

Judicial Communications Office

Tuesday 8 November 2011

COURT RULES THAT ECHR APPLIES TO HOUSING EXECUTIVE'S HOUSING SELECTION SCHEME

Summary of Judgment

Mr Justice Treacy, sitting in the High Court today, ruled that the rights enshrined in Article 8 of the European Convention on Human Rights should be applied by the Northern Ireland Housing Executive when a person makes an application for public housing under its Housing Selection Scheme.

The application for judicial review was brought by a father (referred to in court as "JM") and his 11 year old son ("WM"). The applicants claimed that they were regularly and persistently intimidated by neighbours and eventually forced to leave their home. Initially the NI Housing Executive ("NIHE") considered that JM was not in "priority need" and therefore not entitled to be provided with housing as he became "homeless intentionally" (ie he voluntarily left his former home which was available for him to continue to occupy). JM appealed this decision and NIHE overturned its decision. JM and WM were then housed by NIHE in a different area of Belfast.

Although the dispute between the applicants and the NIHE was resolved as a result of the NIHE's review decision, the court granted the applicants leave to bring the judicial review on the grounds that the application raised important welfare and public interest issues as to how children are treated where a parent is deemed to be "intentionally homeless" and falls within the scope of the NIHE's Housing Selection Scheme. The NIHE's Housing Selection Scheme allows for points to be awarded to persons who have "priority need" for accommodation. In principle, the scheme allows for points to be awarded not only in respect of an applicant but also in respect of a member of the applicant's household.

In this case, JM and WM challenged whether the Scheme as applied actually recognised and advanced the rights of JM, WM as a member of JM's household, and both applicant's rights as a family unit, by awarding points for both parent and child. Their argument was centred on whether the Scheme addressed the interests of a child in such a way as to be compliant with Article 8 of the European Convention on Human Rights (right to respect of privacy and family life). The applicants claimed that, in awarding points under any scheme, the NIHE is bound to allow for points to be awarded in respect of a child who is unintentionally homeless and who is at risk of separation from his parent and at risk of being placed in care if

Judicial Communications Office

accommodation is not provided. They submitted that there was no evidence that any consideration was given to WM in this case when points were being awarded.

Mr Justice Treacy rejected the NIHE's argument that its consideration of a housing application does not fall within Article 8 of the ECHR. He considered there was nothing objectionable in a child's Article 8 rights being recognised in a manner that also recognises his dependent status and the natural limitations on his legal and practical capacities. The judge noted that part of the importance of Article 8 is that it recognises the rights of children to be able to be dependent on their parents. He concluded that there is nothing inherently objectionable in a housing selection scheme which allocates points to a family viewed as one collective unit.

The judge then went on to consider whether the NIHE's Housing Selection Scheme recognised the individual and collective rights of the family unit by awarding points for both the parent and the child. He said it was not clear whether JM alone would have been able to establish that he had a priority need, but when viewed as part of a family unit he was accorded this status. Mr Justice Treacy said that, in his view, this established that the existence, needs and rights of the dependent child were taken into account appropriately and correctly to establish a priority need for accommodation that would meet the individual and collective needs and rights of the parties including their Article 8 rights to respect for family life.

Mr Justice Treacy noted that this case raised an interesting point as to how collective family rights should be recognised in a housing selection scheme. He said that it is acceptable for dependent children's housing needs to be met via provision made to the responsible adult. This form of provision recognises the family relationship and the dependency of the child. It is also important that where a responsible family member takes a decision in the interests of another family member that decision should not be inappropriately individualised in a way that could operate against the collective interest of the family unit. The judge gave an example of parents taking a decision to move the family because one of their four children was being bullied. He said that it would be wrong to apply the intentionally homeless test to the parents' action without taking account of the affected child's situation and of the parents' legitimate concerns and legal responsibilities towards that child.

Mr Justice Treacy said that in many cases inappropriate individualisation would be unfair and unreasonable because it would not give sufficient weight to the connections between parent and child and to the dependence of one on the other:

“Just as it is right to take account of these factors by making housing provision for dependent children via their parents, so it is right to recognise and give weight to parental decisions made for the benefit of a dependent child which might attract penalties had they been made for any other reason. Any lawful housing scheme will recognise the

Judicial Communications Office

responsibilities parents owe to their children in all stages of the application of the scheme.”

In dealing with the facts of this individual case, Mr Justice Treacy said that the adult applicant decided to leave the family home in order to avoid intimidation. He and his son were housed in emergency accommodation and eventually rehoused in a different area. The judge said the housing duty owed to them was originally considered not to amount to a full housing duty but this was later changed as a result of an internal review of the case. A full housing duty was then recognised to exist and the applicants were eventually rehoused in appropriate accommodation. The judge said that throughout the application process father and son were accommodated together.

Mr Justice Treacy held that:

- Article 8 ECHR does apply in the administration of housing selection schemes; and
- The applicants have not established that their Article 8 rights were violated on the facts of the present case.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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