RE: BELFAST CITY COUNCIL

In the Matter of a Call-in Wholly or Partly Under Section 41(1)(b) of the Local Government (NI) 2014

OPINION

INTRODUCTION

1. Counsel have been asked to provide an opinion with respect to the call-in of a decision regarding dual language signage at Olympia Leisure Centre.

2. Pursuant to Section 41(2) of the Local Government Act (NI) 2014, this opinion relates to the issue of whether the decision would disproportionately affect adversely any section of the inhabitants of the district under Section 41(1)(b).

FACTS

COUNCIL'S DECISION

3. On 20 September 2024 the Council's Strategic Policy & Resources Committee made a decision to erect dual language signage at Olympia Leisure Centre.

SECTION 41 OF THE LOCAL GOVERNMENT ACT (NI) 2014

4. Section 41 of the Local Government Act (NI) 2014 provides as follows:

> *(1) Standing orders* ***must make provision requiring reconsideration***[1] *of a decision if 15 per cent, of the members of the council (rounded up to the next highest whole number if necessary) present to the clerk of the council a requisition on either or both of the following grounds –*
>
> *(a) that the decision was not arrived at after a proper consideration of the relevant facts and issues;*
>
> *(b) that the* ***decision would disproportionately affect adversely any section of the inhabitants of the district****.*
>
> *(2) Standing orders* ***must require the clerk of the council to obtain an opinion from a practising barrister*** *or solicitor* ***before reconsideration*** *of a decision on a requisition made wholly or partly on the ground mentioned in subsection (l)(b).*

[1] All emphasis is added save where it appears to the contrary

(3) Regulations may amend the percentage mentioned in subsection (1) and the process by which a legal opinion is obtained in subsection (2).

(4) In this section –
"decision" means a decision of the council or a committee of the council and includes a decision to make a recommendation;
"reconsideration" means –
(a) in the case of a decision of the council, reconsideration by the council;
(b) in any other case, consideration by the council or any specified committee of the council (whether or not the decision is a decision of that committee);
"section" , in relation to the inhabitants of a district, means a section of a specified description;
"specified" means specified in standing orders.

THE CALL-IN

5. On 1 October 2014 a call-in was submitted pursuant to section 41. The call-in was partly on the ground that the decision would disproportionately affect adversely any section of the inhabitants of the district, and in particular:
    a. The community of Blackstaff/The Village.
    b. The Protestant Community.
    c. The British Community.
    d. The Northern Irish Community.

6. The Community Impact Grounds under s.41(1)(b) are set out from pages 4 – 9 of the call-in form. Each ground relies on section 75 of the Northern Ireland Act 1998.

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STANDING ORDERS

7. Section 48 of the Council's Standing Orders set out the call-in process.

8. In particular, section 48(b)(4) provides that:

> *In this part, "section of the inhabitants of the district" means any section of the inhabitants that is* ***clearly identifiable by*** *location, interest or other category (including* ***those categories indemnified in Section 75****(1) of the Northern Ireland Act 1998).*

RELEVANT PROVISIONS OF THE NORTHERN IRELAND ACT 1998

9. The grounds for call-in with respect to each category of the community rely on Section 75 of the Northern Ireland Act 1998 (and it is noted that Section

48(b)(4) of the Standing Orders specifically refer to Section 75 of the Northern Ireland Act 1998).

10. Section 75 provides for equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally, between persons with a disability and persons without, and between persons with dependants and persons without.

11. Section 75 does not include *"language"* as a category. Relevant extracts from Hansard make clear that *"language"* was expressly considered and expressly omitted from section 75.

12. The relevant extract from Hansard for 27 July 1998[2] indicates that the Member for Islington, North (Jeremy Corbyn) begged to move an amendment which would, inter alia, expressly introduce 'language' as one of the categories in section 75. The exchanges are relevant and instructive:

> In response, the Secretary of State for Northern Ireland (Marjorie Mowlam) said:
>
> *Paragraph 3 on page 16 of the agreement, which deals with "Rights, Safeguards and Equality of Opportunity", does not include language in the list of equality of opportunity issues that are to be covered by statutory obligation. That does not mean that we do not consider language as central to the cultural identity of the different communities in Northern Ireland. There are a number of commitments on linguistic diversity, and the Irish language in particular, in the agreement, as several hon. Members, especially my hon. Friend the Member for Islington, North (Mr. Corbyn), pointed out. They are being implemented by administrative and, where appropriate, legislative means. For instance, the commitment to place a statutory duty on the Department of Education to encourage and facilitate Irish medium education has already been enacted. The Government have also decided to sign the Council of Europe charter for regional or minority languages and will specify Irish for part III purposes, at an early date.*
>
> The Member for Falkirk, West (Dennis Canavan) then asked as follows:
>
> *I am listening carefully to my right hon. Friend, but will she confirm that nothing in the agreement would exclude placing a statutory responsibility on public authorities to promote and encourage equality of opportunity in the matter of the Irish language vis-a-vis English or any other language?*
>
> In response the Secretary of State said:

[2] The relevant extract is appended to this Opinion.

I thank my hon. Friend. I was making it clear that we have already made much progress on language as part of cultural identities in Northern Ireland. He knows that we have been trying all along in the settlement Bill to implement the Good Friday agreement without taking away from it or adding to it so that it is what the parties agreed. If the Assembly wants to make other changes in the months and years ahead, it is up to its elected Members so to do.

Jeremy Corbyn asked further as follows:

Before she sits down, will she say a word about the issue of language and the way that it is included in the agreement? If, as seems likely, my amendment is not accepted, what happens in relation to language?

The Secretary of State said:

As I said earlier, language is an important part of cultural identity in both communities and the Irish language is crucial. We have moved a long way in terms of the Irish language – for example, with a statutory obligation in respect of Irish-medium schools. Our specification of Irish for the purposes of part III of the Council of Europe charter for regional or minority languages will make a difference. That comes close to fulfilling the obligations relating to language in the Good Friday agreement. If my hon. Friend believes that that is not the case and he comes to me with other specific changes, we shall consider them; however, I must point out that we are addressing these questions within the Good Friday agreement.

13. The use of such language in aid of interpreting legislation is summarised in 'Erskine May: Use of parliamentary material in court proceedings'[3] as formulated by the Speaker's counsel and adopted in judgments:

'The Speaker accepts that there are circumstances in which reference can properly be made to proceedings in Parliament and where therefore this will not constitute impermissible "questioning" of statements made in Parliament:

(i) The Courts may admit evidence of proceedings in Parliament to prove what was said or done in Parliament as a matter of historical fact where this is uncontentious: see Prebble v Television New Zealand Ltd [1995] 1 AC 321, at 337.

(ii) Parliamentary material may be considered in determining whether legislation is compatible with the European Convention on Human Rights: see Wilson v First County Trust Ltd (No. 2) [2004] 1 AC 816, at paragraph 65 (Lord Nicholls of Birkenhead).

[3] See at https://erskinemay.parliament.uk/section/4594/use-of-parliamentary-material-in-court-proceedings#footnote-link-21

(iii) *The Courts may have regard to a clear ministerial statement as an aid to the construction of ambiguous legislation: see Pepper v Hart [1993] AC 593, at 638.*

(iv) *The* ***Courts may have regard to Parliamentary proceedings to ensure that the requirements of a statutory process have been complied with****. For example, in this case, the Courts may admit such material in order to be satisfied that the steps specified in section 9 of the Planning Act have been complied with.*

(v) *The Courts may have regard to Parliamentary proceedings in the context of the scope and effect of Parliamentary privilege, on which it is important for Parliament and the Courts to agree if possible: see the decision of Stanley Burnton J (as he then was) in Office of Government Commerce v Information Commissioner [2010] QB 98, at paragraph 61.*

(vi) *An exception has also been identified for the use of ministerial statements in judicial review proceedings. The Speaker accepts that such an exception exists but contends that the scope and nature of this exception has not yet been the subject of detailed judicial analysis. It calls for careful consideration of the constitutional issues involved. We respectfully agree.' R (Heathrow Hub) v Secretary of State for Transport [2020] EWCA Civ 13, [2020] 4 All ER 276, para 158 and R (PRCBC) v SSHD [2019] EWHC 3536 (Admin), [2020] 2 All ER 572, para 90.*

14. This is not considered to be an exhaustive list of circumstances, rather as illustrative.

15. In the circumstances of this case, in which there is a clear claim based on a legislative provision, we consider that it is entirely permissible and appropriate to have regard to the express consideration that was given to including 'language' as a category in section 75, and expressly **not** included as a category. In our view there are strong grounds to suggest that Parliament did not intend the other categories in section 75 to be engaged by language matters.

16. Moreover, as foreshadowed by the Secretary of State in 1998, Parliament has since legislated to make further provision for language, in the form of the Identity and Language (NI) Act 2022 ("the 2022 Act"). This inserts Parts 7A – 7C into the Northern Ireland Act 1998 (directly after Part 7 which includes s.75). This further suggests that the language matters covered by the 2022 Act were not already covered by Part 7 of the 1998 Act and are intended by Parliament to be dealt with separately.

17. Parts 7B and 7C both provide for the appointment of commissioners and for addressing complaints against public authorites under Sections 78P and 78T. (Thus leaving complaints with respect to a public authority's approach to

language issues to be dealt with via Parts 7B and 7C rather than via section 75 would therefore also ensure that such complaints are dealt with by a single entity with authority over such issues, i.e. the relevant Commissioner, which would ensure consistency of approach to language issues by public authorities).

18. These provisions were inserted into the Northern Ireland Act 1998 in the context of the resolution of longstanding political disagreement on how to deal with issues relating to language.

19. Sections 78K and 78R are currently in force. It is noted that the First Minister and deputy First Minister have not yet complied with their statutory duty to appoint Commissioners under those provisions. That is a matter for the First Minister and deputy Minister.

20. It is also recognised that the other provisions in Parts 7B and 7C are not yet in force. That is a matter for the Secretary of State. However, although the provisions are not yet in force, they are on the statute book, and this remains relevant to statutory interpretation. See *R v SSHD ex parte Fire Brigades Union* [1995] 2 AC 513.

21. In these circumstances, it is counsels' opinion that Parliament's intention is that section 75 does not engage language issues, and further that Parliament's intention is that language issues are to be addressed via the specific provisions in Parts 7B and 7C of the Northern Ireland Act 1998.

RELEVANCE OF ECNI'S VIEW ON WHETHER USE OF MINORITY LANGUAGES WOULD BE DISCRIMINATORY

22. In January 2023, in its Response to the Consultation by the Education Authority on draft Interim Language Policies, the Equality Commission stated at 3.5 - 3.7:

> *The Commission considers that the use of minority languages, particularly Irish or Ulster Scots languages in Northern Ireland, for common or official purposes would normally and objectively be considered to be a neutral act that would not be discriminatory.*
>
> *The speaking or use of any language in Northern Ireland should be a neutral act and should not be perceived as a threat to any individual or group, nor should it be intended in such a manner.*
>
> *The Commission considers that the speaking or use of the Irish language in the community does not diminish the entitlements of those whose right to their British identity is guaranteed in the Good Friday Agreement. Similarly, the Commission considers that the wider use of Ulster Scots does not diminish the entitlements of those whose right to their Irish identity is guaranteed.*

23. This provides further support for the view that the use of language is a neutral act that would not engage section 75.

OPINION ON THE CALL-IN

24. With respect to each section of inhabitants specified in the call-in, reference is made to section 75 of the Northern Ireland Act 1998.

25. As set out above, the issue of "language" was expressly considered and omitted from section 75, and Parliament has expressly made provision for language issues in subsequent sections of the Northern Ireland Act 1998, and in particular Parts 7B and 7C.

26. It is therefore our opinion that the call-in does not establish that the decision would disproportionately affect adversely any section of the inhabitants of the district, because each ground of call-in relies on and is linked to s.75, and it is our opinion that Parliament did not intend the categories under s.75 to be engaged by language issues, and instead intended any language issues to be dealt with by the relevant Commissioner via the mechanisms set out in Parts 7B and 7C of the Northern Ireland Act 1998.

Monye Anyadike-Danes KC
Aidan McGowan BL
Bar Library
17 October 2024