

Judicial Communications Office

Tuesday 25 October 2011

COURT ORDERS DEPARTMENT OF EDUCATION TO RECONSIDER ITS TRANSPORT POLICY FOR IRISH MEDIUM SECONDARY SCHOOL

Summary of Judgment

Mr Justice Treacy, sitting in the High Court today, ordered the Department of Education to review its transport policy for pupils attending Coláiste Feirste, the only secondary school in Northern Ireland to provide education through the medium of the Irish language.

The judicial review of the Department's refusal to provide transport or transport assistance for pupils of Coláiste Feirste was brought by Ms Colma McKee, the Vice Chairperson of the Board of Governors. Ms McKee claimed the Department of Education had:

- Failed to give proper weight and consideration to its obligation under Article 89 of the Education (NI) Order 1998 to encourage and facilitate the development of Irish-medium education;
- Breached its obligations not to discriminate between different schools and different categories of pupils and failed to treat all schools fairly and equally;
- Failed to comply with its obligations under Article 52 of the Education and Libraries (NI) Order 1986 to provide transport assistance to pupils attending grant aided schools;
- Impeded the exercise of the right to be educated in one's language under the European Convention on Human Rights;
- Discriminated against those who regard Irish as their first language as against those who do not.

Mr Justice Treacy noted that the issue of transport in the Irish-medium sector was the subject of ongoing discussions since 2003. He commented that, unlike other secondary schools, the primary schools which form the catchment area for Coláiste Feirste are widely geographically dispersed. This has obvious implications for the provision of transport to those who wish to attend this school. The judge noted said that "sadly, despite what appears to have been earnest attempts on the part of all parties involved, a solution has not been found". The Department wrote to various interested parties in September 2010 stating that while the Minister had striven to find a solution that would meet the wishes of the parents, she had concluded that the situation could not be resolved without unreasonable public expenditure.

The judge reached his conclusion based on Ms McKee's primary submission that **the Department had failed to give proper weight and consideration to its obligation under to encourage and facilitate the development of Irish-medium education.**

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Mr Justice Treacy said that Article 89 of the Education (NI) Order 1998 is the statutory embodiment of the clear commitment enshrined in the Belfast/Good Friday Agreement to place a statutory duty on the Department to encourage and facilitate Irish medium education in line with the current provision for integrated education. He said he did not accept the Department's contention that this duty was merely aspirational and added that the imposition of the statutory duty has and is intended to have practical consequences and legislative significance.

The judge noted that a major factor in the Department's decision not to provide transport was that it would create a precedent. He said, however, that the Department does *not* have a corresponding duty in relation to the traditional established educational sector:

“Accordingly, [the Department] may facilitate and encourage the Irish-medium post primary sector in ways that it need not for other sectors by taking positive steps or removing obstacles which inhibit the statutory objective. This does not appear to have been fully appreciated by [the Department].”

Mr Justice Treacy added that, in his view, the provision of transport facilities to schools in any sector is critical to the development of that sector and the provision of genuine parental choice. He said it was therefore open to the Department to exercise its powers and to amend the transport policy in the discharge of its duty under the 1998 Order. The judge granted the application and ordered the Department to reconsider the matter.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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