Neutral Citation No: [2020] NIQB 46 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **FRI11261** *Delivered:* **01/05/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY RYAN TAYLOR FOR JUDICIAL REVIEW

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FRIEDMAN J

Introduction

[1] The Applicant has renewed an application for interim relief for the Respondent, the Department for Communities, or alternatively, the Notice Party, the Northern Ireland Housing Executive (NIHE), to make the payment of a sum equivalent to the previous housing benefit to fund the rent on his home for a short period, pending the determination of the expedited substantive judicial review proceedings. The hearing has been inescapably delayed by the COVID 19 crisis. It is agreed that this application should be dealt with on the papers and the parties have supplied skeleton arguments and supporting materials. Counsel and their clients had access to a confidential draft judgment for a short period prior to finalisation. I am grateful to Mr Steven McQuitty on behalf of the Applicant, Mr Aidan Sands, on behalf of the Respondent and the Notice Party, and those who instruct them both, for the assistance that has been provided generally, and especially so in the present circumstances of social isolation.

The Substantive Claim

[2] The Applicant is a remand prisoner in HMP Magilligan. He has until April of this year also been a short term sentenced prisoner serving a sentence of 8 months on a separate charge, which caused him to lose his housing benefit under a legislative scheme that is the subject of the claim. The Housing Benefits Regulations (Northern Ireland) 2006 (the Regulations) as amended by The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2013, provide that persons in receipt of benefits, including a sentenced prisoner, can be away from their home for 13 weeks and still continue to receive benefits (Reg. 7(13). As this Applicant received a sentence of 32 weeks, of which he was required to serve at least

16 weeks, the housing benefit was cancelled. By contrast the Regulations recognise certain exceptions to the 13 week rule, of which a remand prisoner is such an exception, who is allowed to be away from their home for up to 52 weeks and still receive benefits (Reg. 7(16)(c)(i)). During an overall period of less than 52 weeks, this Applicant has altered in his detainee status from being a remand prisoner, to a serving and remand prisoner, in relation to a set of allegations that are separate, but said to be connected, to now being a remand prisoner only. The question that falls to be determined at the substantive hearing is whether his non-entitlement to receive housing benefits for the longer time frame of 52 weeks is compatible with Article 8 and/or Article 1 Protocol 1, read with Article 14, of the European Convention of Human Rights ('ECHR').

Procedural History affected by the COVID 19 Crisis

[3] Leave was granted by this Court on 11 March 2020. The hearing was ordered to be expedited, such that a timetable was originally created to enable the judicial review to be properly and fairly heard on 22 April 2020, with judgment to be given soon thereafter. The state and societal response to COVID 19 has since caused insurmountable challenges to the preparation and hearing of the case. A first case management order was made on 1 April 2020, requiring the parties to submit a joint FORM JRCI1 to deal with the future continuity of the case by reference to the Guidance that had been issued by the Office of the Lord Chief Justice. A further case management order was made on 16 April 2020, which removed the hearing from the list, and set down a new timetable for evidence to be served, replied to, digested into skeleton arguments, and for the parties and the Court to be ready to try the case either in person or remotely by a date in June 2020.

[4] At present the Court Service is only dealing with urgent cases. As this case was granted leave on an expedited basis, I have indicated to the parties that I would be available to try it in physical person (travel and social restrictions permitting) or remotely on 12 June. If necessary I could sit for a day later in the month. At present I would assume without a final decision that a physical hearing will not be possible by that date, or indeed by mid-June. Whether a remote platform to try the case is available, and whether this litigation is to be prioritised over other cases, will need to be looked at closer to the time. The ultimate decision will be dependent on consultation with the Court Service that needs to deal with a macro listing and technological conundrum of obvious complexity. The overall issue of emergency case management remains subject to oversight by the Office of the Lord Chief Justice, and any aspiration that this case should be tried must not be taken as decision that it could bear precedence over other pressing matters. Equally, it would not be right at this juncture to decide the mode of remote hearing in this particular case without further consultation with the parties. I do note, however, that both the Applicant and public authority parties have positively registered that they have no objection to there being a remote hearing. I have therefore approached this application on the basis that the Court Service will be asked to facilitate a remote

platform for the case in mid-June 2020, ideally on 12 June, although present circumstances do not permit me to confirm that this will be the case.

The Renewed Application for Interim Relief

[5] An application for interim relief was part of the initiating Statement pursuant to Order 53 of the Rules of the Court of Judicature (Northern Ireland). Having obtained the above referred to original expedited hearing timetable, the Applicant elected not to pursue the application, but did so on the basis that he would want the matter to be kept under a review. My response at the time conveyed through the Judicial Review Office was that:

> "*We have set a timetable that maximises the possibility of a late April/very early May judgement, but of the various issues that could arise, there is also, unfortunately, coronavirus*."

[6] By way of interim relief, which is discretionary and pending final outcome, the Applicant therefore renews the application. He now seeks a temporary payment of the sum equivalent to two instalments of his housing benefit at £425 per calendar month, which would fall due at the beginning of May 2020 and then again in June. His mother has paid the rent since the beginning of December 2019. During the life of these judicial review proceedings, she paid the rent in March, and now April, in the expectation that the case could be near enough determined in that period. The mother is employed as a care-worker with the Belfast Trust. She is a public sector employee, who earns a monthly salary of £1200. Her work involves visiting vulnerable people in their homes to provide care and bring them medicine.

[7] The crux of the interim relief application is that if the rent cannot be paid then the home could be lost, thereby undermining the underlying purpose of bringing the case in the first place. In her original affidavit the mother was anxious about her capacity to afford to pay another month's rent, given her salary. When leave was granted, it was indicated by Mr McQuitty after a short adjournment to obtain instructions that the mother would take steps to raise the money. In her second affidavit she explains that she was able to pay the additional rent by taking overtime work, but that there is a real risk that she could not make the payment for the further two months, based on matters beyond her control, particularly as to whether she can secure sufficient additional overtime duties. She is further concerned about her work place exposure to COVID 19, and how that would impact on her overtime earning capacity. She also has to support the Applicant's younger brother who is at home, and without funding, having had his apprenticeship scheme suspended during the crisis. The Applicant's landlord has been approached by the mother to consider a short rent holiday in the light of these proceedings, but he has refused to grant one, as is his legal right.

[8] Both the Applicant and his mother in their original affidavits mention his emotional reaction to the prospect of losing this particular property if there is no

money via benefits to pay for it. It is near the mother's home, newly decorated, with a garden in good order, and especially valued for those reasons. There is no medical evidence in relation to his disquiet, but the importance of the matter to him can be appreciated, as can the potential advantages to rehabilitation in returning to the home he left, when he is released from prison. Given the present uncertainties regarding social isolation, the attachment to living nearby to the mother's home could well be a greater stabilising factor once the Applicant is released from prison than it was considered to be at the outset of these proceedings. I take all of these matters into account and without prejudice to the implications either way that this evidence should have in relation to the substantive proceedings. The fact that the mother's affidavit was authorised to serve, but unsworn, should be tolerated under the present circumstances, and should be sworn and re-served when the opportunity to do so safely arises in the future.

[9] The Applicant's present release date is unknown, not least because his arraignment on the remand matter was due to occur on 23 March 2020, but was adjourned due to the overall Crown Court response to COVID 19. No bail application has been made as of yet, but I would not regard it as right to look behind that decision (if that is what it is in the present situation) in determining this application. I have not been asked to do so. The current position therefore appears to be as follows. Both the previous conviction that led to 8 months imprisonment and the pending matters that the Applicant now remains on remand for relate to domestic violence allegations against an ex-partner, the first of which have been admitted, the second of which are pending. The nature of the allegations are irrelevant to the substance of this claim. I mention them because it is said that the Applicant enjoys the genuine prospect of being released into the community within an overall period of 52 weeks. Logically release from detention could now arise either if the Applicant is granted bail, proceeds to trial and is acquitted, or pleads guilty and receives a further short sentence, bearing in mind the previous sentence, and whatever time has been served on remand. Other than seeking an urgent remote bail application, it is not likely that the Applicant could achieve any other substantial alteration of his status in the next few weeks. As I understand the regulatory framework, and the submissions of the Respondent, if the Applicant was on bail he would be automatically entitled to the housing element of Universal Credit.

[10] The Respondent emphasises as part of its overall case, but equally relevant to this issue, that the hardships arising need to be set against the entitlement to benefits when the Applicant is released. When the case was started, the Applicant was erroneously described in the Order 53 Statement as a Housing Executive tenant. As properly corrected by his lawyers at the leave hearing this Applicant has never been a social housing tenant; only a private housing tenant in receipt of benefits. The relevance of this is that the neither the Respondent nor the Notice Party have the power to keep the Applicant in his home. Moreover, the Respondent questions the original (and erroneous) prominence that the Order 53 Statement placed on the Applicant being at risk of scarcely available social housing property in North Belfast,

especially so for a single man of his situation. While that may be true, there is no evidence that this Applicant would not be able to obtain alternative private housing in this area.

[11] I take into account all those matters, but do not accept the more robust submission that as this Applicant did not reside at this relevant address for very long before he was detained, he therefore cannot be said to be as attached to the place and space as much as he says he is. In my view the Applicant and his mother would not have pursued this matter in the way that they have, with some considerable financial cost and stress to her, if this home was not important. I also do not accept the submission that the application should be refused, because the order to enable two months' worth of payments equivalent to the rent would be futile, such that in the language of the relevant case law it would "*made in vain*", "*beat upon the air*" and confer no concrete benefit on the person seeking it: *Titanic Quarter Ltd v Rowe* [2010] NICh 14 §20-21. It is correct that of itself the order could not secure the mandatory retention of the property. The tenant could leave and the landlord could seek to evict. However, the available evidence is that the landlord wants to be paid the rent; and the Applicant would dearly want for the rent to be paid. Indeed, the inter-relationship between the dwelling and the welfare provision to pay for it is an important issue at stake in the substantive proceedings.

[12] The Respondent has served an affidavit from Mr Gerard Murphy who is the Housing Benefits Operation Manager of the NIHE. He avers that the NIHE has no power – arising from its reading of the law – to continue to pay the benefit. At the leave hearing, Respondent counsel ventilated the possibility that if I was minded to grant interim relief then I should consider whether the order should be made against the Respondent, or the Notice Party; although he did not develop his submission because the Applicant did not pursue the application at the time. Mr Murphy's affidavit, served on behalf of the Respondent, but speaking also for the Notice party, makes it clear that if the Court were to order a payment by way of interim relief the Housing Executive would of course be bound to pay it and would do so. Although the Respondent has opposed this application, Mr Sands has informed the Court that NIHE has otherwise adopted a neutral position and makes no submission to the Court.

[13] Of further significance to the application, is that Mr Murphy's affidavit outlines a pending and imminent change in the law to provide some measure of protection to tenants in the private rented sector, which would make the order unnecessary when, and if, it is brought into force. Section 81 and Schedule 29 of the Coronavirus Act 2020 provide that in England & Wales the notice period to commence repossession proceedings for a residential tenancy is extended from 4 weeks to no less than 3 months. It is intended that similar type provisions will be introduced in this jurisdiction to prevent evictions during this time. The Private Tenancies (Coronavirus Modifications) Bill 2020 is currently making its way through the Northern Ireland Assembly and will, if passed, extend the notice to quit periods set out in Article 14 of The Private Tenancies (Northern Ireland) Order 2006 from 4

weeks to 3 months for tenants of less than 5 years standing. I am told that the Bill was at the Committee stage on Monday 6 April and is due to become law in the near future. I see online that it had its second reading on 21 April. Although Mr Murphy's Affidavit hoped that the bill could be ready for Royal Assent on 28 April 2020, the Bill was then subject of further consideration by the Assembly on that date. A Final Report has been issued, but a date for Royal Assent has not yet been established. Clause 5 of the Bill anticipates "*that the Act will come into operation of the day after this act receives Royal Assent*". I am not aware of any proposed change to the text that has arisen during the Committee Stage. I therefore assume that the Act will not be in force on the due date for the rent which is on the first day of the month, but will come into force soon thereafter.

[14] In the meantime on the Respondent's departmental website the Minister has stated that even before the law comes into force, landlords are invited not to proceed with Notices to Quit during this unprecedented time, given the associated risks to public health. She relies on the fact that the Lord Chief Justice's Office has also announced that courts will only be listing urgent matters. Once a landlord has served a notice to quit on a tenant, they can then only get possession of the property through an application to the court. The Minister notes (and I make no observation as to whether this is correct or not in a given case) that such matters are not deemed urgent matters at this time.

Outline of the issues in the case

[15] In an application for interim relief of this nature I am required to consider the seriousness of the matter to be tried as a discrete issue in its own right and as part of the overall exercise of my discretion. It is common ground that there is no provision within the 2006 Regulations as amended that would permit the Applicant to argue that, exceptionally and in the specific circumstances of his case, he should be able to remain in deemed occupation for up to 52 weeks. That is notwithstanding his change in status from a remand to a sentenced prisoner and back again, during what it is claimed would otherwise be the currency of 52 weeks. The regulations do not permit of any argument about proportionality relating to this particular dual status prisoner. It is the absence of such a provision that forms the bedrock of the Applicant's human rights challenge to the legality of the regulations. For its part, the Respondent argues that in amending the 2006 Regulations in 2013, by bringing into force, The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2013, the legislature made a policy decision that sentenced prisoners should be treated in the same way as all other claimants who were absent from their home, rather than obtain the greater protection afforded to certain vulnerable groups. The Applicant was a sentenced prisoner and the legislature plainly intended that he should not benefit from the exception made for prisoners on remand, who have not been convicted of any offence.

[16] In granting leave, I was satisfied that the application disclosed an arguable case of what might turn out to be a successful challenge once further consideration is

given to the issues at the full hearing. Without considering the law and evidence in greater detail it would appear that the timing and manner in which the various charges were brought against this particular Applicant could have caused him to serve less than 13 weeks as a sentenced prisoner that would not then have stopped the clock in the way in which it has. The idea that a date of an early guilty plea, or what remand time is taken into consideration, could make such a substantial difference as it has done to this Applicant's case is a matter that, in my judgment, requires closer examination. The Explanatory Memorandum that accompanied the amending legislation outlined an aim to preclude against more generous treatment for "*more prolific offenders*", who "*are therefore more likely to be sentenced and remanded for different offences*" (§3.15). Pending the delayed service of the Respondent's evidence, I am yet to see any more detailed justification for the amendment, or to determine, if relevant, how this purpose applies to the concrete situation of this Applicant.

[17] However, important arguments have been raised on both sides in relation to Article 8, Article 1 Protocol 1, and Article 14 ECHR, applying as they do to the entitlement, or otherwise, to housing benefit that is used to rent a home. The ECHR case law does not guarantee everyone a right to a home, or to a particular home of their choice. It also expresses caution about the competency of judges and/or the wisdom of judging matters relating to the distribution of resources outside the elected, expert and accountable field of government. There is a line of domestic and Strasbourg jurisprudence that the Respondent will rely upon that the relevant distinction, in this case the one drawn between the remand and the sentenced prisoner, must be shown to be (in the words of the domestic and the Strasbourg case law) "*manifestly without reasonable foundation*" (e.g. *Stec v United Kingdom* (2006) 43 EHRR 47 §52). Of all the bright lines in law and society that one can think of, the difference between a convicted prisoner and accused person, is about as bright and clear a line as there is. These are all matters for the substantive hearing.

Interim relief in public law cases: relevant legal principles

[18] Section 91 of the Judicature (Northern Ireland) Act 1978 empowers the Court to grant a mandatory or other injunction "*in any case where it appears to the court to be just and convenient to do so for the purpose of any proceedings before it ....*" The principles governing the grant of interim relief in judicial review proceedings are those contained in *American Cyanamid Company v Ethicon Limited* [1975] AC 396, 407G-H and 408F-409D but must be modified as appropriate to a public law context, for which seen generally *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin) §§6-16.

[19] The judgement of Cranston J in the *Medical Justice* case draws attention to the additional considerations to bear in mind when one of the parties is a public authority, and there is a triangulation of interests at stake in the public law context, namely the Applicant, the public authority respondent and the broader public

interest. How those three interests interact, however, will invariably be case specific. The standard *American Cyanamid* criteria are:

(1) Whether there is a serious question to be tried, also referred to as a real prospect of success;

(2) What would be the balance of convenience of each party should the order be granted (in other words, where does that balance lie?); and

(3) Whether there are any special factors.

[20] As stated in *McLaughlin & Harvey Limited v Department of Finance and Personnel* [2008] NIQB 25 per Deeny J at §6 in applying the various limbs of the *American Cyanamid* test the Court has an "*overall discretion to do what is just and convenient in the circumstances.*"

Application to the facts of this case

[21] As to each limb of the test, firstly it is agreed by the parties that by granting leave there is a serious question to be tried. I too approach the matter on that basis, save to note that if this claim has raised serious issues it also engages serious counter-arguments to be resolved at the full hearing.

[22] Whether deciding limb 1 of *American Cyanamid* as to the seriousness of the case, or limb 2 as to the balance of convenience, it is necessary in the public law field for caution to be applied before making orders that would displace the ordinary presumption that a public authority should not be restrained from exercising its statutory power or doing its duty to the public: *Smith v Inner London Education Authority* [1978] 1 All ER 411, 418-419. If this case concerned a mandatory order to supply the Applicant with social housing, or to actually suspend the operation of the Regulations in relation to all short term prisoners, then I note that there is a line of case law in the housing law field that would arguably require the showing of a strong prima facie case. The authorities on ordering mandatory accommodation were recently summarised by Hickinbottom LJ sitting as a single judge in *R (Nolson) v Stevenage Borough Council* [2020] EWCA Civ 379 §§7-8. A similar point was made by Lord Goff regarding an application to displace primary legislation in *R v Secretary of State for Transport ex parte Factortame* [1991] 1 AC 603, 674C-D (see below). These threshold distinctions are not necessarily easy to distinguish, especially at an interlocutory stage, but I do not approach this application on the basis that some higher threshold is required to justify interim relief in this case than would ordinarily be required to grant leave to bring the Claim; and for reasons I now develop I have not found it necessary to apply a more exacting threshold of interlocutory review in ultimately determining this particular application.

[23] The second aspect of the test, and more importantly, is the Court must consider where the balance of convenience will lie. This is a more complex issue in

public law than it generally is in private law. The public interest is strong in permitting a public authority to continue to discharge its duties. That wider public interest cannot be measured simply in terms of the financial or individual consequences to the parties: *Smith v Inner London Education Authority* 422. It is under this limb of the test, that it is right to recall the caution expressed by Lord Goff in *Factortame* at p. 674:

> "...the court should not restrain a public authority by interim injunction from enforcing an apparently authentic law unless it is satisfied, having regard to all the circumstances, that the challenge to the validity of the law is, prima facie, so firmly based as to justify so exceptional a course being taken."

[24] As important as this dicta is, I do not consider that it is an absolute requirement either in the determination of limb 1, or in the broader consideration of the balance of convenience. At the leave hearing I was told that there is no case in Strasbourg or the domestic courts in Northern Ireland or England and Wales that directly deals with the agreed core issue, although the case of *Obrey & Others v SOS for Work and Pensions* [2013] EWCA Civ 584 does deal with the imposition of a bright line rule at 52 weeks, as regards hospitalisation for reasons of mental ill-health. All in all, we are in test case territory, and it is "*no part of the Court's function at this stage of the litigation to try to…decide difficult questions of law which call for detailed argument and mature consideration*": *American Cyanamid* p. 406H. While it is relevant that this relief would be made in the face of apparent legislative intent, the legislation is a statutory instrument, and not a primary Act, and the issue at stake has not been the subject of authoritative case law guidance. In those circumstances I have relied on the observations of Lord Bingham as the Master of the Rolls in *HM Treasury ex p British Telecom* [1994] 1 CMLR 621, 643 §§40-41 (and cited in *R (Medical Justice) v SSHD* at §13). The Court of Appeal considered Lord Goff's view in *Factortame*, but urged against adopting "*any rule of thumb in a mechanistic way or to treat any consideration as capable of being decisive in every case*", adding that "*this is a field in which there are no absolutes, only variables*" (§40). It continued:

> "Where an interim injunction is sought which will have the effect of disapplying national legislation pending a reference to the Court of Justice, certain matters are almost bound (as Lord Goff recognised) to fall for consideration: the apparent strength of the plaintiff's case, the general undesirability of disturbing enacted law, and so on. But even these are variables. In one case the plaintiff's case may raise an issue of Community law never before raised or explored; in the absence of authoritative guidance the national court may have very little idea of how the issue is likely to be resolved. In another case the national court may be all but persuaded

> by Court of Justice jurisprudence that the plaintiff has the Community right which he asserts, but may entertain just enough doubt to lead it to refer. In considering the balance of convenience, the apparent strength of the plaintiff's case and the need to protect putative Community rights will obviously weigh less heavily in the first case than in the second. Again, in one case the law to be disapplied may be a major piece of primary legislation, on which an election has perhaps been fought. In another it may be a minor piece of subordinate legislation affecting very few parties other than the plaintiff. While the court would never disapply any legislation without great circumspection, its reluctance would obviously weigh more heavily in the first case than in the second. These are among the materials upon which the court's judgment has to be exercised in weighing the balance of convenience in every case. BT is correct in submitting that there is no room for a formulaic approach."

[25] While I am conscious about treading in the territory of legislative intent, the interim relief here would order no more than the provision of a finite sum of £850 in order to pay the rent and with the pragmatic purpose of seeking to maintain a home that otherwise risks being lost. Any order I would be minded to make would not be intended to suspend the operation of the impugned provision, and would be simply designed to keep on track during a public health crisis an expedited claim designed to test the merits of an important, but complex, human rights argument that it is now in everyone's interests to determine quickly. These circumstances involve quite a number of variables now stacking up on top of one another.

[26] The third aspect of the test is to consider any special features pertaining to the case. Here there are a number of special features, some of which are personal to this Applicant and the generosity and support of his mother. As the Applicant did not become (on his case) entitled to benefits until his release date at the beginning of April, then the crux (or one might say, the "price") of the problem is the rent that became due between the beginning of April 2020 and the date of judgement that it was originally intended to give at the beginning of May, or thereabouts. The judgement, all being well, could now be given by the end of June, but I cannot exclude extraneous difficulties and other urgent case priorities in relation to the proposed remote listing.

[27] If those are the special features pertaining to the Applicant, there are other special features relating to the operation of an apparently clear underlying policy that influenced the re-drafting of Housing benefit regulation in 2013. I was initially concerned to order any interim relief if it would interfere with the broader operation of the work, and funds, of the NIHE. However, for reasons explained above the fact

that this is a challenge to (secondary) legislation is a starting point, rightfully to be considered, but not definitive.

Conclusion

[28] Drawing all the above together, I have reached the following conclusions. When I granted leave in this case, the parties agreed an expedited timetable to a hearing with every intention that judgement could be given before the end of April, in order to coincide with the next date on which the rent was due. On that basis, the Applicant did not make the application for interim relief, and I had asked in any event for further instructions to be taken before the application was pursued in the light of proposed speed in which the case could be determined. The renewed application must now be judged against the case management order of 16 April, and the desire without certainty, that the case can be dealt with by a remote platform mode of hearing in mid-June. I will approach the application on the basis that there is a real risk that if I do not make an order of interim relief then this will put the payment of rent for May, and thereafter June, in jeopardy, because the Applicant's mother is the only person who could pay it and her working and personal circumstances are now under considerable pressure.

[29] Given those particular circumstances, I am prepared to make a limited order, which is predicated upon the exceptional situation of the COVID 19 emergency, and which has been compelled by the interruption of the timetable for the expedited hearing.

[30] The Applicant has primarily sought an order that would enable rent to be paid on his Belfast home in May and June, which would come to £850. As there is legislation just about to go forward for Royal Assent that could prevent eviction for up to 3 months, it has been suggested by the Respondent that the need for any order may be removed altogether. As that legislation is not yet passed, although I assume it will obtain Royal Assent during early May, I am clear that overall justice and convenience requires an immediate initial order for payment of £425 for the equivalent of one month's rent which is just about to be due on the first day of the month.

[31] On further reflection I have also shied away from relying on The Private Tenancies (Coronavirus Modifications) Bill 2020 once it comes into force. The Section 75 Screening Form sets out the aims of this legislation, that the emergency measures, including mortgage holidays for landlords will go some way to alleviate the concerns of landlords, who might be worried about meeting mortgage payments, and should therefore mean no unnecessary pressure is put on their tenants. On that basis the Notice to Quit time limits are extended from 1 month to 3 months, and for that reason it is said that the Applicant could not be evicted, even if no one paid the rent. I accept that eviction may not be immediately possible because of this change in the law, but I know nothing else about the landlord's position. It may be that the effect of immediate arrears would be covered by a mortgage holiday, but there is no

evidence before the Court that this would be the case. The Screening Form recognises that landlords may in cases of rental arrears be deprived of an income stream for the period, and will be delayed in gaining possession of the property to sell or put to alternative use. The emergency legislation is said to be aimed at being a proportionate response to the difficulties that both landlord and tenants face in these exceptional times. While that may absolutely be the case, I do not think it is right to pass the additional difficulties and variables raised by this application on to a landlord, who is not a Notice Party, by automatically piggy backing on the new Act, which is not in force, and without any submissions on its final form. The broader public interest also requires particular constraint before relying on any form of emergency provisions; especially so for a purpose that was arguably outside of their originating purpose.

[32] I therefore grant the narrow version of the relief sought. If for whatever reason it turns out not to be possible to list the substantive hearing in June, I will entertain a further application to extend the order for a short period of time, and consider any fresh information. That should include an update on the Applicant's capacity to otherwise have the rent paid and any further submissions or evidence relating to my reluctance at this stage to rely on the change of the law. Ultimately, I am persuaded to make the order because of special considerations pertaining to this test case litigation and only after its case management has become caught up in the midst of a public health emergency. I very much exercise my discretion based on an overall conclusion of what is "*just and convenient in the circumstances*" (*McLaughlin & Harvey Limited v Department of Finance and Personnel* §6).

[33] The Applicant has suggested that the mechanism for making the order, and against whom, is of secondary importance, and based on the condition that the sum of money paid could only be used for making rental payments, and for no other purpose. It appears from the affidavit evidence that the Notice Party will accede to being the subject of the order. Alternatively, the Respondent could make the payment, as the remaining party in the case and on the limited basis for the specific reasons that I have given. I will leave it to Mr Sands' clients to now decide who is to pay the sum. The money can be transferred to the landlord's agents, or to the mother with the requisite undertaking that it be used for the payment for which this relief is designed. All parties should take into account that the rent is due on the first day of the coming month. I will otherwise leave it to the parties to agree a formula for making the order, which must be drafted in such a way as to enable the transfer of at least half the payment as soon as reasonably practicable, with the full payment to be made by 28 May 2020.

[34] By 22 May 2020 the parties should serve submissions, either jointly or separately, as to the mode of hearing that they seek on 12 June 2020. The Court should also be updated on that date, if not before, as to any change of circumstances in the Applicant's situation that would alter the present need for expedition. As the situation is uncertain and evolving, there will be liberty to apply to change the above date, and more generally on case management matters.