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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**APPLICATIONS BY RK, LO AND CM
FOR JUDICIAL REVIEW**

WEATHERUP J

[1] These applications are for judicial review of decisions of St Cecilia's College, Londonderry ("the school"), the Admissions Appeal Tribunal ("the Tribunal"), the Western Education & Library Board ("the Board") and the Department of Education ("the Department"). There are two issues that have been advanced by the applicants. The first issue concerns the operation of the admissions criteria by the school in the context of suggestions that prospective pupils have been furnishing false addresses in order to gain preference in the admissions procedure. The second issue concerns the approach of the Department to proposals made by the school to offer extra admission places so as to include a number of pupils with sisters who had earlier been admitted to the school. Mr O'Hara QC appeared with Dr McGleenan for the first applicant and with Mr McAteer for the second applicant and Ms Anyadike-Danes QC and Mr Sherrard appeared for the third applicant. Mr Larkin QC appeared for the school and Ms Gibson QC appeared with Mr Robinson for the Board and with Ms Comerton for the Department.

[2] First of all, I deal with the issue about the admissions criteria. This application for judicial review is made on behalf of three girls who are 11 years old and have completed the school transfer procedure. Each wished to attend the school as their first preference, but have not obtained a place. The scheme for entrance to post-primary education is contained in the Education (Northern Ireland) Order 1997. In outline the Department fixes the admissions number for schools, the Boards of Governors of the schools determine the criteria for admission to the school, the Governors of the school apply their criteria to all applicants for places so as to determine who should be admitted and appeals from those who are dissatisfied with the outcome are heard by an independent Tribunal.

[3] Article 16(4) of the 1997 Order requires the criteria for admission to a school to provide that all children resident in Northern Ireland should be selected before any child who is not resident in Northern Ireland. The Governors of the school drew

up the criteria for admission to the school for September 2007. The criteria state first of all, as they are obliged to do under the legislation, that:

“Within each criterion priority will be given to pupils normally resident in Northern Ireland.”

There are then set out a total of 9 criteria for admission in order of priority and for present purposes only the first three are relevant.

[4] The first criterion is that pupils whose sisters or half-sisters are presently or were formerly enrolled at the school and who are resident in five specified parishes in Derry get first preference. Secondly, the pupils who are normally resident in the five parishes (being those who do not have sisters or half-sisters at the school) get second preference. Thirdly, pupils who are not resident in the five parishes and who have sisters or half-sisters presently or formerly at the school get third preference.

[5] There are, therefore, two residence requirements written into the criteria. First preference is given to those who live within the five parishes that have been specified. Further, there is preference for Northern Ireland residents. The three applicants live in Northern Ireland outside the five parishes and have sisters at the school. Accordingly the three applicants fall under the third criterion.

[6] The school has an admissions number of 130. The applicants to the school totalled 184 and accordingly the school was over-subscribed. It became necessary to apply the criteria to determine the order of admission. The school applied the first criterion and the second criterion and filled all 130 places. Accordingly, those who fell under the third criterion could not be offered places. As the three applicants fell under the third criterion they did not obtain places. A total of 11 children fell under the third criterion and none of them obtained a place.

[7] The suggestion emerged that some of the pupils who applied for places at the school were residents of Donegal and had given false addresses within the five parishes and therefore gained priority as having satisfied the first or second criterion. This appears to be described as “grannyng”, being a reference to the practice of giving the address of a grandmother or other relative or friend who would live within one of the five parishes. If the applicant for a place at the school has a sister at the school then an address in the five parishes satisfies the first criterion whereas an address in the Republic places them under the third criterion. If the applicant for a place at the school does not have a sister at the school then an address in the five parishes satisfies the second criterion whereas an address in the Republic places them below the third criterion.

[8] The primary catchment area for the school is the surrounding five parishes. All who live outside the five parishes, whether they live in Northern Ireland or in the Republic, will not satisfy the first and second criterion for admission to the school. All who give false addresses within the five parishes, whether they live in

Northern Ireland or the Republic, are abusing the system by seeking to jump the queue over those who are entitled to places ahead of them.

[9] There is the further preference for Northern Ireland residents who live outside the five parishes and who gain priority over those who live in the Republic. This is a priority laid down in Northern Ireland legislation. Again, those who give false addresses are seeking to gain a preference to which they are not entitled over other children who are so entitled.

[10] The school's view of the issue of false addresses is set out by Mrs Gormley, the Principal of the school. Her affidavit includes the following -

"It is a common feature of over-subscribed schools in Northern Ireland and in England to hear of parents providing false addresses or incorrect details in order to gain admission for their children to the school of their choice. This is not a new matter particularly for a border city like Derry with parishes in County Derry and the Inishowen Deanery which is in the Republic of Ireland. The Board of Governors of St Cecilia's College and myself have been aware of the issue but at no stage has any parent or any child either at the school or, indeed, in making application to the school made any allegation that a transfer form filled in by a parent or child at the school was incorrect. The admissions sub-committee of the Board of Governors does not check the accuracy of residence and address information provided by applicants for admission to the school. Without information or evidence suggesting otherwise the school has no grounds for refusing to accept the integrity of those acting on behalf of the child (usually the parents). The school has never been directed to carry out checks, nor has it the resources, training or guidance to validate addresses."

[11] In addition, Mrs Gormley gave a radio interview, the transcript of which is not in dispute, in which she outlines the background to this problem. On being asked how she might check addresses she replied:

"We ask advice on this nearly every single year on how we check addresses and we are told, we are directed that we take the addresses that we are given at face value and whilst people will say that this happens and I suppose you know that everybody knows that this happens both in the Education Service and in the Health Service no-one has directed St Cecilia's or indeed any other school to

actually check any documentation or any address and no-one has actually named anybody, no one has come forward at St Cecelia's and actually named any children that are actually living over the border."

Mrs Gormley made the further comments in relation to children who were turned away when their siblings were at the school that it was -

"... a miscarriage of justice in many ways that this has happened but unless someone directs us to do something about this or someone takes this thorny issue on board then there would be a big issue".

[12] Included in the radio remarks is the comment by the Principal that "... we are directed that we take the address we are given at face value ...". It has not been established by whom this direction was given, but it apparent that it must have been an official of the Board or an official of the Department. Whether that is the formal position of the Board or of the Department is a different matter. I proceed on the basis that the school was acting upon a direction, official or unofficial, by someone from the Board or the Department that they were to accept addresses at face value.

[13] Mrs Gormley concludes her affidavit by stating that she attended the appeal hearings before the Tribunal and that -

"The Tribunal was sympathetic to the plight of the parents and indeed was aware that "grannyng" was a regular issue mentioned before Tribunals in the Derry area. The Tribunal however did not consider that the school could have taken any action in relation to this matter as there were no specific complaints made to the Board of Governors of children being admitted on this basis."

[14] I commend Mrs Gormley for the forthright and fair manner in which she has presented this issue both to the public, through the radio interview, and to the Court, through the affidavit that she filed.

[15] I turn to the Department's position on false addresses as appears in an affidavit sworn by Dr Price, the Principal Officer in the Open Enrolment and Transfer Procedure Branch of the Department since January 2007. Dr Price points out that the transfer forms, which are completed by the parents, provide that the parents furnish the postal address and the postcode and the parents later certify, by signing the form, that they have read the form, discussed it with the primary school Principal. Further, the address will have been certified by the Principal of the primary school. The Department issued Guidance to primary school Principals on the conduct of the interviews with parents on the completion of the transfer forms

and the Guidance provides that it is particularly important that the address should be checked personally with the parents at the interview to ensure that it is correct and that it is the child's normal place of residence.

[16] Dr Price states the Department's position on this issue to be that if the parents raise a concern with the school about allegations of admissions on the basis of false addresses it is a matter for the Board of Governors, as the admissions authority, to address that allegation. Accordingly, it was entirely a matter for the Board of Governors at this school, as the legal admissions authority, to satisfy themselves that the information provided by the parents was correct. If there was any doubt about the accuracy of an address and whether it was a normal place of residence then the Board of Governors were at liberty to request additional information. Dr Price refers to the example at other schools that may require, for example, a passport, a copy of a Child Benefit entitlement or a utility bill. Reference is made to the booklet issued by the Board which includes a description of each of the schools within its area, which includes this school. The booklet sets out the admissions criteria for the school and includes the following statement:

"Parents are advised that incorrect information, particularly concerning the address given as the normal place of residence or the presence of siblings at the college, may result in the withdrawal of a place or the inability of the college to offer a place."

[17] Dr Price states that there has been no evidence produced to the Department that any identified child was offered a place based on false information and that no specific allegations in relation to the issue had been made to the Department prior to September 2007. The Department has provided informal advice to schools in the past in relation to verification of addresses and this advice has referred to the most commonly requested forms of documentation used to verify addresses. However the Governors of the school never sought guidance from the Department in relation to the checks that may be necessary or advisable to verify addresses and normal places of residence, nor have the Governors or the school ever informed or complained to the Department of parents with children resident outside Northern Ireland who have provided false addresses in the transfer forms in order to secure a place at the school.

[18] Next there is position of the Tribunal in relation to the issue of grannyng. First of all, I should identify the approach of the Tribunal in relation to appeals. Article 15 of the 1977 Order provides in effect that the Tribunal asks itself two questions. First, were the criteria for admission to the school applied correctly? If the answer is no the second question is would the child have been refused a place anyway? If the answer is no the Tribunal allows the appeal and directs that the child should be admitted to the school. The result would be that the admissions number for the school is automatically increased, if necessary, to allow that child a place.

[19] The Tribunal, the Board and the Department pointed out that the approach of a Tribunal on the hearing of appeals is to consider the case in the light of the information that was before the school when it made the transfer decision. The Tribunal conducts a review of the approach of the school, that is, the Tribunal will not allow new matters to be introduced on the appeal, but will reconsider the information that was available to the school. To that extent the Tribunal has a role that is similar to that of the judicial review Court, which reviews the decision-making authority and is not a court of appeal. Ms Gibson referred to Cunningham's Application (Girvan J, Unreported 25/08/1995) and Hughes Application (Weatherup J, Unreported 22/10/2001) where the judgments emphasised the above approach of the Tribunal, in the first case on an appeal in relation to a claim for special circumstances and in the second case on an appeal in relation to a claim concerning the application of the admissions criteria. The statements contained in the decisions to the effect that the Tribunal proceeds on the basis of the information that was before the school when it made the initial decision have found their way into the Guidance issued to the Tribunals. I will return to the application of that Guidance.

[20] Mr Wright was the Chairman of the three Tribunals that heard the appeals of the three applicants. He stated his understanding that the Tribunals would only consider evidence that was available to the school. The members of the Tribunals were of the view that the school was entitled to rely on the information about addresses provided on the transfer forms and signed by the parents and verified by the Principal of the primary school. When a Tribunal heard of allegations that other parents had deliberately mis-stated addresses the Tribunal was unanimous in the view that the school had properly applied the criteria in accordance with the information that was available to the school and on that basis the Tribunal would not interfere with the decision of the school.

[21] Mr Wright referred to the Guidance (described as the School Admissions Appeal Tribunals Procedures) which states that a Tribunal should proceed on the basis of information that was available to the school. He concludes:

“No evidence was presented to the Tribunal in written or oral representations that, at the time the Board of Governors was making its decision with regard to admissions, any of the addresses stated on the transfer report forms were inaccurate.”

The Tribunal did not examine the issue of false addresses and dismissed the appeals against the refusal of the places.

[22] Mr Larkin, for the school, described the approach that the school and the Tribunal had taken as being one of recognising what he described as the “presumptive integrity” of the address, coupled with the confirmation of the primary school. On the other hand Mr O'Hara, whose approach was adopted by

Ms Anyadike-Danes, for the applicants contended, first of all, that the school had knowledge of the false address issue and further that the Tribunal had knowledge of the false address issue. This is confirmed by Mrs Gormley and Mr Wright. Secondly, the applicants contended that once the school had knowledge of the issue there could be no presumptive integrity in the information supplied on behalf of the prospective pupils and the school could not rely on the entries on the transfer forms or upon confirmation by primary Principals. Thirdly, it was said that the onus was on the school to make such checks as then became necessary so as to obtain verification of addresses in whatever reasonable manner was considered appropriate. Further, it was said that such checks would not impose an undue burden on the schools in that they could be selective as to those from whom they required confirmation of addresses or they could require all prospective pupils to provide confirmation through utility bills or by other means.

[23] In addition, the applicants contended that the alternative to the school being responsible for the accuracy of addresses furnished in the transfer forms would be to place the burden on the parents of other children to police the accuracy of the information being furnished to the school and therefore to require other parents to conduct investigations. Such an alternative, said the applicants, would be an impossible task for parents. Until places had been offered how would other parents know who had applied to the school and how would they know what information had been provided on the transfer forms?

[24] In essence the school, the Board and the Department all took the view that it was up to the parents to produce evidence that other parents had furnished false addresses. If they were to do so, said the respondents, then the school would investigate. Further the respondents said that the production of utility bills or other documents would not be in any event a reliable means of making checks on a person's normal residence. In addition they said that the parents in the present cases did not raise the issue of false addresses with the school during the transfer process. Accordingly it was not a matter that the Tribunal could examine on appeal.

[25] There are two separate matters to be considered. First of all, the presence or absence of evidence of false addresses and secondly the decision of the school to accept the addresses stated on the transfer forms and not to carry out any inquiry.

[26] With those two separate matters in mind a number of questions may be asked. First of all, should it be for the parents to produce evidence of false addresses by other applicants to the school or should it be the school that checks the information that is supplied? I accept the applicants' position on this issue. It is impossible for other parents to police the transfer process. It is also inappropriate that other parents should be required to police the process. It is not an undue burden to expect the school to require verification of addresses. Requests for verification are a reasonable response to the general belief or knowledge, both within the school and it would appear more widely, that there was a problem with false addresses.

[27] The second question is, does the decision of the school to accept the addresses stated on the transfer forms, when the school has general knowledge or belief of a problem with false addresses, amount to a failure to apply correctly the criteria for admission to the school? I am satisfied that there was a general problem about false addresses that was known to the school. I am satisfied that the school had been directed, either by representatives of the Board or of the Department, that they were to take the transfer form addresses at face value and that they were not to make inquiries into the residence criteria for admission to the school and that accordingly the school were not making inquiries into the addresses.

[28] The criteria adopted by the school set out an order of preference for admission when the school was over-subscribed and the criteria included preference for residents in the five parishes and residents in Northern Ireland. It is a statutory imperative that the criteria should provide for Northern Ireland residents having a preference over non residents. By relying on the addresses stated on the transfer forms, when there was general knowledge or belief that the addresses may not be accurate, the school was in effect disregarding the residence qualification and not correctly applying the criteria. It should be noted that it is not the presence or absence of false addresses that amounts to not correctly applying the criteria, but rather it is the decision of the school not to examine whether or not there were false addresses that amounted, in effect, to disregarding the residence requirement. The relevant error of the school was the policy that they adopted of not checking whether the addresses were accurate.

[29] The next question is, should the Tribunal have considered the school's approach to the problem of false addresses, when there was no evidence of false addresses presented to the school or to the Tribunal? I again draw attention to the distinction between evidence of false addresses in particular cases and on the other hand the error that has been identified in the application of the criteria, namely the policy decision not to make inquiries about addresses when there is knowledge or belief that there is a problem with false addresses.

[30] The Tribunal hearing an appeal reviews the information that was available to the school when it made the transfer decision. It is the case that the issue of false addresses was not raised by the parents in the transfer process and that only in one of the cases was the issue raised on appeal to the Tribunal and even then it was by way of general information about false addresses. This leads the Board, the Department and the Tribunal to rely on the decisions in Cunningham's Application and Hughes Application and the Tribunal Guidance to the effect that only information that is before the school will be considered by the Tribunal. Thus, they say that there was no information before the school of actual false addresses and there was no information before the Tribunal of actual false addresses.

[31] Information that is available to the school in the transfer process will generally be supplied by the parents on the transfer form and be information within

the knowledge of the parents. If there is an issue about special circumstances the information available to the school will be the additional material within the knowledge of the parents that is provided to the school on the special circumstances application. In those cases it is apparent that with information known to the parents they are expected to provide the information to the school so that it will be able to determine whether the pupil satisfies the criteria or qualifies for special circumstances. There will be other cases where the information before the school will be within the knowledge of the school rather than the knowledge of the parents, or where the information is capable of being obtained by the school rather than the parents and it may or may not have been obtained by the school, or the information may arise from an approach to the criteria that has been adopted by the school, of which the parents are unaware. Thus there are instances where the information may emanate from the school rather than the parents. However such instances also satisfy the requirement that the relevant information be before the school at the time of the relevant decision. If the information is within the knowledge of the school, whether because it was provided by the parents, or because it was only known to the school, or only capable of being uncovered by the school, then it is information that should bear upon the decision of the school in relation to admissions. It would also be information before the school that would involve the Tribunal taking it into account on an appeal.

[32] The approach of the school to the residence criteria was a matter for the school. I have found that the school should have made inquiries about the addresses on the transfer forms. I found that the school should not have adopted a policy of accepting at face value the addresses stated on the transfer forms and disregarding the general knowledge or belief about false addresses. The school had the capacity and the obligation to deal with the problem and most importantly the school knew that it was, by direction it would appear, in effect disregarding the residence requirement and thereby not applying correctly the admissions criteria.

[33] The Tribunal Guidance, which adopts the approach in the decided cases, is that the Tribunal will not take account of information that was not available to the school when it made its decision. However the information as to how the school applied the criteria was known to the school when the Governors made the decisions on admissions. It was known that there was no check on the residence requirements. The school did not require the residence requirements to be satisfied as it did not check the addresses when it had general knowledge or belief that there was an issue about the reliability of the information provided to the school. The policy of the school in relation to the residence requirements was also known to the Tribunal, as Mr Wright's affidavit makes clear.

[34] The incorrect application of the criteria in this case was the policy decision not to examine the addresses and thereby turn a blind eye to the residence requirement and this was known to the school and to the Tribunal. Accordingly, the Tribunal was mistaken in considering it to be necessary for evidence of false addresses to be produced to the school by the parents during the transfer process. The Tribunal

knew of the school policy on the addresses and considered that it would not interfere. This is apparent from Mr Wright's affidavit where he states that the Tribunal was of the view that the school was entitled to rely on the information with respect to addresses, despite the belief that there were false addresses being used.

[35] The Tribunal endorsed the school's approach of not examining the issue. In this I find that the school was in error and that the Tribunal was in error and that this amounted to not applying correctly the residence criteria. The Tribunal made two mistakes in its approach. The first was to consider that evidence of false addresses had to be produced whereas the fault lay in the decision not to examine the addresses. The second mistake was in accepting the policy of the school rather than treating it as an incorrect application of the admissions criteria.

[36] Finally on the issue of the admissions criteria, it is necessary to determine whether the applicants would have been refused places anyway. The school, the Board and the Department, by their Counsel, agree that there is no basis for concluding that the applicants would not have been offered places if the residence requirements had been applied. As the existence of the offending policy adopted by the school is not in dispute, it is not considered necessary to refer the matter back to the Tribunal. Because the school was applying this policy, as it has agreed it did, and that amounted to applying the criteria incorrectly, as I have found to be the case, and as it cannot be said that the applicants would not have been offered places in any event, as accepted by the respondents, the Tribunal would inevitably reach the conclusion that the appeals be allowed. Accordingly, I quash the decisions of the Tribunal and direct the admission of the applicants to the school.

[37] The second issue concerns the extra admissions to the school. In the light of my finding on the first issue it is not necessary to examine fully the second issue. The applicant's claim legitimate expectation of admission to the school on the basis of the Department's correspondence, which it is said represented that the school may admit an additional eleven, later ten, pupils who had siblings at the school. These were the same prospective pupils who fell into criterion three and included the applicants. It was claimed that the extra pupils were to be admitted on the basis that there would be no funding for such pupils.

[38] In the event the school wrote letters to the pupils offering them places at the school. However the Department sought to issue a direction under Article 101 of the Education (NI) Order 1996 requiring the school to adhere to the admissions number. The rival positions were essentially that the school had found that for the first time it was unable to offer places to siblings at the school, as the eleven pupils were not gaining admission because all places were filled before those under criterion three were reached. This, I might add in parenthesis, is what led to the issue of false addresses coming to the surface, because if false addresses were given there were those who did not live within the five parishes who unfairly gained admission in advance of the eleven children with sisters at the school.

[39] On the other side the Department set out sound reasons for refusing to increase the admissions number beyond 130, based on a number of wider policy considerations which I need not recite, but which affect secondary education in the area.

[40] I am not satisfied that the circumstances are such that applicants can rely on a claim of legitimate expectations to secure places for the applicants. I am not satisfied that the representations of the Department relied on by the applicants could maintain a claim for legitimate expectation. I am satisfied that the school did not have power to offer the places to the applicants in excess of the admissions number. I am satisfied that the applicants were not entitled to rely on the offers made by the school in excess of the admissions number. I state my conclusions without examining the issues in any more detail because it is not necessary in the light of my finding on the first issue about the admissions criteria.

[41] The result is that the decisions of the Tribunal in respect of each applicant will be quashed and I direct the admission of the applicants to the school.