| | |
|---|---|
| **Neutral Citation No: [2023] NICty 2** | *Ref:* **2023NICty2** |
| | *ICOS:* |
| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* **21/09/2023** |

**2022/044395**

**IN THE COUNTY COURT FOR NORTHERN IRELAND**
**BY THE DEPUTY COUNTY COURT JUDGE**

---

**AND IN THE MATTER OF A STATUTORY APPEAL PURSUANT TO THE HOUSING (NORTHERN IRELAND) ORDER 1988**

---

**BETWEEN:**

**SHIMA ALAMIN**

**Appellant**

**-and-**

**NORTHERN IRELAND HOUSING EXECUTIVE**

**Respondent**

---

**Mr McKibben BL (instructed by Housing Rights) for the Appellant**
**Mr Sands BL (instructed by NIHE) for the Respondent**

---

**HER HONOUR DEPUTY JUDGE MURRAY**

*Introduction*

[1] This is a statutory appeal under the Housing (Northern Ireland) Order 1988 ("the Order") whereby the appellant appeals against a decision of the NIHE to refuse to accord her full homelessness status on the grounds that she had become homeless intentionally.

*The evidence*

[2] The court had before it the appellant's affidavit; affidavits from the respondent's decision-makers in this case, namely, Ms Murphy and Mr Hannaway, who were a Housing Advisor and Deputy Belfast Regional Manager respectively. The parties lodged an agreed bundle of documents and an agreed bundle of authorities. During the hearing, both counsel requested that the court consider two short videos taken by the applicant but made no specific submissions on their

contents. I declined the appellant's request to view a third video as it had not been before the decision-makers.

[3] The appellant was in attendance throughout the hearing accompanied by an interpreter who had been provided under the Legal Aid scheme.

[4] Both sides agreed that no oral evidence would be required and relied solely on the affidavits of their respective witnesses. Both sides provided skeleton arguments and agreed bundles of documents and of authorities in advance of the hearing. Both counsel also supplemented their arguments with oral submissions in the hearing.

[5] Approximately halfway through the hearing the appellant's three children (who are approximately eight, three and two years old) were briefly brought into the court at the request of the appellant but the court declined at that point to hear from her eldest son on the basis that his evidence would not be relevant to the case and this would also not have been appropriate given his age.

[6] The court has considered the evidence set out above and is grateful for the very helpful skeleton arguments and oral submissions of both counsel.

***Relevant background***

[7] The property in issue is a two-bedroom terraced house in a street in the Ormeau Road area in which the appellant and her family resided from early 2015 until November 2021.

[8] The appellant was a tenant of Choice Housing Association ("Choice"). From approximately 2021 the appellant made complaints to Choice which related to alleged intimidation; racist behaviour and comments by neighbours and also by people in the wider local area.

[9] In particular, the appellant alleged as follows:

(i) That one of her next-door neighbours (who had lived beside her since 2016) had intruded into her home in 2021 and that this involved seeing her without her hijab. The appellant's description of this incident was disputed by the PSNI report from PSNI officers who had actually witnessed this incident.

(ii) That racist incidents were suffered by her family in the local area.

(iii) That she believed that there was alleged drug dealing in the street and next door and that there was regular attendance by the PSNI in the street.

(iv) That adverse comments were made by her other next-door neighbour about her family being noisy.

(v) That the incidents and behaviour adversely affected her eldest child's well-being in certain specified respects and also adversely affected her mental health. A GP report dated 8 December 2021 was submitted in relation to the appellant's health.

[10] The appellant asked to be rehoused in a bigger home in the same area albeit outside that street. On 12 December 2021 the appellant terminated her tenancy (despite being warned about the likely consequences if she did so) and was then housed with her family in temporary accommodation. At that point she was designated homeless by the respondent but intentionally so. She now resides in a flat in temporary hostel accommodation with her family whilst she and her family move up the priority list in accordance with the points system operated by the NIHE across the public housing sector. The fact that she has been deemed intentionally homeless means that the appellant is lower on that priority list than she wishes to be, and it will therefore take longer for her to be rehoused in her area of choice.

[11] The decisions germane to this appeal were firstly, a decision on homelessness made by Ms Murphy on 2 March 2022 and, secondly, a review decision made by Mr Hannaway on 9 May 2022.

[12] The respondent operates a points system for the allocation of housing in the public sector. It also administers the scheme for designating individuals as homeless by reference to the statutory definition in the Order and to an NIHE guidance document. The content of the guidance document was in the event of no assistance to the court as it replicated the statutory definition of intentionality.

[13] The appellant has been accorded points on the points system for, amongst other things, overcrowding and for antisocial behaviour which appears to relate to issues she has had with her neighbours.

***The nature of this appeal***

[14] The appeal before this court is under Article 11C of the Order which provides that: the hearing is not a rehearing; the appeal may only be brought on a point of law; and is like a judicial review. (*Ranza v NIHE* [2015] NIQB 13)

[15] The remedies available to an appellant are set out in the Order namely that the decision of the respondent can be confirmed, quashed, or varied. (Article 11C(4) of the Order).

[16] It is important to emphasise that it is not the task of this court to conduct its own assessment of the evidence before the decision-maker in order to reach its own decision; rather it is to review the decision using the principles applied by the High Court in an application for judicial review. (Article 11D(4) of the Order).

[17] Mr Sands' submission was that the appeal is in relation to the decision upon review by the NIHE namely the final decision by Mr Hannaway. The original decision by Ms Murphy (which was the subject of Mr Hannaway's review) was only relevant by way of background as it is referred to in Mr Hannaway's decision. In contrast, Mr McKibben stated that the appeal is in relation to Mr Hannaway's decision primarily but also in relation to Ms Murphy's decision.

[18] There was agreement by both counsel however that the task for the decision-maker on review (ie Mr Hannaway) was to look at the matter afresh and to take his own decision de novo.

[19] I find that the decision under appeal is that of Mr Hannaway who clearly reached his own decision having considered the evidence gathered at first instance by Ms Murphy and having gathered further evidence himself.

[20] The sole remedy sought in this appeal was that the court quash the decision to deny the appellant full homelessness status.

***The grounds of appeal***

[21] The grounds of appeal are set out in Mr McKibben's skeleton argument, and they narrowed on the morning of hearing. In particular, the appellant abandoned reliance on any argument under Article 8 of the Human Rights Act 1998 and for this reason the issue of proportionality was not a relevant consideration for the court.

[22] It was common case that the appellant terminated her own tenancy and did so deliberately. The focus of this appeal was therefore on one element of the homelessness test namely whether she terminated her tenancy intentionally as it would have been reasonable for her to continue to occupy accommodation. (Article 6(1) of the Order).

[23] The grounds of appeal may be summarised as follows:

(i) That it was unreasonable and irrational for the decision-maker to conclude that it would have been reasonable for the appellant to continue to occupy the property in issue. It was agreed between the parties that the test for reasonableness in relation to the decision is the Wednesbury test namely, whether the decision under review is a decision that no reasonable person acting reasonably would have come to.

(ii) That the decision-maker ignored or gave insufficient weight to the appellant's particular circumstances whereby she was a particularly vulnerable person. It was common case that the test of reasonableness in Article 6 of the Order has both an objective and subjective element and that for this reason the circumstances of the appellant were relevant to the decision-maker's consideration.

(iii) The particular vulnerabilities relied upon by the appellant were related to her gender, religion and race. The appellant is from Sudan having come to Northern Ireland in approximately 2014 to escape persecution; is a female of the Muslim faith and also has three young children.

(iv) The key aspects of the appellant's particular circumstances relied upon were that she and her family had suffered racist incidents; and in particular had had difficulties with the neighbours living immediately adjacent to her property which included a distressing intrusion incident, and the need for the attendance of the police on more than one occasion.

(v) That the house was no longer big enough for the family and that the appellant was: "effectively homeless from the point at which her home no longer met her family's needs/the point it began to have a negative impact on her or her family's health."

***The legal framework***

[24] Article 6 of the Order provides where relevant as follows:

> "**Becoming homeless intentionally**
>
> 6.—(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation, whether in Northern Ireland or elsewhere, which is available for his occupation and which it would have been reasonable for him to continue to occupy.
>
> …
>
> (4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in Northern Ireland."

[25] The right of appeal to this court is set out at article11C of the Order.

[26] The parties provided a bundle of authorities comprising 12 cases all of which were considered save those related to the Human Rights point which was no longer being pursued.

[27] The principal points relevant to this case, drawn from the authorities are as follows.

(i) The review of the matter by the decision-maker when deciding reasonableness must be considered not only on an objective but on a subjective basis. (*R v London Borough of Brent ex parte McManus* [1993] 25 HLR).

(ii) The respondent must ensure that subjective reasonableness has been assessed by considering the particular circumstances of the appellant. (*R (On the application of Ibrahim) v Westminster City Council* [2021] EWHC 2016*).*

(iii) Accommodation must be suitable to the person to whom the duty is owed. (*R v London Borough of Brent ex parte Omar* [1991] 23 HLR).

(iv) In *Poshteh v Kensington and Chelsea Royal LBC* [2017] UKSC 36, the Supreme Court outlined the proper approach of a court of supervisory jurisdiction to decisions of housing officers citing with approval the following comments of the House of Lords in 2009 in Holmes-Moorhouse. The court finds that the following comments have particular resonance in Mrs Alamin's case:

> "In my view, the appeal on this issue well illustrates the relevance of Lord Neuberger's warning in Holmes Moorhouse … against over zealous linguistic analysis. This is not to diminish the importance of the responsibility given to housing authorities and their officers …
>
> The length and detail of the decision letter shows that the writer was fully aware of this responsibility. Viewed as a whole it reads as a conscientious attempt by a hard-pressed housing officer to cover every conceivable issue raised in the case. He was doing so, as he said, against the background of serious shortage of housing and overwhelming demand from other applicants, many no doubt equally deserving." (para 39).

(v) The *Wednesbury* test for unreasonableness applies also to the issue of whether or not further enquiries should have been made by the decision-maker. (*Plantagenet Alliance ltd* [2014] EWHC 1662)

***Consideration***

[28] Both sides referred to the judicial review decision of *Ibrahim* in relation to the issue of subjective reasonableness. The appellant relied particularly heavily on *Ibrahim*, as that case involved a vulnerable Muslim woman and an intrusion by a neighbour.

[29] In *Ibrahim* a neighbour had broken into her house and intruded when she was naked in the bathroom. This resulted in his arrest and led immediately to the appellant fleeing the house to another city. The appellant had submitted psychiatric evidence in relation to her medical conditions which included PTSD due to her having been raped in her country of origin. The medical report provided information on the link between her medical conditions and her decision to flee the house and city in reaction to the intrusion incident and this bore directly on the intentionality assessment. The High Court held that the psychiatric report should have been considered by the decision-maker dealing with her homelessness application but that the medical evidence was wrongly not taken into account at all.

[30] The situation in *Ibrahim* is entirely different to the situation in the appeal before this court. In *Ibrahim* the nature of the adverse incidents which caused the appellant's homelessness were of a more serious character and were more clear-cut than those in issue in this case. The nature and seriousness of the intrusion incident in *Ibrahim* explained her reaction when her circumstances and the psychiatric evidence were considered. The psychiatric evidence unequivocally connected her act of termination of the tenancy to her serious psychiatric condition. This evidence was therefore directly relevant to the assessment of whether it would have been reasonable for her to continue to reside in the house.

[31] In relation to the appeal before this court, a GP report was before the decision-makers which stated where relevant as follows:

> "I believe Shima and her family would benefit from being transferred to alternative accommodation. Their current housing situation is making the family feel unsafe, she describes harassment from a neighbour and this is affecting her mental health and that of her children.
> …
> She has started on medication to help with her mood and anxiety surrounding this.
> …
> Your help with moving this family to somewhere more suitable for their needs would be very much appreciated."

[32] This evidence was considered and weighed up appropriately by the decision-maker. The court rejects the arguments for the appellant that there was a duty on the respondent to seek further medical evidence from the GP in light of reference to her mental state in the GP report. This is so particularly in circumstances where the appellant was at the time of the review represented. It was not unreasonable for Mr Hannaway to decide not to seek out further medical evidence.

[33] One of Mr McKibben's submissions for the appellant was that, the fact that she had been warned that if she terminated her tenancy she was at risk of not being

deemed homeless yet went ahead anyway, is supportive of the seriousness of the issues with which she was dealing. That is no more than one factor to be weighed in the balance by the decision-maker.

[34] I reject the submission that the appellant should have been deemed homeless once the family outgrew the house causing adverse effects on the appellant and her family. The information in this regard was no more than a factor to be weighed in the balance by the decision-makers in this case.

[35] Ms Murphy considered all the evidence put forward by the appellant which largely comprised documents from third parties setting out the appellant's concerns as recounted by her to them, and also setting out her complaints and her account of the effect on her and on her eldest son in particular. Ms Murphy also considered evidence from the PSNI and other agencies in relation to the prevalence of incidents and racist incidents in the area.

[36] Mr Hannaway, upon review, weighed up all of the material gathered by Ms Murphy and, in particular, considered the PSNI report of the numerous interactions between the police and the appellant. He noted that this led the police to remind the appellant about her responsibility not to make false or misleading reports. Significantly, he noted that the PSNI disputed key details of the intrusion incident upon which the appellant particularly relied. In his decision Mr Hannaway fairly summarises the PSNI report on the intrusion incident as follows:

> "The police report clearly stated reports were a mixture of exaggeration and previous reports received from you. Police advised that they were in attendance with the suspect when the incident was alleged to have taken place and that this was completely false. The suspect was intoxicated and believed he was opening his own door, immediately closing it when he realised it was not his home. He did not enter the house and police apologised to you. Police advised that you were reminded of the responsibilities to not make false or misleading reports."

Mr Hannaway further states:

> "The Race Relations Officer attends meetings with numerous community representatives and support agencies including PSNI, Housing Rights, EBCDA, Alternatives, NIACRO, Sure Start and Belfast City Council. During these meetings hate crime statistics are provided by PSNI. The statistics include a breakdown of sectarian, racist and homophobic incidents and the general area concerned. No cases were raised for [the appellant's street] area. The Race Relations Officer was

> unaware of any racially motivated hate crime in [the appellant's street] area."

[37] For the appellant Mr McKibben submitted that there is a reluctance on the part of people from the appellant's racial and ethnic group to make complaints to the police so the lack of reports of racial incidents should not be held against her. The difficulty for this submission is that the police document lists numerous complaints made by the appellant to the police which did not result in criminal proceedings against anyone. It led to the police to assess the situation is one where the appellant was engaged in trying to accumulate points so she could move house.

[38] It was for the decision-maker to weigh up the seriousness of the allegations in the particular circumstances of the appellant taking account of other evidence both for and against her case. Mr Hannaway considered all the evidence which was put forward to Miss Murphy and also considered further evidence before reaching his decision which was set out in a letter which runs to 12 pages. That decision letter demonstrates a careful consideration on Mr Hannaway's part of all the points made by the appellant. In particular, the circumstances of the intrusion incident, which were disputed by the PSNI who were in attendance, were appropriately weighed in the balance when Mr Hannaway was considering his decision on intentionality.

[39] The court concludes that Mr Hannaway carefully considered all the relevant circumstances and weighed them up to reach his decision. He carefully considered the points made on behalf of the appellant about her particular vulnerability in the context of the incidents alleged by her. He considered the wider context in the area based on appropriate enquiries which had been made. Mr Hannaway's decision was not irrational and was not unreasonable.

[40] The court therefore does not impugn the decision of Mr Hannaway which in essence was that he did not accept that the adverse incidents were serious enough to render it not reasonable for the appellant to continue to reside in that property. The court notes that the decision-maker's decisions in these cases must be made against a background of competing priorities for those seeking public housing. It is also important to note that the two key issues raised by the appellant namely firstly that the house was now too small and secondly that there were problems with neighbours, resulted in her being afforded further points in the points scheme.

[41] The court has sympathy for the appellant as she clearly wants to do the best by her family. The court also has sympathy for the respondent's officials who are tasked with making difficult decisions in order to deal with the competing needs of families in Northern Ireland when there are finite resources to do so. The long-established points system is in place with the aim of ensuring that families are prioritised according to need.

***Decision***

[42] The appellant's appeal against the decision of the respondent is therefore dismissed.