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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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McAlinden (Sean) & Hennity's (Hugh) Applications [2009] NICA 56

IN THE MATTER OF APPLICATIONS BY SEAN McALINDEN AND HUGH HENNITY FOR JUDICIAL REVIEW

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MORGAN LCJ, GIRVAN LJ AND COGHLIN LJ

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GIRVAN LJ (delivering the judgment of the Court)

Introduction

[1] These two appeals are brought by the Department of Agriculture and Rural Development ("the Department") against the orders made by Weatherup J on 25th February 2009 referring back to the Department for re-consideration decisions made by the Department refusing the Respondents Sean McAlinden ("Mr McAlinden") and Hugh Hennity ("Mr Hennity") single farm payments under the Single Farm Payments Scheme ("the SFP Scheme"). The Department refused to amend the application forms which Mr McAlinden and Mr Hennity had submitted to the Department under the SFP Scheme. It was their case that they had made an obvious error in filling in and submitting their written applications under the Scheme and that the Department had jurisdiction to amend their applications and should have done so. The issue before the Court at first instance and on appeal turns on

what is meant by the words "obvious error" in Article 19 of EC Regulation 796/2004 ("the 2004 Regulations").

[2] On the hearing of the appeals which we heard together Mr Maguire QC appeared with Mr Wolfe for the Department. Mr McGleenan appeared on behalf of the Respondents. The Court is indebted to Counsel for their helpful written and oral submissions.

Background

[3] Mr McAlinden is a grazier and hill farmer. He acts as a trustee of the Mourne Mountain West Trust ("the Trust") which administers a large area of the Mourne Mountains comprising 1,905 hectares of common land used for the grazing of cattle and sheep ("the common land"). The common land is allocated in parcels to various graziers who graze their animals on the mountain pastures. Mr McAlinden was himself allocated a parcel of 69.11 hectares of the common land in 2005. Mr Hennity is also a grazier and hill farmer who has grazed cattle and sheep in the area for over 50 years. He is also a trustee of the Trust. He was allocated 64.34 hectares of the common land. Mr McAlinden and Mr Hennity submitted SFP Scheme application forms on 10th May 2005.

[4] The SFP Scheme was introduced in Northern Ireland on 1st January 2005. The Scheme was established pursuant to the Common Agricultural Policy Reform Agreement reached by EU Ministers in Luxembourg in June 2003. EC Regulation Number 1782/2003 ("the 2003 Regulations") established common rules for the direct support schemes established under that reform package. Article 1 provided for the introduction of the single payment scheme. Regulations 795/2004 and 796/2004 set out rules in relation to the implementation of the Scheme. The SFP Scheme brought to an end the system of direct payments linked to production in the beef, sheep and arable sectors and broke the link between production and subsidy.

[5] The United Kingdom opted for the permissible option of regional implementation. The Northern Ireland Scheme differs from the Schemes in Great Britain. The Northern Ireland model provides for payment of two elements, namely a reference amount (80%) and an area amount (20%). The reference amount is a combination of a historic reference amount based on subsidy claimed between 2000 and 2002, a diary premium account (based on milk quota held in March 2005) and a national reserve award (based on an additional amount where a farmer applies for and receives an award under special situations). The area amount is calculated at 78.33 Euro per eligible hectare declared for use under the SFP Scheme. The reference amount and the area amount lead to the calculation of the payment entitlement established in the first year of the Scheme which was 2005.

[6] The application process under the SFP Scheme is subject to the Integrated Administration and Control System ("IACS") to which Article 22 of the 2003 Regulations applies. The IACS has been operative since 1993.

[7] To claim a payment under the SFP Scheme farm businesses had to establish *entitlements* in the first year. An IACS 2005 Single Application Package was issued to all potential candidates which included the Application (SAF1) and Field Data Sheet (SAF2) together with other documents SAF3-6. SAF1 and SAF2 had to be completed together with such of the other forms as were relevant. To establish entitlements the farmer had to indicate the fields and area of land on the SAF2, that information being recorded on columns A to J. The farmer was also required to tick the appropriate box at question 16 of the SAF Form indicating he wished to claim entitlements. For each eligible hectare entered into the Scheme an entitlement was allocated. The SAF2 was designed to capture information about the land that each application farmed. Columns A to F provided details of the field parcels including their identity, whether the land was owned, leased or taken in conacre, land type and whether it was eligible for set aside. Column I was used to capture the actual area of the field parcel to be used for establishing entitlements. Column J indicated the area for which entitlements were to be activated. Column K indicated the area claimed for Less Favoured Compensatory Allowance ("LFCA"). Farmers were required to declare all land that they held in columns A to H. They were free to choose which land they entered on columns I to K in other words they were free to choose which of the lands identified in columns A to H were lands in respect of which they wished to claim entitlement.

[8] The Departmental Guidance document issued to the applicants in Part 6 in Section 2 stated:

> "From the land on your holding, you will have to identify the area (fields) on which you wish to establish your Entitlements. You do not have to establish Entitlements on all the land that you have on your holding, but if you choose not to, then you will not be maximising the total payment of SFP that you would otherwise receive. It is important that you identify each field on which you are establishing your Entitlements."

The Department's Guidance in Part 8 stated that for every field entered in column I the farmer had to decide whether to activate the entitlement in 2005 by entering the area in column J. A note in bold type stated that if the farmer did not activate an area he would not receive SFP in respect of that area. Section 13 of the Guidance relating to the completion of the Field Data Sheet (SAF2) stated:

> "For each field entered at columns A-F you must decide whether you want to use a field to establish Entitlements. You must enter the area of that field in column I. If you do not wish to use a field to establish Entitlements you should leave column I blank for that particular field. When you have completed this process for all your field you must add up the entirety in column I and enter the total …".

The McAlinden Application

[9] Mr McAlinden submitted an online application on 10th May 2005. According to his affidavit the E-Form was prepared by his nephew and business partner, Vincent McAlinden. The application related to the 27 fields in the possession of Mr McAlinden. 19 fields were owned and claims were made for SFP and LFCA in relation to them. 7 were held in conacre and no claim was made for SFP as they were not eligible although 2 fields were the subject of a claim for LFCA. The final field entered was the applicant's allocated 69.11 hectares of mountain land. This was designated on the on-line form by reference to a reference number 3-91-9001 and described as "leased." The area was shown as 70 hectares and the box entry in column I and J opposite this land was left blank. Accordingly, on the face of the application form no claim was being made for that land in respect of SFP. If it were assumed that the form had been completed in accordance with the Department's Guidance, Mr McAlinden was ex facie not claiming any entitlement to SFP in respect of that land since column I was left blank.

[10] Mr McAlinden received notification of his final entitlement for SFP on 31st March 2006 when he was informed of his entitlement to 22.95 hectares with no entitlement being declared in respect of the 69.11 hectares of common land. Mr McAlinden's case is that the failure to claim entitlement in respect of the 69.11 hectares of common land was an obvious error for the purposes of Article 19 of the 2004 Regulations and that he is entitled to require an adjustment to this application form to include that holding of common land. The Department, however, did not consider that an obvious error had been made and refused to alter its decision in respect of his entitlement.

[11] The Department operated a two stage appeal procedure in relation to complaints made by farmers in relation to the administration of the SFP. Mr McAlinden appealed against the decision refusing an alteration of this entitlement. He was unsuccessful in the first stage. He lodged a second stage appeal which was heard by an independent panel which recommended that his appeal should not be upheld. The Department accepted that recommendation and so informed Mr McAlinden by letter dated 27th February 2008, thus refusing his application.

The Hennity Application

[12] As noted Mr Hennity also submitted an application for SFP on 10th May 2005. He owned some land, held some in conacre and was allocated part of the common land comprising 64.34 hectares. It was Mr Hennity's case that he received assistance in the completion of the application form from Mr Michael McCullough an official in the Department. The applicant contended that it was Mr McCullough who had completed the relevant parts of the sheets in relation to the common land. In his completed application form the applicant did not claim entitlement in respects of fields 1-11 shown on the farm survey number 3-91-12 nor did he claim entitlement in respect of field 2 of 3-93-59, fields 1-5 in field survey 3-93-65 or field 1 in field survey 3-91-900-1-26 (this latter field being the 64.34 hectare allocated share of the common land). Column C showed that land as being held in conacre though in fact it was not so held. Mr Hennity claimed that it was Mr McCullough who had completed the relevant parts of the sheet in relation to the common land and that he signed the form without noticing that columns I and J in respect to the common land had not been completed. In fact in relation to the land in columns I-J in relation to that land a line was struck through the box although not under column K under which LFCA was claimed for the full area of 64.34 hectares. Mr McCullough asserts that he had not completed the relevant parts of the form and that he had advised the applicant to complete the columns which provided for payment for SFP.

[13] On 17th May 2006 Mr Hennity received a final payment entitlement statement indicating SFP entitlement in respect of the 29.67 hectares with no entitlement to SFP being declared in respect of the 64.34 hectares of common land. He appealed contending that he had made an obvious error in not claiming entitlement to the common land. He pursued the appeal procedure being unsuccessful at stage 1 but being successful at stage 2 with the panel recommending that the Department should treat the matter as having been the subject of an obvious error. However, the Minister did not accept the recommendation and rejected Mr Hennity's application for an alteration in respect of his application. It was the Department's conclusion that there was nothing which would have led the Department to believe that an error had been made. It would be unreasonable to expect that a person checking the form should have to confirm the applicant's intention. There was, in the Department's view, nothing on the face of the documents that pointed to an obvious error.

The Judge's Conclusion

[14] Weatherup J concluded that Judicial Review relief should be granted. He decided to refer the two appeals back to the Department and the independent panels for re-consideration in the light of his judgment. In his judgment he gave guidance as to the proper approach to the question

whether an obvious error had occurred in such cases. He considered that the scheme of the legislation was to provide that mistakes in the making of an application were to be treated as the responsibility of the applicant and that exceptions were made only when the applicant made a genuine mistake in circumstances where the mistake should be obvious to the relevant authority. In processing an application the first stage is for the Department to consider where there is an entry in the application paperwork whether there was an error. It must be shown that the entry did not reflect the true intention of the applicant. If the Department is so satisfied it must proceed to the stage of considering whether the error is *obvious*. The dictionary meaning of obvious includes "clearly perceptible" or "indubitable." Those two definitions include two shades of meaning. The first related to the question whether something was clearly apparent and the second related the obvious to that which was clearly proved. The Judge considered that the findings of the panel showed genuine errors had occurred. On the question whether these genuine errors should be treated as obvious errors there may be circumstances where the Department's knowledge of all the circumstances would raise the prospect that the entry would be a mistake such as where there would be no reason for a farmer failing to make a claim in respect of some of his holding. If the Department has information that indicated that the application paperwork involved a fraud it is to be expected that the Department would rely on that information. Equally if the Department has information that indicated the application paperwork involved an obvious error it was to be expected that the Department would rely on the information. He considered that:

> "That conclusion cannot be reached by an examination that extended only to the paperwork and the databases should not preclude the finding of an obvious error if that conclusion was warranted by all the information available from the enquiries undertaken … An obvious error is capable of being established in cases such as the present if, upon inquiry by the Department, there did not appear to be any explanation for an entry other than that it was a mistake. The totality of the information relating to an obvious error need not lay exclusively in the paperwork or databases."

Discussion

[15] As the Recitals to the 2004 Regulations make clear the 2003 Regulations introduced the Single Payment Scheme as well as certain other direct payment schemes. The Schemes are subject to an Integrated Administration and Control System. The 2003 Regulations built on the basis of that existing integrated system and submitted to its management and control the scheme set up by the Regulations. For the sake of effective control and to avoid

multiple aid applications to different agencies member states were required to provide for a single system to record the identity of farmers submitting aid applications subject to the integrated system. To ensure a proper implementation of the single payment system member states were required to establish an identification and registration system according to which entitlements were traceable and which allowed cross checks. Provision was to be made for submission of a single aid application comprising an application for aid which was related to area. In the single application the farmer should declare not only the area he is using for agricultural purposes but also his payment entitlements. Recital 26 provided that where aid applications contained an obvious error they should be adjustable at any time. This must be read subject to Recital 27 which provides:

> "Respect for the time limits for the submission of aid applications, for the amendment of area aid applications and for any supporting documents, contracts or declarations is indispensable to enable the national administration to programme and, subsequently carry out effective checks on the correctness of aid applications. Provision should therefore be made regarding the time limits within which later submissions are acceptable. Moreover a reduction should be applied to encourage farmers to respect the time limits."

This highlights the legitimate aim behind the imposition of time limits and the need for respect for time limits. The adjustment of applications for obvious error which can be carried out at anytime (and thus outside the time limits) must be viewed as a limited exception to the general rule of compliance with the strict time limits.

[16] Eligibility for payment of the SFP is determined in accordance with the 2003 Regulations. Under Article 34.3, except in case of *force majeure* and exceptional circumstances within the meaning of Article 40(4) of the 2003 Regulations, no entitlement should be allocated if the applicant did not apply for the single payment under the Single Payment Scheme by no later than 15th May 2005 although under Article 21(2) of the 2004 Regulations a farmer could submit an amendment to his single application up to the latest possible date namely 10th June 2005 but any request for amendments after 31st May would result in a 1% reduction in payment for every day after that date. Requests after 10th June 2005 were inadmissible. The percentage reduction was clearly intended to be a financial disincentive to farmers to submit their applications late. Apart from *force majeure* and exceptional circumstances applications out of time were precluded. Article 15 of the 2004 Regulations makes limited provision for amendment to the single application. Thus Article 15 provides:

> "1. After the expiry of the time limit for the submission of the single application, individual agricultural parcels, as the case may be, accompanied by the corresponding payment entitlements, not yet declared and the single application for the purposes of any of the area related schemes, may be added to the single application provided that the requirements under the aid schemes concerned are respected.
>
> Changes regarding the use of aid scheme in respect of individual agricultural parcels already declared in a single application may be made under the same conditions. Where the amendments referred to in the first and second sub-paragraphs have a bearing on any supporting documents or contracts to be submitted the related amendments to such documents or contracts shall also be allowed.
>
> 2. Without prejudice to the dates fixed by Finland and Sweden for the submission of the single application in accordance with the first paragraph of Article 11(2), Amendments in accordance with paragraph 1 of this Article shall be notified to the competent authority in writing by 31 May, the case of Finland and Sweden by 15 June, of the calendar year concerned at the latest."

The only other mechanism for adjusting an application outside the prescribed time limit is that found in Article 19 which provides:

> "**Adjustments of Obvious Errors**
>
> Without prejudice to Article 11-18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority."

[17] A farmer who wishes to make an application for SFP may make mistakes in relation to various aspects of the procedure. He may misunderstand the time limits or simply forget to post his application in time. In such a case he will simply be out of time in relation to this application. In the period of grace between 15th May and 10th June he may be able to submit his application but he will suffer a financial penalty. After 10th June he could not even benefit from that period of grace. He simply becomes ineligible for grant. He may misunderstand aspects of the Scheme and fill out his form

incorrectly, producing a form which on the face of it is rational and does not demonstrate any error. Yet it will be the product of an error on his part. The question is whether he can rely on Article 19 and seek an adjustment of his form so that it reflects his true intent. In other words can he rely on the concept of "obvious error" in such a situation?

[18] Article 19 of the 2004 Regulations relates to the "adjustment" of an application in a case of obvious error. The French text of Article 19 makes it clear that it is dealing with a "*correction des erreurs manifestes*" and the French text of the Article states that the application "*peut être rectifiée à tout moment après son introduction en cas d'erreur manifeste reconnue par l'autorité compétente.*" Rectification, correction and adjustment are words that point to the making of a change in a document when it is manifestly clear that the applicant has made a mistake which requires a rectification of the application to bring it into line with what he obviously intended to achieve by the application. The French text in referring to *erreur manifeste* may well have been influenced by the principle of French *droit administratif* which confers a power of review in respect of *erreurs particulièrement flagrantes* which justify the administrative tribunal intervening to correct the error. In order to found the jurisdiction of the competent authority to correct an application there must be something relating to the application which shows a mistake which is manifest, flagrant, open and clear. The *correction* of an application form differs from an amendment. Referring to other EC regulations dealing with compensatory payments to produces or arable crops in R v. Ministry of Agriculture Fisheries and Food (8 December 1999 unreported) Latham J said:-

> "In so far as the wording itself is of any assistance it is to be noted that paragraph 5(a) refers to an application being "adjusted" whereas Article 4 paragraph 2(a) refers to amendments. That suggests that Article 5(a) is concerned with correcting obvious mistakes, for example errors of calculation rather than mistaken assumptions as to entitlement."

[19] There are clear underlying Community law reasons that point to Article 19 being given a strict interpretation. As pointed out in Schilling and Nehring Case 63-00 to which Mr Maguire referred the ECJ stated:-

> "The integrated system . . . is designed to make administration and control mechanisms more effective. An effective procedure presupposes that the information to be provided by an applicant for aid is complete and accurate from the outset in order that he may make a proper application for the

> grant of compensatory payments and avoid the imposition of penalties."

The ECJ went on at paragraph 39 to state:-

> "It is apparent from the provisions of the regulations that the national authorities are not required, or even able, to carry out checks to verify the truthfulness of all statements made in aid of applications submitted to them. It is therefore necessarily the case that under the integrated system it is for the farmers, who state pursuant to Article 5(1) of that regulation, that they are aware of the requirements pertaining to the aids in question, to submit aid applications for animals which satisfy the requirements."

Similarly in Strawson C-304/00 the ECJ at paragraph 44 stated:-

> "It necessarily follows that the competent authorities are neither required nor able to find inaccuracies or over estimates in the areas declared in the application for aid in the very year in which they are submitted."

[20] In the case of Bay Wa AG and Others R-193-81 the ECJ in the field of the provision of benefits from Community funds observed that:-

> "Those provisions are mandatory in nature. Their nature is moreover in conformity with the principle consistently referred to in the case law of the court to the effect that provisions of Community law and in particular of Council or Commission regulations which create a right to benefits financed by Community funds must be given a strict interpretation."

[21] Aldous J helpfully deals with the question of the proper approach to the question of obvious error in R v. Comptroller General of Patents (ex parte Celltech Limited) [1991] RPC 475. In that case the applicant had instructed its agent to file for international patents under the patent co-operation Treaty in all contracting states. The agents accidentally used an out of date application form which did not include Canada and Spain which were new signatories to the Treaty in the pro forma list of States. When the mistake was eventually realised the applicant applied for the mistake to be rectified under the obvious

errors provision contained in the relevant rules. On an application for judicial review of the superintending examiner who refused to rectify the judge said:-

> "The purpose of the rule is to enable errors to be corrected which are obvious and therefore cannot mislead. Thus the rule uses the words obvious errors in a context of enabling them to be rectified. What must be obvious is not simply that there has been some mistake but also what the error is so that it can be rectified. If extraneous evidence of the applicant's intention is necessary to show that there has been an error, then that error cannot be an obvious error.
>
> . . . The correct standard of proof is the normal standard, namely the balance of probabilities and the correct question to be answered is – on the balance of probabilities would the reader of the application conclude that there was an obvious error? The superintending examiner rightly differentiated between an error and an obvious error. An obvious error is that which must plainly or obviously have been made. If the facts only establish that an error might probably have occurred then that is not sufficient to show that there is an obvious error."

[22] The approach adopted by Weatherup J poses a two stage analysis. The first part of the test addresses the question whether there is a genuine error in that the entry does not reflect the intention of the applicant. The second part is then to consider whether that genuine error is obvious. This approach however fails to give effect to the underlying requirement of Article 19 which necessitates considering a single central question "Has the applicant made an obvious error?". The scheme of the regulations imposes a duty on the farmer to make his application in clear terms and it does not impose on the Department a duty to act as his adviser or the guardian of his best interests. The judge's approach imposes a duty of inquiry on the Department which goes beyond what the regulations envisage. Unless the relevant official designated to scrutinise the application would be bound to conclude that the applicant has made a mistake and that the form cannot have represented the true intent of the applicant, the error is not obvious. As Aldous J pointed out in Celltech, if the official is left to speculate whether the applicant might have made an error or even might well have made an error, it cannot be said that there is an obvious error. Farmers can and do decide not to claim entitlements for their own reasons (for example to stack entitlements as explained in the department's affidavits). They may have leasing or conacre arrangements which lead them to conclude that they should not claim entitlement.

Applications may be considered by differing officials. While one official reading all the applications from the holders of the common land together might conclude that it was likely that those who did not claim entitlement had acted in error such applications could well be considered by differing officials without a shared pool of knowledge from the other application forms. The test of what is an obvious error must be an objective one.

The McAlinden Application

[23] The form submitted by Mr McAlinden in reply to question 16 in section 3 showed that he wished to establish SFP entitlement to the areas marked in column 1 and question 17 showed that he wished to activate payment of the SFP in relation to those shown in column J. In relation to the Mourne common land the applicant made no claim under column I or J. The Department's guidance made clear that unless the claim was made in column I or J there would be no claim to entitlement or activation and accordingly no question of activating any entitlement would arise. On the face of the application there was no claim to entitlement in respect of the common land and the document did not contain an error which could be described as an obvious one applying the proper test. If the applicant had omitted to claim entitlement in column I but in column J had asked for the entitlement to be activated it would have been obvious that a mistake had been made. Either the applicant was claiming entitlement and had erroneously omitted it from column I or he had made a mistake in claiming to activate an entitlement which he was not claiming. Since an obvious error would have occurred, albeit from an omission, the Department would properly clarify the position with the applicant. In that situation the omission could be properly treated as an obvious error. That however is not the situation in the present instance since the applicant claimed neither entitlement nor activation in respect of the common land. This being so, there being no obvious error the Minister applied the proper test and accordingly, we must allow the Department's appeal in relation to Mr McAlinden's claim.

Mr Hennity's Application

[24] Mr Hennity's case raises a somewhat different question. Leaving aside for the moment the question of the involvement of Mr McCullough in assisting Mr Hennity in filling in the application form there would be nothing on the application form itself or the surrounding circumstances to indicate an obvious error for the same reasons as apply in the case of Mr McAlinden.

[25] However, according to Mr Hennity's case he completed the form with the assistance of Mr McCullough, a departmental official. The material entered on the form was in Mr McCullough's handwriting. Mr McCullough entered the details of the 64.34 hectares. While he entered it in column K he did not enter it in column's I or J and although he signed the form Mr Hennity says he

did not identify the error which had been made by the department official. It was Mr Hennity's case that Mr McCullough fully understood that he wished to claim entitlement for the SFP in respect of the common land.

[26] Mr McCullough accepts that he did help Mr Hennity to fill in the form. He accepts that Mr Hennity had difficulty understanding the concepts of establishing and activating entitlements. He showed Mr Hennity the importance of including his common grazing in his claim as it had not been shown in the pre printed form. Mr McCullough however in his affidavit denied that he was involved in stroking out the entries opposite the common land in columns I and J. He claimed to have queried the fact that Mr Hennity did not establish entitlements on his mountain allocation but said that Mr Hennity was determined for whatever reason not to include the mountain land. He was advised that should he change his mind he had five days up to 15 May the closing date and up to 31 May 2005 to amend his application.

[27] Weatherup J reached no conclusion on the factual dispute between Mr Hennity and Mr McCullough. He proceeded on the basis of the conclusion of the independent panel that the failure to claim SFP was a mistake.

[28] Since we differ from Weatherup J on the proper approach to the question of what is meant by obvious error the conflict between Mr Hennity and Mr McCullough raises a question which we must address. Mr Maguire argued that even if Mr Hennity's allegation against Mr McCullough was correct it would make no difference to the outcome because Mr Hennity signed and submitted the application form and it was the form which fell to be considered by the Department. Since no obvious error emerged from the form Mr Hennity's case was claimed should fail. Mr McGleenan argued that the papers provided to the Department disclosed no rigorous enquiry into the circumstances in which Mr Hennity came to be denied SFP for the common land. No attempts were made to ascertain the level of involvement of the Department official in assisting the respondent in completing the form. He argued that this was a relevant consideration for the Minister in the exercise of his discretion.

[29] If a Department official helps a farmer to fill in a form and knows that the farmer wishes to claim entitlement to a piece of land which is not included in the written application the question arises as to whether the Department is to be taken to be fixed with the knowledge of the official and, if so, whether the mistake in the form qualifies as an obvious mistake even if objectively the form does not itself reveal an obvious error applying the usual test. Mr Maguire's argument, if correct, would mean that a farmer faced with difficulties of reading and understanding who is assisted by a Department official who helps him to fill in the form incorrectly, though making his intention clear, would be left with no entitlement to seek rectification of his application and would be left only with a remedy, if any, in tort or a claim for maladministration. There is a

Community law principle that requires authorities to observe the principles of good faith. In Lachmueller [1960] ECR 474 the ECJ held that:-

> "The conduct of an authority in administrative as in contractual matters, is at all times subject to the observance of good faith. Good faith is not enough to leave aside binding legal provisions (Ninth Clearance of Accounts case (Netherlands v. Commission) 1983 ECR 646."

[30] It is clear from the provisions of the 2004 regulations that the farmer must make his application by way of a *written* application form. The power of adjustment in Article 19 relates to adjustment of that application form. This must relate to the application set out in the form. The obvious error must emerge from the application and thus must be something which emerges from the application form. This points away from considering an unwritten claim for entitlement notified to an official but not recorded in the written application. The requirement of good faith is not enough to circumvent the binding legal provisions set out in the Regulations. We conclude that Article 19 must be construed as Mr Maguire argues even if, in fact, it were shown that Mr McCullough did know of Mr Hennity's true intention contrary to the assertions in paragraph 7 of his affidavit. We conclude in the result that the appeal in relation to Mr Hennity's application must likewise fail for the same reasons as apply in the case of Mr McAlinden.

[31] Provision is made for cases of exceptional circumstances (Article 21.1 and Article 72 read with Article 40(4) of the 2003 Regulations). The question whether Mr Hennity could bring himself within that concept if Mr McCullough had known his real intention does not arise in the present case since we were not asked to consider the question whether the exceptional circumstances provision is in play. The question would raise different and possible difficult questions of construction of the Regulations not presently before the court. It is a matter for Mr Hennity to consider whether he has any prospect of success in such argument which he may be able to ventilate before the Minister in a differently constituted submission. Nor do we make any comment on the question whether he has a viable claim for maladministration.

[32] We reach our conclusions with some reluctance bearing in mind that it appears to be clear that the applicants genuinely made errors in submitting their application forms. Those errors have resulted in serious financial loss for them since the fact that they did not claim entitlement in relation to the common land has a financial consequence for a number of years. However, as the ECJ has made clear in a number of decisions time limits serve to ensure legal certainty. In The Premium for Grubbing Fruit Trees Case [1973] ECR 170 no time limits had been laid down for the certification required for receiving

the premiums in respect of the grubbing of fruit trees. Italy made a certification after a period of 2 years in November 1972. The ECJ held that time limits were to be deduced from the content of the regulations and the aims of the system established by them. Due to those aims and having regard to the normal time of grubbing this certification should have been carried out in the Spring of 1971 at the latest. According to the ECJ:-

> "It was imperative for the effectiveness of the measures adopted to observe such a time limit."

In the present instance the Regulations spelt out in explicit and clear terms time limits which were clearly considered necessary for the effectiveness of the scheme. It could not be said that depriving the respondents of a remedy runs contrary to the principles of proportionality. The ECJ ruled on proportionality in the Second Schlueter case [1973] ECR 156:-

> "In exercising their powers, the institutions must ensure that the amounts which commercial operators are charged are no greater than is required to achieve the aim which the authorities are to accomplish; however, it does not necessarily follow that that obligation must be measured in relation to the individual situation of any one particular group of operators. Given the multiplicity and complexity of economic circumstances, such an evaluation would not only be impossible to achieve, but also create perpetual uncertainty in the law.
>
> An overall assessment of the advantages and disadvantages of the measures contemplated was justified, in this case by the exceptionally pressing need for practicability in economic measures which are designed to exert an immediate corrective influence; and this need had to be taken into account in balancing the opposing interests."

The mechanism set out in the SFP scheme represented balance between of the interests of a very large number of farmers seeking voluntary payments of subsidies and the pressing need for the relevant State authorities to have in place a practical and workable scheme capable of proper, effective and fair administration. The operation of time limits and a duty on farmers to timeously submit accurate application forms with a consequent exclusion of applications out of time were features necessary to achieve the purposes of proper regulation of the Scheme. The rigidity of the time constraints was tempered by albeit limited dispensing powers in relation to amendment and in relation to adjusting for obvious errors under Article 19.

Disposal of the appeals

[33] For the reasons given we must allow the Department's appeals and set aside the orders made in the court below.