

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (CROWN SIDE)**

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**IN THE MATTER OF AN APPLICATION BY JOSEPHINE CLARKE FOR  
JUDICIAL REVIEW**

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**KERR J**

**Introduction**

In these proceedings Mrs Josephine Clarke challenges decisions of the Northern Ireland Housing Executive and the Chief Constable. She claims that NIHE has wrongly refused to accord her A1 Priority Status (Intimidation) in relation to her application to be rehoused. She also challenges the decision of the Royal Ulster Constabulary whereby it concluded that she was not at risk of sectarian or terrorist attack.

**Background**

Mrs Clarke is Catholic. She is married to a Protestant. Some six years ago they lived with their children at Glen Road, Belfast. Two children are registered blind. According to Mrs Clarke, while they lived in Glen Road, her husband was intimidated at his place of employment. This intimidation

occurred, Mrs Clarke claims, because of her husband's religion. She further claims that, because of it, she was forced to move to 80 Woodside View, Poleglass. Her husband did not join her there because they feared further intimidation. Mrs Clarke still lives in Poleglass. Her husband lives elsewhere.

Mrs Clarke claims that from the time that she moved to Poleglass she has been intimidated by the same people who had threatened her husband. In October 1998, during a visit to a social club, she and her husband were attacked by a man who, according to Mrs Clarke, had paramilitary connections. The following day the same man was seen in the vicinity of her house and the morning after that she discovered that two of the windows of the house had been smashed. On 16 September 1999 Mrs Clarke was due to give evidence in relation to an assault that had occurred in the Republic of Ireland. The defendant in that case, a woman, was the mother of sons who, according to Mrs Clarke, had paramilitary connections. Before the trial date Mrs Clarke had received threatening telephone calls. On the morning that she was due to give evidence, she was stopped by police and told that the Samaritans had received a telephone call that a bomb had been placed under her car. Other incidents of a similar nature had also occurred.

The house at 80 Woodside View is let to Mrs Clarke by NIHE under a secure tenancy. She has applied for re-housing elsewhere because of the problems that she has encountered. In November 1998 she was deemed to be A1 status for re-housing purposes. Allocation of houses to the Executive's

tenants is carried out in accordance with the Housing Selection Scheme, a statutory scheme devised by the Executive and approved under Article 22 of the Housing (Northern Ireland) Order 1981. The Scheme provides that where a dwelling house becomes available for letting it will be offered to whomever of the “relevant applicants” is at the head of the queue. An applicant’s place in the housing queue depends on his/her grouping within the Scheme. The two top groupings in order of priority are: -

- (i) applicants with A1 (Intimidation) status; and
- (ii) other applicants with A1 status.

At present fewer than one per cent of all applicants have A1(I) status whereas more than 12% have A1 status. A1(I) is described by NIHE as “a kind of super-priority status”. The criteria for the award of this status are set out in paragraph 4.1.9 of the Scheme as follows: -

“Emergencies arising from Civil Unrest/Intimidation

An applicant will be entitled to A1 (Intimidation) status if any of the following criteria apply in respect of the application:

- (a) the applicant’s home has been destroyed or seriously damaged (by explosion, fire or other means) as a result of a terrorist or sectarian attack;
- (b) the applicant cannot reasonably be expected to continue to live or to resume living in his/her home, because, if she or he were to do so, there would, in the opinion of the Executive, be a serious and imminent risk that the applicant or one or more of the applicant’s household would be killed or seriously injured as a result of terrorist or sectarian attack.

If a person is awarded A1 (Intimidation) status because of the perceived risk of attack such an applicant is not entitled to be offered any dwelling if the Executive is of the opinion that there would also be a risk of attack upon the applicant and/or upon a member of the applicant's household, if that dwelling were to be allocated to the applicant."

Mrs Clarke was awarded A1 priority status in November 1998 but she claims that she is entitled to A1 (Intimidation) status. To investigate this claim NIHE contacted RUC and correspondence passed between Mr Stephen Graham of NIHE and various police officers on the topic of the attacks on Mrs Graham's home and members of her family. NIHE has been consistently advised by RUC that, while Mrs Clarke and her family have been the subject of intimidation, there is no reason to suppose that this is part of a sectarian or terrorist campaign.

### **The judicial review application**

For the applicant it was contended that NIHE had relied exclusively on the evidence supplied by RUC in deciding whether to award her A1 (I) status. It was accepted by the applicant that NIHE was "largely dependent" on information supplied by police but it was submitted that there was ample evidence from other sources that Mrs Clarke had been the victim of terrorist/sectarian attack.

The applicant also argued that NIHE had wrongly applied paragraph 4.1.9 of the Scheme in dealing with her claim to be entitled to A1 (I) status. Counsel for the applicant contended that it was sufficient to show that the requirements of that paragraph were satisfied if it could be shown that Mrs

Clarke and her family had been put in fear. He referred to the definition of terrorism in section 20 (1) of the Prevention of Terrorism (Temporary Provisions) Act 1989 and in Article 2(2) of the Criminal Injuries to Persons (Compensation) (Northern Ireland) Order 1988. These definitions contemplated the use of violence for non-political ends. A similar approach ought to have been adopted in the present case, he argued.

Finally, it was suggested that NIHE, in failing to award Mrs Clarke A1 (I) status, had contravened her rights under Article 8 of the European Convention on Human Rights.

In relation to the Chief Constable, counsel for the applicant suggested that the police ought to have looked at the cumulative effect of the various incidents rather than assessing each individually, as they had done. It was claimed that, viewed realistically, the incidents had their origins in sectarianism. The type of attacks that had been perpetrated on the Clarke family obviously had either been sanctioned or tolerated by paramilitary elements that controlled the areas in which they took place.

For NIHE it was argued that it had not relied solely on police information. Mr Graham had stated that he had considered and taken into account the various letters which had been received from the applicant or which had been submitted on her behalf. The decision that Mrs Clarke did not qualify for A1 (I) status did not depend solely on police advice. All of the information available to it had been considered by the Executive before reaching its decision.

Counsel for NIHE also submitted that the criteria contained in paragraph 4.1.9 of the Scheme clearly required that there be a terrorist or sectarian dimension to the attacks on the home of an applicant before A1 (I) status could be awarded. Analogies with the Criminal Injuries Order and the Prevention of Terrorism legislation were, he suggested, inappropriate. The Executive was entitled to approach the definition of “terrorist” and “sectarian” by applying the conventional connotation to these terms.

Finally, it was submitted for NIHE that they had taken into account the need to provide Mrs Clarke with housing where she could be accommodated with her family. She had applied to be re-housed in an area where many other applications had been made. The denial of A1 (I) status had nothing whatever to do with the applicant’s Article 8 rights. The Executive remained willing to re-house the applicant and her family in the area of her choice as soon as accommodation in that area became available. In any event, counsel pointed out, the application made by the applicant for re-housing had not included her husband as part of the household.

For the Chief Constable it was claimed that the matter had been approached globally. All of the incidents concerned had been evaluated for their cumulative effect and the advice of Special Branch had been obtained. It was not accepted that the attacks on Mrs Clarke and her family must have been approved by terrorists or paramilitaries. While paramilitary organisations seek to demonstrate their control over certain areas for political ends, it did not follow that all of the criminal activities within such areas were

approved by paramilitary groups. Many criminal enterprises, including the use of intimidation and violence, were carried out without the approval or involvement of such groups.

It was accepted that the RUC had not adopted the wider connotation of “terrorism” contended for by the applicant but it was also argued for the Chief Constable that this was neither necessary nor appropriate. Nothing in the information available to the police supported the proposition that the attacks were sectarian or terrorist in the normal meaning of those expressions.

### **The correct test**

It was not disputed that NIHE was entitled to devise a policy for the allocation of its housing stock amongst those who applied to be housed. The Executive is not only authorised but is required by the Housing Order to devise such a scheme. The central issue, therefore, is whether the Executive has properly applied its own criteria for determining the applicant’s priority status.

I am satisfied that NIHE was entitled to confine the availability of A1 (I) status to those whose homes had been or were in imminent danger of being destroyed or seriously damaged by terrorist or sectarian attack. I am also satisfied that the Executive was entitled to approach the question of what was meant by terrorist or sectarian attack on the basis of what was conventionally understood by those terms rather than by reference to any statutory definition. The definitions contained in the Prevention of Terrorism Act and the Criminal Injuries legislation were enacted for the specific purpose

of those provisions. There is no legal principle which requires their importation into the quite distinct area of housing. The Executive was entitled to apply its own criteria to the allocation of houses drawing on its experience of the various circumstances in which re-housing was needed. It was not required of the Executive, therefore, that it admit to A1 (I) status any person who had been put in fear, unless it was satisfied that this arose because of terrorism or sectarianism.

Since the Executive had been consistently informed by the RUC that there was no evidence that the attacks on Mrs Clarke's property and on her family were terrorist-related or sectarian, it was entitled to conclude that she did not qualify for A1 (I) status. I am satisfied that NIHE did not conclude that this was so simply because of the information from the police, however. Mr Graham has said that all the information supplied to the Executive was taken into account. I have no reason to doubt the correctness of this statement.

### **The RUC assessment**

The applicant claimed that the conclusion reached by police that there was no evidence pointing to a terrorist or sectarian element in the attacks on Mrs Clarke was insupportable. It was also suggested that the police had made separate assessments of the various incidents individually and failed to consider their cumulative effect.

These assertions are not supported by the evidence. I am satisfied that all of the material available to police was properly considered by them before



final advice was given to NIHE. It is a sad truth that many individuals now engage in the type of squalid attack that has taken place in this case for a variety of the most egregious reasons. These may include terrorist or sectarian motives but that is not always the case. Superintendent Hunter has averred that simply because attacks of this type occur in areas where there are paramilitary elements, it does not follow that the attacks have been sanctioned by those organisations. I have no reason to doubt the correctness of that statement.

I cannot accept, therefore, the argument advanced on behalf of the applicant that the only explanation for the attacks is that they were terrorist or sectarian. The decision of the RUC cannot be impugned on that account, therefore.

As I have already observed there is no evidence to support the claim that the attacks on the applicant and her family were considered individually and in isolation one from the other. On the contrary, the case made on behalf of the Chief Constable is that the overall effect of the various incidents has been assessed. The applicant's claim on this aspect of the case has not been made out, therefore.

## **Article 8**

The applicant's claim that the decision of the Executive breached her Article 8 rights must be considered in light of the willingness of NIHE to re-house her and her family as soon as a dwelling in the area(s) chosen by her becomes available. In essence the applicant's complaint against NIHE is that

it has failed to accord sufficient priority to her claim. It is clear that the Executive must devise a system of allocation of houses which caters for all the demands on its housing stock. Provided the policy which it has devised is fair and is operated equitably, NIHE cannot be faulted if in an individual case, a tenant's aspirations cannot be satisfied immediately.

For understandable reasons, Mrs Clarke fervently believes that her particular circumstances call for the most urgent remedy. The Executive has to deal with enormous demands on its resources, not least in the area of re-housing. I am satisfied that the policy which it has devised to deal with this vexed problem is fair and that it has been properly implemented in the case of Mrs Clarke.

### **Conclusions**

Although I have great sympathy with Mrs Clarke and deplore the attacks that she and her family have had to endure, I am driven to the conclusion that none of the grounds of challenge to the decisions of NIHE or the Chief Constable has been made out and the application for judicial review must therefore be dismissed.

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