

Neutral Citation No: [2020] NIQB 74

Ref: KEE11370

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

ICOS No: 18/073615/01

Delivered: 16/12/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY WILLIAM DUNCAN
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF A DECISION OF THE DEPARTMENT FOR
COMMUNITIES**

**The Applicant appeared as a Litigant in Person
Mr McCleave (instructed by the Departmental Solicitors Office) for the Proposed
Respondent**

KEEGAN J

Introduction

[1] This judicial review seeks to challenge a decision of the Department for Communities ("the Department") made on 4 May 2018 whereby the Department, following an award of attendance allowance to the applicant, refused to disregard a pension annuity payment when calculating the applicant's state pension credit. The Order 53 Statement is dated 3 August 2018 and is accompanied by an affidavit of the applicant sworn on 3 August 2018. At this stage the applicant was represented by solicitors who subsequently came off record. Upon lodgement of the judicial review various case management direction orders were made by McCloskey J and the matter ultimately came to me for determination in late 2019.

[2] I heard from the applicant who appeared as a personal litigant on numerous occasions and I listened carefully to the case that he wanted to make before me. I should say that the applicant appeared as an extremely courteous man who presented his case with care and attention and who listened carefully to the views of

the court. At the outset I had some difficulty getting a clear view of what was at issue in this case given that this matter had been considered by the Department and a Statutory Appeal Tribunal and the Social Security Commissioner. It was apparent that the applicant had issued judicial review proceedings on 31 July 2017 in respect of the Commissioner's refusal to grant leave to appeal further but those proceedings were withdrawn in November 2017. Counsel pointed out that by virtue of Article 17 of the Social Security (Northern Ireland) Order 1998 the Tribunal's decision is now final.

[3] I was assisted by Mr McCleave who appeared for the proposed respondent and who filed a position paper setting out this background. Also, in order to assist the applicant I asked that an affidavit be filed on behalf of the respondent to deal with the monetary issue given the applicant's age and disability. I did receive an affidavit submitted on behalf of the proposed respondent sworn by Mr Tony Gough and dated 19 February 2020.

[4] All of this information led me to convene a substantive hearing in this case in February 2020. As a result of that hearing when I heard oral submissions from both parties it became very apparent that the applicant was now content with the benefits that he was receiving. In his correspondence of 26 March 2020 the applicant confirms this in that he says:

"I stated quite clearly it was no longer deductions of money from my pension credit, but a question that this Department had destroyed data, falsified data and refused to give me data, withheld evidence."

[5] I should say that following the submissions in the February 2020 hearing I gleaned that the real problem in this case appeared to be the applicant's displeasure with the Department's case that he had previously misrepresented receipt of an annuity in the context of his pension credit. The applicant maintained that he did not ever misrepresent this and, in fact, had never been asked about it before. In an effort to resolve this matter, given the applicant's Christian beliefs and his upset at being accused of misrepresentation, I suggested that the Department write to the applicant. Unfortunately, the Department did not do this within the timeframe I suggested but nonetheless they did send a letter of March 2020. This contains the following statements;

"We note your comments during the course of the review and your confirmation that you are no longer seeking to challenge any aspect of your award of attendance allowance. We also note your comments that you are more than content with the increased amount you are now receiving following your award of attendance allowance. We further note your comments in respect of your Christian faith. In that regard we would ask you to

note that the Department is simply acting upon and seeking to give effect to the findings of the Appeal Tribunal. In doing so the Department in no way seeks to challenge your personally held Christian beliefs. Similarly, it is not the Department's understanding that the Appeals Tribunal sought to challenge your Christian beliefs.

It is clear from your comments at the last review that you primarily take issue with the findings of the Appeal Tribunal. Your complaint therefore lies with that body and not the Department. Notwithstanding this the Department, as the named respondent, has had to shoulder the burden of the judicial review proceedings. In doing so there has been a significant impact on the Department both in terms of resources and financially. With each step the Department is required to take, this necessarily increases the financial burden on the Department and the public purse. The costs associated with the continuation of the judicial review are substantial and should not be underestimated. This burden is even more pronounced in the context of the current and exceptional crisis facing the Department and the community more generally.

Taking into account that you are content with the income now provided, that neither the Department nor the Tribunal have sought to challenge your personally held Christian beliefs and the impact that the continuation of the proceedings is having on the Department at this exceptionally grave time, we would ask you to reflect on whether the proceedings should continue. In reflecting we would ask you to consider which approach best serves your genuine and personally held beliefs and what is in the best interests of the community more generally."

[6] Subsequent to this correspondence the applicant wrote to the proposed respondent indicating that he did not intend to discontinue his judicial review. Thereafter, I engaged through the office, and particularly with the assistance of Mr Corbett, with both the applicant and proposed respondent and an agreement was reached that I would now decide the application for leave to apply for judicial review on the papers. I have read the substantial submissions made by both parties and all the evidence filed and my conclusion is as follows.

Conclusion

[7] At the outset it must be remembered that the judicial review court is a court of supervisory jurisdiction. It does not determine the merits of cases and it is not best placed to deal with factual disputes. This case now involves a number of factual disputes principally of conversations that the applicant had with employees of the Department in relation to his benefits. In that regard the applicant had previously brought an application to issue a Khanna summons against British Telecom which is not an application that found favour with me in this judicial review court.

[8] It must also be borne in mind that the applicant's issue in relation to his pension has now been determined by the Appeal Tribunal in 2016 and leave was refused by the Social Security Commissioner in 2017. Happily however, the applicant's benefits have improved since the beginning of these proceedings and as he now has stated very clearly he is content with the benefits that have been applied to him. I note that the applicant continues to raise an issue in relation to the legality of the deduction for the pension annuity and in that regard he raises some provisions of the Pension Credit Act which are marked in his exhibits to his affidavit at 12 (a), (b), (c), (d) and (e). I understand the point raised however this is not an issue that I consider requires to be heard in this case. The issue as counsel has said has been determined by the Appeal Tribunal and leave to appeal has been refused by the Commissioner. As such it would be disproportionate to embark upon a legal case on this issue particularly when the applicant has no issue with the monies now received.

[9] The applicant has an ongoing issue with the use of his data and in that regard I agree with the correspondence of Ms Mitchell of 20 May 2020 that there are alternative remedies that the applicant should take up in relation to this. In the first instance he should contact the Information Commissioner if he has an issue in relation to the use or misuse of his data.

[10] Therefore it is my conclusion in this case that leave to apply for judicial review should be refused. The issue that is now raised by the applicant is one of data protection which is entirely separate from the issues previously raised. The calculation of benefits issue is academic and I do not consider that it should be litigated in this particular case. This judgment will highlight the issue and so I have no doubt that the experienced advisors in this field will take it up in another case if it is correct to do so. By way of final comment, Mr Duncan should be reassured that there is no slight on his character or Christian beliefs so far as this court is concerned. I wish the applicant well going forward and I am very content that through the course of these proceedings he has managed to achieve a favourable financial outcome in relation to his benefits.