Judgment Title: Zatreanu & ors -v- Dublin City Council

Neutral Citation: [2013] IEHC 556

High Court Record Number: 2013 436 JR

Date of Delivery: 04/12/2013

Court: High Court

Composition of Court:

Judgment by: Hedigan J.

Status of Judgment: Approved

Neutral Citation: [2013] IEHC 556

THE HIGH COURT

[2013 No. 436 J.R.]

BETWEEN

ION ZATREANU, CRISTINA STAVARACHE, CIPRIAN STAVARACHE, FRANCO STAVARACHE, LEO ZATREANU (A MINOR SUING BY HIS FATHER AND NEXT FRIEND ION ZATREANU),MARIA ZATREANU

(A MINOR SUING BY HER FATHER AND NEXT FRIEND ION ZATREANU)

APPLICANTS

AND

DUBLIN CITY COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered on the 4th day December of 2013

Application

1. The applicants seek to quash the refusal of the respondent made on 20th March, 2013, to grant them priority for housing transfer under the Exceptional Social Grounds Scheme (hereinafter "ESG scheme"). They further seek an order compelling the respondent to reconsider their application for same and to afford them safe and suitable alternative housing in an area other than that in which they

currently reside pending their permanent transfer.

Parties

2. The first named applicant is a tenant of the respondent, husband of the second named applicant and father of the third, fourth, fifth and sixth named applicants. All applicants, apart from the second named applicant, are Irish citizens and are members of the Roma community. The respondent is a local authority for the purposes of the Local Government Acts 1925-2012 and a housing authority for the purposes of the Housing Act 1966 (as amended).

Factual Background

3.1 These proceedings arise from the refusal of the respondent to award a priority housing transfer under the ESG scheme to the applicants who are local authority tenants of the respondent and who allege that they are victims of repeated racist abuse and attacks in their neighbourhood.

3.2 The applicants have lived in Ireland since December 2002, and reside in a Dublin City Council tenancy at 128, Greencastle Road, Coolock, Dublin which was let to them on 12th June 2008. The family were on the respondent's housing list from 2003 and were accorded medical priority in 2005, owing to the fact that the first named applicant suffers from a heart condition and has undergone four heart bypass surgeries since 2004.

3.3 Prior to residing in their current property, the applicants lived in private rented accommodation in Artane for five years and did not experience any problems with their neighbours there.

3.4 Since moving to their current address, they claim that they have been subjected to abuse, including physical attacks, in what they describe as a prolonged and violent campaign of harassment and intimidation by certain local residents in and around the family home. They allege that one of the perpetrators responsible for the majority of the abuse and attacks is their next door neighbour. The applicants believe that the violence is directly related to their ethnic origin, as this has been explicitly stated on numerous occasions when they have been threatened, and told to return to their own country because they are hated here. Damage has been caused to the applicants' house and car. Lives of individual members of the family have been threatened and the children are now missing school as they are afraid to leave the house. Racially motivated murders have been reported in the area and the first named applicant believes that the family is very vulnerable to a potentially fatal assault at the hands of criminal gangs.

3.5 The first named applicant had previously twice applied to the respondent for the family to be transferred from their current accommodation, which applications were refused. He applied for priority transfer under the ESG scheme for the third time by application dated 27th August, 2012, on the basis of further and additional information provided by him. On the application form, he specified that he was seeking transfer due to attacks on his family home. This application was refused by letter of 20th March, 2013. The applicants argue that this application was refused in identical terms to the previous refusals and that no reasons were elaborated upon in respect of that refusal. The applicants do not understand on what basis their application for transfer has been refused and no reasons have been offered for same.

Relevant Law

4.1 The Housing Act 1966, as amended by the Housing Act 1988 and the Housing (Miscellaneous Provisions) Act 2009, places a duty on housing authorities such as the respondent to assess the need for the provision of adequate and suitable housing accommodation for persons whom the authority has reason to believe require accommodation from it. The respondent is also required to establish a scheme determining the order of priority to be accorded when allocating housing of which it is the owner. Moreover, the scheme must determine the basis for prioritising transfer applications from the authority's existing tenants. The respondent adopted such a scheme on 9th May, 2011.

4.2 Section 22(7) of the 2009 Act, permits the respondent to disregard the order of priority where the household in question is being provided with social housing support arising from exceptional circumstances which include displacement by emergency or on exceptional medical or compassionate grounds. The scheme is supplemented by way of a notice on the respondent's website entitled "Move out of extremely difficult living circumstances". The criteria for qualifying for priority on exceptional social grounds are set out in the following terms therein:-

> "1. Your circumstances must be exceptional;
>
> 2. Your circumstances must not already be covered by the "scheme of letting priorities . . .
>
> 3. Your difficulties can only be relieved by a change in your accommodation."

The website also indicates that an application must be supported by third party evidence from professionals who are aware of the applicant's circumstances.

The application is to be made to the respondent's Chief Welfare Officer (hereinafter "CWO"). The scheme provides that cases will only be re-examined if there has been a change in circumstances and no-re examination will take place in cases where evidence already notified is resubmitted. This is to prevent multiple applications from the same applicant.

Section 2.6 of the Council's Allocations Scheme adopted by Dublin City Council on 9th May, 2011, provides as follows:

> "Priority status for housing/transfer may be given on exceptional social grounds. This priority may cover a particular type of accommodation and/or accommodation in a particular area. The City Council, in making lettings of dwellings where priority is claimed on exceptional social grounds shall consider a recommendation from the Chief Welfare Officer.

All applications must be submitted in writing to the Chief Welfare Officer and must be accompanied by supporting third party evidence. Cases will only be re-examined if there is a change in circumstances.

No re-examination will take place in cases where evidence already notified is re-

submitted.

All applicants who allege that they are subject to harassment and/or intimidation must have their cases investigated by the Regional Housing Manager in the first instance. Only when the Regional Housing Manager reports back that they are unable to deal with the problem will cases of harassment and intimidation be considered for a transfer on exceptional social grounds. Decisions will be made by the Chief Welfare Officer on the basis of:

> the exceptional nature of the case;
>
> the stated urgency and
>
> the likelihood of a vacancy occurring in an area to relieve the stress and suffering of the applicant."

4.3 The respondent is also required to develop an anti-social behaviour strategy under s. 35 of the 2009 Act.

Applicants' Submissions

5.1 Failure to give reasons.

The decision to refuse of 20th March, 2013, confirmed that the application for consideration under the ESG scheme had been examined and that the respondent was unable to award priority. The letter, it is contended, does not divulge factors taken into account in reaching the decision and so the decision was not transparent.

The applicants contend that there is an obligation to give a reasoned decision which makes clear what was considered by the respondent and why in light of those considerations the application was refused. They argue that failure to do so amounts to a breach of the duty to give reasons in a decision and is at the core of the administrative failure in this matter.

A reasoned decision is of the utmost necessity to enabling the applicants to discern if the decision made is lawful. If the applicants remain ignorant of the reasons underpinning the decision made then it impedes them in any further application they may make be it to the respondent (in that they remain unaware of what they can do to bolster their application) or before a court of law.

The record of this decision made in this instance does not provide sufficient information to enable the applicants to consider:-

> (a) whether they have a reasonable chance of succeeding in judicially reviewing the decision;
>
> (b) whether the respondent has directed its mind adequately to the issues it had to consider and

(c) whether the decision gave sufficient information to enable the court to review the decision.

The applicants point to *Mallak v. Minister for Justice Equality and Law Reform* [2012] IESC 59, where Fennelly J. said:-

"[t]he overarching principle is that persons affected by administrative decisions should have access to justice, that they should have the right to seek the protection of the courts in order to see that the rule of law has been observed, that fair procedures have been applied and that their rights are not unfairly infringed . . .

More fundamentally and for the same reason, it is not possible for the appellant, without knowing the Minister's reason for refusal ,to ascertain whether he has a ground for applying for judicial review and, by extension, not possible for the courts to effectively to exercise their power of judicial review."

In *R v. Westminster City Council, Ex parte Ermakov* [1996] 2 All E.R. 302, the obligation to give reasons for a decision was described by Hutchinson L.J. at p.309 as follows:-

"It is well established that an obligation, whether statutory or otherwise, to give reasons for a decision is imposed so that the persons affected by the decision may know why they won or lost and, in particular, may be able to judge whether the decision is valid and therefore unchallengeable, or invalid and therefore open to challenge."

Moreover, in *Westwood Club Ltd. v. An Bord Pleanála* [2010] IEHC 16, this court stated at para. 59:-

"Sufficient reasons must be given so as to equip the applicant to appeal the decision or to judicially review it".

The applicants argue that the letter of 20th March, 2013, does not conform to the requirements stipulated in those cases. They contend that the respondent is well aware of this and notes that the respondent, in the affidavit of Ms. Anne Helferty CWO, has now sought to explain the decision taken and to set out the matters considered. They argue that it would not be necessary for her to attempt to do so, had the decision communicated in March 2013 included adequate justification for the refusal. They also argue that as a matter of law, the reasons for deciding to refuse an application for transfer must be apparent solely from the decision made and not by reference to any subsequent explanation of those reasons such as have been stated by the respondent in affidavits in these judicial review proceedings. They contend that any elaboration of the reasons post-decision, when proceedings are already under way comes too late to assist the applicants and should not be considered by this court. They point to R. v City of Westminster where it was stated at paragraph 2 of the decision that:-

"(2) The court can ,and in appropriate cases should, admit evidence to elucidate or, exceptionally, correct or add to the reasons given in the decision letter but should be very cautious about doing so; examples of cases where affidavit evidence would be admitted where an error had been made in transcription or expression, in a word or words inadvertently omitted, or

> where the language used may be in some way lacking in clarity; the purpose of the affidavit evidence should be elucidation and not fundamental alternation –confirmation not contradiction- of the reasons given in the decision letter."

It is asserted that the failure to give reasons renders the decision defective .The applicants rely on **Meadows v. Minister for Justice** [2010] IESC 3, where Fennelly J. found at p.830 that:-

> "The difficulty posed by the form of the first respondent's decision is not merely his failure to provide reason for his decision, though that is undoubtedly the case, but that the decision is defective as a result."

5.2 The applicants argue that it is unclear what considerations or materials informed the respondent's decision. Thus, the applicants cannot ascertain if the decision was taken in the correct manner. A decision could be improperly taken if, for example, the respondent asked itself the wrong questions or where it could be considered that the respondent was unreasonable in reaching the decision it did based on the facts before it.

On two previous occasions, the applicants sought transfer on exceptional social grounds and were refused overall priority for such transfer. Nothing documents the material considered by the decision maker in the applicants' most recent application apart from the ESG Scheme Assessment form completed by the CWO. It appears from this form that the respondent took into account only information that had been previously put before it in the applicants' earlier applications e.g. letters received on 20th June, 2011, from the first named applicant and letters from An Garda Siochána and no reference is made to new information submitted. The document also appears to be dated in error 16th January, 2012, albeit in respect of an application received in September 2012, which suggests that the decision to refuse was made in January 2012 (based on the earlier applications), notwithstanding correspondence to solicitors for the first named applicant on 21st February 2013, confirming that the third application remained under consideration.

Following submission of his application, the first named applicant supplemented it by providing a detailed account of further incidents which had occurred by way of letter dated 29th October, 2012. The incidents occurred on 11th October, 2012, 22nd October, 2012 and 10th November, 2012. On the first occasion, a number of unknown youths had attempted to force the main door to the house at about 5.20 am. On the second occasion, a neighbour had, without provocation, started an argument with his family and attempted to smash his car window. On the third occasion, a number of people smashed his house window. Complaints were made to An Garda Siochána regarding these incidents.

By further letter of 12th December, 2012, the first named applicant brought to the respondent's attention the following:-

> 1. That since moving into the house the applicants had been subject to racially motivated attacks;
>
> 2. That since June 2011 the difficulties had escalated;
>
> 3. That his life and that of his family had become full of fear and stress;

4. That notwithstanding having made some 20 complaints to the Garda Siochána little had been done to protect them;

5. The incident of 22nd October, 2012;

6. That he would welcome an opportunity to meet with a servant/agent of the respondent to discuss the family's difficulties and fears.

No reference is made in the ESG assessment form to this more recent correspondence.

By letter of 20th November, 2012, the CWO wrote to the Anti-Social Policy Unit of the respondent explaining that the application lodged by the first named applicant was being examined and seeking advice in this regard. On 22nd November, the respondent's project estate officer for its Darndale regional office wrote to Coolock Garda station requesting information pursuant to s. 15 of the Housing (Miscellaneous Provisions) Act 1997.

By letter of 12th December, 2012, the Superintendent of Coolock Garda station furnished the respondent with details of five complaints made by the applicant in respect of criminal damage between 4th June, 2011, and the 10th November, 2012, in respect of which no arrests had been made.

By letter dated 31st January 2013, the Project Estate Officer replied to the CWO and confirmed that their records showed that the first named applicant had first contacted the respondent on 8th June, 2011, complaining of having been assaulted by a neighbour. It was noted that he had again written to the respondent on 12th June, 2011, 4th July, 2011, 27th July, 2012 and 20th September, 2012, complaining of harassment. There was a letter on file from the Garda Siochána dated 6th December 2012, regarding the complaint made by the first named applicant to them.

The applicants argue however that, like the first named applicant's correspondence none of this correspondence from the Garda Siochána and the Project Estate Officer appears to have been taken into consideration by the CWO. The application was supported by the family's Primary Health Care Worker, the Non-Irish Nationals' Liaison Officer with Threshold, Crosscare, the Home School Community Liaison Teacher of St. David's CBS and numerous TDs. No reference is made in the ESG assessment to the representations made by any of these people and there is no evidence that they were considered in the decision making process. This, the applicants contend, renders the respondent's refusal to grant priority under exceptional social grounds is unreasonable. They rely on classic Wednesbury principles which have long identified the duty of the decision maker to take relevant matters into account in the decision making process. Where the relevant body has "taken into account matters which they ought not to have taken into account . . . or conversely neglected to take into account matters which they ought to have taken into account", then the decision is flawed as it is unreasonable in law and therefore should be quashed.

The CWO suggests in her letter of the 10th June, 2013, that matters complained of were matters for the Garda Siochána but it remains far from clear why such matters were not also considerations in the applicant's application for transfer. The fact that criminal activity was engaged in by third parties against the applicants appears to have been discounted by the respondent merely because An Garda Siochána have a

role in the investigation of crime. It is accepted that An Garda Siochána have policing functions in relation to criminal activity, but this cannot detract from the separate duty of the respondent as housing authority to provide appropriate and suitable accommodation for persons who are being victimised while living in a particular area especially in view of the fact that criminal incidents are not excluded from the ESG scheme.

It is argued that the respondent improperly fettered its discretion if it failed to consider the application at issue because a previous application comprising some of the same information had been refused.

Breach of Fundamental Rights

The scheme was introduced under statutory provisions and therefore constitutional rights derive therefrom. The applicants argue that these rights as well as their fundamental freedoms have been breached.

They contend that failure to provide reasons for the refusal to grant priority is a breach of their right to a reasoned decision in accordance with the requirements of constitutional justice as protected under art. 40.3 of the constitution. They argue that the lack of reasons is also contrary to good administrative practice and contravenes their rights under art .41 of the Charter of Fundamental Rights and Freedoms of the EU.

They rely on *Rawson v Minister for Defence* [2012] IESC 26 where, at para. 6.10, Clarke J. stated:-

> ". . . [i]f a person affected does not have any sufficient information as to the question which the decision maker actually addressed then it surely follows that that person's constitutional right of access to the courts to have the legality of the relevant administrative decision judicially reviewed is likely to be, in the words of Murray C.T. in Meadows 'rendered either pointless or so circumscribed as to be unacceptably ineffective'."

There was a failure to properly apply the terms of the scheme, it is asserted, and this breaches the applicants' right to procedural fairness in decisions affecting their rights and obligations, which right is protected under Articles 6 and/or 8 and/or 13 of the European Convention on Human Rights.

The respondent is obliged by Statute to make provision for persons wishing to transfer from local authority accommodation. The scheme adopted makes express provision for victims of harassment or intimidation to be considered for transfer on exceptional social grounds. On the facts presented on the applicants' application they have been subjected to sustained, racially motivated harassment and the council has been made aware of this.

They argue that apart from the flaws in the decision making procedure the result of same *i.e.* failure to accord them priority for transfer and to transfer them to more appropriate accommodation has resulted in an unnecessary and disproportionate interference with their fundamental rights including their rights to bodily integrity, protection of their lives, respect for their family and private lives, and the right to receive an education which are rights variously protected under Articles 40.3 and 40.4 and/or 41 and/or 42 of the Constitution.

Although the classic, more restrictive, position is that judicial review concerns the procedure for taking decisions, not the merits of the decisions themselves (unless they clearly offend against fundamental reason and commonsense) the European Court of Human Rights and the Supreme Court in cases such as Meadows postulate that consideration should be given to the proportionality of measures that interfere with the fundamental rights of the applicant i.e. in assessing the reasonableness of such administrative decisions the courts are entitled to consider the proportionality of the decision.

At p.703 of *Meadows* Denham J said:-

> "The constitutional limitation of jurisdiction arises from the duty of the courts to protect constitutional rights. When a decision maker makes a decision which affects rights the court could consider whether the effect on the rights of the applicant would be so disproportionate as to justify the court in setting it aside on the ground of manifest unreasonableness."

It is argued that in this instance that the respondent has not identified any basis for a conclusion that the interference with fundamental rights affected by the refusal to accord priority is necessary or proportionate.

Respondent's Submissions

6.1 No failure to give reasons.

In line with its obligations under the Housing Act 1966 (as amended), the respondent established an Allocations Scheme in 2011, the purpose of which was to set out the basis for prioritising the allocation of all Dublin City Council rented dwellings to persons whose needs for accommodation had been established and the basis for prioritising transfer applications from existing council tenants.

The scheme states at para. 2.6 that :-

> "Decisions will be made by the Chief Welfare Officer on the basis of:
>
> - The exceptional nature of the case
>
> - The stated urgency and
>
> - The likelihood of a vacancy occurring in an area to relieve the stress and suffering of the applicant."
>
> It is contended that the applicants' application for transfer on exceptional social grounds was considered with all documentation provided in support of same by the CWO who decided not to recommend overall priority.
>
> The Supreme Court (Murray J.) in *Meadows v The Minister for Justice, Equality and Law* Reform [2010] 2 IR 701, stated at para.93:-
>
> ". . . An administrative decision affecting the rights and obligations of persons should at least disclose the rationale on foot of which the decision is taken. The rationale should be patent from the terms of the decision or

> capable of being inferred from its terms and its context."

Context is important in a case such as this. The ESG scheme is based on compassionate grounds rather than being "points driven". Thus ipso facto all applicants will have suffered some type of hardship. The CWO must have wide discretion in her decision and when providing reasons cannot go into the details of other people's social problems, since to do so would be a breach of confidentiality. Thus, there is no express obligation under the scheme to give reasons for a decision such as this one and usually a simple yes/no answer is given.

Notwithstanding this, by letter dated 10th June, 2013, the CWO elaborated on the reasons for her decision following a request for same made by the applicants on 6th June. In her letter, the CWO sought to reference aspects of the matter peculiar to the applicant and which influenced her decision without mentioning the difficulties of other people. It is argued that the CWO's reasons for refusal were patent from this letter and therefore the decision fulfils the requirements set out in Meadows.

Despite this, the applicants sought leave to bring these proceedings - quite possibly before receipt of the respondent's replying letter. They should, in fact, have withdrawn their application at that stage.

The applicants argue that the reasons for the decisions were divulged after the decision letter of 20th March. They rely on *R v Court of Westminster* [1996] 28 HLR 819, to suggest that the court cannot have regard to reasons given post decision. The respondents contest this reasoning and assert that that case is merely authority for the proposition that the court cannot consider information put before it following the initiation of proceedings. They rely on p.12 para. 5. where Hutchison L.J. stated:-

> "(5) Nothing I have said is intended to call in question the propriety of the kind of exchanges sometimes leading to further exposition of the authority's reasons or even to an agreement on their part to reconsider the application, which frequently follow the initial notification of rejection. These are in no way to be discouraged, occurring, as they do, before, not after the commencement of proceedings."

They further rely on *Mishra v Minister for Justice* [1996] IR 189, wherein Kelly J. stated at p.203:-

> "However as a matter of fact, in this case it is clear that reasons for the ministerial decision have emerged by means of the affidavit and the notice of opposition which have been filed. No obstacle was placed in the way of Dr. Mishra's counsel in analysing and commenting upon those reasons. Therefore, as a matter of fact Dr. Mishra has not been impeded in the prosecution of this case by the refusal to give reasons."

The respondent thus argues that there is nothing to prevent this Court from taking into consideration the reasons were given, albeit they were given after the decision letter of 20th March.

Proportionality

The respondent refutes that allegation that the decision taken was disproportionate

having regard to the applicants' fundamental rights. It points out that there is enormous pressure on the respondent's housing stock and there is a limit on the number of vacant premises to which the applicants could be relocated.

It contends that it is for this reason that the scheme of priorities has been adopted to ensure as far as possible that all applicants for transfer are treated fairly. To allow for cases of particularly extenuating circumstances overall priority may be granted on exceptional social grounds. It must, however, be borne in mind that there are hundreds of applications for priority transfer on those grounds each year. The CWO stated in her letter that she was of the opinion that the matters complained of could appropriately be addressed by the Gardai as opposed to urgent relocation and therefore declined to grant the priority requested.

6.3 The respondent denies that it restricted consideration of the application to material that had previously been submitted by the applicant in respect of his earlier applications for priority. It asserts that the CWO had regard to all matters submitted and that the application was considered in full, including consideration of the earlier documentation furnished by the applicants (which it argues was in fact re-submitted), new correspondence received and the report from the Project Estate Officer.

According to that report, on 14th November, 2012, Portocala Mustata (a member of the applicants' family) complained that she had been attacked at the Northside shopping centre by her husband's ex-girlfriend who she alleged had also twice smashed the windows of the applicants' home. The CWO was of the view that this was not a matter for the respondent to deal with and was best dealt with by An Garda Siochána, as were many of the other incidents complained of, since they had occurred in public places. She felt that allocating priority to the applicants would serve no purpose in addressing those issues and she advised them of this.

The respondent asserts that it does not appear that the first named applicant ever sought formal prosecution of his neighbour and had he done so the Gardai would have dealt with the matter under the Non Fatal Offences against the Person Act.

In *Rawson* at para.6.2, Clarke J. outlined four guidelines which must be met to ensure that a decision reached by public person is lawful.

> "First, the decision must be within the power of the person or body concerned. Second, the process leading to the decision must comply both with fair procedures and with whatever procedural rules may be laid down by law for the making of the decision concerned. Third, the decision maker must address the correct question….and in so doing must have regard to any necessary factors properly taken into account and must also exclude any considerations not permitted. Fourth, in answering the proper questions raised and in assessing all matters properly taken into account the decision maker must come to a rational decision…."

The CWO addressed the correct question and came to a rational decision that the granting of overall priority for transfer was not warranted in the case. Therefore it is argued the respondent has met the test for lawful decision as set out by the Supreme Court in the above cited case.

6.4 No breach of Constitutional Rights

The respondent denies that the applicant's constitutional and convention rights to life, to bodily integrity, to respect for family life and the rights of their children to education have been affected given that the applicants are housed by the respondent and that the housing they receive is both appropriate to their needs and sufficient.

DECISION

7.1 The issues arising in this case are as follows:

(i) The obligation to give reasons;

(ii) Was account taken of the evidence?

(iii) Proportionality;

(iv) Were the right questions asked?

The obligation to give reasons

In the recent judgment of the Supreme Court in *John Kelly v. Commissioner of An Garda Síochána* [2013] IESC 47, delivered on 5th November 2013, O'Donnell J. cited as a thorough survey of the law relating to the obligation of a decision maker to give reasons for his or her decisions, the judgment of Fennelly *J. in Mallak* v. The Minister for Justice, *Equality and Law Reform* [2012] IESC 59, where he states:

> "67. Several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have a right to know the reasons on which they are based, in short to understand them."

Fennelly J. further stated that:

> "66. In the present state of evolution of our law, it is not easy to conceive of a decision-maker being dispensed from giving an explanation either of the decision or of the decision-making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."

In applying this principle to the case in hand, O'Donnell J. concluded at paragraph 36:

> "In my view, therefore, a proper interpretation of the Regulations requires that reasons be given for any determination made by the board of inquiry unless it can be said that the issue is so self-evident and narrow that the

> mere fact of the decision discloses the reason. That cannot be said to be the case here."

Thus, the recipient of an administrative decision has a right to know the reasons upon which it is based so as to understand it. Although the most obvious way for this to occur is for reasons to accompany the decision, this is not a formal rule. The test is one of openness and fairness. There could be cases where the reason is obvious so that effective judicial review is not precluded.

7.3 Applying that principle here, the original decision made was not to grant priority over others. In the special circumstances herein, any detailed reasoning would, I think, not be either appropriate or necessary in the first place. This is because such would involve a measuring of the applicants' needs against the needs of others. In those circumstances, I would think that the approach adopted by the acting Chief Welfare Officer, Ms. Anne Helferty, was the correct one. First, she gave a decision simply refusing priority. Upon being pressed, she gave reasons for this decision in her letter of 10th June 2013. I will deal with the adequacy of these reasons below. What Ms. Helferty did was what Hutchinson L.J. contemplated as cited above at 6.1;

> "(5) Nothing I have said is intended to call in question the propriety of the kind of exchanges sometimes leading to further exposition of the authority's reasons or even to an agreement on their part to reconsider the application, which frequently follow the initial notification of rejection. These are in no way to be discouraged, occurring, as they do, before, not after the commencement of proceedings."

In the highly contentious and very delicate decision as to the granting of priority over others, it is very understandable that a deciding officer would not wish to add insult to injury by explaining to an unsuccessful applicant why their need was not greater than another's. Thus, I think the approach adopted was an acceptable, and indeed, a good one. The deciding officer may give the bare decision first. If an unsuccessful applicant asks for reasons, then a brief outline of those, setting out the gist of reasons for the decision will be sufficient. The reasoning given need only explain why the decision was made so that the applicant understands the reasons.

In the light of the above, it seems to me that the reasons given, firstly in bare form but further exposed in the letter of 10th June 2013 were sufficient for that purpose.

7.4 Was account taken of the evidence?

In her affidavit at paragraphs 8 to 15, Ms. Helferty sets out in detail what information and complaints she considered before making her decision of 13th March 2013. It seems to me that all the essential complaints of the applicants upon which was grounded the request for priority were considered by her i.e. a sustained history of harassment and intimidation against them in the vicinity of their home and the general area nearby. Thus, I reject the argument that she did not take account of the evidence.

7.5 Proportionality

The Council manages a stock of 27,000 social housing units. There are 12 to 15 applications on exceptional social grounds made each week by persons seeking priority over others. All of these cases involve serious individual social/personal problems. I cannot see how proportionality arises in these circumstances. The

Council considers and balances one person's set of serious problems against another's. If the decision is made reasonably, then no question of disproportionality seems to me to arise.

Did the Deciding Officer address the question correctly?

In her letter of 10th June 2013, Ms. Helferty states:

> "This decision was made on the basis of information contained in the reports and letters received including accounts of incidents reported to estate management by members of the family. This available information indicates that many of the incidents described appear to have arisen either as a result of actions on the part of an individual known to the family or occurred in public places, *e.g.* Northside shopping centre and local parks. It is a matter for the gardaí to deal with incidents of law and order and, in general, such incidents are not within the scope of the Exceptional Social Grounds Scheme."

Is she correct to state that the kind of incidents described by the applicant do not fall within the scope of the scheme? The scope is set out in paragraph 7 of her affidavit sworn on 20th September 2013. This is cited above at paragraph 4.2 and I refer here to the latter part of the Allocations Scheme:

> "All applicants who allege that they are subject to harassment and/or intimidation must have their cases investigated by the Regional Housing Manager in the first instance. Only when the Regional Housing Manager reports back that they are unable to deal with the problem will cases of harassment and intimidation be considered for a transfer on exceptional social grounds. Decisions will be made by the Chief Welfare Officer on the basis of:
>
> the exceptional nature of the case;
>
> the stated urgency and
>
> the likelihood of a vacancy occurring in an area to relieve the stress and suffering of the applicant."

Thus, the scope of the scheme is, *inter alia*, "exceptional social grounds" in respect of applicants "who allege they are subject to harassment and/or intimidation". Decisions of the Chief Welfare Officer will be made on the basis of "the exceptional nature of the case" and "the stated urgency".

It is clear that the "incidents of law and order" referred to by Ms. Helferty are the incidents of harassment and intimidation of which the applicants complain. Such incidents will almost always involve breaches of the law which the gardaí might well deal with. The mere fact that the gardaí might be involved does not mean there has not been harassment or intimidation. Thus, it is clear that such "incidents of law and order" which, in this case, are alleged to be harassment and intimidation, are not excluded from the scope of the scheme. Thus, in adopting this view of the scope of the scheme, the acting Chief Welfare Officer applied a test that was too narrow. The decision therefore cannot stand and must be quashed. There must also be an order remitting the application to the respondent for reconsideration in the light of the

judgment herein.