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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE FOR JUDICIAL REVIEW

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Karen Quinlivan KC & Aidan McGowan (instructed by the Committee on the Administration of Justice) for the Applicant
Tony McGleenan KC & Philip McAteer (instructed by the Departmental Solicitor's Office) for the Respondents

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JUDGMENT ON REMEDY

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HUMPHREYS J

Introduction

[1] In a judgment handed down on 5 March 2025, I held that the Executive Committee was in breach of its statutory duty under section 28E of the Northern Ireland Act 1998 ('NIA') by reason of its failure to adopt an anti-poverty strategy. I rejected claims that the Minister for Communities and/or the First Minister and deputy First Minister had acted in such a manner as to cause the breach of duty on the part of the Executive Committee.

[2] I then invited further submissions from the parties on the issue of relief. The applicant seeks an order of mandamus compelling the Executive Committee to adopt an anti-poverty strategy by the end of August 2025. The respondent says that no mandatory order ought to be made but rather the court should either allow the judgment to speak for itself or make an appropriate declaration.

[3] On 31 March 2025 the Minister presented a draft anti-poverty strategy to his Executive colleagues for their consideration and comment. The court has been advised that the proposed next step is for the paper to be formally tabled at an

Executive Committee meeting. This would be followed by a 12 week consultation period and thereafter final consideration in light of proposed amendments and representations.

The legal principles

[4] In *Re Napier's Application* [2021] NIQB 120, Scoffield J set out a number of principles in relation to the grant of mandatory relief:

> "(1) Rarity in general: As noted above, mandatory or coercive orders are rare in judicial review. The just result is more often achieved by the grant of a constitutive remedy such as a quashing order and/or an educative remedy by way of declaration. Nonetheless, mandatory orders remain an important tool within the courts' toolkit to do justice in an appropriate case and where there is a proper basis for compelling a particular action on the part of the respondent.
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> (2) Need for clarity as to obligation: Mandatory orders are most appropriate in cases where the relevant public authority has a clear statutory duty to do a certain thing (see Supperstone, para 16.47; and Lewis, para 6-051). This means that, in practice, the situations where the courts are willing and able to order a public authority to do a specific act are limited. A mandatory order is most suitable where the obligation to act is clear and the act to be performed is also clear. That is not to say, however, that an implied statutory duty may not be enforced by way of mandatory order where the court has identified the relevant obligation.
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> (3) Rare where discretion involved: Generally, a mandatory order will not be granted compelling a particular outcome where the public body in question enjoys a discretion – unless (exceptionally) the discretion may only lawfully be exercised in one particular manner in the circumstances of the case – although an order may be granted securing performance of the duty to *exercise* the discretion (see Supperstone, para 16.47; and Auburn, para 30.73).
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> (4) Need for clarity as to act required: A mandatory order will also not normally be granted unless the court can specify precisely what the public body needs to do in order to perform its duties; and such an order should be framed

> in terms which make it clear what the public body is required to do and also therefore to allow a clear assessment to be made as to whether the order has been complied with (see Lewis, para 8-009; and Auburn, para 30.08). That is not to say that a court may not, for instance, grant an order requiring a particular purpose to be achieved within a particular timescale (where there is a public law obligation to achieve the purpose in question); but the court will be more cautious as the complexity of the result to be achieved or the steps required for that purpose increases.
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> (5) Presumption against continuing supervision: In general, a mandatory order will not issue to compel the performance of a continuing series of acts which the court is incapable of superintending (see De Smith, para 18-036). Nor will a mandatory order be granted if it will require close supervision by the court to ensure that it is being observed, or ongoing monitoring of the exercise of the public body's functions (see Lewis, para 8-009; and Auburn, para 30.08)." (para [59])

[5] In the context of the duty owed by the Executive Committee under section 28D of the NIA, relating to the adoption of an Irish language strategy, Scoffield J commented in *Conradh na Gaeilge's Application (no. 2)* [2022] NIQB 56:

> "As explained in *Napier*, the courts will be slow to grant a mandatory order in judicial review proceedings in certain circumstances. One of those is where the making of the order would be such as to require political agreement on a matter of political controversy…That is partly because of the practical difficulty in requiring parties to agree; partly because the threat of use of the court's punitive powers might give rise to undue pressure on the part of various ministers to capitulate to unreasonable demands, or temptation on the part of others to impose unreasonable demands, as the case may be; and partly because, in the event of non-compliance, enforcement by way of the imposition of sanctions may be difficult." (para [46])

[6] By the time of this decision, the Executive had collapsed and the question of mandatory relief rendered moot but Scoffield J held:

> "However, even if the Executive were still in place, this is not a case where I would have been prepared to accede to the applicant's request to grant an order of mandamus. I

> accept the respondent's submission that it would be premature to grant such an order at this stage, when the Department is now in the process of taking forward work on the draft strategy, which has not yet come before the Executive" (para [47])

[7] The Supreme Court has recently considered the principles to be applied when a court is considering whether to issue a mandatory order in respect of the breach of a statutory duty by a public authority, albeit in a very different factual context. In *R (Imam) v London Borough of Croydon* [2023] UKSC 45, the respondent conceded that it was in breach of its duty to provide suitable accommodation to the applicant but said that it was not able to comply by reason of budgetary constraints and the lack of available housing stock.

[8] Lord Sales began his analysis by reference to the duty in question. It was statutory in nature, owed personally to the individual applicant and enforceable by way of judicial review proceedings. It was described as immediate, non-deferrable and unqualified, in particular by any reference to the resources of the particular council. As a result, a court ought not to modify or moderate the duty by declining to grant relief on the ground of insufficient resources – see paras [37] to [41].

[9] However, remedies in judicial review are, of course, discretionary and this permits:

> "… a court which finds that there has been a breach of a public law duty to decide, in the light of all the circumstances as appear to the court at the time it applies the law, how individual rights and any countervailing public interests should be reconciled." (para [42])

[10] In exercising its discretion, a court must have regard to the separation of powers and the extent to which the making of a mandatory order may impinge upon the ability of an authority to carry out functions which have been conferred on it by Parliament. However, the Supreme Court recognised that:

> "…the nature of a breach of legal duty on the authority may be such as to call for the grant of mandatory relief in order to compel the authority to do what it has a clear duty to do." (para [45])

[11] Much of the reasoning in *Imam* is concerned with the question of how a court should approach a plea of impossibility advanced by a public body. However, a number of principles of general application are articulated. At para [67], Lord Sales stated:

> "…it is a factor relevant to the exercise of the court's discretion if it emerges that the authority was on notice in the past of a problem in relation to the non-performance of its duty but failed to take the opportunity to react to that in good time. The court cannot provide encouragement for what would amount to a settled position of the authority to act in disregard of the duty imposed on it by Parliament. The longer an authority with notice of the problem has sat on its hands, the more important it may be for the court to enforce the law by making a mandatory order rather than marking the unlawfulness of the authority's conduct by making a quashing order or declaration."

[12] Lord Sales continued:

> "…if there is no sign as things stand at the time the matter is before the court that the authority is moving to rectify the situation and satisfy the individual's rights, that is a factor pointing in favour of the making of a mandatory order." (para [69])

[13] In *Re Brown's Application* [2025] NICA 16, the Court of Appeal adopted the approach of the authors of De Smith's Judicial Review (9th Edition) who say at para 18-024:

> "If the court has found there to be a breach of duty, a mandatory order may be granted if in all the circumstances that appears to the court to be the appropriate form of relief."

Consideration

[14] The applicant stresses that the failings of repeated Executive Committees had led to the previous successful judicial review proceedings before Treacy J in 2015. This, accompanied by the lapse of some 18 years since the duty was first enacted, ought to point the court in the direction of the grant of mandatory relief.

[15] Section 28E (1) states:

> "The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need."

[16] On one level, this duty is straightforward and binary in nature. The Executive Committee is obliged to adopt an anti-poverty strategy and, as I have previously found, it has failed to comply with this duty. However, beneath the simplicity of the

section lies a range of political decisions as to how the duty is to be complied with. This will inevitably engage a range of views as to competing priorities and the efficacy of proposed measures. Politicians, NGOs and other lobby groups will hold differing but valid views on what any anti-poverty strategy should contain.

[17] The particular constitutional arrangements of Northern Ireland require a consensus to be arrived at across a range of political parties who occupy positions within the Executive Committee. If a mandatory order were issued in this case, it would have the effect of compelling Ministers to agree a strategy even in circumstances where some of their number held entirely valid objections to its contents. It could be, for instance, that differing opinions emerge as to whether the draft strategy presented complies with the requirement to be "based on objective need." If, in such circumstances, a court were then asked to impose sanctions for non-compliance with an order of mandamus, it would be faced with a most invidious task. Would all members of the Executive Committee be subject to sanction? Or only those who adopted a particular stance? To what extent could the court determine the validity of the stance taken? As Scoffield J observed, even the existence of the threat of punitive sanctions may serve to distort the political process.

[18] It is also important to recognise that the duty in this situation is not owed to a particular individual, as was the case in *Imam*, but to the community at large. There are, no doubt, significant benefits to society which would accrue from the adoption of an effective anti-poverty strategy but these cannot be seen through the isolated prism of an individual case.

[19] As I have already found, there has been a breach of the requirement to adopt an anti-poverty strategy within a reasonable time, and the Executive Committee is in breach of section 28E. However, the evidence reveals that it is moving to rectify the situation by tabling a draft policy and commencing the consultation phase within the very near future. This is a factor which speaks to the appropriate form of relief.

[20] As the Court of Appeal did in *Brown*, I remind myself of the judgment of Lord Reed in *Craig v HM Advocate* [2022] UKSC 6 and of the importance attached to the Government's compliance with declaratory orders.

[21] For these reasons, I have determined that it is not appropriate, on the particular facts of this case, to make an order of mandamus. I do propose, however, to make a declaration in respect of the breach of statutory duty.

Declaratory relief

[22] The court declares:

> "The failure of the Executive Committee to adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective

need was, at the time of the commencement of these proceedings, unlawful and in breach of section 28E(1) of the Northern Ireland Act 1998."