NO REDACTION NEEDED

THE COURT OF APPEAL - UNAPPROVED

Neutral Citation Number: [2023] IECA 16

Court of Appeal Record Number.: 2020/265
High Court Record Number: 2018/76JR

Murray J.
Costello J.
Binchy J.

BETWEEN/

DEIRDRE BRENNAN

APPLICANT

- AND -

THE MINISTER FOR EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

RESPONDENT

Court of Appeal Record Number: 2020/264
High Court Record Number 2018/165JR

MARGARET BRACKEN

-AND-

THE MINISTER FOR EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 31st day of January 2023

1. Each of the above entitled proceedings give rise to the same question of statutory interpretation, specifically what is meant by the phrase "net cash value to the person of his or her annual housing costs" as used in Regulation 142 of S.I. 142/2007 , being the Social Welfare (Consolidated Claims Payments and Control) Regulations 2007 (the 2007 Regulations"). The cases as run in the High Court did not overlap exactly with each other hence they gave rise to two separate judgments of Creedon J. of 18th November 2020, from each of which the appellant now appeals. However, any distinctions between the two cases effectively fell away at the hearing of these appeals, with the appellants focusing exclusively on what they claim is the erroneous interpretation and application by the respondents of the phrase referred to above. It is the appellants' case that the trial judge fell into error in her interpretation of the words "net cash value to the person of his or her annual housing costs". That interpretation accorded with that of the respondent in her adjudication of claims made by each of the appellants, being, in the case of Ms. Brennan a claim for one parent family payment, and in the case of Ms. Bracken a claim for Disability Benefit.

Relevant legislation

2. It is useful at this early stage to identify the relevant statutory provisions that fall for consideration in the proceedings. Provision for payment of disability benefit is set out in

Chapter 8, Part 2 of the Social Welfare Consolidation Act, 2005 (the "Act of 2005"). This is the benefit claimed by Ms. Bracken. Provision for payment of one parent family payment is set out in Chapter 7, Part 3 of the Act of 2005. This is the benefit claimed by Ms. Brennan. The detailed rules as to calculation of means in respect of each benefit are set out in in Schedule 3 of the Act of 2005. Schedule 3, part 1, sets out definitions for the purposes of these rules, and therein defines housing costs as follows:

"*housing costs" means rent or repayment of a loan entered into solely for the purpose of defraying money employed in the purchase, repair or essential improvement of the residence in which the person is, for the time being, residing*" **3.** It is common case that the repayments of mortgage loans on behalf of each of the appellants by their former partners comprise *"housing costs"* for the purpose of Schedule 3 of the Act of 2005.

4. Part 2 of Schedule 3 sets out the provision for calculation of means in relation to the following benefits: Job seekers allowance, Pre-Retirement Allowance, Disability Allowance and Farm Assist.

5. Rule 1(2), Part 2, Schedule 3 provides, in material part as follows:

"1. In the calculation of the means of a person for the purposes of Chapters 2, 3, 10 [chapter 10 relates to disability benefit] and 11 of Part 3, account shall be taken of the following-

(1) ....

(2) All income in cash and any non-cash benefits that may be prescribed which the person or his or her spouse may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise, but -

(a) ....

(b) excluding -

(i) ....,

(ii) any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)……."

6. Part 5 of Schedule 3 sets out the provisions for calculation of means in relation to the following benefits: Blind Pension, Widow's (Non-Contributory) Pension, Widower's (Non-Contributory) Pension, Guardian's payment (Non-Contributory), One-Parent Family

Payment and Carer's Allowance.

7. Rule 1(2), part 5 of schedule 3 provides, in material part as follows:

"*1. Subject to paragraphs (2) and (3), in calculating the means of a person, account shall be taken of the following -*

(1) ....

(2) all income in cash (including, in the case of widow's (non-contributory) pension….and one-parent family payment, the net cash value of such non-cash

benefits as may be prescribed), and the income received by qualified children that may be prescribed which the person may reasonably expect to receive during the year succeeding the date of calculation, but-

(a) ...

(b) excluding -

(i) ...

(ii) in the case of blind pension.....or one-parent family payment, any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as they do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)……"

8. Regulation 142 of the 2007 Regulations prescribes the "non-cash benefits" referred to in Rules 1(2) in each of Parts 2 and 5 of Schedule 3, under the heading of "Assessment

of Means – Non Cash Benefits" as follows:

"*142. The non-cash benefits prescribed for the purposes of Rules 1(2) of Part 2,....and Rule 1(2) of Part 5 of Schedule 3 to the principal Act shall be –*

(a) the net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum, and

(b) the net cash value to the person of meals, accommodation and related services provided under a scheme administered by the Department of Justice, Equality and Law Reform and known as Direct Provision."

9. Regulation 143 of the 2007 Regulations addresses maintenance arrangements for the purposes of calculation of means as follows:

"*143.(1) Subject to Sub Article (2), the maximum amount prescribed for the purposes of Rule 1(2)(b) and (ii) of Part 2, Rule 1(2)(b)(i) of Part 3 and Rule 1(2)(b)(ii) of Part 5 of Schedule 3 to the principal Act shall be €4,952..*

(3) *The maintenance arrangements prescribed for the purposes of SubArticle (1) shall be all forms of formal and informal arrangements whether procured by way of Court Order or otherwise*."

10. "Liable Relative" as referred to in Rule 142 (a) is defined in s.2(7) of the Act of 2005.It includes the father of a "qualified child" whom the father or mother is bound to maintain. It is not in dispute that the mortgage loan repayments that are the subject of both appeals are made by a liable relative of each of the appellants.

Background- Ms. Brennan

11. The appellant in the first entitled proceedings, Ms. Brennan, is a homemaker who has two young children. She resides with her children in a home jointly purchased by herself and her former partner. Her former partner pays the sum of €1,161.36 per month by way of annuity mortgage repayment pursuant to a loan that she and her ex-partner obtained for the purpose of purchasing the property. Ms. Brennan makes no contribution to the mortgage, and while she is a nurse by training, she is not currently in employment by reason of being the primary carer for the two children.

12. Ms. Brennan applied to the respondent for a One Parent Family Payment, and by decision dated 2nd February 2015, it was decided by a deciding officer that the mortgage payments made by Ms. Brennan's ex-partner should be taken into account in full when assessing her means for the purpose of calculating her entitlement to the benefit. It is Ms. Brennan's case that the decision to apply the full amount of the mortgage repayments made by Ms. Brennan's ex-partner in this way was in error and that it resulted in an unlawful reduction in the amount of One Parent Family Payment to which Ms. Brennan was entitled under the Act of 2005.

13. Ms. Brennan appealed this decision. In doing so, she claimed that since the house she occupies is held in the joint names of herself and her ex-partner, he also derives a benefit from the payments, and therefore, she claimed, only 50% of the payments being made by her ex-partner should be taken into account when assessing her means. Had such an approach been taken it would have had the effect of increasing the amount of the benefit payable to Ms. Brennan. In advancing this ground of appeal, Ms. Brennan relied on a previous decision made by the Chief Appeals Officer, in July 2015 (referred to by the trial judge as the "precedent decision", a definition I will hereafter adopt), in which such an approach had been taken. In a decision of 11th June 2017, the Appeals Officer rejected the appeal stating as his reason for his decision that "…*the legislation does not allow the payments being made to be qualified in such a way as to discount from the means assessment the benefit which the ex-partner derives from these payments. In these circumstances the full value of the mortgage payments being made must be used in assessing the appellant's means. Having reviewed that assessment I am satisfied it has been done correctly and in accordance with the legislation as it stands. Accordingly, I very much regret that this appeal cannot succeed*".

14. As regards the precedent decision of the Chief Appeals Officer relied upon by Ms. Brennan, the Appeals Officer acknowledged that, while it is important that as far as possible there is consistency in decisions made by the Appeals Office, each case must be treated on its own merits.

15. Ms. Brennan then requested a review by the Chief Appeals Officer of the decision of the appeals officer, pursuant to s.318 of the Act of 2005 . In her decision on this request which she delivered on 7th November 2017, the Chief Appeals Officer, Ms. Joan Gordon, noted at the outset that the review was being undertaken in accordance with s.318 of the

Act of 2005 which provides that the Chief Appeals Officer may revise any decision of an Appeals Officer where it appears to her that the decision was erroneous by reason of some mistake having been made in relation to the law or facts. She observed that her role therefore is a revising role rather than another avenue of appeal.

16. Ms. Gordon summarised the grounds of review as submitted on behalf of Ms. Brennan as follows:

(1) That the Appeals Officer, while referring to the legislation relevant to the means test for One Parent Family Payment, failed to set out an interpretation of that legislation as applied to the circumstances of Ms. Brennan's case;

(2) That the Appeals Officer erred in fact and in law in failing to follow an earlier decision of the Chief Appeals Officer in which the facts were very similar, i.e. the Precedent Decision;

(3) That if the Chief Appeals Officer formed the view that the legislation does not allow the relevant mortgage repayments to be assessed in such a way as to discount from the means assessment the benefit accruing to Ms. Brennan's

expartner from the mortgage repayments, that the Chief Appeals Officer should set out the legal basis for that opinion.

17. By decision dated 7th November 2017, Ms. Gordon declined the review request. It is that decision that is impugned in Ms. Brennan's proceedings. Ms. Gordon noted in her decision that the Appeals Officer had correctly identified the legislation governing Ms.

Brennan's claim. She then analysed the computation of the value of the weekly benefit which the Appeals Officer had decided accrued to Ms. Brennan. She noted that the calculation was made on the basis of the total mortgage repayments made by Ms. Brennan's ex-partner which equated to a weekly sum of €268.00. She noted that the sum provided in the legislation to be disregarded amounted to €95.23 per week , and that this had been applied by the Appeals Officer in accordance with Article 142 of the 2007 Regulations, giving rise to an assessable amount of €172.77, which in turn was halved in accordance with Rule 1(2)(b)(ii) of Part 5 of Schedule 3 of the 2005 Act, to arrive at a weekly means of €86.39. Without saying so explicitly, Ms. Gordon clearly concluded that the Appeals Officer was correct both in the approach taken to the computation, and in the computation itself.

18. Ms. Gordon went on then to address the precedent decision, by which she herself, as Chief Appeals Officer, had allowed a discount from the means assessment of a claimant of 50% of the mortgage repayments made by a liable relative on the basis that the property was held in that case in the joint names of the claimant and her ex-partner, who was making all the mortgage repayments. Ms. Gordon stated:

"While previous decisions do not create precedents, the Appeals Office endeavours to be consistent in its decision making. Having reviewed the decision that I am now referred to I am of the view that while I gave the benefit of a more favourable

calculation in that particular case there was in fact no precise rule which allowed for that more favourable treatment. While that decision was made by me in good faith, I do not consider that, in the absence of a specific rule in the governing legislation permitting the application of a more favourable calculation, it would be appropriate for me to apply the same consideration in Ms. Brennan's case."

Statement of Grounds (in the case of Ms. Brennan).

19. On 29th January 2018 Ms. Brennan was granted leave to issue these proceedings, seeking, *inter alia,* an Order of Certiorari quashing the decision of the Chief Appeals Officer of 7th November 2017, on, amongst others, the following grounds:

(1) Having regard to the joint ownership of the property in which Ms. Brennan resides, there are a number of interpretations as to how "non-cash benefits" could be assessed: they could be assessed on a 50/50 basis or could be assessed as nil, given that Ms. Brennan's ex-partner could be regarded as benefiting wholly from the repayments;

(2) To ignore the joint owner's beneficial interest in the property is irrational and arbitrary;

(3) The impugned decision fails to set out the reasons why Ms. Brennan should be assessed on the basis of 100% of the mortgage payments made by her expartner as opposed to 50%, as decided by the Chief Appeals Officer in the precedent decision of 31st July 2015, or less;

(4) The impugned decision fails to explain, or deal with the joint owner's beneficial [interests] in the property or the actual net benefit to the applicant given the interest payments on the mortgage;

(5) The impugned decision is arbitrary, irrational and lacking in proportionality.

The Evidence (in the case of Ms. Brennan).

20. Ms Brennan swore her verifying affidavit on 29th January 2018. The respondent filed her notice of opposition on 25th June 2018 , grounded on an affidavit of Ms. Gordon, Chief Appeals Officer, sworn on the same date. In her affidavit, Ms. Gordon avers that the mortgage repayments made by Ms. Brennan's ex-partner were correctly taken into account, in full, when assessing her means. At para. 11 of her affidavit, Ms Gordon avers that the provisions of the legislation allow income in cash and any non-cash benefits which the applicant may reasonably be expected to receive during the succeeding year, whether as contributions to the expenses of the house, or otherwise, to be taken into account in the assessment of means of a claimant. Such non-cash benefits include the annual housing costs actually incurred and paid by a liable relative. Ms. Gordon states that such payments have a "net cash value" to a claimant because the claimant is living in the house, and "his or her annual housing costs" which he or she would otherwise have to meet, are being paid entirely by a liable relative.

21. At paragraph 7 of her affidavit, Ms. Gordon provides details as to the calculation of Ms. Brennan's weekly means in more or less the same terms that she did in her decision (see para.17 above).

22. An affidavit was also sworn by Mr. Ciaran Lawlor on 25th June 2018 on behalf of the respondent. Mr. Lawlor is a principal officer in the budget/estimates and means policy section of the Department of Employment Affairs and Social Protection. He avers that the

One Parent Family Payment is a means tested payment and is provided for by Chapter 7 of Part 3 of the Act of 2005. He avers that the purpose of means testing is to direct resources

to those who need them most, and there is an expectation that those with resources will use them to support themselves. He avers that Social Welfare legislation provides that the means test for certain schemes takes account of the income and assets of the person and a spouse/partner if applicable. These schemes include Disability Allowance, One Parent Family Payment and Job Seekers Allowance, amongst others. Mr. Lawlor explains that in conducting the means test, account is taken of housing costs paid by another person on behalf of a claimant provided that the value of those costs exceeds €4,952.00 per annum; account is not taken of maintenance monies received if they are less than the housing costs and in so far as they do not exceed €4,952.00 per annum. He says that the legislative provisions recognise than in many cases another person, referred to as the "liable relative", could be paying an applicant's housing costs. The legislation allows the net cash value of such payments to be taken into account in the assessment of means of the claimant. The legislative scheme, he says, focusses on the benefits that are provided to an applicant rather than any notional liability that an applicant may have to a third party or any benefit that a liable relative may receive from making the payment. The focus of the legislative scheme is on the needs of a claimant and the proper assessment of that claimant's means to support himself or herself and any dependent children.

23. Mr. Lawlor refers to a Department Circular 01/08 entitled "Mortgage Payments Paid by Liable Relative" which issued on 2nd January 2008, and he says that the respondent's decision was made in compliance with that circular.

24. Mr. Lawlor avers that he does not consider it a correct interpretation of the legislation to suggest that mortgage payments made by a liable relative in circumstances such as Ms. Brennan's should be assessed on a "nil" or 50/50 basis. He submits that such an assessment or apportionment is itself arbitrary and takes into account notional liabilities and interests without regard to the benefit of the

payments of the mortgage to the applicant. **25.** Ms. Brennan then swore a further affidavit on 12th November 2018. She avers that capital and interest payments on the mortgage over the house in which she resides are not her housing costs and instead relate to the cost of receiving a mortgage and the repayment of the loan. Accordingly, to the extent that these costs are taken into account, this is incorrect. She avers that if she was a tenant residing in a property under a lease, neither she nor any liable relative would have to pay any of the interest or insurance payments required under a mortgage.

26. Ms. Brennan submits that the respondent has arbitrarily decided that the entire mortgage repayments inclusive of interest payments and the net cash value of her housing costs are one and the same, and she submits that this is irrational. She gives an example: If she and her ex-partner entered into a lease agreement for the property in which she resides, they could agree that she would rent the property at 50% of the mortgage costs, and on the respondent's interpretation of the legislation, her net housing costs would be reduced by 50% immediately.

27. An affidavit sworn by a Ms. Elisabeth Rogers of Elisabeth Rogers Chartered Accountants of 9th November 2018 was submitted on behalf of Ms. Brennan by way of expert evidence. In her affidavit, Ms Rogers avers that in her professional opinion, the "net cash value of a person's annual housing costs" and the gross mortgage repayment made by the liable relative are entirely separate concepts. Ms Rogers avers that these amounts could never be the same save by coincidence and happenstance. This is because the amount and the term of a loan are the factors that will primarily determine the proportion of principal and interest paid by a borrower on a monthly basis, and the breakdown or division of these components is almost always variable over the term of the loan. Interest repaid by a borrower is essentially the cost associated with borrowing money from a bank. While this

forms part of a mortgage repayment cost, in Ms. Rogers' opinion it cannot be said to form part of the net cash value of Ms. Brennan's housing costs. To illustrate this, Ms. Rogers gives the example of a person in the same circumstances as Ms. Brennan lawfully entering into a lease agreement with her ex-partner at a rental comprising a fraction of the monthly mortgage payment made by him, with the result that the rent under the lease agreement is the net cash value of the applicant's housing costs, and not the mortgage payments.

Statement of Opposition (in case of Ms. Brennan)

28. In her statement of opposition, the respondent acknowledges the facts giving rise to the proceedings as pleaded by Ms. Brennan and admits that, in assessing the means of Ms. Brennan, the respondent used the full value of the mortgage repayments of €1,161.36 per month and took that amount in full into account in the assessment of Ms. Brennan's means. It is denied that the respondent is required to take into account any benefit that Ms. Brennan's ex-partner derives from the mortgage payments and it is further denied that to ignore any such interests in the property is irrational or arbitrary. It is pleaded that pursuant to the relevant statutory provisions and rules, the annual amount of the monthly mortgage payments is to be taken into account as a non-cash benefit in assessing Ms. Brennan's means. The respondent denies that the Chief Appeals Officer failed to set out properly the reasons why the full mortgage repayments should be taken into account when assessing Ms. Brennan's means. It is also denied that the decision of 31st July 2015 is a precedent decision or in any way binding on the Appeals Officer or the Chief Appeals Officer in determining Ms. Brennan's case or any future cases.

Decision of the High Court (in the case of Ms. Brennan)

29. In submissions made on her behalf by the Citizens Information Centre ("CIC") to the Chief Appeals Officer (when requesting a review of the decision of the appeals officer), it was argued on behalf of Ms. Brennan that in calculating the net cash value to Ms. Brennan of the payments being made by her ex-partner, account should be taken of the fact that the house in which Ms. Brennan is residing is in the joint names of Ms. Brennan and her partner, and since her partner also derives a benefit from the repayments of the mortgage that he is making, only half of those payments should be used in the assessment of Ms. Brennan's means. The position adopted on behalf of Ms. Brennan in the High Court appeared to have modified slightly in that it was submitted to the trial judge that "housing costs" and "net cash value" are different concepts requiring separate and distinct treatment by the respondent when assessing the means of a claimant. However, counsel for Ms. Brennan did not argue that any particular approach to the assessment of "net cash value" should be followed by the respondent. It was submitted to the trial judge that there are a number of approaches to the interpretation of "non-cash benefit", one of which included the apportionment of the mortgage repayment on a 50/50 basis as between the claimant and the liable relative making the mortgage repayment, and another approach would be to treat the mortgage repayments as "nil" in the hands of the claimant for the same reason. It was contended that to ignore the joint ownership of the property is irrational and arbitrary and that no explanation or reasoning for the approach was provided in the decision of the appeals officer .

30. The respondent on the other hand submitted to the trial judge that there is no basis upon which the legislation should be interpreted in the manner argued on behalf of Ms. Brennan, and in her written submissions to the High Court the respondent argued that to

seek to interpret the legislation in such manner (whereby the mortgage repayments of Ms. Brennan's ex-partner would be taken into account to the extent of 50% only or not at all) is arbitrary and contrary to the legislation. It was submitted that a simple reading of regulation 142 (a) of the 2007 regulations is that the net cash value to the person of the housing costs paid by the liable relative is taken as a non-cash benefit. In this context, it was submitted, "net cash value" equates to the mortgage repayments. The sole or joint ownership of the property in question and/or the joint liability for the payment of the mortgage are irrelevant considerations to the determination of "net cash value" in assessing the means of a claimant.

31. While, in her grounds of appeal, Ms. Brennan contends that the trial judge failed to give effect to the true meaning and effect of the legislation, she does not contend that the trial judge failed to identify the correct principles of statutory interpretation. These principles are considered by the trial judge at paras. 95 – 98 of her judgment, where the trial judge addressed certain relevant authorities , including *D.B. v Minister for Health* [2003] 3 I.R. 12 and *A.W.K (Pakistan) v. The Minister for Justice and Equality, Ireland and the Attorney General* [2020] IESC 10. The trial judge quoted the following extract from the judgment of McGuinness J. in *D.B.* , where she stated, at paras. 49-50:

> *"It may, I think, be safe to sum up the judicial dicta in this way. In the interpretation of statues, the starting point should be the literal approach – the plain ordinary meaning of the words used. The purposive approach may also be of considerable assistance, frequently, but not invariably, where the literal approach leads to ambiguity, lack of clarity, self contradiction, or even absurdity…."*

32. The trial judge then referred to the following passage in the judgment of McKechnie J. in *A.W.K.*, when, giving the judgment of the Supreme Court in that case, he held, at para.34:

"The most appropriate way to achieve this objective is by reference to the words used by the Oireachtas itself when given their ordinary and natural meaning, the outcome should best reflect the plain intention of that body. The text published is the basic material involved because it is the most preeminent indicator of intention of that body."

33. The trial judge then proceeded to consider the statutory definition of "housing costs" as provided in Part 1, Schedule 3 of the Act of 2005 and immediately thereafter, at paras. 100 and 101 of her judgment referred to the rules governing the assessment of maintenance and non-cash benefits for the purpose of deciding an applicant's rate of One Parent Family Payment as set out in Rule 1, Schedule 3, Part 5 of the Act of 2005 and Regulation 142, Chapter 6 of the 2000 Regulations. At para. 102, she noted that it had been argued on behalf of Ms. Brennan that "*there are a number of interpretations as to how "non-cash benefit" could be assessed and that it could be apportioned either on a 50/50 basis or as nil, given the joint ownership of the property. The applicant further argued that to ignore the joint owner's beneficial interest in the property is irrational and arbitrary and that no explanation or reasoning for this approach has been provided."* **34.** Having noted that the phrase "net cash value" is not specifically defined in the legislation, at para. 104 of her judgment the trial judge had regard to the definition of "housing costs" which she notes is a term defined in the legislation as meaning "rent or repayment of a loan entered into solely for the purpose of defraying money employed in the purchase, repair or essential improvement of the residence in which the person is, for the time being, residing".

35. At paras. 105 and following the trial judge continued:

"105. Engaging with the literal approach to statutory interpretation and giving these words their plain and ordinary meaning, this clearly encompasses rent, repayment of

a mortgage entered into for the purchase of a property and repayment of a mortgage entered into for the repair or essential improvement of a property. The legislative intention in defining "housing costs" is clear. The mortgage repayments being made by the applicant's ex-partner clearly come within the definition of "housing costs".

106. Regulation 142 provides that "the non-cash benefits" prescribed shall be "(a) the net cash value to the person of his or her annual housing costs actually incurred and paid by liable relative insofar as the cash value exceeds €4,952 per annum ". Accordingly, the Court finds that the mortgage repayments do come within the definition of "housing costs" and within the meaning of "non-cash benefit" as set out in Regulation 142.

107. Turning then to the rules governing the assessment of maintenance for the purpose of deciding an applicant's rate of One Parent Family Payment as set out in Rule 1 Schedule 3 Part 5 of the 2005 Act and regulation 42 of the 2007 Regulations and the phrase "net cash value ". The Court looked to the plain and ordinary meaning of these words and to the wording of these provisions as a whole to determine the meaning of the words used. Rule 1 Schedule 3 Part 5 of the 2005 Act and regulation 142 of the 2007 Regulations, when read in in their entirety, set out how maintenance is to be assessed by calculating the income of the applicant in accordance with the terms of the provisions. The legislation clearly sets out the categories of income to be considered.

108. The respondent in the impugned decision decided that in calculating the "net cash value" to the applicant of her annual housing costs actually incurred and paid by a liable relative insofar as the net cash value exceeds €4,952, the full amount of the mortgage repayments had to be taken into account and it was this sum which was used by the respondent in assessing the means of the applicant. The applicant

argued that the use of the terms "cost" and "value" by the legislature in the one provision leads to the clear inference that the Oireachtas was aware of the distinction to be drawn between the possible cost of housing paid by a liable relative and the net cash value to the person of same. She argued that the respondent sought to equalise these two issues for reasons of administrative convenience. She argued that "housing costs" and "net cash value" are different and that if there is a difference the respondent must reassess the meaning of "net cash value".

109. In considering this argument, the Court looked to the wording of Rule 1 Schedule 3 Part 5 of the 2005 Act and regulation 42 of the 2007 Regulations and engaging with the literal approach to statutory interpretation and (sic) gives these words their plain and ordinary meaning. This Court has already determined that the mortgage repayments come within the definition of "housing costs" and within the meaning of non-cash benefit for the purposes of determining income. Ascribing the words "net cash value" their ordinary meaning, the Court is satisfied that the respondent's interpretation is the correct one and that the full amount of the mortgage payments was correctly used in the assessment of maintenance and noncash benefits for the purpose of deciding the applicant's rate of One Parent Family Payment as set out in Rule 1 Schedule 3 Part 5 of the 2005 Act. The Court is of the view that this literal approach does not, in the words of McGuiness J. in D.B v. Minister for Health [2003] 3 I.R. 12 "lead to any ambiguity, lack of clarity self contradiction or even absurdity".

110. The Court goes further and finds that when these provisions are read as a whole, with the purpose of the provisions in mind, that is to determine income for the purpose of assessment of maintenance, the Court is further satisfied that the respondent's interpretation is the correct one. There is nothing in the legislation

which allows the decision maker to set off any purported benefit to the "liable relative" based on their joint ownership of the property or on any other basis. Given the Court's finding that the respondent has correctly interpreted the legislation, the Court agrees with the respondent that the arguments that the respondent has engaged in an arbitrary system of implementation which fails to treat similar applicants equally or that the respondent in its interpretation is engaging with a fixed and inflexible policy or basing its interpretation on administrative convenience falls away."

Notice of Appeal

36. The appellant sets forth seven grounds of appeal, just three of which, grounds 2 - 4 were pursued at the hearing of this appeal. These are as follows:

2. The learned trial judge erred in holding that "net cash value" and "annual housing costs" were the same.
3. The learned trial judge failed to give adequate or any adequate weight to the fact that the legislature had intentionally used the words "cost" and "value" in the legislation.
4. The learned trial judge has failed to give effect to the true meaning and effect of the legislation.

Respondent's notice

37. The respondent addresses the grounds of appeal referred to above at paras. 4-6 of the respondent's notice as follows:

"*4. The learned trial judge did not hold that "net cash value" and "annual housing costs" were equivalent. The learned trial judge correctly held that mortgage repayments come within the definition of "housing costs" and within the meaning of "non-cash benefit" as set out in Regulation 142. The learned trial*

judge correctly found that in the assessment of means for the purpose of deciding the appellant's rate of One Parent Family Payment, as set out in chapter 7 of Part 3 of the Social Welfare Consolidation Act 2005 and the rules contained in Part 5 of Schedule 3 to the Act and Regulation 142 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. 142/2007), that the full amount of the mortgage payments were correctly used in the assessment of means and non-cash benefits for the purpose of deciding the appellant's rate of One Parent Family Payment, which are set out in Rule 1 Schedule 3 Part 5 of the 2005 Act.

5. The learned trial judge in coming to her decision gave proper weight and considered fully the use of the words "cost" and "value" in the relative legislative provisions in the legislative scheme.

6. The learned trial judge correctly construed the true meaning and effect of the legislation."

Background – Ms Bracken

38. While these appeals proceeded on the basis that there was one identical ground of appeal in each case, nonetheless I think it is preferable in the interests of completeness, to set out briefly the background to Ms. Bracken's proceedings.

39. The trial judge records the background facts in the case of Ms. Bracken at para. 2 of her judgment as follows. Ms. Bracken is a carer and has one child with her ex-partner, from whom she is separated. She resides in a house with her son, which is in the sole name of her ex-partner. Her ex-partner pays €647.00 per month by way of an annuity mortgage repayment. There is no tenancy agreement between the applicant and her expartner and the applicant pays no rent.

40. Ms. Bracken made an application for disability allowance to the respondent. As with one parent family payment applications, applications for disability allowance are also subject to a means assessment pursuant to the Act of 2005 and the 2007 Regulations. Ms. Bracken was unsuccessful in her application. In assessing her means, the Deciding Officer, as in the case of Ms. Brennan, ascribed the full amount of the mortgage repayments being made by Ms. Bracken's ex-partner as a non-cash benefit in the hands of Ms. Bracken.

41. With the assistance of the CIC, Ms. Bracken brought an appeal to the Social Welfare Appeals Office. Unfortunately, the letter of appeal from the CIC is not exhibited in the papers, but it appears from the decision of the appeals officer, that in advancing the appeal on behalf of the appellant, the CIC placed reliance on the precedent decision, not for the purposes of advancing an argument as to the net cash value to Ms. Bracken of the contributions made by her ex partner to the mortgage loan relating to the property in which she resides, but in order to advance a different and unrelated argument. This concerned the apparent refusal on the part of the deciding officer to apply the statutory disregard amount of €95.23 per week (€4952 per annum) as an offset against the mortgage repayments being made by the liable relative, her ex- partner. Such an offset had been applied in the precedent decision.

42. The Appeals Officer gave his decision on 7th November 2017. He concluded as follows :

> "*With regards to the formula/assessment presented by the CIC in the letter of appeal, it is accepted that where the house is jointly owned that this formula would apply. The facts in this case are that the home in question is solely owned by Mr. McGhee. As a consequence, the appellant does not have a liability to bear the costs of the mortgage. In these circumstances the mortgage paid is assessed as*

maintenance paid , as a non-cash benefit and in line with the formula for assessment of maintenance the means are halved.

With regard to the decision in 2015 outlined in the appeal's submission [i.e. the precedent decision] I must conclude this was an erroneous decision and cannot be compounded by its imposition in this case".

43. In thus concluding , the appeals officer appears to draw contradictory conclusions regarding the precedent decision. In the first place he said that if Ms. Bracken's house was in the joint names of Ms .Bracken and her ex partner, then the formula for assessment of means put forward by the CIC would apply. I understand this to be a reference to the formula used in the precedent decision, i.e. that the mortgage repayments would be discounted by half to reflect the joint ownership of the property. In the following paragraph however, he said that the precedent decision was an error which should not be further compounded by following it. In any case, this apparent contradiction is immaterial for present purposes. What is of significance however is that it does not appear as though the issue of the meaning of "net cash value" of payments (to a claimant for disability allowance) made by a liable relative in repayment of a mortgage loan over the property in which the claimant resides, was under consideration in that appeal. What was at issue was the application of the statutory regard sum in favour of the Ms. Bracken, in the consideration of her means.

44. By letter dated 20th November 2017, the CIC on behalf of Ms. Bracken sought a review of the decision of the appeals officer by the Chief Appeals Officer, pursuant to s.318 of the Act of 2005. In the grounds of review it is claimed, *inter alia*, that:

- The appeals officer erred in not referring to the 2007 regulations;
- The appeals officer erred in placing reliance on the fact that Ms. Bracken's home was owned exclusively by her ex partner, and in concluding that the

calculation of means put forward on behalf of Ms. Bracken would only apply if the house were owned in joint names;

- The appeals officer frustrated the intention of the legislation by failing to assess the non-cash benefit properly;
- That the appeals officer erred in law by determining that the weekly housing disregard of €95.23 is not allowable in the calculation of Ms. Bracken's means.

45. In a decision given on 21st December 2017, the Chief Appeals Officer , Ms. Gordon, concluded that the Appeals Officer had been correct and she declined to revise his decision. In the course of her decision, the Chief Appeals Officer stated: "*It is accepted that Ms. Bracken receives a "non cash benefit" in the form of mortgage repayments made by her ex-partner in the amount of €161.66 per week on the home she resides in. It is also accepted that this non-cash benefit is correctly treated as maintenance. What is in dispute is that the housing disregard of €95.23 is not included in the calculation of the means assessment of maintenance paid as a non-cash benefit*."

46. Ms. Gordon proceeded to consider the legislation applicable to the assessment of means insofar as non-cash benefits are concerned. She noted that rule 1(2) of part 2 of schedule 3 of the 2007 Regulations prescribes that such non-cash benefits shall be the "net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4952 per annum…".

47. Ms. Gordon then considered the nature of the non-cash benefit received by Ms Bracken from her ex-partner and concluded that it constitutes a maintenance payment as provided for in article 143 of the 2007 regulations. However, she further concluded that since Ms Bracken does not incur housing costs, her means are calculated by reference to the amount of maintenance that she receives, which includes the mortgage repayments

made by her ex-partner. Under the 2007 Regulations, the amount of maintenance so received is reduced by one half in the assessment of means with the result, in the case of Ms Bracken, that the contribution of €161.66 made by her former partner to the mortgage repayments is reduced to €80.83. However, in the view of Ms Gordon, the provisions as to statutory disregard did not apply in these circumstances (for reasons which she explained but which it is unnecessary for reasons that will become apparent to set out here).

48. From the above, it is apparent that the issue decided by the Chief Appeals Officer in the case of Ms. Bracken was whether or not the statutory disregard amount should be offset against the mortgage repayments made on behalf of Ms Bracken by her ex-partner in the assessment of means, and not the meaning of the phrase "net cash benefit to the person" (i.e. Ms. Bracken) in the context of those same mortgage repayments.

49. However, in her statement of grounds, Ms. Bracken's principal focus is on the precedent decision, and it is claimed that the decision impugned by these proceedings i.e. the decision of the Chief Appeals Officer is inconsistent with the precedent decision and that the latter is indistinguishable from Ms Bracken's case. It is stated that the impugned decision fails to properly set out the reasons why Ms Bracken should be assessed on 100% of the mortgage payments made by her ex-partner as opposed to 50%, as decided by the Chief Appeals Officer in the precedent decision. There is no express reference in the statement of grounds to the issue that the Chief Appeals Officer considered was the issue before her, i.e. the application of the statutory disregard. This became an issue of some controversy, because in her judgment, at para. 116, the trial judge noted that *"the issue in respect of the statutory disregard does not form part of the applicant's statement of grounds."* This gave rise to two grounds of appeal, the first, ground no.5, in which it is stated that the trial judge erred in so holding, and the second, ground No.6, in which it is stated that the issue is raised by para. 19 of the statement of grounds by which it is pleaded:

"The impugned decision fails to consider or address all relevant matters raised in the Section 318 Appeal."

50. However, following upon the grant of leave on 27th February 2018, and the subsequent issue of the proceedings, the respondent must have realised that her decision regarding the non- application of the statutory disregard in favour of Ms. Bracken was an error, and, as is recorded by the trial judge at para. 92 of her judgment, by open letter of 25th June 2018, the Chief State Solicitor wrote on behalf of the respondent to the solicitors for Ms. Bracken confirming that the respondent was prepared to consent to an order of certiorari of her decision of 21st December 2017, solely on the basis that an allowance to the applicant of the statutory disregard in the sum of €95.30 per week should have been applied.

51. In the same letter, it is stated that this proposal is made in advance of the delivery of the statement of opposition to avoid the incurring of further legal costs, and the letter invites Ms. Bracken to discontinue the proceedings.

52. Notwithstanding the above, and while the issue of the application of the statutory disregard to Ms. Bracken's circumstances is addressed in the written submissions of the parties, this appeal, as with the appeal of Ms. Brennan, proceeded before this Court on the basis of a single ground of appeal only, that relating to the interpretation of the phrase "net cash value to the person". There is therefore no distinction at all to be drawn between the two cases as they proceeded before this Court, notwithstanding that Ms. Brennan is joint owner of the house in which she resides, and Ms. Bracken has no equivalent interest in her residence. The decision of the trial judge on this point is, unsurprisingly, identical in each case. Needless to say, so too are the submissions of the parties to this Court on appeal and it is to those submissions that I now turn.

Submissions

Submissions on behalf of The Appellants

53. The appellants agree with the conclusion of the trial judge that the mortgage repayments being made by their ex-partners comprise "housing costs", and that they are also a non-cash benefit, but submit that it is incorrect to equate "housing costs" with "net cash value". It is submitted that the Oireachtas has very carefully and deliberately chosen to use two different terms, each of which must have its own separate and distinct meaning. It is accepted that the appellants' housing costs have a net cash value to them, and that a monetary value must be placed on that benefit so that it might be taken into account in assessment of means. However, it is submitted that it is not correct to state that the net cash value to a claimant is always precisely equal to the mortgage repayments made by a liable relative. It is submitted that such an approach may lead to an absurdity so that, for example, the appellants could each enter into a lease agreement with the liable relative for €1.00 per annum in order to reduce the net cash value of the mortgage repayments to them (the appellants), or alternatively they could each ask their ex-partner to reduce the mortgage repayments to the bank, if he was so willing, thereby reducing the annual housing costs and the net cash benefit to each appellant . The effect of this, it is submitted, is that the liable relative could determine the quantum of the benefit payable to a claimant, which the legislature could not have intended. Moreover, a disgruntled ex-partner could frustrate the intention of the legislature and ensure that the mother of his children received less support under the one parent family payment than she might otherwise be entitled to receive, simply by increasing the mortgage repayments on the relevant property unilaterally. It is submitted that the trial judge erred in failing to have regard to such possibilities.

54. It is further submitted that the trial judge failed to address the core issue in each case, that being the meaning of the words "the net cash value to the person of his or her annual housing costs" and that, in adopting the interpretation contended for by the respondent, it was incumbent on the trial judge to explain why that interpretation was the correct one, and the trial judge failed to do so.

55. Furthermore, it is submitted that the trial judge failed to address and take account of para. 142(b) of S.I. 142/2007, which addresses non-cash benefits in the context of direct provision to asylum seekers. This paragraph provides that a further non-cash benefit to which regard must be had is:

> *"(b) The net cash value to the person of meals, accommodation and related services provided under a scheme administered by the Department of Justice, Equality and Law Reform and known as direct provision, where the costs are met in full by the State."*

56. The appellants submitted that here again there was a clear distinction being drawn between "costs" being met by the State on the one hand, and the "net cash value to the person" on the other. It is clear from this paragraph that it is the value to the recipient that is relevant to the assessment of a claimant's means, and not the actual cost to the State, whether the former be higher or lower than the latter. The appellants submit that the words "net cash value" must have a common meaning throughout Regulation 142 of the Regulations, and this necessarily involves a contrast between value and cost.

57. At the hearing of this appeal, counsel for the appellants was asked what he considered was the meaning of "net cash value". He answered simply that it is the value to a claimant of the house that she is living in per month, so that, for example, if the appellant is living in a house in a housing development where the house next door is rented out at €800 per month, then the value to the claimant is the same, assuming the houses to be

broadly equivalent. This cost is unrelated to the level of mortgage repayments, other than that they may coincidently be the same.

58. Counsel for the appellants agreed that in many cases the net cash value to a claimant will be the open market rental of the property, but he submitted that this would not be so in all cases. He made the point that the claimant could be contributing to a rental payment being made by the liable relative, which would serve to reduce the net cash value to the claimant of the house being provided to him/her. In such circumstances, the net cash value to the claimant of the contribution of the liable relative would be less than the open market rental value of the accommodation.

59. Counsel was also asked how, in his submission, the assessment of means should have been undertaken by the respondent in each case. Counsel replied that in the first place, the respondent must satisfy herself that the housing costs of the claimant are being met by a liable relative. Once satisfied that that is so, the respondent must then assess the net cash value of that to the appellants. In addressing this question, counsel submitted, it is not open to the respondent to take a blanket view that in all cases where the liable relative is repaying a mortgage on the property occupied by the claimant, that the net cash value to the claimant equates to the monthly mortgage instalments. This would give rise to anomalies and in some cases even absurdities and no less than ten examples of such anomalies/absurdities were provided in the written submissions of the appellants. Moreover, such an approach is illogical because, as evidenced by the affidavit of Ms. Rogers, the net cash value of a person's annual housing costs and the gross mortgage repayments made by a liable relative are entirely separate concepts, and will never be the same save by coincidence and happenstance.

60. More generally, counsel for the appellants submitted that the approach of the respondent to the assessment of net cash value is one of administrative convenience, but

such an approach is not permissible having regard to the statutory language. The statutory language requires an individual assessment to be undertaken, but in this regard, counsel submitted that in his view it would be permissible for the respondent to allocate the net cash value, once determined, to a band as the respondent does in other contexts. This would limit the administrative inconvenience to the respondent. If the respondent considers that the interpretation urged by the appellants causes too great an administrative inconvenience, then, if necessary the respondent should amend the legislation, but in the meantime it must be accorded its correct meaning.

Submissions of respondent

61. The respondent submits that the trial judge was entitled to adopt the approach that she did to the interpretation of the legislation and to take into account the need to read the legislation as a whole and "*with the purpose of the provisions in mind, that is to determine income for the assessment of means*…". It is submitted that benefits under consideration are means related payments and, as deposed to by Ms. Gordon on behalf of the respondent, the purpose of the means test is to ensure that resources are directed to those with the greatest needs for income supports from the State. The respondent noted that the appellants accepted that the mortgage repayments made by the liable relative come within the definition of "housing costs" and within the meaning of "non-cash benefit" as set out in Regulation 142 of the 2007 Regulation.

62. While it was submitted on behalf of the appellants that the trial judge erred in holding that "net cash value" and "annual housing costs" were equivalent, the respondent submits that the trial judge did not say that the concepts are equivalent. The trial judge referred to the affidavits sworn by Ms. Gordon and Mr. Lawlor on behalf of the respondent and to the purpose of means testing. It is submitted that the legislative provisions address

the fact that in many cases a liable relative may be paying a claimant's housing costs, and the legislation requires the net cash value of such payments to be taken into account in the assessment of means of a claimant.

63. As to the meaning of the term "net cash value", while this is not expressly defined in the legislation, it is submitted that is clear that a computation of some kind is required to arrive at a net figure, and it is the submission of the respondent that that computation is the subtraction of the specified sum to be disregarded as provided in the legislation from time to time (at the time of the proceedings €4,952) from the total of the mortgage repayments or rental payments made by the liable relative. It is this computational exercise that results in the "net cash value" to the claimant. Moreover, since this is a statutory construct, the evidence of Ms. Rogers is *nihil ad rem.* This particular approach to the interpretation of "net cash value" does not appear to have been made on behalf of the respondents in the High Court, although the resulting interpretation of the phrase is just the same.

64. Furthermore, the respondent contends, in the case of Ms. Brennan, that while it is unclear whether or not she continues to submit that "net cash value to the person" should be calculated by reducing the contributions made by the liable relative by reference to the extent of the interest of the liable relative in the property (i.e. in cases of joint ownership, it had been contended that the contributions of the liable relative should be reduced by half, or alternatively to nil, in order to reflect that person's interest in the property), the relevant legislative provisions make no reference to the market value of a person's principal private residence. It is submitted that the silence of the legislation on the issue of property value and ownership reflects the fact that it would not be reasonable to assess and take into account the potential value of a property which, in the absence of its sale, is not available to provide income support to the claimant. Therefore the issue of ownership, and whether

the property is jointly owned by the claimant, is not relevant to the assessment of means where the liable relative is making mortgage repayments, as in this case.

Discussion and decision

65. At the outset, it is appropriate to say again that it forms no part of this appeal that the trial judge erred by failing to apply the correct principles of statutory interpretation. The challenge is to the conclusions that she reached having applied the principles that she referred to in her judgments (see paras. 31-32 above), rather than the principles that she applied in arriving at those conclusions .

66. While the grounds of appeal in each of these cases raised multiple issues, ultimately just one ground of appeal (the same ground in each case) was pursued, that being that the trial judge erred in her interpretation of the phrase "net cash value to the person" as that term appears in Regulation 142 of the 2007 Regulations.

67. As mentioned above, at the hearing of this appeal, the respondent submitted that (in the case of Ms. Brennan) it was unclear whether or not the appellant in that case was pursuing the argument advanced on her behalf to the Chief Appeals Officer i.e. that in order to arrive at the net cash value to the appellant in that case, the mortgage repayments should be reduced to nil or by 50% in order to reflect the value of the liable relative in the house occupied by the claimant.

68. However, it will be apparent from what I have already said above, that no such argument were advanced at the hearing of this appeal. This argument, in respect of which the precedent decision was called in aid, was effectively abandoned, and the appellants nailed their colours firmly to the mast of a single point, that relating to the meaning of the phrase "net cash value to the person". There is no other issue to be decided on this appeal.

69. The appellants argued that the net cash value to them of having their housing costs discharged by the liable relative - which in each of these cases involves the re-payment of a mortgage loan relating to the houses in which the appellants reside - does not equate to the annual sum of those mortgage repayments. In answer to a question from the Court, counsel for the appellants said that the net cash value [of their housing costs] to the appellants means the value of the house in which each appellant resides per month. Counsel was asked if by this he meant the open market rent, and he agreed that in most cases it would be, comprising either the rent that is actually being paid (where the dwelling house is not owned by either the claimant or the claimant's liable relative) or, where the house is so owned, the rent that "should be paid" by which I understand counsel to refer to the open market rent. He submitted that there must be a system of addressing the net cash value to the individual, and if that is administratively inconvenient, then that is a consequence of the legislation, and if need be the respondent should amend the legislation to address such inconvenience. It would be open, for example, to the respondent to implement a system of "banding", by which I understood counsel to mean that houses could be grouped together within certain bands, and the claimant's means would be assessed by reference to whatever band the house was in rather by reference to an exact rental value.

70. As against this, as we have seen, the respondent contends that the trial judge was correct in holding that *"the full amount of the mortgage payments was correctly used in the assessment of maintenance and non-cash benefits for the purpose of deciding the applicant's rate of One Parent Family Allowance…"* . Such an interpretation, the respondent contends, is consistent with the statutory scheme and the purpose of the legislation. As to the meaning of "net", the respondent submits that this is the net sum computed by subtracting the statutory "disregard" sum from

the annual mortgage repayments, and that that computation results in the "net" cash value to the claimant for the purposes of Schedule 3, rule 1(2) in each of Parts 2 and 5 of the 2005 Act and Regulation 142 of the 2007 Regulations. This submission I find compelling.

71. I agree with counsel for the respondent that the word "net" implies a computation. In the context of money "net" usually implies the sum resulting after deduction of an expense of some kind, but it need not be confined to an expense, and there is no reason why, in a statutory scheme, it cannot be used to refer to the deduction of another sum.

72. In the present context , as is to be expected, the Oireachtas has drawn up a detailed and sophisticated system for determination of eligibility to a very wide range of social welfare benefits. It is an obvious step in that process that applicants must be assessed for eligibility to whatever benefit they may apply for, and that in turn a key element of that assessment is an assessment of means , in the contexts of both the initial determination of eligibility , and , if that is established , the amount of benefit to be paid.

73. The scheme requires that both income in cash and such non cash benefits as are prescribed, are to be taken into account in assessment of means (in the case of both benefits at issue in the proceedings), but it also allows for what has been described as a "statutory disregard", being a sum that is to be disregarded in the assessment of a claimant's means. Another way of putting that is to say that the non-cash benefit to be assessed is the value of that benefit in the hands of a claimant less the prescribed sum to be disregarded, which results in the net cash value to the claimant of the non-cash benefit that is reckonable for the purposes of assessment. That is what the

respondent submits is the meaning of Regulation 142 of the 2007 Regulations, and I agree.

74. This interpretation is one which in my view is consistent with the literal and ordinary meaning of the words used, and it yields an exact result in every case. I see no ambiguity in the phrase, and the interpretation is in my view consistent with the clear purpose of this part of the Act of 2005 which is to identify the criteria to be taken into account when assessing the means of an applicant for a particular benefit. On the other hand , if the submissions of the appellant are accepted, it is anything but clear on what basis the "net cash value to the person" of mortgage loan payments is to be calculated, and neither the Act of 2005 nor the 2007 Regulations give any hint at all as to the basis for such a calculation . If, as was suggested by counsel for the appellants, it means the open market rental of the property in which the claimant resides (adjusted to take account of whatever variables are appropriate) then why did the legislation, which is otherwise very detailed and comprehensive, not so provide?

75. Insofar as the appellants have laid great emphasis upon the possibility that the interpretation argued for by the respondents may be abused by claimants and their former partners alike, and that such abuses could give rise to anomalies or absurdities, I am unpersuaded by this line of argument. So, for example, it is argued that a liable relative might, out of spite, artificially increase mortgage repayments in order to reduce the amount of one parent family payment that a claimant might otherwise receive. However, I find such a scenario quite improbable, not least because it might well result in the claimant activating or reactivating proceedings to secure greater maintenance payments from the liable partner.

76. Another scenario proposed by the appellants is that it would be possible for the liable relative and the claimant to collude and, by means of a lease at an artificially low price (from the liable relative to the claimant) depress the value of the non-cash benefit. In their submissions, the appellants argue that it is inevitable that such an abuse will occur in the future.

77. However, I do not think that it is appropriate to approach matters of statutory interpretation from the point of view that a particular interpretation, which is otherwise sound, may give rise to abuses. On the contrary, it is appropriate to approach matters of statutory interpretation from the point of view that the law will be properly implemented and followed. Moreover, although the Court received no submissions on the issue, the Court is not blind to the fact that the respondent has at her disposal the powers to deal with social welfare fraud and to claw back benefits that should never have been awarded, or that were awarded in an excess of statutory entitlements. Furthermore, while the appellants argued that it was inevitable there would be abuses, the scheme is now in operation for more than fifteen years or more and no evidence was provided at all that such abuses have occurred.

78. Finally, so far as the anomalies/absurdities argument is concerned, the interpretation of Regulation 142 which the appellants contend for also suffers from the same kind of potential illogicality to which the appellants pointed in their submissions to support their argument that the Oireachtas cannot have intended such an irrational system. For example, the appellants state that the net cash value is to be assessed by reference to the rent chargeable for an equivalent property and not the actual repayments made on foot of the mortgage secured on the house. However, it is perfectly possible that the mortgage repayments might be relatively low (for a

variety of reasons) and the notional monthly market rent could be considerably higher. Indeed, the submissions made by the CIC on behalf of Ms. Bracken to the Chief Appeals Officer on 20th November 2017 state on p.4 thereof that "*Evidence has been provided that a similar property would cost more to rent than the mortgage repayments on the open market*". Can it truly be said that the net cash value to Ms. Bracken or any claimant in these circumstances is this greater sum (the open market rent) when as a matter of fact the liable relative pays a lesser sum? While counsel for the appellants did posit such an outcome , it would surely be anomalous, if not absurd ,that a claimant for a social welfare benefit could effectively be deemed to receive a benefit having a greater value than the amount actually being paid by the liable relative (over which the claimant may have no control) , with the result that the claimant receives a lesser benefit than if it was calculated on the basis of the payments actually being made by the liable relative? The question only needs to be posed to see the absurdity of the proposition. It follows that examples of anomalies do not provide the answer to the question in this appeal.

79. It was also argued on behalf of the appellants that there must be consistency of interpretation of a phrase used in the same statute, and in this regard reliance was place upon the use of the phrase "net cash value to the person" in Regulation 142(b) of the 2007 Regulations (see para.55 above). But this is not a proper comparison, simply because there is no equivalent deduction of a specified sum in Regulation 142 (b) as is provided for in Regulation 142 (a). The latter directs the calculation of the net cash benefit, whereas the former stops short of doing so

80. For all of the foregoing reasons, I have come to the conclusion that the interpretation of the legislation contended for by the respondent is the correct interpretation, and accordingly I would dismiss both appeals. Since the respondent has been entirely

successful in both appeals, my preliminary view is that she is entitled to an order directing payment of her costs by the appellants in each of their respective proceedings, such costs to be determined by adjudication in default of agreement. If either or both of the appellants wishes to contend for a different order, then she/they may , within 14 days from the date of delivery of this judgment, apply to the Court of Appeal office for a brief supplemental hearing on the issue of costs. In such event, and in the event that the party requesting such a hearing is unsuccessful in any application that she may make, then she may be held additionally liable for the costs of such supplemental hearing.

81. Murray J. and Costello J. have confirmed their agreement to the within judgment.