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Equal Status Act 2000 - 2008

Equality Officer Decision

DEC-S2010-056

Mary Stokes (on behalf of her son John Stokes)
(Represented by Vivian Meacham B.L. instructed by Irish Traveller Movement Independent Law Centre)

-V-

Christian Brothers' High School, Clonmel
(Represented by Mason, Hayes and Curran, Solicitors)

and

The Department of Education and Skills
(Represented by Conor Dignam B.L. instructed by the Chief State Solicitor)

File ref: ES/2010/0073 & 0075
Date of Issue: 7th December 2010

Unlawful Discriminatory Grounds
Gender, Marital Status, Family Status,
Sexual Orientation, Religion, Age,
Disability, Race, Membership of the
Traveller Community

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Keywords: *Equal Status - Membership of Traveller community, Admission to educational establishment – indirect discrimination - Whether appeals under section 29 of the Education Act 1998 subject to Equal Status Acts - Whether preferential treatment in admission of siblings of current or former pupils or children of former pupils indirectly discriminatory - Burden of proof - Equal Status Acts 2000 to 2008 ss.3 (1) (c), 3 (2) (i), 3 (3A), 5, 7, 14(b), 34 - Education Act 1998 s. 29.*

1. This complaint was referred to the Director of the Equality Tribunal on 22 July 2010 under the Equal Status Acts, 2000-2008 (hereinafter "the Acts"). On 13 October 2010 I, Niall McCutcheon, Director of the Equality Tribunal decided to take responsibility myself for the investigation, hearing and the issue of a decision, and the exercise of all my other powers and functions under the Employment Equality Acts 1998 - 2008 and the Acts, in relation to this case. The same day, for the purpose of enabling me to exercise my functions under Part III of the Acts, in accordance with section 34 of the Acts, I wrote to all the parties seeking information which, in my opinion, was relevant. As required by section 25(1) of the Acts and as part of my investigation, an oral hearing was held on 9 November 2010 and all parties were in attendance. Further information sought at the hearing was received by me on 10 November 2010.

2. Dispute

This dispute concerns a claim by the complainant, Mary Stokes on behalf of her son John Stokes (hereinafter "the complainant") that he was discriminated against by Christian Brothers' High School, Clonmel (hereinafter "the High School") on the Traveller community ground in terms of section 3(2)(i) of the Acts by being refused admission as a student to the High School, contrary to section 7 (2) (a) of the Acts. The complainant also claims that the Department of Education and Skills (hereinafter "the Department") discriminated against him by not upholding an appeal under section 29 of the Education Act 1998 against the decision of the High School.

3. The facts

The High School is a Roman Catholic Voluntary secondary school for boys only under the trusteeship of the Christian Brothers.

The complainant is a member of the Traveller community as are his mother and father. He is Roman Catholic as are his parents. He attended SS Peter and Paul's primary school, Kickham Street, Clonmel, a feeder school to the High School. He is the eldest of seven children, three boys and four girls. The complainant applied for admission to the High School in November 2009, on or prior to the closing date. The number of applications greatly exceeded the number of places available.

The **Admissions Policy** of the High School (dated November 2009) sets out the following Enrolment Policy that applies when places are oversubscribed:

"First Round

The school will examine all applications received on or prior to the closing date in the first round review to determine which applicants have maximum eligibility in accordance with the school's selection criteria mentioned in this policy and the mission statement and the ethos of the school.

"Second Round

All or any remaining places not allocated in the First Round shall be allocated in accordance with the Lottery Procedure mentioned below.

"Rationale

The rationale of the admissions policy is to fairly and transparently allocate the available places in accordance with the mission statement, the guidelines and recommendations of the Patron and the Department of Education and Skills (DES) where arising, and the selection criteria and lottery referred to below.

"The School's goals generally

The primary goal of the School is to fulfill its mission statement in accordance with the law, Patron or DES guidelines and the resources currently available to it. The Admissions Policy is intended to reflect that primary goal and in this context the school aims to:

- Provide a fair system of enrolment for boys

- Make reasonable provision and accommodation for students, including students with a disability and special educational needs in accordance with relevant legislation, with due regard to the efficient use of resources provided by the DES.
- Allow for full participation by all students, subject to resources being available and allowing for Health and Safety implications
- Transparently allocate those limited places in accordance with its Mission Statement and the Selection Criteria mentioned below.

"The School's Goals on dealing with Admissions

When dealing with Admissions where there are a limited number of places, the School seeks to fulfil the above goals in the following manner, namely to allocate the number of places available:

- firstly on the basis of its Mission as a Roman Catholic school;
- Secondly on the basis of supporting the family ethos within education by providing education services for the children of families who already have, or have recently had, a brother of the applicant attend the School for his post primary education;
- And thirdly to make reasonable provision and accommodation for boys within its own locality or demographic area, including students with disability and special educational needs, in accordance with the resources provided by the DES and otherwise available to it.

"Selection Criteria

First Round criteria:

In the first round the School *shall firstly select* from all of the applications submitted that have maximum eligibility in accordance with the following criteria:

The application is made on behalf of a boy:

- whose parents are seeking to submit their son to a Roman Catholic education in accordance with the mission statement and Christian ethos of the school;

- who already has a brother who attended or is in attendance at the School, or is the child of a past pupil, or has close family ties with the School
- who attended for his primary school education at one of the schools listed in Schedule Two, being a school within the locality or demographic area of the school;

The School may also allocate **some** places to take account of:

- families who have located to Clonmel through work
- the urban/rural balance on a proportional basis in the context of the allowed number of applicants
- exceptional circumstances
- students (living in the catchment area) who are diagnosed with ASD (Autistic Spectrum Disorder).

Second Round

With respect to all or any remaining places not allocated in the First Round the School shall run a Lottery to determine the order in which same shall be filled.

Because the School can only provide a limited number of places for boys, in the event of one or more appeals, a corresponding number of places from the lottery cannot be confirmed pending determination of the relevant Appeal(s), starting with the last place to be filled by the lottery and proceeding accordingly."

The complainant applied on or prior to the closing date in November 2009 for admission to the High School in autumn 2010. The complainant met two of the three First Round Selection criteria , namely:

- whose parents are seeking to submit their son to a Roman Catholic education in accordance with the mission statement and Christian ethos of the school;
- who attended for his primary school education at one of the schools listed in Schedule Two, being a school within the locality or demographic area of the school;

The criterion he did not meet was as follows:

- who already has a brother who attended or is in attendance at the School, or is the child of a past pupil, or has close family ties with the School.

The complainant therefore did not have maximum eligibility under the First Round criteria. His application was placed in a Lottery along with those who, like him, applied in time but did not have maximum eligibility, as well as four other applicants who applied late but had maximum eligibility. The complainant was not successful in the lottery. He was placed on a waiting list. As of the date of the hearing he is fourth on the waiting list. One of the boys ahead of him on the waiting list applied late but was entered into the Second Round lottery.

Three boys were awarded places in the First Round under the "exceptional circumstances" rule because of loss of a parent or ill-health. No places were awarded in the First Round under the other exceptional criteria, namely

- families who have located to Clonmel through work
- the urban/rural balance on a proportional basis in the context of the allowed number of applicants
- students (living in the catchment area) who are diagnosed with ASD (Autistic Spectrum Disorder).

90 places were awarded in the First Round. 84 names were entered into the Second Round Lottery for 47 places.

The complainant appealed the refusal internally and was unsuccessful. The complainant subsequently appealed to the Secretary General of the Department of Education and Skills under section 29 of the Education Act 1998 who referred the matter to an Appeals Committee. The Appeals Committee heard the appeal on 23 April 2010. It decided not to uphold the appeal for the following reason:

"The Board of Management of Clonmel High School were fair and reasonable in the application of the school's admission policy in a situation where the numbers of applicants greatly exceeded the places available."

The Appeals Committee made a Recommendation as follows:

"The Appeals Committee are of the view that the clause in the Admissions Policy relating to "exceptional circumstances" merits review by the Board of Management of Clonmel High School in order to make it more inclusive."

The Appeals Committee also added the following comment:

"The Appeals Committee noted that in dealing with late applications the Board of Management did not strictly adhere to its policy. This did not materially affect the outcome."

4. Summary of complainant's case against the High School.

The complainant argues that the only criterion he did not meet was having a brother who attended or is in attendance at the School, or being the child of a past pupil, or having close family ties with the School. He is the eldest child in his family. Therefore he could not have a sibling who attended the school. The complainant's father never progressed to second level education. He therefore could not have a parent who attended the school. As a member of the Traveller community, his father (and the rest of his extended family) is statistically much less likely to have attended second level education than the settled population. This criterion of having a family member who attended the school therefore disproportionately affects members of the Traveller community and amounts to indirect discrimination. The High School failed to take this into account under the "exceptional circumstances" clause in their Admissions Policy.

The complainant claims that empirical evidence suggests that historically Travellers have suffered "extreme educational deprivation" specifically at second level education. The Report of the Travelling People Review Body 1983 estimated that only half of Traveller children of school going age attended school and very few remained after reaching the age of 12 years. The Report stated that only 10 per cent of Travellers who finish primary school continue to attend school and most of these drop out after one or two years.

This contrasts with the experience of the rest of the population at that time. In 1982, 66.4 per cent of all children who entered second level education completed their secondary schooling.

These data correspond with the approximate time period in which the complainant's father and other family members would have been of a school going age which proves as a further example that members of the Traveller community were statistically less likely to attend second level education.

The Department of Education and Science Guidelines on Traveller Education in second Level Schools 2002 has categorically stated that "school policies should facilitate Traveller enrolment" and has acknowledged that "some schools enrolment policies at second level have not been designed with Travellers in mind and can therefore indirectly act as a barrier to access." The 2002 Census indicated that 2 per cent of all Travellers who entered second level education completed the senior cycle compared to 23 per cent completion by the general population. To combat this injustice the Department stated that "enrolment policies must therefore take into account the particular needs and lifestyles of Traveller families". However the attitude and actions of the High School are in flagrant breach of the Department's guidelines. According to the High School's reply [to the complainant] of 29th July 2010 "the fact that a person is a member of the Travelling community is not considered an exceptional circumstance by the Board of Management". In the complainant's view, the High School has failed in its duty to take into account "all guidelines, regulations and programmes currently made available by the DES" as required by its own admissions policy.

5. Summary of Complainant's case against the Department.

The Department failed to find against the High School at the appeal stage. The Department further failed to ensure that its own guidelines (referred to above) were adhered to during the course of the appeal hearing.

6. Summary of the High School's Case

The High School denied any claims of discrimination, direct or indirect.

The complainant referred his complaint to the Department under a section 29 appeal and the Appeals Committee determined that the Admissions Policy was fair and had been applied correctly.

The complainant was not treated less favourably on the Traveller community ground. He was treated in the same manner as all other applicants to the school. At all times during this process the school treated the complainant in a fair and appropriate manner and in accordance with its policy. The complainant has failed to establish a prima facie case of discrimination in that he has not produced evidence that the treatment he received was less favourable than the treatment someone who is not a member of the Traveller community would have received in similar circumstances.

On the question of indirect discrimination, the High School responded to the allegation that the criterion of having to have a family member who attended the school disproportionately affects members of the Traveller community because Travellers are statistically less likely to have attended secondary school as follows:

The criterion applied is not that a family member has attended second level education but that a family member is attending or has attended the **High School**. This is a standard criterion in admission policies. It is entirely justifiable that the school should have a procedure to follow in cases of oversubscription.

The school has an excellent record of working with students who are members of the Traveller community. There were 5 members of the Traveller community enrolled in the school in 2010. All Travellers who applied for admission in both 2007 and 2008 were accepted. No Travellers applied in 2009. The complainant is the only Traveller to have been unsuccessful in his application to date.

The complainant has argued that the "exceptional circumstances" clause in the school's admission policy should have been applied to him by reason of his membership of the Traveller community. The High School states that the application of this clause was fully explained to all

parents i.e. that it applied only in narrowly defined circumstances where an applicant had lost a parent or suffered from ill-health. The complainant therefore was fully aware of its narrow scope. This is evidenced by the fact that on his application form the complainant made no request in this regard.

7. Summary of Department's case.

The Department contends that it does not own, govern or control the High School. The Department cannot direct the High School as to its enrolment policy. The claim against the Department is misconceived as the Department is an inappropriate respondent. The matters complained of fall outside the scope of the Equal Status Acts. The Department and more particularly the section 29 Appeals Committee are not "education establishments" within the meaning of section 7 of the Acts. The Department contends that section 7 is the only provision of the Acts which governs discrimination in the education sphere. Therefore the Department and the section 29 Committee fall outside the scope of the Acts. Even if it was contended that the Department was subject to section 5 of the Acts as a service provider, the activities of adjudicative bodies are not "services" within the meaning of the Acts. Even if it was considered that adjudicative bodies were subject, in principle, to the Acts, the section 29 Appeals Committee is limited in the scope of the review it can carry out. The Oireachtas did not intend to grant the Minister for Education and Skills an entitlement, through the section 29 Appeals Committee, to give directions to schools as to how they accept pupils. The jurisdiction of the section 29 Appeals Committee, as interpreted by the High Court¹, is limited to, in effect, a judicial review type role of determining whether the board of management correctly and lawfully applied its enrolment policy, having regard to the facts of the case at the date of board's decision.

8. Preliminary Issue

I address first the question, does the claim of discrimination made against the Department fall within the jurisdiction of the Equality Tribunal? The complainant claimed that the Department

¹ Co. Westmeath VEC v Secretary General of the Department of Education and Science & Ors. [2009] IEHC 373 and Board of Management of St Molaga's National School v Secretary General of the Department of Education and Science & Ors. [2009] IEHC 98.

discriminated against him when it failed to find against the High School at the appeal stage and that the Department further failed to ensure that its own guidelines were adhered to during the course of the appeal hearing. There is no dispute that the decision of the High School not to admit the complainant is subject to the Equal Status Acts. The question is, is the Secretary General of the Department and/or the section 29 Committee, in carrying out their statutory appellate functions subject to the Equal Status Act? If the Secretary General or the section 29 Appeals Committee had discretionary power to substitute for the decision of the High School their own decision on the merits of an individual application or had discretionary power to amend the terms of the enrolment policy, they would be taking decisions in relation to the admission or the terms or conditions of admission of a person as a student to an educational establishment. In such a case they might be subject to the Equal Status Act. It is clear, however, from the legal authorities opened to me, that the Secretary General and a section 29 Appeals Committee do not have power to carry out a merits-based review of a decision to refuse an application. Ms Justice Irvine found that

*"the powers of the appeals committee under section 29, in the opinion of this Court, was one intended to be confined to a right to review the lawfulness and/or reasonableness of a board's decision to refuse enrolment."*²

Therefore the Department, in exercising its powers under section 29 of the Education Act 1998 cannot substitute its own view on the merits of an individual application for the decision of the school. Neither can it strike down or amend the enrolment policy of a school. It can only quash a decision in relation to the admission or the terms or conditions of admission of a person as a student to an educational establishment if the decision is unlawful or unreasonable. Therefore, in reviewing the decision of the High School the Department and the section 29 Committee are concerned not with the decision but with the decision making process. They are not acting as an educational establishment within the meaning of section 7 of the Equal status Act in this instance. Neither are they providing a good or service within the meaning of section 5 of the Equal Status Act in this instance. I find therefore that I have no jurisdiction to consider the claim

² Board of Management of St Molaga's National School v Secretary General of the Department of Education and Science & Ors. [2009] IEHC 98

of the complainant that the Department discriminated against him by not upholding his section 29 appeal. As regards the claim that the Department failed to ensure that its own guidelines (regarding access for Travellers) were adhered to during the course of the appeal hearing, the Acts (at section 14 (b)) certainly permit an educational establishment or a service provider to give preferential treatment or to take positive measures to promote equality of opportunity for persons, such as Travellers, who are disadvantaged or who have been or are likely to be unable to avail themselves of the same opportunities as those other persons. However the Acts do not put an obligation on educational establishments or service providers to do so. Therefore I have no jurisdiction to consider that element of the claim against the Department.

9. Indirect Discrimination:

Indirect discrimination is defined in section 3 (1) (c) of the Acts as:-

“where an apparently neutral provision puts a person referred to in any paragraph of section 3(2) [i.e. covered by one of the discriminatory grounds] at a particular disadvantage compared with other persons, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

Section 3 (3A) of the Acts provides that in any proceedings statistics are admissible for the purpose of determining whether indirect discrimination has occurred.

The complainant claims that the following criterion in the enrolment policy of the High School indirectly discriminates against him:

“who already has a brother who attended or is in attendance at the School, or is the child of a past pupil, or has close family ties with the School.”

It is for the complainant to prove, on the balance of probabilities, that this criterion puts a Traveller at a particular disadvantage compared with non-Travellers. If he succeeds in this, the burden of proof shifts to the High School to prove that the criterion is objectively justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary. Under section 3 (3A) of the Acts, the complainant can use statistical data as an evidential tool to prove a particular disadvantage and so shift the burden of proof. It is possible to establish a case where statistics are inadequate or non-existent, if the complainant can prove that a provision is intrinsically liable to affect his group [in this case Travellers] more than others and there is a consequent risk that it will place his group at

a particular disadvantage. It is not necessary in this respect to find that the provision in question does in practice affect a substantially higher proportion of Travellers. It is sufficient that it is liable to have such an effect.³

Once the complainant has proved that the criterion puts a Traveller at a particular disadvantage, it is for the High School to prove that the criterion is objectively justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary. The High School must prove each element of the defence [objective justification, legitimate aim, appropriateness and necessity]. To permit a criterion which puts a group at a particular disadvantage to be maintained is a derogation from the principle of equal treatment. According to settled case-law, in determining the scope of any derogation from an individual right such as that of equal treatment, due regard must be had to the principle of proportionality, which requires that derogations must remain within the limits of what is appropriate and necessary in order to achieve the aim in view and that the principle of equal treatment be reconciled as far as possible with the requirements of the aim thus pursued.⁴

There are four sub-criteria to the impugned criterion. They are:

1. Has a brother who attended the High School in the past, or
2. Has a brother who is currently in attendance in the High School, or
3. Is the child of a past pupil, or
4. Has close family ties with the High School.

The 4th element above is understood to mean only that the applicant is the child of a current member of staff. No one was admitted to the School on this basis in the current year. It is not relevant therefore to this case.

³ ECJ, C-237/94 *O'Flynn v. Adjudication Officer* [1996] ECR-I-02617, paragraphs 20, 21.

⁴ ECJ, C-476/99 *Lommers* [2002] ECR I-2891, paragraph 39.

The High School informed me that of the 90 boys given offers of places after the first round, 33 were brothers of boys currently in the school, 16 were brothers of former pupils without a brother currently in the school and 36 were the sons of former pupils who did not have a brother currently in the school.

10. Siblings of existing and former pupils.

The complainant, as the eldest son, claims that he is put at a particular disadvantage in that he cannot by definition benefit from the priority given to siblings of current or former pupils. While this is true, his disadvantage arises from his being an eldest son and not from his being a Traveller as such. The complainant further argues that giving priority to brothers puts Travellers at a particular disadvantage in that, due to historic low participation by Travellers in secondary education, an older Traveller sibling is much less likely than a non-Traveller to have attended or completed secondary school. Census figures show that 66 per cent of Travellers over 15 years old who had completed full-time education had not progressed beyond primary school. The equivalent figure for the general population is 21 per cent.

In 1988, according to the Department's figures, fewer than 100 Travellers were enrolled in post-primary schools. The corresponding figures for 1999 were 961, 2003: 1,714 and 2008: 2,874. It is clear therefore that Traveller enrolment in post-primary schools has risen in the last decade from a very low base. The complainant has also emphasised that the retention rates for Travellers in post-primary schools is significantly lower than for the general population. He argues therefore that the likelihood of a Traveller having an elder brother who is or was enrolled at the High School is significantly lower than for a non-Traveller.

Against this, however, it must be noted that Traveller family size is on average double that of the general population. According to the 2006 Census, the average number of children in Traveller households with children is 4.2 compared to 2.0 among the general population. The chances of a Traveller boy having a male sibling are therefore much greater than that of a non-Traveller boy.

Priority for siblings can therefore favour Travellers. It is argued that giving priority to siblings of former pupils would particularly disadvantage Travellers in that the rise in Traveller participation in post-primary education is very recent. The older the brother the less likely he is to have attended secondary school. On the other hand, given the very high drop-out rates of Travellers in post-primary schools, particularly in the senior cycle, priority for brothers of former pupils (as opposed to brothers of existing pupils) would favour Travellers whose brother dropped out early.

On the balance of probabilities I cannot conclude that giving priority to brothers of either existing or former pupils in enrolment is intrinsically liable to put Travellers at a particular disadvantage compared with non-Travellers.

11. Sons of former pupils.

The complainant argues that giving priority to the sons of former pupils puts members of the Traveller community at a particular disadvantage compared with non-Travellers since Travellers of the complainant's father's generation (those who would have been of post-primary school going age in the 1980's) were most unlikely to have attended post-primary school. Figures supplied by the Department show that less than 100 Travellers in the entire country in 1988 were enrolled in post-primary schools. Therefore the chances that a Traveller of the complainant's father's generation was in fact at post-primary school is extremely remote. The High School argue that the criterion applied is not that a family member has attended second level education but that a family member is attending or has attended the High School. The High School produced no evidence that any Travellers attended the school during the 1980's. The School in oral evidence explained that prior to 20 years ago (before 1990) entrance to the High School was determined by competitive written examination. This would certainly have acted as a serious barrier to Travellers securing admission since the academic standard achieved by Travellers in primary schools at that time was on average very low.

The operation of this policy of giving priority to the sons of former pupils therefore appears to disadvantage Travellers more than non-Travellers. It is necessary to establish whether or not the

complainant was put at a particular disadvantage. Under the enrolment policy, once a child applied on time, was a Roman Catholic and attended a designated feeder school, the child needed to meet one of the three following sub-criteria to be offered a place:-

1. Has a brother who attended the High School in the past, or
2. Has a brother who is currently in attendance in the High School, or
3. Is the child of a past pupil.

All children of past pupils who applied in time and who did not meet the sibling criteria were successful, 36 in all. The chances of an applicant like the complainant who did not meet any of these criteria being successful in the second round was 55 per cent, that is, he was one of 84 applicants in a lottery for 47 places. If the third sub-criterion (being a child of a past pupil) was not a priority, then those places awarded to the sons of past pupils who did not meet the sibling criteria (36 in all) would have been added to the number to be allocated by lottery under round two. That would have increased the complainant's chances in the second round to 70 per cent., that is he would have been one of 120 applicants in the second round lottery for 83 places. Therefore, I conclude on the balance of probabilities that the policy of giving priority to children of past pupils puts the complainant as a member of the Traveller community at a particular disadvantage compared with non-Travellers.

The question I must now consider is this: has the High School proved that the criterion is objectively justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary. The goal or aim of the criterion, according to the published Admissions Policy is:-

On the basis of supporting the family ethos within education by providing education services for the children of families who already have, or have recently had, a brother of the applicant attend the School for his post primary education.

This may justify giving priority to siblings but does not, on its face, state an aim which requires as a means to achieving that aim giving priority to the children of former pupils. In oral evidence the High School stated that it had as its aim the strengthening of family loyalty to the school, by rewarding those fathers who supported the school by assisting in various ways. I accept that strengthening bonds between the parents, as primary educators of a child and the school is a

legitimate aim. However, I do not consider that giving a blanket priority in admission to children is appropriate (i.e. proportionate) or necessary, for the following reasons:

1. The priority applies to the children of all past pupils, irrespective of the actual level of current engagement of the father with the school. In many cases therefore, the means would not achieve the aim.
2. There are other ways of achieving this aim which would not disadvantage children whose fathers did not attend the school, such as organising a past pupils' union, by the activities of a parents' association etc.
3. The impact on Travellers is disproportionate to the benefit of the policy.

I find therefore that the High School has not proved that the priority given to the children of former pupils is appropriate and necessary.

12. Conclusions

I find that I don't have jurisdiction to consider the complaint of discrimination against the Department of Education and Skills.

I find that the complainant has not proved that the priority given to siblings of current or former pupils puts members of the Traveller community at a particular disadvantage compared with non-Travellers.

I find that the complainant has proved that the priority given to the sons of former pupils puts members of the Traveller community at a particular disadvantage compared with non-Travellers and that the High School has not proved that this criterion is objectively justified by a legitimate aim and is appropriate and necessary.

13. Redress

In general the appropriate redress is to put the complainant in the position he would have been in but for the discrimination. If the school did not give priority to the sons of former pupils, the chances of the complainant succeeding in the second round lottery would have been significantly greater. It is impossible to re-run the lottery under revised criteria. In the circumstances I order:

1. That the High School immediately offer a place to the complainant.

2. That the High School review its Admissions Policy to ensure that it does not indirectly discriminate against pupils on any of the grounds covered by section 3 (2) of the Equal Status Act. This is without prejudice to its status as a Roman Catholic voluntary secondary school for boys only.



Niall McCutcheon

Director

7 December 2010

