

Neutral Citation No: [2018] NIQB 59

Ref: McC10602

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

JR 18/004739/01

Delivered: 14 March 2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY HUGH RICHMOND WOODROW
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

DAERA

McCloskey J

Introduction

[1] Following the Court's initial case management order of 22 January 2018 this case proceeded as an *inter-partes* leave hearing on 12 March 2018. I reserved judgment as it was necessary to give consideration to certain new materials provided.

[2] The Applicant carries on the businesses of beef and sheep farming and butchery. He is in dispute with the Respondent, the Department of Agriculture, Environment and Rural Affairs (the "*Department*") relating to the provision of certain public funding. In short, his application to the Regional Reserve invoking the "force majeure/exceptional circumstances" provisions were unsuccessful. The specific target of his challenge is the Department's letter dated 12 October 2017. This signals the culmination of a review process, involving initially an independent "Panel" and the letter author, described as the "Head of Paying Agency".

[3] I extrapolate from an unsworn document entitled "Affidavit" the following material assertions, which help to illuminate this challenge:

- (a) The Applicant made a force majeure/exceptional circumstances application in 2004. His reference to an appeal which he did not pursue suggests an acceptance that this application was refused.
- (b) He also made a "hardship" application at the beginning of January 2015.

- (c) He made a further force majeure/exceptional circumstances application in 2015. This was evidently based upon and related to the birth of a severely handicapped fourth child of the family in April 2004 and associated compelling family circumstances.

The gist of the Applicant's case appears to be that the Department ought to have recognised force majeure/exceptional circumstances arising out of the foregoing, between 2005 and 2015 approximately, and made payments accordingly. He asserts, in his words –

“... unusual circumstances, outside the control of the trader, the consequence of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice an excessive sacrifice to my disabled son's health, medical care and personal needs as well as an excessive sacrifice to the essential care and wellbeing of my other three children.”

[4] The Department, in compliance with the Court's directions, has provided a written response to the Applicant's case with a helpfully indexed and paginated accompanying bundle of material documents consisting of some 300 pages. As a result of the materials provided by both parties and having considered oral submissions, the Court is well placed to adjudicate on the question of whether the leave threshold is overcome, applying the well recognised test of whether an arguable case with a reasonable prospect of success has been demonstrated.

[5] It is evident that the most important event in the somewhat protracted history of this dispute occurred in 2005, when the Applicant's Single Farm Payment (“SFP”) entitlement values were calculated by the Department under the scheme then prevailing. One of the elements of this calculation is described as a “historic reference amount”. Provision was made to effectively challenge this discrete calculation by making a “Hardship Application” by a specified date being 11 January 2005. The Applicant purported to do so but failed to comply with the governing time limit and therefore did so ineffectively.

[6] The most recent phase of events was triggered on 12 May 2015 when the Applicant submitted a force majeure/exceptional circumstances application, based on circumstances prevailing between 1999 and 2014. This application was refused on the ground that neither force majeure nor exceptional circumstances had been demonstrated under the relevant EU legislative measure – Articles 24 and 30 of Regulation 1307/2013 – which refusal was upheld at two subsequent reviews.

[7] The thrust of the Department's case is that the force majeure/exceptional circumstances provision is designed for applicants whose circumstances prevented them from receiving an allocation of entitlements in 2015 and the Applicant is not

such a person. I accept the contention that, properly exposed, the Applicant is in reality and substance challenging the value of the entitlement awarded to him in 2005 in circumstances where he failed to adequately pursue the remedy available to him at that time under a scheme which no longer exists and which cannot be pursued at this remove.

Conclusion

[8] There is clear force in the Department's central submission noted above. I am unable to identify any arguable error of law or other public law misdemeanour in the Department's actions and decision making. While the Court has every sympathy for the Applicant and his spouse it follows that the judicial review leave application must be dismissed.