

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY C, a minor, BY HER
MOTHER AND NEXT FRIEND FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF AN APPLICATION BY A, a minor, BY HER
MOTHER AND NEXT FRIEND FOR JUDICIAL REVIEW**

WEATHERUP J

The applications.

[1] The application by C for Judicial Review relates to a decision made on 18 April 2005 by the Principal of Meanscoil Feirste, Falls Road, Belfast suspending C for a period of five days for stealing school property. The application by A for Judicial Review concerns a related decision made by staff at Meanscoil Feirste imposing one day's detention on A for involvement in the stealing of the school property by C.

The different versions of events in the street.

[2] The events giving rise to the allegations of stealing school property are in dispute and occurred on Tuesday 12 April 2005. Breandan O'Fiaich a teacher at Meanscoil Feirste was supervising a camogie team from the school and asked a number of girls, including C, to assist in placing hurling sticks, helmets and a sliotar (a camogie or hurling ball) in the store. Having then left the school to return home Mr O'Fiaich describes on affidavit how he saw C hitting a sliotar against the wall of a shop in the street. He approached C and asked for the sliotar but C claimed that she had not been hitting a sliotar but a stone. A was present and supported C's account, as did another girl from another school. The girl from the other school had her arms crossed and a sliotar fell from her arms. Mr O'Fiaich recognised the sliotar as the one that

had been used in the school competition. Mr O’Fiaich reclaimed the sliotar and later found that there was no sliotar with the equipment in the store.

[3] C described how she was walking home from school and found the sliotar in the fence of a leisure centre. She was hitting the sliotar against a wall and Mr O’Fiaich approached and asked for the sliotar. As the sliotar had gone under a car C said that she did not know where it was but her friend retrieved it and gave it to Mr O’Fiaich. In her second affidavit C stated that she had referred to hitting stone as well as a sliotar and had not sought to claim that she had solely been hitting a stone. Further she stated that there were two sliotars and she had placed one of them in a helmet in the equipment store.

A described how she had gone with C to the bus stop where she had gone into a shop and when she came out C was hitting a sliotar against a wall. A went back into the shop and she noticed Mr O’Fiaich arrive. A heard some of the remarks made by Mr O’Fiaich. She does not describe making an contribution to the exchanges, save that in a second affidavit A describes being asked by Mr O’Fiaich whether C had been hitting a stone and replying that she had not seen any stone.

The different versions of the interviews of C and A.

[4] On Wednesday 13 April 2005 Mr O’Fiaich reported the events of the previous day to Damien MacGiolla, a Vice-Principal at Meanscoil Feirste. Having telephoned C’s mother on Wednesday 13 April and being unable to speak to her mother, and having telephoned C’s father on Thursday 14 April and reported the incident to him, Mr MacGiolla spoke to C on Friday 15 April. C stated that she had not stolen the sliotar but had found it. Mr MacGiolla did not believe C but believed Mr O’Fiaich’s version of events and he proposed to impose two detentions on C. Later the same day Mr MacGiolla reported the events to Garai MacRoibeaird, the Principal of Meanscoil Feirste. Mr MacRoibeaird then consulted with Mr O’Fiaich about the events of 12 April. Mr MacRoibeaird then interviewed C in the present of Rosa MicLochlainn of the school’s senior management team. C maintained that she had found the sliotar in the street. Mr MacRoibeaird re-interviewed Mr O’Fiaich who maintained that he was not mistaken in his description of events. Mr MacRoibeaird returned to his interview with C in the presence of Ms MicLochlainn. Ms MicLochlainn challenged C that she, Ms MicLochlainn, did not believe that the sliotar had been found in the street and C then said that she had intended to return it to the school and that she knew it was the school’s sliotar because it had MF written on it. Mr MacRoibeaird repeated Mr O’Fiaich’s version of events to C and C then agreed that version was true. C admitted that she had stolen the sliotar and that it had MF written on it. Ms MicLochlainn’s affidavit confirmed Mr MacRoibeaird’s account. After consultation with others on Monday 18 April Mr Mac Roibeaird decided that C should be suspended.

[5] C disputes that she made admissions as indicated by Mr MacRoibeaird and Ms MicLochlainn. She had not stated to Mr MacRoibeaird that she intended to return the sliotar to school. The sliotar recovered by Mr O’Fiaich did not have MF written on it. C had not admitted that she had stolen the sliotar. C had been asked a number of times if she had stolen the sliotar. The exchanges took place in Irish. Eventually C said “Maith go leor”. She translates this into English as meaning “Yeah, right” which could not be interpreted as an admission. In response Mr MacRoibeaird states that had C said “Maith go leor” he would not have accepted that as an answer and he would not have treated it as an admission. Ms MicLochlainn also responds that C did not say “Yeah right” or “Maith go leor.”

[6] On Wednesday 13 April Mr O’Fiaich also reported the previous days events to Padraigin Ni Ghallchoir, the teacher who was Year Head of A’s year. Later that day Ms Ni Ghallchoir spoke to A about the incident and her support for C’s version of events when Mr O’Fiaich had met the three girls in the street. A did not deny Mr O’Fiaich’s version of events. Ms NiGhallchoir then reported the interview to Mr McGiolla who later instructed Ms Ni Ghallchoir to apply one days detention to A.

[7] A states that at the interview with Ms Ni Ghallchoir she gave her version of events, namely that she never saw C steal a ball. In a further affidavit A does not address the statement of Ms Ni Ghallchoir that A had not denied Mr O’Fiaich’s version of events.

[8] In proceedings for Judicial Review the burden of proof is on the applicant. Where there is a conflict of evidence in proceedings for Judicial Review, and it is not an exceptional case involving cross examination of witnesses, and that conflict of evidence cannot be resolved on the papers, it follows that the applicant’s version of events has not been established. In those circumstances the Court proceeds, in respect of disputed matters incapable of resolution on the papers, on the basis of the version of events advanced by the respondent’s witnesses. In the present case there are conflicts of evidence between the applicants and the staff that cannot be resolved on the papers. The bare contradiction of the applicants is no basis for rejecting the version of events given by staff. The applicants refer to the absence of the letters MF on the sliotar as calling into question the evidence of the staff at the interview of C. However I accept the respondent’s interpretation of that remark as probably having been made by C to support her claim that she intended to return a school sliotar found in the street, and to establish how she could have known it belonged to the school, and not as being an indication that the staff version of the interview was incorrect. Accordingly I proceed on the basis of the version of events given by staff in relation to events in the street and at the interviews of C and A.

[9] The applicants grounds for Judicial Review -

- (a) Inadequate investigation
- (b) Inadequate hearing
- (c) Inadequate communication with parents
- (d) Disregard of discipline procedures
- (e) Inadequate regard to penalties
- (f) Insufficient reasons
- (g) Absence of appeal
- (h) Irrational decisions

[10] First of all it should be stated that the Court does not propose to concern itself with the detention imposed on A, save in one respect discussed below. This approach is adopted because the Court ought to decline to involve itself in school discipline unless severe measures are being applied, as with the cases of suspension and expulsion. The record of A's detention was deleted at the end of the term. The one aspect that warrants consideration is that A's detention slip recorded the reason for detention as "Páirteach in eachtra inar goidiú sliotar," which the applicants translate as meaning that she participated in the theft of the sliotar. The accusation, and the finding, is more accurately stated in Ms Ni Ghallchoir's affidavit as being that A untruthfully supported C's story. It was Ms NiGhallchoir who made the entry in A's detention slip, which she translates as meaning that A was involved in an incident where a sliotar was stolen, that is that A was aware of the theft and sought to conceal it because C was involved.

The adequacy of the investigation.

[11] The applicants contend that there was inadequate investigation of the allegations against C. Lundy, in *Education Law, Policy and Practice in Northern Ireland* at paragraph 7.23 states -

"It is inevitable that the level of enquiry will depend upon three things (1) the severity of the behaviour, (2) the level of doubt about the accuser's involvement and (3) the punishment which might be imposed."

[12] In relation to C she was questioned by Mr O'Fiaich at the scene of the events in the street. The Vice-Principal Mr MacGiolla then interviewed Mr O'Fiaich, attempted to speak to C's mother, spoke to C's father and then interviewed C. He then reported to the school Principal, Mr MacRoibeaird, who also interviewed Mr O'Fiaich and then interviewed C in the presence of Ms MicLochlainn. In the course of that interview Mr MacRoibeaird broke off to clarify matters with Mr O'Fiaich and again returned to interview C in the presence of Ms MicLochlainn. At this point C made admissions to

Mr MacRoibeaird and Ms MicLochlainn. I am satisfied that in all the circumstances this was an adequate investigation.

The adequacy of the hearing.

[13] The applicants contend that there was no adequate opportunity to respond to the allegations. The requirements of procedural fairness include the right to know and to respond. A party must have the opportunity to be informed of the allegations and to make representations in response. In relation to C it was apparent that she was being accused of stealing a sliotar belonging to the school. She responded to Mr O’Fiaich that she did not have a sliotar. She responded to Mr MacGiolla that she had found the sliotar. She repeated this response at interview by Mr MacRoibeaird and Ms MiLochlainn and when challenged on her versions of events said that she intended to return the sliotar to the school. On further questioning she admitted that she had stolen the sliotar. I am satisfied that C had an adequate opportunity to respond to the allegations on a number of occasions and did make her response on those occasions.

Communication with parents.

[14] The applicants contend that the parents ought to have been present during interviews. In Re M’s Application [2004] NICA 32 M was in P7 at the Good Shepherd Primary School, Dunmurry when he was suspended by the Principal for knowingly handling an illegal substance on school property. Kerr LCJ, delivering the judgment of the Court of Appeal, recognised the use of the suspension power to facilitate investigation, but concluded in M’s case that suspension had been imposed as a punishment. Punishment could only properly be imposed when M’s guilt has been established. In relation to communication with M’s parents Kerr LCJ stated at paragraph 24 –

“We are satisfied that the process to establish his guilt, in view of his age at the time, should have involved his parents.”

[15] As a pupil in P7, M would have been 10 or 11 years old. At the time of the events in the present case C was 14 years old and A was 16 years old. There was nothing in either case to suggest that either C or A was restricted in the ability to furnish their version of events, whether personally or by reason of the nature of the circumstances prevailing in the case. Nor was there any general policy of having parents present at such interviews. I am satisfied that there was nothing in the circumstances of the present cases that indicated that procedural fairness would require the presence of a parent at the interviews.

[16] Further, while raised as separate issues, there is a cumulative effect to a consideration of the nature of the investigation and of the opportunity afforded to know the charge and to respond at the hearing and of the involvement of the parents in the process. I am satisfied on a consideration of these matters on a cumulative basis that there was no procedural unfairness.

Compliance with disciplinary procedures.

[17] The applicants' contend that there was non-compliance with disciplinary procedures. Article 3(3) of the Education (Northern Ireland) 1988 requires that the scheme of management for every grant aided school shall provide for it to be the duty of the Principal to determine measures to be taken in relation to the behaviour of pupils and -

“(c) To prepare a written statement of such measures and to secure that -

- (i) a copy of that statement is given (free of charge) to the parents for all registered pupils at the school; and
- (ii) copies of the statement are available for inspection (at all reasonable times and free of charge) at the school.

[18] Article 49(2) of the Education and Libraries (Northern Ireland) Order 1986 requires the Council for Catholic Maintained Schools (CCMS) to prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from Catholic maintained schools. Regulation 3 of the Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995 requires that a scheme shall include provision that a pupil may be suspended from school only by the Principal; that the initial period of suspension shall not exceed five school days in any one school terms; that where a pupil has been suspended the Principal shall immediately give written notification of the reasons for suspension to the parent and the Education and Library Board and the Chairperson of the Board of Governors and the CCMS.

[19] The school has adopted a Discipline Policy, a Code of Conduct and a Pastoral Care programme. In relation to major breaches of discipline, which includes stealing, the year teacher will be informed, and if necessary the Vice-Principal and the Principal, and requisite action will be taken with all details being recorded. The sanctions for major breaches of discipline include suspension. The school's suspension policy provides for notice by letter from the school to the parent with prior notice by telephone from a member of staff; the Principal will keep a record of the circumstances associated with the case and report the matters of the Chairperson of the Board of Governors; the

Principal will immediately give written notification of the reasons and duration of the suspension to the parent, the Chairperson of the Board of Governors and the Belfast Education and Library Board and the parent will be invited to visit the school to discuss the pupil's behaviour.

[20] The school's letter of referral was sent to the parents and correspondence referred to the complaints and contacts procedure and indicated that a range of policies are available on request. There would appear not to have been strict compliance with the requirement of Article 3(3)(c)(i) of the 1988 Order that a copy of the Principal's written statement of measures should be given free of charge to the parents of all registered pupils at the school. However this was not a ground relied on by the applicants in the Order 53 Statement.

[21] Further the policy requires that in dealing with major breaches of discipline the requisite action will be taken and all details should be recorded. No such record was maintained in the present cases. It is important that there should be compliance with the policy requirement that proper records be maintained of the details of action taken in disciplinary matters as serious consequences may be visited on the pupils concerned. In addition the suspension was intended to apply for a period of five days and while the applicant initially objected that the suspension had been for six days it was agreed that a five day suspension had been applied.

Having regard to the penalties.

[22] The applicants contend that decisions were made without regard to the nature of the penalties and the likely effects on the applicants' education. Mr MacRoibeaird states that he took into account that C had completed course work and was in a revision phase. Further any punishment must be proportionate. The applicants contend that suspension was a disproportionate penalty. The policy statement includes stealing as a major breach of discipline for which suspension is set out as a possible sanction. The applicant makes comparisons with sanctions imposed in other cases. Mr MacRoibeaird states that during his four years as Principal there have been four cases where theft has been proven and in each case he has suspended the people concerned. Suspension was not a disproportionate penalty. In any event the proper test for a challenge to the punishment imposed is a rationality test and such a challenge can not be sustained in the present case.

Reasons.

[23] Further in relation to suspension the policy requires written notification to the parent of the reasons for, and duration of, the suspension. Written reasons were furnished in a standard letter of suspension dated 19 April 2005 which recorded the reason for C's suspension as "stealing school

property". The extent of the reasons to be given in relation to this undertaking to give reasons must reflect the context of the decision making. The reasons should be such as enable the parent to know the basis on which the decision was made. In the present case the parent was already on notice of the nature of the allegations. In the circumstances of the present case the statement that C was suspended for stealing school property was a sufficient statement of the reasons for the decision.

Right of appeal

[24] The applicants contend that they had a legitimate expectation of a right of appeal against the decisions. Legitimate expectation must be based on some promise or practice of a particular course of action. In the present case there has been no such promise or practice as would generate any legitimate expectation on the part of the applicants that they would be granted any right of appeal against the decisions. Nor does procedural fairness require the grant of a right of appeal. Of course the procedures applied, absent any right of appeal in the present case, must satisfy the requirements of procedural fairness, as I have found to be the case.

Rationality.

[25] The applicants contends that the findings of guilt against the applicants were unwarranted and unreasonable. On the version of events outlined by the respondents' witnesses the findings that C was involved in stealing the sliotar and that A had untruthfully supported C's stories were entirely warranted and reasonable.

[26] The school has failed to record the details of action taken, and to that extent has failed to comply with the Discipline Policy. Such failure does not otherwise impact on the procedures adopted or the conclusion reached in relation to C's suspension and does not warrant any interference by the Court with the suspension decision. As the applicants have not established any other grounds for Judicial Review the applications are dismissed.

Na fórais, an fhianaise agus na hargóintí atá thaca leis an forais, tá siad gan bhunús. Mar sin, tá an cás caite amach.