Neutral Citation: [2014] IEHC 489

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 900 J.R.]

BETWEEN

KEVIN MCCORMACK

APPLICANT

AND

MINISTER FOR SOCIAL PROTECTION, CHIEF APPEALS OFFICER, IRELAND AND ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Baker delivered on 30th day of October, 2014

1. The applicant is a married man who separated from his wife in 2011 and entered into a formal separation agreement, the relevant terms of which I will outline below. The couple have four children ages, three, six, eight and sixteen. During the marriage the couple had a privately owned family home in the west of Ireland, and following the breakdown of the marriage, and as part of the separation agreement, the couple agreed that this premises would be transferred into the sole name of the wife on the basis therein set out and in satisfaction of certain claims of the wife to maintenance for herself and the children, and for their respective accommodation needs.

2. Following the separation, the applicant moved back to Dublin where he has lived with his parents and other family members from time to time. He is out of work and has been so for almost the entire period since he returned to Dublin.

3. In May 2012, the applicant applied to and was assessed as eligible by Fingal County Council for social housing for himself and his four children. It is not doubted that the supply of houses in Fingal is such that it is not likely that the applicant will be allocated a suitable home for a number of years.

4. On 5th July, 2012, the applicant applied to the Department of Social Protection for rent supplement, a supplementary welfare allowance within the meaning of the Social Welfare Consolidation Act 2005 ("the Act of 2005"). In his application he sought rent allowance at the maximum amount payable for a one parent family with three children. On 16th August, 2012, the designated officer granted the applicant the rent allowance payable to a single person , but not in the amount sought by him, the decision expressly being based on the fact that the rent sought of €900 was in excess of the €475 monthly limit for single people.

5. The applicant appealed and the appeals officer gave her decision on 13th December, 2012 disallowing the application. The stated reason was that the accommodation needs of the children "were already met in the home of their mother".

6. Following on the unsuccessful appeal under this statutory scheme, the applicant obtained the assistance of the Northside Community Law Centre and application was made on his behalf by his solicitor to the Chief Appeals Officer, the second named respondent in these proceedings, requesting her to carry out a review pursuant to s. 318 of the Act of 2005, of the decision of 13th December, 2012.

7. On 13th November, 2013, the Chief Appeals Officer gave a reasoned written decision, in which she stated she found no basis for reviewing the decision of the Appeals Officer of 13th December, 2012. The decision states that as the deciding officer and the appeals officer had considered that:

> *"as the housing and other basic needs of the children were met by their primary carer and the applicant received no increase in respect of those children on his primary social welfare payment, they were not dependent on the appellant for support and could not be regarded as dependent children. "*

8. Leave to issue judicial review proceedings was granted by Peart J. on 2nd day of December 2013. In summary the grounds are two fold:

(a) The decision maker erred in law as to the proper test to be applied in considering the application of Mr. McCormack. This is a classic ground of review and the challenge is that the deciding body failed to have regard to any relevant considerations, and misconstrued the test to be applied.

(b) Whether the enabling legislation properly vindicates the constitutional and Convention rights of the applicant and his children and whether in the circumstances the legislation is unconstitutional.

The parties have agreed an issue paper and have identified the first issue as

> *"whether the decision to limit rent supplement to the amount payable to a single man in November 2013 is ultra vires because the first and/or second named respondents erred in law as to the applicable test to be applied to a determination of eligibility for rent supplement and thereby failed to have regard to relevant considerations and/or to make a decision within jurisdiction having regard to the requirement to interpret legislation in a constitutionally and Convention compatible manner. "*

The statutory scheme providing for supplementary allowance

9. Chapter 9 of the Act of 2005, sets out a statutory scheme for the payment of supplementary welfare allowances which has been described by the respondents as a form of "safety net" within the overall social welfare system in that it provides assistance to eligible persons in the State whose means are insufficient to meet their needs and/or those of their dependents. The general provision is for a weekly allowance, and can be supplemented with an additional amount, including for the present purposes, an amount known as a rent supplement to cover the costs of private rented accommodation.

10. Section 189 of the Act of 2005 establishes the qualifying requirements for supplementary allowances:

> *"Subject to this Act, every person in the State whose means are insufficient to meet his or her needs and the needs of any qualified adult or qualified child of the person shall be entitled to supplementary welfare allowance. "*

11. Section 196 provides for the calculation of supplementary welfare allowances and gives statutory definition to the categories of household types for the purpose of the payment amount. The relevant subsection is 196(2), as amended by s. 19(9) of the Social Welfare and Pensions Act 2010, which provides that:

> *"(2) In calculating the amount of supplementary welfare allowance payable to any person, the following apply:*
>
> *(a) where-*
> *(i) a husband and wife,*
>
> *(ii) both civil partners of a civil partnership, or*
>
> *(iii) both cohabitants, are members of the same household, their needs and means shall be aggregated and shall be regarded as the needs and means of the claimant;*
>
> *(b) in the case of a person with a qualified child his or her needs shall be taken to include the needs of that qualified child;*
>
> *(c) where the needs of any person are taken into account in determining the entitlement of any other person to supplementary welfare allowance, only that other person shall be entitled to an allowance. "*

12. As can be seen the amount of the payment is measured to take account of the composition of the household and the needs and means of cohabiting couples, whether they be married or not, are treated as being amalgamated. Further, the needs of a person with a qualified child must be assessed to include the needs of that child.

Rent supplement
13. Rent supplement is a form of social welfare assistance, express provision for which is found in s.198(1):

> *"in the case of a person whose means are insufficient to meet his or her needs regulations may provide for a weekly or monthly payment to supplement that person's income. "*

14. Subsection (3) specifically provides for rent allowance

> *"regulations under subsection (1) may provide for the payment of a supplement towards the amount of rent payable by a person in respect of his or her residence. "*

15. The purpose of rent allowance is to provide short term income to eligible persons living in private rented accommodation when it can be shown that the means of those persons are insufficient to meet their accommodation costs, and where it is shown that those persons do not have accommodation available to them from any other source. The overall scheme is to provide short term assistance and not to act as an alternative to other social housing schemes operated by the State, hence the requirement under the scheme that a person be eligible for social housing. It is common case that in the current economic climate, and in particular having regard to the lack or limited supply of social housing in the Dublin area, that rent allowance is frequently paid to persons for a number of years while they are waiting for social housing.

16. Section 198(3E) is the empowering provision and enables the Minister to fix the maximum amounts of rent supplement payable :-

> *"the maximum amount of rent in respect of which supplement is payable having regard to the family circumstances of the person to whom such supplement is payable and the location of the residence of that person. "*

17. The Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations were enacted in 2007 under this statutory power and Article 9(1) states:-

> *"Subject to these Regulations, a person shall be entitled to a supplement towards the amount of rent payable by him or her in respect of his or her residence."*

18. The maximum amounts of supplement are set out in the schedule and tabulated to take account of the household type and location of the rented accommodation. The amount in the Dublin area is significantly higher than that payable in other parts of the country and the allowance paid to a single person is approximately half of that payable to a person with dependent children, the maximum single allowance being €475 per month, and the maximum allowance for a parent with four children being €900 per month.

19. The Regulations were amended by S.I. 215 of 2013, which came into operation on 17th June, 2013, and were the relevant Regulations fixing the maximum amount of rent supplement payable at the time of the application to the applicant.

20. The primary legislation identified the matters by which the Minister was constrained in making the Regulations and the matters that would constitute the qualifying parameters were identified as two matters only: the location of the premises and the family circumstances of an applicant. The legislation did not allow for any discretion in the amounts awarded to an individual applicant and required that the amounts be fixed by reference to two matters only. The reasons for this are fairly obvious. The location of premises is a significant determiner in the Irish property market of market rent, and there is a marked difference between rental values in Dublin and the rest of the country, and indeed in parts of Dublin. Equally obvious is the fact that the family circumstances or living arrangements of an applicant for rent allowance must be taken into account, and this means that the applicant for rent allowance must identify for the purposes of an application whether the applicant is a single person with or without children, a married or co-

habiting couple or a couple in a civil partnership etc. The expression "family circumstances" is a broad expression to identify in essence the living conditions of an individual applicant.

21. It seems to me that it is clear from the provisions of the supplementary welfare code itself and the express requirements in s. 196 that the calculation takes account of the living arrangements of applicants and that cohabiting couples are regarded as having aggregated means and needs. Equally the needs of a person who has qualified children are taken to include the needs of that child or children.

22. The respondents accept that the applicant is entitled to rent supplement under the supplementary welfare allowance scheme. What is in issue is whether the first respondent applied the correct test in the characterisation of the applicant for the purposes of assessing the maximum amount of rent supplement to which he is entitled. Put simply, the question is whether the applicant was properly characterised as a single man, or whether he is to be treated as the parent of four qualified children.

The overall scheme: the trigger of entitlement
23. Rent supplement is a form or subset of the general scheme that provides supplementary allowances. The test which must be satisfied in order to activate an entitlement is that a persona can show that his means are insufficient to meet his needs. Central to the test is that a person's needs are assessed to include those of his or her children if these children are qualified with in the meaning of s. 188. The test for a qualified child is that the child be dependent for support and thus the child or children of an applicant are not separately assessed as applicants.

The categories in the Schedules
24. The Regulations contain a schedule with a number of columns, the relevant ones being the column which identifies the payment to a single person and one which identifies the maximum payment that could be received by a one parent family with three children. It is noteworthy that there is no column to deal with a one parent family with more than three children.

25. The applicant claims that on a true application of the Regulations and the schedules attached to the Regulations he falls within category 8, i.e. he is a one parent family with three children. The respondent says that the applicant falls within the category identified in column 4, i.e. he is a single person.

26. The respondent makes an argument, which I do not accept, that as Mr. McCormack has four children he cannot qualify under category 8 as he is, at the height of the case put by the applicant, a single person with four children. I do not accept this analysis as otherwise the Regulations would be interpreted as meaning that no family with four children could qualify within category 8. There being no category within the Regulations which identifies a single person with more than three children I believe that in order that the Regulations not produce an absurd result that the expression "single person with three children" must be taken to mean a "single person with three or more children".

A single person?
27. To ask first what is meant in the Regulations by the expression "single person", it seems to me that this cannot refer to the marital status of a person and it must refer to or identify a person who lives alone. A single person is a person who is unmarried or not in a civil partnership, but the column cannot be so narrowly identified to require an assessment of the individual marital status of an applicant, as otherwise an applicant who was single but cohabiting would still be classified as a single person, or more especially a person who is married but separated informally, and who is then technically not a single person as a matter of marital status, would be regarded as married for the purposes of the Regulations. The reference to a single person must mean a reference to a person living alone or to his or her actual living circumstances. This interpretation is consistent with the fact that s. 196 allows for the amalgamation of the means and needs of cohabiting couples and there is no separate identification of a single person for that purpose.

The matters actually considered by the second respondent
28. The second respondent delivered her decision on review on 13th November, 2013, and she concluded that the accommodation needs of the applicant were the sole ones in issue before her and that she was not required to have regard to the accommodation needs of the children in conjunction with the needs of the applicant, as his children were not qualified. She also determined she did not require as a matter of law to have regard to the family circumstances of Mr. McCormack, and that the expression "family circumstances" in Regulation 9(2) refers to the matters to which the Minister must have regard when fixing the categories and amounts of rent supplement.

29. The applicant says that the use of the expression "having regard to" in the Regulations requires the deciding officer, or on appeal the appeals officer, to have regard to the family circumstances of an applicant. I do not accept that that obligation arises from the Regulations, and I accept the argument of the respondent that it is the Minister who is mandated to have regard to family circumstances in the context of his power contained in section 198(3E).

30. But this is not to say that the deciding officer or the appeals officer may ignore or fail to properly consider the individual circumstances, family circumstances or living circumstances, of an applicant and I return below to the precise meaning of the expression in the context of an application.

31. The applicant claims that the second respondent fell into error in failing to have regard to Mr. McCormack's family circumstances and argued further that the family circumstances of Mr. McCormack included that he had the benefit of a joint custody order in respect of his children and that he was entitled to and did in fact enjoy access to them.

Qualified children
32. The definition of "qualified children" is found in s.188, and provides that for the purposes of Chapter 9, which sets out the scheme of supplementary welfare allowance, a qualified child of a beneficiary is defined as a child under the age of 18 years, or if over 18 in full time study, and "dependent on that beneficiary for support". All of the children of the applicant and his former spouse are under the age of 18. Where an applicant has a qualified child the needs of that child or children are assessed in conjunction with those of the applicant for the purpose of assessing the means and needs of an applicant for social welfare assistance.

33. Counsel for the applicant argues that the definition of "qualified child" in s. 188 is not relevant to the application for rent supplement. The applicant says that the provisions of s. 188 and the definition in that section do not govern an application for rent supplement and the entire scheme for the payment of rent supplement is found in s. 198 and the following sections. She argues that while the enabling provisions with regard to rent supplement are found in Chapter 9, Part 3A of the Act of 2005, it is not necessary that an applicant for rent allowance be in receipt of supplementary welfare payments, and a person in employment can, in certain circumstances be entitled to a rent allowance. She says that the two forms of allowances or payments are separate and distinct and

that the definition or statutory requirements for one do not apply to the other.

34. I cannot accept that argument. The definition in found Part 3 of the Act of 2005, which sets out the general scheme of social assistance, defined in s. 139(1) as including the payment of supplementary welfare allowances in s. 139(1)(i). The definition of qualified child in s. 188 is relevant to all parts of the general scheme of social assistance, of which rent allowance is a subset.

Does Mr. McCormack have qualified children?
35. This brings me to the question which seems to be the central question in this case, whether the decision making body applied the correct test in determining that Mr. McCormack does not have qualified children within the meaning of the Act. Section 188 offers relatively little assistance and it merely links the qualification to a dependence on the applicant for "support". In this it can be contrasted with the definition of qualified adult contained in s. 187 where such a qualified adult is defined as a being a person who is wholly or mainly maintained by a beneficiary, and those persons may be either a spouse, civil partner or cohabitant. The link is directly made between the provision of maintenance and dependency, while in the case of a child, a child's dependency is linked to a more general word, the word "support". On a simple analysis "support" must mean something different from or more than "maintenance".

The meaning of "dependent for support"
36. Counsel for the applicant argues that the legislature intended that the decision maker have regard to more than mere financial support. She calls in aid the decision of Irvine J. in *O.E. v. Minister for Justice* [2008] 3 I.R. 760, where the Court articulated the child's constitutional right to be "supported emotionally, physically and financially whilst enjoying the care of its parent...". It is argued that the word "support" in s. 188 must be seen in the context of the broad supportive relationship between a parent and child and that to interpret the requirement as being one confined to financial support would have been unduly narrow.

37. Counsel for the respondent argues that the word "support" in the legislation must mean financial support, and he says that this is so having regard to the fact that the legislation is one which enables payment of financial support, and that the interpretation contended for on behalf of the applicant fails to take into account that it is material support that the legislature must have intended to identify. He makes the point that a child might receive emotional or part time care or support from a grandparent and that a wide interpretation of the word "support" could mean that the grandparent could equally be able to argue an entitlement to a supplementary welfare payment in respect of the child. I do not accept that analogy because the legislation identifies the relationship as one of dependence on a beneficiary for support, and the legislature clearly intended to limit the class of persons which it would regard as dependent. To return to the analogy of the grandparent, if they were the sole carer of a child, or even one of two primary carers then arguably the grandparent could be in a position to argue a degree of dependency.

38. However, it seems to me that having regard to the structure and purpose of this legislation that the Oireachtas intended the definition of qualified child to be confined to a child who was dependent for financial or material support on the parent, and to interpret the legislative meaning as including emotional support is not correct.

39. However, the matter cannot be decided simply on this argument. It was decided by the appeals officer that the needs of the dependent children were adequately met by the living arrangements that they had with their mother in a town in the west of Ireland where they lived with her in privately owned accommodation. It seems to me that the decision maker was overly narrow in her understanding of the financial relationship between the applicant father and the children.

The factual nexus: the separation agreement
40. Mr. McCormack and his wife entered into a separation agreement and the parties agreed that the parents would have joint custody of the children, and that while they would reside primarily in the west of Ireland they would have liberal and open visitation rights with their father. Of more significance is the fact that by the separation agreement, Mr. McCormack agreed to transfer to his wife his legal and beneficial interest in the former family home and he did so in consideration of his wife's claim to maintenance, and also in consideration of the maintenance needs and claims of the dependent children and of their respective accommodation needs. Such a capitalised maintenance and accommodation provision is envisaged by the family legislation and in particular the provisions of s. 8 of the Family Law Act 1995, which permits the court to make an order for a lump sum payment and/or for provision to be made in respect of accommodation needs. The practice evolved, and it seems to me to have been a practice in conformity with the legislation, that in certain cases where it was determined or agreed by a couple that they would not sell their family home, that one spouse would transfer to the other his or her beneficial interest in the family home in full or partial satisfaction of accommodation or maintenance claims. In practical terms, this means that Mr. McCormack transferred to his former spouse his beneficial interest in the family home, and by doing so he made a capitalised payment to his spouse to satisfy her maintenance claim in respect of herself and the children, and the claim or entitlement of both herself and the children to be accommodated.

41. The separation agreement undoubtedly made financial provision for the children, and Mr. McCormack as a result of so making financial provision for his children lost or ceded the benefit of his beneficial interest in his former family home, thereby making him dependent on private rented accommodation and rent supplement.

42. Mr. McCormack has in fact provided for his children in financial terms and by virtue of having transferred his beneficial interest to his spouse he has provided for their day to day or weekday accommodation needs. His children were dependent on him when he and his wife separated and the dependence both in terms of income or accommodation needs has continued, albeit these needs were met by Mr. McCormack by an "up front" capital payment.

43. The deciding officer and the appeals officer failed to have regard to the fact that Mr. McCormack had made provision for his children and that the children were and remain to that extent dependent financially on him. The fact that the financial dependence was not one which was met by weekly payments was not considered by the decision maker, and in my view the decision maker fell into a significant error which went to jurisdiction. I say this because, while I agree with the respondent that the dependency relationship is one which is linked to financial or material needs, those financial or material needs cannot properly be assessed unless all of the relevant circumstances of the individual applicant were considered. The simple decision to the effect that the accommodation needs of the children are already met at the home of their mother (the town in the west of Ireland), failed to have regard to the actual circumstances prevailing.

44. Thus it appears to me that the decision maker failed in this respect to have regard to the actual dependence that exists between the applicant and his four children, and that in so failing she incorrectly interpreted the legislation so as to exclude the children from the category of qualified children for the purpose of the application.

45. Further, it appears to me that a perhaps more important and relevant matter was not part of her deliberations. The legislation identifies a qualified child as one who is dependent for support on a parent or guardian, as the case may be. The class of relevant support is, I have already held, confined to financial support. But financial support includes more than monetary support, and the

decision making body in my view took an overly narrow view of what might constitute financial support in the question asked. In particular it seems to me that it is arguable that the needs of the children may include their accommodation needs when they visit their father in Dublin, so his argument that he needs accommodation suitable for overnight, weekend and holiday visits is a real one in those circumstances. The children are qualified relative to Mr. McCormack if they are dependent on him, and it seems to me that his children are so dependent when they visit and stay with their father in a place which cannot be accessed easily or casually by them and where even remotely satisfactory contact require more than a fleeting visit. This is not to say that the needs of the children are to be assessed independently, and were I to look to this argument, as was urged by counsel for the applicant, I could be straying into a question which is not before me as the children are not party to this action. But the more narrowly defined needs of the children that I identify were or ought to have been before the deciding body in the context of the question whether they are qualified children, i.e. dependent on their father for support, and this question fell to be decided in the context of the broader accommodation need of the children while they are visiting their father.

46. Mr. McCormack has the benefit of a separation agreement by which he has joint custody, and liberal and flexible visitation rights with his children. The children cannot in that context be viewed as living primarily with one parent, nor can they be viewed as having what was described as a "primary carer" and such a view would fail utterly to have regard to the reality of a joint custody agreement made by the parents of these children, presumably in the context of what the parents viewed was in the best interests of their children, and what they perceived to be the best means by which the children could be supported in their relationship with each parent. The decision of the appeals officer and of the review incorrectly in my view applied an overly narrow test in coming to the decision that the "housing and other basic needs of the children are met by their primary carer", in that the actual needs of the children are more complex and have been assessed by their parents as involving joint custody, and *ipso facto* cannot be met in the circumstances in which they find themselves in one location only

The test for judicial review
47. In *O'Leary & Ors. v. Minister for Justice Equality & Law Reform* [2012] I.E.H.C. 80 Cooke J. stated at para. 8:

> *"As is invariably emphasised in judgments of the High Court in judicial review, its jurisdiction is confined to the examination of the legality of the decision or measure sought to be impugned and particularly of the legality of the process by which it has been made. It is not directed at the merits of the measure or the question as to whether the decision was the right or wrong decision. This remains the jurisdictional position of the High Court, even where the reasonableness (including the proportionality) of the conclusion reached in an impugned decision is at issue. "*

48. In *The State (Lynch) v. Cooney* [1982] 1 I.R. 337 the Supreme Court considered the duty placed on a non-judicial person or body conferred with decision making powers which affect personal rights. Henchy J. delivering judgment on behalf of the Court held at p. 380 that it is presumed that when a person is conferred with such a power it is

> *"to be exercised only in a manner that would be in conformity with the Constitution and within the limitations of the power as they are to be gathered from the statutory scheme or design. This means, amongst other things, not only that the power must be exercised in good faith but that the opinion or other subjective conclusion set as a precondition for the valid exercise of the power must be reached by a route that does not make the exercise unlawful - such as by misinterpreting the law, or by misapplying it through taking into consideration irrelevant matters of fact, or through ignoring relevant matters. Otherwise, the exercise of the power will be held to be invalid for being ultra vires."*

49. The arguments of the applicant as identified in the agreed issue paper relate to the reasonableness of the decision and there is no argument that flows from any alleged breach of process. The accepted formulation of a test for unreasonableness or irrationality is that as set out in *The State (Keegan) v. The Stardust Victims Compensation Tribunal* [1986] 1 I.R. 642 where Henchy J. held a p. 658 the test "lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense."

50. I adopt these formulations of the test that I must apply in assessing the lawfulness of the decision of the second respondent.

Conclusion
51. The role of the court in an application for judicial review is confined to the question of the legality of the decision, and it is not my function to look to the merits of the application by Mr. McCormack, nor to the question as to whether the decision challenged is right or wrong on its facts. I am confined to questions of the legality of the decision, this not being a case whether procedural irregularity is claimed. But if a mistaken view was taken as to the correct test to be applied to the application the decision will fail.

52. I am satisfied that the decision making process was flawed as a matter of law in that the decision body took an erroneous view of the test it had to apply, and looked only to test the accommodation needs of the applicant himself without having any regard to the complexity of his family relationships, the needs of the children and their intrinsic interconnectedness with those of their father, the fact that the accommodation needs of the children when they are visiting their father in Dublin are an element in the test of whether they are qualified within the meaning of the legislation, and that if they have needs which are required to be satisfied by their father, his needs are to be accessed as including theirs. Further, the deciding body failed to have any regard to the fact that the accommodation and maintenance needs and claims of the children were met by a capitalized payment in the separation agreement.

53. This is not to say of course that a deciding body may yet come to the same conclusion on a reassessment of the application in the light of the factors identified in this judgment, but it seems to me that the deciding body took an overly narrow view of the test of the needs of the children for the purpose of the proper consideration of whether they are qualified within the meaning of the scheme.

The Constitutional dimension
54. The applicant argues that if the legislation is found not to have taken into account the family circumstances of Mr. McCormack, and that these family circumstances include his right to the custody of and access to his children and their right to the company of their father, that the legislation is unconstitutional. As the proceedings are not brought in the name of the children and as Mr. McCormack is the sole applicant, the rights of the children whether under European law or under Irish Constitution do not come for consideration before me. What is in question is the right of Mr. McCormack to rent allowance and whether the decision of the respondents was made having regard to a true interpretation of the legislation, or of the facts before the deciding body. Having regard to the view that I take, namely that the decision maker did not have regard to the relevant facts, and that this is a matter that went to the jurisdiction of the decision maker, I do not intend to consider the constitutionality of the legislation. It seems to me that this legislation does permit a decision maker to have regard to the actual circumstances of the applicant and that the definition of a qualified child did include a consideration of the true degree of support or dependency as between Mr. McCormack and his children. I have taken the view that a degree of support and dependency can be said to exist by virtue of the capitalised payment,

by the existence of a joint custody arrangement, by the fact that the children's mother lives in a town which is geographically distant from that of their father, and that the true and complex nature of the family arrangements was not properly considered. I have taken the view that the failure of the deciding body to have regard to these matters was an error.

55. It is not necessary for me in those circumstances to look to the issue of the constitutionally of the legislative framework and the interpretation contended for by the applicant fully accommodates the constitutional dimension, and any argument under the Human Rights Act.

56. Accordingly it is appropriate that the decision be remitted to the respondents for further consideration.