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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY TRACEY MORRIS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF ST MATTHEW'S HOUSING ASSOCIATION AND THE HOUSING EXECUTIVE FOR NOTHERN IRELAND

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The applicant appeared in person
Sarah O'Reilly (instructed by Armstrong Solicitors) for the first respondent
Aidan Sands KC (instructed by NIHE Legal Services) for the second respondent

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SCOFFIELD J

Introduction

[1] These proceedings were commenced in mid-June 2024. The applicant, Ms Tracey Morris, sought an urgent hearing, and the grant of interim relief, in relation to the proposed occupation of a property which (she contends) ought to have been offered to her. The first proposed respondent is St Matthew's Housing Association (SMHA) ("the housing association"), a not-for-profit housing association; and the second proposed respondent is the Northern Ireland Housing Executive (NIHE) ("the Executive"). The housing association made the decision which is under challenge but did so by applying the rules set out in the Executive's Housing Selection Scheme ("the Selection Scheme").

[2] The Executive appears in these proceedings since it is named as a proposed respondent. Although the Executive makes the point that it is the housing association's decision which is under challenge in these proceedings, it nonetheless fully supports that decision. Examination of the applicant's pleadings and evidence indicates that she is acutely aggrieved about the recent decision of the housing association not to allocate her a particular property but that, also, she is aggrieved

more generally at the Executive's failure to find her suitable housing for a significant period of time. In that regard, the recent allocation decision may be viewed as something of a straw which broke the camel's back.

[3] The challenge principally relates to a property at 43 McClure Street, Belfast ("the property"). This is a new-build bungalow which the applicant contends ought to have been offered to her and her family by SMHA. She has been seeking an all-one-level, ground-floor 3-bedroom property for some time. At the initial case management review hearing, I was told that this particular property had been offered to another family (referred to in these proceedings as "the K Family") with very significant needs, who are currently housed in an unsuitable property, and that they were intending to move into the property in early July. It was agreed that this application should be dealt with urgently therefore, and the matter was listed for a rolled-up hearing at the start of the Long Vacation. In the course of that hearing, it became clear that the matter was not as urgent as had originally been thought, as the K Family, for unrelated reasons, would not be in a position to occupy the property until sometime later in August 2024.

[4] The applicant, Ms Morris, appeared in person; Ms O'Reilly appeared for the housing association; and Mr Sands KC appeared for the Executive. I am grateful to all parties for their written and oral submissions.

The applicant's case

[5] The applicant contends that she should have been offered the property or that, in the alternative, the respondents should buy her family a bungalow which is equally suitable for her family's needs as is the property at 43 McClure Street. She relies upon a broad range of grounds. In the initial case management directions order in this case, I summarised the applicant's main contentions as follows:

> "(i) That she was "number one" at the top of housing list for some time (since June 2023, with 370 housing points) such that she had an entitlement to be offered the property when it became available, whereas the proposed respondents have offered the property to someone else with fewer housing points;
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> (ii) That the proposed respondents wrongly left out of account or "overruled" an occupational therapy report indicating that she required housing in an all-level category 1C property;
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> (iii) That NIHE wrongly failed to award her intimidation points in April 2020 and that, although

she was later awarded intimidation points, this indicates an animus against her;

(iv) That she and her children have been left without appropriate housing (in the form of a bungalow) since 2021 and are currently in accommodation which is unfit for their needs, which is a breach of disability discrimination legislation; and

(v) That she had been promised a (newly built) bungalow at some time in May 2022, from which she understood that no one could be offered the property before her, and that the NIHE told her representative that the next three-bedroom bungalow which came available was hers by her choice."

[6] Each of these elements of the applicant's intended claim is addressed below. An overarching element of the applicant's complaint is that, for some four years, the respondents – principally the Executive – have "refused to carry out their duty of care" towards her by failing to ensure that she and her family are housed in appropriate housing. In this regard, she has relied upon a range of conditions from which she suffers, including osteoarthritis (diagnosed in December 2023), severe fibromyalgia and irritable bowel syndrome. She has reduced mobility as a result of these and requires the use of sticks to walk. She also has a wide variety of complaints about the conditions within her current property, to which I return below.

[7] In addition to her own medical issues, the applicant relies upon the needs of her son, A, who has autism and behavioural issues. She has indicated that he is on the "highest spectrum" of attention deficit disorder (ADD) and that he suffers from severe night terrors. As a result, she contends, he has been forced to sleep in a tiny dining area which is not safe for him. A letter from A's school from February 2023 outlines some of his needs. He has a statement of special educational needs indicating social, behavioural, emotional and wellbeing issues and a diagnosis of ADHD. He frequently presents as tired and needing sleep. He is said to express his own worries about his housing situation and how this impacts on his emotions and sleep.

[8] A's night terrors are relevant because he will jump out of his sleep and injure himself. This is a particular reason why the applicant is concerned about being housed in a multi-level property, in case A falls down the stairs in his sleep and severely injures himself. The applicant has provided evidence from a consultant paediatrician indicating that A attends the Paediatric Sleep Outpatient Clinic with severe nocturnal night terrors whereby he jumps out of bed and out of his bedroom, such that he is at risk of falling down the stairs or jumping over the banister in the

hall stairs. This consultant strongly supports the family being re-housed in a bungalow in order to reduce the risk to A if or when he runs out of his bedroom at night. Other evidence suggests that it would have been very useful to organise actigraphy studies in order to monitor Daniel's activity and motion during the night but that his mother reported that he had only worn the monitor for two days as he found it difficult to tolerate because of his sensory issues. In light of the totality of the evidence, I proceed on the basis that there is a valid concern in relation to A's safety and that it would be much preferable if he was accommodated in a single-level property.

[9] The applicant further says that she and her children have sustained multiple injuries whilst being required to remain in accommodation which is not fit for their needs. Her current property is a 4-bedroom house. This only has one toilet, about which the applicant has concerns, as she and her four sons have to share the one toilet and this is upstairs. She also complains that there are a range of repair issues which have not been addressed. She says that she cannot understand how the property has passed a health and safety inspection. She describes having been "left here to rot" in the property. She has further averred that her landlord refused to put handrails up throughout the house which would have prevented further injuries to her and her children. Other issues mentioned are rat infestation; sinking and chipped tiles in the kitchen; and electrical issues (which the applicant says resulted in her being electrocuted and in her family not being able to use their cooker, albeit this has been replaced).

[10] The applicant has previously sought the assistance of the courts in relation to her housing issues. She describes having 'taken out an Article 11C against the NIHE', which was dismissed by His Honour Judge Devlin. (I understand this to be an appeal on a point of law under article 11C of the Housing (Northern Ireland) Order 1988 ("the 1988 Order") against a review decision of the Executive taken under article 11A of that Order.) The decision of the county court judge was appealed to the High Court. It was in the course of these proceedings (the applicant avers) that she received a call from "Heather", the new Head of Housing Solutions, in January 2022. On the applicant's account, Heather "begged" her not to proceed with the appeal and indicated that she would set up a meeting in order to seek a permanent 4-bedroom bungalow for the family in light of having received an updated report from the applicant's Occupational Therapist stating that an all-one-level home was required. (In another submission, the applicant appears to attribute this conversation to Helen Russell.)

[11] The meeting mentioned by Heather was, the applicant avers, delayed for some time 'using Covid as an excuse' but, when it happened, she was told that both Heather and Anne McAleese were seeking to work with housing associations in order to have a bungalow built for the family. This meeting is said to have been in or around May 2022. Around this time, it appears that Ms Morris was focused on her preferred housing areas of Newtownbreda and Carryduff, on the basis that she was satisfied that this was a safe location for her to live. (There was also a concern

about A's travel to school, as he required anti-sickness tablets even when travelling a short distance. This is a reason why properties outside Belfast, such as in Crumlin, Lisburn and Moira, have been considered unacceptable to the applicant.) In the meantime, Ms Morris was asked to find a 4-bedroom bungalow in the BT8 area and NIHE would cover the rent. The applicant found one such bungalow which the landlord then decided to rent to someone else; and other suggestions she made were, she contends, ignored by NIHE. During this time, Heather also retired. On the applicant's case, one further suggested rental was declined by NIHE because of the cost (£1,400 per month). A consistent complaint of the applicant is that the Executive should be prepared to pay more per month to rent her a property, in light of other spending commitments on its behalf or those of other public sector bodies.

[12] The applicant has also described having taken a previous judicial review case related to her son B, in which Colton J "upheld the NIHE's duty to meet our housing needs to standards appropriate to our disabilities." This case appears to have been dealt with in June 2022. At that time, B was offered a new home, which he accepted, meaning that the judicial review application did not have to proceed. A further son, C, refused to live at her current property due to the rodent infestation. He removed himself and applied for a one-bedroom apartment last year. This has meant that the applicant can downsize her requirements, to a 3-bedroom bungalow. She hoped this would make it easier for the NIHE to accommodate her in a permanent home and has been disappointed that this change in needs has not resulted in a new offer of a suitable property. She has a number of complaints about how C's housing situation has been, or is being, dealt with; but these are not relevant for present purposes. The simple point Ms Morris makes is that it ought to have been easier for the proposed respondents to provide her with a suitable property with a reduced number of intended occupants.

[13] The property at 43 McClure Street is considered by the applicant to be particularly suitable for her family's needs since it is a bungalow which has "a secure and safe back with a high wall" so that A could be safeguarded there and could play in the back garden without fear of his running off.

[14] The applicant submits that she has been "top priority" since May 2020, although she also notes that she has been top of the housing list "since June 2023", after she was awarded intimidation points. It seems that the applicant was intimidated from her home in or around May 2020, during the Covid-19 pandemic. After this, she was temporarily housed in a hotel for a short time. After that, she was housed in her current property. She has averred that the NIHE indicated that this would only be for a short period of time whilst they searched for a property to suit her disability needs. She has now been in that property much longer than originally intended.

[15] The applicant has placed great reliance upon the award of intimidation points to her and the belated award of these. She has provided a significant amount of evidence, which I need not go into in detail for present purposes, in relation to the

circumstances of intimidation against her family which resulted in them moving from North Belfast to West Belfast and, more recently, out of West Belfast. Ms Morris wished to address this in very considerable detail in her oral submissions. She now has the benefit of intimidation points and, I accept, has concerns about living in some areas.

[16] A further aspect of the applicant's case therefore relates to the areas where she is prepared to be housed. She contends that the McClure Street property is the next 3-bedroom bungalow which has become available "as close to the area required for the safety of my family." The applicant's preferred or selected areas are important in this case; and I return to this issue below.

[17] As appears above, the impetus for the present proceedings is the property at 43 McClure Street having been offered to the K Family. Ms Morris has noted, in her grounding affidavit, that Mr Black, the Chief Executive of SMHA, told her that she had to be "completely wheelchair bound" to be offered the property at issue in these proceedings. That is consistent with the case made by the first respondent in these proceedings, discussed below. Ms Morris also says that Mr Black "ghosted her" until calling her back shortly *after* he had sent her an offer of a house. This refers to SMHA offering the applicant a different property in the same development as the bungalow she is seeking. She has been offered a new house in that development, 35 McClure Street. She has declined to accept this offer on the basis that that property is a two-storey house which is unsuitable, since she and her family require a single-level property.

[18] As to the question of requiring a wheelchair, the applicant says that she has requested the Occupational Therapy Department to come and assess her for a wheelchair "because there are days [she] can't walk across a room." She says that the OT Department called her back and told her that they could only assess her when she gets out of her current property, as it is too dangerous for a wheelchair since it has no adaptions. As appears below, the Executive disputes this characterisation of the situation.

[19] In any event, the applicant seeks leave to apply for judicial review against each respondent. She also seeks interim relief in the form of an order that she be offered the property she seeks in McClure Street or that the respondents be ordered to buy her a bungalow "due to them being so far out of their timeline that [they] should [have] had [the applicant] housed a long time ago."

[20] The applicant has a separate complaint against Children's Disability Services in relation to an alleged data breach. She contends that her son's personal data has been lost by Disability Services. In her grounding affidavit, she states that this service has lost six referrals, mostly submitted by her but one by someone in the Gateway Team. A staff member who took three of these referrals has told the applicant, she avers, that her son's details are gone from their files. Disability Services have not appeared in the proceedings. I am unsure whether or not they

have been put on notice of them. In any event, this complaint was clearly not the focus of the applicant's case.

The relevant rules and policies

[21] SMHA submits that it allocates its housing stock in accordance with its Allocation and Transfer Policy and Procedure ("the SMHA Allocation Policy"), the aim of which is to ensure that properties within its stock are allocated in a fair and equitable manner. This policy is said to be operated in line with the NIHE's Selection Scheme and its Common Waiting List. It is appropriate to set out the key rules within the Selection Scheme before turning to summarise how the respondents contend they have operated in the circumstances of this case.

[22] The rules governing housing allocations are set out in Part 4 of the Selection Scheme. Rule 46, under the heading 'The General Rule', provides as follows:

> "All Applicants will be assessed and placed on a Waiting List which is used by all Participating Landlords. As a general rule each dwelling will be offered to the relevant Applicant with the highest points."

[23] It will immediately be noted that this is expressed merely as "a general rule." Exceptions are permitted and these are addressed in rule 48. Even before one turns to the question of exceptions, however, one has to consider the precise terms of general rule, which relates to the offer of each dwelling to the "*relevant* Applicant" with the highest points. This concept is explained further in rule 47, which provides as follows:

> "In the present context an Applicant is a 'relevant applicant' if:
>
> 1. he/she has applied for, or is deemed to have applied for accommodation with the locational and other characteristics of the dwelling in question, and
>
> 2. the Landlord is satisfied, on reasonable grounds, that the non-locational characteristics of the dwelling meet the Applicant's needs, and having regard to all of the circumstances, do not substantially surpass those needs."

[24] Accordingly, an applicant for housing will only be a "relevant" applicant in terms of an offer relating to particular accommodation if a number of conditions are met. These include that (a) the person has applied for (or is deemed to have applied for) accommodation in the particular *location* and with the particular characteristics

of the dwelling in question; and (ii) in the landlord's opinion (formed rationally, on reasonable grounds) the characteristics of the dwelling, *other* than its location, do not substantially surpass the person's needs in all of the circumstances. The first of these requirements is a matter of common sense. The accommodation must be in a relevant area for the housing applicant and of a basic type suitable to their needs.

[25] The latter requirement is obviously designed to ensure that properties with special characteristics are not provided to those with no need for them, in preference to applicants who do need them. There is a degree of flexibility in this regard since this requirement will come into play only when the characteristics of the available dwelling "substantially" surpass the needs of a particular applicant. When that is the case, that applicant is no longer a relevant applicant. Only applicants who truly have need of a dwelling with those specific characteristics will be relevant in terms of the allocation of that property. As between applicants with that level of need, the allocation will generally be determined on the basis of their housing points.

[26] There are two further points to be made about the provision made in rule 47(2) of the Selection Scheme. First, the landlord must be satisfied that the non-locational characteristics of the dwelling do *not* substantially surpass the particular applicant's needs. It is not appropriate to import into this assessment a formal burden of proof. However, where the landlord is seriously concerned, on reasonable grounds, that a dwelling's characteristics may substantially surpass those of a particular applicant, there is an onus that the landlord be dissuaded of that before treating the applicant as a relevant applicant. That is the effect of the way in which the rule is framed. It has likely been drafted in such a way so as to reduce the risk of extremely scarce, specially adapted properties being offered to those who do not really need what they provide.

[27] Second, this assessment plainly involves an exercise of judgment on the part of the landlord. It is for the landlord to "be satisfied" that the applicant is a "relevant" applicant within the terms of the rule. This is not an absolute discretion of course. The landlord's view may be amenable to challenge on normal public law grounds given that it involves the allocation of public housing. The indication within the rule that the landlord's assessment must be "on reasonable grounds" – which in my view qualifies both the assessment that the housing applicant's needs are met and the assessment as to whether those needs are substantially surpassed by the characteristics of the property in question – indicates that there must be some objectively reasonable support for the view which is reached. However, where a landlord such as the Executive or a specialist housing association reaches such a view, provided they have properly taken into account all relevant considerations (and have left irrelevant considerations out of account), the High Court is unlikely to interfere with this view on an application for judicial review, absent some other material public law error.

[28] Rule 48 provides for departure from the general rule set out in rule 46, where it applies. Rule 48 provides as follows:

> "The Designated Officer has the authority to depart from the general rule only in the following circumstances and subject to the following conditions:
>
> 1. Exceptionally, such a departure is highly desirable in order to match the special and specific needs of an applicant with the facilities and amenities accessible in a particular dwelling or location.
>
> 2. Any such departures from the general rule must be notified in writing within three months to the Board (Director of Housing, DOE in the case of housing associations)."

[29] This provision has not been relied upon by SMHA in the present case. However, it indicates that, even as between relevant applicants, some departure from the general rule that housing will be allocated on the basis of housing points is permitted where, exceptionally, this is highly desirable in order to match special and specific needs on the part of an applicant with the facilities and amenities accessible in a particular dwelling or location. Conceivably, this provision could also have been used in favour of the K Family in the circumstances of this case in terms of allocation of the McClure Street property. It differs from the rule 47 mechanism in a number of ways, principally because it permits allocation *as between relevant applicants* in a way which departs from the general rule; and also, because it allows an applicant to be matched to a particular *location* as well as simply a particular property, whereas rule 47(2) focuses on *non-locational* characteristics of the property. This is a provision which could conceivably be used in the applicant's favour, given that her concerns are focused not merely on disability needs but also safety concerns about certain areas. Given that she has such a high number of housing points, however, it is perhaps unlikely that recourse to this provision would be required.

The housing association's case

[30] The first respondent initially responded to these proceedings – the applicant not having complied with the High Court's Judicial Review Pre-Action Protocol – by letter dated 18 June 2024. This provided a summary of the housing association's response to the applicant's complaints about the decision, which is principally at issue in these proceedings, namely the decision not to offer the applicant the property at 43 McClure Street.

[31] The housing association says that this decision was taken on 31 May 2024. It accepts that this was a decision to allocate the property to an applicant other than Ms Morris. The property is a 3-bedroom "specially adapted wheelchair bungalow." The housing association has explained that it has many special design characteristics suited for a "Level 3" user household, meaning someone who requires assistance in

operating a wheelchair. It was adapted for more than one wheelchair user and there was a process to identify the relevant applicant household with the highest number of points for that type of accommodation. In contrast, Ms Morris has been assessed by the Occupational Therapy Service as a Level 1 "Ambulant User." The housing association contends that its decision was taken following an appropriate application of its Allocation and Transfer Policy and Procedure. This reflects the NIHE's Housing Selection Scheme.

[32] In particular, the housing association has relied upon rule 47 of the Selection Scheme. It is accepted that Ms Morris has a very high number of housing points, but she was not considered to be a "relevant" applicant for the property at 43 McClure Street because its specific design and wheelchair-adaptation characteristics surpassed her needs. She was not therefore the highest ranked "relevant" applicant for the property.

[33] SMHA disputed all of the applicant's proposed grounds of challenge. It noted that there was no evidence that the OT report was not taken into account, whilst pointing out that the assessment of need is a matter for the NIHE. A summary of the SMHA case is contained within the following passage:

> "You appeared on the general housing list for three-bedroom accommodation and were offered, as a high pointed relevant applicant, a three-bedroom lifetime home. This accommodation is easily adaptable for living with complex needs e.g., level access showering and toiletry facilities and installation of lifts and lifting equipment. You refused this accommodation.
>
> SMHA correctly allocated a specially adapted wheelchair unit to the relevant applicant with the highest points."

[34] In its written submissions, the housing association expanded its case in reliance upon rule 47 of the Scheme. It argues that this provision allows the allocation of specialised accommodation, for example wheelchair-standard accommodation, to those who need that type of accommodation ahead of those who do not. In the SMHA's submission, rule 47 of the Scheme is designed to make the best use of the available housing stock and to prevent those requiring specialist wheelchair accommodation from being disadvantaged due to the limited availability of such accommodation.

[35] The first respondent has also described how this is done in practical terms, as set out in section 6.0 of the SMHA Allocation Policy. The NIHE standardised computerised system for the common waiting list is used. 'Filtering' is applied to the waiting list, which involves selecting a target group based on their needs, which is matched to the characteristics of the specific house for allocation.

[36] As noted above, the property at issue in these proceedings is specifically wheelchair-adapted, with many special design characteristics suited for a 'Level 3' user household, meaning someone who requires assistance in operating in a wheelchair. The special characteristics of accommodation designed for use by specific categories of users are set out in guidance which has been provided to the court. Examples of such features in relation to properties specifically designed to accommodate Level 3 users include wider openings, larger unobstructed activity space at the side of the bed and in bathroom spaces, etc.

[37] The family to whom the property has been allocated by SMHA comprise a father, who is assessed as a Level 3 wheelchair user, and his son, both of whom are wheelchair dependent and suffer from a degenerative neurological condition. This family is currently placed in a terraced two-level property which is wholly unsuitable for their complex needs. In contrast, SMHA says that the applicant has been assessed by the NIHE as a Level 1 ambulant user, a type of user who is not wheelchair dependent. Even accepting that the applicant is in temporary accommodation, which is unsuitable for her needs, the property at 43 McClure Street would, in the housing association's judgment, substantially surpass her needs, whereas it would not surpass the K Family's needs. The applicant is not a "relevant applicant" for this allocation, therefore, whereas the K Family is.

[38] In summary, therefore, although the first respondent acknowledges that the applicant's family has disabled members and complex needs, it contends that the number of housing points she enjoys is not determinative in this case and that it has acted lawfully in allocating the particular property to a higher placed relevant applicant, applying rule 47 of the Scheme and taking into account the special characteristics of the property. It also contends that the property which the applicant was offered could readily be adapted (for instance, by the installation of a lift) in order to meet her needs, although it is accepted that this would not cater for the applicant's concerns about her son A.

The Executive's case

[39] The Executive emphasised the fact that the key allocation decision at issue in this case was not one which had been made by it but, rather, by the housing association. Nonetheless, the Executive supported this decision and considered that it was properly made consistent with the terms of the SMHA Allocation Policy and, indeed, the Selection Scheme. In his submissions, Mr Sands indicated that the Executive understands the applicant's frustration given that she has 370 housing points (described at one point as "about as high as you can get") yet has not secured the offer of a property which is acceptable to her. The Executive is sympathetic to her situation, he submitted. However, there is a severe shortage of public housing in Belfast with some 6,000 or so 'full duty applicants' and even more than that in housing stress; and a very limited stock of public housing available.

[40] The Executive contends that, in essence, there are three reasons for the present situation. The first is the general scarcity of housing of the nature which the applicant seeks (namely, an all-one-level, ground-floor multi-bedroom home). Wheelchair accessible housing is said to be "like hens' teeth." The second is the fact that there will inevitably be others, such as the K Family, who require a similar property and whose needs may objectively surpass those of the applicant and her family. The third is the applicant's very small area of choice, historically, in terms of the areas where she would be content to live. This was previously the Newtownbreda and Carryduff areas. More recently, but only in May of this year (the Executive submits), she broadened this area of choice out to include the Lower Ormeau area, in which the McClure Street properties are situated.

[41] In relation to the condition of the applicant's present accommodation, Mr Sands drew attention to (what he submitted was) a lack of objective evidence about several of the complaints the applicant made or as to their severity. He submitted that the evidence indicated that these issues are being, or have been, dealt with in a variety of ways by the landlord and/or the local district council. The second respondent also raised a variety of potential alternative remedies which, it submitted, should result in a refusal of leave to apply for judicial review against it, namely a complaint to the Public Services Ombudsman; or a request to the Executive to determine, as of now, the suitability of her present accommodation. It was submitted that when this accommodation was made available to the applicant (on a temporary basis, when she was required to move from West Belfast and became a full duty applicant) it *was* suitable for her at that point. At the same time, it was submitted that what may be considered suitable on a temporary basis is more flexible than what may be considered suitable on a permanent basis.

Consideration

The applicant having "the highest points"

[42] In her Order 53 statement, the applicant has raised the question of whether a landlord has to offer the property "to the one with the highest points." She relies upon the fact that she has 370 housing points and has therefore been "top of the list" for the past year. I accept the housing association's submissions, summarised at paragraphs [31]-[37] above, in relation to the way in which the allocation decision was made in this case and the significance of rule 47 of the Selection Scheme in this regard. I therefore propose to refuse leave to apply for judicial review against SMHA in relation to its decision to allocate the property to the K Family, rather than the applicant and her family. Her case against SMHA, on the basis of her points allocation and the application of the Selection Scheme (and the housing association's own policies and procedures), is not arguable in the sense of having a realistic prospect of success. That is because, as explained at paragraphs [23]-[27] above, it is permissible under the Selection Scheme to allocate a property to an applicant with lower points where they are a relevant applicant but another applicant with higher points (here, Ms Morris) does not qualify as a relevant applicant in respect of that

property. In the present case, the housing association was entitled in law to consider that the property substantially surpassed the needs of the applicant and her family so that she was not a relevant applicant for the purpose of the allocation.

The application for interim relief

[43] The above conclusion is sufficient to dispose of any claim for interim relief related to the allocation of the property at 43 McClure Street (for instance, that its allocation to the K Family should be suspended or that they should be precluded from taking up the offer of that accommodation). I make clear, however, that, even if I had considered that there was an arguable case against SMHA in relation to its allocation decision, I would not have been inclined to grant the interim relief sought in this regard. Assuming both that the applicant had an arguable case and that damages would not have been an adequate remedy in the event that she was ultimately successful in her judicial review (since it is unlikely that a cause of action would have been established in relation to the outcome of the allocation decision), I would not have considered the balance of convenience to have fallen in favour of the interim remedies which the applicant sought.

[44] Ms Morris herself, in her oral presentation of her leave application, made clear on a number of occasions that she was not seeking to have the property at 43 McClure Street taken away from the K Family. Although that appears to have been the initial aim when these proceedings were commenced, Ms Morris had by then tempered her attitude to this. In the course of submissions, she indicated that she understood that the K Family needed this property; and that she did not wish to take the property off them. At the same time, however, she later indicated that, if it would be a number of years before a suitable property was available for her, she would have to maintain her original position that 43 McClure Street should be given to her in priority to any others. I cannot therefore treat the application for interim relief as having been entirely abandoned.

[45] For the reasons which resulted in the allocation decision being made in favour of the K Family in the first place, and on the basis of the public interest in ensuring that very scarce specialised properties of this nature are allocated to those most in need of them, I would have concluded that the balance of convenience came down against the grant of interim relief which would have precluded that family taking up the property. The suggestion that the proposed respondents, or either of them, should simply be ordered to purchase the applicant a property (of her choosing) as an interim remedy, or indeed even a final remedy, was simply not realistic.

The occupational therapy report

[46] The applicant has relied strongly upon an occupational therapy report which, she says, means that, since 12 August 2021, it has been clear that she can be housed in a "Level 1C" property only. She contends that this has been "overruled" or left out of account by the respondents. In particular, she has pleaded that Mr Black did

not read this report because, if he *had* read it, he would have to have offered her the property at 43 McClure Street.

[47] The report upon which the applicant places reliance was not exhibited to her papers. There was what appears to be a case-note from 12 August 2021 included in the evidence. It notes that the case was "discussed at major works with OT Team Leads" before going on to say: "It was agreed to support re-housing to level 1C ambulant disabled." The client was telephoned to advise her of this. This entry appears to have been made by Ms Curley, an occupational therapist. She then forwarded a housing needs report to the NIHE. Ms Morris wanted a copy of this report but, apparently, was told that she would need to contact the data protection team to have this provided. In any event, the Executive has provided a copy of a number of Community OT Housing Needs Reports, as follows:

(a) There is a report dated 12 August 2021, which appears to be the report upon which Ms Morris places most reliance in her pleaded case. It assessed the applicant as Level 1 Ambulant Disabled. It recommended re-housing on the basis that the applicant's existing home could not be adapted to facilitate her needs. It indicated that no other members of the household required accessible housing features. It further indicated that a two-storey property (suitable for a home lift) would be acceptable, with a recommendation for a through-floor lift.

(b) There is a further report from the same OT dated 28 September 2021. This was broadly in the same terms. It again assessed the applicant as Level 1 Ambulant Disabled and recommended re-housing on the basis that the applicant's existing home could not be adapted to facilitate her needs. It again indicated that no other members of the household required accessible housing features. On this occasion, however, it was noted that all facilities should be situated on the one level. This was noted to be an "amended" housing report on the following basis: "home lifts now deemed unsuitable due to reported risks with other household member." In other words, the applicant herself appeared to be the only household member who, from an occupational therapy perspective, had mobility issues; but the report took into account the concerns the applicant reported in relation to her son A.

[48] SMHA say that the assessment of need is a matter for the NIHE so that, if there has been a failure to reflect the contents of such a report in the applicant's assessed needs, this is a criticism directed towards the NIHE.

[49] I also consider that this ground of challenge does not enjoy a realistic prospect of success. The applicant's need for a one-level property, supported by the OT input, was taken into account. She has made clear that the NIHE, at least from early 2022, has been aware of the requirement for a one-level property for her family. The issue in this case is that the K Family have a much greater need for the property in question, given its specialist features. The height of the OT input appears to be that

the applicant requires a Level 1C property as an ambulant user (that is to say, someone who is capable of walking), with a need for a one-level property taking into account the additional issues with her son. For the reasons discussed above, this was insufficient to render her a relevant applicant for the property.

[50] Relatedly, the applicant contends that the Chief Executive of SMHA has refused to acknowledge or accept that "there are two of us who have high complex needs." It may be that there has been a failure to reflect A's needs in the information made available to the housing association by the Executive's computerised waiting list. The evidence before me does not establish this one way or another, although this might provide an explanation as to why the applicant's family has been offered a two-level property which is capable of adaptation for those with mobility problems. However, I am satisfied on the basis of the evidence and submissions now before me that, even taking A's additional needs into account, the circumstances of the K Family were still such as to outweigh the needs of the applicant's family; or, put another way, that the property's specific characteristics still substantially surpassed the combined needs of the applicant's family.

Bias or predetermination

[51] The applicant has laid a substantial amount of emphasis upon the fact that the NIHE historically failed to award her intimidation points in April 2020. At that point she had been on 168 housing points for some time. After the intervention of Base 2, she was awarded additional intimidation points, which has taken her to her present total of 370. She has also relied upon a significant history with Mr Jim McCarthy, of Community Restorative Justice, whom she contends plays a significant role in the NIHE in Twinbrook. The applicant also provided a range of details relating to her role in 'taking on' paramilitary organisations, including challenging and disrupting such organisations' involvement in child abuse, which she contends led to her being threatened and required to leave West Belfast, where there had been pipe bomb attacks at her home.

[52] I do not consider that there is any evidence of the influence of bias, or any animus against the applicant, in the decision which is under challenge. That was a decision of the housing association. As discussed above, there is a rational basis for the decision that was taken. There is no evidence of the intervention or influence of anyone else which would give rise to an allegation of bias or predetermination which would have a realistic prospect of success. The applicant now has the benefit of the intimidation points which she sought some years ago. Much if not all of the background to this issue is, in my view, irrelevant to the decision now under challenge. I propose to refuse leave on this aspect of the applicant's case also.

The promise of a newly built bungalow

[53] It is convenient to deal next with the element of the applicant's case which, in public law terms, equates to a claim of breach of substantive legitimate expectation.

The applicant contends that she had a substantive legitimate expectation that no one could be offered the property before her. In particular, in addition to the averments made in relation to the May 2022 meeting (discussed above at para [11]), she says that the NIHE told her local Assembly representative (Kate Nicholl MLA) that she was top of the housing list and that the next bungalow which came up was hers by choice. She also contends that she was told, as was a member of Ms Nicholls' staff, that she could choose any 3-bedroom bungalow which came up across Northern Ireland. Since the property in McClure Street was the only 3-bedroom bungalow which became available to the applicant, she contends that she was entitled to be housed in it.

[54] The applicant has submitted a detailed letter of support from Ms Nicholl MLA. In a covering email from Ms Nicholl, the letter is said to detail her office's interactions with the applicant and also with the Housing Executive. It provides the following details, amongst others:

(a) Ms Morris came to her constituency office in September 2023 to discuss concerns around her housing situation. She wanted to move to something more suitable such as a 3-bedroom house on a single level to accommodate her and her son's complex medical needs.

(b) Ms Nicholl's office contacted Housing Solutions at the NIHE who let them know, on 4 October 2023, that the applicant was "on the list for permanent rehousing with a three-bedroom ground floor requirement on her application", stating also that Ms Morris was "well placed on the list with her current points."

(c) NIHE also warned that, according to the data it held on current social housing stock within the applicant's areas of choice (Newtownbreda and Carryduff), there were only three 3-bedroom ground floor flats within Newtownbreda and one in Carryduff. There had been no allocations of such properties within those areas within the last two years and "due to the lack of suitable stock and turnover in these areas it would seem that [the applicant] would have low prospects of being rehoused in the near future despite having a healthy amount of points."

(d) In an update in February 2024, NIHE confirmed that it had submitted a suitability review of the applicant's current property to Regional Management.

(e) In April 2024, the applicant raised with Ms Nicholl's office issues with rats at her property, which they in turn raised with the maintenance manager of the property and the district council. There was contact with the Environmental Health Department who confirmed that they had attended the property; that pest control was a matter for the landlord; and that they believed the landlord

had taken out a pest control contract. NIHE were also aware of the situation, and it had been passed to pest control.

(f) Also in April 2024, the applicant informed Ms Nicholl's office that her occupational therapist had been trying to get in touch with NIHE about the unsuitability of the property. This was also passed on to NIHE. NIHE said that they did not seem to have a report from the occupational therapist but that any recommendations would be assessed when they were received. They confirmed that the applicant had 370 points and remained on the list for a 2 or 3-bedroom ground-floor property within Carryduff or Newtownbreda.

(g) At a regular update meeting with NIHE on 10 May 2024, Ms Nicholl's office was notified that there was no further update in relation to the applicant's case. There was an acknowledgement that the applicant had what appeared to be the highest points for any applicants on the NIHE waiting list "which should put her in prime position for a suitable property ie bungalow." However, the NIHE also advised that it believed that the current property in which the applicant was accommodated was determined to be suitable (although it was unclear if the suitability review referred to above had been completed).

(h) Coincidentally, on the same day, the applicant contacted the office to raise the issue of the new property at 43 McClure Street. Ms Nicholl's staff contacted SMHA to inquire about this. They said that the housing officer was aware of the applicant's interest in the property and that they had the details they needed.

(i) Later that month, on 31 May 2024, the applicant rang to complain about the allocation of the property to another family. Ms Nicholl's staff contacted SMHA "who confirmed that the wheelchair filter was a determining factor in the allocation of the property (Rule 48)" and that the decision had been taken in conjunction with NIHE. It is noted in Ms Nicholl's letter that, "At this stage [the applicant] is not in a wheelchair although her occupational therapist has stated that she will not be allocated a wheelchair until she is moved into a wheelchair-suitable property." It was noted that the applicant had been offered a 3-bedroom property in the same development but that she had turned this down as it "has stairs that neither she nor her son can get up."

[55] Ms Nicholl's letter concludes by indicating that the applicant's case is both complex and urgent, with her medical needs and those of her son requiring immediate support in terms of finding suitable accommodation, which is compounded by what appears to be the unsuitability of the property in which she is currently living. Ms Nicholl lent her support to the applicant in achieving a resolution which accommodates both the needs of the applicant and her son.

[56] Returning to the May 2022 meeting, the applicant says that she has a recording of Heather and Anne McAleese promising her a newly built bungalow in May 2022. However, this recording has not been provided, nor has any transcript of the conversation, with the applicant's evidence. Nonetheless, Ms Morris maintains that she had been promised a (newly built) bungalow at some time in May 2022, from which she understood that no one could be offered the property before her. At other times, this aspect of the applicant's case was presented as a promise that the NIHE would work with any and all housing associations in order to build a bungalow specific to her needs.

[57] There are very few details which have been provided by the applicant in relation to the alleged promises made to her at the meeting in May 2022, much less the precise words used. In submissions, she indicated that she was told that the NIHE would be working with housing associations to find out where developers were building and that they would then contact her (Ms Morris) to work with her and the occupational therapist to see about a property being built for her. The applicant contends that this representation related to engagement with every housing association. She complains, therefore, that the McClure Street development was built without her having been given the opportunity to have a property built for her within it, specific to her needs. This is in contrast, she asserts, to the K Family, for whom such a facility has been made available. (This latter point is not established in the evidence, and I was told in the course of submissions that, in fact, the property at 43 McClure Street was not specifically built for the K Family but, initially, for another family with similar needs.) The applicant contends that the developer of the McClure Street development could easily have built two such bungalows rather than only the one.

[58] The answer to this on the part of each proposed respondent is that the McClure Street development was not within the applicant's selected areas of choice for a new home until at or about the time that the development was complete. Ms Morris' riposte is that it didn't matter where the new property was – BT6, BT7 or BT9 – provided that it was close to her son's school. In the course of her submissions, however, she also stated that the McClure Street development was the only place on the Ormeau Road where she would feel safe.

[59] It is well known that the requirements for enforcing a substantive legitimate expectation engendered by a promise from (or on behalf of) a public authority are exacting. These have been repeated many times by the higher courts. In this jurisdiction, Girvan LJ's judgment in *Re Loreto Grammar School's Application* [2012] NICA 1 is frequently cited, particularly at para [41] where he endorsed the suggestion in earlier authorities that a legitimate expectation can only arise where there has been a "clear and unambiguous representation devoid of relevant qualifications" and emphasised the need for clarity in the representation such that it must come close to the character of a contract. Plainly, each case will require a consideration of the context and its own facts. In the present case, I do not consider that the evidence gives rise to a realistic prospect of the applicant establishing (i) that

a promise of the character mentioned at paras [53] and/or [56] above was made to her and (ii) that it was an abuse of power for the housing association to allocate the property in question to another family in light of whatever representations were made to her by the NIHE.

[60] There may be a more complicated question in relation to whether the NIHE has breached some or other representation of some character made to the applicant. However, there is a lack of clarity around what precisely the applicant was told in the meeting in May 2022. The present evidence does not, in my view, come close to supporting the suggestion that the applicant was promised any property of her choice within Northern Ireland, or even within the Belfast area, which met her approval, in priority to all others; nor that a specific property would be built for her family to her requirements. I find it hard to conceive that NIHE officers would make such a promise or would consider themselves in a position either to make such a promise or to deliver upon it. A promise of such significance would, in my view, require to be set out clearly in writing before a court would consider granting a remedy designed to enforce it on an application for judicial review. The detailed summary of interactions between Ms Nicholl's office and the Executive contained in Ms Nicholls' letter, whilst supportive, also appears to fall well short of supporting the height of the applicant's claims about what she (or Ms Nicholl or some member of her staff on the applicant's behalf) was promised.

[61] Equally importantly, it is highly unlikely that the applicant could establish that it was so unfair as to be an abuse of power for the Executive not to give effect to any such representation where, as here, it is possible to point to another family assessed as being in greater need of such a property than the applicant. As illustrated by the discussion above, the Selection Scheme is framed in such a way that those with additional needs will often be prioritised. In turn, that calls into question the legality of the Executive or its officers making a commitment of the type which the applicant claims was made to her.

[62] I have little doubt that those to whom the applicant spoke would have sought to reassure her that they would do as much as they could to try to find her a suitable property; and that they would have indicated that the number of housing points she had accumulated put her in a strong position in relation to suitable properties which became available within her area of choice. Part of the difficulty here, however, is that the applicant's areas of choice were so limited for such a long period and have only been widened to a very modest degree in very recent times. Although the applicant contends that she was told that the Executive would work with housing associations in a variety of areas, outside her areas of choice, this further underscores the ambiguity around what it was the Executive had (even on the applicant's case) committed to do. Rule 47 of the Selection Scheme, discussed above, makes clear that it is important for a housing applicant to apply for a property with "locational" characteristics, in other words to spell out the area or areas in which they are seeking a property.

[63] For the reasons given above, I do not consider that the applicant has a realistic prospect of success in relation to her case founded upon breach of legitimate expectation arising from discussions she had with Executive officials.

Failure to provide adequate or appropriate housing and disability discrimination

[64] In my view, the strongest aspect of the applicant's case against the Executive relates to her claim that she has been left in a property which is unsuitable for her and her family for an unreasonable amount of time. The two difficult issues which arise in relation to this element of the claim are (i) the question of whether the property is, in fact, unsuitable for the applicant and her family and (ii) the difficulties in securing a more suitable property for the reasons summarised at paragraph [40] above.

[65] As to the first of these issues, the Executive has been somewhat equivocal in relation to whether the applicant's current property is, or is not, suitable for her and her family's needs. Its formal position – as expressed in correspondence with Ms Nicholl MLA – appears to be that the applicant's current property <u>is</u> suitable for her and her family. Mr Sands indicated that, if the applicant disputes this, she is entitled to seek a formal review of whether the property remains suitable. Disappointingly, he was unable to indicate whether the review referred to in the correspondence with Ms Nicholl had concluded and, if so, what the outcome of this was. I was, however, provided with a Health and Safety Inspection report completed by Tarasis further to an inspection on 13 June 2024; and a service report from Felix Pest Management dated 6 June 2024, which the Executive relied upon to indicate that there were no serious ongoing issues.

[66] I consider there to be considerable force in Mr Sands' submission that, in addressing this issue, Ms Morris frequently relied upon issues about the condition of her current property (or its fixtures or fittings) which were simply matters for the landlord to address, rather than issues relating to the fundamental characteristics of the accommodation. In principle, it is important not to elide these separate issues. Nonetheless, if there are continuing issues in relation to (for example) rodent infestation, it is only natural that this will add to Ms Morris's frustration and unhappiness. There must also come a point where the condition of a property is so bad, despite attempts to repair or remedy it, that it should properly be considered to be unhabitable. On the basis of the evidence I have seen, I am satisfied that there have been a number of ongoing issues of this type which, whilst not the ultimate responsibility of the Executive, have given rise to reasonable complaint and objection. The extent to which these remain issues of concern at present, and how serious they may be, are factual issues which it is not possible for me to resolve on the current evidence, if at all in the course of judicial review proceedings.

[67] More importantly, however, there is plainly an arguable case that – even taking into account its nominally 'temporary' nature – the applicant's current accommodation is not suitable for her or her family's needs. There is OT input

which suggests that the applicant herself requires a one-level property because of her mobility issues (see paragraph [47] above); and there is medical evidence strongly supporting a one-level property for the applicant's son A, in the interests of safety, in light of his sleep difficulties (see para [8] above). Leaving aside the issues which are properly for the landlord to rectify, the applicant has a claim that she is currently housed in a property which is unsuitable to her needs.

[68] What, however, is the court in a position to do about this? It is obvious from the position outlined by Mr Sands that there will be a number of individuals and families, perhaps a large number, who are in a similar position arising from the severe public housing shortage, particularly in relation to ground-floor, single-level family properties. (The K Family, up to now, provided a further example of this). The evidence suggests that a number of such properties have been offered to the applicant in the past but have been unacceptable to her by reason of their location; and that she is unwilling to avail of private rented accommodation to be paid for through housing benefit. I have already indicated that the limitations of the court's role are such that some of the relief the applicant is seeking is simply unrealistic. The most she may realistically be able to obtain is a declaration.

[69] Albeit not without some misgivings, I have concluded that leave should also not be granted in relation to this aspect of the applicant's case. It has been a consistent feature of the applicant's case that she and her family have been the victims of disability discrimination. Insofar as that claim relates to the first respondent, I accept the housing association's submission that rule 47 of the Selection Scheme is itself a provision which operates to combat disability discrimination, in that it represents a reasonable adjustment to the normal allocation rules so as to ensure that disabled housing applicants are not disadvantaged by other applicants securing accommodation far beyond their needs which should instead have been reserved for disabled users. At the same time, in making reasonable adjustments to favour disabled users, some assessment must also be made as to *relative* disability which matches the most in-demand properties to those most in need of that type of property. Insofar as the applicant claims that her continued occupation of her present property represents disability discrimination on the part of the Executive, that can be pursued (if she wishes to do so) by way of civil proceedings. Such a claim would be brought pursuant to the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006) but should be brought in the county court (see section 25 of the 1995 Act). Such proceedings would in any event be better placed to resolve any disputed issues of fact which are likely to arise.

[70] The applicant has not clearly pleaded any other alleged breach of duty against the Housing Executive. In any event, it is difficult to see what practical relief the court could or would grant even if the applicant was successful in establishing that her current property is unsuitable to her and/or her son's medical needs. It is unrealistic to suppose the court would grant a mandatory order requiring the Executive to build or purchase a particular property in light of the limited resources

available and the competing demands in this regard. It also appears to be the case that there is an alternative remedy available to the applicant. Again, leaving aside the matters which should properly be pursued against the landlord of the property, the applicant can seek a further determination of whether her current property remains suitable for her and her family. Any such request should, in my view, be dealt with expeditiously. A determination in that regard can then be appealed, as the applicant previously did, on a point of law, which I consider could also address whether the Executive's determination was irrational in the *Wednesbury* sense.

[71] The applicant also has a right of complaint to the Northern Ireland Public Services Ombudsman in relation to potential maladministration on the part of the NIHE. Whilst she was correct to indicate that the Ombudsman would not accept a complaint which was the subject of legal proceedings, this may be an avenue which the applicant wishes to pursue in the event of leave to apply for judicial review having been refused. I would not consider this potential avenue of redress to be a bar to judicial review in itself in this case; but it is another relevant factor to be considered, in conjunction with other potential remedies open to the applicant, particularly in relation to more generalised complaints about the Executive's unwillingness or failure to assist her.

[72] For the reasons summarised above, I decline to grant leave to apply for judicial review against the Executive in relation to its general alleged failure in the present case. This is on the basis of the applicant enjoying alternative remedies (including civil proceedings against the landlord, a claim for disability discrimination in the county court, an appeal against the Executive's decision that her property remains suitable for her and/or a potential complaint to the Ombudsman); the limited basis of her pleaded claim against the second respondent; and the limited utility in proceedings in terms of likely relief.

Ongoing concerns

[73] Notwithstanding the above, I have a number of ongoing concerns about the applicant's situation. In particular, I am concerned that the applicant has indicated that she has not been able to be assessed as to her need for a wheelchair because of the nature of her current property. SMHA, in its written submissions, suggests that this is because her property is not a *permanent* property. In any event, SMHA submits that this is a matter for the applicant and the NIHE, since it (the housing association) does not assess need and is reliant upon the assessments of need made by or on behalf of the NIHE. The applicant indicates that she has been told that she will only be assessed in a long-term property. Mr Sands on behalf of the Executive indicated that it did not know why the applicant would have to move house in order to have a wheelchair assessment. If it is indeed correct that the applicant requires to be assessed as requiring a wheelchair before she has a greater chance of securing a property for a wheelchair user, but also cannot be assessed in this regard whilst in her present property, this would appear to present a catch-22 situation which is somewhat illogical. Although this is not directly before me in these proceedings, I

would urge the relevant Trust, insofar as possible, to facilitate an assessment of the applicant in this regard as soon as practicable; and, insofar as it can do so, I would further urge the Executive to assist in facilitating this.

[74] It is also concerning that, since August 2021, it appears to have been accepted that the applicant should be housed in an all-one-level, ground floor property; yet no such property has become available for her. This is likely to be a result of the various factors mentioned at para [40] above, or some combination of them. As I have done from the commencement of these proceedings, I would urge the parties to continue to engage with each other, in good faith and in a spirit of cooperation so far as possible, in order to seek to find some satisfactory resolution of the applicant's situation. It seems that, at least in significant measure, some of the difficulties in this case have arisen from miscommunication in terms of what was possible and/or which areas the applicant was content to consider for permanent accommodation. To the extent possible, this should be avoided going forward. The Executive should in my view take steps to assure itself that both the applicant's needs and those of her son have been understood and reflected in its categorisation of her case. In turn, the applicant should make entirely clear in which areas she would be prepared to be housed.

[75] As to the applicant's immediate situation, although I have accepted that some of these issues are simply for the landlord to resolve, a more pro-active degree of oversight on the part of the Executive, again insofar as possible, may assist in moving a number of these issues forward which might, in turn, reduce the applicant's distress.

[76] In the course of the hearing, I explored with the parties the possibility of the applicant and her family moving to the property she had been offered at 35 McClure Street on a temporary basis, as a means of resolving the applicant's immediate safety concerns in relation to her current property. This was not acceptable to the applicant for a number of reasons; nor did it commend itself to the Executive. First, the applicant indicated that she could not cope with a further move, either emotionally or physically, if this was not a move to permanent accommodation. Her submission was that it "would kill" her. Second, she would not countenance a move to a house with stairs on the basis of the concerns on her part which have already been outlined above. Third, she was concerned – and the Executive agreed – that a move to a permanent home which she did not consider suitable would prejudice her position in terms of a loss of housing points from which she currently benefits whilst only in temporary accommodation. The applicant has also completely ruled out any suggestion that she could secure private rented accommodation, funded by Housing Benefit payments, and did so in robust terms when this possibility was raised during the course of the hearing. In light of this, the ongoing engagement between the parties to seek to identify a more permanent solution is all the more important.

Conclusion

[77] For the detailed reasons given above, I refuse leave to apply for judicial review in the case. The central issue in the application was whether the first proposed respondent was entitled to allocate a particular property to a family in priority to the applicant. I do not consider that the applicant has an arguable case in relation to the illegality of that decision. Had I been minded to grant leave, I would in any event have refused the application for interim relief which led to the leave hearing being expedited. Leave is refused in relation to the more general complaints against the Executive for the reasons given in paragraphs [53] to [72].

[78] The separate complaint in relation to Children's Disability Services mentioned at paragraph [20] above was not seriously pursued in argument but, in any event, is likely to be amenable to other effective alternative remedies in the data protection field. Its inclusion in the present proceedings could also be viewed as an abuse of process given its limited, if any, connection with the central matters at issue in this claim. Insofar as necessary, I refuse leave on that issue also.

[79] Despite the refusal of leave, the court has a considerable degree of sympathy for the applicant, who is simply seeking to improve conditions for her family including in particular her son A. This case is a sad illustration of the outworkings of the current shortage of social housing described by the Housing Executive in its submissions. It has acknowledged the unsatisfactory nature of the applicant having failed to secure permanent housing which she considers suitable notwithstanding the very high level of housing points she has been awarded under the Selection Scheme. In those circumstances, I commend the steps recommended at paragraphs [73]-[76] above to the parties for their consideration, whilst recognising that, strictly speaking, these are outside the court's remit.

[80] I will hear the parties on the issue of costs. Any written representations in relation to this should be provided within seven days.