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

Delivered: 05/03/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY THE COMMITTEE ON THE
ADMINISTRATION OF JUSTICE FOR JUDICIAL REVIEW**

**Karen Quinlivan KC and Aidan McGowan (instructed by the Committee on the
Administration of Justice) for the Applicant
Tony McGleenan KC and Philip McAteer (instructed by the Departmental Solicitor's
Office) for the Respondents**

HUMPHREYS J

Introduction

[1] The applicant is the Committee on the Administration of Justice ('CAJ'), an independent human rights organisation which, inter alia, seeks to hold public authorities accountable in respect of their domestic and international legal obligations.

[2] By these proceedings, the CAJ seeks to challenge the failure of the Executive Committee to comply with the statutory duty imposed by section 28E of the Northern Ireland Act 1998 ('NIA') in relation to the adoption of a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.

[3] The CAJ also challenges the alleged failure by the Minister for Communities to produce such a strategy to place before the Executive Committee and the alleged failure on the part of the First Minister ('FM') and deputy First Minister ('dFM') to ensure compliance with the Executive Committee's statutory obligation.

The legal framework

[4] The Executive Committee was established by section 20 of the NIA and consists of the FM, dFM and the Ministers of each Department. It is not a corporate entity and does not enjoy executive power which is vested in Ministers and Departments (see *Re Salinas* [2009] NIQB 43).

[5] By section 28A of the NIA, and the Ministerial Code, the FM and dFM set the agenda for Executive Committee meetings, which should consider any matter properly regarded as cross-cutting, significant or controversial.

The statutory duty

[6] Section 28E of the NIA states:

“(1) The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.

(2) The Executive Committee –

(a) must keep under review the strategy; and

(b) may from time to time adopt a new strategy or revise the strategy.”

[7] This was introduced into the NIA by the Northern Ireland (St Andrews Agreement) Act 2006 and came into force on 8 May 2007.

[8] As a result of the failure by the Executive Committee to adopt such a strategy, the CAJ commenced judicial review proceedings which culminated in a judgment from Treacy J reported at [2015] NIQB 59. In that case, there was a dispute as to whether, in fact, the Executive Committee had adopted a strategy. On the evidence, the learned judge found that no strategy had been adopted and, therefore, the statutory duty had not been fulfilled and he found for the applicant.

[9] Following the introduction of the Executive Departments (Northern Ireland) Act 2016, responsibility for the development of the anti-poverty strategy fell to newly formed Department for Communities (‘DfC’).

[10] The CAJ points out that, despite the fact that judgment was handed down almost ten years ago, and the statutory duty has been in existence for almost 18 years, no anti-poverty strategy has been adopted by the Executive Committee.

The evidence

- [11] The affidavit evidence in this case reveals the following chronology of events:
- (i) The Executive collapsed in January 2017;
 - (ii) In January 2020 the New Decade, New Approach agreement included, as a priority for the newly restored Executive, the development and implementation of an anti-poverty strategy;
 - (iii) The DfC established an expert advisory panel and a co-design group to progress the development of the strategy in the autumn of 2020;
 - (iv) The expert advisory panel report, together with detailed recommendations, was published in March 2021;
 - (v) The co-design group provided its written position paper in February 2022;
 - (vi) The Executive collapsed in February 2022 without any strategy being adopted;
 - (vii) An initial draft of a strategy was presented to the Minister in October 2022;
 - (viii) In June 2023, a seminar on progressing an anti-poverty strategy was held at Stormont, which involved various politicians, officials, NGOs and academics;
 - (ix) During the course of this seminar, it was represented by a DfC official that a draft strategy was in existence and was ready to present to an incoming Minister for consideration;
 - (x) The current Executive Committee was formed on 3 February 2024;
 - (xi) On 29 February 2024 the Permanent Secretary of the DfC appeared before the Communities Committee and stated that a strategy was “some months away” from being in position to be presented to the Executive Committee;
 - (xii) The new Minister for Communities was briefed by officials on 5 March 2024 in relation to the development of the strategy and the statutory duty imposed by section 28E of the NIA;
 - (xiii) The Minister adopted the option recommended by officials to ‘sequence and refresh’ the policy;
 - (xiv) On 12 March 2024 the Northern Ireland Audit Office published a report on child poverty which stated:

“An integrated, cross-departmental anti-poverty strategy is urgently needed. As co-ordinating department in this

area, when the Department presents a draft strategy to the Executive, it should include an action plan containing clearly defined indicators and targets aimed at quantifying and reducing poverty, including measures of persistent poverty and the poverty gap.”

- (xv) A meeting was held on 24 April 2024 between the Minister and officials at which the existing draft and future development were discussed;
- (xvi) On 16 May 2024 the Minister wrote to the Chair of the Committee stating that he was considering how best to take this work “forward at pace” and he would write to his Executive colleagues “setting out how we will continue to develop the Anti-Poverty Strategy, including setting out a timetable”;
- (xvii) A briefing took place for the Committee on 30 May 2024;
- (xviii) On 8 July 2024 the Minister provided a written answer to an MLA question stating:

“Addressing poverty in all its forms has been a key priority for me since the restoration of the Executive in February 2024 and I am committed to delivering long-term sustainable solutions to poverty for our communities right across Northern Ireland through the implementation of a robust anti-poverty strategy. I am currently considering the next steps ...”
- (xix) The Minister met officials on 19 August 2024 and was presented with a revised draft of an anti-poverty strategy which was substantially different to the version produced in October 2022. The Minister declared himself content to proceed with the draft as the basis to develop the strategy;
- (xx) On 9 September 2024 the Executive produced a draft Programme for Government 2024-2027. This document makes no reference to any anti-poverty strategy being considered, adopted or implemented;
- (xxi) Pre-action protocol letters were sent by the CAJ on 11 September 2024;
- (xxii) On 24 September 2024 the Minister wrote to his Ministerial colleagues asking for officials to be nominated to a re-constituted Anti-Poverty Cross-Departmental Working Group and enclosing terms of reference for that group. In doing so, he anticipated that a paper would be brought to the Executive Committee before 31 March 2025;
- (xxiii) On 2 October 2024 the FM and dFM responded, stating their commitment to delivering the strategy and making proposals as to how it might be developed;

(xxiv) A pre-action protocol response was sent on 15 October 2024 and this included a timetable, approved by the Minister, as follows:

September-November 2024	Cross-departmental liaison and working groups
December 2024	Drafting of strategy
January 2025	Stakeholder engagement
February 2025	Sharing drafts with Ministers
February 2025	Paper presented to Executive
March 2025	Executive agreement Consultation scheduled.

(xxv) The Public Accounts Committee published a report on 17 October 2024 entitled “Report on Child Poverty in Northern Ireland.” In it, the PAC described the “continuing lack of urgency” in producing a draft strategy was “not acceptable”;

(xxvi) On 18 November 2024 the Anti-Poverty Strategy Cross-Departmental Working Group met for the first time;

(xxvii) These judicial review proceedings were issued on 21 November 2024;

(xxviii) Leave was granted on 5 December 2024;

(xxix) The Minister wrote to his Executive colleagues on 17 December 2024 asking for confirmation that they agreed with the overall structure/approach for the strategy, based on the three pillars of minimising the risk of poverty, minimising the impacts of poverty and assisting people to exit poverty. Ministers were also asked to identify key strategic level inputs which will contribute to the delivery of these pillars. This communication enclosed an ‘early draft’ version of the strategy;

(xxx) On 3 March 2025 the Executive published the agreed Programme for Government which contains an express commitment to bring forward an anti-poverty strategy.

The interpretation of section 28E

[12] The respondents seek to place reliance on a decision from the Court of Appeal in England & Wales in *National Car Parks v Baird (Valuation Officer)* [2005] 1 All ER 53

in relation to the performance of a statutory duty when no time limit is prescribed. In that case, Dyson LJ did not accept the general proposition that such a statutory duty must be performed within a reasonable time. He preferred an analysis based on all the circumstances including the subject matter of the duty, the time taken, the reasons for delay and the prejudice occasioned thereby.

[13] The difficulty in the respondents' argument is that, in this jurisdiction, the relevant caselaw has adopted a "reasonable time" approach.

[14] In *Re Conradh na Gaeilge's Application* [2017] NIQB 27, Maguire J considered an analogue statutory provision, the duty imposed on the Executive Committee by section 28D of the NIA to adopt a strategy for the enhancement and development of the Irish language. The learned judge stated:

"It is also not in dispute that the sub-section contains no express time period by which the strategy shall be adopted. However, it is common case that a proper reading of the provision would necessarily imply into it the notion that the obligation is to be performed within a reasonable period of time." (para [5])

[15] It is noteworthy that the respondent in that case accepted that compliance with the statutory duty fell to be assessed on the basis of a reasonable time criterion.

[16] The court made a declaration that the Executive Committee had failed to adopt such a strategy and was therefore in breach of its statutory duty. Maguire J observed that almost ten years had elapsed since the duty was imposed but no strategy had been adopted. He stated:

"In the court's view, the obligation is an obligation of outcome, not means. The required outcome is adoption. The fact that there have been efforts at times to move matters on towards the development of a strategy or strategies cannot excuse the non-performance of the obligation from a legal point of view, though it may offer some insight into the difficulties." (para [18])

[17] Some five years later, the same applicant brought a further application for judicial review, reported at [2022] NIQB 56, complaining of the same and ongoing breach. In relation to the time for compliance, Scoffield J stated:

"The reasonable period of time available to an Executive Committee to comply with its obligation has to be judged according to all the circumstances. What is reasonable will be shaped, inter alia, by what has gone before. In the present case, given the lengthy period of failure on the part

of preceding Executive Committees to comply with their legal obligations such that no Irish language strategy had been adopted at all – and particularly against the background of a previous High Court declaration to this effect and the renewed hope of expeditious progress in light of the commitments in the NDNA deal – it was incumbent upon the Executive to act with alacrity. It has plainly failed to do so. I acknowledge the impact of the Covid-19 pandemic on the work of Departments and the Executive Committee. I also acknowledge that the DfC’s initial paper in early November 2020 had an indicative date for approval of the strategy in December 2021 (which post-dates the commencement of these proceedings). In light of the delay which had already occurred to that point, however, I do not consider that delivery within that timescale would have been reasonable. Greater urgency was required. In the event, even that timescale has not been met; or anything close to it.” (para [25])

[18] The court again made a declaration that the failure to adopt a strategy was unlawful and in breach of the section 28D duty.

[19] Of relevance to these proceedings, Scofield J commented:

“The more difficult question is whether its inaction in taking preparatory steps towards the adoption of an Irish language strategy was itself a breach of section 28D(1). I have concluded that it is not. That is because the section 28D(1) obligation is one of result. In Maguire J’s words (at para [17](ii) of his judgment), it is “an obligation of outcome, not means.” The Executive could rationally take the view that it was best to permit the Department to devise a strategy which would come to it for approval and adoption at, or towards the end, of the draft strategy’s development. I would not consider the Executive’s failure to progress that work itself to represent a freestanding breach of section 28D(1).” (para [35])

[20] He continued:

“However, notwithstanding that in my view the section 28D(1) obligation is not one requiring certain preparatory acts to be undertaken on the part of the Executive, it may nonetheless be unlawful, on the basis of standard public law principles, for the Executive to act in a way which thwarts the statutory purpose of the adoption of an Irish

language strategy. The repeated failure to permit the matter to be discussed or addressed at a variety of meetings might well appear to reach that threshold – but that is not a failure of the Executive Committee itself. Rather, the setting of the agenda is a function of the First Minister and deputy First Minister; and this case was not specifically directed towards their conduct.” (para [36])

Consideration

[21] When one applies the principles set out in the *Conradh na Gaeilge* cases, the inescapable conclusion is that the Executive Committee is in breach of the section 28E duty to adopt an anti-poverty strategy. Three periods of time are of particular significance:

- (i) It is almost 18 years since the statutory duty was imposed;
- (ii) It is almost ten years since the declaration was made by Treacy J; and
- (iii) It is now over a year since the Executive Committee was reconstituted.

[22] The focus must be on outcome rather than means and the unfortunate position is that there is in existence no adopted strategy. I accept that the Executive Committee is not a corporate entity but, nonetheless, the failures of previous Executive Committees are of relevance in considering whether the reasonable time period has expired in all the circumstances. As Scofield J commented, there is a particular requirement for the Executive Committee to act with alacrity when there have been egregious failings on the part of previous incarnations. In that case, the court found that a delay of 12 months in 2020/2021 was not reasonable. A fortiori, a delay of similar duration in 2024/2025 must also be unreasonable.

[23] I therefore find that the Executive Committee is in breach of its obligation under section 28E of the NIA.

[24] Unlike the previous cases relating to delay in the adoption of strategies required by the NIA, the applicant in these proceedings also seeks to challenge the alleged failures of the Minister for Communities and the FM/dFM.

[25] It is evident that the statutory duty created by section 28E is imposed exclusively on the Executive Committee and not on any individual Minister. The *Conradh na Gaeilge* judgment also establishes:

- (i) There is no separately justiciable duty in relation to the carrying out of preparatory work; and

- (ii) It may be unlawful for others to act in such a manner as to thwart the statutory purpose of the adoption of the anti-poverty strategy.

[26] It is recognised in public law that taking steps to thwart the implementation of a statutory duty is itself unlawful. In classic *Padfield* terms, Ministers cannot exercise their powers so as to thwart or run contrary to the purpose or objects of a statute. More widely, any steps which a Minister may take to frustrate a statutory purpose could be impugned by way of judicial review.

[27] The applicant criticises the Minister on the basis that, on the date he assumed office, a substantial body of work towards the development of a strategy had already been completed. It is said that he has abandoned the October 2022 draft and delayed in progressing matters with officials and other stakeholders. The applicant alleges that the Minister has only recently begun to take action as a result of these judicial review proceedings.

[28] To “thwart” means to act in a such a way as to prevent a particular event from occurring. In this context, it imports a deliberate attempt to prevent a statutory duty from being fulfilled. On the evidence in this case, I am not satisfied that the applicant has established that the Minister has acted in this fashion. The applicant may well disagree, for principled reasons, with some of the steps the Minister has taken but that does not establish that he has sought to thwart the section 28E obligation. Criticism may be levelled at certain of the periods of delay but, in my analysis, this goes to the question of fulfilment of the duty by the Executive Committee rather than separate public law illegality on the part of the Minister. The evidence points clearly towards an intention to produce an anti-poverty strategy in the near future for consideration and, if appropriate, adoption by the Executive Committee. Importantly, it must be recognised that policy development is a matter for Ministers, who are accountable to the Assembly, and not for the courts. A judicial review court will assess legality and rationality but plays no part in the qualitative evaluation of the merits of policies.

[29] The case against the FM and dFM must fail for similar reasons. The FM and dFM have the statutory remit to set the agenda for Executive meetings and could, if they saw fit, place the issue of an anti-poverty strategy before the Committee. However, there would seem to be little benefit in doing so unless there was a draft strategy for the Executive Committee to consider and, if appropriate, to adopt. It is theoretically true that the FM and dFM could take this issue and proactively engage in the production of a strategy but it could not be said that failing to take such a course was unlawful.

[30] There is no evidence or suggestion that the FM and dFM have acted in any sense to frustrate or thwart the development and adoption of the strategy. Indeed, they have each expressed unequivocal commitment to the fulfilment of the statutory duty.

[31] I am not satisfied therefore that the FM and dFM have committed any public law wrong or acted in a manner that has caused the Executive Committee to fail to comply with section 28E.

Conclusion

[32] I, therefore, find that the Executive Committee is in breach of the section 28E duty but dismiss the case against the other respondents.

[33] I will hear the parties on question of what relief, if any, is appropriate and on the issue of costs.