Neutral Citation No: [2025] NICh 10 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **SIM12920** *ICOS No:* **24/049586** *Delivered:* **08/12/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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NORTHERN IRELAND HOUSING EXECUTIVE

Plaintiff/Respondent

and

GRAINNE CARSON

Defendant/Appellant

_____

Amy Kinney (instructed by Legal Services & Information Governance, NIHE) for the Plaintiff/Respondent
Dan O'Muirigh (instructed by Flynn & McGettrick Solicitors) for the Defendant/Appellant

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SIMPSON J

Introduction

[1] On foot of an ejectment Civil Bill dated 3 June 2024 the Northern Ireland Housing Executive ("NIHE"), as plaintiff, sought against the defendant (the appellant before me) an order for possession of premises at 14 Stanley Court, Belfast ('the premises') and a decree for arrears of payments to NIHE. The county court judge made an order for possession on 9 July 2025. Ms Carson (hereafter 'the defendant') appealed the order on 11 August 2025.

[2] Briefly, the history of the premises is that the defendant's father became the sole tenant in May 1985. The defendant's mother was granted a joint tenancy with her husband from around September 1986. The defendant's father died in 2005. In 2008 the defendant's mother applied for a succession tenancy and was granted a sole tenancy in June 2008. The defendant lived in the premises for much of her childhood, only leaving when she was around 20. In late 2021, or perhaps early 2022, the defendant moved back into the premises to care for her mother. Her mother died in September 2023. The defendant continues to reside in the property with her two children.

[3] Her present status is not one of tenant. She has NIHE permission to occupy. She is in arrears of payments to NIHE.

[4] The defendant applied for succession of tenancy in 2023, following the death of her mother. By letter dated 19 October 2023 she was informed by the NIHE that she did not meet the criteria either for a statutory succession or a policy succession. Article 26(1) of the Housing (NI) Order 1983 provides that a statutory succession cannot occur where the previous tenant was already a successor tenant, as was the defendant's mother. Policy succession is outlined in Rules 74 and 75 of the Housing Selection Scheme Rules. The defendant did not meet any of the relevant criteria.

[5] She sought a review of that decision. The review was carried out by Ms Julie Alexander, Head of Housing Policy & Tenancy Management. By letter dated 5 March 2024 the defendant was informed that she did "not have a statutory right to the tenancy and [did] not meet the policy grounds" in the rules.

[6] The defendant now accepts, through her counsel, that she does not qualify for a statutory or policy succession.

[7] Accordingly, the only way for her to succeed to the tenancy is that identified by Ms Alexander in her letter in the following way:

> "… the only possible way in which you could succeed to the tenancy would be through consideration of very exceptional circumstances. In very exceptional cases the Director of Housing Services has the authority to make a discretionary award of a tenancy."

[8] I note the qualification of 'exceptional' by the word 'very.'

[9] The letter informed the defendant that Ms Alexander did not believe that the defendant's circumstances merited a referral to the Director.

[10] I am indebted to both counsel in this case for their detailed, clear and helpful skeleton arguments, both in this court and in the court below. It is obvious that both have invested considerable effort in their representation of their respective clients.

The impugned decision

[11] It is common case that the defendant had to demonstrate to the NIHE that there were very exceptional circumstances in her case. In his most recent skeleton argument Mr O'Muirigh challenges the decision of the NIHE not to refer the defendant's case to the Director on the following bases:

(a) NIHE erred when finding that the defendant did not qualify for an exceptional grant of tenancy;

(b) NIHE failed to take into account all relevant factors when making the decision and failed to exercise its reasonable duty of inquiry, and that the eviction of the defendant is not in accordance with law;

(c) the premises are the defendant's 'home' for the purposes of article 8 ECHR and, per *Manchester City Council v Pinnock* [2010] UKSC 45, her case constitutes one of the exceptional circumstances envisaged in *Pinnock* where eviction would amount to a disproportionate breach of her article 8 rights.

[12] The grounds relied upon are more akin to what one would see in a judicial review challenge to the decision, and I raised with the parties whether this was, in fact, really a challenge which should have been brought by way of judicial review. Mr O'Muirigh submitted that since there were facts to be found by the court, and since the judicial review court was not a suitable forum for fact-finding, the matter was properly one which should progress by way of appeal from the county court. In addition, both parties were keen that the matter should conclude rather than be delayed by changing tack. In the event, there was very little in the way of fact-finding.

[13] Two issues were identified by counsel: (1) whether that decision was wrong and (2) the proportionality of an order for possession. Ms Kinney, for the NIHE, says that the court should not consider (1) above, only the issue of proportionality. Mr O'Muirigh says the court should consider both. In deference to the efforts of Mr O'Muirigh on behalf of the defendant, I will consider the decision itself as well as the issue of proportionality.

[14] Prior to making her decision on the review, Ms Alexander was provided with a briefing document accompanied by a number of appendices. The briefing document was authored by John Kane, Housing Policy and the various appendices were collected by other members of the same team, Ms Tanya Anderson and Ms Jennie Greenaway. There are six appendices, (1) the chronology of the defendant's residency at the premises; (2) the Succession Request form dated 9 October 2023; (3) the Succession decision letter of 19 October 2023; (4) the acknowledgement letter for the Review Request letter of 23 October 2023; (5) a letter from the defendant's GP dated 9 November 2023.

[15] The sixth appendix contained a number of documents described as being from the House file and the computerised records of the tenancy history.

[16] The briefing document is seven pages in length and the letter sent to the defendant by Ms Alexander is 5½ pages long. There is considerable detail in both.

Ms Alexander had both the briefing document and its appendices when she was considering whether or not to refer the defendant's case to the Director of Housing. On the penultimate page she says:

> "All of the information you provided as part of your Succession application and request for a Review, along with your circumstances, were balanced against the Housing Executive's duty to allocate stock, in a fair and impartial manner in accordance with the Rules of Housing Selection Scheme. As part of this, consideration was given to the competing needs of existing applicants on the Waiting List for the area in which [the premises are] located and the high demand for properties of this type in this area.
> …
> The Housing Executive has a duty to allocate tenancies in a fair and impartial manner in line with the Housing Selection Scheme and cannot look beyond applicants who have been assessed and placed on the housing waiting list, unless there is compelling evidence of very exceptional circumstances to justify this. Having carefully considered your case it was concluded that there were no such compelling reasons."

[17] Mr O'Muirigh criticises, both in cross examination and in submission, the failure by Ms Alexander to mention in the letter the defendant's vulnerabilities and the fact that children resided in the premises. The inference he asks the court to draw was that there was a failure to take these matters into consideration, thus vitiating the decision.

[18] He took Ms Alexander to two chapters of the NIHE Housing Selection Scheme Guidance Manual, chapters 8 and 10. In chapter 8 the guidance states:

> "When considering a referral to the Director of Housing Services … some examples of very exceptional circumstances are as follows (**this list is not exhaustive and each case should be considered on its own merits in the context of the specific circumstances of the case**)." (The words appear in bold in the original)

[19] Vulnerabilities is one of the relevant matters to be considered.

[20] Ms Alexander, who gave the only oral evidence before me, said that the bar to show very exceptional circumstances was a high one. As to the defendant's vulnerabilities, she said that she was aware from the succession application document which was before her that the defendant had issues with visual impairment. She said

that the note from the GP did not contain any reference to any particular needs which the defendant might have as a result of her condition. If the GP had thought the visual impairment resulted in any particular needs, he would have said so. Equally, although the decision letter made no reference to the children, she knew from the documentation that the defendant had two children, one at university, one at school.

[21] There were certain adaptations to the premises which were previously carried out following an occupational therapist's assessment of the defendant's mother's needs, not the needs of the defendant. Ms Alexander described these as minor. Although she was not aware of those adaptations at the time she made her decision, she said that they would not have made any difference to that decision. So minor were they, that the NIHE would not describe the house as having adaptations.

[22] Mr O'Muirigh also submitted that the NIHE was in breach of its reasonable duty of inquiry. Paragraph 10.1 sets out in six numbered paragraphs the steps in the review process. Step 5 says: "Housing Policy Review Team conduct independent review." At 10.4 of the guidance the following appears:

> "The Review will be carried out by the Housing Policy review Team, by a person who was not involved in the original decision. They will carry out an independent investigation and review of the case and all evidence/information provided."

[23] Paragraph 10.5 identifies those matters to be covered by the review and is introduced by the following:

> "The Review will reconsider the original decision; it will also allow for additional evidence/information to be considered and requires the Housing Policy Review team to make full and proper enquiries. The Review Officer is obliged to carry out their own independent investigations and cannot simply rely on matters raised by the customer…"

[24] Mr O'Muirigh says that the answer to the question as to whether there existed very exceptional circumstances can only properly be determined by taking into account all relevant information. Since, he says, Ms Alexander did not have all relevant information, the answer must be wrong. In the circumstances, and relying on the decisions in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 and *Balijigari v SSHD* [2019] EWCA Civ 673, he submits that "no reasonable authority in the position of NIHE at the time of its review decision could have been satisfied on the basis of enquiries made, that it possessed the information necessary to make its decision on whether [the defendant's] case should be referred to the Director of Housing." Thus, he says, the decision could not have been made in accordance with law.

[25] In the *Balijigari* case cited by the defendant I note Underhill LJ (giving the judgment of the court) as saying at para [70]:

> "The general principles on the *Tameside* duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) at paras. 99-100. In that passage, having referred to the speech of Lord Diplock in Tameside, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since Tameside itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a Wednesbury challenge, it is for the public body and not the court to decide upon the manner and intensity of enquiry to be undertaken: see *R (Khatun) v Newham LBC* [2004] EWCA Civ 55, [2005] QB 37, at para. 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it."

[26] Ms Alexander made it clear that she had all relevant information. I have seen the detail in the briefing note and the appendices to it. Ms Alexander was aware of the vulnerabilities of the defendant, her visual impairment, and was aware of the fact that there were two children. As to making further enquiries, I consider that she was correct to say that NIHE do not embark on a fishing expedition. She had all the information from the defendant contained in the succession application and she had all the information contained in the housing records. She also had available to her the

medical evidence from the defendant's GP. She was entitled to make her decision on the basis that if there was anything within the knowledge of the defendant which she, the defendant, considered to be relevant to her own circumstances, the defendant would have made it known to NIHE. Looking at the totality of the matter, I consider that it was not unreasonable for Ms Alexander to act on what she had before her and I do not consider that she was obliged to carry out any further enquiries. I do not consider that the NIHE was in breach of any relevant duty.

[27] In *Holmes-Moorhouse v Richmond Upon Thames LBC* [2009] UKHL 7, an appeal of a review decision, Lord Neuberger said:

> "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."

[28] In my view a similar approach is appropriate in this case.

[29] In the circumstances I do not consider that the decision made by Ms Alexander — that the defendant had not demonstrated very exceptional circumstances — was wrong in any way or flawed. Accordingly, I consider that the decision was correct.

The proportionality argument

[30] It is not in dispute between the parties that the article 8 ECHR rights of the defendant are engaged in this case. Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[31] The defendant submits that if NIHE obtained an order for possession it would constitute a disproportionate breach of her rights under article 8. As a starting point

there is the decision of the ECtHR in the case of *Chapman v UK* (2001) 33 EHRR 18. There the court said, at para [99]:

> "It is important to recall that article 8 does not in terms recognise a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision."

[32] I also note the judgment of the Court of Appeal in *Southend-On-Sea Borough Council v Armour* [2014] EWCA Civ 231 where, in slightly different circumstances, Lewison LJ said of the issue of proportionality:

> "(i) It is a defence to a claim by a local authority for possession of a defendant's home that the recovery of possession is not necessary in a democratic society within article 8(2), that is to say it would be disproportionate in all the circumstances. An order for possession in such a case would be an infringement of the defendant's right under article 8 to respect for his or her home and so unlawful within the Human Rights Act 1998 s. 6 (1).
>
> (ii) The test is whether the eviction is a proportionate means of achieving a legitimate aim.
>
> (iii) The threshold for establishing an arguable case that a local authority is acting disproportionately and so in breach of article 8 where re-possession would otherwise be lawful is a high one and will be met in only a small proportion of cases.
>
> (iv) The reasons why the threshold is so high lie in the public policy and public benefit inherent in the functions of the housing authority in dealing with its housing stock, a precious and limited public resource. Local authorities, like other social landlords, hold their housing stock for the benefit of the whole community and they are best equipped, certainly better equipped than the courts, to make management decisions about the way such stock should be administered.

(v) That is why the fact that a local authority has a legal right to possession, aside from article 8, and is to be assumed to be acting in accordance with its duties (in the absence of cogent evidence to the contrary), will be a strong factor in support of the proportionality of making an order for possession without the need for explanation or justification by the local authority.

(vi) An article 8 defence on the grounds of lack of proportionality must be pleaded and sufficiently particularised to show that it reaches the high threshold of being seriously arguable.

(vii) Unless there is some good reason not to do so, the court must at the earliest opportunity summarily consider whether the article 8 defence, as pleaded, and on the assumption that the pleaded facts relied upon are correct, reaches that threshold.

(viii) Even where an article 8 defence is established, in a case where the defendant would otherwise have no legal right to remain in the property, it is difficult to imagine circumstances in which the defence could operate to give the defendant an unlimited and unconditional right to remain."

[33] I can adapt those sentiments to the factual circumstances of this case and bear them in mind.

[34] The provision of social housing in Northern Ireland, for the vast majority of which NIHE is responsible, is under severe pressure. In its Paper "Affordable Housing Supply" the NIHE in its Housing Market Review 2024/25 states:

"**Social Housing Allocations**

The Housing Selection Scheme is administered by the Housing Executive to assess social housing applicants and award points according to their housing need. The level of points awarded determines an applicant's position on the Common Waiting List. Over the last number of years there has been a steady increase in the overall number of applicants for social housing. There were 49,083 applicants on the waiting list for social housing as of Jan-March 2025 which is, at time of writing, the highest number of social housing applicants on the waiting list over the last 20 years.

> As of 1st April 2025, applicants are assessed and awarded points within three main categories:
>
> - ➢ Insecurity of Tenure
> - ➢ Housing Conditions
> - ➢ Health and Social Well Being Assessment
>
> Applicants are deemed to be in 'Housing Stress' if they are awarded 30 or more points. There has been a steep increase in applicants experiencing housing stress since 2013/14 and the number of applicants experiencing housing stress is now at an all-time high (37,635, Jan-March 2025) representing three-quarters of all housing applicants. Social housing has always been an important option for those seeking security of tenure and many applicants for social housing choose to remain on the waiting list to keep housing options open, even though the wait for an offer of housing could be considerable. Allocations have flatlined for the past four years, hovering around the low of 6,000 allocations per year as the number of applicants and those experiencing housing stress increase. Around a tenth of total housing applicants (12%) were allocated housing in 2024/25, compared to more than a quarter of applicants in 2003/04 (29%) and a fifth of housing applicants in 2013/14 (22%)."

[35] Ms Kinney submitted that the court, in carrying out the balancing exercise, had to take into consideration not only the interests of the defendant, in her particular circumstances, but the interests of the NIHE which has the burden of allocating social housing in the area in a fair and impartial manner. Part of that balancing exercise includes taking account of the housing stock, the number of applicants for housing on the waiting list and how the allocation is made in what Ms Kinney described as "the sad reality of social housing."

[36] The court was provided with very informative statistics. The property in which the defendant lives is described by Mr Kane in the briefing document as "a three bedroom, five person house." There are only 12 three bedroom properties in the area where the defendant resides. The total number of applicants for such housing in the area is currently 233. The applicant with the highest number of points on that waiting list has 218 points. The defendant has 80 points. In the past 24 months there have been only 2 allocations from the waiting list of a three bedroom house and the average number of points of each successful applicant was 219.

[37] Ms Kinney drew the court's attention to the decision in *Dudley Metropolitan Borough Council v Mailley* [2023] EWCA Civ 1246 where, at para [67] Simler LJ, giving the judgment of the court said that:

> "… a balance had to be struck between the different interests of tenant, family members, landlord and those in need of social housing so as to allow for some limited security being given to family members while preserving the ability of local authorities to allocate their housing resources on an appropriately fair and effective basis in circumstances where those housing resources are scarce."

[38] In *London Borough of Haringey v Simawi and others* [2018] EWHC 2733 (QB), the court said (para 51) that the "primary objective of the statutory framework governing how such tenancies are granted and succeeded to is to ensure that social housing is distributed fairly."

[39] Mr O'Muirigh makes the point that the premises are and have been for a very significant period her home. He submits that a 'home' is not limited to a property of which a person is the owner or lawful tenant. It can include, inter alia, a council house occupied by a person, even where the right of occupation has ended (*McCann v UK* (2008) 47 EHRR 40); and he cites *Brežec v Croatia* Application No. 7177/10 where the ECtHR found, in 2013, that the Croatian courts had limited themselves to finding that a person's occupation was without legal basis without proceeding to analyse whether her eviction from the flat which she had occupied for 40 years, while paying rent, was proportionate. For the NIHE to obtain possession, he says, would be an interference with her enjoyment of her home. The premises are very suitable for her and such adaptations as there are, albeit installed not for her, but for her mother's, benefit make her life much easier and are superior to what might be available in another property. Her son is completing his 'A' level examinations (he is almost 18) and her daughter is studying at university (she is 21). Any uncertainty adversely affects the children, causing them to suffer stress and upset.

[40] He also says that the defendant is "intimately involved in the community and has lived in the area all her life." She operates a free breakfast club for very young children and performs other good works. She has provided a number of letters of positive support from community representatives, neighbours, local business representatives and others. I have read all of these letters of support.

[41] I have also seen two further short reports from the defendant's GP in which he refers to anxiety and low mood, that in his "opinion she needs to stay" in the premises, that any additional stress would not be helpful for her mental state, that her current accommodation "is allowing her to maintain stability especially with her mental state and that it is "very important that she is not forced to move."

[42] As noted above, Mr O'Muirigh relied on *Pinnock*. In that case the local authority brought what were effectively possession proceedings against a secure tenant of premises of which the authority was the landlord. The county court judge hearing the case took the view that he only had jurisdiction to review the authority's decision on conventional judicial review grounds, that he could not resolve factual disputes nor could he consider issues of proportionality. The Supreme Court held that for domestic law to be compatible with article 8 of the Convention, a court, being asked to consider an order for possession of a person's home, had to have power to assess the proportionality of the order and had to be able to resolve issues of fact. In addition, the court was not confined to the facts before the decision-maker, but could take into account facts which had arisen since the decision was taken.

[43] In accordance with the decision in *Pinnock*, in addition to the factual matters which I have set out above, some of which post-date the decision by Ms Alexander, I have also taken into account all of the factual considerations which Mr O'Muirigh identifies in detail in his most recent skeleton argument, and I bear them all in mind when reaching my decision on the issue of proportionality.

[44] In *Pinnock*, Lord Neuberger giving the judgment of the court, said:

> [54] Unencumbered property rights, even where they are enjoyed by a public body such as a local authority, are of real weight when it comes to proportionality. So, too, is the right — indeed the obligation — of a local authority to decide who should occupy its residential property. As Lord Bingham said in *Harrow v Qazi* [2004] 1 AC 983, 997, para 25:
>
> > '[T]he administration of public housing under various statutory schemes is entrusted to local housing authorities. It is not for the court to second-guess allocation decisions. The Strasbourg authorities have adopted a very pragmatic and realistic approach to the issue of justification.'
>
> Therefore, in virtually every case where a residential occupier has no contractual or statutory protection, and the local authority is entitled to possession as a matter of domestic law, there will be a very strong case for saying that making an order for possession would be proportionate. However, in some cases there may be factors which would tell the other way."

[45] I consider that the statistics which I set out above in para [36] reflect the stark reality of the difficult decisions which the NIHE has to take in relation to the allocation

of social housing on a fair and impartial basis. The defendant falls well below the points level of the very few successful applicants for this type of housing in the past 24 months. When it comes to the balancing exercise between the particular circumstances of this defendant, all of which I have taken into consideration, and the duty on the NIHE fairly and impartially to allocate scarce social housing on the basis of assessed housing need, I consider that the scales tip very significantly on the side of NIHE.

[46] In all the circumstances of this case I do not consider that an order for possession would be a disproportionate interference with the defendant's rights under article 8 ECHR.

[47] Accordingly, I affirm the possession order made by the county court judge. I also enter a decree in favour of the NIHE, but vary the amount awarded in the county court to reflect the up to date position. The decree will be for £576.60.

[48] The defendant was legally aided. In the circumstances, I make no order as to costs, save that the defendant's costs be taxed as an assisted person.