Mercy Law
Resource Centre

HUMAN RIGHTS AND THE PUBLIC SECTOR DUTY IN ACCESS TO SOCIAL HOUSING AND HOMELESS SERVICES





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About Mercy Law Resource Centre

Mercy Law Resource Centre ("MLRC") is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. It also seeks to advocate for change in laws, policies and attitudes which unduly and adversely impact on people who are at the margins of our society.

Our core services are free legal advice; legal representation; legal support and training to organisations and professionals; and policy work.

MLRC is committed to the principles of human rights, social justice and equality. MLRC's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, and where every individual enjoys equal access to justice and legal recourse in order to vindicate those rights.

MLRC would like to express our sincere thanks to Seán Beatty BL for authoring this much-needed report.

MLRC would also like to extend its gratitude to the Irish Human Rights and Equality Commission which provided the grant funding for this project.



A. Introduction and Context

Since 2009 MLRC has provided free legal advice and representation to people facing housing issues and homelessness. MLRC clients have always included those individuals who may face additional barriers when seeking to access social housing or homeless supports. Frequently, these are people from minority backgrounds, those with a disability, those who have experienced domestic violence, or people seeking to move forward with their lives after a period of incarceration.

Against the backdrop of ever-increasing numbers of people recorded as homeless, our most recent statistics indicate that in 2024 MLRC saw a 15.5% increase in requests for legal assistance compared to 2023. MLRC was able to provide direct assistance to 142 individuals in relation to homelessness, including 77 who were refused access to emergency accommodation or had significant issues with their emergency accommodation provision.

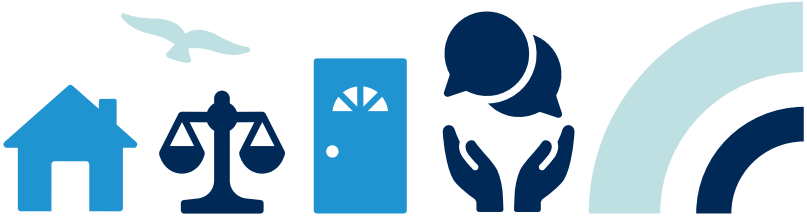
As well as our case work, we have sought to advocate for change on behalf of our clients through policy work. This not only highlights systemic issues but seeks alternative legal solutions. An area of interest in such policy work has been the potential of the Public Sector Human Rights and Equality Duty (the "Public Sector Duty"), as defined under s.42 of the Irish Human Rights and Equality Commission Act 2014 ("the 2014 Act") and its goal of ensuring that the human rights of public service users are both protected and promoted.

In this context, MLRC has produced a series of reports with the support of the Irish Human Rights and Equality Commission ("IHREC") that examine the Public Sector Duty as it relates to social housing and homelessness. The reports are as follows: Minority Groups and Housing Services: Barriers to Access; Social Housing, Domestic Violence and the Public Sector Duty; and Excluded and Left Behind: The Lived Experience of Long-Term Family Homelessness on Minority Ethnic Families and the Effects on their Children. These reports highlight the potential of the Public Sector Duty to make a positive impact on the lives of our homeless clients and what steps can be taken to ensure that it is given proper effect by local authorities. Early recommendations included calling on local authorities to have regard to the Public Sector Duty and to carry out equality reviews of their functions. As the report series went on, there were calls to develop specific responses based on clients' particular characteristics—whether these may relate to domestic violence or membership of an ethnic minority—and for local authority staff to receive cultural competence, trauma-informed, and anti-discrimination training. This was to be accompanied by the development of clear procedures through which individuals accessing emergency accommodation could report instances of discrimination or hostility as a mechanism through which the goals of the Public Sector Duty can be fulfilled by local authorities in the context of social housing and homelessness.



This report: *Human Rights and the Public Sector Duty in access to Social Housing and Homeless Services*, also produced with the support of IHREC, seeks to build on that work to explore how the duty operates and could be developed. As the previous reports have highlighted issues and spotlighted the potential of the duty to ameliorate certain of them, this report seeks to chart a course as to the possible development of the duty. To that end, the report will examine the legal landscape in Ireland in relation to homelessness before looking at the operation of the Public Sector Duty. The report will explore the operation of the duty in England and Wales, including an analysis of its operation in a homelessness and social housing context. It proceeds to look to the possible future development of the Public Sector Duty in Ireland, firstly by considering what human rights and equality principles are relevant to homeless and social housing assessments (in addition to those contained under social housing statute), and then by addressing the specific potential of s.42(1) of the 2014 Act to allow homeless people to fully realise their human rights as they seek access to these services. The report is informed by our casework experience of the lived experiences and difficulties people have faced when seeking to access homeless and social housing supports.

It should be noted that the potential impact of the recently enacted Housing and Residential Tenancies (Miscellaneous Provisions) Act 2026 has not been considered in this report. However, it is possible that its intention to introduce certain residency requirements to be satisfied in order to access social housing and homeless supports will engage considerations under the Public Sector Duty.



B. Legislative Framework for Homelessness Services

(i) Housing Act 1988

(a) Section 2

The statutory framework for homelessness services in Ireland is minimal. The Housing Act 1988 ("the 1988 Act") sets out the legal test for homelessness under s.2, entitled, "Homeless persons for the purposes of this Act":

> "A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—
>
> > (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or
> > (b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a),
>
> and he is, in the opinion of the authority, unable to provide accommodation from his own resources."

Accordingly, it is for a housing authority to determine whether there is no accommodation available to a person which they can reasonably occupy or remain in occupation of and, if so, whether "in the opinion of the authority" they are unable to provide accommodation from their own resources. A line of jurisprudence emphasises the deference the courts afford to housing authorities in making such determinations, taking the view that they are reviewable only on grounds of rationality. While a full and individualised analysis of such judgments falls outside the scope of this report, it is necessary to outline why an assessment confined to rationality only (thereby excluding a rights-based proportionality analysis) cannot be correct.

For instance, in *Tee and Anor v Wicklow County Council* [2017] IEHC 194, Noonan J said (para. 24):

> "The discretion must be exercised within well settled norms as explained in cases such as *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 so that it must not be exercised in an arbitrary or capricious manner or in a manner that flies in the face of fundamental reason and common sense. Absent that however, the court cannot interfere with the Council's determination."

Similarly, in *Middleton and Anor v Carlow County Council* [2017] IEHC 528, Meenan J also took the view that the role of the courts in reviewing a housing authority's discretion under the 1988 Act is "limited", referring to irrationality in the strict *Keegan/O'Keeffe* senses (paras. 39–40). It appears that neither judgment had regard to *Meadows v Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 IR 701.

In *Meadows*, a majority of the Supreme Court considered it appropriate that the principle of proportionality may be applied to rights-based judicial review of administrative decisions. To avoid a lengthy review of that expansive decision, it is sufficient to note that in *Efe and Ors v Minister for Justice. Equality and Law Reform and Ors* [2011] IEHC 214, [2011] IR 798, Hogan J said of *Meadows* that "it is plain that a majority of the court was prepared to apply a general proportionality test in respect of all decisions affecting fundamental rights" (para. 28), and that courts are not (para. 34):

> "constrained to apply some artificially restricted test for review of administrative decisions affecting fundamental rights on reasonableness and rationality grounds. This test is broad enough to ensure that the substance and essence of constitutional rights will always be protected against unfair attack, if necessary through the application of a *Meadows*… style proportionality analysis."

It is therefore clear that where the fundamental rights of an applicant for homeless services are in issue (and for a person truly in a situation of homelessness it is difficult to envisage a situation in which they would not be), a housing authority's decision can be reviewed with the principle of proportionality (indeed this was accepted in a housing decision which did consider *Meadows: C and Ors v Galway County Council* [2017] IEHC 784, paras. 18–19).

It is noted that in a recent judgment, *Sherlock Mongans and Ors v Clare County Council* [2025] IEHC 427, the Court cited Tee and again returned to the idea that it (para. 21):

> "can only interfere with a housing authority's exercise of its discretion in relation to section 2 where it was done 'in an arbitrary or capricious manner or in a manner that flies in the face of fundamental reason and common sense. Absence that however, the court cannot interfere with the Council's determination.'"

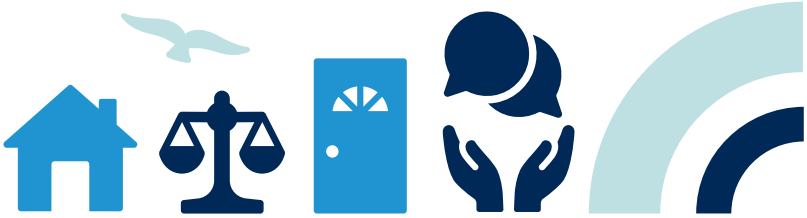
That judgment suffers from the same apparent failure to consider *Meadows* and related jurisprudence.

(b) Section 10

Where a housing authority considers a person to be homeless within the meaning of s.2 of the 1988 Act, s.10, entitled "Additional provisions regarding accommodation for homeless persons", enumerates the steps it may take to ameliorate that homelessness:

> "(1) A housing authority may, subject to such regulations as may be made by the Minister under this section—
>
> (a) make arrangements, including financial arrangements, with a body approved of by the Minister for the purposes of section 5 for the provision by that body of accommodation for a homeless person,
> (b) provide a homeless person with such assistance, including financial assistance, as the authority consider appropriate, or
> (c) rent accommodation, arrange lodgings or contribute to the cost of such accommodation or lodgings for a homeless person.
>
> (2) A request for accommodation may be made to a housing authority by or on behalf of a homeless person."

The word "may" indicates that a housing authority retains discretion to take, or not take, any of the listed steps in respect of a person deemed homeless under s.2. However, in exceptional circumstances, the provision becomes mandatory.



O'Donnell and Ors v South Dublin County Council and Ors [2015] IESC 28, [2024] 2 ILRM 393 involved particularly serious facts. One Applicant, Ellen O'Donnell, was a wheelchair-using, disabled Traveller child who was left in an overcrowded mobile home for years with no access to a private toilet. The housing authority had accepted that the Applicants were homeless within the meaning of s.2. MacMenamin J, relying on longstanding jurisprudence concerning s.13 of the 1988 Act (particularly *O'Brien v Wicklow Urban District Council* (Unreported, High Court, Costello J, 10 June 1994)), held that the power of the housing authority to provide homeless accommodation under s.10 was mandatory, not permissive, where constitutional rights were sufficiently engaged. He stated (para. 65):

> "Acts of the Oireachtas are to be read and interpreted in the light of the Constitution. If, in an exceptional case such as this, statutory powers are given to assist in the realisation of constitutionally protected rights or values, and if powers are given to relieve from the effects of deprivation of such constitutionally protected rights, and if there are no reasons, constitutional or otherwise, why such statutory powers should not be exercised, then I think such powers may be seen as being mandatory."

On the nature of the constitutional rights and values which must guide the operation of s.10, he said (para. 68):

> "The preamble to the Constitution outlines the values of promoting the common good with due observance of prudence, justice and charity, so that 'the dignity and freedom of the individual may be assured'. It is clear that constitutional values established by our jurisprudence, specifically those of autonomy, bodily integrity and privacy, are *engaged here (In the matter of A Ward of Court (withholding medical treatment) (No 2)* [1996] 2 I.R. 75, and Ryan v AG [1965] I.R. 294). The position of Ellen O'Donnell is distinct by virtue of the evidence… [B]ecause of the exceptional overcrowding, and the destruction of the sanitation facilities, and in light of Ellen O'Donnell's disability, her capacity to live to an acceptable human standard of dignity was gravely compromised. Her integrity as a person was undermined. Her rights to autonomy, bodily integrity and privacy were substantially diminished."

MacMenamin J said:

> "69. The situation… was truly, exceptional. That situation was, to my mind, sufficient as to impose a special duty upon the County Council towards Ellen O'Donnell…
>
> 70. … [I]nsofar as Ellen O'Donnell is concerned, this is not only a case about parental choices, rights and duties (though these arise), but also about the duty of the Council, when faced with clear evidence of inhuman and degrading conditions, to ensure that it carried out its statutory duty. This was to vindicate, insofar as was practicable, in the words of Article 40.3 of the Constitution, the rights of one young woman with incapacities to whom, by virtue of the evidence, the Council owed a discrete and special duty under Article 40 of the Constitution. That statutory duty is to be informed with due regard to Ellen O'Donnell's capacity as a human person (Article 40.1 Constitution of Ireland)."



In light of the finding of exceptionality and the resulting duty, he went on to hold that (para. 71):

> "the extent of a duty, (if it exists), must be gauged against the degree of incursion into the constitutional and statutory rights engaged. A mere letter will not fix an authority with liability. It was the truly exceptional nature of what was in the letter, and its acceptance, which viewed in the circumstances, gave rise to the duty to interpret and apply 'may' as 'must'."

Thus, and importantly, the duty to vindicate the constitutional rights of the Applicant was framed as a *statutory duty* under s.10.

(ii) Child Care Act 1991

In addition to ss. 2 and 10 of the 1988 Act, s.5 of the Child Care Act 1991 ("the 1991 Act"), as amended, is relevant. It is entitled, "Accommodation for homeless children":

> "Where it appears to the Child and Family Agency that a child is homeless, the Agency shall enquire into the child's circumstances, and if it is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the care of the Agency under the provisions of this Act, the Agency shall take such steps as are reasonable to make available suitable accommodation for him."

The term "homeless" draws on, and is defined in accordance with, the first condition contained in s.2 of the 1988 Act, that of having "no accommodation available to him which he can reasonably occupy". As the provision concerns children, it is sensible that the question of whether the child is "unable to provide accommodation from his own resources" was omitted.

The language of the section is in patently stronger terms than anything appearing in the 1988 Act. It requires that the Child and Family Agency ("the CFA") "shall" take such steps as are reasonable to make "suitable" accommodation available to the child. Thus, the duty is *always* mandatory, rather than requiring exceptional circumstances as in *O'Donnell* and, when engaged, it demands that *suitable* accommodation be provided. The question arises as to whether this provision, appearing in the 1991 Act rather than a housing statute, could have an application similar to that of ss.2 and 10 of the 1988 Act?



The first and most important port of call in statutory interpretation is the text of the statute, the words being given their ordinary and natural meaning (*People (DPP) v Brown* [2018] IESC 67, [2019] 2 IR 1, paras. 92–93; *Heather Hill Management Co CLG and Anor v An Bord Pleanála* [2022] IESC 43, [2024] 2 IR 222, paras. 110 and 119). But "the literal and purposive approaches to statutory interpretation are not hermetically sealed" (*Heather Hill*, para. 112) and, rather, as held in *A, B and C v Minister for Foreign Affairs and Trade* [2023] IESC 10, [2025] 1 IR 417 (para. 99):

> "language, context and purpose are potentially in play in every exercise in statutory interpretation, none ever operating to the complete exclusion of the other. The starting point in the construction of a statute is the language used… but the words used in that section must still be construed having regard to the relationship of the provision in question to the statute as a whole, the location of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute."

Of special importance is that, like the 1988 Act, the 1991 Act is a remedial social statute which therefore "should be approached in a purposive manner and… should be construed as widely and liberally as fairly can be done" (*Western Health Board v KM* [2002] IR 493, p. 510). Although stated in the context of eligibility for the Residential Institutions Redress Act 2002, Clarke CJ in *JGH v Residential Institutions Redress Review Committee* [2017] IESC 69, [2018] 3 IR 68 said it must be assumed that the Oireachtas, "having decided that it is appropriate to apply public funds to compensate a particular category of persons, did not intend that potentially qualifying applicants would be excluded on narrow or technical grounds" (para. 20).

Turning to the matter of context, the task is to construe the words used by reference to the entirety of the Act, rather than in isolation (*Minister for Justice and Equality v Vilkas* [2018] IESC 69, [2020] 1 IR 676, para. 86). The Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a preexisting context and for a purpose which is best guided by the language of the statute read as a whole (*Heather Hill,* para. 120). Thus, the words must be viewed in context which may include the immediate sentence containing the words, the other subsections of the provision, other sections within the relevant Part of the Act, the Act as a whole, any legislative antecedents, *etc.* (Brown, para. 94; *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, [2020] 3 IR 480, para. 64; *Heather Hill,* para. 110). Most language carries layers of meaning, and most communication does not occur in disjointed individual phrases; instead, what is said occurs, and is understood, against a background created by what has gone before *(People (DPP) v AC* [2021] IESC 74, [2022] 2 IR 49, para. 3).

That the remainder of the 1991 Act does not deal in questions of social housing or homelessness, and that s.5 clearly envisages CFA involvement in terms of potentially taking a child into care, provides a context which may weigh against an interpretation that would render this section at the forefront of combatting homelessness in the state. That being said, there is little doubt but that the section can and should be employed in cases involving homeless children where there has never otherwise been, and may never otherwise be, involvement by the CFA due to concerns about the standard of care provided by the child's parent(s). As stated by Murray J in *Heather Hill*, "the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring about" (para. 118).



The true meaning of the section is apparent from its context. First, the basic language of s.5 itself is simply lifted from s.2 of the 1988 Act. Second, s.3 of the 1991 Act provides:

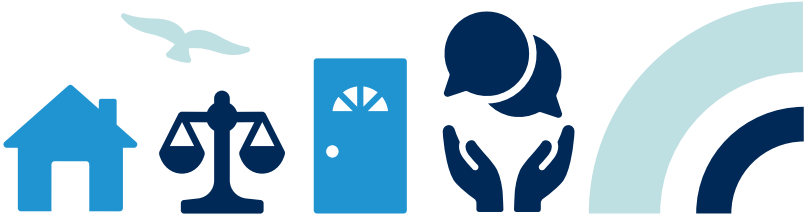
> "(1) It shall be the function of the Child and Family Agency to promote the welfare of children who are not receiving adequate care and protection.
>
> (2) In the performance of this function, the Child and Family Agency shall—
>
> (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children;
>
> (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—
>
> (i) regard the welfare of the child as the first and paramount consideration, and
> (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child…"

The scope of the CFA's functions under s.3 is pitched broadly enough to encompass children suffering from homelessness alone. Especially notable is s.8(1)(b) of the 1991 Act which obliges the CFA annually to "report on the adequacy of the child care and family support services available". Section 8(2) requires that in preparing the said reports, the CFA "shall have regard to the needs of children who are not receiving adequate care and protection and, in particular -

> (a) children whose parents are dead or missing,
> (b) children whose parents have deserted or abandoned them,
> (c) children who are in the care of the Agency,
> (d) children who are homeless,
> (e) children who are at risk of being neglected or ill-treated, and
> (f) children whose parents are unable to care for them due to ill-health or for any other reason."

Thus, the 1991 Act itself, through s.8(2), recognises a distinction in the CFA's role as between dealing on the one hand with children whose parents are dead or missing, who have deserted or abandoned them, where the children are at risk of being neglected or ill-treated, and on the other hand with homeless children. Accordingly, a child could be relevant to the CFA's work by virtue of being homeless, even if their parents are otherwise adequate carers and meet the child's needs as best they can.

Three critical differences exist between s.5 of the 1991 Act and s.10 of the 1988 Act which may be transformative for homelessness litigation.



First, should a child receive homeless services from the CFA under s.5 of the 1991 Act rather than a housing authority under s.10 of the 1988 Act, the CFA is obliged by s.3(2)(b)(i) of the 1991 Act, in the performance of its function "to promote the welfare of children who are not receiving adequate care and protection", to "regard the welfare of the child as the first and paramount consideration". No such imperative exists under the 1988 Act. The application of that paramountcy principle, reflecting Article 42A.4.1° of the Constitution (and to a lesser degree Article 3(1) of the United Nations Convention on the Rights of the Child), would have substantial implications. It would significantly reduce the scope for a decision (commonly seen in practice) that while a person is assessed as homeless, no homeless accommodation will be provided to them. Moreover, as the CFA would be mandated to "take such steps as are reasonable to make available suitable accommodation" for the child, would the CFA's duty to accommodate the child would necessarily extend to the entire family? In circumstances where a child enjoys constitutional rights to family life, to nurture, to the care and company of their parents, and where the best interests of the child would be the paramount consideration, it seems eminently arguable that this would be so.

Second, and as adverted to earlier, the requirement under s.5 of the 1991 Act to provide "suitable accommodation" imposes a standard of suitability which does not exist in s.10 of the 1988 Act. This (taken together with the paramountcy principle) could potentially be used to significant effect in cases where children find themselves in homeless accommodation not suited to their needs.

Third, potential arguments not to provide homelessness accommodation based on limited resources would be curtailed. While the courts have tended towards caution in granting mandatory orders in judicial review proceedings since *Sinnott v Minister for Education* [2001] 2 IR 545 and *TD v Minister for Justice* [2001] 4 IR 259, a change in that approach is plainly evident in more recent judgments from the Supreme Court such as *In the Matter of McD* [2024] IESC 6, [2024] 2 ILRM 153, *Protect East Meath Limited v Meath County Council* [2026] IESC 1, and *Burke v Minister for Education* [2022] IESC 1, [2023] 2 IR 1.

In *In re MMcD* where the CFA had failed to comply with statutory duty in relation to special care, Hogan J held that a "statutory agency such as the CFA is bound to uphold the Constitution and the law" and may not "take it upon itself - even for the best of motives - to disregard that which the Oireachtas has prescribed as mandatory (para. 97). He stated that if the courts "were to allow statutory obligations to fall fallow" on the ground of a lack of resources, "it would immediately raise separation of powers and rule of law issues" (para. 113). Referring to *TD*, he said there is a "danger that this decision can be over-interpreted" (para. 114), noting the key difference was that this case the relevant matter had been legislated for, meaning that the judiciary was merely "seeking to ensure that legislation duly enacted by the Oireachtas is actually complied with" (para. 115).



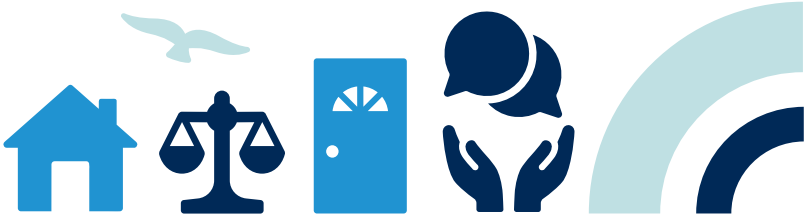
In Protect East Meath Limited, Woulfe J distinguished that case from *Ward v South Dublin County Council* [1996] 3 IR 195 and *Mulhare v Cork County Council* [2017] IEHC 288 which both involved "statutory discretion" rather than "statutory obligation" (para. 34). Referring to the starting point of "a society governed by democratic values and the rule of law" (para. 33), he said:

> "34. It is quite clear, therefore, that there is a constitutional imperative imposed on local authorities to discharge their functions in accordance with law. Here the law has been clearly prescribed by the Oireachtas… To that extent this case is significantly different from cases involving the exercise of a statutory *discretion* such as *Ward and Mulhaire* (sic). In these circumstances one might fairly ask why an order of *mandamus* should not be made."
>
> [Emphasis in original]

In *Burke*, the Supreme Court distinguished between challenges to decisions/omissions of the executive involving larger policy issues on the one hand, and those of an administrative nature which affect individual rights on the other. *O'Donnell* CJ indicated at para. 61 that where such rights are engaged "the courts' obligation is to defend and vindicate the rights of the citizen", thereby rejecting that the separation of powers requires courts to refrain from compelling the executive arm of state to act in a certain way. In homeless accommodation cases, it is generally the position that Applicants do not seek to compel their housing authority to take actions touching upon matters of pure policy, but rather actions in relation to the provision of homeless services which are "more of an administrative nature affecting individual rights".

While we have seen that the Supreme Court in *O'Donnell* framed the mandatory obligation on the housing authority to ameliorate homelessness under s.10 of the 1988 Act as a *statutory duty* where circumstances are sufficiently exceptional (thereby aligning it with *In re McMcD and Protect East Meath*), no test of exceptionality would be needed under s.5 of the 1991 Act—it would be a straightforward question of compliance with statutory duty.

Having outlined the applicable statutory framework, s.42 of the 2014 Act can be considered to ascertain what impact it may have on the operation of same.



C. Public Sector Duty in Ireland

(i) Scope of "Human Rights" under the 2014 Act

Section 42 of the 2014 Act falls within Part 3 thereof (ss. 29–42), entitled "Enforcement and Compliance". This Part has been referred to by Collins J as powers conferred on IHREC by the Oireachtas in "an ascending order of potency", or a "broad palette of options when it seeks to enforce and to ensure compliance with human rights" (*IHREC v Minister for Children, Equality, Disability, Integration and Youth and Ors* [2025] IECA 156, paras. 21 and 30), though Collins J omitted s.42 from his review of Part 3.

Section 2(1) of the 2014 Act defines "human rights", other than in Part 3, as meaning:

> "(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution,
>
> (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party, and
>
> (c) without prejudice to the generality of *paragraphs (a)* and *(b),* the rights, liberties and freedoms that may reasonably be inferred as being—
>
> > (i) inherent in persons as human beings, and
> >
> > (ii) necessary to enable each person to live with dignity and participate in the economic, social or cultural life in the State".

Under s.2(1), "dignity" means "the inviolable intrinsic value, equal to other persons, that the person has and includes the recognition by other persons of such value with respect of that person".

Very unusually, s.29 then defines "human rights" for the purposes of Part 3 much more narrowly than does s.2(1) for the remainder the Act. One might have thought that the concept of "human rights" was not one which lent itself towards having its standards lowered on a selective basis. Section 29 provides the following definition:

> "(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution,
>
> (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force, and
>
> (c) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Convention provisions within the meaning of the European Convention on Human Rights Act 2003".

The Oireachtas plainly sought to limit the concept of "human rights" which could be used under Part 3 in realm of "Enforcement and Compliance". It excluded all international conventions except the European Convention on Human Rights ("the ECHR") (by adding the criterion at (b) that they must have been given the force of law in the State). In circumstances where these are not capable of giving rise to a cause of action in the courts, their removal from this Public Sector Duty is notable.



The omission of "rights, liberties and freedoms that may reasonably be inferred as being (i) inherent in persons as human beings" (s.2(1)(c)(i)) perhaps changes nothing as these are contained at part (a) of s.29 dealing with constitutional rights. But the omission of the "rights, liberties and freedoms that may reasonably be inferred as being (ii) necessary to enable each person to live with dignity and participate in the economic, social or cultural life in the State" (s.2(1)(c)(ii)) attempts to narrow s.29 to traditionally justiciable civil and political rights, rather than cultural, social or economic rights (though certain of those rights, such as a child's right to shelter, would not be so excluded if founded outside the scope of the non-justiciable Article 45 of the Constitution). Lastly, as appears below, even though the ability to "live with dignity" is omitted from s.29, the concept of dignity unquestionably falls under the "rights, liberties and freedoms that may reasonably be inferred as being (i) inherent in persons as human beings" within the constitutional order. The suggestion that the concept of dignity could be legislated out of "human rights" for the purposes of the 2014 Act is not tenable.

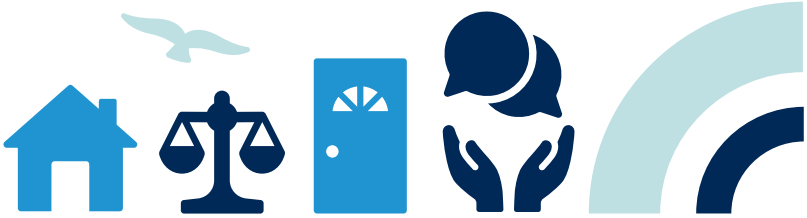
(ii) Human Rights and Equality Principles Relevant to Homelessness and Social Housing Assessments

It is necessary then to provide a broad (and necessarily incomprehensive) outline of the human rights and equality principles which may play a role under s.42(1) of the 2014 Act.

(a) The Constitution

The reference in s.29 of the 2014 Act to "(1) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution", plainly covers the full scope of constitutional rights and values. A variety of these are relevant to decisions concerning homelessness and social housing. This includes dignity, privacy, autonomy, bodily and mental integrity, protection of the person, and the particular rights of children.

Dignity is the most fundamental concept in rights-based law. *O'Donnell* J (as he then was) has referred to it as "a vital component in the protection of human rights" (*Ruffley v Board of Management of St Anne's School* [2017] IESC 33, [2017] 2 IR 596, para. 68). It appears in the Preamble to the Constitution which refers to the need to "promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured". As stated by Budd J in *McGee v Attorney General* [1974] IR 284, this "must surely inform those charged with its construction as to the mode of application of its Articles" (p. 322).



The status of dignity under the Constitution is presently undetermined. In *Doe and Ors v Commissioner of An Garda Síochána and Ors* [2025] IESC 44, [2025] 2 ILRM 113, *O'Donnell* CJ for a majority of the Court expressly left the interpretation of the concept over for another case (para. 43). In minority judgments, Hogan J treated the reference to dignity in the Preamble as "the equivalent of a specific enumerated constitutional right and as having the same constitutional value as such a specific constitutional right" (para. 14; emphasis in original), while Collins J considered that dignity is not a standalone justiciable right but rather "a fundamental value that should enliven and inform the interpretation and application of the personal rights guaranteed by the Constitution" (para. 17). He noted the existence of the question of whether "dignity is understood as a *value* or as a *right* (or both)" (para. 15; emphasis in original).

In any event, the constitutional concept of dignity is of critical importance in social housing and homelessness matters. The value of dignity "underlies all fundamental rights, especially that of equality before the law" (*Simpson v Governor of Mountjoy Prison* [2019] IESC 81, [2020] 3 IR 113, para. 104; Doe, per Hogan J, para. 14 and per Collins J, para. 11) and, arguably, amounts to a right in itself *(In re a Ward of Court (No 2)* [1996] 2 IR 79, p. 163; *Director of Public Prosecutions* v AM [2025] IESC 16, paras. 47–48). Whatever its precise nature, well-established principles flow.

In *Simpson*, MacMenamin J held that any diminution of rights "must not fall below the standards which we identify to protect human dignity" (para. 98). He referred to "the respect due to each individual by virtue of his or her status as a human being… By virtue of their personhood, each individual has an intrinsic worth which is to be respected and protected by others and by the State" (para. 103). The facts of that case (conditions of imprisonment) concerned the triad of the right of privacy, the value of dignity, and the respect due to any person (para. 107). Relatedly, in *Fleming v Ireland and Ors* [2013] IESC 19, [2013] 2 IR 417, the Supreme Court said it is "undoubted that the Constitution recognises and respects" the values of "autonomy, self-determination and dignity" in the rights protected by it (para. 110).

In *Norris v Attorney General* [1984] IR 36, Henchy J held that a constitutional "right of privacy inheres in each citizen by virtue of his human personality", and the "essence" of the "range of personal freedoms or immunities necessary to ensure [one's] dignity as an individual" is that "they inhere in the individual personality of the citizen in his capacity as a vital human component of the social, political and moral order posited by the Constitution" (p. 71). Of the various components of the right to privacy, Henchy J said "they would all appear to fall within a secluded area of activity or non-activity which may be claimed as necessary for the expression of an individual personality" (p. 72). As stated by Collins J, well-established jurisprudence recognises "the crucial importance to humans of having a zone of private life, encompassing intimate and private conduct and expression" (*AM*, para. 47).

The Court in *Simpson* also adverted to the right to protection of the person which encompasses physical, mental, and emotional wellbeing. This is an express constitutional right which was has in recent years been developed to cover much of the same ground as the derived rights to bodily and mental integrity (*Kelly on the Constitution* (5th edn, Bloomsbury Professional 2018), para. 7.3.45). In *Kinsella v Governor of Mountjoy Prison* [2011] IEHC 235, [2012] 1 IR 467, Hogan J observed (para. 9):



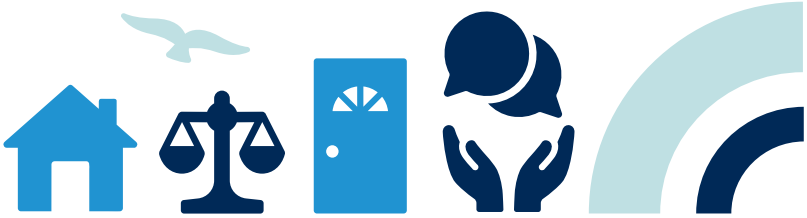
> "Article 40.3.2° protects not simply the integrity of the human body, but also the integrity of the human mind and personality… [O]ne does not need to be psychologist to envisage the mental anguish which would be entailed by a more or less permanent lock-up under such conditions for an eleven day period."

In the context of the 1988 Act in *O'Donnell,* MacMenamin J held that the constitutional values of "autonomy, bodily integrity and privacy" were engaged and that it was because of the exceptional overcrowding, destruction of sanitation facilities, and the Appellant's disability, that "her capacity to live to an acceptable human standard of dignity was gravely compromised, her integrity as a person was undermined, and her rights to autonomy, bodily integrity and privacy were substantially diminished" (para. 68).

Article 41.1.1° of the Constitution "recognises the Family as the natural primary and fundamental unit group of Society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law". Article 41.1.2° affords as its "essential protection" to the family recognition of its "*constitution and authority*" as areas where it is presumptively in control (*Gorry and Anor v Minister for Justice and Equality* [2020] IESC 55, [2024] 1 IR 666, para. 20). The "constitution" relates to the composition of the family while its "authority" concerns decisions within familial boundaries (*Gorry*, paras. 21 and 247). In *In re JJ* [2021] IESC 1, [2022] 3 IR 1, the Supreme Court remarked that "in Article 41, the Constitution treats the Family as a collective unit and having collective rights" (para. 101). McKechnie J adverted to the fact that an example of Article 41's protections "might be the authority of each member to defend the institution against external interference" (para. 339). While the "constitution" or "authority" of the family under Article 41 may not be directly engaged in housing or homelessness cases, the reference to the "collective unit… having collective rights", and the defence against "external interference" will inform the broader analysis, particularly where a family includes children.

Though the rights and interests of children are in play each time a child is involved, they are far more pronounced under s.5 of the 1991 Act than s.10 of the 1988 Act, with the former incorporating the paramountcy principle. Article 42A.1 of the Constitution "recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights". As held by Woulfe J in *AZ and Ors v Minister for Justice and Equality* [2024] IESC 35, Article 42A.1 "is of general application so that the rights of an Irish citizen child, including the welfare of the child, require consideration when the Minister is making deportation decisions which may seriously affect the child" (para. 101). He said the trial judge was correct "in finding that the Minister must consider the best interests of an Irish citizen child as a primary consideration in arriving at the decision whether to revoke the deportation order in this case" (para. 115). This was because (para. 116):

> "the same rights of the child, previously found in *Oguekwe* to arise under Article 40.3.1 of the Constitution, can now be seen as more specifically arising or located under Article 42A. These rights include the right to have his/her welfare considered, in the sense of what is in his/her best interests, in immigration decisions which impact upon custody and access."



He held (para. 122):

> "[T]hese general Article 42A.1 constitutional rights may well be engaged by an immigration decision involving the parent of a child who is not an Irish citizen. In this context the best interests of the child are a *primary* consideration for the Minister, but unlike the special category of Article 42A.4.1 cases, they are not *the paramount consideration*."

While Article 42A has otherwise received relatively little judicial analysis since its enactment, the content of the rights of the child for present purposes can be fleshed out more generally.

In the High Court in G v *An Bord Uchtála* [1980] IR 32, Finlay P said, in a judgment upheld on appeal, that the constitutional rights of the child include the rights "to its bodily integrity and *to an upbringing with due regard to its welfare*" (p. 45; emphasis added). In the Supreme Court, O'Higgins CJ held that a child "has the right to be fed and to live, *to be reared* and educated, to have the opportunity of working and *of realising his or her full personality and dignity as a human being*" (p. 56; emphasis added). The word "personality" has been substituted in certain of the subsequent jurisprudence for the word "potential" (see, TD, p. 295). For his part, Walsh J said (p. 69):

> "The child's natural rights spring primarily from the natural right of every individual to life, *to be reared* and educated, to liberty, to work, to rest and *recreation*, to the practice of religion, and to follow his or her conscience. The right to life necessarily implies the right to be born, the right to preserve and defend (and to have preserved and defended) that life, and *the right to maintain that life at a proper human standard in matters of food, clothing and habitation*."
>
> [Emphasis added]

The references to a child's constitutional rights to "an upbringing with due regard to his welfare", "to be reared", and to realise "his or her full personality and dignity" or "potential", are critical. All are broad in nature and reflect the constitutional obligation to respect and vindicate, and certainly not to inhibit, a child's *development*. A child's accommodation must be seen to occupy a fundamental place in their development as human persons. Alongside the concept of dignity, the need to protect these matters in order to ensure each child's development ought to be focused on in litigation and policy work.

It is extremely material that Walsh J in *G* derived from the constitutional right to life the right of a child to "maintain that life at a proper human standard in matters of… habitation". "Habitation" can only be seen to relate to a child's accommodation. In this respect, in *In re JJ, McKechnie* J took the view that children have (para. 357):

> "the right to be fed, cared for, reared and nurtured, *given shelter* and protection, to be educated, clothed, to have the integrity of his person secured, to have his needs, special or otherwise, looked after, and also to have whatever other rights various circumstances may call for safeguarded."

Taken together, these references to a child's constitutional right to habitation and to shelter are very significant in the present context (the presence or otherwise of a right to shelter was argued for, and not determined, in Tee (paras. 30–31)). They must be considered against the fact that the source or content of the relevant rights were not detailed by Walsh or McKechnie JJ, as well as the judgment in *CA and Anor v Minister for Justice and Equality and Ors* [2014] IEHC 532, [2021] 2 IR 250 where Mac Eochaidh J said "[n]obody has a primary right under Irish or international law to be provided with accommodation" (para. 132). Yet in *FN v Minister for Education* [1995] 1



IR 409, a case determined before s.5 of the 1991 Act was commenced, Geoghegan J held (pp. 415–416):

> "[W]here there is a child with very special needs which cannot be provided by the parents or guardian there is a constitutional obligation on the State under Article 42, s. 5 of the Constitution to cater for those needs in order to vindicate the constitutional rights of the child. It is not necessary for me to determine how absolute that duty is; conceivably there may be very exceptional circumstances where there is some quite exceptional need of the child which the State cannot be expected even under the Constitution to provide… But it would seem to me that on the balance of probabilities the provision of such necessary accommodation, arrangements and services by the State as might meet the necessary requirements of this applicant is not so impractical or so prohibitively expensive as would come within any notional limit on the State's constitutional obligations."

While the question requires concrete judicial input, the judgments of *G, In re JJ,* and *FN*, together with Article 42A.1, provide a sufficient basis from which to argue a child's constitutional right to habitation or shelter.

One relevant factor, particularly at the height of a national housing crisis (see, *Fagan v Dublin City Council* [2019] IESC 96, [2022] 3 IR 745, para. 45), is a risk in scenarios of familial homelessness of separation between parent and child, such as where a family hub has insufficient space for a number of children plus both parents. The Supreme Court in *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12 considered that the "right to nurture" is the most "important to man's survival" (p. 24). In *Chigaru and Ors v Minister for Justice and Equality and Ors* [2015] IECA 167 Hogan J stated that "the right of children to the care and company of their parents is a core constitutional value" (para. 29).

Should such a separation occur, various relevant *dicta* fall for consideration. In *North Western Health Board v HW* [2001] 3 IR 622, Keane CJ took judicial notice of the fact that the "love of parents for their children is the purest and most protective, at least in that period of their development when they are so dependant on, and in need of, that love and protection" (p. 687). *In Re JB* [2018] IESC 30, [2019] 1 IR 270, MacMenamin J similarly took notice of "the passage of time [being] an inherent and undeniably significant factor in decisions regarding the fleeting nature of childhood" (para.171).

Article 40.1 of the Constitution protects the right to equality before the law. However, as noted by the authors of *Kelly on the Constitution* (5th edn, Bloomsbury Professional 2018), the provision "is intended to apply to the process of enacting law, and does not merely become operative in the process of applying law already enacted" (para. 7.2.08).

(b) European Convention on Human Rights

Incorporated into the law of the state through the 2003 Act, the ECHR is expressly contained within the concept of "human rights" for the purposes of s.42 of the 2014 Act. Section 29 refers to the:

> "(c) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Convention provisions within the meaning of the European Convention on Human Rights Act 2003."



The primacy of the Constitution over the ECHR is well established (see, *McD v L* [2009] IESC 81, [2010] 2 IR 199, paras. 24, 151 and 322; *AC v HSE* [2019] IESC 73, [2020] 2 IR 88, para. 323; *Simpson*, per MacMenamin J, paras. 88–90; *Ennis v Allied Irish Banks plc* [2021] IESC 12, [2021] 3 IR 733, para. 5; *Clare County Council v McDonagh* [2022] IESC 2, [2022] 2 IR 122, para. 52). In McD v L, Fennelly J warned against overlooking "the distinction between the international obligations of the State pursuant to the Convention and its effect in domestic law" (para. 309). Thus, in cases where both constitutional rights and rights under the ECHR are engaged, constitutional rights ought to be dealt with first (see, *Gorry*, paras. 283–288). In *Ennis*, MacMenamin J stated that the ECHR "operates through the filter" of the 2003 Act (para. 5), and in *Clare County Council v McDonagh* [2022] IESC 2, [2022] 2 IR 122, Hogan J commented that the ECHR "can only be relied to the extent specified in the 2003 Act" (para. 54).

Section 2(1) of the 2003 Act states that in "interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions". Section 3(1) provides that "[s]ubject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions".

As regards the relevant ECHR rights, the threshold for a finding of degrading treatment under Article 3 is considered together with the concept of dignity. In *Bouyid v Belgium* (App No 23380/09), the European Court of Human Rights ("the ECtHR") held in relation to Article 3:

> "87. … [W]here treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3… [I]t may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others…
> …
> 89. … [R]espect for human dignity forms part of the very essence of the Convention… alongside human freedom…
>
> 90. Moreover, there is a particularly strong link between the concepts of 'degrading' treatment or punishment within the meaning of Article 3 of the Convention and respect for 'dignity'."

Circumstances of a case would need to reach a particularly high threshold to meet the Article 3 criteria.

In respect of Article 8 of the ECHR, there is no right under Article 8 to be provided with housing (*Chapman v United Kingdom* (App No 27238/95), para. 99), and as such the ECtHR has considered that "the scope of any positive obligation to house the homeless must be limited" (*O'Rourke v United Kingdom* (App No 39022/97); *Hudorovič and Ors v Slovenia* (App Nos 24816/14 and 25140/14), para. 114). However, "an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 of the Convention in exceptional cases" (*Yordanova and Ors v Bulgaria* (App No 25446/06), para. 130).



The Court has held that there is no right to live in a particular location (*Garib v The Netherlands* (App No 43494/09), para. 141). It is also legitimate for a housing authority to adopt "criteria according to which a benefit such as social housing can be allocated, when there is insufficient supply available to satisfy demand, so long as such criteria are not arbitrary or discriminatory" (*Bah v United Kingdom* (App No 56328/07), para. 49). In *Connors v United Kingdom* (App No 66746/01), the ECtHR held:

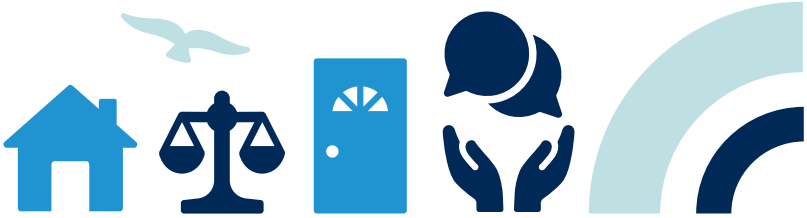
> "82. … The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation… It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual›s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community… Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant…
>
> 83. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8…"

Thus, the procedures adopted by housing authorities in their decision making must be fair and proportionate. In *Paulić v Croatia* (App No 3572/06), the Court held:

> "43. … [A]ny person at risk of an interference with his right to home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he or she has no right to occupy a flat… The Court, however, emphasises that such an issue does not arise automatically in each case concerning an eviction dispute."

The question of whether a property amounts to a "home" under Article 8 of the ECHR requires one to have sufficient and continuous links with the property (*Winterstein and Ors v France* (App No 27013/07, 17 October 2013, para. 141). In *Demopolous and Ors v Turkey* (App No 46113/99 et. al), the ECHR observed:

> "136. The notion of 'home' has been interpreted dynamically by this Court; however, care must be taken to respect the intentions of the authors of the Convention as well as common sense… [An applicant] must show that they enjoy concrete and persisting links with the property concerned… The nature of the ongoing or recent occupation



> of a particular property is usually the most significant element in the determination of the existence of a 'home'… However, where 'home' is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any, or any separate, issue under Article 8… Furthermore, while an applicant does not necessarily have to be the owner of the 'home' for the purposes of Article 8, it may nonetheless be relevant in such cases of claims to 'homes' from the past that he or she can make no claim to any legal rights of occupation or that such time has elapsed that there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights… Nor can the term "home" be interpreted as synonymous with the notion of "family roots", which is a vague and emotive concept." (see also, *Nicola v Turkey* (App No 18404/91, 21 February 2011), para. 21)

This was affirmed in *Asproftas v Turkey* (App No 16079/90, 4 October 2010) at para. 44, and *Petrakidou v Turkey* (App No 16081/90, 4 October 2010) at para. 43. There is limited guidance in the ECHR case law as to what amounts to "some considerable time" sufficient to attenuate links to a property. In all three cases just referred to, the Applicants were very young at the time they ceased to live in the then family home and had lived elsewhere almost their entire lives.

Positive obligations under the ECHR, referred to earlier, were considered domestically in *O'Donnell*. Having established that the disabled child was entitled to relief under s.10 as interpreted in accordance with the Constitution, MacMenamin J went on to consider the position of her parents under the ECHR having found that they did not qualify for relief on the same basis as their child. He cited with approval the following passage from *Doherty* (para. 36):

> "It may be that there is a positive duty cast upon public authorities to intervene under article 8, consistent with the proper disposal of available resources, where special circumstances cause a direct interference of a serious kind in family life and where the subject of that interference has no available means to alleviate the absence of that right."

In that connection, MacMenamin J stated that no judgment of the ECtHR "confers a right to be provided with a home of one's choice, nor are there any positive obligations to provide alternative accommodation of an applicant's choosing" (para. 83). The is supported by *Donegan v Dublin City Council and Ors* [2012] IESC 18, [2012] 3 IR 600 (see, para. 147).

Judgments such as *Moldovan v Romani*a (No 2) (2007) 44 EHRR 16 demonstrate that the ECtHR is willing to find breaches of Articles 3 and 8 in housing cases. However, the facts of that case were particularly stark. Having found at para. 105 that the Applicants' living conditions fell within the scope of Article 8, the Court looked to whether the national authorities took adequate steps to put a stop to the breaches of their rights. It considered the lack of prosecution after the Applicants had been burned out of their homes, the absence of an award of damages, the failure to rebuild some of the houses and the sub-standard rebuilding of others. It found breaches of Articles 3 and 8 as follows (paras. 108–111):



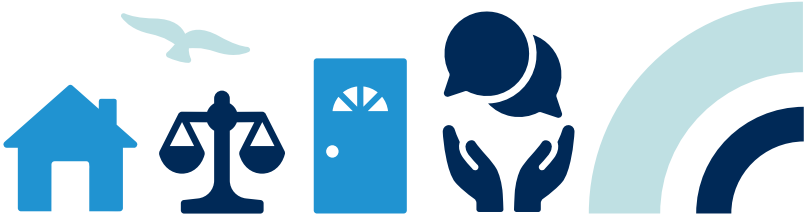
"The Court concludes that the above hindrance and the repeated failure of the authorities to put a stop to breaches of the applicants' rights, amount to a serious violation of Art.8 of the Convention of a continuing nature.

> It furthermore considers that the applicants' living conditions in the last 10 years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.
>
> In addition, the remarks concerning the applicants' honesty and way of life made by some authorities dealing with the applicants' grievances appear to be, in the absence of any substantiation on behalf of those authorities, purely discriminatory. In this connection the Court reiterates that discrimination based on race can of itself amount to degrading treatment within the meaning of Art.3 of the Convention. Such remarks should therefore be taken into account as an aggravating factor in the examination of the applicants' complaint under Art.3 of the Convention."

This finding of the ECtHR is helpful in that it recognises a positive obligation arising in respect of Article 8 living conditions and found a violation based on state inaction. However, that the original burning out of the Roma families involved State actors was a significant factor. An Article 3 breach in a living conditions case is difficult to establish in anything other than extreme circumstances.

While there is no ECHR right to be housed, where a state decides to provide social benefits, "it must do so in a way that is compliant with Article 14" (*LF v United Kingdom* (App No 19839/21). In *Bah*, the ECtHR held that Article 14 "complements the other substantive provisions of the Convention and the Protocols, but has no independent existence since it applies solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions" (para. 35). The Court has held that "only differences in treatment based on an identifiable characteristic, or 'status', are capable of amounting to discrimination within the meaning of Article 14", and thus (para. 36):

> "difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment."



(c) Charter of Fundamental Rights of the European Union

Where an international protection applicant has been granted refugee status or subsidiary protection, they are afforded permission to remain in the state on that basis, a permission based on European Union law. When EU law is being implemented, the rights contained in the Charter of Fundamental Rights of the European Union ("the Charter") are engaged (Article 51(1) thereof). The Charter forms a part of "human rights" under s.29 of the 2014 Act which includes:

> "(b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force."

Article 1 of the Charter is entitled "Human dignity", and states that "[h]uman dignity is inviolable. It must be respected and protected".

Article 1 is "an absolute and non-derogable right, forming the foundation of other fundamental rights, and cannot be limited" (*SA v Minister for Children* (Case C-97/24), Advocate General Medina, para. 62). Although in the distinct context of the Reception Conditions Directive (Directive 2013/33/EU), the Court of Justice interpreted Article 1 as requiring (para. 46):

> "the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity".

As held by Collins J in *IHREC v Minister for Children, Equality, Disability, Integration and Youth and Ors* [2025] IECA 156, Article 1 is "justiciable before the Courts of Ireland" (para. 54), with the CJEU having "imported into the test of an actionable breach of Art. 1 of the Charter elements of the test that the ECtHR applies to establish an infringement of Art. 3 ECHR", being "a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity" (paras. 43–44). However, the Court of Appeal overturned the High Court judgment, concluding that IHREC had "not adduced evidence sufficient to show that the circumstances of extreme material poverty, attributable to a failure to meet the accommodation needs of members of the class of persons… had the consequence of putting those persons in a state of degradation incompatible with human dignity" (para. 74). The appeal of that decision to the Supreme Court remains pending ([2025] IESCDET 142). By contrast, in *SA v Minister for Children, Equality, Disability, Integration and Youth and Ors* [2026] IEHC 90, Ferriter J noted that the Respondents had conceded, *inter alia*, a breach of Article 1 of the Charter (para. 17).

While the evidential threshold to demonstrate a breach of Article 1 of the Charter is high, it is in principle possible that failure by a housing authority to remedy the homelessness of a successful international protection applicant could reach that standard, potentially leading to remedies available to such persons by virtue of EU law which do not exist for Irish citizens.



(d) International Conventions

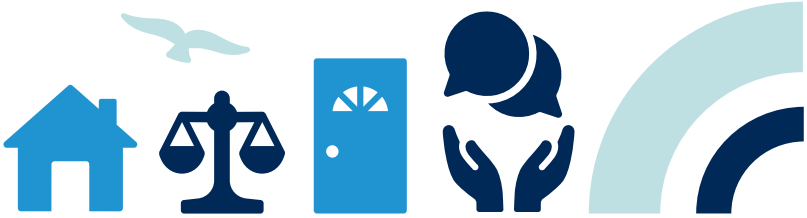
Section 2(1) of the 2014 Act defines "human rights" as including "the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party". This incorporates all international conventions to which the State is a party but that have not been incorporated domestically by way of legislation. Section 29 of the 2014 Act, however, has no such provision. As such, international conventions beyond the ECHR are outside the scope of the s.42 duty.

Furthermore, such conventions would be of limited effect in domestic litigation by virtue of Article 29.6 of the Constitution which provides that "[n]o international agreement shall be part of the domestic law of the state save as may be determined by the Oireachtas" (see, *In re Ó Laighléis* [1960] IR 93, p. 125). The only manner in which they could be relied upon would be in potentially informing the interpretation of a statute or giving rise to an argument of legitimate expectation where this does not conflict with national law (*O'Domhnaill v Merrick* [1984] IR 151, pp. 159 and 166; *Kavanagh v Governor of Mountjoy Prison* [2002] 3 IR 97, p. 129; and *OI v Refugee Appeals Tribunal and Ors* [2015] IEHC 408, paras. 37 and 46). Principles of customary international law also "may be incorporated into domestic law providing that they are not contrary to" it (*Horgan v An Taoiseach and Ors* [2003] 2 IR 468).

However, s.42(1) is not limited to "human rights", so defined by Part 3 of that Act, as it also imposes a duty to have regard to the need to "eliminate discrimination" (s.42(1)(a)). In doing so, it is reasonable to suggest that otherwise non-binding international conventions hold relevance. Thus, the United Nations Convention on the Rights of the Child states that the best interests of a child shall be a primary consideration (Article 3) and provides, *inter alia*, for rights to equality (Article 2), development (Article 6(2)), private and family life (Article 16), that a "child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State" (Article 20(1)), "the enjoyment of the highest attainable standard of health" (Article 24) and, for a disabled child that they "should enjoy a full and decent life, in conditions which ensure dignity". Of particular importance is the right under Article 27(1) "of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development", and the provision of Article 27(3) that:

> "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

Similarly, the United Nations Convention on the Elimination of All Forms of Discrimination against Women requires Member States to pursue "a policy of eliminating discrimination against women" (Article 2), to take "all appropriate measures… to ensure the full development and advancement of women" (Article 3), and to "take all appropriate measures to eliminate discrimination against women in rural areas… and, in particular, shall ensure to such women the right (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation electricity and water supply, transport and communications" (Article 14(2)).



(e) Equal Status Acts

Finally, in relation to the aforementioned requirement under s.42(1)(a) to "eliminate discrimination", regard can also be had to the obligations on housing authorities under the Equality Acts 2000–2018 ("the ESA") to avoid discrimination on grounds including gender, disability, race, and membership of the Traveller community (s.3(2)). For instance, in *Cleary v Tipperary County Council* (ADJ-00032943), the Workplace Relations Commission upheld a complaint that the housing authority unlawfully discriminated against the complainant on the ground of disability in relation to its failure to take his disability into account when assessing him in relation to his placement on the list for social housing, and in relation to the conduct of its assessment when moving him from the list for two-bedroom housing to the list for one-bedroom housing. It was held that there had been a:

> "failure to explain the process required and engage with the complainant in a meaningful and supportive manner, in circumstances where he had made repeated efforts to demonstrate that he had a disability demonstrates, in my view, '*a failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment*'. Indeed, the provider (the respondent) had made no provision to clearly set out the requirements of an individual seeking to have their disability considered when assessing their entitlement/priority for housing. It is clear to me that the complainant repeatedly struggled to understand the process and to ascertain what was required of him to have his disability factored into the local authority assessment process and as a result he found it unduly difficult to avail himself of the service of the local authority in relation to housing. In all these circumstances I find that the complainant was discriminated against.
>
> [Emphasis in original]

(iii) Section 42

Section 42 of the 2014 Act states:

> **"Public bodies**
> 42. (1) A public body shall, in the performance of its functions, have regard to the need to—
>
> > (a) eliminate discrimination,
> > (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
> > (c) protect the human rights of its members, staff and the persons to whom it provides services.
>
> (2) For the purposes of giving effect to subsection (1), a public body shall, having regard to the functions and purpose of the body and to its size and the resources available to it—
>
> > (a) set out in a manner that is accessible to the public in its strategic plan (howsoever described) an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues, and
> > (b) report in a manner that is accessible to the public on developments and achievements in that regard in its annual report (howsoever described).
>
> (3) In assisting public bodies to perform their functions in a manner consistent with subsection (1), the Commission may give guidance to and encourage public bodies in developing policies of, and exercising,

good practice and operational standards in relation to, human rights and equality.
(4) Without prejudice to the generality of subsection (3), the Commission may—

(a) issue guidelines, or
(b) prepare codes of practice in accordance with section 31,

in respect of the development by public bodies of performance measures, operational standards and written preventative strategies for the purpose of reducing discrimination and promoting human rights and equality in the public sector workplace and in the provision of services to the public.

(5) Where the Commission considers that there is evidence of a failure by a public body to perform its functions in a manner consistent with subsection (1) and that it is appropriate in all the circumstances to do so, the Commission may invite the public body to—

(a) carry out a review in relation to the performance by that body of its functions having regard to subsection (1), or
(b) prepare and implement an action plan in relation to the performance by that body of its functions having regard to subsection (1), or both.

(6) A review or an action plan under subsection (5) may relate to—

(a) equality of opportunity or human rights generally, or
(b) a particular aspect of human rights or discrimination, in the public body concerned.

(7) The Commission may, and, if requested by the Minister, shall, review the operation of subsection (1).
(8) For the purposes of assisting it in carrying out a review under subsection (7), the Commission shall consult such persons or bodies as it considers appropriate.

(9) Where the Commission carries out a review under subsection (7) it—

(a) may, or
(b) where the Minister has requested the review, shall,

make a report of the review to the Minister and any such report shall include such recommendations as the Commission thinks appropriate.

(10) The Commission shall cause a copy of the report to be laid before each House of the Oireachtas.

(11) Nothing in this section shall of itself operate to confer a cause of action on any person against a public body in respect of the performance by it of its functions under subsection (1)."

Section 42 can be divided as follows: (i) the obligation on public bodies to have regard to certain matters, (ii) assessment and reporting requirements of public bodies, (iii) the ability of IHREC to assist public bodies in performing their functions consistently with s.42(1), (iv) IHREC's power to invite public bodies to carry out a review or prepare and implement an action plan, (v) IHREC's power to review the operation of s.42(1), and (vi) the preclusion of the section of itself conferring a cause of action on any person against a public body in respect of the performance of its functions under s.42(1).



(a) Section 42(1)

The first relevant aspect of s.42(1) is that it is a mandatory, positive obligation. The word "shall" cannot be ignored or set at nought—the Oireachtas is presumed not to legislate in vain (*Higgins v Irish Aviation Authority* [2022] IESC 13, [2023] 1 IR 65, paras. 297–299; *County Council of the County of Cork v Whillock and Anor* [1993] 1 IR 231, p. 239). "Words would lose all meaning" if it were otherwise (*MR (Albania) v Minister for Justice and Equality and Ors* [2020] IEHC 402, para. 35).

Second, the precise nature of this obligation is that a public body "shall, in the performance of its functions, have regard to the need to…" (emphasis added). In *Coolglass Wind Farm Limited v An Bord Pleanála* [2025] IEHC 1, Humphreys J offered a taxonomy of statutory duties, from "have-regard-to obligations" at one end to "unconditional comply-with obligations" at the other. With the words "have regard to", s.42(1) of the 2014 Act is a simple "have-regard-to obligation". By contrast, the equivalent provision in the jurisdiction of England and Wales uses the words "have due regard to" and therefore constitutes an "intensified have-regard to obligation". Humphreys J said:

> "63. The distinction between have-regard-to obligations and comply-with obligations is foundational to administrative law and to planning law in particular.
>
> 64. The basic fault line is between regard and compliance, but there are shades of emphasis within that. I can attempt to sketch the spectrum as follows:

(i) Simple have-regard obligations – the decision-maker has to take the matter into account but is free to depart from it. The weight to be attached to the matter is in principle for the decision-maker. This can also be phrased as requirement to consider something. An example from the 2000 Act, s. 18(3)(a):

> '(3) (a) When considering an application for permission under section 34, a planning authority, or the Board on appeal, shall have regard to…'

(ii) Intensified have-regard obligations – the decision-maker is directed to have due or adequate or reasonable or appropriate regard to something. The weight to be given to the matter is now no longer totally discretionary. That implies something more than merely considering it and implies that the matter be given a degree of weight – not binding weight of course but material weight. It would normally mean an intensified duty of giving reasons – so that it would be clear why the decision-maker came to a conclusion different to the one that would be suggested by having regard to that factor in the event of such a different conclusion. An example from the Water Environment (Abstractions and Associated Impoundments) Act 2022, s. 86(2):



> '(2) Without prejudice to the generality of subsection (1), or section 20 (2)(i), the Agency, in considering an application by Waterways Ireland under Part 5 for a licence stated in the application to be necessary for the management, operation or maintenance of navigable water or a canal or navigation thereon, shall have due regard to…'"

Third, in respect of its justiciability, in *Sherlock Mongans* a litigant in person sought to require the Respondent to comply with their obligations under the section (para. 2). Dismissing the issue in summary fashion, Bolger J said that "[p]ursuant to section 42(11) the applicants have no cause of action in relation to a public body's performance of their functions under section 42(1). Therefore, the plea does not give rise to a justiciable claim" (para. 29). In similar terms, in the annotated version of the 2014 Act, Kerr has noted that the "exercise of the duty imposed by this section however, will not be subjected to judicial review" due to s.42(11).

While both formulations adopt definitive language, they are not quite right. Section 42(11) provides that nothing in the section "shall *of itself* operate to confer a cause of action on any person against a public body" (emphasis added). The implication is that, potentially, the section *may in combination* with some other statutory duty, constitutional right, *etc.* give rise to a cause of action. This has not been explored to date, and admittedly it may pose certain challenges. Irrespective of what conclusion may be reached on that point, it seems clear enough that judicial review proceedings grounded on another basis could plead a breach of s.42 of the 2014 in conjunction with the main pleading. There is also the possibility of obtaining declaratory relief concerning non-compliance with s.42.

In Tipperary County Council v Reilly and Ors [2023] IEHC 600, Phelan J considered an appeal against Circuit Court Orders giving the local authority liberty to pursue enforcement of Orders made by that Court ten years previously regarding the Defendants' unlawful occupation of land. Having reviewed developments in the case law, the Court stating that "it can therefore be seen that the Legislature in its laws seeks to achieve equal treatment for members of the Traveller Community through proper provision for accommodation which respects the traveller way of life" (para. 42). She said that the ECHR Act 2003 ("the 2003 Act") was also "a recognised part of the statutory framework guiding the exercise of the Authority's public law powers", in respect of which the ECHR imposes positive obligations on states "by virtue of Article 8 to facilitate the Gypsy way of life" (para. 43). Phelan J then commented:

> "44. Similarly, s. 42 of the Irish Human Rights and Equality Commission Act, 2014 places a positive duty (the 'public sector duty') on housing authorities as public bodies to perform their functions having regard to the need to eliminate discrimination, promote equality of opportunity and treatment of persons to whom it provides services and to protect the human rights of those persons. The public sector duty is a duty of process and not outcome which requires demonstration of due consideration in the affected decision-making process. Obviously, the public sector duty has no relevance to the original decision to seek injunctive relief in 2012 but it is relevant to the decision made in 2021 to seek to execute on foot of the 2013 Order notwithstanding the passage of time and changed circumstances."



Referring to further case law as well as the proportionality test inserted into the process for a housing authority seeking a Possession Order in respect of social housing, Phelan J said:

> "47. … As I am now being asked to make a fresh order, I am satisfied from the decision of the Supreme Court in *McDonagh* that I am bound, when exercising my discretion under the Rules of Court to do so, so far as possible, in a manner which respects and vindicates the constitutional rights of the parties before the Court with due regard to the public interest and safety issues identified in the evidence *and the Authority's duties as a public body charged with a range of statutory responsibilities* including accommodation provision for the Defendants. There is a constitutional imperative on me in exercising powers under the Rules of Court to do so, to the extent possible, in a manner which ensures proper respect for affected constitutional rights by exercising my discretionary powers under the Rules in a manner designed to ensure only proportionate interference with those rights.
>
> 48. It seems to me therefore that the test I must apply in a case which involves an application for leave to execute an eviction order secured some ten years ago by a housing authority with ongoing duties to provide accommodation to the persons against whom the order is sought to be enforced is, firstly, whether there is an explanation for the delay in executing the order and secondly, whether any prejudice arises which warrants the refusal to exercise my discretion under the rules. *Prejudice in this context includes a real risk of disproportionate interference with rights having regard to* rights protected under the Constitution (most notably Articles 40.3 and/or 40.5), *the statutory duties on the Authority including their duties under* the Housing (Traveller Accommodation) Act, 1998 (as amended), s. 3 of the European Convention on Human Rights Act, 2003 and *the 'public sector duty' under s. 42 of the Irish Human Rights and Equality Commission Act, 2014.*"
>
> [Emphasis added]

Although s.42 was not a definitive or perhaps even a substantial element of the Court's analysis in *Reilly*, it patently fell to be considered in determining whether there had been a "disproportionate interference with rights having regard to rights protected under the Constitution… the statutory duties on the Authority including… the 'public sector duty'".

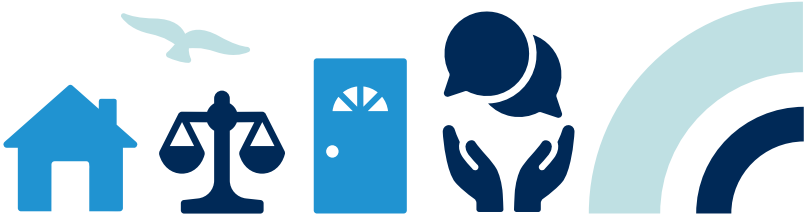
CMA v K [2023] IEHC 96 concerned an application for a mandatory interlocutory injunction restraining the Defendant from terminating the Plaintiff's employment or removing her from her position pending further Order of the Court (para. 1), the relevant test being whether she established a strong case that she would succeed at the trial of the action (paras. 21–22). In this context the Plaintiff sought a Declaration that the Defendant had failed to have regard to its s.42 duty (para. 7). Roberts J was referred to *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWHC 897, stating she did (para. 30):

> "not find that this case supports the proposition that the plaintiff has established a strong case for injunctive relief. In his decision Mr Justice Blake noted that even if he had reached the conclusion that due regard had not been made to the public sector equality duty as it applied to people with disabilities, he would have confined any relief to a declaration rather than quashing the decisions taken."

Accordingly, *CMA* is relevant insofar as it noted (and did not reject in this jurisdiction) that the courts of England and Wales may make a Declaration of non-compliance with the public sector duty.

(b) Section 42(2)

In relation to a local authority's duty to set out in its strategic plan in an accessible manner the human rights and equality principles relevant to its functions, and the "policies, plans and actions in place or proposed to be put in place to address those issues", and to report on "developments and achievements in that regard" annually, s.42(2) of the 2014 Act is an "unconditional comply-with obligation" in accordance with the *Coolglass* taxonomy (para. 64(vii)). Humphreys J described these as "straight obligations to comply with something with no exceptions envisaged". As noted earlier, the word "shall" cannot be ignored or set at nought by local authority inaction.



D. Public Sector Equality Duty in England and Wales

In light of the fact that there has been only sparse engagement with s.42 by the Superior Courts to date, it is necessary to consider how the equivalent provision in England and Wales has been applied. Reliance on such jurisprudence must be approached with some care in light of the distinction between the standard of the duties ("regard" versus "due regard"), and the presence of s.42(11) which limits the extent to which s.42(1) may give rise of a cause of action in Ireland.

(i) Generally

In England and Wales, s.149 of the Equality Act 2010 ("the 2010 Act"), entitled "Public sector equality duty" (often referred to as the "PSED"), replaced s.49A of the Disability Discrimination Act 1995 ("the 1995 Act"), and provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> …
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
>
> (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low."

As noted above, the duty under s.149 of the 2010 Act is more onerous than s.42 of the 2014 Act, requiring that "due regard", rather than merely "regard", be had by public bodies to the relevant factors. Accordingly, there can be no precise 1:1 crossover between the jurisprudence under the 2010 and 2014 Acts.

A primary difference is that s.42(1)(c) requires public bodies to have regard to the need to "protect the human rights of… persons to whom it provides services", which makes the section far broader than s.149 (which is indeed entitled a public sector *equality* duty, rather than *equality and human rights* duty).



The leading authority is R (*Bracking*) v *Secretary of State for Work and Pensions* [2014] EWCA Civ 1345, [2014] Eq LR 60 (cited with approval by the United Kingdom Supreme Court in *Hotak v Southwark Borough Council* [2015] UKSC 30, [2016] AC 811, para. 73), where McCombe LJ summarised the principles applicable to s.149(1) of the 2010 Act (para. 26):

> "(1) …[E]quality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.
>
> (2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision-maker in seeking to meet the statutory requirements…
>
> (3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice…
>
> (4) A minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a 'rearguard action', following a concluded decision…
>
> (5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in *R (Brown) v Secretary of State for Work and Pensions* [2009] PTSR 1506, as follows:
>
> (i) the public authority decision-maker must be aware of the duty to have 'due regard' to the relevant matters;
>
> (ii) the duty must be fulfilled before and at the time when a particular policy is being considered;
>
> (iii) the duty must be 'exercised in substance, with rigour, and with an open mind'. It is not a question of 'ticking boxes'; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument.
>
> (iv) The duty is non-delegable; and
>
> (v) is a continuing one.
>
> (vi) It is good practice for a decision-maker to keep records demonstrating consideration of the duty.
>
> (6) '[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria.'…
>
> (7) Officials reporting to or advising ministers/other public authority decision-makers, on matters material to the discharge of the duty, must not merely tell the minister/decision-maker what he/she wants to hear but they have to be 'rigorous in both enquiring and reporting to them'…
>
> (8) Finally, and with respect, it is I think, helpful to recall passages from the judgment of my Lord, Elias LJ, in *R (Hurley) v Secretary of State for Business, Innovation and Skills* [2012] HRLR 13 (Divisional Court) as follows:



(i) At paras 77–78

> '77. Contrary to a submission advanced by [counsel for the claimants], I do not accept that this means that it is for the court to determine whether appropriate weight has been given to the duty. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then… it is for the decision-maker to decide how much weight should be given to the various factors informing the decision.
>
> 78. The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision-maker. In short, the decision-maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors. If [counsel for the claimants'] submissions on this point were correct, it would allow unelected judges to review on substantive merits grounds almost all aspects of public decision-making.'

(ii) At paras 89–90

> '89. It is also alleged that the PSED in this case involves a duty of inquiry. The submission is that the combination of the principles in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean than some further consultation with appropriate groups is required. [Counsel for the claimants] referred to the following passage from the judgment of Aikens LJ in *Brown* (para 85):
>
> > "the public authority concerned will, in our view, have to have due regard to the need to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function under consideration."
>
> 90. I respectfully agree.'"



That summary of the principles is a guide only. The Court of Appeal of England and Wales in *Powell v Dacorum Borough Council* [2019] EWCA Civ 23, [2019] HLR 21 made clear that the application of the public sector equality duty "will differ from case to case, depending upon the function being exercised and the facts", as a ministerial decision on a matter of national policy "will engage very different considerations from that of a local authority official considering whether or not to take any particular step" in social housing proceedings (para. 44; see also, *Haque v Hackney London Borough Council* [2017] EWCA Civ 4, [2017] PTSR 769, para. 41).

As in Ireland (*Reilly*, para. 44), it is "not a duty to achieve a result, but a duty to have due regard to achieve the goals identified in section 149" (*McMahon v Watford Borough Council* [2020] EWCA Civ 497, [2020] PTSR 1217, para. 48); that is, a question of substance, not form (*R (McDonald) v Kensington and Chelsea Royal London Borough Council* [2011] UKSC 33, [2011] PTSR 1266, para. 24). It is, also, "not a free-standing duty. It applies to the way in which a public authority exercises its functions. Those functions derive from other laws" (*McMahon*, para. 48).

As held in *R (RR) v Enfield London Borough Council* [2025] EWCA Civ 1390, [2026] HLR 8, considering the local authority's functions of adopting its housing allocation scheme and operating same (para. 74):

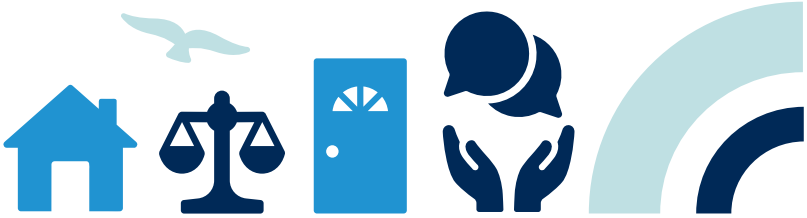
> "The starting point… is to identify the particular functions that the public body is exercising. The next step is to assess whether, on the evidence, the authority did have due regard to the specified equality considerations when exercising those functions."

(ii) Due Regard

A mere discussion/recitation of the public sector equality duty without application to the facts is insufficient to discharge the "due regard" duty (*Kannan v Newham London Borough Council* [2019] EWCA Civ 57, [2019] HLR 22, para. 24).

In Pieretti v Enfield London Borough Council [2010] EWCA Civ 1104, [2011] PTSR 565, Wilson LJ (in the context of s.49A of the 1995 Act) said that the extent of the "regard" which must be had to the duty must be what is "appropriate in all the circumstances". The Supreme Court approved that approach in respect of s.149 in Hotak, noting it is not "possible to be more precise or prescriptive, given that the weight and extent of the duty are highly fact-sensitive and dependent on individual judgment" (para. 74). That said, in *R (Hurley) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), [2012] HRLR 13, Elias LJ said (para. 78):

> "The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors."



Subsequently, the Court in *R (Hollow) and Ors v Surrey* [2019] EWHC 618 (Admin), [2019] PTSR 1871 said that what constitutes "due regard" under s.149 "will depend on the circumstances, particularly, the stage that the decision-making process has reached, and that the nature of the duty to have 'due regard' is shaped by the function being exercised, and not the other way round" (para. 80; see also, *R (Sheakh) v Lambeth London Borough Council* [2022] EWCA Civ 457, [2022] PTSR 1315, para. 56). In *R (End Violence against Women Coalition) v Director of Public Prosecutions* [2021] EWCA Civ 350, [2021] 1 WLR 5829, the Court of Appeal of England and Wales said s.149 "does not require an elaborate structure of secondary decision-making every time a public authority makes any decision which might engage the listed equality needs, however remotely. The court is not concerned with formulaic box-ticking, but with the question whether, in substance, the public authority has complied with section 149" (para. 86).

Lastly, s.149 imposes a continuing obligation. In *Metropolitan Housing Trust Ltd v TM* [2021] EWCA Civ 1890, [2022] 1 WLR 2161 a housing association had carried out a PSED assessment before deciding to seek possession of the property but had failed to revisit this after receiving a report casting doubt on the tenant's capacity. The possession order was quashed for non-compliance with the duty.

(iii) Reasons

The duty for an administrative decision maker to give reasons for a decision in Ireland is well-established (see, for example, *Meadows*, paras. 93–95; *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297, para. 45; *Connelly v An Bord Pleanála* [2021] IESC 31, [2021] 2 IR 752, para. 46). Guidance may be obtained from the English and Welsh case law as to whether the Public Sector Duty attracts a discrete obligation to give reasons.

The need to refer to a particular section may be classed as a subcategory of the duty to give reasons. It has been considered in other contexts in Ireland, being generally unnecessary, but, if not referred to, this "increases the burden on the Court to be vigilant to ensure that the [decision-maker] has identified and applied the correct test because it requires careful consideration of the substance of the decision to ascertain what test was applied in substance" (*ES v International Protection Appeals Tribunal and Anor* [2022] IEHC 613, paras. 42 and 48).

In *End Violence against Women Coalition*, the Court of Appeal held that a "public authority can comply with section 149 even if the decision-maker does not refer to section 149" (para. 86). In *McDonald*, the UK Supreme Court said "it may be entirely superfluous to make express reference to section 49A [of the 1995 Act] and absurd to infer from an omission to do so a failure on the authority's part to have regard to their general duty under the section", it being a "question is one of substance, not of form" (para. 24).

In *Haque*, the Court of Appeal said there is no "general principle… requiring the reviewing officer to spell out in express terms" their analysis of s.149, as "a conscientious reviewing officer… would be likely to comply with the PSED even if unaware of its existence as a separate duty, or of the terms of section 149" (para. 47). It noted that s.149 "does not require the decision-maker to give any reasons for a decision to which the PSED applies", though observed that the underlying housing legislation did require the provision of reasons

enabling an Applicant "to judge whether the authority have properly fulfilled their statutory obligations including, where it is engaged, the PSED" (para. 48).

In Hotak the UK Supreme Court considered the duty of housing authorities toward a disabled homeless person claiming to be vulnerable and therefore having "a priority need" for the provision of housing accommodation under Part VII of the Housing Act 1996, and an internal review under s.202 of that Act. It said in respect of the need for the duty to "be exercised in substance, with rigour, and with an open mind", that there is:

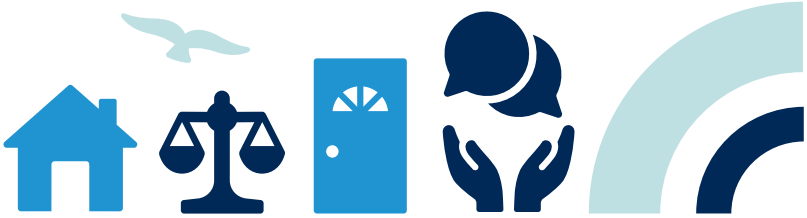
> "78. … a risk that such words can lead to no more than formulaic and high-minded mantras in judgments and in other documents such as section 202 reviews. It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a section 202 review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result 'vulnerable'.
>
> 79. … I quite accept that, in many cases, a conscientious reviewing officer who was investigating and reporting on a potentially vulnerable applicant, and who was unaware of the fact that the equality duty was engaged, could, despite his ignorance, very often comply with that duty. However, there will undoubtedly be cases where a review, which was otherwise lawful, will be held unlawful because it does not comply with the equality duty…"

By contrast, in *Luton Community Housing Ltd v Durdana* [2020] EWCA Civ 445, [2020] HLR 27, Patten LJ said that although it was theoretically possible for the duty to be complied with in ignorance of what it consists of, "such cases are likely to be rare" (para. 26).

(iv) Necessity of Inquiry

Compliance with the duty "requires the decision-maker to be informed about what protected groups should be considered. That will involve a duty of inquiry, so that the decision-maker is properly informed before making a decision" *(R (Ward) v Hillingdon London Borough Council* [2019] EWCA Civ 692, [2019] HLR 30, para. 71). In that case, the Court of Appeal held:

> "74. I would not hold that Hillingdon were in breach of the PSED in carrying out the initial equality impact assessment in 2013. At that stage it had not been shown that there was any reason for Hillingdon specifically to have considered non-UK nationals or refugees. But by the time of the 2016 assessment Mr Gullu had made his challenge in court. In the light of that challenge, I consider that Hillingdon ought at least to have *considered* the position of non-UK nationals. But they did not. I would therefore hold that Mr Gullu has established a breach of the PSED."
>
> [Emphasis in original]



Lived experiences from MLRC's case work

MLRC has provided assistance to people who been through the International Protection process and granted "status", i.e. allowed to remain in Ireland but who are struggling to access emergency accommodation supports. When a person has "status" they are entitled to access social housing supports in the same manner as an Irish citizen. However, we have seen numerous cases where a person has their status and is on a local authority's social housing list but is being refused or denied access to emergency accommodation.

Often people are told that there is no accommodation available or that they should not have left their IPAS accommodation. This raises serious concerns that such people are having their applications for emergency homeless accommodation treated or processed in different, and possibly discriminatory ways, from other applicants.

In the context of disability, it has been held that the duty of a housing authority to inquiry about a person's circumstances is engaged where there is some feature of the information available which raises a real possibility that the person concerned has a disability that is relevant. In *Pieretti* the Court of Appeal held that the housing authority failed to undertake sufficient inquiries into the Applicants' mental health before determining that they had intentionally rendered themselves homeless. It was held that where the housing authority official "is not *invited* to consider an alleged disability, it would be wrong, in the light of section 49A(1), to say that he should consider disability only if it is *obvious*. On the contrary. He needs to have due regard to the need for him to take steps to take account of it" (*Pieretti*, para. 32; emphasis in original). That does not mean, though, that in every case decision-makers "must take (active) steps to inquire into whether the person to be subject to the decision is disabled" (para. 33). Rather, the question is whether the decision maker failed to "make further inquiry in relation to some such feature of the evidence presented to her as raised a real possibility that the applicant was disabled in a sense relevant to" the statutory test for deliberate homelessness (see also, *London and Quadrant Housing Trust v Patrick* [2019] EWHC 1263 (QB), [2020] HLR 3, para. 43).



(v) Effect of Non-Compliance

A breach of the public sector equality duty will not necessarily lead to a quashing of the relevant decision. In *Forward v Aldwyck Housing Group Ltd* [2019] EWCA Civ 1334, [2020] 1 WLR 584, it was held in the context of a failure to comply with the PSED in possession proceedings that if it is highly likely that the decision would not have been substantially different if the breach of duty had not occurred, there will be no need to quash the decision (para. 36). As held in *Patrick*, "any breach of the PSED would not have led to the making of a materially different decision" (para. 59).

Following *Bracking* in *R (Friends of the Earth Ltd and Ors) v Secretary of State for Environment, Food and Rural Affairs* [2024] EWHC 2707 (Admin), [2025] PTSR 893 Chamberlain J said:

> "134. Mr Westmoreland Smith sensibly concentrated in his oral submissions on arguing that I should refuse relief under section 31(2A) or (3C) of the SCA 1981. Even before that provision came into force, there were *dicta* indicating that the court should be slow to quash decisions in circumstances where the duty had been substantively complied with after the event… In *West* Berkshire [2016] PTSR 982, para 87…
>
> > 'we have strong reservations about the proposition that the court should necessarily exercise its discretion to quash a decision as a form of disciplinary measure. During the course of argument, [counsel for the claimant] accepted that if an assessment, subsequently carried out, satisfied the court, there would be no point in quashing the decision if the effect of doing that and requiring a fresh consideration would not have led to a different decision. We think this was a correct concession. The court's approach should not ordinarily be that of a disciplinarian, punishing for the sake of it, in these circumstances. The focus should be on the adequacy and good faith of the later assessment, although the court is entitled to look at the overall circumstances in which that assessment was carried out.'
>
> 136. Applying those provisions, the first question is whether it appears highly likely that the result for the claimants would not have been substantially different if the conduct complained of (the initial failure to comply with section 149 of the 2010 Act) had not occurred. If so, I am obliged by subsections (2B) and (3D) to refuse permission/relief unless I consider it appropriate to disregard the requirements in subsections (2A) and (3C) for reasons of exceptional public interest.
>
> 137. In answering these questions, I consider that I should focus (as Laws and Treacy LJJ did in the (West Berkshire case) on the adequacy and good faith of the later assessment. The earlier authorities urge caution in drawing too much from assessments completed as a 'rearguard action' after the event. Nonetheless, it is important to bear in mind that, in most public law cases, the maximum relief to which a successful party will be entitled is an order requiring the decision-maker to retake the challenged decision according to a process which cures the flaw in the initial decision. There is little utility in requiring that if the initial flaw has already been corrected.
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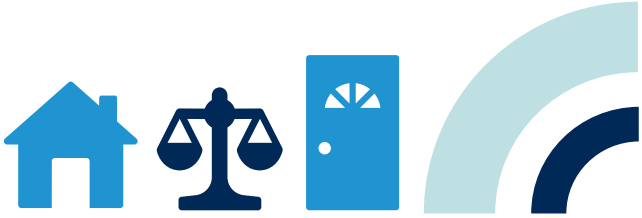
> 138. In my judgment, that is the position here."



By contrast, in *Metropolitan Housing Trust Ltd v TM* [2021] EWCA Civ 1890, [2022] 1 WLR 2161, the Court of Appeal considered a possession application following anti-social behaviour. The tenant had significant mental health disabilities and raised the failure to comply with the public sector equality duty in his defence to possession claim. The housing association had carried out a PSED assessment but failed to re-evaluate this assessment on receipt of a report on capacity from the tenant's doctor. The Court found that the association was required to revisit its PSED assessment given this new information and that the failure to do so was a breach (para. 36). The Court quashed the possession order. The distinguishing factor in this case appears to be that the housing association had stated that they would not have pursued possession proceedings had they been aware of the capacity issue; that is, it could be said to be highly likely that the outcome would have been the same had a s.149 assessment been carried out.

(vi) Application in Social Housing/ Homelessness Cases

The public sector equality duty has been seen to arise in England and Wales in respect of effectively the entire span of social housing and homelessness issues, such as adopting and operating a social housing allocation scheme *(R (Ward)*, para. 74; RR, para. 76; R *(Monfared) v Westminster City Council* [2026] EWHC 737 (Admin), paras. 89–97), social housing possession proceedings (*Powell*, para. 44; *Forward, TM*), the provision of homelessness services (*Pieretti*, para. 31), and so on.

It is instructive to briefly highlight certain cases which relate to topical issues in an Irish context. In *R (AK) v Westminster City Council* [2024] EWHC 769 (Admin), [2024] PTSR 940, the Applicant's child had been sexually abused by a neighbour causing her to seek a "reciprocal transfer" under the relevant legislation, by which the authority would provide her with accommodation within its borough and in return would have access to equivalent accommodation in her current borough for its own tenants. Thus, the situation arising was similar to that of an inter-county transfer in Ireland. The Court found that the housing policy relating to transfer applications by non-tenants was significantly less advantageous than for applications by existing tenants (para. 37). It held that the evidence established that women were more likely to need to move borough to escape violence than men, and therefore the policy, by effectively excluding people who were not from the borough from a housing transfer, put women at a disadvantage compared with men and was indirectly discriminatory (paras. 45–46). As regards s.149, it was determined that the housing authority had a general ongoing obligation to consider that duty which involved a duty of inquiry (para. 32). It was held that the authority not had regard to the factors to which it ought to have considered, and accordingly had not complied with its public sector equality duty (para. 34).



Lived experiences from MLRC's case work

MLRC has provided assistance to clients who have faced difficulties accessing social housing and homeless supports having experienced domestic violence. In one example, we assisted a client, temporarily residing in domestic violence refuge accommodation, who was refused access to housing and homeless supports on the grounds that she had "no local connection" to the local authority's functional area and should instead apply to another local authority where she had spent some time as a child. This was in spite of the fact that the client had been normally resident in that local authority's functional area. In this case, the local authority seemingly misinterpreted Regulation 5 of the Social Housing Assessment Regulations 2011, claiming that the client was required to demonstrate five years' prior residence in their functional area. This approach was in contrast to the approach recommended under the Department of Housing's Guidance for Housing Authorities for Assisting Victims of Domestic Violence with Emergency and Long-Term Accommodation Needs which gives local authorities appropriate scope to assist people in such circumstances and where they may face difficulties in satisfying a local connection test if they have had to flee from a dangerous environment.

Following MLRC's intervention, the client was approved for social housing supports but the case raises concerns that those who have experienced domestic violence can face additional barriers when seeking access to such housing supports.

In *Lomax v Gosport Borough Council* [2018] EWCA Civ 1846, [2019] PTSR 167, the Applicant was a wheelchair user who was confined to bed for much of the day and required 24-hour care. She appealed a decision that it was reasonable to continue to occupy a bungalow in a rural location, after her carer departed, leaving her house-bound and isolated. The medical evidence showed that she was depressed and that the bungalow's isolated location was exacerbating her mental condition. Her family lived in Gosport and she wished to move closer to them. The Court held that the decision was in breach of the public sector equality duty in failing to deal with how the location of the property was contributing substantially to the Applicant's deteriorating mental condition (para. 53). Similarly, in *Kannan v Newham London Borough Council* [2019] EWCA Civ 57, [2019] HLR 22, the Applicant had physical disabilities and could not climb the steps to his accommodation without serious pain, and lacked suitable bathing facilities. The Court held, as in Lomax, that the housing authority did not consider whether any of those who were not living in ideal conditions had disabilities. That, too, shows that there was not the required sharp focus on Mr Kannan's disability and the impact it had on his housing needs" (para.23).

While the ability to rely on these judgments in an Irish court is attenuated by s.42(11) of the 2014 Act, it is clear that these positive examples of the functioning of the PSED in England and Wales are instructive as to how housing authorities should comply with the equivalent duty in Ireland.



Lived experiences from MLRC's case work

MLRC worked with a number of clients who had different intellectual disabilities. All of these adult clients were being refused access to the social housing list by the local authority on the grounds that they had "alternative accommodation" available to them with their families.

Such rationale runs contrary to the aim of National Housing Strategy for Disabled People to "facilitate disabled people to live independently with appropriate choices and control over where, how and with whom they live". It also raised significant concerns around discriminatory treatment, how the Social Housing Assessment Regulations 2011 were applied by the local authority as well as concerns that the local authority failed to have regard for the need to eliminate discrimination; promote equality of opportunity for service users; and to protect the human rights of service users.

After engagement with the local authority on the clients' behalf and working with dedicated advocacy services, clients were eventually approved for social housing supports.



E. The Potential of the Public Sector Duty to Improve Outcomes for Homeless People and Those Seeking Access to Social Housing Supports

MLRC's 2021 IHREC-funded report *Minority Groups and Housing Services: Barriers to Access* was the first time that we, as an organisation, examined the potential of the Public Sector Duty. Indeed, IHREC itself had just begun to monitor compliance with the Public Sector Duty by public bodies (IHREC, *Annual Report 2021*). Revisiting that report now, it is instructive to highlight again a quote from a 2020 report carried out by Values Lab for the Irish Homeless Policy Group:

> "Twenty-one (68%) local authorities have published their corporate plans for the next four to five-year period, four in draft form and one adopted but not published. Nineteen of the twenty-one local authorities make commitments to implementing the Duty (90%) […] While this is significant, no local authority appears to have actually implemented the Duty, with none pointing to a completed assessment of equality and human rights issues in relation to their functions. While significant commitment to the Duty is evident, local authorities are at an early stage in its implementation. The commitment established by most of these twenty-one local authorities is general in nature, focused on a broad commitment to implement the requirements to assess, address, and report." (Niall Crowley, 'Ensuring a Home for All; Using the Public Sector Duty to Improve Access to Housing and Homelessness Supports for Migrant Households: Report to the Irish Homeless Policy Group' (Values Lab, 16))

From IHREC's 2025 Annual Report we can see the progress that has been made with regards to the publishing requirements under s.42(2) of the 2014 Act, with 48% of public bodies having met their obligations in part or in full, and 33% fully compliant with their actions (IHREC, *Annual Report 2025*). IHREC's monitoring makes apparent that public bodies are becoming more aware of their need to incorporate the Public Sector Duty into their strategic plans. This is to be welcomed. However, as made clear in this report, those assessment, reporting, and monitoring obligations contained in s.42(2) are "unconditional comply-with obligations" from which the statute permits no derogation: 100% compliance is required to avoid clear breach of statutory duty. Moreover, the reporting requirements under s.42(2) of the 2014 Act is only a part of the picture in terms of meaningfully actioning the Public Sector Duty. It is in s.42(1) where the "substance" as to what the Public Sector Duty entails of public bodies is to be found.

As mentioned at the outset of this report, MLRC's previous reports in this series on the Public Sector Duty have highlighted issues that people seeking to access homeless supports or social housing supports face. Throughout the reports we have detailed the barriers faced by our clients and, in particular, the barriers faced by those from minority backgrounds or those who have experienced domestic and gender-based violence. Without wishing to go through these issues and barriers in detail, it will suffice to highlight that such clients have faced problems when seeking to have a homeless assessment conducted; in the provision of emergency homeless accommodation; and access to social housing supports. It is for such clients that the meaningful implementation of s.42(1) by local authorities would have a significant benefit.

As was explored in the *Minority Groups and Housing Services* report, those from a minority background such as Travellers or migrants can face particular barriers in satisfying the normal residency or local connection criteria for access to social housing supports (which is also frequently misapplied by housing authorities to tests for access to homeless services). While housing authorities have a discretion to assess applications if the local connection test is not satisfied, the expectation of a local connection to the housing authority area to which the applicant applies constructs a barrier to non-Irish nationals and to ethnic minority Irish nationals, including Travellers (European Observatory on Homelessness report '*Local Connection Rules and Access to Homelessness Services in Europe*' (2015)). This cohort, therefore, faces particular barriers under the social housing assessment where the housing authority does not exercise its discretion properly. Ethnic minority applicants are less likely

than a white Irish applicant to have lived in any housing authority area for five continuous years; they are also less likely to have relatives or household members living in a housing authority area for the previous two years. This has led, in some instances, to minority groups being excluded from accessing the social housing list (Rafelle Grotti, Helen Russell, Éamonn Fahey and Bertrand Maître, '*Discrimination and Inequality in Housing in Ireland*,' Irish Human Rights and Equality Commission (June 2018)).

For the s.42(1) Public Sector Duty to be adequately implemented by local authorities when assessing such housing applications, a proactive and meaningful assessment of these factors must be undertaken by the decision-maker. This would in turn ensure that housing decisions comply with all the requirements of not just the Public Sector Duty but also the equality framework in the State. Taken together, it would mean that decisions in relation to housing applications treat everyone equally and do not unfairly discriminate against certain cohorts and would go some way to countering the "gaps" in the current housing and homelessness legal system.

Full implementation of s.42(1) would also have a positive impact for those seeking access to homeless and social housing supports who have had an experience of domestic or gender-based violence. There are various legal instruments that local authorities must consider when assisting someone who has an experience of domestic violence and implementation of s.42(1) would assist local authorities in meeting these standards.

As has been highlighted by MLRC in both its 2026 report, *Family Homelessness and the Law: Current Challenges and Recommendations for Reform* and in its 2023 report, *Social Housing, Domestic Violence and the Public Sector Duty*, Ireland's ratification of the Council of Europe Istanbul Convention on combatting violence against women and domestic violence (CETS No. 210) carries with it significant obligations that public bodies are required to comply with, although as noted above, it falls outside the definition of "human rights" under s.29 of the 2014 Act. For example, Article 20 of the Convention commits parties to "take the necessary legislative or other measures to ensure victims have access to services facilitating their recovery from violence" which "should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment". In making decisions around housing, local authorities must also ensure that they act in compliance with relevant ECtHR judgments such *B v The Republic of Moldova*, (App No 61382/09). In that case, the applicant was a victim of domestic violence. The Court found that the Moldovan authorities failed to properly comply with their positive obligations under Article 8 of the ECHR because they had "effectively forced the first applicant to continue risking being subjected to violence or to leave home" (para. 75). Again, s.42(1) is a very useful tool for local authorities in making sure that the aims of combatting domestic violence are "built-in" to local authority decision-making processes.

As outlined above, while the courts' interrogation of local authorities' decision-making under s.2 of the 1988 Act can sometimes be confined, incorrectly and unlawfully, to a rationality analysis, full implementation by local authorities of the s.41 Public Sector Duty when they are considering someone presenting as homeless could, therefore, act as a "bridge" between that deferential consideration by the courts and a more holistic, progressive, and lawful approach, encompassing a proportionality assessment. This would bring the application of the Public Sector Duty by local authorities somewhat closer to the practice adopted in by public authorities in England and Wales.

In short, while the Public Sector Duty under s.42 of the 2014 Act contains limitations as addressed in this report, it is a manifestly meaningful provision. The duty under s.42(1) to take human rights and equality principles into account when making decisions on social housing and homelessness issues for oftentimes vulnerable applicants is a critical aspect of procedural fairness, which itself is the bedrock of rights-based practice in Ireland. Should this be done proactively with decision-makers adequately trained and resourced, better decisions will inevitably result. However, the plain breach of statutory duty in relation to compliance with the assessment, reporting, and monitoring obligations under s.42(2), which are basic prerequisites for the proper implementation of s.42(1), demonstrates the unsatisfactory and unlawful failure to adequately engage with the Public Sector Duty to date.

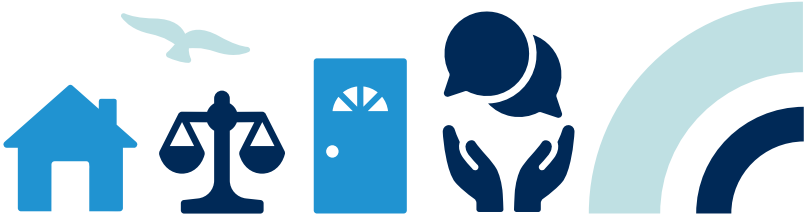
F. Conclusion

This report acts as a conclusion to the series of reports we have undertaken in relation to homelessness, social housing and the Public Sector Duty. As such, it both offers a recap of some of the work that we have done but also, and more importantly, looks at where we can go next. The report has examined how the law has been applied in Ireland in relation to homelessness (and to a lesser extent social housing) and how the Public Sector Duty has had a limited impact in improving outcomes for homeless people.

Examining the Public Sector Equality Duty in an English and Wales context allows us to see the greater impact that it has had in case law application (and by extension, outcomes for clients) through its framing in more "mandatory" terms. From the case law analysis, we have identified that having a justiciable duty (*i.e.*, capable of a court ruling as to whether or not it has been complied with and providing a remedy where it has not), even to the limited degree as it exists in England and Wales, has had certain positive outcomes for clients. This is highly instructive for an Irish context. Without wishing to suggest that the duty operates perfectly in England and Wales, it has helped in making public bodies more human rights aware in their service delivery; effecting a form of systems change (Simonetta Manfredi, Lucy Vickers, Kate Clayton-Hathway, *Public Sector Equality Duty: Enforcing equality rights through second-generation regulation (2018), 47(3) Industrial LJ* 365).

This systems change approach, coupled with an ability to actually challenge a perceived failing by way of litigation, could act as a model for the development of the Public Sector Duty in Ireland. As we have shown, there are a significant number of human rights instruments relevant in a homeless/social housing context that local authorities should be considering (but frequently do not) in addition to the relevant housing law. Section 42(1) has the potential to bring about the system changes needed to have these human rights instruments "mainstreamed" into local authority decision-making processes. Without this being justiciable, it is difficult to compel local authorities to act. Therefore, it is necessary for housing authorities themselves to take ownership of this duty and see to its full and forthright implementation. A duty introduced by the Oireachtas with limited justiciability is not to be seen as a duty which need not be complied with, or which can be avoided—it is, rather, to be seen as a duty over which the authority has far more responsibility for its implementation than usual, given the limited ability of external parties to hold it to account.

This report also examined an under-developed area in the potential for a greater role for the Child and Family Agency to provide appropriate assistance to homeless children and their families. As far as we are aware, the role of the CFA to provide suitable accommodation is not something that has been substantively ruled on by the Superior Courts in recent years.



Recommendations:

1. Greater emphasis given by local authorities to s.41(1) for the realisation of human rights and equality for homeless people and social housing applicants. While the strides public bodies have made in recent years around building the Public Sector Duty into their strategic plans through s.42(2) are commendable, it is through the full application of that subsection and s.42(1) that meaning improvements will be delivered for homeless people, particularly those from minority backgrounds or other at-risk cohorts.

2. Consideration to be given to amending s.42 of the Irish Human Rights and Equality Commission Act 2014, to make the language more "mandatory" and based on the example of the wording used for the Public Section Equality Duty in England and Wales. Mandatory language will allow people meaningful realisation of their human rights by ensuring that if a local authority does not fulfil its obligations that this can be reviewed by a court.

3. Further engagement is needed with the Child and Family Agency to ensure that they are aware of their duties to homeless children and their families, and its obligations under Article 42A of the Constitution.



Acknowledgements

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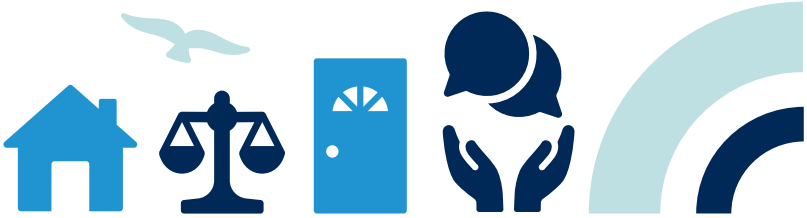



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