

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION  
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY JUDICIAL REVIEW  
BY THE NORTHERN IRELAND COMMISSION FOR CHILDREN AND  
YOUNG PEOPLE OF DECISIONS MADE BY PETER HAINE,  
THE SECRETARY OF STATE  
AND DAVID HANSON, THE MINISTER OF STATE

GILLEN J

**Costs**

[1] On 21 December 2007 I handed down a judgment in this Judicial Review dismissing the applicant's challenge to the introduction of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 dealing with the reasonable chastisement defence to a charge of assaulting children.

[2] The respondents now seek an order for costs against the applicant but not the interveners.

[3] The starting point is that the approach to costs is the same in judicial review as in other civil proceedings (see R (Smeaton) v. Secretary of State for Health (2002) EWHC 886 at para 8). Normally costs "follow the event".

[4] However I consider that as each decision is tied to the facts of the individual case, there are some considerations that are specific to the judicial review context. The court may look to the purpose of bringing the judicial review. Therefore where a test case which may have far reaching implications has been brought, an award of costs may not be made against an unsuccessful applicant. Although it does not apply in this case, this principle may have particular strength where the person is of insubstantial means. I consider it should also be borne in mind when, as in this instance, the applicant is a publicly funded body.

[5] Thus in Supperstone Goudie and Walker "Judicial Review" 3<sup>rd</sup> Edition at paragraph 19.24.1 it is stated :

"The tension between the costs rules of adversarial civil litigation and the judicial review context is most apparent where litigation is conducted in the public interest. In these cases, it becomes more difficult to see why an unsuccessful claimant should pay costs as a matter of course".

[6] Those are sentiments with which I am in agreement. Accordingly where a matter raises a legal question of genuine public concern, it is not unusual for the courts in some instances to hold that it is inappropriate to make a costs order against an applicant even where the judicial review has been wholly unsuccessful. See R v. Secretary of State for the Environment, ex parte Shelter [1997] COD 49. A similar approach has also been adopted in cases where "fundamental rights and the liberty of the subject" were involved and there was a public interest in the issue beyond that of the individual parties. See R (Friends of the Earth and Greenpeace) v. Secretary of State for Environment Food and Rural Affairs [2001] 1 EWCA Civ 1950.

[7] I consider that the legality of physical punishment of children is a matter of genuine public interest as indeed is the question of the status of the Commissioner in claims under the Human Rights Act 1998. These were matters which properly concerned the Commissioner and I believe she has acted responsibly in raising them albeit unsuccessfully. I have therefore concluded that this is a case where there should not be an award of costs against the applicant. There shall therefore be no order as to costs.