Respondent accepted the relief duty towards the Appellant, pursuant to s.189B of the Act.
8. By an email sent on 30 June 2022³ at 10:38, the Respondent said,

¹ 16-35

² 78-79

³ 80-81

“As we discussed, please use this link ... to complete an affordability assessment.”

9. By an email sent on 30 June 2023⁴ at 10:38, the Respondent said,

“Your case will be referred to one of our Homelessness Prevention and Assessment officers. This officer will be your case worker. They will contact you and arrange to complete a Personal Housing Plan’.

10. By an email sent on 30 June 2023⁵ at 11:07, the Respondent said,

“Your Personal Housing Plan is now available for you to review.”

11. On 16 September 2022, the Respondent made an offer⁶ to the Appellant of accommodation at 15 Malmesbury Road.

12. On 11 October 2022, the Appellant’s solicitors sent the Respondent an email⁷, requesting a review of the suitability of 15 Malmesbury Road. In that email, the Appellant’s solicitors raised three issues, of which only the second is relevant for the purposes of this appeal: the affordability of 15 Malmesbury Road. The Appellant’s solicitors asked whether an affordability assessment had been carried out.

13. By an email dated 12 October 2022⁸ from the Respondent to the Appellant, they say,

“The request for review has been received. ...

In the meantime, as you have cited affordability ... in the request for review on behalf of Ms Ake, ...

Please also find an income and expenditure form attached. Ms Ake will also need to complete and return this form as well. We would ask that she provide monthly figures in relation to her income and expenditure. We would also ask that she provide the last three months bank statements and pay slips, along with proof of any welfare benefits she is claiming at present.”

14. The Respondent’s income and expenditure form⁹ states,

“Please state the full amount your household receives from wages, benefits, maintenance payments or any other regular monies received and also your expenditure. Please do include payments made towards any arrears or debts.”

⁴ 81-83 at 81

⁵ 83

⁶ 90

⁷ 96

⁸ 96

⁹ 110-113

15. The Respondent's income and expenditure form included a table for the Appellant to itemise her monthly expenditure under headings provided by the Respondent. I set out the table at paragraph 18 below.
16. On 12 October the reviewing officer emailed the Respondent's housing benefits team, asking for information about the Appellant's income from¹⁰:
- i) Universal Credit;
 - ii) Child Tax Credit and Working Tax Credit;
 - iii) Child Benefits;
 - iv) Housing Benefits and any other welfare benefits; and
 - v) Employment.
17. On 13 October 2022, the Respondent's housing benefits team replied, giving the following figures for the Appellant's income¹¹:
- i) Universal credit: her latest Universal Credit payment was £835.32, made up of £334.91 for the standard allowance, £534.58 for the child element and a reduction of £34.17 due to earnings of £406.13.
 - ii) Child Benefit: £35.15
 - iii) Housing Benefit award for 15 Malmesbury Road: £365.92
 - iv) Income from employment in the last three months: £498.75, £508.88, and £474.46.
18. The Appellant completed the income and expenditure form on 14 October 2022. The form includes a table headed "household expenditure: weekly/monthly (delete as applicable)"¹². I set out below the Respondent's table and the entries made by the Appellant:

Rent (gross – before housing benefit)	£365.92 per week
Water bills	£30 monthly
Electricity	£60 weekly (£260 pcm)
Travel costs (bus/train fares)	£160 monthly
Television licence	£15 monthly

¹⁰ 93

¹¹ 93

¹² 112

School meals	£5 per day (£108.34 pm)
Pocket money	£40 weekly (£173.33 pcm)
Clothing	£50 monthly
Other swimming	£30 monthly

19. On 19 October 2022, the Respondent sent the Appellant’s solicitors a letter¹³ pursuant to Regulation 5 of the Homelessness (Review Procedure Etc.) Regulations 2018.
20. On 20 October 2022, the Appellant’s solicitors emailed the income and expenditure form which the Appellant had completed on 14 October 2022 to the Respondent¹⁴.
21. On 10 February 2023, the Respondent sent the Appellant a ‘minded to’ letter¹⁵.
22. By an email dated 16 February 2023 from the Appellant’s solicitors to the Respondent, they say¹⁶,

“Her income and expenses should be updated.

Child benefit £140 per month

Universal credit £780 per month

Electricity £400 per month.”
23. The reviewing officer concluded in his decision letter, dated 27 February 2023¹⁷, that 15 Malmesbury Road was suitable for the Appellant and her family, and she was therefore not offered alternative accommodation.
24. On 20 March 2023, the Appellant filed an Appellant’s Notice, bringing an appeal under s.204 of the Act¹⁸.

The Review Decision

25. In the review decision, dated 27 February 2023, it is said¹⁹,

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

¹³ 114-115

¹⁴ 97

¹⁵ 116-132

¹⁶ 105

¹⁷ 16-25

¹⁸ 3-15

¹⁹ 24

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.

...

According to the information provided to Obtained from (sic) Lewisham Housing Benefit, your monthly wages fluctuate between £474.46 and £508.88. However, for the sake of prudence I will use the lower figure of £474.46. Child Benefit - £35.15 per week or £152.31 per month, Universal Credit – £835.32 and Housing Benefit - £1346.28.

The rent for the accommodation is £365.92 per week or £1585.65 per month and your council tax is £84.44 per month.

Monthly Household Income:

Housing Benefit - £1585.65

Child Benefit - £152.31

Employment - £474.46

Universal Credit - £835.32

Total Monthly Household Income - £3047.74

Monthly Household Costs:

Rent - £1585.65

Council Tax - £84.44

Total Monthly Household expenditure - £1670.09

Total Monthly Household Income – Total Monthly Household Costs = Residual Income $£3047.74 - £1670.09 = £1377.65$
Residual income

...

Your residual income is £508.16 greater than the Maximum Universal Credit allowance that you would be entitled to if unemployed.

I note in response to my minded to letter dated 10/02/2023 that your solicitors advised that there has been a change in your income and expenditure. They have advised that Child Benefit is now £140 per month, Universal Credit is now £780 per month,

Electricity is now £400 per month. I have conducted an objective affordability assessment with the updated figures

Monthly Household Income:

Housing Benefit - £1585.65

Child Benefit - £140

Employment - £474.46

Universal Credit - £780

Total Monthly Household Income - £2980.11

Monthly Household Costs:

Rent - £1585.65

Council Tax - £84.44

Total Monthly Household expenditure - £1670.09

Total Monthly Household Income – Total Monthly Household Costs = Residual Income $£2980.11 - £1670.09 = £1310.02$
Residual income

Maximum Universal Credit that you would be entitled to if you were unemployed - £869.49

Residual Income – Maximum UC $1310.02 - 869.49 = £440.53$

As you can see from the above, your residual income is still greater than the Maximum Universal Credit allowance that you would be entitled to if unemployed. In fact, it is £440.53.

Having conducted enquiries around affordability I am satisfied that you will be able to meet your housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to your circumstances.

...

The objective affordability assessment completed above further leaves me satisfied that from the above you will be able to meet your housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to you and your family's circumstances. The standard universal credit allowance that you and your family would be entitled to if you were unemployed is £869.49 per month.

...

Enquiries were made with TFL to confirm the cost of the travel cards that you and your family would need to travel to work and school.

...

The total cost of travel per month for you and your household is £196.30.

...

As you can see, the figure is still greater than the standard universal credit allowance you would be entitled to if you were unemployed. This leaves me further satisfied that even when taking the increase in your travel costs into account, you will be able to meet your housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials specific to you and your family's circumstances.

I have also had regard to the expenditure you disclosed in the income and expenditure forms you submitted on review. In relation to your expenditure, you stated that you spend:

£1585.65 per month on rent

£70 a month on mobile phone

£28 a month on land line

£700 per month on Food and Toiletries

£108.34 a month on school meals

£173.33 per month on pocket money

£160 per month in Travel costs

£400 per month on electricity

£30 per month on water

...

I have looked at your expenditure on food and according to evidence base for cost of living and guidance for caseworkers from the Association of Housing Advice Services an expenditure of £650 a month on food is excessive and I am of the view that you can save at least £200 a month on this expenditure.

...

As advised above I do not regard pocket money as essential expenditure, when considering the Homelessness code of guidance and the judgement in *Samuels v Birmingham*;

especially for someone who is implying on review that they are facing financial hardship, and therefore I am of the view that it would not be unreasonable to make save further savings on this expenditure of £100-£120 a month.”

Legal and policy framework

26. Article 2 of the Homelessness (Suitability of Accommodation) Order 1996²⁰ (the 1996 Order) identifies matters which a Housing Authority must take into account in determining whether it would have been reasonable for a person to continue to occupy accommodation. These include:

“... 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; ...

...

(b) the costs in respect of the accommodation, including, but not limited to, (i) payments of, or by way of, rent; ...

...

(d) that person's other reasonable living expenses.”

27. Section 182 of the Act provides that in the exercise of its functions relating to homelessness a Housing Authority “must have regard” to such guidance as may from time to time be given by the Secretary of State. Such guidance has been set out in a Homelessness Code of Guidance for Local Authorities²¹.

28. In *Samuels v Birmingham City Council* [2019] P.T.S.R. 1229, Lord Carnworth JSC said²²,

“34. I would start from the terms of the 1996 Order itself. On the one side it requires the authority to take into account all sources of income, including all social security benefits. I agree with Mr Manning that there is nothing in the Order which requires or justifies the exclusion of non-housing benefits of any kind. On the other side it requires a comparison with the applicant’s ‘reasonable living expenses’. Assessment of what is reasonable requires an objective assessment; it cannot depend simply on the subjective view of the case officer. ...

...

40. The government’s consultation response dated February 2018 recorded a significant number of requests from ‘all

²⁰ Authorities bundle, 74A-79 at 75-76

²¹ Authorities bundle, 81-105

²² Authorities bundle, 35-37

stakeholder groups’ for further guidance on assessing the affordability of accommodation, and that it had been decided to include ‘additional information on assessing affordability for a person based on Universal Credit standard allowances in chapter 17’. The revised paragraph of the 2018 Code as issued reads:

‘17.46 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. ...’
(Emphasis added)

It will be noted that this is no longer a recommendation but merely something which ‘may’ be used as guidance; and that the suggested comparison is with Universal Credit ‘standard allowances’. The court did not hear argument on whether this is limited to a ‘standard allowance’ payable to adults or whether it includes amounts payable in respect of children.

41. It is not clear from the consultation response whether the new form of wording followed any discussion of the issues raised in this appeal or highlighted in the intervener’s evidence. That evidence shows what appears to be an unfortunate lack of consistency among housing authorities in the treatment of ‘affordability’, and a shortage of reliable objective guidance on reasonable levels of living expenditure. It is to be hoped that, in the light of this judgment, the problem will be drawn to the attention of the relevant government department, so that steps can be taken to address it and to give clearer guidance to authorities undertaking this very difficult task.”

29. The 2022 Guidance issued by the Association of Housing Advice Services (the AHAS Guidance) provides²³,

“This guidance was originally developed for the introduction of the household benefit cap. Now that there is a considerable gap between actual private rents in the market and the amounts UC/HB/LHA pay toward housing costs, many lower income households face shortfalls on their rent.

...

This guidance aims to provide a method to identify reasonable levels of expenditure for the necessities of family life.

...

Step 1. Food and other household shopping

...

You can use Column B below for an average figure for Food & Household shopping over a six month period. Use the figure for the month when you are doing the Affordability assessment, and this assumes food inflation continues at 15%. (e.g., Doing an assessment in February to cover 6 months use the figure of £129 per person per month).

...

Step 3. Phone/broadband/TV. (This was Step 4 in previous versions)

£25 per month for the household for broadband and phone line or use the actual monthly charge. There are social tariff broadband deals for those on benefits from Vodafone for £12 ...

Add £14 per month for TV licence for the household (licence is £159 per annum)

There are cheaper SIM options than this to get 5GB data and unlimited calls and texts such as Lebara/Lyca/Smarty deals under £1 a month for 3 or 6 months. It is a monthly contract so could then swap to a new deal. It is easy to take existing phone number to new provider. (You need to decide at what age a child needs a mobile. Maybe from age 10)

...

If the client is still on a fixed contract, then the actual contract cost needs to be used until it ends. It is not worth ending the contract early as the remaining period still needs to be paid.

...

Step 5. Travel

...

Allow £37.50 per person per month for adults and children 17 and over not in full time education. If actual information is available for travel costs for the family, this can be used instead.

...

Step 7. Discretionary spend

To allow for entertainment, smoking, drinking, confectionery, pets, pocket money, presents etc.

Add £48 per person per month

Annual Halifax Pocket Money Survey has risen and shows parents give an average of £7.55 per week per child. This has been factored in and discretionary spend has been uprated by 10%.”

30. In *Baptie v Kingston-upon-Thames* [2023] 2 All ER²⁴, Warby LJ (with the agreement of Asplin LJ and Peter Jackson LJ) gave the following guidance:

“The AHAS guidance

17. AHAS is a non-statutory body which conducts and publishes research to assist advisers and decision-makers in the sphere of housing, in a document entitled ‘Evidence base for cost of living and guidance for caseworkers’ (‘the AHAS guidance’).

...

21. At the centre of the 2019 guidance was a step-by-step ‘Methodology’ for ‘Calculating *minimum family expenditure*’, also referred to in the text as ‘the family’s *reasonable expenditure*’. The guidance addressed nine categories of household expenditure, identifying recommended allowances for each. These allowances were calculated weekly to match the way legacy benefits are calculated. Appendices provided supporting detail.

...

47. An LHA must therefore determine whether the rent is one that the applicant could afford. This depends on the applicant’s available income and her ‘reasonable’ living expenses. Speaking generally, various different levels of expense may fairly be described as ‘reasonable’. It depends on the yardstick that is applied. One possible approach would be to start with the actual costs incurred by the applicant and ask whether it would be unreasonable for a person in the applicant’s position to incur a particular expense or to spend as much as she did on the item in question. One might answer that question by reference to a range of reasonable prices for the goods or services in question, or by reference to the average cost of acquiring an asset or service. But the 1996 Order and the 2018 Code in combination prescribe a different approach. The 2018 Code identifies the task as ‘assessing the income that an applicant will require to meet

²⁴ Added to the authorities bundle at the hearing as 106-124

essential needs aside from housing costs ...’ (emphasis added). Another way of putting it that reflects Patel and the other authorities cited in that decision is that in the context of an affordability assessment the ‘reasonable living costs’ of an individual or household are the sum they reasonably need to provide the necessities of life to a minimum standard.

The AHAS guidance

48. The stated purposes and aims of the AHAS guidance are consistent with this way of putting the matter. It follows that in my judgment the Judge was wrong at [38] to treat the AHAS guidance as legally irrelevant on the footing that the statutory provisions call for an assessment of reasonableness by reference to ‘the average cost of food and other items’ and not ‘reasonable minimum costs’. In deciding what an individual applicant reasonably requires to meet essential needs, evidence of the ‘reasonable minimum cost’ of meeting such needs is precisely the kind of evidence to which a reviewing officer can properly have regard.

49. The Judge was also mistaken when he said at [40] that the question was ‘whether the appellant’s living expenses were reasonable’. The question was what she reasonably required to meet the essential needs of the family. And the Judge was wrong to say at [41] that the test for the cost of a mobile phone was ‘not whether it was a need but whether it was a reasonable expense’. In fairness to the Judge, it may be pointed out that the decision in Patel was handed down two days after his own decision. The fact remains, however, that the Judge’s conclusion that the AHAS guidance was irrelevant followed from a mistaken view of what the law required.”

General guidance as to statutory housing appeals

31. In *Holmes-Moorhouse v Richmond-upon-Thames LBC* [2009] UKHL 7²⁵, Lord Neuberger gave the following general guidance as to how Circuit Judges should approach statutory housing appeals:

“46. The rights granted by Part VII of the 1996 Act to those claiming to be homeless or threatened with homelessness are based on humanitarian considerations, and this underlines the fact that any challenge to a review decision should be carefully considered by the County Court to whom such challenges are directed. Given that the challenge in the County Court is treated as a first appeal, the responsibility on the Judge considering the challenge is heavy, and, if he or she is satisfied that there is an error in the reasoning which undermines the basis upon which

²⁵ Authorities bundle, 128-139 at 138-139

the decision was arrived at, then the decision should obviously be set aside.

47. However, 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.

...

49. In my view, it is therefore very important that, while Circuit Judges should be vigilant in ensuring that no applicant is wrongly deprived of benefits under Part VII of the 1996 Act because of any error on the part of the reviewing officer, it is equally important that an error which does not, on a fair analysis, undermine the basis of the decision, is not accepted as a reason for overturning the decision.

50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical 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."

Ground of Appeal

32. There is one ground of appeal²⁶:

"The Review Decision took an unlawful and/or unreasonable approach to the assessment of the affordability of the Bow Flat [15 Malmesbury Road]."

33. This ground has two facets: the benefit cap and the evaluation of the Appellant's monthly expenditure, which I will consider in turn.

Benefits cap

34. In the order of HHJ Bloom of 27 September 2023 it is recorded that the Appellant would not be pursuing the benefit cap ground and the parties did not address me on this point during the hearing.

²⁶ 15

Assessment of the Appellant's monthly expenses - Appellant's submissions

35. Mr Grütters submits that the reviewing officer has used the Affordability Guidance from the Association of Housing Advice Services selectively during the review. He submits at paragraph 53 of his skeleton argument that the reviewing officer should have used the Affordability Guidance consistently, and if he had done so, the figures would have been as follows:

i)	Food and other household expenditure of 3 x £129.00	£387.00
ii)	Electricity bill (the Guidance says to use actual amount)	£400.00
iii)	Water bill (Guidance says "the current average annual bill is £417" ²⁷)	£34.75
iv)	TV Licence	£14.00
v)	Mobile phone bill (the Guidance says that if a person is on a fixed contract, then the actual amount must be used)	£70.00
vi)	Landline (and potentially broadband) (Guidance says to use the actual monthly charge)	£28.00
vii)	Clothing (Guidance says £18.50 per person)	£55.50
viii)	Travel costs (Guidance says to use actual information)	£196.30
ix)	Discretionary spend (Guidance says £48.00 per person)	£144.00
x)	Council tax	£84.44
xi)	School meals	£108.34
xii)	Swimming	<u>£30.00</u>
		£1,552.33

36. Based upon the Appellant's income figures before the reviewing officer of £1,462.09, this leaves a shortfall of £90.24 (£1,552.33 - £1,462.09).

37. Mr Grütters further submits that when the reviewing officer summarised what the Appellant disclosed in the income and expenditure form²⁸ as her monthly expenditure, he failed to take into account items of the Appellant's monthly expenses in the review decision²⁹:

- i) £15 on TV Licence;
- ii) £50 on clothing;

²⁷ 183

²⁸ 112

²⁹ 28

- iii) £30 on swimming.
38. Further, Mr Grütters says that despite the fact that the Respondent recognised that the Appellant was having difficulty managing her finances and had had at least four years of deductions for her Housing Benefit as a result of an overpayment in the past, this was not taken into account by the reviewing officer.
39. Mr Grütters submits that the central finding in the Supreme Court decision in *Samuels* (supra) was that what are ‘reasonable living expenses’ required an objective assessment and could not depend on the subjective view of the case officer. Mr Grütters says that the reviewing officer fell into the problem identified in *Samuels* and which the Guidance was supposed to avoid: reliance on the subjective views of the review officer about what are (and are not) reasonable living expenses, rather than an objective assessment.
40. Finally, Mr Grütters submits that even if one assumed that all of the reviewing officer’s reductions of the Appellant’s expenditure were correct, her expenditure would still exceed her income.

i)	Food	£450.00
ii)	Water bills	£30.00
iii)	Electricity	£400.00
iv)	Landline	£28.00
v)	Mobile phones	£50.00
vi)	Travel costs	£196.30
vii)	Television licence	£15.00
viii)	School meals	£108.34
ix)	Pocket money	£93.33
x)	Clothing	£50.00
xi)	Swimming	£30.00
xii)	Council tax	<u>£84.44</u>

£1,585.41

41. The Appellant’s income is £1,462.09, and this therefore leaves a shortfall of £123.32. Mr Grütters concludes that 15 Malmesbury Road was not affordable to the Appellant and therefore not suitable. He submits that the contrary conclusion in the Review Decision was both perverse and, in any event, reached procedurally improperly.

Assessment of the Appellant’s monthly expenses - Respondent’s submissions

42. Mr McDermott submits in the Respondent’s perfected skeleton argument,

“8. The reviewing officer used 2 methods of assessing A’s reasonable living expenses [25]-[29]; firstly he compared her monthly residual income with her maximum universal credit entitlement and found that it exceeded it by £244 per month *after* A’s additional travel costs were factored in. He also, by way of cross reference, looked at A’s reasonable expenditure in the light of the information she supplied, which he then compared to the Guidance on reasonable living expenses in London and the South East published by the Association of Housing Advice Services (AHAS) [282]. The use of this guidance in carrying out affordability assessments was upheld by the Court of Appeal in *Baptie v Kingston Upon Thames RLBC* [2022] EWCA Civ 888; [2022] PTSR 1665.

9. A’s complaint appears to be that the RO should have either used A’s own figures without deduction or used the figures set out in the AHSA guidance wholesale, even if the actual figures supplied by A for individual items of expenditure were lower. A has included items of expenditure in the calculations set out in her skeleton argument which do not appear to be applicable to her given her specific circumstances. In particular she has included discretionary spend of £144 for the whole family, despite the fact that A’s youngest child is 7; £35 per month for replacement of white goods despite the fact that A is in temporary accommodation, and £84 council tax despite the fact that A does not assert that she is liable to pay any council tax (and presumably qualifies for full Council Tax Support). It is on this basis that A asserts that there was a shortfall. No authority is cited by A in support of this proposition.

10. The RO accepted A’s figures save for the following adjustments;

(i) He considered that the sum spent on food and toiletries could be reduced to £500 [28]. The sum suggested by the AHSA would have been £374.

(ii) He considered that the sum spent on mobile phones was excessive and could be reduced by £10-£20 by reverting to pay as you go [28].

(iii) He did not consider that sum spent by A on pocket money (£173.33 per month) was reasonable and suggested that a sum of £50 to £70 would be a more reasonable sum [28]. For comparison the AHSA guidance suggests £7.55 per child per week.

11. In short A’s calculated ‘shortfall’ does not exist and is based on the erroneous premises that the RO should either have accepted A’s figures for her monthly expenditure as reasonable in their entirety or disregarded them entirely and instead relied

wholesale on the AHSA guidance, and included items of expenditure which A had not actually asserted were relevant to her.”

Findings as to ground 2

43. The reviewing officer made the following findings in his decision³⁰:

- i) After considering the fact that the Appellant’s monthly residual income exceeded her maximum universal credit entitlement, the reviewing officer correctly said that the Respondent,

“... should ensure that the wishes, needs and circumstances of the applicant and their household are taken into account.

This means that in order to complete the objective assessment of affordability within the meaning of the Homelessness Suitability of Accommodation) Order 1996 (Order) and Samuels v Birmingham City Council and in accordance with the Homelessness code of Guidance 2018, we need to consider the income from employment and /or welfare benefits that client is receiving and then deduct the total housing costs which would be rent and council tax.”

- ii) Electricity³¹

“... is now £400 per month. I have conducted an objective affordability assessment with the updated figures.”

- iii) Travel³²,

“The total cost of travel per month for you and your household is £196.30.”

- iv) The reviewing officer also said³³,

“I have also had regard to the expenditure you disclosed in the income and expenditure forms you submitted on review. In relation to your expenditure, you stated that you spend:

£1585.65 per month on rent

£70 a month on mobile phone

£28 a month on land line

£700 per month on Food and Toiletries

³⁰ 24-25

³¹ 26

³² 27

³³ 28

£108.34 a month on school meals

£173.33 per month on pocket money

£160 per month in Travel costs

£400 per month on electricity

£30 per month on water”

v) The reviewing officer also said³⁴,

“I have looked at your expenditure on food and according to evidence base for cost of living and guidance for caseworkers from the Association of Housing Advice Services an expenditure of £650 a month on food is excessive and I am of the view that you can save at least £200 a month on this expenditure.

I have also looked at your expenditure on mobile phones and according to evidence base for cost of living and guidance for caseworkers from the Association of Housing Advice Services an expenditure of using pay as you go mobile phones instead of purchasing mobile phones on a contract plan can also save money. In light of the above, I am of the opinion that £70 a month on mobile phones is excessive and you can save at least £10-20 a month on mobile phone expenses.”

vi) The reviewing officer also said³⁵,

“As advised above I do not regard pocket money as essential expenditure, when considering the Homelessness code of guidance and the judgement in *Samuels v Birmingham*; especially for someone who is implying on review that they are facing financial hardship, and therefore I am of the view that it would not be unreasonable to make save further savings on this expenditure of £100-£120 a month.”

44. I reject Mr Grütters’ submission that the reviewing officer could not adopt some of the figures in the Affordability Guidance while rejecting others. The Guidance was, as its name states, guidance and not prescriptive.

45. The reviewing officer said that he had had regard to the expenditure disclosed by the Appellant in the income and expenditure forms³⁶ but without explanation failed to take into account³⁷:

i) TV licence, £15 monthly

³⁴ 28

³⁵ 29

³⁶ 96

³⁷ 112

- ii) Clothing, £50 monthly;
 - iii) Other: Swimming, £30 monthly.
46. TV licence, clothing and swimming are plainly expenses which should be considered because they are included as categories in the Respondent's income and expenditure form. Moreover, clothing is, unsurprisingly, described in the Homelessness Code of Guidance at paragraph 17.46 as a "basic essential". If the reviewing officer was going to disregard these items, he would have needed to give a reason for disallowing each of these three items. However, he gives no reason and does not say that he has considered these items.
47. Mr McDermott referred to the guidance at paragraph 43 of *Baptie* (see paragraph 36 above), which provides, "The role of the court is supervisory only. It should not be drawn into conducting any form of merits review". However, in his submissions, he wrongly sought to carry out a merits review:
- i) In his perfected skeleton argument, Mr McDermott said,

"9. £84 Council tax despite the fact that A does not assert that she is liable to pay any council tax (and presumably qualifies for full Council Tax Support)."

In fairness to Mr McDermott, in his oral submissions, he conceded that he could not go behind the reviewing officer's finding in the review decision³⁸ that Council Tax of £84 was payable by the Appellant.
 - ii) In his oral submissions, he sought to argue that the Appellant could reduce her mobile bill by obtaining a sim option and using pay as you go. However, I find the reviewing officer found in terms that the mobile phone charge of £70 could be reduced by £10 to £20 a month. I find that it was not open to Mr McDermott to seek to carry out a merits review of the amount allowed by the reviewing officer.
 - iii) The reviewing officer found that the Appellant's expenditure on pocket money of £173.33 could be reduced £70-£80 per month³⁹, i.e. a reduction to approximately £100. Mr McDermott sought to argue that this figure could be reduced much more substantially to £50-£70. Again, I find that it was not open to Mr McDermott to seek to carry out a merits review of the amount allowed by the reviewing officer.
48. However, even relying on the Respondent's assessments of the Appellant's expenditure and allowing the items for TV licence, clothing and swimming, the Appellant's monthly expenditure totals £1,585.41 (as set out at paragraph 45 above). This is greater than the Appellant's monthly income of £1,462.09⁴⁰. There is a shortfall of £123.32, which renders the accommodation at 15 Malmesbury Road unaffordable, and as a consequence, unsuitable.

³⁸ 26

³⁹ 28-29

⁴⁰ Wages £474.46, child benefit £152.31 and universal credit of £835.32.

49. I conclude that there are errors in the reviewing officer's assessment of the affordability of 15 Malmesbury Road which, to use Lord Neuberger's words in *Holmes-Moorehouse* (see paragraph 32 above), "undermine the basis of the decision".

Quashing or varying decision

50. S.204(3) of the Act provides⁴¹,

"On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit."

51. I find that the appropriate remedy is to quash the review decision of 27 February 2023, not least because by reason of the passage of time, a new assessment of the facts must be undertaken. In carrying out the affordability assessment, the reviewing officer should consider the Appellant's debt repayment costs.

⁴¹ 24