APPROVED **[2026] IEHC 587**

THE HIGH COURT
JUDICIAL REVIEW

2024 838 JR

BETWEEN

C. & OTHERS

APPLICANTS

AND

LIMERICK CITY AND COUNTY COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 18 August 2026

INTRODUCTION

1. These judicial review proceedings concern the efforts of a Traveller family to secure reasonable accommodation from Limerick City and County Council. The principal allegation made in the proceedings is that the local authority acted unlawfully in purporting to remove the family from the housing list for a period of twelve months.

2. The local authority opposes the judicial review proceedings on the merits. In addition, the local authority has raised a number of procedural objections, including an objection that the proceedings were commenced outside the prescribed time-limit and an objection that the proceedings have since become moot.

REPORTING RESTRICTIONS

3. The names of the applicants have been redacted for the purposes of this judgment. This is because two of the applicants are minors, and one of the minor applicants has a sensitive medical condition. The first applicant is an adult, but publication of her name would be likely to identify the minor applicants. The precise addresses of the dwellings, and the location at which the household subsequently lived in a caravan, have also been omitted to protect the privacy of the minor applicants.
4. In reporting this judgment, nothing should be published or broadcast which identifies any of the applicants by name or otherwise leads to the identification of the minor applicants. Nor should there be any disclosure of the addresses of the dwellings, or the location of the caravan, which are the subject matter of the proceedings. If any member of the media wishes to vary these reporting restrictions, they may apply to do so on seven days' notice to the parties.

STATUTORY FRAMEWORK

5. Section 22 of the Housing (Miscellaneous Provisions) Act 2009 establishes the statutory framework for the allocation of dwellings by housing authorities. A housing authority may allocate a dwelling to a household in accordance with an

allocation scheme made under that section. The allocation scheme must determine the order of priority to be accorded in the allocation of dwellings to households assessed as being qualified for social housing support.

6. Section 22(4) empowers the Minister to make regulations providing for the matters to be included in an allocation scheme. These include the manner in which dwellings are to be allocated, the order of priority in accordance with which they are to be allocated and, of particular relevance to these proceedings, the conditions relating to refusals by a household of reasonable offers of social housing support. In this latter respect, section 22(4)(c) contemplates that the prescribed conditions may operate by reference to the availability of social housing support in the administrative area concerned, the number of offers made to, and refusals made by, a household and the period during which those offers and refusals are made.

7. The Social Housing Allocation Regulations 2011 (S.I. No. 198 of 2011) were made in exercise of the powers conferred by section 3 and section 22(4) of the Act of 2009. The Regulations require each housing authority to set out in its allocation scheme the manner in which it will determine the order of priority for the allocation of dwellings and the manner in which dwellings will be allocated to qualified households. The Regulations also prescribe the consequences which are to follow from the refusal of reasonable offers.

8. A "*qualified household*" is defined as a household which has been assessed under section 20 of the Housing (Miscellaneous Provisions) Act 2009 as being qualified for social housing support from the housing authority concerned. Regulation 4 requires a housing authority to specify in its allocation scheme how it will determine the order of priority for allocating dwellings to qualified

households. The assessment of whether a particular category of dwelling would meet the accommodation needs and requirements of a class of households is, under the Regulations, one for the opinion of the housing authority.

9. The Regulations distinguish between the general allocation of dwellings and an allocation made under the choice-based letting procedure. Regulations 6 to 11 govern choice-based letting. Under this procedure, a housing authority may designate a dwelling as a "*bid dwelling*" and invite applications from eligible households.

10. Regulation 12 makes separate provision for the refusal of offers made outside the choice-based letting procedure. Each housing authority is required to incorporate the conditions prescribed under regulation 12 into its allocation scheme.

11. Regulation 12(2) provides as follows:

> "Following the coming into force of the first allocation scheme made under section 22 of the Act of 2009 and subject to paragraph (4), where a qualified household refuses 2 reasonable offers of the allocation of different dwellings made by one or more than one housing authority in the relevant application area in any continuous period of one year commencing on the date of the first refusal, the said household shall not, for the period of one year commencing on the date of the second refusal, be considered by any housing authority for the allocation of a dwelling to which section 22 of the Act of 2009 applies and the latter period shall not subsequently be reckonable in any way for the purposes of determining the relative priority of that household for a dwelling allocation."

12. As appears, the refusal of two reasonable offers has two distinct consequences. First, the household is not to be considered for the allocation of a dwelling for one year commencing on the date of the second refusal. Second, that period is not subsequently reckonable in determining the household's relative priority for an allocation.

13. Regulation 12(3) defines when an offer is to be regarded as reasonable:

> "For the purposes of this Regulation, an offer of a dwelling allocation by a housing authority shall be deemed to be reasonable where the allocation of that dwelling would, in the opinion of the authority, meet the accommodation needs and requirements of the qualified household concerned and, except in the case of a dwelling allocation offered under section 22(7)(b) of the Act of 2009, the dwelling is situated in an area of choice specified by the household in accordance with Regulation 8 or 9 of the Social Housing Assessment Regulations 2011."

14. As appears, an offer will be deemed reasonable only where two requirements are fulfilled. First, the allocation of the dwelling must, in the opinion of the housing authority, meet the accommodation needs and requirements of the household. Second, subject to the specified exception, the dwelling must be situated in an area of choice identified by the household.

15. In the present case, the local authority purported to impose the twelve-month disqualification in reliance upon regulation 12. Its position was that the applicants refused an earlier offer of accommodation, accepted a second offer, and subsequently acted unreasonably in surrendering the tenancy of the allocated dwelling. The principal issue is whether the surrender of a tenancy is capable of constituting a refusal for the purposes of regulation 12. The question whether the local authority formed the opinion prescribed by regulation 12(3) arises only on an alternative basis.

FACTUAL BACKGROUND

16. The applicants are a mother and her two minor children. For ease of exposition, the first applicant will be referred to as "*the mother*" throughout this judgment. The household also includes the mother's partner, who is the father of the children. The household had been assessed as qualified for social housing

support and had been living in emergency accommodation provided by the local authority.

17. Insofar as relevant to these proceedings, the chronology begins on 21 March 2023, when the local authority offered the household a supported tenancy of a two-bedroom dwelling at [address redacted]. The mother informed the local authority on 23 March 2023 that she was refusing the offer. By letter dated 14 April 2023, the local authority stated that, because written acceptance had not been received, the offer was deemed to have been refused. The local authority regarded this as the refusal of a reasonable offer for the purposes of the Social Housing Allocation Regulations 2011.

18. On 10 August 2023, the local authority offered the household a supported tenancy of a two-bedroom dwelling at [address redacted]. The supported tenancy was to be provided through the Peter McVerry Trust, an approved housing body. The mother initially declined the offer. She expressed concern about anti-social behaviour in the area, including drug use and damage to property. She explained that there had been reports of violence in the area involving other persons who shared her surname, although they were only distantly related to her. She maintained that the shared surname exposed the household to a particular risk of being associated with those events and subjected to intimidation.

19. Following the mother's initial refusal, the local authority advised her that the offer would be treated as a second reasonable offer and that the household would be excluded from consideration for the allocation of social housing for twelve months. The household was also advised that it would be required to leave its existing emergency accommodation.

20. The mother ultimately accepted the local authority's offer of allocation on 18 August 2023 and agreed to enter into the supported-tenancy arrangement. She continued, however, to express concerns about the safety of the property. Threatening graffiti was painted on the property before the household entered into occupation. The local authority arranged for the graffiti to be painted over. The mother's evidence is that threatening graffiti was repainted on the property.

21. The household entered into occupation of the allocated dwelling on 14 November 2023. On 27 December 2023, the front windows of the dwelling were smashed while the household was away. A further incident occurred at the rear of the dwelling several days later. The mother's evidence is that a person attempted to gain entry to the dwelling during the early hours of the morning and that the rear windows were smashed. The incidents were reported to An Garda Síochána.

22. The mother decided that it was unsafe for the household to remain in the allocated dwelling. On 2 January 2024, she informed a social worker in the local authority's Traveller accommodation unit that she intended to surrender the tenancy. She was advised by the social worker, and separately by a member of staff of the Peter McVerry Trust, not to do so and instead to engage with An Garda Síochána and the available support services. Notwithstanding that advice, the mother delivered the notice of surrender and returned the keys to the Peter McVerry Trust later that day.

23. By decision dated 2 January 2024, the local authority purported to exclude the household from consideration for the allocation of social housing for twelve months. This is the principal decision impugned in these judicial review proceedings.

EXTENSION OF TIME: OVERVIEW

24. Order 84, rule 21 of the Rules of the Superior Courts provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. Following the amendment effected by the Rules of the Superior Courts (Order 84) 2024 (S.I. No. 163 of 2024), an application for leave is regarded as having been "*made*" once the statement of grounds and verifying affidavit are filed in the Central Office of the High Court.

25. Order 84, rule 21(3) and (4) confer discretion on the High Court to extend time as follows:

> "(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:
>
> (a) there is good and sufficient reason for doing so, and
>
> (b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:
>
> (i) were outside the control of, or
>
> (ii) could not reasonably have been anticipated by the applicant for such extension.
>
> (4) In considering whether good and sufficient reason exists for the purposes of sub-rule (3), the court may have regard to the effect which an extension of the period referred to in that sub-rule might have on a respondent or third party."

26. The obligations to be complied with by an applicant who seeks an extension of time are prescribed by Order 84, rule 21(5). This rule provides that an application for an extension of time shall be grounded upon an affidavit sworn

by or on behalf of the applicant which shall set out the reasons for the applicant's failure to make the application for leave within the period prescribed and shall verify any facts relied on in support of those reasons.

27. The Supreme Court in *M. O'S. v. Residential Institutions Redress Board* [2018] IESC 61, [2019] 1 ILRM 149 has confirmed that an applicant who does not apply for leave to issue judicial review within the time specified is required to furnish good reasons which explain and objectively justify the failure to make the application within the time-limit, and which would justify an extension of time up to the date of institution of the proceedings.

28. The principles governing the extension of time have been considered more recently by the Court of Appeal in *Arthropharm (Europe) Ltd v. Health Products Regulatory Authority* [2022] IECA 109. Relevantly, the Court of Appeal (*per* Murray J.) held that the factors of which account may be taken will include: the nature of the order or actions that are the subject of the application; the conduct of the applicant; the conduct of the respondent; the effect of the decision it is sought to challenge; any steps taken by the parties subsequent to that decision; and the public policy that proceedings relating to the domain of public law take place promptly except where good reason is furnished.

29. The Court of Appeal also emphasised (at paragraph 125) that in the vast majority of applications for an extension of time, the court has no role in assessing the strength of the underlying merits of the proceedings. This is subject to a possible exception where an applicant's case is extremely strong to the point that the only extant issue in the proceedings is whether time should be extended.

30. The Supreme Court has emphasised that the question whether there is "*good and sufficient reason*" for extending time requires a holistic consideration of all

relevant circumstances: *Thompson v. An Bord Pleanála* [2025] IESC 31. Those circumstances may include the decision sought to be challenged, the nature of the claim that the decision is unlawful, the explanation for the delay, the conduct of the parties, prejudice to a respondent or third party, the public interest in certainty and finality, and any countervailing public interest favouring the ventilation of the issues. The weight to be assigned to the various factors is a matter of assessment and balance on the particular facts of the case.

EXTENSION OF TIME: APPLICATION TO THE FACTS

31. The principal decision impugned in these proceedings was made and communicated to the applicants on 2 January 2024. This was the decision to disqualify the applicants from being considered for the allocation of social housing for a period of twelve months. The three-month period prescribed under Order 84, rule 21(1) expired on 2 April 2024. The application for leave to apply for judicial review was not made until 1 July 2024. This was some three months after the expiration of the time-limit.

32. The applicants did not seek an extension of time in their statement of grounds, nor did they bring a separate motion in that regard. The question of delay has, however, been expressly addressed in the subsequent affidavits and the written submissions filed on behalf of the applicants. The mother has identified the circumstances said to explain the delay and has sought an extension of time.

33. Having regard to the procedural history, I am satisfied that an application for an extension of time is properly before the court. The local authority has been aware of the time-limit point from the outset. The issue is pleaded in the statement of opposition and was developed in the local authority's written and

oral submissions. The local authority has had a full opportunity to consider and respond to the application for an extension of time.

34. The explanation given for the delay is as follows. Having surrendered the tenancy of the allocated dwelling on 2 January 2024, the applicants were compelled to return to reside in a caravan. The mother says that the location did not have access to basic services. She was caring for two very young children, both of whom had health difficulties. The mother has limited formal education and no legal training. She says that she made efforts to obtain legal assistance but was unsuccessful. She did not understand that the decision to disqualify the household had to be challenged by way of judicial review within three months. The commencement of proceedings was ultimately precipitated by the local authority pursuing enforcement action in respect of the caravan.

35. The mother's lack of legal knowledge would not, of itself, justify an extension of time. Her explanation must, however, be considered in the context of the household's precarious living conditions, the immediate demands associated with caring for two young children and her unsuccessful efforts to obtain legal assistance. Considered cumulatively, these circumstances objectively explain both the failure to apply within the prescribed period and the ensuing delay until 1 July 2024. I am satisfied that the circumstances which resulted in that failure were, in substantial part, outside the applicants' control.

36. The decisive factor in the present case is the concession made by the local authority on the second day of the substantive hearing. The local authority now accepts that the requirements of regulation 12 of the Social Housing Allocation Regulations 2011 had not been met. Counsel expressly accepted that the twelve-

month disqualification was unlawful and that the court could make an appropriate declaration to that effect.

37. The significance, in the context of an application for an extension of time, of a concession going to the merits was considered by the Supreme Court in *M. O'S. v. Residential Institutions Redress Board* (cited above). There, the Supreme Court attached material weight to the respondent decision-maker's concession as to the consequence which would follow if time were extended. Finlay Geoghegan J., delivering the majority judgment, explained that the respondent had confirmed that, if an extension of time were granted, the applicant would succeed on the underlying merits. The majority judgment treated the case as being at the other end of the scale from an unarguable case. This factor was not treated as automatically determinative: the majority judgment considered all relevant circumstances, including the explanation for the delay, the nature of the statutory scheme, the absence of third-party prejudice, and the public policy favouring prompt challenges to administrative decisions. Nevertheless, the accepted strength of the underlying merits formed an important part of the overall balance which led the majority to conclude that "*good and sufficient reason*" for an extension of time had been established.

38. It would be disproportionate to refuse an extension of time in proceedings where it is conceded that "*but for*" a delay of some three months, the applicants would be entitled to a declaration in their favour. The disbenefit to the applicants, namely, the loss of any effective remedy in respect of an admittedly unlawful disqualification, would be out of all proportion to any benefit to the public interest in the prompt resolution of legal challenges. This is especially so where the delay has not been shown to have caused any prejudice. No third party rights

have intervened. There is no suggestion, for example, that any dwelling was withheld from another household pending the determination of these proceedings or that any third party altered their position in reliance upon the expiry of the time-limit.

39. There is a public interest in ensuring that a local authority imposes the statutory consequences attached to the refusal of an offer only where the conditions prescribed by the legislation have been fulfilled. The point is not confined to the historical position of these applicants. The local authority continues to administer the statutory scheme and to make offers of accommodation.

40. The failure to make the application within the three-month period has not been shown to have caused any actual delay to the proceedings coming on for substantive hearing. This is significant. The policy underlying the imposition of a short time-limit is to ensure that challenges to public law decisions are made and determined promptly. The time-limit does not exist in a vacuum, nor is it intended merely to penalise an applicant. Rather, it is intended to promote legal certainty and the prompt resolution of challenges to administrative decisions.

41. On the facts of the present case, the application for leave was made on 1 July 2024. The proceedings thereafter involved the exchange of extensive affidavit evidence, a series of directions hearings, and the issuance of a motion brought by the local authority seeking the dismissal of the proceedings on grounds of mootness. The proceedings did not come on for substantive hearing until 22 July 2026. This post-leave procedural history does not excuse the applicants' original failure to comply with the time-limit. It does, however, demonstrate that the three-month delay in commencing the proceedings did not make any material difference to the date upon which the proceedings were ultimately heard.

42. Taking all relevant circumstances into account, I am satisfied that there is good and sufficient reason for extending time. I am also satisfied that the circumstances which resulted in the failure to apply within time were, in substantial part, outside the applicants' control. An extension of time will accordingly be granted up to and including 1 July 2024.

MOOTNESS

43. The principles governing the doctrine of mootness have been restated by the Supreme Court in *Odum v. Minister for Justice and Equality* [2023] IESC 3, [2023] 2 ILRM 164. The summary which follows is taken largely from that judgment.

44. The doctrine of mootness reflects the importance, in the common law system, of the resolution of cases which can be characterised as "*present, live controversies*". Courts exist to resolve controversies of real importance to real people. The requirement for a live controversy ensures that the decision of the court is grounded in a concrete factual setting and that the proceedings retain a full adversarial context.

45. Such a live controversy must be present not only when the proceedings are commenced but also when the court is called upon to reach a decision. Mootness may be understood as the doctrine of standing (*locus standi*) set in a time frame: the requisite personal interest which must exist at the commencement of proceedings must continue throughout their existence.

46. Proceedings may be said to be moot where there is no longer any legal dispute between the parties. Parties may have had a real dispute at the time proceedings were commenced, but time and events may render the issues in proceedings, or

some of them, moot. This will occur where the eventual decision would be of no practical significance to the parties.

47. There are three interlinked considerations underlying the doctrine. The first is the importance of a full adversarial context for a legal decision. The second is the management of scarce and expensive court resources. The third is, in cases likely to become precedents, the desirability, and perhaps necessity, of avoiding purely advisory opinions. A court which decides an issue, and thereby makes law, without being compelled to do so by the requirement to resolve a real dispute between the parties risks exceeding the proper bounds of the judicial function.

48. There is no simple bright-line rule applicable in the same way at all points and in all courts. In general, the more clearly the case retains its essential character as a real controversy which is capable of being properly resolved and the less it resembles a contrivance for the purpose of achieving some change in the law abstracted from a real controversy, the more likely it is that a court will proceed to hear the case in the proper exercise of its jurisdiction.

49. The analysis involves two stages. The first is to determine whether the proceedings, or an issue within them, are moot. If so, the second question is whether the court should nevertheless exercise its discretion to determine the issue: *Lofinmakin v. Minister for Justice, Equality and Law Reform* [2013] IESC 49, [2013] 4 IR 274 (at paragraphs 35 and 51); *Odum v. Minister for Justice and Equality* (at paragraphs 10, 29 to 35, and 50).

50. I turn next to apply these principles to the present case. The first question is whether the proceedings are technically moot. The effect of the impugned decision had been to exclude the household from consideration for the allocation

of social housing for a twelve-month period. That period expired on 1 January 2025. Thereafter, the household was again capable of being considered for the allocation of social housing and subsequently received further offers of accommodation from the local authority.

51. The making of an order of *certiorari* would no longer confer any immediate practical benefit upon the applicants. The twelve-month period has expired by effluxion of time, and the household cannot now be restored retrospectively to the position of being considered for offers during that period.

52. Insofar as the applicants seek relief from the operative effect of the twelve-month disqualification, the proceedings are technically moot. It is next necessary to consider whether the court should nevertheless determine the validity of the disqualification. For the reasons which follow, it should do so.

53. First, the applicants retain a real and current interest in the proper interpretation of the Social Housing Allocation Regulations 2011. This is because the parties remain in an ongoing statutory relationship. The applicants continue to seek social housing support from the local authority, and the local authority continues to make offers of accommodation to them pursuant to the same statutory scheme.

54. It should be explained that no adjudication can be made in respect of the validity of those subsequent offers and refusals in the present proceedings. This is because those offers and refusals postdate the issuance of the judicial review proceedings and there has been no application to amend the statement of grounds to seek any relief in respect of same.

55. The subsequent offers and refusals are nevertheless of relevance to the question of mootness. The same statutory concepts which inform the judicial review proceedings continue to govern the parties' dealings. In particular, the

interpretation and application of regulation 12, and the consequences which may follow from the refusal of an offer, remain matters of practical significance to the parties.

56. The applicants maintain that the local authority has failed to give proper consideration to the household's safety, medical and developmental needs. In January 2024, that complaint concerned the criminal activity affecting the allocated dwelling. In relation to the subsequent offers, it concerns the children's health and the asserted unsuitability of requiring them to share a bedroom. The application of regulation 12, and the consequences which may follow from the refusal of an offer deemed reasonable by the local authority, remain matters of practical significance to the parties.

57. This does not permit the court to adjudicate upon the validity or reasonableness of the subsequent offers. It does, however, demonstrate that the controversy arising from the decision of January 2024 has not become wholly detached from the continuing statutory relationship between the parties. The possibility of the local authority again seeking to attach adverse statutory consequences to the refusal of an offer is not so remote as to be purely hypothetical.

58. Counsel for the local authority cited *Crumlish v. Donegal County Council* [2020] IEHC 233. The applicant in those proceedings had refused two offers of accommodation and had been disqualified from consideration for the allocation of a dwelling. The period of disqualification expired five days after the substantive hearing of the proceedings. Meenan J. held that the proceedings were moot, observing that whether an offer of accommodation is reasonable depends upon the particular facts and circumstances of the offer. Meenan J. further observed that were the court to formulate, as the applicant had requested,

general principles governing offers of Traveller-specific or otherwise suitable accommodation, it would in effect be giving legal advice.

59. The present proceedings are materially different. The court is not being asked to determine the reasonableness of a particular offer or to formulate general principles governing suitable accommodation. The issue is whether an offer which was accepted and acted upon could subsequently be treated as having been refused when the resulting tenancy was surrendered. That is a discrete question of statutory interpretation which remains of practical significance within the parties' ongoing statutory relationship.

60. The second factor favouring a determination of the proceedings is the ephemeral nature of the disqualification. The proceedings were commenced during the currency of the disqualification, but the twelve-month period expired well before the substantive hearing. There is a significant risk that the same timing difficulty would arise in any other case, with the disqualification expiring before the challenge could be determined.

61. A similar concern informed the Supreme Court's decision in *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49, [2012] 3 IR 152. The issue before the court concerned the legal position which should pertain pending the determination of an application for leave to apply for judicial review. It had become moot by the time of the appeal because the leave application had been determined in the interim. The Supreme Court considered that any case in which the issue might arise was likely to become moot in a relatively short period of time, as every case of that type would become moot when the leave application was heard. The problem which had emerged in *Okunade* had a significant risk of occurring in any other case. In those "*special and unusual circumstances*", it

was held to be appropriate to hear the appeal notwithstanding its mootness (*Okunade*, at paragraphs 37 and 38).

62. The position in the present proceedings is broadly analogous. A disqualification under regulation 12 is necessarily temporary and of short duration. If expiry of the period of disqualification were invariably sufficient to render proceedings moot, there would be a significant risk that the legality of the disqualification might thereby evade effective judicial review.

63. This consideration is not decisive in itself. In the present proceedings, however, its significance is reinforced by the continuing statutory relationship between the parties, the further offers already made, the local authority's concession that the disqualification was unlawful, and the fact that the issue has been fully argued.

64. The third factor favouring the determination of the proceedings is the efficient use of judicial resources. The proceedings have progressed to a substantive hearing; the parties have exchanged extensive affidavit evidence and written submissions; and the court has heard full argument on the time-limit objection, mootness and the underlying merits. No material saving would now be achieved by declining to determine the short question of statutory interpretation which arises.

65. The court is not being asked to formulate general principles governing the accommodation which should be offered to Traveller households. Nor is it being asked to determine hypothetical questions concerning future offers. The principal issue is whether regulation 12 authorised the local authority to impose the twelve-month disqualification by reference to the surrender of a tenancy. The alternative issue is whether, on the assumption that surrender could trigger disqualification, the local authority formed the requisite opinion upon an

adequate evidential basis. The determination of those issues will resolve an actual dispute between the parties rather than provide an advisory opinion on an abstract question of law.

PROPER INTERPRETATION OF REGULATION 12

66. Regulation 12(2) of the Social Housing Allocation Regulations 2011 provides that, where a qualified household "*refuses 2 reasonable offers of the allocation of different dwellings*" within the prescribed period, that household shall not be considered for the allocation of a dwelling for one year commencing on the date of the second refusal.

67. On the facts of the present case, the applicants refused the first offer, which had been made in March 2023, but accepted the second offer in August 2023. A tenancy was subsequently created, and the household entered into occupation of the allocated dwelling on 14 November 2023. The tenancy was surrendered in January 2024 following the two criminal attacks on the dwelling in December 2023.

68. Having regard to this sequence of events, it is necessary to consider whether regulation 12 extends to a subsequent surrender of a tenancy or whether, alternatively, its effect is confined to the refusal of an offer of the allocation of a dwelling.

69. Counsel for the local authority acknowledged on the second day of the hearing before me (23 July 2026) that the offer had been accepted; that the subsequent surrender of the tenancy did not constitute a refusal of the offer; and that the requirements of regulation 12 had not been met. Counsel further acknowledged

that the disqualification was unlawful and that the court could make an appropriate declaration to that effect.

70. For the reasons which follow, those acknowledgments were properly made and reflect the correct interpretation of the Regulations.

71. The words of regulation 12 are the first port of call in construing the provision. The court must construe those words having regard to (i) the context of the Social Housing Allocation Regulations 2011, (ii) the pre-existing relevant legal framework, and (iii) the object of the legislation insofar as discernible. The onus is on those contending that a statutory provision does not have the effect suggested by the plain meaning of the words chosen by the legislature to establish this. The "*context*" that is deployed to that end, and the "*object*" so identified, must be clear and specific, and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language: *Heather Hill Management Company v. An Bord Pleanála* [2022] IESC 43, [2024] 2 IR 222.

72. The language of the parent Act is a core part of the legislative context. Section 22(4)(c) of the Housing (Miscellaneous Provisions) Act 2009 refers to the number of offers made to, and refusals made by, a household and the period during which those offers and refusals are made. The statutory language thus associates a refusal with an offer and contemplates the refusal as an identifiable response to that offer. It does not suggest that conduct occurring after an offer has been accepted and a tenancy created may retrospectively be characterised as a refusal of the offer.

73. This understanding is reinforced by the wider structure of the Act. Section 22 governs the allocation of dwellings. Section 29 and Schedule 3 separately govern the letting of an allocated dwelling and the terms of the resulting tenancy agreement. Schedule 3 expressly contemplates terms regulating the occupation of the dwelling, conditions prohibiting the tenant from vacating it or otherwise parting with possession, and procedures governing the termination of the tenancy. The Act thus treats the refusal of an offer at the allocation stage and the subsequent termination or surrender of a tenancy as distinct matters arising at different stages of the statutory process.

74. Regulation 12 speaks of an "*offer*" of the allocation of a dwelling and its "*refusal*" by a qualified household. On their plain meaning, these words describe the household's response to an offer at the allocation stage. A surrender occurs at a later and legally distinct stage and presupposes that the offer has already been accepted and acted upon. It concerns the continuation of the tenancy and does not alter the historical fact that the antecedent offer was accepted. Regulation 12 contains no provision by which the surrender of a tenancy is deemed to constitute a refusal of the original offer or by which an acceptance may be converted retrospectively into a refusal. The local authority does not contend otherwise.

75. On its proper interpretation, the disqualification under regulation 12(2) is only triggered where a qualified household refuses two reasonable offers of the allocation of different dwellings within the prescribed period. It does not capture the contingency of a subsequent surrender of a tenancy. It follows that the local authority acted unlawfully in purporting to remove the family from the housing

list for a period of twelve months by reference to the surrender of the tenancy in January 2024.

LOCAL AUTHORITY'S ASSESSMENT: ALTERNATIVE ANALYSIS

76. For the reasons explained under the previous heading, I have concluded that the disqualification under regulation 12(2) is only triggered where a household refuses to accept an offer of a dwelling. For completeness, I propose to consider *de bene esse* what the position would be if—contrary to that conclusion—the subsequent surrender of a tenancy were also capable of triggering the disqualification. The intention in carrying out this alternative analysis is to ensure that all relevant findings of fact have been made at first instance, lest the matter be pursued by way of appeal to the Court of Appeal or the Supreme Court.

77. For the purposes of this alternative analysis, it is necessary to assume that the surrender of a tenancy may be treated as a refusal under regulation 12(2). On that counterfactual assumption, the question corresponding to that prescribed by regulation 12(3) is whether the Local Authority formed the opinion that the dwelling continued to meet the accommodation needs and requirements of the qualified household.

78. The fact that the exercise of a statutory power is conditional upon the decision-maker forming an opinion does not exclude judicial review. The opinion must be *bona fide* held, factually sustainable and not unreasonable. There must be factual material capable of providing reasonable support for the opinion formed. The opinion must also be reached by a lawful route, without misinterpreting the law, taking irrelevant matters into account or ignoring relevant matters. The court does not substitute its own opinion for that of the decision-maker. Its

function is to determine whether the prescribed opinion was formed upon grounds which could reasonably support it and within the express or necessarily implied limits of the statutory power: *State (Lynch) v. Cooney* [1982] IR 337 (at pp. 361 and 380 to 381). These principles have been applied in the specific context of housing legislation in *Fingal County Council v. Gavin* [2007] IEHC 444 (at paragraph 38). Peart J. observed that the opinion of the housing authority must be rationally based, otherwise the decision may be open to challenge.

79. Applying these principles on the counterfactual statutory interpretation, it is not the function of the court to decide for itself whether the household could reasonably have remained in the allocated dwelling. Rather, its function is to determine whether the local authority formed the requisite opinion upon a lawful and adequate evidential basis and having regard to the representations made by the applicants.

80. The local authority's answer to the judicial review proceedings is that the mother acted unreasonably in surrendering the tenancy. It says that, notwithstanding the criminal attacks, the household could reasonably have continued to occupy the dwelling with the assistance of An Garda Síochána, the Peter McVerry Trust and the community sustainment team. The local authority places particular reliance upon the mother's supposed failure to engage sufficiently with those services or to allow a reasonable opportunity for support measures to be put in place before surrendering the tenancy. On this basis, it pleads that the applicants rendered themselves homeless and were not entitled to further emergency accommodation. The local authority seeks to defend the twelve-month disqualification on the same basis.

81. The difficulty is that the local authority has not identified any material capable of providing reasonable support for these pleas. It has not pointed to any document recording an assessment of whether—having regard to the criminal attacks—the allocated dwelling continued to meet the accommodation needs and requirements of the household. Still less has it identified the officer who supposedly carried out any such assessment.

82. It will be recalled that the criminal attacks occurred against a background in which the mother had raised concerns about the suitability of the dwelling in August 2023. She had said that there was hostility towards the family by reason of their surname, with a consequential risk of intimidation if the household lived there. The threatening graffiti painted on the dwelling before occupation, and allegedly painted again after it had been removed, tended to lend support to the concern previously expressed.

83. The household entered into occupation on 14 November 2023. On 27 December 2023, the front windows of the dwelling were smashed. A further incident occurred at the rear of the dwelling on either 30 or 31 December 2023. The mother's evidence is that a person attempted to gain entry during the early hours of the morning and that the rear windows were smashed. It is not disputed that the dwelling was attacked on two occasions, although the precise circumstances of the second incident are not agreed.

84. There is no contemporaneous document recording any assessment of the significance of the graffiti and the two attacks for the safety concerns previously expressed by the mother. In particular, the papers do not disclose whether the local authority considered that these events might be connected with the hostility which the mother said existed towards the family by reason of their surname.

The record does not indicate whether that possibility was accepted, rejected or regarded as incapable of determination.

85. Nor does the material disclose whether the local authority sought information from An Garda Síochána concerning the incidents or the risk of further intimidation. There is no evidence that it asked An Garda Síochána whether the household could safely return to the dwelling, or what protective measures might be available. No Garda assessment or advice addressing that risk has been identified.

86. The local authority's reliance upon the availability of assistance from the Peter McVerry Trust and the community sustainment team is similarly expressed at a high level of generality. No contemporaneous safety plan has been identified. There is no record of any enhanced security measures being proposed, arrangements being made to monitor the dwelling, or any commitment being given to put measures in place capable of addressing the risk to the household.

87. On 2 January 2024, a social worker employed by the local authority advised the mother not to surrender the tenancy and instead to engage with An Garda Síochána and the available support services. A member of staff of the Peter McVerry Trust also advised against surrendering the tenancy. There is no indication that the risk had been assessed or that the local authority had concluded, upon an identified evidential basis, that the household could safely remain in the dwelling. Advice to seek assistance is not equivalent to an assessment that the assistance available would be sufficient to address the identified risk.

88. The local authority's written submissions state that the mother chose not to seek assistance from An Garda Síochána, the Peter McVerry Trust or the community

sustainment team. That characterisation is not fully borne out by the evidence. The mother says that she reported both incidents to An Garda Síochána and spoke to a representative of the Peter McVerry Trust; her account that the incidents were reported to An Garda Síochána is supported by the documentary material.

89. Counsel for the local authority cited the judgment in *McDonald v. Feely* (Supreme Court, unreported, 23 July 1980). The plaintiff there objected to moving to a chalet because she feared that her children might be intimidated by another family occupying the halting site. O'Higgins C.J. accepted that the possibility of intimidation existed but held that the plaintiff could not be accorded a right of veto merely because of the possibility of unlawful action by others. In reaching that conclusion, the Supreme Court proceeded on the basis that appropriate steps could and would be taken by An Garda Síochána to minimise the possibility of trouble. The judgment further recognised that, if trouble occurred despite those precautions, other steps might have to be taken by one or other of the housing authorities involved.

90. The factual position confronting the local authority in January 2024 was materially different. The applicants' concern was no longer confined to the *possibility* of intimidation. Threatening graffiti had been painted on the allocated dwelling before occupation, and the dwelling had thereafter been attacked on two occasions. If the local authority was to rely upon the proposition that the household could reasonably have remained in occupation notwithstanding those events, it was necessary to assess their significance and the support or protective measures said to be available.

91. The limited paper trail does not disclose that any such reassessment was undertaken or that any particular support or protective measures were identified. The judgment in *McDonald v. Feely* does not stand for the proposition that actual intimidation or repeated attacks can never justify a household in leaving a dwelling. On the contrary, the judgment expressly contemplated that further action by the housing authorities might be required if the anticipated trouble materialised.

92. The position in the present case is also different from that in *Fingal County Council v. Gavin* (cited above). Peart J. was satisfied there, on the evidence which he had heard, that the housing authority had considered the accommodation which could be provided, the size and circumstances of the extended family, and the practical limitations upon the housing authority. The housing authority had arrived at a proposal which was as much as could reasonably be expected. There is no equivalent assessment evident in the present case.

93. In conclusion, there is no evidence that the local authority carried out an assessment which considered the mother's representations, the risk of further intimidation or the support measures said to be available. The court cannot be satisfied that the local authority formed the requisite opinion under regulation 12(3). Still less can the court be satisfied that any such opinion was *bona fide* held, factually sustainable and not unreasonable, or that it was formed upon grounds which could reasonably support it.

94. In the absence of the requisite opinion having been lawfully formed, the local authority could not rely upon the asserted unreasonableness of the surrender of

the tenancy to impose the serious consequence of excluding the household from consideration for the allocation of social housing for twelve months.

95. Finally, it should be reiterated that the analysis under this heading has been undertaken *de bene esse*, on the assumption—contrary to the conclusion reached under the previous heading—that the surrender of a tenancy is capable of triggering the disqualification under regulation 12(2). Nothing in this alternative analysis is intended to detract from the conclusion reached as to the correct interpretation of regulation 12 of the Social Housing Allocation Regulations 2011.

ENFORCEMENT NOTICE

96. Following the surrender of the tenancy in January 2024, the household returned to live in a caravan. The caravan was located on what the mother describes as a disused roadway. On 22 May 2024, the local authority issued an enforcement notice pursuant to section 154 of the Planning and Development Act 2000. The enforcement notice directed that the caravan be removed. Thereafter, the local authority instituted criminal proceedings against the mother, returnable before the District Court on 5 July 2024.

97. The enforcement notice prompted the applicants to institute these judicial review proceedings, in which they challenged both the twelve-month disqualification and the criminal proceedings under the planning legislation. The *ex parte* leave application came on for hearing before me on 1 July 2024. As part of the order granting leave, I imposed a stay on the criminal proceedings.

98. On 25 November 2024, the caravan was removed and the applicants entered emergency hotel accommodation funded by the local authority. The criminal proceedings were subsequently struck out at the instance of the local authority.

99. The parties disagree as to why the caravan was removed. The local authority says that it was removed in compliance with the enforcement notice. Conversely, the mother says that she removed it because emergency accommodation had been provided and she had been informed that (permanent) accommodation was being prepared for the family.

100. It is unnecessary to rule upon this factual disagreement. This is because this aspect of the proceedings has already achieved its practical purpose. The intent had been to injunct the local authority from pursuing the criminal proceedings in respect of the enforcement notice *pending* the provision of some alternative safe place for the family to stay. The family has since been provided with emergency accommodation and is no longer living in the caravan. The criminal proceedings have been struck out and there is no suggestion that the local authority propose to institute further proceedings.

101. The claim for a permanent injunction in respect of the enforcement notice has accordingly been overtaken by events. It is unnecessary to express any view on the validity of the defunct enforcement notice.

ALLEGED QUOTA SYSTEM

102. The applicants allege that the local authority may operate a quota system governing the allocation of social housing to Traveller households. The allegation is framed conditionally. The mother says that she had been told that

such a system might exist and that it might explain the housing decisions affecting her household.

103. No evidence has been adduced that the local authority fixed a numerical or proportional ceiling for allocations to Traveller households. Nor has it been shown that any dwelling was withheld from the applicants, that their priority was reduced, or that the allocated dwelling was selected by reference to such a ceiling.

104. The applicants have not established that a restrictive quota existed or that any such quota influenced the housing decisions made in respect of their household. The relief sought in respect of the alleged quota system must accordingly be refused.

EQUALITY AND HUMAN RIGHTS LEGISLATION

105. The statement of grounds invokes a number of statutory equality and human rights regimes. Reliefs 7 and 8 allege that any quota system operating in the allocation of social housing to Traveller households would be discriminatory and contrary to the Equal Status Acts. Relief 10 seeks an order of mandamus requiring the local authority to comply with the public-sector duty under section 42 of the Irish Human Rights and Equality Commission Act 2014. Relief 12 includes a general reference to the European Convention on Human Rights Act 2003.

106. The allegation under the Equal Status Acts is conditional upon the existence of a quota system. For the reasons explained under the previous heading, the applicants have not established that the local authority operated the alleged system or that any such system affected the allocation of accommodation to their

household. In any event, insofar as the applicants seek a determination at first instance that they were subjected to prohibited discrimination contrary to the Equal Status Acts, those Acts establish a specific statutory scheme for the investigation and determination of such complaints. It is not the function of the High Court, at first instance in judicial review proceedings, to determine whether prohibited discrimination has occurred outside that statutory scheme: *Doherty v. South Dublin County Council* [2007] IEHC 4, [2007] 2 IR 696 (at paragraphs 11 to 17); *S.M. v. Clare County Council* [2025] IEHC 427 (at paragraphs 27 and 28).

107. Relief 10 seeks an order of mandamus requiring the local authority to comply generally with the public-sector duty under section 42 of the Irish Human Rights and Equality Commission Act 2014. Section 42(11) expressly provides that the section does not, of itself, confer a cause of action against a public body in respect of the performance of its functions under subsection (1). In *S.M. v. Clare County Council* [2025] IEHC 427 (at paragraph 29), Bolger J. cited this provision in finding that a plea, which is materially similar to the plea advanced in the present case, was not justiciable.

108. There is a further difficulty with the form of relief sought. The applicants have not identified the particular obligation under section 42 said to have been breached, the act or omission said to constitute that breach, or any specific step capable of being compelled by mandamus. The order sought would amount to a general direction that the local authority comply with the legislation. This is not a proper basis for an order of mandamus.

109. The general reference to the European Convention on Human Rights Act 2003 in Relief 12 is not supported by a pleaded ground identifying the Convention

right relied upon or the act or omission said to be incompatible with that right. In their later affidavits and submissions, the applicants sought to develop additional claims by relying upon Article 14 of the Convention, Article 42A of the Constitution, the Charter of Fundamental Rights of the European Union and a number of international instruments.

110. Those later materials cannot enlarge the grounds upon which leave to apply for judicial review has been granted. No application has been made to amend the statement of grounds to include those additional claims. Even allowing for the fact that the mother is a litigant in person, it is not permissible for the court to determine grounds which were not identified in the statement of grounds. The requirement that the grounds supporting each relief be identified clearly and precisely serves both procedural fairness to the opposing party and the need to avoid uncertainty as to the issues before the court: *S.M. v. Clare County Council* (at paragraph 15).

CONSTITUTIONAL CLAIMS

111. The statement of grounds also seeks declarations that the local authority failed to vindicate the applicants' rights under Article 40.3 and Article 41 of the Constitution. The grounds do not, however, identify with sufficient precision the particular constitutional rights alleged to have been infringed, the act or omission said to comprise the infringement, or the manner in which the declarations sought would afford relief beyond that available on the statutory challenge. The court has concluded that the disqualification was unlawful under regulation 12. It is neither necessary nor appropriate to determine the wider

constitutional claims in circumstances where the proceedings can be resolved on that narrower basis.

REMAINING CLAIMS FOR MANDAMUS

112. The applicants seek further orders of mandamus requiring the local authority to provide suitable and adequate accommodation, including emergency accommodation, and to comply generally with its statutory obligations under the housing legislation. Mandamus may issue only to compel the performance of an identified public duty which the respondent is legally obliged to perform but has failed or refused to perform. The relief sought does not identify any specific outstanding duty or act capable of being compelled. Moreover, insofar as the applicants seek the provision of emergency accommodation, they are now receiving such accommodation from the local authority. The court cannot make a general order directing the local authority to comply with the housing legislation, nor would it serve any useful purpose to compel the performance of an act which, in respect of emergency accommodation, has already been performed.

CLAIM FOR DAMAGES

113. The statement of grounds pleads, in general terms, that the applicants suffered loss and damage as a result of the matters complained of and that such loss and damage was occasioned by a breach of statutory duty. It does not, however, identify the particular statutory duty said to give rise to an entitlement to damages or the basis upon which a breach of that duty is actionable at the suit of the applicants.

114. The court is conscious that damages do not ordinarily follow from even a successful application for judicial review. It may not always be possible or appropriate, when commencing such proceedings, for an applicant to formulate a claim for damages with the same degree of particularity as would ordinarily be expected in plenary proceedings. This is because the very viability of the claim is contingent upon the court first determining that the relevant public body acted unlawfully. In the present case, the court has now concluded that the local authority acted unlawfully in imposing the twelve-month disqualification.

115. At the conclusion of the substantive hearing on 23 July 2026, the parties were afforded an opportunity to make written submissions on *M.C. v. Clinical Director of the Central Mental Hospital* [2020] IESC 28, [2021] 2 IR 166. That judgment confirms that there is no procedural impediment under Order 84 to a court awarding damages in judicial review proceedings in a suitable case. It is equally clear, however, that damages do not follow merely from a finding that a public body acted unlawfully. An applicant must identify and establish a substantive cause of action capable of supporting such an award.

116. The applicants' post-hearing submission refers variously to breach of statutory duty, negligence, misfeasance in public office and infringement of constitutional rights. In its replying submission, the local authority contends that negligence, misfeasance in public office and a claim for damages arising from an infringement of constitutional rights are not pleaded in the statement of grounds. It further submits that the applicants have not identified a statutory provision which confers a private right of action in damages and have not established the constituent elements of any recognised cause of action. These objections raise

issues of pleading, procedural fairness and substantive law which would require careful consideration before any claim for damages could be allowed to proceed.

117. It would not be appropriate simply to dismiss the claim for damages without first hearing the parties on the procedural course which should now be followed. Any consideration of the claim for damages will be deferred, and the proceedings will be listed for further argument. This deferral does not amount to a finding that the applicants have established an entitlement to pursue a claim for damages, nor does it imply that any of the causes of action identified in the post-hearing submission will be allowed to proceed.

CONCLUSION AND NEXT STEPS

118. For the reasons set out at paragraphs 24 to 42 above, I am satisfied that there is good and sufficient reason for extending time. I am also satisfied that the circumstances which resulted in the failure to apply for judicial review within time were outside the applicants' control. Accordingly, an order will be made pursuant to Order 84, rule 21 of the Rules of the Superior Courts extending time up to and including 1 July 2024.

119. Although the proceedings are technically moot insofar as the applicants seek relief from the operative effect of the disqualification, the principal issue should nevertheless be determined. The parties remain in an ongoing statutory relationship, and the question of the proper interpretation and application of the Social Housing Allocation Regulations 2011 remains a matter of practical significance to them.

120. On its proper interpretation, the disqualification under regulation 12(2) is triggered only where a qualified household refuses two reasonable offers of the

allocation of different dwellings within the prescribed period. It does not extend to the subsequent surrender of a tenancy arising from an offer which had been accepted. It follows that the local authority acted unlawfully in purporting, by reference to the surrender of the tenancy in January 2024, to exclude the household from consideration for the allocation of a dwelling for twelve months. A declaration will be made to that effect.

121. The claim for an injunction in respect of the enforcement notice has been overtaken by events. Save for the declaration identified above, the remaining claims for declaratory relief and mandamus will be refused.

122. Consideration of the claim for damages has been deferred to allow the parties to be heard further on whether any such claim is capable of being pursued in these proceedings. In particular, it remains to be determined whether the general plea of breach of statutory duty in the statement of grounds is sufficient to sustain a claim for damages, having regard to the failure to identify the particular statutory duty relied upon, the absence of particulars of the alleged breach and the fact that the additional causes of action identified in the post-hearing submission were not pleaded.

123. The proceedings are adjourned until 8 October 2026 for mention only.

Appearances

The first applicant appeared as a litigant in person
Carol O'Farrell for the respondent instructed by Leahy Reidy Solicitors LLP