

Neutral Citation No: [2025] NIKB 10	Ref: SIM12718
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 24/10728
	Delivered: 19/02/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING’S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY TRACEY MORRIS
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF DECISIONS OF THE NORTHERN IRLAND
HOUSING EXECUTIVE**

**The Applicant represented herself
Aidan Sands KC (instructed by NIHE Legal Services) for the Respondent**

SIMPSON J

Introduction

[1] In the applicant’s original Order 53 Statement, dated 28 October 2024, she sought leave to challenge the decision, dated 14 October 2024, of the Northern Ireland Housing Executive (“NIHE”), the then intended respondent, to decline to pay the necessary funding to allow the applicant and her family to move to a three-bedroom bungalow at 15 Marlborough Crescent, Carryduff. The applicant, making use of the template Order 53 Statement provided in the relevant Practice Direction, under the rubric “The impugned decision/omission”, states:

“The applicant is challenging the proposed respondent’s decision dated 14 October 2024 whereby it was determined that the NIHE failure to cover the rent (sic) at £1,350 for a 3 bedroom bungalow and their refusal to carry out their duty of care [OR] also the proposed respondent’s failure to find us a one level property and failed to make contact with my OT to request an updated assessment of my needs due to serious deterioration from being left in a property that does not suit our needs and [within a reasonable time?] their failure to find us a reasonable home and in reasonable time.

The judgment of Mr Justice Scoffield dated 15 August 2024 states that they have a duty to house my family – ‘should be housed in an all-one-level, ground floor property; yet no such property has become available to her’ [para 74]. Yet Mr Sands stood in court stating that there were no 3 bed bungalows. While Michael Chandler’s made me aware that there was a 3-bedroom property available [in Carryduff] and that this has been available for 5 months. I have been made aware that this property is still available to rent. This is the only 3-bedroom bungalow available in the last 3 years and it had been agreed that my housing situation would be under the single lets scheme. While it is noted that there are those who are prepared to facilitate other families, so I am asking why not me?”

[2] Under the heading “The relief sought”, sub-paragraph (i) asks:

“For the courts to order the NIHE to agree to accommodate my family at 15 Marlborough Crescent, Carryduff until a more permanent home is located in a non-sectarian and safe environment.”

[3] The relief sought further includes reference to NIHE contact with an occupational therapist and a reference to housing in relation to the applicant’s second oldest son, but these matters were not pursued before me, and I say no more about them. The applicant’s grounds of challenge are wide-ranging and are stated to be – illegality; taking into account immaterial considerations; failing to take into account material considerations; procedural unfairness; irrationality; improper motive/bad faith; breach of statutory duty/requirement; substantive legitimate expectation; breach of EU law; and breach of policy.

[4] This is the second recent challenge mounted by the applicant to a decision involving the NIHE. In mid-June 2024 the applicant launched an application for leave to apply for judicial review, the intended respondents to that application being St Matthew’s Housing Association and NIHE. That application related to a decision of the housing association not to allocate to her a property in McClure Street, Belfast and a more general grievance directed at NIHE due to its failure to find suitable housing accommodation for her. In his judgment delivered on 15 August 2024 Scoffield J refused the application for leave but expressed sympathy with the applicant and identified what he described as ongoing concerns, although acknowledging that they were “outside the court’s remit.”

[5] The present application arises because the applicant has identified the bungalow in Carryduff, which she says is a suitable property for her and her family. However, NIHE’s position, as articulated in Mr Sands’s skeleton argument, is that the

rental being asked for by the landlord of the property, falls “significantly above the applicable standard rate for three-bedroom dwellings and well beyond the range of the limited discretion to increase the applicable rates that is normally available to the [NIHE’s] Area Manager.”

Relevant legislative provisions

[6] The legislative provisions relevant to the initial considerations in this application are contained in the Housing (Northern Ireland) Order 1981 and the Housing (Northern Ireland) Order 1988, principally the latter.

[7] Article 22 of the 1981 Order imposes a duty on NIHE to submit to the department for Communities “a scheme for the allocation of housing accommodation held by [NIHE] to prospective tenants or occupiers.” It is not necessary to set out the provisions of article 22 in full.

[8] In the 1988 Order the following are (for the purposes of this application) material provisions:

“Homelessness and threatened homelessness

3.—(1) A person is homeless if he has no accommodation available for his occupation in the United Kingdom or elsewhere.

...

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in Northern Ireland.

Duties to persons found to be homeless

10.—(1) This Article has effect as regards the duties owed by the Executive to an applicant where it is satisfied that he is homeless.

(2) Where the Executive is satisfied that the applicant has a priority need and is not satisfied that he became homeless intentionally, it shall secure that accommodation becomes available for his occupation.

Provisions supplementary to Articles 8 and 10

12. – (1) The Executive may perform any duty under Article 8 or 10 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person –

- (a) by making available suitable accommodation held by it, or
- (b) by securing that he obtains suitable accommodation from some other person, or
- (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,

and in determining whether accommodation is suitable the Executive shall have regard to Chapter II of Part III and Part VI of the Order of 1981.”

Some background

[9] Since 22 April 2020 the applicant has had what is described as Full Duty Applicant status. Since May 2020 she has been living in the Four Winds area of Belfast (it is unnecessary to identify her present address in this judgment) with first, three of her sons and later, two of her sons (presently aged 14 and 13) in a four-bedroom two-storey semi-detached house. The property is described as temporary accommodation. The landlord is Tarasis Housing which manages a portfolio of private sector rented properties, and the applicant lives in the house pursuant to a licence agreement with Tarasis. The applicant is entitled to Housing Benefit to help pay the rent, with any shortfall being met by the NIHE. In an affidavit dated 28 January 2025 Mr Liam Gunn, Belfast Regional Manager of the NIHE explains how this came about (I acknowledge that the applicant does not agree with all the facts stated):

“6. The applicant had been a tenant of the Housing Executive at 10 [actually No. 7] Shaw’s Park, which is in Andersonstown in West Belfast. On 30 March and 1 April 2020, she contacted the Housing Executive seeking emergency transfer on the basis of alleged acts of neighbourhood harassment at her property.

7. A housing/homeless assessment was carried out on 22 April 2020. The Housing Executive was satisfied that the applicant met the statutory test to be owed a duty

under article 10(2) of the [1988 Order] in that she was homeless (on the basis that it would not be reasonable for her to continue living at the property), that she was not intentionally homeless and that she was in priority need, as she had depending (sic) children living with her.”

[10] It is at the core of the applicant’s case that owing to various issues, some of which I will set out in this judgment, the only property suitable to her is single-storey accommodation, essentially a bungalow, described by Scoffield J as “an all-one-level, ground-floor, 3-bedroom property.” I can do no better in explaining some of the background to this application than to recite selected excerpts from the judgment of Scoffield J in the earlier challenge. (I have ciphered the name of any non-adult referred to in the judgment):

“[6] ...An overarching element of the applicant’s complaint is that, for some four years, the respondents – principally the Executive – have ‘refused to carry out their duty of care’ towards her by failing to ensure that she and her family are housed in appropriate housing. In this regard, she has relied upon a range of conditions from which she suffers, including osteoarthritis (diagnosed in December 2023), severe fibromyalgia and irritable bowel syndrome. She has reduced mobility as a result of these and requires the use of sticks to walk. She also has a wide variety of complaints about the conditions within her current property, to which I return below.

[7] In addition to her own medical issues, the applicant relies upon the needs of her son, A, who has autism and behavioural issues. She has indicated that he is on the ‘highest spectrum’ of attention deficit disorder (ADD) and that he suffers from severe night terrors. As a result, she contends, he has been forced to sleep in a tiny dining area which is not safe for him. A letter from A’s school from February 2023 outlines some of his needs. He has a statement of special educational needs indicating social, behavioural, emotional and wellbeing issues and a diagnosis of ADHD. He frequently presents as tired and needing sleep. He is said to express his own worries about his housing situation and how this impacts on his emotions and sleep.

[8] A’s night terrors are relevant because he will jump out of his sleep and injure himself. This is a particular reason why the applicant is concerned about being housed in a multi-level property, in case A falls down the stairs in

his sleep and severely injures himself. The applicant has provided evidence from a consultant paediatrician indicating that A attends the Paediatric Sleep Outpatient Clinic with severe nocturnal night terrors whereby he jumps out of bed and out of his bedroom, such that he is at risk of falling down the stairs or jumping over the banister in the hall stairs. This consultant strongly supports the family being re-housed in a bungalow in order to reduce the risk to A if or when he runs out of his bedroom at night. Other evidence suggests that it would have been very useful to organise actigraphy studies in order to monitor A's activity and motion during the night but that his mother reported that he had only worn the monitor for two days as he found it difficult to tolerate because of his sensory issues. In light of the totality of the evidence, I proceed on the basis that there is a valid concern in relation to A's safety and that it would be much preferable if he was accommodated in a single-level property.

[9] The applicant further says that she and her children have sustained multiple injuries whilst being required to remain in accommodation which is not fit for their needs. Her current property is a 4-bedroom house. This only has one toilet, about which the applicant has concerns, as she and her four sons have to share the one toilet and this is upstairs. She also complains that there are a range of repair issues which have not been addressed. She says that she cannot understand how the property has passed a health and safety inspection. She describes having been 'left here to rot' in the property. She has further averred that her landlord refused to put handrails up throughout the house which would have prevented further injuries to her and her children. Other issues mentioned are rat infestation; sinking and chipped tiles in the kitchen; and electrical issues (which the applicant says resulted in her being electrocuted and in her family not being able to use their cooker, albeit this has been replaced).

[10] The applicant has previously sought the assistance of the courts in relation to her housing issues. She describes having 'taken out an Article 11C against the NIHE', which was dismissed by His Honour Judge Devlin. (I understand this to be an appeal on a point of law under article 11C of the Housing (Northern Ireland) Order 1988 ... against a review decision of the Executive taken under article 11A of that Order.) The decision of the county court

judge was appealed to the High Court. It was in the course of these proceedings (the applicant avers) that she received a call from 'Heather', the new Head of Housing Solutions, in January 2022. On the applicant's account, Heather 'begged' her not to proceed with the appeal and indicated that she would set up a meeting in order to seek a permanent 4-bedroom bungalow for the family in light of having received an updated report from the applicant's Occupational Therapist stating that an all--one--level home was required. (In another submission, the applicant appears to attribute this conversation to Helen Russell.)

[11] The meeting mentioned by Heather was, the applicant avers, delayed for some time 'using Covid as an excuse' but, when it happened, she was told that both Heather and Anne McAleese were seeking to work with housing associations in order to have a bungalow built for the family. This meeting is said to have been in or around May 2022. Around this time, it appears that Ms Morris was focused on her preferred housing areas of Newtownbreda and Carryduff, on the basis that she was satisfied that this was a safe location for her to live. (There was also a concern about A's travel to school, as he required anti-sickness tablets even when travelling a short distance. This is a reason why properties outside Belfast, such as in Crumlin, Lisburn and Moira, have been considered unacceptable to the applicant.) In the meantime, Ms Morris was asked to find a 4-bedroom bungalow in the BT8 area and NIHE would cover the rent. The applicant found one such bungalow which the landlord then decided to rent to someone else; and other suggestions she made were, she contends, ignored by NIHE. During this time, Heather also retired. On the applicant's case, one further suggested rental was declined by NIHE because of the cost (£1,400 per month). A consistent complaint of the applicant is that the Executive should be prepared to pay more per month to rent her a property, in light of other spending commitments on its behalf or those of other public sector bodies.

[12] The applicant has also described having taken a previous judicial review case related to her son Aaron, in which Colton J 'upheld the NIHE's duty to meet our housing needs to standards appropriate to our disabilities.' This case appears to have been dealt with in June 2022. At that time, Aaron was offered a new home, which he

accepted, meaning that the judicial review application did not have to proceed. A further son, Jay, refused to live at her current property due to the rodent infestation. He removed himself and applied for a one-bedroom apartment last year. This has meant that the applicant can downsize her requirements, to a 3-bedroom bungalow. She hoped this would make it easier for the NIHE to accommodate her in a permanent home and has been disappointed that this change in needs has not resulted in a new offer of a suitable property. She has a number of complaints about how Jay's housing situation has been, or is being, dealt with; but these are not relevant for present purposes. The simple point Ms Morris makes is that it ought to have been easier for the proposed respondents to provide her with a suitable property with a reduced number of intended occupants.

...

[14] The applicant submits that she has been 'top priority' since May 2020, although she also notes that she has been top of the housing list 'since June 2023', after she was awarded intimidation points. It seems that the applicant was intimidated from her home in or around May 2020, during the Covid-19 pandemic. After this, she was temporarily housed in a hotel for a short time. After that, she was housed in her current property. She has averred that the NIHE indicated that this would only be for a short period of time whilst they searched for a property to suit her disability needs. She has now been in that property much longer than originally intended.

[15] The applicant has placed great reliance upon the award of intimidation points to her and the belated award of these. She has provided a significant amount of evidence, which I need not go into in detail for present purposes, in relation to the circumstances of intimidation against her family which resulted in them moving from North Belfast to West Belfast and, more recently, out of West Belfast. Ms Morris wished to address this in very considerable detail in her oral submissions. She now has the benefit of intimidation points and, I accept, has concerns about living in some areas."

[11] Understandably, the applicant remains extremely exercised about the rat infestation of her present house and she also expresses considerable concerns about identified electrical issues and fire hazards in the kitchen. All of the applicant's concerns about the property are intended to support her challenge as originally

articulated and to show that the house in the Four Winds area is not suitable for her or her family.

History of these proceedings

[12] The application for leave came on before me on Monday 9 December 2024 and I heard lengthy and detailed submissions from the applicant and submissions from Mr Sands KC. The applicant set out in some detail the history of the matter, some of which is contained in the judgment of Scoffield J, and she identified what she said were continuing failures of NIHE to deal with complaints about the present accommodation. In the course of Mr Sands's submissions he indicated that although article 11A of the 1988 Order provides for a right for a person to request a review of any decision by NIHE, no request for a review was ever made by the applicant. However, as it seemed to me, it would be appropriate for NIHE to treat the complaints made by the applicant about the suitability of the present accommodation as a request for a review, and Mr Sands accepted that this could be done.

[13] Accordingly, the matter was adjourned to 16 December for such a review to be carried out by NIHE. This was done, and whatever else be the case, I am grateful to NIHE for moving so expeditiously in relation to this aspect of the matter.

[14] At the adjourned hearing on 16 December I was provided with a letter written by NIHE to the applicant and dated 13 December. The author of the letter, Ms Denise Conlon, Deputy Regional Manager, Belfast Region, NIHE states that she has carried out a review "within the meaning of the review/appeal procedure found in the [1988] Order, as amended." Having identified a number of matters taken into consideration in the course of the review, Ms Conlon concludes as follows:

"In relation to the available information with regard to repairs, I am satisfied [the present property] is not presently unsuitable on the grounds that it should be considered unfit.

...

In terms of its suitability in meeting the particular needs of you and members of your household, I consider this temporary accommodation was reasonable for your family to occupy at the outset and for a period of time thereafter.

However, due to the length of time which you have been accommodated there, coupled with the apparent decline in your physical health, I have determined that the property should no longer be considered suitable for you on account of the issues presented by the stairs in the dwelling. In those circumstances I have referred the matter to operational staff who will continue to work towards

sourcing alternative, more suitable temporary accommodation.”

[15] Mr Sands indicated to the court that NIHE was under a duty to find suitable alternative accommodation for the applicant. He submits that the full housing duty does not require the allocation of permanent housing. Relying on *R v Brent London Borough Council, ex p Awua* [1996] AC 55 he says that the duty “is to provide ‘accommodation’; which is generally discharged on a phased basis by the provision of temporary accommodation. Such temporary accommodation can range from a hostel to bed and breakfast accommodation to a single let with a private landlord. There is, apparently, no statutory definition of ‘temporary’ in the 1988 Order.

[16] Noting that article 12(1) of the 1988 Order provides that the accommodation must be ‘suitable’ he cites *Nzolameso v City of Westminster Council* [2015] UKSC 22 as meaning suitable both for the applicant and the other members of her family. He submits that suitability has a broad meaning; see eg *Codona v Mid-Bedfordshire District Council* [2004] EWCA Civ 925 where the Court of Appeal said (para [34]):

“It must, as a matter of common-sense, encompass considerations of the range, nature and location of accommodation as well as of its standard of condition and the likely duration of the applicant’s occupation of it. Standards of the condition of the property are clearly important.”

[17] The applicant initially identified Carryduff and Newtownbreda as her areas of choice for accommodation, but in August 2024 this was increased to include Castlereagh rural, Milltown/Gray’s Park, Lower Ormeau, Upper Ormeau and Rosewood Park. It appears from the affidavit of Mr Gunn that the area of choice “applies only when it comes to an allocation of permanent accommodation; it has no application to sourcing temporary accommodation. Mr Sands said (as had previously been indicated to the court in December) that NIHE had identified what it considered to be suitable accommodation in University Street, Belfast. This property, according to the affidavit of Mr Gunn is within the Lower Ormeau area of choice and some 300 metres from the McClure Street property which was the subject of the previous challenge before Scofield J. On 16 January 2025 it appears that the applicant removed the Lower Ormeau area from her list of areas of choice. The University Street property is a ground-floor flat, with three bedrooms and a bathroom, one of the bedrooms also having en-suite facilities (ie per Scofield J “an all-one-level, ground-floor, 3-bedroom property”). The applicant was and remains adamant that this property is not suitable.

[18] Thus the focus of the application has widened. NIHE accepts that, for the reasons stated, the property in the Four Winds area is not suitable, and that it has a duty to find suitable alternative accommodation. It says it has done so. This is denied by the applicant. Accordingly, I fixed the matter for hearing on 30 January 2025, with Ms Morris to amend her Order 53 Statement to reflect the additional challenge, namely

to the NIHE's decision that the flat in the University area is suitable. She was to produce any further documentation which she wishes to use in her submissions. I also indicated that I would treat the hearing on 30 January 2025 as a rolled-up hearing.

[19] Since the adjournment I have received some further documents from her, including further medical evidence from her, material from a school supportive of her case, and material relating to alleged threats against her. In the interval between the hearing and this judgment I have received further material from the applicant, including photographs, relating to dangerous tiling in the kitchen of her present home.

[20] The matters for decision are (1) whether the respondent has a duty to provide funding so that the applicant and her family can move to the bungalow in Carryduff; (2) whether, the decision of the respondent that the flat in University Street is suitable for the applicant and her family is correct; (3) whether, in relation to that decision there is available to the applicant an effective alternative remedy.

The applicant's submissions

[21] I make it clear that I have read the judgment of Scofield J in the applicant's previous challenge, and have read, and taken into account, the documents in the folder which she provided for the original hearing, the further documents for the substantive hearing and those received after the hearing. I have read and taken into account all her written material and I have also taken into account all her oral submissions. I do not seek to set out in full all her complaints or submissions otherwise this judgment would be impossibly long, but some are identified below. Many of her submissions related to the unsuitability of her present accommodation in the Four Winds area and were repetitions of historical submissions made to Scofield J. I have also alluded to some of her submissions when dealing seriatim with the grounds of challenge in the Order 53 Statement.

[22] As to the bungalow in Carryduff, she compared its rental with the £1,000 per month which was being paid for her current property and trenchantly made the point that the respondent continued to endanger her and her family for the sake of about £350 (being approximately the difference in the rent of the two properties); in written submissions she rhetorically asks: "What cost do the NIHE put on my family's lives?" She said the Carryduff property is ideal for her and her family, describing it as being suitable, among other reasons because it is in an isolated area to which dissident republicans are unlikely to come; that there are no sectarian issues there; that if A ran away from the house, it would be safer for her to look for him, and safer for him than if he ran away in the University area; that his best friend is more likely to socialise with him in that area; and that A would be able to indulge in his love of gardening, making use of his polytunnels and greenhouse which, she says, are still in boxes. It has, she says, "everything my child needs."

The respondent's case

[23] It is important to understand the background to NIHE's decision in relation to the Carryduff bungalow, and the basis on which it was made. I have read the affidavit of Mr Gunn in detail, and do not intend to set out the contents in their entirety. I note, first, that the affidavit identifies, between paras [10] and [14] the medical evidence and the occupational therapy evidence available to it, and in para [37] sets out the evidence in relation to the applicant's son (whom I have identified as A). Accordingly, all of this information was available to be taken into consideration by the respondent in reaching its decisions.

[24] In a section in the affidavit headed "Current demand for temporary accommodation" it is stated that there is currently "unprecedented demand and stress on temporary accommodation" (para [23]). Of the 1,283 single let dwellings available to the respondent, only 400 are three-bedroom dwellings – 383 are houses, nine are upper-floor flats, four are ground-floor flats and four are bungalows. It is one of the four ground-floor flats which is being made available to the applicant (para [24]). Such is the demand on standard temporary accommodation that in order to meet its statutory duties, the respondent has had to rely on non-standard hotel and B&B accommodation. At the date of the affidavit there were 228 placements in non-standard accommodation (para [25]).

[25] In para [26] Mr Gunn states that the respondent "must be mindful of the need to deliver value for money when managing a single let portfolio in the context of an extremely challenging funding environment." He refers to the NIHE's response to the Department of Communities Budget 2024-25 Equality Impact Assessment. In the section of the response dealing with homelessness he quotes the following:

"Data on projected demand for homelessness services led to a requirement for funding of £44.5m in 2024/2025. Indicative programme funding of £30.4m has been allocated, resulting in a significant funding shortfall of £14.1m across the programme.

Over the past five years, there has been an unprecedented growth in the number of households requiring temporary accommodation, soaring from 4,527 placements annually to 11,368 in just five years, an increase of over 150%...

The number of households currently living in temporary accommodation is a small portion of the households who are entitled to do so. On the 31 March 2024 there were 29,394 households with Full Duty Applicant (FDA) status, more than half of all households on the waiting list for social housing. This number has increased by 40% since March 2020. The Housing Executive owes a duty to these

households to provide temporary accommodation and is conscious that at any point they could present seeking those services. Therefore, it is likely that the numbers seeking temporary accommodation will rise, as allocations to new and existing social housing reduce.

...

Given our dependence on accommodation in the private sector and reflecting trends in the cost of private rented sector accommodation, the cost of providing temporary accommodation has increased dramatically in recent years, increasing the cost of meeting our statutory obligations."

[26] The deponent goes on to record, in a table, the increasing costs of temporary accommodation – from £4.607m in 2017/18 to £26.1m in 2023/24, noting that the 2023/24 figure is 5.7 times greater than that in 2017/18.

[27] At para [27] the following appears:

"Significant shortfalls remained until a Ministerial statement on 3 December 2024 noted the results of the October Monitoring Round in which additional funding was provided to the Housing Executive to address pressures in 2024/2025. While the October Monitoring Round assisted with resolving financial challenges in 2024/2025, as of 30 September 2024, there were a total of 30,658 households who were statutorily homeless and on the waiting list ie 30,658 households who could avail of a temporary accommodation duty if they chose to do so. It is in this context that the Housing Executive is obliged to ensure value for money in the identification of single let options, as it is expected that pressures on the wider public sector budget will continue into 2025/26 and any homelessness allocation must meet an increasing demand on services."

[28] Dealing with part of the history of this case Mr Gunn records (para [31]) that in the last four years the respondent has offered a number of alternatives to the applicant, all of which she has refused as being unsuitable to her, and her family's, needs (I note, in passing, that none was "an all-one-level, ground-floor, 3-bedroom property"). Those were:

- (a) 26 November 2020, a three-bedroom house with ground floor shower room, in St. James's Crescent;
- (b) 8 January 2021, a three-bedroom house with ground floor toilet, at Moira Road;
- (c) 25 January 2021, a three-bedroom house at Low Road;

- (d) 21 June 2021, a four-bedroom house at Ravenhill Avenue;
- (e) 11 May 2022, a four-bedroom house at Springfield Crescent;
- (f) 9 January 2023 and 14 November 2024, a three-bedroom house at Newton Park, Four Winds (the same property on each occasion).

[29] In paras [41] to [47] of his affidavit Mr Gunn deals in some detail with the respondent's decision in relation to the Carryduff bungalow:

"41. The applicant identified accommodation in the private rented sector at 15 Marlborough Crescent, Carryduff as alternative temporary accommodation on the basis she considered it would suit her needs, as part of the phased discharge of the full housing duty... The Housing Executive has a process for bringing accommodation in the private rented sector onto its books for use as temporary accommodation. Non-standard temporary accommodation will be used in the absence of other suitable accommodation. With numbers of voluntary sector hostels remaining relatively static over recent years the Executive will very often meet its statutory duties via provision of single lets, properties which are acquired from the private rented sector and whereby there is no contractual arrangement between the Executive and the provider. Arrangements between the provider and applicant (ie household placed by the respondent) would be on a licence to occupy basis.

42. On 14 October 2024 the Executive made a request to Tarasis, the provider of the applicant's current accommodation, to review [the Carryduff property] to determine if it would be viable to acquire as a single let accommodation for use by the Housing Executive. The Executive will consider a range of factors when seeking to acquire temporary accommodation, with cost being a primary consideration due to the pressure on the homelessness budget. With the homelessness budget being a consistent challenge, staff involved in the acquisition of single lets, will seek to provide a maximum payment outline by standardised rates, unless in exceptional circumstances. For a 3-bedroom property such as [the Carryduff bungalow], the current standardised rate (ie maximum rate outside of exceptional circumstances) is £252.08 per week, or £1,092 per month, which falls

significantly below the £1,350 per month expected by the letting agent [for the Carryduff property]. In considering exceptional circumstances, the Housing Executive will account for a range of factors such as:

- Demand for the property
- Lack of available alternatives
- Location/accessibility
- Age/condition
- Quality/furniture & fittings
- Client type
- Best value
- Local Housing Allowance (LHA)

43. The Housing Executive does not receive multi-year funding in respect of homelessness services and therefore, it is not currently possible for it to acquire single lets on a contractual basis. In such circumstances, it is reliant on providers being satisfied with arrangements, whereby there is no defined period for which the Executive will use the property. The consequence of this is that the provider has no assurances that such use will be for periods similar to normal letting arrangements in the private rented sector, which are often defined by contract periods of 12 months, as was the case for [the Carryduff property] when it was advertised as available. The Executive will therefore find it very challenging to engage with letting agents such as those responsible for letting [the property] in acquiring single let accommodation, and it uses either smaller providers who contact the respondent directly or larger providers, such as Tarasis, who may act as a conduit between the Executive and the property owner or letting agent. Tarasis then assumes the risk in terms of any contractual obligations that may be expected by the property owner or letting agent.

44. In making such decisions, the Housing Executive must consider the impact on the overall single let portfolio. It is for this reason that a standardised rate is applied and any deviation from this must consider the impact on the portfolio as a whole. The standardised rate itself is commercially sensitive information. On 17 October 2024 the Area Manager in Belfast Housing Solutions, Aisling McDermott, made the decision that [the Carryduff

property] was not viable as an arrangement directly with the letting agent, due to the fact that a 12 month contract was required, and any agreement with an intermediary such as Tarasis would have required a payment of £377 per week/£1,633 per month, which would have been an extremely significant deviation beyond the standardised rate. Across Northern Ireland the Housing Executive presently pays over £300 in respect of six ground floor 3-bedroom single let properties. Each of these presents with significantly more complex housing considerations than the applicant and the costs are marginally over the standardised rate, not approaching or exceeding £377 per week. Furthermore, in no case has any applicant sourced a property and approached the Housing Executive asking for it to be rented for them. The Housing Executive searches for temporary accommodation. I would refer to the offers of accommodation made to the applicant by the Housing Executive set out in paragraph 30 above [actually, paragraph 31] which reflect the usual approach here. Indeed, it is in these circumstances the applicant was offered her present accommodation and, most recently, was offered the alternative temporary accommodation [in the University area].

45. Local Housing Allowance (LHA) rates are decided by the Department for Work and Pensions (DWP) using information based on the list of rents provided by the Valuation Office Agency. LHA rates are based on private market rents being paid by tenants in a Broad Rental Market Area (BRMA). This is the area within which a person might reasonably be expected to live. These rents are being paid by people with the same number of bedrooms as the property where the individual lives, or the number of rooms that person and their household needs. VOA rent officers collect rental data from letting agents, landlords, tenants and other sources. This data is then shared with DWP on an annual basis.

46. The current weekly rate for [applicant's current property] is £277.90. The LHA rate for a 4 bed property in this postcode is £219.76, and the Housing Executive pays a top-up amount of £58.21 per week directly to the landlord from its Homelessness Budget. In summary, the LHA and the top-up equals the weekly rental liability for the temporary accommodation single let. When a customer is offered temporary accommodation, single let affordability

is discussed at the outset and the customer is advised that they may be eligible for Housing Benefit to cover the weekly LHA amount. The difference between the agreed rent and the LHA top-up is paid directly to the provider via Discretionary Housing Benefit and funded from the Homelessness budget. The LHA rate in respect of [the Carryduff property], a three-bedroom property, is £173.08. Therefore if the cost of the property is £1,600 per month, the shortfall which would be required to be paid by the Executive would be very significantly higher than those set out in the standardised rates.

47. Housing Executive records indicate that there are two examples in the past twelve months in Belfast Region where Housing Executive has exercised discretion in bringing on three-bedroom ground-floor single let accommodation beyond the standardised rates. In both of these instances the costs were considerably lower than those associated with [the Carryduff property] and the individual circumstances of both households were highly anomalous, involving permanent wheelchair users, requiring a bespoke solution. The shortfall which would have to be paid for [the Carryduff property] would be unprecedented and that additional cost could not be justified where there is suitable alternative means of providing alternative accommodation at significantly less expense.”

Discussion

[30] As the affidavit of Mr Gunn makes clear, there are significant budgetary constraints within which the respondent has to act. In general, a court has to exercise some caution in intervening in allocative decisions of a public body and to be wary of the consequences of intervention. In the current (9th) edition of *De Smith's Judicial Review* the following is stated in paragraphs 1-047 and 1-048:

“1.047 Most ‘allocative decisions’ – decisions involving the distribution of limited resources – fall into the category of polycentric decisions. If the court alters such a decision the judicial intervention will set up a chain reaction, requiring a rearrangement of other decisions with which the original has interacting points of influence...”

1.048 Another typical polycentric decision is one involving the allocation of scarce resources among competing claims...”

[31] Although in a case involving local authorities, I consider that assistance as to the approach of the court can be gleaned from the judgment of Lord Nicholls in *R(G) v Barnet London Borough Council* [2003] UKHL] 57. In paragraphs [11] and [12] he said:

“[11] The financial resources of local authorities are finite. The scope for local authorities to increase the amount of their revenue is strictly limited. So, year by year, they must decide what priority to give to the multifarious competing demands on their limited resources. They have to decide which needs are the most urgent and pressing. The more money they allocate for one purpose the less they have to spend on another. In principle, this decision on priorities is entrusted to the local authorities themselves. In respect of decisions such as these council members are accountable to the local electorate.”

[32] Mr Gunn’s affidavit explains the rationale for the decision, in the light of the respondent’s policies, including its policy on maximum rental payments. From that it is clear that the figure of £1,350 per month is significantly above the standardised rate, which is described as being “the maximum rate outside of exceptional circumstances.” (Para [42]). Para [47] of the affidavit identifies two examples of single let accommodation beyond the standardised rates, in each of which the family circumstances involved “permanent wheelchair users, requiring a bespoke solution.” Even then, the “costs were considerably lower than those associated with” the Carryduff property.

[33] The many grounds of the applicant’s challenge to the decision in relation to the Carryduff bungalow are set out in section 5 of the Order 53 Statement.

[34] At section 5(i) the applicant says that the respondent’s decision was unlawful under section 75 of the Northern Ireland Act 1998. Where material this provides:

Statutory duty on public authorities.

(1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and

- (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

[35] Previously there was some doubt as to whether judicial review lay in relation to an allegation of a breach of section 75, on the basis that the Act provided, in Schedule 9, a mechanism for the enforcement of the duties under the section, essentially by the Equality Commission. Section 75(4) provided that “Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.” That doubt has been removed by the judgment of the Court of Appeal in *McMinnis’s Application for Judicial Review* [2024] NICA 77. McCloskey LJ dealt in detail with this matter between paras [119] and [143]. He said, inter alia:

“[132] Two particular features of section 75 must be highlighted. The first is the presumptively mandatory ‘shall’ in section 75(4). The second is the statutory gateway to the Schedule 9 machinery: this is governed by the words ‘the enforcement of the duties under this section.’ Paraphrasing, in any case where a question arises about whether a public authority has discharged its duty under section 75(1) or section 75(2), thereby raising an issue concerning the enforcement of either of those duties, the Schedule 9 machinery, which has the rubric ‘Equality: Enforcement of Duties’, shall apply.

[133] The next consideration is constitutional in nature, namely that in cases where the High Court decides to adjudicate upon such a complaint, there is judicial intrusion in a field in which the legislature has conferred sole responsibility on a specified and presumptively expert agency. This leads to a further, related consideration namely that the High Court in judicial review exercises the jurisdiction of supervisory superintendence and has no appellate function. Furthermore, the High Court is not endowed with the tools and mechanisms available to ECNI in its investigation and determination of a complaint under Schedule 9.

...

[136] We further consider that the clearest guide to the identification of cases in which the High Court should properly adjudicate in section 75 issues is found in the

language of para 10(1) of Schedule 9. This empowers ECNI to conduct an investigation where it receives a complaint that a public authority has failed to comply with its statutory equality scheme. The legislature has reserved all cases belonging to this category to ECNI."

[36] At para [137], posing the pithy question: "Whither the scope for judicial review by the High Court?", he went on to answer it, thus:

"In this context the prism of vires falls to be considered. If an issue related to section 75 raised by an aggrieved person or body does not fall squarely within the foregoing statutory framework, ECNI will not have the vires to investigate. Should it choose to do so it would be acting ultra vires. Alternatively, the High Court would be competent to adjudicate on a refusal or failure to act by ECNI in a case said to fall within para 10(1) of Schedule 9. A misconceived acceptance by ECNI of jurisdiction to act would similarly attract a challenge by judicial review proceedings. It is precisely in such cases that the supervisory jurisdiction of the High Court would properly be engaged. ...we repeat that any attempted compilation of an exhaustive list of such cases would be both inappropriate and unprofitable."

[37] Nothing was canvassed before me as to why the applicant could not make an effective complaint to the Equality Commission. Accordingly, I consider that the appropriate remedy available to the applicant arising from any asserted breach of section 75, in the particular circumstances of this case as I have outlined them above, lies with the Equality Commission.

[38] Section 5(ii) and 5(iii) relate to allegations that the respondent has taken into account immaterial considerations and failed to take into account material considerations. The immaterial considerations appear to be that there are uneven floors in the present (Four Winds) property and that there is a hole in the driveway. The material considerations relate to the absence of documents held by the NIHE "to prove that they had even tried to house me" and an assertion that the "Courts didn't believe that I had a recording of [2 NIHE officials] telling me to look for any 4-bed bungalow and they would pay for it."

[39] I do not consider that the matters relied upon by the applicant constitute the type of material/immaterial considerations which could be prayed in aid to vitiate the respondent's decision not to pay a figure significantly above its standardised rates for the Carryduff property. In the circumstances, I do not consider that the evidence shows the respondent to have ignored material considerations or to have failed to take

into account any material consideration in arriving at the decision in relation to the Carryduff property.

[40] Section 5(iv) alleges procedural unfairness, being discrimination “by NIHE to rehome my family”; “Trying to force me to accept that they have no properties in the areas where I have felt safe living for the last four years and because they have no properties they can just leave me. This is wrong, a recent example is that land has been purchased to house the travelling community”; and an assertion that the County Court has recently ruled that NIHE had discriminated against a disabled couple for “being left in unsuitable accommodation for 9 and a half years.”

[41] The county court case (which is *Boyle & Boyle v NIHE* NICty 3) is particularly fact specific. In my view it provides no assistance to this court dealing with the facts of this case. The applicant provided no evidence of how she was discriminated against. Other than a bare assertion that land had been purchased for the travelling community, there was nothing to suggest that the decision in relation to the Carryduff property was made on any discriminatory basis. Looking at the decision of the respondent in the round and in light of all the evidence which I have rehearsed and considered, I see no evidence whatsoever of discrimination.

[42] Section 5(v) alleges irrationality. Having examined the particular facts and circumstances in this case as I have set them out in some detail above, and considering the explanation of the rationale of the decision as set out in the NIHE’s affidavit, I consider that there is nothing irrational or *Wednesbury* unreasonable about the policy in relation to standardised rates or the exceptions to it which has been adopted by the respondent, and nothing irrational or *Wednesbury* unreasonable in the way in which the policy has been implemented in this case.

[43] Section 5(vi) alleges improper motive/bad faith on the basis (a) that the applicant and her children have sustained multiple injuries in the Four Winds property and (b) that the Carryduff property is ideal for their needs. Neither of the two matters relied on by the applicant is capable, in my view, of supporting an allegation of improper motive or bad faith on the part of the respondent.

[44] At section 5(vii) the applicant alleges breach of statutory duty/requirement. She relies on a failure to award intimidation points in April 2020 and the fact that Base 2 had to step in to help, as a result of which the applicant was awarded appropriate intimidation points in 2023. Both of these are historical matters and do not in any way speak to the respondent’s impugned decision in relation to the Carryduff property.

[45] Section 5(viii) refers to substantive legitimate expectation. In order to found a claim based on this principle, the statement in question must be “clear, unambiguous and devoid of relevant qualification”, see eg Bingham LJ in *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, at 1569. There seems to be two alleged aspects of this in the applicant’s case. First, the applicant asserts that the respondent told the office of Kate Nicholls MLA that “I was top of the list for a very

long time and the next bungalow that comes up is mine of my choice.” Secondly, the applicant says that she herself and Kate Nicholls were both told that she “could choose any 3-bedroom bungalow that comes up.”

[46] Both of these points were made to Scoffield J and were dealt with in his judgment beginning at para [53]. Although the letter from Ms Nicholls is not in the papers before me, its contents are set out in some detail in para [54] of the judgment of Scoffield J. In my view, there is nothing in the reported contents of the letter to support the proposition that the respondent had made a clear, unambiguous statement, devoid of any relevant qualification such as is asserted in the applicant’s Order 53 Statement.

[47] The applicant’s evidence about the assurance given to her – that she could choose any 3-bedroom bungalow that comes up (with the necessary inference that NIHE would provide the appropriate funding, whatever that might amount to) – appears to relate to recorded conversations between her and named NIHE officials. A flash drive was provided to the court containing a number of recordings of conversations between the applicant and officials from the respondent, and the applicant says that the assurance is recorded. The applicant’s assertion involves an issue of fact, and insofar as the applicant relies on a recording of any conversation in which such a matter was said to her, I have been unable to identify it having listened to the recordings. In the circumstances I am not persuaded that there is cogent evidence of any assurance made by the respondent to ground a finding that the applicant enjoyed a substantive legitimate expectation that the respondent would provide the appropriate funding, whatever that might be, for the Carryduff bungalow.

[48] At section 5(ix), under the heading “Breach of EU law” the applicant relies on (a) breach of policy and procedures and (b) breach of Disability Discrimination Act 1995 (“the DDA”). She should, she says, have had safe and secure housing, not housing which has caused her and her sons to sustain injury, and the respondent has failed to offer her the only 3-bedroom bungalow which has become available, notwithstanding that she has 370 points and has been “number 1 since June 2023.” In relation to the DDA the applicant submits that she has “been discriminated against on s. 21B, s. 21D and s. 21 E.” Broadly speaking, section 21B makes it unlawful for a public authority to discriminate against a disabled person in carrying out its functions; section 21D sets out the meaning of discrimination; and section 21E requires the public authority, in certain circumstances, to make adjustments.

[49] The affidavit of Mr Gunn, as I referred to above, records all the medical and OT material relevant to the applicant and her family which has been seen by the respondent. At para 8 of the affidavit, he says:

“The Executive has a Complex Needs Regional Team which is responsible for addressing housing solutions in circumstances of applicants ... with complex medical

needs. The applicant's case is not considered [of a] complex enough nature to warrant case management by this Team. Her needs do not call for the type of bespoke solution that the Complex Needs cohort require. All the medical evidence points to her and her family being suitable for a ground level access priority which does not require any ad hoc adaptations or specific requirements (for instance, a wheelchair standard property)."

[50] It seems to me that that assessment is entirely appropriate. Throughout the available medical reports, the applicant is described as 'ambulant disabled' and it appears from the affidavit of Mr Gunn (para [12]) that the applicant is "the only person in the household who has been assessed as having mobility issues." Further, A's night terrors and sleepwalking was part of the circumstances which led to the determination that an all-one-level, ground-floor, 3-bedroom dwelling was appropriate. Precisely such a property has been offered to the applicant for her and her family. The issue of suitability of that property remains outstanding and I deal with it later in this judgment.

[51] Finally, under section 5(xi) (section 5(x) in the template not being relevant) the applicant relies on breach of policy, in the following respects: (a) not following their own guidelines, policies and procedures; (b) breach of her son's personal data lost by Disability Services; (c) A's "autism and serious behavioural issues. On highest spectrum ADD. Suffers severe night terrors and has been forced to sleep in a tiny dining area where it is not safe either."

[52] The only relevant document included by the applicant in the papers submitted by her is the 'Housing Executive Disability Action Plan 2020-2025.' In her oral submissions the applicant did not take the court through this document to highlight those passages upon which she places reliance, although in the copy provided to the court some passages are highlighted. The Plan arose from the respondent's duty, pursuant to 49B of the DDA, to submit such a plan to the Equality Commission. Having read through the document, including the objectives in the appendix, and considering the highlighted issues, I do not see any basis for a submission that in making the decision in relation to the Carryduff property, the respondent was in breach of this plan. As to the allegation that the respondent did not follow its own policies, as it seems to me from the explanation in Mr Gunn's affidavit, the respondent was, indeed, abiding by its policy on standardised rates. Whether the fact that personal data relating to her son was allegedly lost had any impact on the respondent's decision in relation to the Carryduff property was not made clear to me and I can make no finding about that allegation.

[53] In all the circumstances discussed above I dismiss the applicant's challenge to the decision of the respondent in relation to the funding for the Carryduff property.

The decision as to whether the flat in the University area is suitable

[54] In relation to the challenge to the decision of the respondent that the flat in the University area is suitable for the applicant and her family, the court first has to consider the prior question, namely: is there an effective alternative remedy available to the applicant?

[55] Mr Sands submits that the applicant has available to her an effective alternative remedy. He relies on the recent Supreme Court decision in *McAleenon's Application for Judicial Review* [2024] UKSC 31, where the Supreme Court said, under the rubric "The suitable alternative remedy principle":

"50. The forms of relief available in a claim for judicial review are discretionary (albeit the ambit of the discretion may in the event be very small or non-existent in the circumstances of a particular case). The availability of the judicial review procedure is likewise discretionary. A court may refuse to grant leave to apply for judicial review or refuse a remedy at the substantive hearing if a suitable alternative remedy exists but the claimant has failed to use it. As stated in *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] EWCA Civ 1716, para 55, "judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective." If other means of redress are conveniently and effectively available, they ought ordinarily to be used before resort to judicial review: *Kay v Lambeth London Borough Council* [2006] UKHL 10; [2006] 2 AC 465, para 30; *R (Watch Tower Bible & Tract Society of Britain) v Charity Commission* [2016] EWCA Civ 154; [2016] 1 WLR 2625, para 19.

51. Where Parliament has enacted a statutory scheme for appeals in respect of certain decisions, an appeal will in ordinary circumstances be regarded as a suitable alternative remedy in relation to such decisions which ought to be pursued rather than having resort to judicial review: *Glencore Energy*, above, paras 55-58; *Watch Tower Bible & Tract Society*, above, para 19. Otherwise, use of judicial review would undermine the regime for challenging decisions which Parliament considers to be appropriate in that class of case."

[56] This chimes with the principles outlined by the Court of Appeal in this jurisdiction in *Alpha Resource Management Ltd.'s Application for Judicial Review* [2022] NICA 27 in which the Lady Chief Justice said:

“[20] Drawing together the authorities and texts we have referred to above, we summarise the principles as follows:

- (i) Judicial review is a remedy of last resort and may not be the only available avenue of challenging a particular decision. That is because statute may have provided an appellate machinery to deal with appeals against decisions of public bodies.
- (ii) A court may, in its discretion, refuse to grant permission to apply for judicial review or refuse a remedy at the substantive hearing if an adequate alternative remedy exists, or if such a remedy existed but the claimant had failed to use it.
- (iii) The general principle is that an individual should normally use alternative remedies where these are available rather than judicial review. The courts take the view that save in the most exceptional circumstances, the judicial review jurisdiction will not be exercised where other remedies were available and have not been used.
- (iv) The rationale for the exhaustion of alternative remedies principle is that it is not for the courts to usurp the functions of the appellate body which has the expertise and ability to determine disputes.
- (v) The courts will not insist that claimants pursue an alternative remedy which is inadequate. The principle can be defined as one that requires the use of adequate alternative remedies, or the fact that an alternative remedy is inadequate may be seen as an exceptional reason why judicial review may be used.
- (vi) There may be other exceptional reasons why judicial review is the preferred course as each case is fact sensitive and the court must consider in exercising its discretion to hear a judicial review where an alternative remedy is available the overall circumstances including in some cases the urgency of the case, delay, cost, or public interest concerns.”

[57] Mr Sands relies on the existence a statutory scheme and submits that the combination of the 1988 Order and the Homelessness (Review) Regulations (Northern Ireland) 2010 provide an adequate alternative remedy. The 1988 Order provides, where material:

“Right to request review of decision

11A – (1) An applicant has the right to request a review of any decision of the Executive –

...

(c) as to the suitability of accommodation offered to the applicant in discharge of the Executive’s duty ...

...

(3) A request for review must be made before the end of the period of 28 days beginning with the day on which the applicant is notified of the Executive’s decision or such longer period as the Executive may in writing allow.

(4) On a request being duly made to it, the Executive shall review its decision.

...

Procedure on a review

11B – (1) The Department may make provision by regulations as to the procedure to be followed in connection with a review under Article 11A. Nothing in the following provisions affects the generality of this power.

...

Right of appeal to a county court on a point of law

11C – (1) If an applicant who has requested a review under Article 11A –

(a) is dissatisfied with the decision on the review, or

...

the applicant may appeal to the county court on any point of law arising from the decision or, as the case may be, the original decision.”

[58] Regulation 2 of the Homelessness (Review) Regulations (Northern Ireland) 2010 provides that the review “shall be carried out by a person who was not involved in the original decision and is senior to the officer who made that decision.” Regulation 3, 4 and 5 provide:

“Request for a review and notification of review procedure

3. – (1) A request for a review shall be made to the Executive.

(2) Where a request for a review has been made, the Executive shall –

- (a) notify the applicant that he, or someone acting on his behalf, may make representations in writing to the Executive in connection with the review, and
- (b) if it has not done so already, notify the applicant of the procedure to be followed in connection with the review.

Procedure on a review

4. – (1) The Executive shall, subject to compliance with the provisions of regulation 5, consider –

- (a) any representations made under regulation 3, and
- (b) any representations made under paragraph (2).

(2) If the Executive considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the Executive shall notify the applicant –

- (a) that the Executive is so minded and the reasons why, and
- (b) that the applicant, or someone acting on his behalf, may make representations to the Executive orally or in writing or both orally and in writing.

Notification of the decision on a review

5. – (1) The period within which notice of the decision on a review shall be given to the applicant by the Executive shall be eight weeks or such longer period as the applicant and the Executive may agree in writing.”

[59] Mr Sands says this statutory scheme allows for an entirely fact-specific review of the decision as to suitability. The 2010 Regulations allow for an applicant to produce whatever evidence oral or in writing, he or she wishes to rely on to challenge the suitability decision. The Regulations allow for representations to be made.

[60] In response, the applicant denies that there is an adequate alternative remedy. She relies on what she terms “the years of trauma” during which the respondent has failed her and her family. She says that the respondent has made no attempt to look for a bungalow for her and simply “threw in” the University area flat at the last moment. She it was who looked for and found the Carryduff bungalow. She says that the respondent is “not going to throw us from the frying pan into the fire” and that there is no other remedy.

[61] I note from para [10] of the judgment of Scofield J, to which I have already referred, that the applicant has in the past made use of this same statutory procedure.

Discussion

[62] The applicant has made a very large number of factual assertions, which the judicial review court is not competent to resolve. If any reminder of this limitation on a judicial review court was required, the matter was addressed by the Supreme Court in *McAleenon's Application*, thus:

“41. Judicial review is supposed to be a speedy and effective procedure, in respect of which disputes of fact which have a bearing on the legal question to be determined by the court – that is, whether the public authority has acted lawfully – do not generally arise. A public authority is subject to a duty of candour to explain to the court all the facts which it took into account and the information available to it when it decided how to act.

42. Given the nature of the legal question to be determined by the court and the duty of candour, the usual position is that a judicial review claim can and should be determined without the need to resort to procedures, such as cross-examination of witnesses, which are directed to assisting a court to resolve disputed questions of fact which are relevant in the context of other civil actions, where it is the court itself which has to determine those facts. In judicial review proceedings the court is typically not concerned to resolve disputes of fact, but rather to decide the legal consequences in the light of undisputed facts about what information the public authority had and the reasons it had for acting.”

[63] The difficulty faced by the court in the present case is well illustrated by the sheer number of factual matters raised by, and relied on by, the applicant, which would have to be resolved by the court. Without intending to be exhaustive these include:

- her assertion that the University area is not safe for her family because there are two or three nearby hostels accommodating, inter alia, troubled teenagers and drug addicts and it would be entirely unsuitable for her son (referred to as A above in the paragraphs of Scofield J's judgment) to live in that area where, she says, there have

been some 4,700 crimes. In addition, she says, there are prostitutes working in the general University area;

- I note from Scoffield J's judgment that her earlier judicial review challenge related to her desire to be allocated a property in McClure Street, Belfast. This is, broadly, in or adjacent to the University area, and the court would have to make a finding of fact as to why, if McClure Street was a suitable and safe area for her and her family to live in, the University area would not be;
- that A's night terrors, during which he screams, would wake or disturb other tenants in the block of flats, would draw attention to the family, thus possibly endangering her, and might cause other tenants to have mental health issues;
- that if A runs away from the dwelling, as he sometimes does because, she says, he feels trapped by the housing situation, the University area would be dangerous for him and for the applicant going looking for him;
- that A's best friend's father would not let him come into the University area to socialise with A;
- that the flat has no garden, that the school (by letter) thinks that A would benefit from a garden space, and that A would have nowhere to benefit from his passion for gardening and growing things;
- that the flat would not be suitable for her other son, younger than A, who is depressed and vulnerable and spends a lot of time inside which, she says, is thought to be due to their housing circumstances;
- that one further reason why she would not agree to the flat in the University area is that she doesn't know who else is in the property.

[64] As I set out above, she describes the Carryduff bungalow as being suitable, among other reasons, because it is in an isolated area to which dissident republicans are unlikely to come, that there are no sectarian issues there, that if A ran away from the house, it would be safer for her to look for him and safer for him than if he ran away in the University area, that his best friend is more likely to socialise with him and that A would be able to garden, making use of his polytunnels and greenhouse which, she says, are still in boxes. It has, she says, "everything my child needs."

[65] Medical issues, both in relation to the applicant herself and her children, have been raised, and there is some written material from medical personnel. In addition, she has provided some material from a school.

[66] In addition to these facts, the applicant also relies on various conversations which she says she has had with letting agents and with Tarasis. She asserted that she went to a new development in the Saintfield road area and asked the developers about social housing. She recounts the conversation she says she had with them. All of this, she says, is to inform the court about how the respondent has failed, and continues to fail, in its duty to her and her family.

[67] The applicant also relies on threats to her which, she says, will still be real if she is housed in the University area, as opposed to Carryduff. She initially relied on a letter dated 29 January 2025 from Base 2. According to the letter "Base 2 is a NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders) based project that deals with individuals and families placed at risk of paramilitary or community threat in Northern Ireland." The organisation is funded by the respondent. It provides information about threat levels to a particular individual. The applicant sought information from Base 2, as did the respondent. The letter states:

"In our response to the NIHE dated 2/1/25 Base 2 confirmed that on 2/6/23 we had confirmed there was a dissident republican threat against the family covering the West Belfast area. There was an indication expressed that areas of known dissident presence in Belfast may not be appropriate. New enquiries specific to the address could have potentially created a risk to the family, so potential risk was based on information already held."

[68] As is apparent from this, the letter was silent as to any possible threat in the University area. As a result of my pointing this out to her, the applicant again contacted Base 2. A further letter dated 31 January 2025 has been provided. It states, where material:

"[The applicant] has reported that you are requesting confirmation of the existence at a specific address in South Belfast. Our previous letter confirmed the information we had received when confirming the original threat back in 2023 which was West Belfast and areas controlled by dissident republicans

To confirm a threat to a potential new allocation (sic) Base 2 would have to make new enquiries in the community where the client is looking to be rehoused. This would carry a number of risks namely:

It would give that community an opportunity to 'create' a new threat to exclude that individual

Would be a risk that client would have concerns that information might get back to those individuals who originally had they under threat

There could be a risk that allocation of tenancies could be influenced then by the community and not the housing provider. Base 2 have to ensure the safety of the client is paramount in the verification process and hence rarely make enquiries prior to allocation.

If you require further information, we can be contacted at the address above.”

[69] The applicant also relies on a conversation with Housing Executive officials in which she asserts that she was given an assurance that if she found a bungalow, the respondent would pay for it. As noted above, a flash drive was provided to the court containing a number of recordings of conversations between the applicant and officials from the respondent and the applicant says that the assurance is recorded. I have listened to the recordings and cannot identify any such assurance, but again that is a factual matter which will have to be resolved.

[70] I have made clear that the above is not an exhaustive list of the facts relied on by the applicant, but it is obvious that there are significant factual issues which would require to be resolved in any assessment by the court of the issue of whether or not the University area flat would be suitable. Some factual assertions, principally medical assertions, find support from written material provided by doctors; some, particularly to do with threats, find little support from written material; some, however, comprise only the bare assertions of the applicant. All of this reinforces the view that the judicial review procedure is not suitable for the resolution of such factual issues.

[71] In all the circumstances I am satisfied that there is an adequate alternative remedy available to the applicant and that the statutory review procedure is the appropriate route for a challenge to the suitability decision. The proliferation of factual matters which I have identified can be fully ventilated and resolved in the statutory review process. In passing, I make the observation that the respondent, having strongly argued that there is an effective alternative remedy, should ensure that the review is undertaken, notwithstanding the time which has passed since the decision was notified to the applicant. The respondent has the discretion to extend the 28-day period – see article 11A(3) of the 1988 Order – and I would expect it to do so.

Conclusion

[72] I dismiss the application for judicial review of the decision of the NIHE not to fund the rental of the Carryduff property. In relation to the decision of the NIHE that

the flat in the University area is suitable for the applicant and her family, I am satisfied that the applicant has an effective alternative remedy, and I refuse the application for judicial review on that basis.