

Neutral Citation No. [2010] NIQB 55

Ref: **TRE7842**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **5/05/2010**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Walsh's (Richard) Application [2010] NIQB 55

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY
RICHARD WALSH**

TREACY J

Introduction

[1] By this application the applicant seeks to quash the decisions of the Social Security Agency ("the Agency") and of the Social Fund Commissioner upholding the decision of the Agency to refuse him a Community Care Grant ("CCG").

[2] As against both respondents the grounds upon which relief is sought are the same namely improper exercise of discretion, unparticularised complaints of taking irrelevant matters into account and leaving relevant matters out of account and a complaint of misinterpreting and misapplying the departmental guidance on the award of a CCG.

Background

[3] The body of material available at the time that the final impugned decision was taken [11 June 2009] included the following:

- (i) Following constant rows and arguments with his mother and brother (p122) the applicant was effectively rendered homeless leaving home to "avoid serious confrontational problems" within his former family home (p130);

- (ii) When he left home he stayed with different friends and relatives staying “primarily” with his sister (p135);
- (iii) On 15 December 2008 he secured (on a non-priority basis) an unfurnished NIHE flat – some 6 weeks or so after having left the family home due to conflict;
- (iv) The applicant was suffering financial hardship (he had Jobseekers Allowance but was also paying off an earlier crisis loan) and was unable to buy the essential items he required for his unfurnished flat (p97);
- (v) The only furniture he had at the time of his application was a couch on loan from his father (p122);
- (vi) He was dependent on other people for “cooking facilities and hygiene purposes. The items I applied for are the minimum I require ... my alternative of staying in my flat is to go into a hostel for the homeless which I don’t want. I am also dependent on getting my laundry done by other people as my Income Support leaves nothing over for heating ...”(p122).

[4] By letter dated 3 April 2009 he was asked by the Social Fund Inspector, John De Larcy, to supply the names and addresses of the people he stayed with and for permission for him to contact those people if need be. By letter dated 26 May 2009 his solicitor provided the information sought including the names of three people whom he had stayed with namely his sister and two other named male individuals. This letter indicated that “primarily he stayed with his sister”. The letter was silent on the issue of permission to contact the named individuals.

[5] On 11 June 2009 Mr De Larcy, the Social Fund Inspector, issued what was the final decision in a series taken by the respondents. The decision was in the following terms:

“Based on the evidence before me I do not accept that Mr Walsh and his family were under exceptional pressure when he made his application for a Community Care Grant. Therefore, I will not be changing my decision dated 23 April or the previous Inspector’s decision dated 23 March.”

Accordingly, those two earlier decisions are incorporated by reference. On 23 March 2009 the Social Fund Inspector had refused a CCG on the following grounds:

“I can see you may be under a degree of pressure setting up home and managing on a low income. However, the evidence does not suggest any other member of your family is adversely affected by your current circumstances. Therefore, I am satisfied you do not qualify ...”

The decision of 23 April 2009 said:

“The previous Inspector decided that while Mr Walsh was under a degree of pressure setting up home, there was insufficient evidence to indicate that he was part of a family experiencing exceptional pressure.”

[6] In follow up correspondence dated 23 June 2009 the applicant’s solicitor disputed the analysis which had led to the refusal to make payment of a CCG stating:

“It is difficult to envisage how the agency can maintain their stance that anyone who feels compelled to leave a family home because of strife is not a family experiencing exceptional pressure. The very fact that he has had to leave I believe proves that the pressure was indeed exceptional. To hold otherwise I believe is unreasonable in the Wednesbury sense.”

[7] By letter dated 26 June 2009 Mr Stephen Rea on behalf of the respondents stated, so far as material, as follows:

“In the second paragraph of your letter you contest that Mr Walsh was a member of a family experiencing exceptional pressure. The inspectors who reviewed this case disagree. The inspector who first reviewed this case accepted that Mr Walsh was under a degree of pressure, but that the evidence did not suggest that any other member of his family was

adversely affected by his circumstances. Therefore, the inspector decided [he] did not qualify for a grant. On reviewing the case, the second inspector decided the first inspector was entitled to come to this conclusion and, following provision of further information from you, this inspector again decided that Mr Walsh and his family were not under exceptional pressure at the time of the application and that the decision should remain unchanged.”

[8] Mr De Largy, in his affidavit sworn on 3 March 2010, having set out the relevant factual background, expanded upon the reasons for the decision to which he had come in the following terms:

“34. On the evidence available to me, I considered that Direction 4(a)(iii) was the only part of Direction 4 under which Mr Walsh’s application fell to be considered as requiring further evaluation both because he was under some pressure and also because he had family members.

35. ...

36. I could see that Mr Walsh had been under some pressure having referred to family problems, fights and constant arguing when living with his mother and brother. However, the NIHE had advised he had not been awarded any ‘priority’ points when being considered for tenancy of his property. From this I inferred that the NIHE had not deemed Mr Walsh's need to be rehoused as urgent.

37. At the time of his application Mr Walsh had already moved out of the family home where there was conflict with his mother and brother. *I considered this action would largely have relieved each of them of the source of their pressure. I considered that, because of the time that had elapsed between Mr Walsh leaving home and the date of his application, he was now sufficiently far removed from the former family home that any grant award would have done little to further relieve the source of*

the pressure that had been affecting him and his mother and brother.

38. Moreover, upon leaving home Mr Walsh was reliant on others for laundry, cooking and hygiene facilities, but I did not consider that this reliance amounted to exceptional pressure.

39. He stayed with his sister during part of this time, but from the answers provided I was *unable to determine* whether she (a family member) was providing this support or whether it was one of the other two people named. *Despite asking, I was not given permission to contact his sister to establish the position.*

40. As a single man trying to set up home in an unfurnished tenancy on a low income a grant would undoubtedly have eased the pressure Mr Walsh was under at the time of his application. However, as explained above, I considered it unlikely that an award for the items he sought would ease any exceptional pressure on his family in view of the time that had elapsed since leaving the family home.

41. Also, Mr Walsh's evidence was that he *would not return to the family home* should an award be refused; he would have found other alternative accommodation, as, for example, a hostel. *Therefore there was, in my view, no sufficient causal link between making an award and the relieving of exceptional pressure on Mr Walsh and at least one other member of his family.*

42. Accordingly, taking all the circumstances of the case into account, I considered that at the time of his application Mr Walsh and his family had been relieved of the pressure caused by their conflict. In its place he himself was under separate pressure trying to set up home in an unfurnished tenancy on a low income. Any pressure on Mr Walsh's family had abated since he had moved from the family home. As appears from the information

provided by him he had no intention of returning there even if his application was refused. Hence, the refusal of a grant had no relevant impact on his family."

[9] The applicant swore a further affidavit on 12 April 2010 in response to queries raised by the respondent in which he confirmed at para.6 that he still relies on assistance and help from his sister as far as meals are concerned and with washing clothes as he does not have a washing machine. He explained that he has very little in the way of cooking utensils, cutlery etc and then at para.8 states:

"I believe that my circumstances are unacceptable, as I have to live in circumstances in deprivation without assistance from the State. The fact that I have obtained some old and damaged items from a charity should not affect the State's legal obligation to cure assistance for persons in my situation i.e. those rendered homeless as a result of pressures caused by family conflict within the home."

Legal Framework

Purpose of the Social Fund

[10] The Social Fund Scheme was introduced in 1988 to replace the Single Payments and Urgent Needs Payments Schemes. The structure of the scheme is now contained in the Contributions and Benefits (NI) Act 1992 ("the Act") and has two distinct parts - a regulated strand and discretionary strand.

[11] The discretionary strand of the social fund provides for CCGs to meet a need for community care; crisis loans - to meet immediate, short-term needs; and budgeting loans to help defray intermittent expenses. These parts of the social fund are budget limited. There is no entitlement to these payments and there are certain conditions that must be met before an award may be made.

[12] Section 136(1) of the Act sets out the "Principles of Determination"¹. Section 136(2) provides:

¹ (1) In determining whether to make an award to the applicant or the amount or value to be awarded a social fund officer shall have regard, subject to subsection (2) below, to all the circumstances of the case and, in particular -

(a) ...

(b) the existence of resources from which the need may be met;

(2) A social fund officer shall determine any question in accordance with any general directions issued by the Department and in determining any question shall take account of any general guidance issued by the Department."

[13] The Department for Social Development ("the Department") has issued both Directions and Guidance. The 1992 Act requires that decision makers shall determine any question "in accordance with" the Department's Directions. The Act requires decision-makers to take guidance into account when making decisions.

[14] It is common ground that the application for the CCG fell to be determined in accordance with Direction 4(a)(iii) which provides, as far as material, as follows:

"Subject to directions 25 and 26, a social fund payment may be awarded to promote community care -

(a) By assisting an applicant with expenses, including expenses of travel within the United Kingdom, (except those excluded by these directions) where such assistance will -

...

(iii) ease exceptional pressures on the applicant and his family;

..."

[Emphasis added]

[15] The Department's Social Fund Guidance provides advice to decision makers on how they should approach a case involving consideration of direction 4(a)(iii). The following paragraphs appear to be the most relevant:

"225. All families, especially those on low income, face pressure at various times, so that in itself is not

(c) the possibility that some other person or body may wholly or partly meet it;

(d) where the payment is repayable, the likelihood of repayment and the time within which repayment is likely;

(e) any relevant allocation under section 147(1) to (4) of the Administration Act.

a reason to award a Community Care Grant (CCG). However, CCGs may be awarded to ease *exceptional pressures on a family, i.e. circumstances which put a family under greater pressure than might normally be associated with low income. Consider the degree of this pressure in terms of its effect on the individual family as well as the type of pressure and how common it is.*

226. It is important to recognize that *what constitutes "exceptional pressure" covers a very wide range of personal circumstances. It may be the result of acute domestic difficulties which can be described as specific to the family, such as:*

- *The breakdown of a relationship (especially where domestic violence is involved)*

230. The specific circumstances giving rise to a need may be important in deciding the priority of an application. Consider giving a higher priority to a new type of expense which has arisen as a direct result of special circumstances, particularly if these were unforeseeable. For example:

- *A mother with young children needs household items following the violent breakdown of a relationship*

Paras.233-236 of the Guidance deal with the definition of family and the requirement to be flexible in the interpretation thereof².

248. A CCG may be awarded to help an applicant move to different accommodation where the

² 233. "Family" in this section should generally be taken to mean couples, including those with children, people caring for children or pregnant women over 24 weeks. DMs can use their discretion in defining a family...

234. When considering the meaning of "family" however, DMs must consider all the circumstances of each particular case and are at liberty to be flexible in their interpretation, bearing in mind the overall intention of CCGs.

235. There may be circumstances, for instance, where it may be appropriate to extend the definition of family beyond the conventional "nuclear" family scope to include siblings...

236. An award of a CCG should normally be to help members of a family to stay together. In addition the guidance in paragraphs 233-235 should be borne in mind when considering what is meant by "family" and a rigid interpretation of the guidance should be avoided.

applicant was formerly part of a couple with or without children, and where the relationship has recently ended. In these circumstances, remember that any award must ease the pressures on both the applicant and his family.

249. When deciding if a relationship has ended recently, take account of what has happened since the relationship has broken down e.g. The applicant may have spent some time in a refuge or other temporary accommodation until permanent accommodation could be found. In such circumstances it may be reasonable to award a CCG even if the relationship has not recently ended.”
[Emphasis added]

The Applicant’s Submissions

[16] The applicant accepted that the guidance stated that the award must ease exceptional pressures on *both* the applicant and his family and that therefore the applicant must have a family and the award must ease the pressures on both him and them. The applicant relied upon para.226 of the guidelines which recognised the “very wide range of personal circumstances” that come under the description of “exceptional pressure”. One of the examples given was “the breakdown of a relationship” (especially where domestic violence is involved). Therefore they submitted the directions and guidance envisaged the award of a CCG to one member of the family to ease exceptional pressure on the family as a whole and someone leaving the family home due to the breakdown of a relationship especially, but not necessarily, caused by domestic violence. They submitted that there was no obvious reason why a family member becoming homeless in circumstances similar to that of the applicant should be interpreted as falling outside the guidance and that none of the decision-makers appeared, they said, to have reflected on the breakdown in relationships that underpinned the applicant’s need for an award to purchase essential items. It was also submitted that the guidance exhorts decision-makers to be “imaginative” in their assessment of applications and that this is a recurrent theme in the guidance, an exhortation, they said, had been ignored.

The Respondent’s Submissions

[17] The respondents submitted that even if it were accepted that there was exceptional pressure on both the applicant and his family which compelled him to leave the parental home that it was not accepted that *at the time of his*

application there was exceptional pressure affecting him and a family member. They submitted that there was no obligation to award a CCG to any person experiencing even exceptional pressure. To be entitled to be considered for payment he required to satisfy one of the qualifying provisions set out in the directions – in this case the relevant one being direction 4(a)(iii). To fall within that direction it will always be necessary for a CCG applicant to establish that the award would ease exceptional pressure on both the applicant and another family member. The respondent submitted that on the material presented the applicant was not able to demonstrate that the award of the grant would ease exceptional pressure on both him and a family member “because the evidence clearly showed that there was never any prospect of his returning to the home *whether or not a CCG was awarded*” (see para.46 of respondent’s submissions). It was, Mr Gordon QC, submitted well within the discretionary judgment of the decision-maker to hold that *no* family member was the subject of pressure relevant to the grant of a CCG and that there was ample material that the provision of a grant was not going to touch upon the life of any other family member in terms of easing exceptional pressures associated with the family conflict and that the award of a grant was neutral in its consequences for the Walsh family. The respondents submitted that whatever the merits of the applicant’s claim for a CCG immediately upon leaving the family home his circumstances at the time of making the CCG application did not establish any entitlement since by that time the applicant had his own rented accommodation, was no longer dependent on his family (it was asserted) and he had no intention of returning to the family home.

Discussion

[18] As appears from the averments of Mr De Largy at para.8 above he gave a number of reasons for concluding that the applicant did not satisfy the eligibility criteria for the CCG under para.4(a)(iii) of the relevant directions. In summary the reasons were:

- (vii) *Lapse of time* between leaving home and date of application for CCG [De Largy affidavit para.36];
- (viii) Absence of causal link between the making of an award and the removing of exceptional pressure on applicant and at least one other member of his family *because of resolve not to return home* [De Largy affidavit at para.41].
- (ix) *Inability to determine* if another family member was providing support [De Largy affidavit at paras.38-39];

[19] In assessing the respondent's approach, in judicial review terms, regard must be had to the entire legislative framework. The context of the assessment were the directions which the respondent was obliged to follow and the guidance which it was also obliged to take into account unless of course the guidance conflicted with the directions in which case the directions would take precedence. There is no suggestion in this case that there is any conflict between the guidance and the directions. Accordingly, the respondent was obliged to take the guidance into account.

[20] The guidance explicitly recognises acute that domestic difficulties such as the breakdown of a relationship may constitute exceptional pressure; that a CCG may be awarded to help an applicant to move to different accommodation when a relationship has recently ended or even if the relationship has not recently ended if the applicant has spent some time in temporary accommodation until permanent accommodation is found.

[21] A common feature of the irretrievable breakdown of relationships will be the consequential need for one party to find separate accommodation. A paradigm example of that is furnished by the guidance at para.226. The guidance also recognises that, in the example of partners separating, the need for a CCG can arise whether or not children are involved (see para.248.). Thus, if as a result of a breakdown in a relationship a woman (or man), without children, ends up seeking shelter and then finds alternative accommodation, the direction envisages that the applicant will be eligible for assistance in those circumstances. In the example given in the guidance the following factors may be present:

- (x) lapse of time between leaving home and making an application;
- (xi) resolve not to return to the former address.

The guidance therefore plainly intends that such an applicant would not be deemed ineligible on those grounds or that the presence of those factors necessarily breaks the causal link. This is not surprising since such factors will frequently be present in relationship breakdown cases. The resolve not to return is merely a measure of just how irredeemable is the breakdown and it would be odd if that feature was to render an application ineligible and it is in my view plain that this is not what is intended.

The First & Second Reasons - Lapse of Time and Resolve not to Return Home

[22] At the time the application for the grant was made the applicant had not been out of the family home for very long. The situation had crystallised to the point where the applicant felt compelled to leave. Some six weeks after his

departure he was awarded the tenancy of an unfurnished Housing Executive flat which led to the application for the grant for the household goods sought. Since a common feature of relationship breakdown cases is a consequential home move and a resolve not to return the presence of these factors, in the light of the guidance, does not logically support the conclusion that exceptional pressure on the family was therefore not evidenced. To illustrate the point it may be helpful to have regard to the analogy of the domestically abused partner which finds expression in the guidance. A woman forced to leave through domestic abuse, who had taken up refuge in a hostel for a period and was then subsequently allocated an unfurnished Housing Executive flat (within a similar timeframe to the applicant) is unlikely, having regard to the guidance, to have been refused a grant because of the lapse of time between leaving the family home and taking up the new unfurnished tenancy. It is virtually inconceivable that the lapse of time would be regarded as a reason disentitling her to an award.

[23] Following an irretrievable breakdown it will often be the case that there will be a firm determination not to return on the part of the person who has left. The respondent submitted that since there was never any prospect of the applicant returning to his home whether or not the CCG was awarded that he was therefore unable to demonstrate that the grant of an award would relieve exceptional pressure on both him and a family member. However, a determination not to return to the original home will often be a feature of applications grounded on breakdown of a relationship. The directions plainly did not intend that a prospect of never returning to the family home should ordinarily be treated as a ground of refusal. One would have thought that the more irredeemable the conflict is the more secure the official might feel in making an award. Mitigation by departure is a feature of family breakdowns and this is catered for in the guidance which makes it clear that such departure, far from precluding a finding of exceptional pressure, is a likely incident thereof.

The Third Reason - Inability to Determine if Another Family Member was Providing the Support

[24] The respondent proceeded on the basis that it was unable to determine whether the support the applicant was getting was from a family member or the two friends he named (see De Lary affidavit para.39). His reason for arriving at this conclusion was that "despite *asking* [he] was not given permission to contact his sister to establish the position". Initially the Court had been given to understand that this averment reflected a refusal by the applicant following some verbal request either from the deponent or another official. Indeed, Counsel for the respondent laboured under the same understanding. During the hearing the deponent through Counsel clarified that this averment was a reference to the letter dated 26 May 2009 referred to at para.4 above. It was

suggested that there might be data protection issues in the respondent unilaterally contacting a third party (i.e. the applicant's sister), without such permission, to verify information provided by the applicant. It is not clear to me (in the absence of any argument on the issue) what those difficulties might be.

[25] In any event, insofar as the averment might be taken to imply that permission was withheld, it was inaccurate and potentially misleading. The response from the applicant's solicitor was simply silent on the issue of permission. Before any adverse inference was drawn the respondent should have sought clarification from the applicant's solicitor. The fact that Mr De Largy, as the Court has now been informed, interpreted the response in the way in which he did suggests that, in that respect, he may have approached the case on a mistaken basis. If there was any lack of clarity about the matter all that Mr De Largy had to do was to write to the Solicitor asking him to deal with the question of permission directly or to contact him by phone to clarify this. Neither step was taken. The solicitor's response should not, without further enquiry, have been interpreted in this negative way. This may inadvertently or otherwise have influenced Mr De Largy in his approach to the case. In the absence of a clear, unequivocal refusal of permission it was not reasonably open to the respondent to conclude that it was unable to determine whether a family member was providing this support. The applicant's evidence on this issue is set out at p122 and p135 of the trial bundle and summarised at para.3(ii)-(vi) above. See also the supplementary affidavit from the applicant summarised at para.9 above which was admitted without objection from the respondent. Since there was no material to contradict the applicant's evidence and no refusal of permission to contact (in order to verify) it was not open to the decision-maker to conclude as he did on the basis upon which he did.

[26] Had Mr De Largy not reasoned as he did it is possible that he may have concluded that this ingredient of help from the applicant's sister may have constituted exceptional pressure on another member of the family bringing it within direction 4(a)(iii). This is at least implicit in his averments at paras.38 and 39 of his affidavit.

[27] I do not accept that there was ample material that an award would not touch upon the life of any other family member in terms of easing exceptional pressures associated with the family conflict and that the award of a grant was neutral in its consequences. This submission is based in large part on Mr De Largy's averments at paras.38 and 39 which I have already dealt with above and, in my view, is not sustainable.

[28] As matters stood (and apparently have remained) the applicant's sister was responsible for his hygiene, his laundry and his cooking. Mr De Largy has

averred that he did not consider that this amounted to exceptional pressure – but this was on the basis of his purported inability to determine whether the support was being given by the applicant’s sister. For the applicant’s sister to have to bear the burden of looking after these aspects of the applicant’s life because he was living in an unfurnished flat unable to afford the basic necessities to eke out an existence must have placed her in a very difficult position indeed. Furthermore, it is not difficult to imagine that whatever caused the family conflict, the strain of that conflict is likely to have been exacerbated by the knowledge that their son and brother was having to live in such spartan conditions.

Conclusion

[29] For the above reasons I conclude that the application for judicial review must be granted and I will hear the parties as to the appropriate remedy.