

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **29/06/2006**

IN THE HIGH OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
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AN APPLICATION BY NELSON BAILEY FOR JUDICIAL REVIEW
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WEATHERUP J

[1] This is an application for Judicial Review of a decision of Armagh and Dunganon Health and Social Services Trust dated 11 May 2005 refusing the applicant financial assistance by way of payments of rent for temporary accommodation during proposed adaptations to the plaintiff's home to be carried out under the Disabled Facilities Grant scheme. Mr White appeared for the applicant and Mr Good appeared for the Trust.

Disabled Facilities Grants.

[2] The applicant and his wife resided in premises at Ballygawley, County Tyrone and qualified for adaptations to be made to the premises under the Disabled Facilities Grant Scheme operated by the Northern Ireland Housing Executive (NIHE) under the Housing (Northern Ireland) Order 2003. The completion of the adaptations would have required the applicant and his wife to vacate the premises for a period of approximately 17 weeks. Housing benefit was available to the applicant for temporary accommodation for 4 weeks only. The applicant was unable to meet the cost of temporary accommodation for the additional 13 weeks. Accordingly the applicant applied to the Trust for payment of the temporary housing costs under section 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978. The Trust refused to pay the temporary housing costs contending that such payments were outside the scope of section 2 of the 1978 Act. In the event the applicant, being unable to meet the costs of the temporary accommodation while the adaptation works were being carried out on his

home, moved to alternative premises and did not make use of the grant. The application proceeded on the basis that it was in the general public interest to have a determination of the scope of a Trust's powers for the purposes of other such claims.

[3] Disabled Facilities Grants are payable under Articles 50-56 of the Housing (Northern Ireland) Order 2003. The Scheme is administered by NIHE in respect of a disabled occupant who is an owner or tenant of premises requiring adaptation for specified purposes. The purposes include access to the dwelling or a room in the dwelling or movement within the dwelling, making the dwelling safe, facilitating the preparation and cooking of food, improving any heating system, facilitating the use of a source of power, light or heat or other purposes specified by order.

The Chronically Sick and Disabled Persons (NI) Act 1978.

[4] Section 2 of the 1978 Act concerns the provision of social welfare services as follows -

“Where the [Trust]... is satisfiedthat it is necessary in order to meet the needs of [a person]....to make arrangements under Article 4(b) and 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 for all or any of the following matters namely-

(e) the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience;

then, that [Trust] shall make those arrangements.”

Article 4(b) of the 1972 Order provides for the general duty of the [Trust] as follows -

“It shall be the duty of the [Trust] -

(b) to provide or secure the provision of personal social services in Northern Ireland

designed to promote the social welfare of the people of Northern Ireland;

and the [Trust] shall so discharge its duty as to secure the effective co-ordination of health and personal social services.”

Article 15 of the 1972 Order provides for general social welfare as follows -

“(1) In the exercise of its functions under Article 4(b) the [Trust] shall make available advice, guidance and assistance, to such extent as it considers necessary, and for that purpose shall make such arrangements and provide or secure the provision of such facilities (including the provision or arranging for the provision of residential or other accommodation, home help and laundry facilities) as it considers suitable and adequate.

(1A) Arrangements under paragraph (1) may include arrangements for the provision by any other body or person of any of the personal social services on such terms and conditions as may be agreed”

Grounds for Judicial Review.

[5] The applicant's grounds for Judicial Review are that the Trust in refusing assistance to the applicant -

- (i) Acted in breach of section 2 of the 1978 Act.
- (ii) Reached an irrational decision.
- (iii) Failed to take into account relevant matters and to disregard irrelevant matters.
- (iv) Fettered its discretion.
- (v) Acted in breach of the right to respect for private and family life and home under Article 8 of the European Convention.
- (vi) Acted in breach of the right to property under Article 1 of the First Protocol of the European Convention.

In essence this application for Judicial Review concerns the resolution of competing interpretations of the scope of the Trust's powers under section 2 of the 1978 Act.

Interpretation of section 2 of the 1978 Act.

[6] Under section 2 of the 1978 Act the Trust must be "satisfied" that it is "necessary" to make "arrangements under [the 1972 Order]" for the provision of "assistance in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience." The arrangements under the 1972 Order are to secure the provision of personal social services and in the exercise of those functions the Trust shall make available "assistance" as "necessary" by making "arrangements" and providing "facilities" as it considers "suitable and adequate".

[7] The structure of section 2 of the 1978 Act is such that the arrangements are interlinked with advice guidance and assistance under the 1972 Order. Under section 2(e) of the 1978 Act the dual target of the arrangements concerns the carrying out of the works to the home or the provision of facilities for safety comfort or convenience. Under Article 15 of the 1972 Order the Trust provides adequate and suitable arrangements and facilities. The Trust's position is that neither the first limb of section 2(e) which applies to assistance in arranging for the carrying out of the works of adaptation to the dwelling nor the second limb of section 2(e) which applies to the provision of facilities for safety, comfort extends to financial assistance to secure alternative accommodation.

[8] The Trust refers to Guidance issued by the Health and Social Services Executive, Child Community Care Directorate, dated 10 December 1998 "Care in the Community - Housing for People with Disabilities." The Guidance was issued to Health and Social Services Boards and Trusts in relation to the arrangements for providing specialist housing and housing adaptations for people with disabilities. Under the heading "Top Up Payments" paragraphs 17-19 of the Guidance provide -

(i) Where the cost of the work exceeds the limit of the mandatory disabled facilities grant an extra-statutory payment may be made by NIHE, provided that a means test has determined that an applicant should not pay the extra cost of the adaptations.

(ii) Where NIHE assess an applicant as able to contribute to the cost of adaptations, but the applicant alleges that he cannot make the contribution, Boards and Trusts may, in exceptional circumstances, consider financial assistance where need is established.

The above top-up payments relate to the cost of the adaptation works. The Guidance does not provide for the cost of alternative accommodation during the adaptation works.

[9] The Trust further refers to a service agreement between the Health and Social Services Boards and Trusts and NIHE and to paragraph 2.2 in relation to Trust assessments of housing adaptation needs and recommendations to the NIHE. From this the respondent maintains that a need for temporary housing accommodation is a matter for NIHE. Such a conclusion is not apparent from the terms of the service agreement.

[10] The applicant refers to the equivalent position in England and Wales where it is contended that the cost of temporary housing is met by the Department of Health. Section 2 of the 1978 Act is to be found in England in section 2 of the Chronically Sick and Disabled Persons Act 1970. Where section 2 of the 1978 Act in Northern Ireland refers to Article 4(b) and 15 of the 1972 Northern Ireland Order the 1970 Act in England refers to local authority functions under section 29 of the National Assistance Act 1948 which provides for arrangements for promoting the welfare of the disabled. The scheme of section 29 of the 1948 Act in England is different from the scheme of Articles 4 and 15 of the 1972 Order in Northern Ireland and I do not find the English legislation of assistance in addressing the scope of the Northern Ireland legislation.

[11] The applicant also relies on a Good Practice Guide for England and Wales published by the office of the Deputy Prime Minister in November 2004 under the title "Delivering housing adaptations for disabled people". The Good Practice Guide is of course based on the social services and housing legislation applicable in England and Wales and this, while similar, is not the same as that which applies in Northern Ireland. Paragraph 2.8 of the Good Practice Guide refers to social service authorities and states that the duty to ensure that the assistance required by disabled people is secured. Reference is then made to cases where the help needed goes beyond what is available through the Disabled Facilities Grant, or where a Disabled Facilities Grant is not available for any reason, or where a disabled person cannot raise their assessed contribution. This appears to equate to the top-up payments scheme applied in Northern Ireland where the assistance provided is directed at the cost of adaptation works. Further the Good Practice Guide at paragraphs 5.43 and 5.44 refers to disabled persons required to vacate properties for a few days during adaptations and states that the social services and the housing authorities should consider meeting all or part of the costs arising from such arrangements. Where more prolonged disruption is unavoidable and a temporary move is required the emphasis appears to be on the housing authority making appropriate provision. The Good Practice Guide at paragraphs 2.22 to 2.24 deals with local authorities discretionary powers to provide financial assistance for housing adaptations, but this is dealing with

the statutory powers of housing authorities rather than social service authorities. The above reference to paragraphs 5.43 and 5.44 of the Good Practice Guide contemplates the involvement of social services authorities in decisions about short term temporary accommodation.

[12] In addition the applicant relies on Withnell's Application (18 February 2004) where Girvan J considered a challenge to a decision of a Trust refusing to assist the applicant in the adaptation of her heating system. The Trust had carried out an assessment of the applicant's needs under section 2 of the 1978 Act by referring the matter to the NIHE which advised against adaptation of the heating system. Girvan J stated that the Trust retains overall statutory responsibility for ensuring that the applicant's necessary requirements are met and if NIHE cannot meet the needs of the disabled person the Trust cannot escape from its statutory responsibility to make arrangements to meet those needs (paragraph 13). The statutory responsibility is determined by the interpretation of the scope of section 2 of the 1978 Act and Withnell's Application does not assist the applicant in that interpretation.

[13] The first limb of section 2(e) of the 1978 Act relates to arrangements for the carrying out of adaptation works to an applicant's home. I am satisfied that this extends to the conduct of the works and does not extend to the payment of financial assistance to secure temporary accommodation pending completion of the works. The second limb relates to the provision of additional facilities for safety, comfort or convenience. What is contemplated by the provision of "facilities"? The structure of section 2 of the 1978 Act is such that the necessary arrangements are made under Articles 4(b) and 15 of the 1972 Order. Article 15 may also concern the provision of "facilities", which is stated to include arranging the provision of residential accommodation. The overall scheme of section 2 of the 1978 Act, involving the exercise of social welfare functions under the 1972 Order that include arrangements for the provision of accommodation, leads to the conclusion that "facilities" in the second limb of section 2(e) includes the provision of accommodation. Arrangements for the provision of accommodation may involve payment for the cost of accommodation provided by others. Accordingly I am satisfied that the Trust had power to make payment of temporary accommodation costs under section 2(e) of the 1978 Act, provided the other requirements were satisfied.

[14] It is apparent that the operation of a Disabled Facilities Grant scheme may in certain cases such as the present require the premises to be vacated. In such circumstances it is apparent that a housing need arises and if the applicant is a tenant of the premises where the adaptations will be carried out it is equally apparent that rents are liable to be incurred in respect of the premises to be adapted as well as the temporary accommodation. Assuming the applicant does not have the means to discharge the rent for the temporary accommodation it is clear that a housing need will arise and if the Disabled

Facilities Grant scheme is not to be thwarted the cost of the temporary housing requires to be met. It might have been thought that the housing authority had some responsibilities in such circumstances but the responsibilities of NIHE did not fall to be considered on this application for Judicial Review. The application focused on the responsibilities of the social services authority under section 2 of the 1978 Act.

[15] Accordingly I am satisfied that the proper interpretation of section 2 of the 1978 Act permits a Trust to make payments for temporary accommodation costs. Whether the Trust should do so in a particular case requires an assessment by the Trust of all the considerations arising under section 2. That is not an exercise that was conducted by the Trust in the present case, given the Trust's approach to the scope of section 2. Having found that section 2 extends to the payment of temporary accommodation costs it is not necessary to consider Article 8 and Article 1 of the First Protocol of the European Convention in relation to the interpretation of the provision. Whether Article 8 and Article 1 of the First Protocol are engaged in relation to the making of a decision under section 2 is a different matter that the Trust will have to address in considering a claim for temporary accommodation costs.

Declaration.

[16] The Court will issue a declaration that "facilities" in section 2(e) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 may include the cost of temporary accommodation costs for a person who is required, in order to secure greater safety, comfort or convenience, to vacate his home during the carrying out of any works of adaptation in his home.