



Amendment to Dublin City Council's Scheme of Letting Priorities

Background:

In August 2017 a couple separated and on reassessment of their respective social housing applications, Dublin City Council awarded a Housing Assistance Payment (HAP) rate of €1,950 to the parent with primary care and control of the 3 children. She was later allocated a 4 bedroom Local Authority house.

The father was allocated a Housing Assistance Payment of €990, which is the enhanced one bedroom rate and he was recorded as having a one bedroom accommodation need on the Social Housing Waiting list.

In the High Court judgement of 19th November 2018, the Judge found that in determining the reasonable requirement to live together, the approach taken by the council was the practical, proper and lawful interpretation.

However, on 19th December 2019, the Supreme Court allowed the father's appeal in a unanimous judgement. The Supreme Court judgement requires that Dublin City Council must, when assessing applications, consider, on a case-by-case basis, whether there is a reasonable requirement for family members to live together. This assessment must only have regard to the individual circumstances of each case and not to the resources available to the local authority.

The Supreme Court judgement does not mean a blanket policy must be adopted by the Council. The judgement gives examples of areas where the Council should satisfy itself of a reasonable requirement of the persons to live together.

'In making its assessment in a case such as this the Council, might, for example, want to be satisfied that (i) the applicant was the father of the children with whom he wanted to reside, (ii) that the relationship with the children's mother was at an end and that he could no longer share any accommodation she might have, (iii) that he was genuine in his stated requirement to have his children reside with him 3 days a week and (iv) that he had the mother's agreement or was entitled to custody/access on this basis as a matter of law.' para 32.

Allocations Policy/Scheme of Lettings

Dublin City Council engaged in lengthy consideration of the accommodation needs of children in shared custody arrangements during the revision of its Allocations Scheme in 2018. There was unanimous agreement on the desirability of having an additional bedroom available to both parents but the difficulty of under-utilisation of accommodation when children and families were in emergency accommodation led to the adoption of a policy which, save for exceptional circumstances, assigned multiple bedroom requirements to the parent with whom the children reside for the greater part and one bedroom to the other parent.

The ruling is clear that the **assessment**, which is the subject of the judgement, is entirely separate from any **allocation** decision made - Under the Allocations scheme. ‘**Such decisions are based on the availability of resources and the need to ensure the most beneficial, effective and efficient use of its limited housing stocks.**’ para 40.

The Supreme Court judgement stated that with regard to the decision on **allocating** social housing;

“In a situation where there is insufficient housing stock to meet the demands of qualifying households, and where there are children with no accommodation or who have greater need than the appellants, it is accepted that in allocating housing to qualified households it is not only permissible but just that the Council should prioritise those households with the greatest need so as to ensure that there is not an under-utilization of bedroom accommodation, as would likely be the case if a house with a separate bedroom for the children was to be allocated to the applicants at this point in time.” para 42.

The judgement further noted that it appeared from the submissions made by the Council that there was sensitivity in its efforts to ensure those with greatest needs were prioritised. para 47.

Implications

The judgement essentially means that Dublin City Council can and does take available resources into account when determining the order of priority for allocation but **should not** take this into account when assessing a household.

Dublin City Council’s Housing Allocations section has urgently reviewed its assessment procedures to ensure a case by case investigation of the reasonable requirement of an applicant’s household members to reside together. If a reasonable requirement to live together is established (there can be no blanket policy for this, each case must be examined according to its merits) all household members will be included on the assessment.

Such an assessment will affect the rental rates offered to HAP applicants. We estimate that there may be in the region of 600 of these applications on the current Housing List.

Amendment to Allocations Scheme:

It is necessary as a result of this Judgement to amend Dublin City Council’s Scheme of Letting Priorities to provide an extra bedroom for shared custody arrangements where the reasonable requirement to live together has been established.

It is recommended that the current Scheme of Lettings Priorities be amended as follows:

2.5.1 Children in Shared Custody/Access Arrangements:

Dublin City Council may assign an additional bedroom requirement to a household whose members do not reside on a full-time basis but who in the opinion of Dublin City Council, have a reasonable requirement to live together.

This proposed amendment was approved by the Housing Strategic Policy Committee at its meeting held on 11th March 2020

Brendan Kenny
Assistant Chief Executive
6th April 2020