

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BEATA RANZA

Applicant/Appellant

v

NORTHERN IRELAND HOUSING EXECUTIVE

Respondent

STEPHENS J

Introduction

[1] The applicant who is for the purposes of this appeal, the appellant, Beata Razna, is 28 years old. She suffers from major alcohol and drug problems both of which have led to a chronic state of self-neglect. She lives in permanent chaos and her personal, physical and emotional health is in continual turmoil. She is homeless living either on the street or in hostel accommodation when this is available to her.

[2] The applicant applied to the Northern Ireland Housing Executive ("the Executive") for accommodation on the basis that she was homeless in accordance with the Housing (Northern Ireland) Order 1988. Her application was refused and she applied for a review of that decision. On 31 March 2014 and on review, her application was again refused. On the same day a letter was written by the Executive not to her, but to Natasha Connolly, a homeless support worker who is engaged by Extern Northern Ireland and who works with the applicant. The letter was received by Ms Connolly on 4 April 2014. However the applicant, given her personal circumstances, was not capable of being found by Ms Connolly until Good Friday, 18 April 2014. On that date the applicant was informed of the decision but this may have been in a general way, in that an arrangement was made for her to attend at the office of Ms Connolly on the Wednesday after Easter, 23 April 2014, so that the matter could be discussed in a more formal setting.

[3] If the applicant wishes to appeal against the decision of the Executive to the County Court on any point of law then an appeal must be brought within 28 days of the applicant being notified of the decision. The court may give leave for an appeal to be brought after the end of 28 day period but only if it is satisfied, where leave is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and good reason for any delay in applying for leave.

[4] The applicant lodged a notice of appeal on 19 May 2014 and:

- a) if she was notified of the decision when the letter was received by Ms Connolly on 4 April 2014 then the 28 day period would have expired on 16 May 2014. On that basis the notice of appeal was lodged 17 days out of time;
- b) if the applicant was notified of the decision when Ms Connolly found her on 18 April 2014 then the 28 day period would have expired on 2 May 2014. On that basis the notice of appeal was lodged 3 days out of time; or
- c) if the applicant was notified of the decision when she saw Ms Connolly in her office on 23 April 2014 then the 28 day period had not expired and the appeal was lodged in time.

In any event it was perceived that the appeal had been brought outside the 28 day period and an application for leave for the appeal to be brought was made to the County Court. That application was refused. The applicant appeals against that decision to this court.

[5] Ms Alyson Kilpatrick appeared on behalf of the applicant and Mr Mark McEvoy appeared on behalf of the Executive. I acknowledge with gratitude the assistance that I received from both counsel who ensured that the relevant issues were presented in a helpful and thoroughly professional manner.

Legislative background

[6] I will briefly summarise the provisions of the Housing (Northern Ireland) Order 1988 which are relevant to this case.

(a) Article 3 provides that a person is homeless if he has no accommodation available for his occupation in the United Kingdom or elsewhere. It is accepted that the applicant is a homeless individual.

(b) Article 5(1)(c) provides that a person who is vulnerable as a result of ... mental illness or handicap or physical disability or other special reason has a priority need for accommodation. The Executive in refusing the applicant's application for accommodation accepted that she was a vulnerable person within the provisions of Article 5(1)(c) but considered that that vulnerability was not as a result of mental illness, handicap or physical disability or other special reason. The legal question is as to the meaning of mental illness. The Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") defines "mental illness" as meaning a state of mind which affects a person's thinking, perceiving, emotion or judgment to the extent that he requires care or medical

treatment in his own interests or the interests of other persons. "Mental disorder" is defined as meaning mental illness, mental handicap and any other disorder or disability of mind. Article 3(2) goes on to provide that no person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of ... dependence on alcohol or drugs. It is contended by the Executive that the applicant's vulnerability is not as a result of a mental illness as a dependence on alcohol or drugs is excluded from the definition in the 1986 Order.

(c) Article 6 provides that a person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation whether in Northern Ireland or elsewhere which is available for his occupation and which it would have been reasonable for him to continue to occupy. There is no suggestion in this case that the applicant had become homeless intentionally.

(d) Article 7 imposes a duty on the Executive to make enquiries into cases of possible homelessness or threatened homelessness.

(e) There are limitations on the obligation of the Executive to provide housing assistance. Article 7A(1) provides that:

"A person is not eligible for assistance under this Part-

(a) if he is a person from abroad who is subject to immigration control and is ineligible for such assistance by virtue of section 119 of the Immigration and Asylum Act 1999;

(b) if he is any other person from abroad who is ineligible for such assistance by virtue of regulations made under paragraph (2); or

(c) ..."

Article 7A(2) enables the Secretary of State, for the purposes of paragraph (1)(b) to make provision by regulations as to other descriptions of persons who are to be treated as persons from abroad who are ineligible for assistance under this Part. The applicant is Polish and the Executive rely on the Allocation of Housing and Homelessness (Eligibility) Regulations SR (NI) 2006/397 to justify its decision to refuse accommodation to the applicant.

(f) Article 9 imposes obligations on the Executive to notify decisions and the reasons for decisions. Accordingly on completing its enquiries under Article 7 the Executive shall notify the applicant of its decision on the question whether he is homeless or threatened with homelessness and if the Executive notifies the applicant that its decision is that he is homeless or threatened with

homelessness it shall at the same time notify him of its decision on the question whether he has a priority need. Article 9(4) goes on to provide:

“If the Executive notifies the applicant that it is not satisfied that he is homeless or that it is not satisfied that he is a priority need or that it is satisfied that he became homeless or threatened with homelessness intentionally it shall at the same time notify him of its reasons.”

(g) Article 10 imposes duties on the Executive in relation to persons found to be homeless. In effect if the Executive is satisfied that the applicant has a priority need and is not satisfied that he became homeless intentionally it shall ensure that accommodation becomes available for his occupation.

(h) Article 11A provides a right to request a review of a decision. Such a right was exercised in this case. Article 11B provides for the procedure on review, which procedure includes notifying the applicant of the decision on review and if the decision is to confirm the original decision on any issue against the interests of the applicant the Executive shall also notify the applicant of the reasons for the decision. In any case the Executive shall inform the applicant of the right of appeal to the County Court on a point of law and of the period within such an appeal must be made.

(i) There is a right of appeal to a County Court on a point of law which appeal must be brought within *28 days of the applicant being notified of the decision*. However the court *may* give leave for an appeal to be brought after the end of that period but only if it is satisfied, where leave is sought after that time, that there was a good reason for the applicant’s failure to bring the appeal in time and for any delay in applying for leave.

Whether the appeal was brought after the expiry of the 28 day period

[7] The appeal before me proceeded on the basis that the applicant required leave as the appeal had not been brought in time. Time commences from the applicant being notified of the decision. The notification is to the applicant so that the applicant himself or herself knows of the decision. It was not suggested to me that Ms Connolly had been appointed as the agent of the applicant so that notification to Ms Connolly was notification to the applicant. On the evidence before me I consider that the earliest date upon which the applicant was notified of the decision was on 18 April 2014 when she was told in a general way of the decision by Ms Connolly. On the basis of that date the appeal was lodged 3 days out of time.

[8] I did not receive any detailed evidence as to what the applicant was told on 18 April 2014. If the conversation was purely restricted to making an appointment for the applicant to come in to the office on 23 April 2014 that would not amount to

notification of a decision. In such circumstances the notification of the decision would occur on the later date when the applicant attended at the office of Ms Connolly. However on the state of the evidence before me I consider that I should proceed on the basis that the applicant was notified of the decision on 18 April 2014 and that the applicant requires leave for the appeal to be brought.

The test for leave for an appeal to be brought after the expiry of the 28 day period

[9] Article 11C requires the court to be satisfied of two matters:

- (a) good reason for the applicant's failure to bring the appeal in time; and
- (b) good reason for any delay in applying for leave.

If the applicant satisfies the court in relation to those two matters, the burden being on the applicant, then there is discretion for the appeal to be brought after the expiry of the 28 day period. At the discretionary stage factors such as whether there is no merit in the appeal, the consequences for the applicant if leave is not granted, and the prejudice, if any, suffered by the Executive by reason of the delay (not by reason of the appeal) can be brought into account.

[10] At the earlier stage when the court is considering whether there is good reason, it is clear that the reasons can be taken individually or cumulatively.

[11] The nature of the appeal to the County Court led to a submission that "good reason" in Article 11C is to be construed in the same way as "good reason" in Order 53 rule 4(1) of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the 1980 Rules") which is the rule applicable to extending time for applications for leave to apply for judicial review. The nature of the appeal to the County Court under Article 11C has been contrasted with the power of the High Court to judicially review administrative decisions. This is apparent from the decision of the Master of the Rolls in the case of *Bubb v London Borough of Wandsworth* [2011] EWCA Civ 1285 which analysed the nature of the appeal to the County Court under the equivalent English legislation which is for practical purposes in identical terms to Article 11C. At paragraph [21] the Master of the Rolls stated:

"This analysis appears to me to be entirely consistent with the notion that the exercise carried out by the County Court under s 204 is "in substance the same as that of the High Court in judicial review", as it was described by Lord Bingham of Cornhill in *Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, para 7, [2003] 1 All ER 731. Accordingly, as he went on to say, a review decision may be quashed:

“not only . . . if it is held to be vitiated by legal misdirection or procedural impropriety or unfairness or bias or irrationality or bad faith, but also if there is no evidence to support factual findings made or they are plainly untenable or . . . if the decision-maker is shown to have misunderstood or been ignorant of an established and relevant fact.”

So in effect the appeal from the Housing Executive to the County Court is in substance the same as the power of the High Court to judicially review administrative decisions. In judicial review applications Order 53 Rule 4(1) of the 1980 Rules provides that an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is *good reason* for extending the period within which the application shall be made. I consider that the context of judicial review is different from the context of this application under Article 11C. The purpose of the Housing (Northern Ireland) Order 1988 is to provide social housing. That context is in my view completely removed from for instance judicial review applications in relation to planning permissions which vitally affect the interests of third parties and the interests of the community. There are compelling reasons in judicial review applications for the applications to be brought promptly because one can readily understand that the interests of the third parties can be affected and the affairs of government can be unnecessarily delayed and hampered if they are not.

[12] In the context of social housing the fundamental purpose is to provide for individuals who are deprived or who have difficulty in managing their own affairs. The nature of the reasons which could be held to be good is bound to be wider than in judicial review applications. Inevitably the circumstances held to amount to a good reason in a judicial review application will also be held to amount to a good reason in relation to this type of application but it should be anticipated that a good reason may be more readily found in the context of social housing so that the purpose of the legislation is not undermined. Those reasons can include for instance delays in obtaining legal aid, the applicant having no funds to support any appeal absent legal aid being forthcoming, the applicants socially disadvantaged position, whether the applicant suffers from alcoholism or drug addiction, whether the applicant is chaotic in her lifestyle, whether applicant needs to obtain and to rely upon advice, whether that advice comes from charitable organisations who in turn would not have the funds available to support any appeal absent legal aid being forthcoming, whether the applicant has no permanent address so that letters cannot be sent and received by the applicant in the ordinary course of the post, whether the applicant has no mobile telephone or whether the applicant has insufficient finances to pay for a “pay as you go” mobile telephone and whether the applicant has no landline. All those are matters which it might be decided in a particular case

amounts on the facts of that case to a good reason for the purpose of Article 11C. In listing out those potentially good reasons I make it clear that there is no definitive list of such reasons but rather there is an assessment on the facts of each individual case.

The applicant's personal circumstances

[13] So having set out the test I then turn to the applicant's personal circumstances. In doing so I emphasise that a General Practitioner's report was made available to me today. That report was not before the Learned County Court Judge. I quote from that report:

“(The applicant) has a major chronic alcohol problem. This has contributed to a chronic state of self-neglect. She lives in permanent chaos. Her personal, physical and emotional health are in continual turmoil. She continually makes poor choices and decisions that just compound her situation further. She has no ability to organise herself in relation to going through the normal bureaucracy of form filling for benefits and housing entitlement. She lacks the concentration and motivation to organise these for herself and is dependent on others to do this for her.”

[14] Ms Natasha Connolly states that the applicant is a homeless single woman, who was considered to be particularly vulnerable as a result of her personal circumstances and health conditions and therefore in need of additional support to enable her to fend for herself. That she is a vulnerable woman who suffers from a number of health issues including alcohol dependency and some drug misuse. She has been living in unsuitable temporary accommodation such as hostels for periods of time and has also been without temporary accommodation for periods of time as a direct result of her vulnerability and personal circumstances. Ms Connolly also states that it can be difficult to engage with the applicant.

[15] That evidence is also supported by the affidavit of the applicant who describes her deeply disturbing personal circumstances.

The sequence between the date of the decision and the date upon which the appeal was lodged

[16] The decision was made by the Executive on 31 March 2014. The letter was received on 4 April 2014 by Ms Connolly. She attempted to contact the applicant but could not get hold of her. It is not unusual to lose contact with a homeless person because of their vulnerability and transient existence. She did eventually make contact with the applicant on 18 April 2014. That was just before the Easter holiday so an appointment was made by Ms Connolly to see the applicant on the following

Wednesday, 23 April 2014. Of course an extern worker such as Ms Connolly must have a holiday period. I consider that such a holiday period is a good reason for some of the delay in this case. In any event on 23 April 2014 Ms Connolly referred the applicant to the Housing Rights Service, which is a charity providing legal assistance to homeless individuals. Ms Connolly is not a lawyer. The applicant needed legal advice.

[17] On 29 April 2014 the applicant met with a duty advisor in the Housing Rights Service. I take the requirement to see a duty advisor to be a filtering mechanism to determine whether the individual requires advice from a lawyer. The duty adviser took some additional information and made some preliminary inquiries. The applicant's case was then referred to the legal team on 1 May 2014. Thereafter, the earliest that the lawyer could see the applicant was on 6 May 2014. Legal aid forms were completed on that date but they were inaccurate due to the chaotic lifestyle of the applicant. On 13 May 2014 the necessary corrections were made to those forms. Legal aid was granted on Friday 16 May 2014. The Notice of Appeal was lodged on the next working day which was Monday, 19 May 2014. The Housing Rights Service is a charitable organisation which operates under limited funding. It cannot just lodge appeals without funding being available to it. I make it clear that any appeal would have to be a proper appeal. It cannot just be a meaningless document lodged in order to stop time from running.

Conclusions

[18] I consider that the applicant's personal circumstances which led to delays as the applicant attempted to obtain legal advice and to complete legal aid forms, the difficulties encountered in obtaining legal advice from a charitable organisation, the need for the extern worker to have an Easter holiday and the need to obtain legal aid were all individually and/or cumulatively good reasons within Article 11C. Accordingly I consider that the applicant has established good reason for her failure to bring the appeal in time and good reason for the delay in applying for leave.

[19] I then turn to the exercise of discretion. The period of delay was three days. There is no suggestion made on behalf of the Executive that this appeal is hopeless. There is no prejudice to the Executive caused by reason of the three day delay. There would be substantial prejudice to the applicant if she was entitled to accommodation and that accommodation was not provided. The exercise of discretion quite clearly comes down in favour of giving leave to bring the appeal outside the 28 day period.

[20] I allow the applicant's appeal. I give leave for an appeal to be brought after the end of the 28 day period.