

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY MARTIN CLIFFORD FOR
JUDICIAL REVIEW**

WEATHERUP I

Derry City Council Grant Aid Programmes.

[1] The Applicant is a member of the Committee of an organisation known as the Community, History and Heritage Project based in Derry City. The Project is described by the Applicant as a community group set up to facilitate persons interested in Derry's local history, heritage, culture and environment and is based at the Workhouse Museum and Library in Derry. The Respondent is Derry City Council which administers grant aid programmes, the general aim of which is stated to be to encourage and facilitate activities which enhance and develop the Derry City Council area and improve the quality of life for its citizens. This is an application for Judicial Review of the decision of Derry City Council of 17 February 2003 refusing grant aid to the Project. I shall refer to the Project as the Applicant. Mr Deeny QC and Mr Scofield appeared for the Applicant and Mr O'Reilly appeared for the Respondent.

[2] The Applicant received grant aid from the Respondent for a number of years. For the financial year 2002-2003 the Respondent introduced new criteria for the determination of applications for grant aid. In April 2002 the Respondent circulated a consultation document in relation to the new approach to grant aid. By June 2002 a timetable had been devised and it involved applications being made in June 2002 and determinations being made in July 2002. In the meantime the Respondent had approved what were described as continuity grants by which previous recipients of grant aid were to receive payments for the period from April to July 2002.

[3] The Applicant applied for grant aid on 30 June 2002. There were a number of programmes and sub-programmes for which grant aid was available. The

Respondent's officers reported to a special meeting of the Recreation and Leisure Committee of the Council on 25 July 2002 and the Committee accepted the recommendations of the officers in respect of three of the programmes.

[4] The Respondent was advised by Lestas Consulting who produced a Report entitled "Audit of Current Grant Appraisal System June-September 2002". The report stated that it had been commissioned as a result of the concerns expressed by the Director of Recreation and Leisure regarding the robustness, consistency and transparency of the current systems which may leave the Council open to appeals from the public based on the fairness of the systems employed. The Report identified four areas of major concern, being application form issues, system/procedural issues, monitoring and management issues and general difficulties. A number of recommendations were made. In relation to the round of funding that was then current, three options were suggested as the way forward, being no change, deferring the applications or re-examining the process.

[5] As a result it was decided that all applications were to be reconsidered. The decision of the special meeting of the Recreation and Leisure Committee of 25 July 2002 was rescinded. The officers then made recommendations and on 15 November 2002 the Recreation and Leisure Committee made determinations as to the grant aid programmes. The Applicant was assessed under the Heritage and Museum Services Programme and failed to secure grant aid. The Respondent did approve a payment of £3,870, being four months' salary for an employee of the Applicant for the period April to July 2002. The Applicant received notice of refusal of grant aid by letter dated 27 November 2002.

[6] There had been some 350 applications for grant aid requesting payment of some £4.4m. The grant aid programme budget was £1.2M, which had to be reduced to some £300,000 because of commitments already made by the Respondent to various projects and programmes.

[7] Lestas Consulting produced a further Report entitled "Retest Audit of Current Grant Appraisal System November 2002". The Report concluded that the new appraisal system implemented after the first Report had brought about substantial changes and although it was stated that there were still substantial levels of stress regarding the process brought about by time constraints, lack of resources and training, the Respondent's officers felt in a better position to defend decisions and to prepare and develop a worthwhile system for the future.

[8] The Respondent made provision for reviews of decisions, and a Grant Aid Review Panel was set up. The Applicant sought such a review. The recommendations of the Grant Aid Review Panel were accepted by the Recreation and Leisure Committee on 17 February 2003. The decision of 15 November 2002 in relation to the Applicant remained unaffected and by letter dated 18 February 2003 the Applicant was notified that the decision of the Review Panel was final.

[9] There were 87 requests from unsuccessful applicants to be considered under the grand aid review procedure of which 5 related to heritage and museum services. One was accepted and the other 4, including the Applicant, were rejected. A total of 12 reviews were accepted.

[10] The Applicant's grounds of Judicial Review cover four areas -

- (1) procedural impropriety;
- (2) breach of the applicant's legitimate expectation;
- (3) fettering of discretion and failing to consider relevant considerations;
- (4) disproportionate and irrational decision making.

Procedural Impropriety.

[11] The Applicant's first ground of procedural impropriety concerns the failure to permit representations or receive further submissions on the review of the decision. The process is variously described as a review or an appeal but the Respondent's published procedures, at paragraph 10, describe a "review procedure". Stage 1 is described as involving a written request for review explaining fully and clearly why the project should have been awarded a grant by reference to the specified criteria. Stage 2 involved a review panel receiving the written request and the stated options were first to accept the written appeal, second to defer a decision and request a verbal presentation, or third to reject the appeal.

[12] By letter dated 4 February 2003 the Applicant furnished additional documentation in support of his appeal but this was returned on 12 February 2003 on the basis that the Review Panel would only consider information contained in the original application form and in the letter requesting review. It is clear from the Respondent's stated procedures that the review procedure involved a written review subject to the Review Panel's discretion to defer a decision for oral representation. There is no right to review or appeal of an administrative decision and the issue is whether the procedures in place meet the standards of procedural fairness. It is not unfair to require applications to contain all matters relevant to a decision and to exclude late information from consideration. The Applicant had the opportunity to make a full presentation with the application and to set out all the grounds of review in the letter of request for review. The Respondent's procedure was not unfair in this regard.

[13] The Applicant's second ground of procedural impropriety concerns the failure of the respondent to take the Applicant's representations into account in the course of the review. The Applicant contends that the review procedure provides that further information may be obtained from an appellant. The stated procedures do refer to the Review Panel's deferral of a decision for oral representations. The

Respondent explains this procedure as involving clarification of applications rather than the receipt of additional information. The Review Panel exercised its discretion not to defer a decision in the Applicant's case for the purposes of oral representations as it was not considered necessary to obtain clarification of the application. The material furnished subsequently by the Applicant could have been included in the application or the request for review and would have been considered by the Review Panel. The Applicant had the opportunity to have all material that it considered to be relevant taken into account by the Review Panel.

[14] The Applicant's third ground of procedural irregularity concerns the failure to abide by stated procedures in a number of respects. First, paragraph 8.3 of the guidelines provides that an applicant will be contacted by a council officer to arrange a meeting to discuss the application on a confidential basis. Such a meeting was not arranged with the Applicant. As explained in the Respondent's letter to the Applicant's solicitors dated 27 August 2003, no such meetings took place due to timeframe pressures and the volume of applications. The Applicant was therefore not at any disadvantage compared to other applicants. This was not a ground of complaint in the Applicant's original application. I have not been satisfied that the absence of a meeting with a Council officer amounted to procedural unfairness to the applicant in the processing of the claim.

[15] The further alleged failure to abide by stated procedures concerns a Council approval of the Review Panel decision. Paragraph 10 of the stated procedures provides that the Review Panel's decision will be referred back to the relevant Committee and full Council for final approval. As appears from the minutes of a special meeting of the Recreation and Leisure Committee held on 17 February 2003 the recommendations of the Grant Aid Review Panel were accepted and it was that decision that was notified to the Applicant on 18 February 2003.

[16] The Respondent contends that the powers of the Council to award grant aid had been delegated by the Council to the Recreation and Leisure Committee. On 4 July 2002 the Recreation and Leisure Committee recommended that delegated Council powers be given to a special meeting of the Recreation and Leisure Committee to be held on 22 July 2002 in respect of grant aid allocations. On 18 July 2002 the Council resolved to accept and adopt the minutes of the meeting of the Recreation and Leisure Committee of 4 July 2002. In this manner the Council approved the delegation of powers to the Committee in respect of grand aid allocations. However, the recommendation that was adopted by the Council applied to a special meeting of the Committee to be held on 22 July 2002 and the issue arises as to whether the Committee had delegated powers at subsequent Committee meetings, leading ultimately to the determination of applications on 15 November 2002, and further whether the Committee had delegated powers in respect of the review procedures leading to the determinations on 17 February 2003.

[17] It was suggested by Counsel for the Respondent that there had been express delegation of powers to the Committee on later occasions but no evidence of such

express delegation was produced to the Court. James Saunderson was the Director of Recreation and Leisure at Derry City Council and he filed a replying affidavit in which he stated that he was authorised to make the affidavit on behalf of the Respondent. By that affidavit the Respondent makes clear its endorsement of all the decisions of the Committee and has clearly ratified those decisions, and in particular for present purposes the decisions to refuse grant aid to the Applicant taken on 15 November 2002 and 17 February 2003.

[18] The Applicant further contends that the Respondent may not lawfully delegate its powers to the Committee in respect of the purported review of the initial decision made by the Committee. As stated above the Applicant had no right to an appeal and it is not unfair that a decision-maker may review a decision. The Respondent had power to delegate both the original decision and the review decision to the Committee. That the process was not a sham is apparent from the success of 12 of the 87 reviews.

[19] The Applicant's fourth ground of procedural irregularity was that the Respondent accorded preferential treatment by "ring fencing" certain applications. The Council made separate provision for those organisations providing services that the Respondent would otherwise have provided in-house. The applications were not dealt with in the grant aid programme. The Applicant contends that it should have been considered for inclusion in the ring fenced projects but that is disputed by the Respondent. The Applicant claims that it was discriminated against and that the lack of criteria for ring fencing rendered the system liable to abuse. The 6 ring fenced applicants were placed outside the grant aid programme and I have not been satisfied that the Respondent's grounds for doing so can be set aside.

[20] The Applicant's fifth ground of procedural impropriety concerned the constitution of the Review Panel. The review procedure provided that the Review Panel would comprise council members and an independent assessor and the case officer, and that members of the Review Panel should not be involved in those committees associated with the allocation of grants. The Review Panel comprised Alderman Garfield and Councillors Ramsey and Anderson. Alderman Garfield was a member of the Recreation and Leisure Committee. Councillor Ramsey attended the Recreation and Leisure Committee meetings of 15 November 2002 and 17 February 2003, as he was entitled to do, although he was not a member of that Committee. The object of the review procedure appears to have been to establish a Review Panel comprised of members who had not made the decision on the allocation of grants. The Committee was aware of that purpose and at the meeting of 5 December 2003 were reminded by the Director of Recreation and Leisure that it was necessary that only members external to the Recreation and Leisure Committee and Environmental Services Committee be appointed to serve on the Review Panels. Councillors Anderson, Hamilton and Ramsey were nominated to sit on the Panel. In the event it appears that Alderman Garfield replaced Councillor Anderson. An explanation appears in the Respondent's letter of 27 August 2003 where it is stated that "the unionist block on the Council did not put anyone else other than Alderman Garfield

forward to sit on the Review Panel". The process of setting up the Review Panel is not explained in the papers but it would appear that further to the nomination by the Committee there were names put forward by the political blocks on the Council and I treat the composition of the Grant Aid Review Panel as a Council decision. The Court will not interfere with the political aspects of decision-making unless it is a matter outside the powers of the Council or renders the process procedurally unfair. Neither is the case in the present instance.

Legitimate Expectation.

[21] The Applicant's second ground of challenge is based on a legitimate expectation of funding for the Applicant said to be engendered by the comments of Maureen Hetherington on behalf of the Council. Michael McGuinness on behalf of the Applicant avers that he consulted Maureen Hetherington after a meeting on 24 May 2002 between council officers and community workers. "Ms Hetherington reassured me that the salary grant award for the project was secure for the year 2002-03".

[22] In May 2002 Ms Hetherington was the Respondent's community relations officer. She avers that she had no control over the award of grant aid and accordingly could not have provided Mr McGuinness with the guarantee that he suggests she provided. Ms Hetherington's affidavit sets out that "I do not recall precisely when Mr McGuinness consulted me. I did talk to him once concerning the application of this project. I most certainly would not have given him any reassurance and could only have passed on any recommendation that might have been made by Mr Gerard McColgan particularly since funding in a community relations field was exceptionally sensitive".

[23] In considering legitimate expectation it is first of all necessary to establish some promise or practice by or on behalf of the public authority. *R v North and East Devon Health Authority, ex parte Coughlan* [2003] 3 All ER 850. The burden is on the Applicant to establish such promise or practice. The Applicant relies on the promise of Ms Hetherington on behalf of the Respondent. That promise is disputed and in the circumstances I am not satisfied on the evidence available in the affidavits that any promise was made by or on behalf of the Respondent that could found any legitimate expectation on the part of the Applicant. Nor am I satisfied that Ms Hetherington had any authority to make any promise on behalf of the Respondent. Nor am I satisfied, had Ms Hetherington made any such promise, that the Applicant could thereby have achieved an expectation that could be considered legitimate in public law, considering that he knew or ought to have known that determinations in relation to grant aid would not be matters for council officers but would be matters for determination by the Council or a committee of the Council.

[24] Further, the Applicant claims legitimate expectation of payment of grant aid on the basis of the Respondent's practice. The Applicant had received grant aid for many years but could have had no legitimate expectation that such grant aid would

continue. In the alternative the Applicant claimed entitlement to grant aid to November 2002, being the date of refusal. In March 2002 the Respondent had approved continuity grant aid for the period April, May, June and July 2002. At the date of that decision it was anticipated that determinations in respect of grant aid for the current year would have been made by July 2002. For reasons outlined above the determinations were delayed until November 2002 but the earlier decision to award continuity grant aid for four months could not ground any legitimate expectation that grant aid would be paid up to any later date when applications were determined.

Fettering of Discretion and Failure to Take into Account Relevant Considerations.

[25] The Applicant's third ground of challenge alleges fettering of discretion and the leaving out of account of relevant considerations. The Applicant alleges a restrictive approach by the Respondent in requiring applicants to select a particular grant aid programme and failing to look at applications in the round. In the event the Applicant applied under the Community Services Programme and the Applicant was assessed under that programme and transferred to the Arts and Culture Programme. Having been assessed under that programme the Applicant was then transferred for assessment under the Heritage and Museum Services Programme and the application was refused. Different programmes applied different criteria and the Applicant was not restricted to a particular programme and was assessed under a number of programmes. The Applicant has not established any ground on which the Respondent's programme approach as applied to the Applicant can be set aside.

Proportionality and Rationality.

[26] The Applicant's fourth ground of challenge alleges disproportionality and irrationality. In the first place the Applicant seeks to establish these grounds by reason of the long delay into the financial year in reaching a final decision on funding. The Respondent, being dissatisfied with the procedures adopted in the first place, was entitled to review the process, and having done so to undertake a further processing of the claims. This necessarily involved delay in the completion of the assessment of the claims, and of course it would have been desirable that the review of the process had not been necessary. However a challenge based on the delay arising in those circumstances and grounded on proportionality or rationality is unsustainable. Further, the Applicant relies on these grounds to object to the limited payment for April, May, June and July and claims that full funding until the date of final decision ought to have been made. The Respondent points out that such funding to all applicants would have exhausted the grant aid fund. There are no grounds for contending that funding should have been provided up to the date of decision.

[27] The Court has not been concerned with the merits of the application for grant aid. The Applicant has not established any of the grounds for Judicial Review. The application for Judicial Review is dismissed.