

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

Minister of Finance and Personnel's Application [2013] NIQB 137

IN THE MATTER OF AN APPLICATION BY THE MINISTER OF FINANCE
AND PERSONNEL FOR JUDICIAL REVIEW

MORGAN, LCJ

[1] This is an urgent Judicial Review application by the Minister of Finance and Personnel, seeking to quash a decision of the Minister of Agriculture and Rural Development made on 19 December 2013, determining that for the purposes of the EU Common Agriculture Policy for 2014/2019, funds available under pillar one should be transferred to pillar two at an average rate of 7%.

[2] The background is that the European Union has agreed funding arrangements under the Common Agriculture Policy for the period from 2014 to 2020. Pillar one funding amounts to approximately €325 million per annum and is made up of direct payments to farmers. Pillar two funding over the entire period is approximately €227 million and provides funding for projects for rural development. There is provision within the regulations for transfer of up to 15% from pillar one into pillar two and vice versa provision for transfer from pillar two to pillar one of up to 25%.

[3] The Department of Agriculture and Rural Development ("DARD") consulted on a corresponding rural development programme for the period from 2014 to 2020.

The programme also involves responsibilities affecting the Department of the Environment and Climate Change and the Department of Enterprise Trade and Industry (“DETTI”) on energy policy, *inter alia*. It is unsurprising that a strategic document of this sort should engage the resources of a number of Government Departments. The responses to DARD’s consultation on whether to reduce pillar one, indicated that farmers were opposed to the reduction of pillar one as this would reduce payments to individuals, whereas environmentalists sought to encourage transfer to assist in the development of environmental schemes. A submission to the DARD Minister on 13 November 2013 recognised that any transfer would be highly contentious.

[4] During November 2013, discussions involving DETTI, the First Minister and DARD continued in relation to various aspects. It appears that political disagreement occurred between DUP and Sinn Fein Ministers in particular on the transfer issue. The DUP Minister opposed transfer from pillar one. Those discussions continued into November and extended even after the grant of leave in this judicial review application. I am satisfied on the basis of the information provided to me that there is no prospect of a resolution of the issues in this matter as a result of the use of the urgent procedure.

[5] One of the difficult issues which arose in argument was the prospective funding for areas of natural constraint which, I think, had an alternative designation in an earlier scheme. A submission to the DARD Minister on 16 December 2013, identified difficulties in providing funding for those areas from pillar two. It would be necessary to obtain DFP approval in relation to the expenditure and in order to do so it would be required to show value for money, which was, in the words of the submission, “likely to be extremely challenging”. This submission advised that if funding from pillar two for areas of natural constraint were provided, the Minister would have to issue a Ministerial Direction in respect of the proposed expenditure of £120 million over the period and recognise that such a direction may lead to the monies not being spent or fully spent.

[6] Because it had not been possible to reach a political agreement on these matters, the Court has been engaged as a matter of last resort. The issue is whether

the Minister had authority to make the decision to transfer funds from pillar one to pillar two or whether in doing so she was in breach of the Ministerial Code and as a result had no authority to make the decision.

[7] I have reached the concluded view on some of the issues raised in the proceedings but I am satisfied that the decision to transfer the funds was significant in the context of paragraph 2.4(5) of the Ministerial Code. The decision will materially impact on the flexibility to support the areas of natural constraint and individual farmers under pillar one and potentially put at risk pillar two money if allocated for ANC purposes. I have also concluded that the decision was controversial within the meaning of the same paragraph. It is clear that there was a strong difference of opinion between the farming community and environmentalists over how this decision should be made. I consider that was recognised in the submission to the Minister of 13 November 2013, and I reject the distinction between what is contentious and what is controversial. I conclude that this matter should have been brought to the attention of the Executive Committee and that the Minister made the decision consequently in breach of the Ministerial Code. Those findings are sufficient for me to conclude, pursuant to section 28(A)(10) that she had no authority to make the decision and in those circumstances, subject to any representation that is made about substituting a declaration, I am prepared to quash the decision.

[8] In the absence of a representation I will do that.