

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

The Committee on the Administration of Justice (CAJ) and Brian Gormally's
Application [2015] NIQB 59

IN THE MATTER OF AN APPLICATION BY THE COMMITTEE ON THE
ADMINISTRATION OF JUSTICE AND BRIAN GORMALLY FOR JUDICIAL
REVIEW

AND IN THE MATTER OF SECTION 28 OF THE NORTHERN IRELAND ACT
1998

AND IN THE MATTER OF A FAILURE TO ACT BY THE EXECUTIVE
COMMITTEE OF THE NORTHERN IRELAND ASSEMBLY

TREACY J

Introduction

[1] This is an application by the Committee on the Administration of Justice (CAJ) and Brian Gormally for judicial review of an alleged on-going failure of the Executive Committee of the Northern Ireland Assembly ("the Executive Committee") to discharge its statutory duty under section 28E of the Northern Ireland Act 1998.

[2] The application is concerned, in particular, with the Executive Committee's failure to:

- (i) adopt an identifiable strategy within the meaning of section 28E; and
- (ii) develop a strategy based upon "objective need" within the meaning of section 28E.

Background

[3] The CAJ is a well-known NGO which focuses on ensuring that public bodies comply with their obligations under domestic, European and International law.

[4] The present proceedings concern the Executive Committee's legal duty in relation to poverty, social exclusion and deprivation within the meaning of section 28E.

[5] Historically, that duty has its origins in the Belfast / Good Friday Agreement of 1998, which imposed an obligation on the UK government to adopt a more focused Targeting Social Need initiative and a range of measures aimed at combating unemployment and progressively eliminating employment differentials between Northern Ireland's two main communities by targeting objective need.

[6] The more immediate basis for section 28E lies in the St Andrews Agreement of 2006 which sought to create the circumstances that would allow the political promise of the Belfast Agreement to be fully realised. The St Andrews Agreement included a section entitled "Human Rights, Equality, Victims and other Issues", which imposed an obligation on the UK government to publish "an Anti-Poverty and Social Exclusion strategy to tackle deprivation in both rural and urban communities based on objective need and to remedy patterns of deprivation". The corresponding strategy was published in November 2006 under the title "Lifetime Opportunities".

[7] The St Andrews Agreement contained a further commitment on the part of the UK government whereby it bound itself to introduce legislation to implement the St Andrews Agreement. The resulting legislation was the Northern Ireland (St Andrews Agreement) Act 2006, which, by section 16, added section 28E to the Northern Ireland Act 1998. Section 28E reads:

"28E Strategy relating to poverty, social exclusion etc.

(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."

[8] The CAJ regarded this section as an important milestone in the development of equality law in Northern Ireland because the concept of “objective need” had for the first time been placed on a statutory footing and was to provide the basis for the Executive Committee’s strategy for tackling poverty, social exclusion and patterns of deprivation. The applicant believes that this was highly significant because “objective need” is a concept that is intended to reduce in its entirety the scope for discrimination between persons in need by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation.

[9] The applicant monitored section 28E but became concerned that the Executive Committee was failing to act upon its duty to adopt a strategy based upon “objective need”. On 28 June 2013, the CAJ wrote to Dr Malcolm McKibbin of the Office of the First Minister and Deputy First Minister (OFMDFM) and stated that “there currently appears to be no compliance with this legal requirement” as “there is no actual anti-poverty strategy as required under the terms of section 28E”

[10] Dr McKibbin replied on 30 July 2013 in a letter which stated that he considered that the Executive Committee was meeting its statutory duty. In this contention he relied on three factors:

- (i) a decision of the Executive Committee of 20 November 2008 whereby it had agreed “to formally adopt the broad architecture and principles of Lifetime Opportunities as the basis of its strategy to tackle poverty and social exclusion and poverty”;
- (ii) the emphasis that Programmes for Government have placed upon tackling disadvantage as a “priority”;
- (iii) the role and work of the OFMDFM-led Delivering Social Change Framework.

[11] On 16 August 2013 the applicant responded noting several uncertainties arising from the letter of 30 July 2013, particularly about whether there was an identifiable strategy in place. Clarification was sought about, *inter alia*, the title of the strategy, the date on which it had been adopted and review arrangements.

[12] Dr McKibbin forwarded the letter of 16 August to Margaret Rose McNaughton in the Equality and Strategy Directorate within OFMDFM. Ms McNaughton then replied to the applicant in a letter dated 2 September 2013 stating:

- (i) That the Lifetime Opportunities document is not the Executive Committee’s strategy within the meaning of section 28E;
- (ii) That the Executive Committee’s strategy is instead found in Priority 2 of the Programme for Government (PfG);

- (iii) That Lifetime Opportunities informs Priority 2 and a range of initiatives that have been rolled out under the PfG;
- (iv) That Lifetime Opportunities is therefore being implemented and has been subject to review; and
- (v) That the Delivering Social Change Framework is a means for realising the aims and objectives of the strategy.

[13] The Equality Coalition, of which the applicant is a co-convenor, wrote to Ms McNaughton on 17 September seeking clarification about the Executive Committee's approach to Lifetime Opportunities. It noted inconsistencies in the correspondence received from Dr McKibbin and Ms McNaughton. Clarification was also sought about whether the current approach to anti-poverty measures was "based on objective need". No reply to this letter was received.

[14] On 18 April 2014 the applicant wrote a pre-action protocol letter to OFMDFM in which it highlighted its concern that no strategy had been adopted pursuant to section 28E and that, without prejudice to that point, the Executive Committee had no working definition of "objective need". A request was made for a range of documents relevant to the Executive Committee's deliberations about section 28E, including documentation that defined "objective need" and explained how the concept is mainstreamed into government decision-making.

[15] On 18 April 2014, the applicant also sent a letter to OFMDFM under the Freedom of Information Act 2000. That letter requested the disclosure of documents relevant to the Executive Committee's deliberations about section 28E, including documentation that defined "objective need" and explained how the concept is mainstreamed into government decision-making.

[16] On 27 May 2014 OFMDFM replied to the pre-action letter. In the letter of 27 May the respondent rejected the suggestion that no strategy was in place for the purposes of section 28E and provided detail on a range of programmes and initiatives. On the matter of the meaning of "objective need", the letter stated that objective need "is a broad concept which provides the Executive very substantial discretion in identifying areas of need based upon their contribution to cycles of poverty and deprivation". In relation to the request for information about "objective need", the letter of reply stated that such information would not routinely be disclosed in the absence of a legal obligation to do so and that that position would not be departed from in this instance.

[17] On 22 May 2014, OFMDFM replied to the Freedom of Information request of 18 April 2014. In relation to the applicant's request for disclosure of documents relevant to the Executive Committee's deliberations about section 28E, including documentation that defined "objective need" and how the concept is mainstreamed

into government decision-making, the letter of reply stated “We hold no information in relation to the material requested”.

Relief Sought

[18] The applicant seeks:

- (i) A declaration that the Executive Committee of the Northern Ireland Assembly is in breach of its duties under section 28E of the Northern Ireland Act 1998 by reason of its failure to adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on “objective need” within the meaning of section 28E.
- (ii) A declaration that the Executive Committee of the Northern Ireland Assembly is in breach of its duties under section 28E of the Northern Ireland Act 1998 by reason of its failure to adopt any working definition of “objective need” for the purposes of section 28E.
- (iii) A declaration that the Executive Committee of the Northern Ireland Assembly misdirected itself in law when adopting *Lifetime Opportunities* as the purported basis of its strategy for the purposes of section 28E.
- (iv) An order of mandamus requiring the Executive Committee of the Northern Ireland Assembly to adopt a strategy within the terms of section 28E of the Northern Ireland Act 1998.

Grounds for Relief

[19] The grounds on which the reliefs are sought are:

- (i) That the Executive Committee of the Northern Ireland Assembly has acted unlawfully by failing to adopt an identifiable strategy for the purposes of section 28E of the Northern Ireland Act 1998.
- (ii) That the Executive Committee of the Northern Ireland Assembly has acted unlawfully by failing to adopt a working definition of “objective need” for the purposes of section 28E of the Northern Ireland Act 1998.
- (iii) That the Executive Committee of the Northern Ireland Assembly has failed to take into account all relevant considerations that relate to section 28E of the Northern Ireland Act 1998. In particular, it has failed to give consideration to established understandings of “objective need” and to integrate those into government policy.
- (iv) That the Executive Committee of the Northern Ireland Assembly’s approach to section 28E is *Wednesbury* unreasonable. In particular, its failure to give

consideration to established understandings of "objective need" is so unreasonable that no reasonable decision-maker could have failed to give consideration to those understandings

- (v) That the Executive Committee misdirected itself in law when adopting *Lifetime Opportunities* as the purported basis of its strategy for the purposes of section 28E. In particular, it misdirected itself in law by linking *Lifetime Opportunities* to section 28E in relation to "social need" when the relevant statutory duty relates to "objective need", those two terms being different.

Arguments

Applicant's Arguments

[20] The applicant argues that "objective need" is a concept that is intended to reduce in its entirety the scope for discrimination between persons in need by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation.

[21] The applicant argues that section 28E contains a two-fold duty which is founded on the natural and ordinary meaning of the words contained therein. It specifies that the nature of that two-fold duty is as follows:

- (i) To adopt a strategy that sets out how the Executive Committee proposes to tackle poverty, social exclusion and patterns of deprivation; and
- (ii) To base that strategy upon objective need.

[22] The applicant argues, based on previous judicial treatment of the interpretation of the Northern Ireland Act (specifically in Robinson v Secretary of State for Northern Ireland [2002] UKHL 32 and Re Colaiste Feirste's Application [2011] NIQB 98), that section 28E and the duty contained therein should be regarded as 'constitutional' in form. If this is accepted, the applicant argues that such duty can only be discharged by the adoption of a clear and transparent strategy that is based upon an established definition of 'objective need'. The applicant relies on the 'Noble-criteria' as confirmation that such an established definition of objective need in fact exists.

[23] The applicant argues that the duty in section 28E is mandatory rather than permissive and that the words 'shall' and 'must' within the section cannot be read as importing any element of discretion on the part of the Executive Committee. The applicant argues that each part of the section 28E duty is to be regarded as mandatory and that the respondent must therefore adopt both a clear and transparent strategy and one that is based on a working definition of "objective need".

[24] The applicant sets out section 66 of the Local Government Act (Northern Ireland) 2014 in relation to Community Planning. The relevant part of this section (which has not been commenced as yet) reads:

“(b) the reference to improving the economic wellbeing of the district includes tackling poverty, social exclusion and patterns of deprivation;

And expressions used in this subsection and in section 28E of that Act... have the same meaning as in that section.”

Having set out this legislation the applicant argues that when section 66 does come into force, there will be scope for uncertainty as to the meanings of poverty, social exclusion and so on. The applicant further submits that this will be even more true given the absence of a working definition of “objective need” such as should ground the Executive Committee’s approach to its section 28E duty in relation to poverty and so on.

[25] The applicant argues that the absence of a working definition of “objective need” is already having practical consequences. In this contention the applicant relies on media reports about political disagreements on the expenditure of monies within the framework of the Social Investment Fund in relation to the allocation of funding across Northern Ireland’s two main communities.

[26] The applicant argues that even if an anti-poverty strategy were in place it could not be said to satisfy the demands of section 28E as it would not be “based on objective need”.

[27] The applicant argues that the word “strategy” connotes the existence of clear and coherent planning in respect of identifiable targets. To support its contention that there is no such strategy, the applicant relies on the following points:

- (i) The respondent, in Dr McKibbin’s letter of 30 July 2013, stated that its strategy centred upon a decision of the Executive Committee of 20 November 2008 whereby it had agreed ‘to formally adopt the broad architecture and principles of *Lifetime Opportunities* as the basis for its strategy to tackle poverty and social exclusion and poverty’.
- (ii) In later correspondence, Ms McNaughton on behalf of the respondent stated that *Lifetime Opportunities* is not the Executive Committee’s strategy within the meaning of section 28E and that the Executive Committee’s strategy is instead to be found in Priority 2 of the Programme for Government. Her letter further recorded that *Lifetime Opportunities* informs Priority 2 and a range of initiatives that have been rolled out under the Programme for Government; that *Lifetime Opportunities* is being implemented and has been subject to

review; and that the Delivering Social Change Framework is a means for realising the aims and objectives of the strategy.

- (iii) In its reply to the applicant's pre-action protocol letter, the respondent returned to the argument that the *Lifetime Opportunities* document provided the basis for its anti-poverty strategy and that the Executive Committee had endorsed it on that basis. It also noted how an Executive sub-committee had been established and tasked with identifying further actions to assist in achieving the goals set by *Lifetime Opportunities*. It further explained how, in 2012, a Delivering Social Change programme had been initiated and that this oversees six signature programmes that seek to reduce the levels of poverty across all ages.
- (iv) Ms McNaughton's affidavit states that she had been 'incorrect' in her letter wherein she suggested that *Lifetime Opportunities* is not the Executive's strategy for the purposes of section 28E and that 'it is clear from the Executive's decision of November 2008 that its duties have been discharged by adopting *Lifetime Opportunities*, in combination with the Delivering Social Change Framework (which is described as the delivery mechanism for *Lifetime Opportunities* and other strategies). The applicant argues that this change in approach raises questions about the lack of coherence within the Executive planning and communications department and that her earlier letter was confused on account of the lack of a readily identifiable strategy. The applicant further submits that other aspects of her affidavit create uncertainty about the nature of the Executive's strategy, notably the relationship between *Lifetime Opportunities* and other "strategies"; while she avers that the Strategic Investment Fund is not a part of the section 28E strategy, she later discusses that same initiative in the context of discharging the section 28E duty.

[28] The applicant relies on the following submissions in support of its contention that there is an absence of any working definition of "objective need":

- (i) The respondent did not respond to the applicant's letter of 17 September 2013 in which the applicant directly asked whether the Executive's claimed strategy was based upon "objective need".
- (ii) The respondent declined (in response to a request from the applicant) to provide documentation which defined "objective need" or explained how it was calculated or explained how it is mainstreamed into anti-poverty initiatives. In its response to the applicant's request the respondent defined "objective need" as a broad concept which affords the Executive very substantial discretion in identifying areas of need based upon their contribution to cycles of poverty and deprivation. In this regard the applicant submits that the idea of 'very substantial discretion' posits a high degree of

subjectivity and that this is inconsistent with the idea of objectivity that underpins "objective need".

- (iii) In response to the applicant's request under the Freedom of Information Act 2000 for documentation in relation to "objective need" (in the same terms as the request to the respondent detailed at (ii) above) the respondent stated that it held no information in relation to that request. The applicant submits that this is particularly telling.
- (iv) The respondent avers that the Executive Committee endorsed recommendations in relation to its section 28E duty. In relation to the recommendation of OFMDFM the applicant notes that this recommendation refers to 'social need' rather than "objective need" and queries whether Ministers have thereby been misdirected as to the nature of their statutory duty.
- (v) In response to the respondent's stance that poverty and deprivation are separate phenomena, on the basis of which stance the respondent rejects the 'Noble indices' as an appropriate basis for formulating a universal definition of "objective need", the applicant argues that section 28E regards poverty, social exclusion and patterns of deprivation in terms that are conjunctive. On this basis the applicant queries whether the respondent's distinction is consistent with the section 28E duty. If the distinction is sustainable the applicant argues that the respondent is obliged to fashion an alternative definition of "objective need" that provides clarity for the purposes of section 28E (and section 77 of the Local Government Act (Northern Ireland) 2014 when commenced).
- (vi) In relation to the respondent's averments as to the place that "objective need" occupies within the Executive Committee's anti-poverty strategy and related initiatives, the applicant argues that there is neither a single nor a coherent definition of "objective need" that is referred to across and within each of the corresponding documents.

[29] The applicant argues that the respondent has fallen into illegality by its failure to act in accordance with section 28E. In this contention it relies on parallels with R(Child Poverty Action Group) v Secretary of State for Work and Pensions [2012] EWHC 2579 (Admin). In that case, the claimant charity challenged the respondent's preparation of a national poverty strategy without having first requested advice from the Child Poverty Commission that was to be established under the Child Poverty Act 2010. Such request was not made because the Secretary of State had not established the Commission in accordance with the Act. Singh J found that there was a legal requirement to establish the Commission and that that requirement had not been acted upon. By analogy to this case the applicant argues that the Executive Committee has acted unlawfully by failing to adopt an identifiable strategy based on

"objective need". The applicant argues that any other analysis would arguably only allow the Executive Committee to act contrary to the intentions of the legislature as expressed in section 28E.

[30] The applicant argues that the absence of a working definition of "objective need" inevitably means that the Executive Committee has failed to have regard to relevant considerations such as the Noble criteria for calculating need. The applicant submits that the requirement to have regard to such considerations is either implicit within section 28E or 'obviously material' to section 28E and that failure to consider them is not in accordance with the underlying legislation.

[31] The applicant argues that the Executive Committee's failure to have regard to criteria such as the Noble criteria and thereby to bring clarity and meaning to the terms of section 28E is so unreasonable as to fall outside the parameters within which reasonable decision-makers would work.

[32] The applicant argues that the respondent has misdirected itself in law in that the OFMDFM recommendations had made reference to 'social need' rather than "objective need" when addressing the Executive Committee's duties under section 28E. The applicant supports this contention with the following main arguments:

- (i) 'Social need' is a wider concept than that of "objective need". In other words, while 'social need' provides a general justification for state intervention in poverty and so on, "objective need" goes much further by requiring the use of neutral criteria to ensure that resources are channelled towards those who are most in need. The applicant refers to various documents exhibited by the respondent which, it argues, make clear that the two terms are not co-terminous.
- (ii) That the Executive has regarded the terms as co-terminous and has therefore misunderstood the nature of its legal duties.
- (iii) The fact that the Executive has elided the two terms lends further support to the applicants related submissions that the respondent has no working definition of "objective need".

Respondent's Arguments

[33] The respondent argues that its section 28E duty is fulfilled because it has adopted a strategy which sets out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on "objective need", specifically that the Executive resolved on 20 November 2008 to adopt 'the architecture and principles' of 'Lifetime Opportunities' as this strategy. In addition to adopting the 'architecture and principles' of the Lifetime Opportunities strategy, the Executive also agreed to supplement the strategy by establishing a new dedicated sub-committee with the purposes of identifying specific measures directed towards achieving the objectives

such as the Delivering Social Change Framework which is a committee with responsibility, *inter alia*, for policy formation within this area and also acting as a mechanism for overseeing implementation of policy initiatives.

[34] The respondent argues that section 28E does not require a definition of "objective need". Rather the strategy must be 'based upon' "objective need". The respondent contends that this requirement relates to the substance of the strategy itself and does not impose an obligation of definition. In this regard the respondent argues that an analysis of the Lifetime Opportunities strategy, together with the steps which have been taken to implement it, demonstrate that it is both directed toward identifying 'need' and that it employs objective measures to do so.

[35] The respondent argues that the applicant's reliance on a deprivation index as a means of defining "objective need" is misplaced i) because such index is not referred to in section 28E and ii) because deprivation and poverty are not synonymous.

"Objective Need"

[36] The respondent argues that the words "objective need" in the context of section 28E are words of limitation which relate to the substance and content of the strategy, rather than impose an obligation of definition. The respondent submits that these words give rise to a statutory imperative upon the principles which underpin the strategy and also a corresponding restriction on its content.

[37] The respondent argues that it is contrary to the plain wording of section 28E and wrong in principle that the Executive should be responsible for defining "objective need". These are the words chosen by the UK legislature to regulate the content of the Executive's strategy. The respondent contends that these words are general in nature and have a broad meaning and that this meaning should be ascertained by means of standard principles of statutory interpretation. There is nothing within the wording of section 28E to suggest that the Executive should have a discretion as to what they mean or a duty to put forward a definition.

[38] The respondent argues that the St Andrews Agreement sheds no light on the meaning of "objective need", nor does it contain anything which suggests either that the Executive's strategy under section 28E must define the term or what that definition should be.

[39] The respondent argues that it is important to distinguish between the content of the strategy and the content of any specific measure which may be adopted as a means of achieving the objectives of the strategy.

[40] The respondent submits that the natural and ordinary meaning of the term "objective need" is simply that the Executive's strategy should be 'needs-based'. Namely, that the strategy should promote the use of measures aimed at tackling

poverty, social exclusion or patterns of deprivation by focusing upon those most in need of the particular form of government intervention. It should also promote the use of objective criteria when identifying 'need and when devising the relevant government intervention. The criteria should be related to the form of intervention and assist in identifying those in 'need'.

[41] The respondent argues that the requirement of objectivity is a form of statutory prohibition upon the use of arbitrary or partisan principles within the strategy, which might facilitate community imbalances in the distribution of government funds. Such an interpretation of section 28E is clearly faithful to the words used, but it is also faithful to the purposes behind the Act, namely facilitating the restoration of a power sharing and cross community government in Northern Ireland. It is also entirely consistent with other existing provisions of the Northern Ireland Act 1998, which prohibit discriminatory conduct by public authorities.

[42] The respondent argues that an obligation to provide a single definition of "Objective need" within the strategy itself would be entirely impractical. The strategy required by section 28E is one which is intended to offer a high level framework or guidance for how to tackle poverty, social exclusion and patterns of deprivation. Because the types of intervention which may be adopted to implement the strategy will cover many different types of needs, the means by which the intervention defines those relevant needs objectively will also have to differ. For this reason one definition of "objective need" would not be suitable.

Discussion

Has a Strategy been adopted for the purposes of section 28E?

[43] The political background to the section 28E duty is discussed above. To ascertain whether or not a strategy has actually been adopted to meet that duty it is necessary to assess the steps that were taken by the Executive to adopt a strategy and whether those steps led ultimately to a successful adoption of a suitable strategy that meets the requirements of the section.

[44] The relevant chronology is as follows:

- (i) On 28 June 2008 the OFMDFM proposed (via a draft executive paper) that the Executive should adopt the 'architecture and principles' of Lifetime Opportunities as the basis of the Executive's strategy under section 28E and also that a sub-committee should be set up to identify key actions to contribute toward achieving the goals in Lifetime Opportunities.
- (ii) A final paper in these terms was circulated on 19 November 2008 and was approved by the Executive on 20 November 2008.

[45] Based on this sequence of events the respondent argues that the text of the 2006, pre-devolution Lifetime Opportunities document, along with various other initiatives / policies / interventions / frameworks make up the Executive's strategy for the purposes of section 28E.

[46] I cannot agree with this view. The Oxford English Dictionary defines a 'strategy' as a 'plan of action designed to achieve a long term or overall aim'. In adopting only the 'architecture and principles', the Executive adopted something that was inchoate. There is no evidence before me that this inchoate strategy was ever finalised. There is no evidence that it was ever crafted into a road map designed to tackle the issues referred to in the section.

[47] A strategy is intended to guide, to set a course. It must therefore be implicit in the idea of a strategy that that strategy must be identifiable, it must be complete, it must have a start, a middle and an end, it must aim to be effective, its effectiveness must be capable of measurement and the actions which are taken in attempting to implement that strategy must be referable back to that overarching strategy. In order for a strategy to fulfil these implicit requirements and to inform all the many stakeholders that an anti-poverty strategy must necessarily inform, it must be a written document (or a collection of strategy level documents intended to be read together as such). It must be capable of being referred back to and of providing policy level guidance to the stakeholders charged with achieving its goals.

[48] By contrast, the document relied upon by the respondent in this case is the pre-devolution strategy document which is *expressly not* the strategy by which, it is contended, the Executive meets its section 28E duty. In other words, the respondent's in this case do not present one single, unified, final document (or collection of documents from which a single strategy is identifiable) that represents the Executive's strategy under section 28E. Rather they present a document which they agreed to use as a starting point for the development of their strategy plus a range of other items. They assert that these collectively amount to the strategy required by the section.

[49] While it is clear that there are many current programmes and interventions which in fact deal with the same issues that section 28E seeks to address, that section creates a duty to have an overarching strategy, and it is this long range plan which doesn't exist and is incapable of being made to exist by the combination of programmes and interventions.

[50] Despite the lengthy and erudite arguments presented by both sides in this case, it resolves to a very simple decision: is there in existence a strategy which has been adopted to satisfy the duty in section 28E? On the evidence presented it is clear that there is no such strategy and for that reason I must find for the applicants.

Objective Need

[51] Given the finding that there is no strategy in existence, the arguments in relation to whether such strategy is properly based on "objective need" as per the requirements of the section are academic. However the applicant correctly identified section 28E as an important milestone in the development of equality law in NI because the concept of "objective need" had for the first time been put on a statutory footing. This provision was to provide the Executive Committee's strategy for tackling poverty, social exclusion and patterns of deprivation. The concept of "objective need" is obviously central to the statutory provision the intention of which is to remove or reduce the scope for discrimination by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation. It is difficult to see how the Executive could develop and deliver a section 28E compliant strategy without adopting some agreed definition of "objective need" but that will be a matter for the Executive in due course.

Conclusion

[52] For these reasons I must find for the applicants.