Neutral Citation Number: [2006] IEHC 170

THE HIGH COURT

[2004 No. 137 JR]

JUDICIAL REVIEW

BETWEEN

MICHAEL POWER, RISTEARD MORRISSEY, SUZANNE DUNNE, PAUL NEWMAN AND OWEN MCCARNEY

APPLICANTS

AND

THE MINISTER FOR SOCIAL AND FAMILY AFFAIRS

RESPONDENT

Judgment of Mr. Justice John MacMenamin dated the 28th day of February, 2006.

1. Factual Background

The applicants named in these judicial review proceedings are all full-time students who were admitted to the Back to Education Allowance (hereinafter "the scheme") operated under the aegis of the Department of Social and Family Affairs. They were so admitted at a time when the terms and conditions of that scheme were set out in a booklet entitled "Back to Education Programme SW70" dated June 2002.

2. The scheme provides payments for persons in receipt of social welfare payments who decide to return to education. It is designed to promote second chance education for those who have not been to third level education. Eligible persons may return to college and continue to receive social welfare payments. Such payments may not otherwise be available, in instances, where for example the student is unavailable for full-time work and is thus ineligible for unemployment assistance. The scheme is administrative, that is set up on a non statutory basis, and was approved by a government decision. The published booklet outlines a number of ways in which a successful applicant can return to full-time or part-time education while continuing to receive income support. The programmes range from basic foundation courses through to post graduate university courses.

3. Under the rubric "Third Level Option" it is stated therein:

> "You can attend a third level course of education at any university, third level college or institution provided that the course is a full-time day course of study and is approved by the Department of Education and Science for Higher Education Grant Scheme, the Vocational Education Committee Scholarship Scheme or the Third Level Maintenance Grant Scheme for Trainees or has Higher Education and Training Awards Council (HETAC) recognition."

4. The method of application is set out and refers to an application form referable to persons on unemployment benefit. Thereafter the question of the duration of the allowance is dealt with. It is stated

> "The allowance is payable for the duration of the course, including all holiday periods. It is not means tested so you may also work without affecting your payment. However see overleaf regarding secondary benefits."

There were previous editions of the booklet. These were published in October 1999 and August 2001 and were virtually identical in terms with the June 2002 edition.

5. The first named applicant applied for inclusion on the scheme early in the month of August 2002. By notification dated 5th September, 2002 he was informed that his application was successful and that, subject to satisfying certain conditions, he was eligible for payment of the allowance.

6. The first named applicant contends that, but for the operation of the scheme and the payment of the allowance, he would have been unable to go to university due to financial reasons. One of the reasons that induced him to apply under the scheme was that the payment was an alternative to other social welfare entitlements. The applicant specifically refers to the fact that in the booklet of June 2002 it was stated

> "*BTEA* is not an unemployment payment. Participants receive a standard rate of payment which is not means tested".

7. The first named applicant says that the provisions concerning payments during the summer vacation and the authorisation of supplementary income from work during that period had a large influence on his decision to return to college. He says that he planned to engage in some work during the summer to make extra money in order to pay debts associated with his return to third level education. As the payments under the scheme were not unemployment benefit there was no requirement upon him to 'sign on' for this purpose. The applicant received his first payment order under the scheme on 19th September, 2002. From January 1st 2003 to May 31st 2003, and from September 15th 2003 to December 31st 2003 he was in receipt of €274.80 per week. This was made up of a personal rate of €124.80 per week, an adult dependent payment of €82.80 per week, and a child dependent payment of €16.80 per week in respect of each of his four children. As of January 1st 2004 he was in receipt of €291.40 per week further a Budget increase of €10 per week in the personal rate and €6.60 in the adult dependent allowance.

8. By notification dated 26th March, 2003 the first named applicant became aware that certain changes had been made to the terms of the said scheme. The respondents stated that:

> "Following a review of the Back To Education Allowance (BTEA) Scheme it has been decided that, with effect from Summer 2003, the allowance will not be payable for the summer holiday period between the academic years".

It later transpired that the decision to alter the terms of the scheme had been made some months earlier. The first named applicant states that he was concerned by these changes and resolved to challenge them in all appropriate ways. He began by looking into the statements by the respondent on the issue.

In the Dail on March 27th 2003 the then Minister respondent answered questions in relation to the scheme. Specifically there appears to be some imprecision in the course of responses to questions put by an opposition deputy as to whether or not all persons in the scheme would not be affected.

9. On the website of the respondent's Department on 28th March, 2003 it was still stated in relation to the scheme that "you … be paid for the full duration of your course, including holidays". However the applicant was still not entirely certain of his position and by

letter dated 28th March, 2003 he wrote to the respondents to outline his concerns in relation to the changes in the scheme and to the effect that he believed they would have on his situation. It is clear that while changes were envisaged by the respondent, the precise criteria for continuing eligibility had not been finally determined.

10. In particular there appeared uncertainty as to the status of students who had already entered the scheme

11. However later it was stated that persons availing of the scheme would, during the university summer period, be entitled to apply for the assistance that they might need but that it was to be hoped and anticipated that they would find employment in the summer months and revert to the Back To Education Allowance to complete there relevant studies. Ultimately it became clear that persons in the applicants category i.e. undergraduates and who were not members of certain other categories would be rendered ineligible to avail of the scheme or all during the summer vacation period. The first named applicant among others commenced a campaign to reverse these changes. This took the form of lobbying and letter writing to members of the government, the Oireachtas, and academic staff, demonstrations, and the preparations of reports and submissions on the question. The campaign continued up to the announcement of the budget for 2004 in December 2003. The activities met with some success since the proposed withdrawal of the benefit in respect of post graduate students was reversed. The first named applicant wrote a series of letters. He informed that his letters seeking the reversal of the change were receiving attention. However it became clear that the change as far as concerned undergraduates would not be reversed through political action. Thereafter the applicant sought legal advice and initiated these proceedings in which leave was granted on February 23rd 2004 (O'Neill J.).

12. The Claim
Each of the applicants and one hundred and seventy three other persons who were added to the proceedings as applicants assert a legitimate expectation that the scheme as constituted when they were admitted thereto would continue for the duration of their presence at college. In particular they contend that they would continue to receive payments under the scheme during college vacations, and that the respondent, through the booklet, made a statement amounting to a promise or representation that such vacation payments would be made for the duration of the course of education undertaken by participants in the scheme. They say that this representation was made to persons in receipt of certain social welfare payments and who were interested in returning to education. It is contended that the promises thus binding as regards those students who entered the scheme on foot of the promise constitute a defined group of persons.

The applicants herein do not dispute that the scheme could be amended for future entrants. But by entering upon the scheme they assert that they reasonably and legitimately expected that the terms and conditions of the scheme would remain akin to those extant on their entry to the scheme for the duration of their eligibility. In the circumstances it is contended that it would be unjust for the respondent to resile from the representation made to the participants at the outset and upon which they contend they relied. It is now necessary to consider the question of elapse of time and the *locus standi* of the applicants.

13. The Law - Elapse of Time
Under Order 84 Rule 21(1) of the Rules of the Superior Courts it is provided that:

> "An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the court considers that there is good reason for extending the period within which the application shall be made".

14. In the statement of opposition it is pleaded that the decision impugned in these proceedings was made some 11 months prior to leave being granted and that this application is accordingly out of time.

15. The issue of elapse of time was considered in the case of *O'Donnell v. Dun Laoghaire Corporation* [1991] ILRM 301.

In the course of that judgment at p. 315 Costello J. stated

> "The phrase 'good reasons' is one of wide import which it will be futile to attempt to define precisely. However, in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under Order 84 R. 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay. There may be cases for example where third parties had acquired rights under an administrative decision which was later challenged in a delayed action. Although the aggrieved plaintiff may be able to establish a reasonable explanation for the delay the court might well conclude that this explanation did not afford a good reason for extending the time because to do so would interfere unfairly with the acquired rights". *(State) Cussen v. Brennan* [1981] I.R. 181."

He continued "Or again, the delay may unfairly prejudice the rights and interests of the public authority which had made the ultra vires decision in which event there would not be a good reason for extending the time, or a plaintiff may acquiesce in a situation arising from an ultra vires decision he later challenges or the delay may have amounted to a waiver of his right to challenge it and so the court could not conclude that there were good reasons for excusing the delay in instituting the proceedings."

16. In *O'Donnell* the plaintiff had to explain a delay of between four and six years in commencing the proceedings. The evidence was that he had declined to pay the water charges for three preceding years which he thought were unfair. In 1987 he concluded that they were invalid, but took no steps to challenge them by way of legal proceedings believing that the issue would be resolved in proceedings against other householders. Costello J. took the view that this constituted good reasons until June 1998. From then until the proceedings commenced Mr. O'Donnell contested

> " … his liability to pay water charges not through the courts but with the assistance of three different public representatives".

Costello J. accepted that efforts by an individual of modest means to obtain redress through political pressure constituted 'good reason' to extend the time for bringing judicial review between June 1988 and July 1989 and accordingly extended the time for seeking relief. He made this finding notwithstanding the fact that the plaintiff had not sworn that he did not get legal advice because he had not the means to pay for it.

17. I am satisfied that in the instant case the *first* named applicants circumstances strongly resemble those of the plaintiff in *O'Donnell v. Dun Laoghaire Corporation* if the facts are not indeed stronger. On the evidence the first named applicant has at all times contested and been actively involved in the campaign to reverse the decision the subject matter of these proceedings. Indeed, unlike

the position in *O'Donnell v. Dun Laoghaire Corporation* the campaign had some limited success, and elicited indications from the respondent to the effect that further changes might be introduced along the lines for which the applicant was agitating.

18. This is evidenced by a series of letters to the respondent to another Minister of State; to an opposition spokesperson; in a presentation made to the joint Oireachtas Committee on Social and Family Affairs by the then President of the Union of Students in Ireland on 6th May, 2003, a response from the respondents department dated 7th May, 2003, in a letter received from the Minister, of State a letter to a departmental official in May 2003, a letter received from the Office of the Ombudsman on 16th July, 2003, further correspondence from the first named applicant to the Minister dated 24th November, 2003 and from the Minister dated 25th of that month and year. Thereafter there is exhibited a submission made for the reversal of this particular measure dated 28th November, 2003. I am satisfied therefore that insofar as concerns the first named applicant evidence has been adduced which is sufficient to satisfy the test set out by Costello J. in *O'Donnell v. Dun Laoghaire Corporation*. Applying an objective test I consider that on the evidence there are reasons which both explain the delay and afford justifiable excuse therefor. In particular I consider that the circumstances of the first named applicant strongly resemble the position of the plaintiff in O'Donnell where being a person of modest means he sought to obtain redress through political pressure for a period of time and thereafter it having become evident that he had failed in the endeavour he was ordered to the remedy of judicial review. I think the position is reinforced by the fact that as a matter of fact certain changes in eligibility were achieved although not in relation to the applicant.

19. However while such evidence relating to the first applicant brings him within the discretionary power of the court as outlined earlier, I do not consider that there is such evidence in relation to the remainder of the applicants to these proceedings, nor, a forforti, in relation to a list of 173 other persons who were added as applicants to the proceedings on foot of correspondence between the parties. It is contended that these persons too were eligible under the Scheme and that they sustained the same damage or detriment as the applicants herein. During the course of argument counsel now acting for the applicant, but who was not involved earlier in the proceedings accepted there was no such evidence regarding the position of the second to fifth named applicants nor in relation to the other applicants who had been added to the proceedings.

20. In the case of *deRoiste v. The Minister for Defence* [2001]. Fennelly J. considered the circumstances in which judicial review may be granted *ex debito justitiae*. In particular that judge helpfully explained and analysed a number of the authorities which were relied on in a previous decision of the court on the issue (see McCarthy J. in *The State (Furey) v. Minister for Defence* [1988] ILRM 80; *The (State) Vozza v. O'Floinn* [1957] I.R. 227; *Rex v. Stafford Justices*, *exp. Stafford Borough* [1940] 2 KB 33).

21. At p. 220 of the judgment Fennelly J. stated

> "Two points stand out in *The State (Vozza) v. O'Floinn* [1957] I.R. 227. Firstly the original order was made entirely without jurisdiction. The summary trial of the applicant proceeded without his consent. Secondly the lack of candour with which the applicant was charged did not affect that ground of complaint. It is clear from a reading of the aforementioned cases as well as many other cases that an order of *certiorari* is always, as a matter of principle discretionary. But the nature of that discretion must be considered in two different contexts. An applicant who is not directly affected by the legal act which he attacks can do no more than ask the court to exercise his discretion to quash an order. Applications of this sort are rare. When the order is one to which the applicant is entitled *ex debito justitiae* i.e. one which affects him directly that discretion can normally be exercised in only one way (i.e. in his favour) that does not mean however that the behaviour of the applicant may not be such as to deprive him of his *prima facie* right to relief. This gives rise to a second context for the exercise of discretion.
>
> A close reading of *The State (Kelly) v. District Justice for Bandon* [1947] I.R. 258 *and The State (Vozza) v. O'Floinn* [1957] I.R. 227 reveals that though in each case the order was one to which the applicant was entitled *ex debito justitiae* the court considered whether the delay and lack of candour respectively would bar the applicant from relief. In each case the court concluded that not that these were inadmissible grounds, but rather they were not established on the facts of the respective cases."

23. At p. 221 Fennelly J. continued

> "In my view, extremely long delay, without cogent explanation and justification may in itself constitute a ground for refusing relief. The respondent does not have to establish that he has been prejudiced though prejudice will usually be relevant. So also will the effect on the third parties as in *The State (Cussen) v. Brennan* [1981] I.R. 181. It is of course conceivable that in exceptional circumstances even very long delay might be explained and even justified. The respondent might for example be responsible for concealment or for exercising control over relevant information or even the applicants own freedom of action".

Here, while explanation and justification has been furnished in relation to the first named applicant no such information has been put forward in relation to the other named applicants in these proceedings nor in relation to the 173 other persons whose names were furnished and who were added as applicants by consent. The fact that the respondents consented to their addition as applicants simplicter, does not debar the respondent from contesting their standing on the time issue. A fortiori, the respondents are entitled to point out that no affidavit evidence has been adduced on behalf of any of the other applicants on either the issue of extension of time, their rights *ex debito justitiae*, or the steps which they individually took on the denial of eligibility. In addition no evidence is available as to the effect of the changes on each of the other applicants. Certainly it is a point on which I think the court is entitled to consider and rule. In the circumstances the court is constrained to hold that, both as regards the time issue and on the evidential onus the remaining applicants are debarred from seeking relief.

24. It is then necessary to consider the position of the first named applicant on the basis of the legal submissions made.

25. Legitimate Expectation
In *Glencar Exploration plc v. Mayo County Council* [2002] 1 I.R. 84 Fennelly J. made the following observations on the issue of legitimate expectation.

> "In order to succeed in a claim based on a failure of a public authority to respect legitimate expectations, it seems to me to be necessary to establish three matters. Because of the essentially provisional nature of these remarks, I would emphasise that these propositions cannot be regarded as definitive. Firstly the public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied, as to how it will act in respect of an identifiable area of its activity. I will call this the representation. Secondly, the representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, affected actually or potentially, in such a way that it forms part of a transaction definitively entered into or a relationship between that

person and group and the public authority or that the person or group has acted on the faith of the representation. Thirdly, it must be such as to create an expectation, reasonably entertained by the person or group that the public authority will abide by the representation to the extent that it would be unjust to permit the public authority to resile from it. Refinements or extensions of these propositions are obviously possible. Equally there are qualified by considerations of the public interest including the principle that freedom to exercise properly a statutory bar is to be respected. However the propositions I have endeavoured to formulate seem to me to be preconditions for the right to invoke the doctrine (2002) 1 I.R. 84 p. 162 – 163.

25. Two questions then arise for consideration. The first of these is as to whether or not the first named applicant can rely upon the doctrine of legitimate expectation in order to obtain the relief sought in these proceedings, there, in addition, having been no such evidence relating to the other applicants.

The second question is, if so, has that applicant satisfied the preconditions described by Fennelly J?

In answering these questions it is necessary first to advert to the fact that the scheme in this case is not a statutory scheme. It is an administrative non statutory scheme approved by government decision only.

26. In *Webb v. Ireland* Finlay C.J. described the doctrine of legitimate expectation stated that

> "The doctrine … is but an aspect of the well recognised equitable concept of promissory estoppel … whereby a promise or representation as to intention may in certain circumstances be held binding on the representor or promisor [1998] 353 at 384.

27. In *Tara Prospecting Limited v. Minister for Energy* [1983] ILMR 771, at 778 Costello J. observed that

> "… in cases involving public authorities, other than cases involving the exercise of statutory discretionary powers, an equitable right to the benefit may arise from the application of the principles of promissory estoppel to which effect would be given by an appropriate court order".

28. Subsequently in *Abramson v. The Law Society of Ireland* [1996] 1 I.R. 403 at 423 McCracken J. enunciated the following four propositions

> "1. It is now well established in our law that the courts will, as a general rule, strive to protect the interest of persons or bodies who have a legitimate expectation that a public body will act in a certain way.
>
> 2. In protecting those interests the court will ensure that where that expectation relates to a procedural matter, the expected procedures will be followed.
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> 3. Where the legitimate expectation is that a benefit will be secured, the courts will endeavour to obtain a benefit or to compensate the applicant whether by way of an order of mandamus as by an award of damages, provided that to do so is lawful.
>
> 4. Where a Minister or public body is given by statute or statutory instrument a discretion or a power to make regulations for the good of the public or of a specific section of the public, the court will not interfere with the exercise of such discretion or power, as to do so would be tantamount to the court usurping that discretion or power itself and would be an undue interference by the court in the affairs of the persons or bodies to whom or to which such discretion or power was given by the legislature".

It is true that non statutory rules are more easily changed than statutory rules in order to meet changing circumstances and increased knowledge of the matters with which the rules deal. Mr. Eanna Molloy S.C. on behalf of the respondent points to the replying affidavit of Leonard Burke on behalf of the respondent. This shows that there was an increase of 18% from 6,473 applicants for the Back to Education Allowance Scheme between 2002 and 2003 being the year under consideration. Counsel submits that the conventions of statutory drafting do not apply to non statutory rules so that they can be more loosely worded. He points to certain variations in wording in the explanatory booklets issued by the respondent in the succeeding years of 1999, 2001 and 2002. He submits that this emphasises that they were not an legal interpretation and that some fluidity unfettered by legal obligation must be permitted. However insofar as relates to the representation in question the wording is clear and unequivocal. No where in the booklet do I find any indication that the terms and conditions of the scheme may be liable to change without notice especially to persons who had already embarked, at significant sacrifice, on the scheme and were thereby pursuing an undergraduate course in third level education. As is pointed out in Cane Administrative Law 4th Edition 2004 at p. 205

> "The very nature of a discretionary power requires that its holder be given considerable freedom in deciding what to do in exercise of it; and this includes a power, in suitable circumstances of changing direction and replacing existing policies with new ones; in *Re Findlay* 1985 AC 318 338. Professor Cane points out that provided there is good enough reason for the change of published policy it will not be held to be unfair or illegal."

Counsel for the respondent adopts in argument a quotation from Professor Cane's work at p. 205-206.

> "At first sight there might seem to be a conflict between the principle in *British Oxygen Company Limited v. Minister of Technology* [1971] AC C10 [where the courts and House of Lords refused to overrule a particular grant-giving policy] and the doctrine of legitimate expectation: does the latter not allow in effect a fettering of the decision maker's discretion? Two points need to be made. The first is that a legitimate expectation will arise only if the court thinks that there is no good reason of public policy why it should not. That is why the word "legitimate" is used rather than the word "reasonable". The matter is not to be judged just from the claimant's point of view. The interest to the claimant in being treated in the way expected has to be balanced against the public interest in the unfettered exercise of the decision maker's discretion; and it is the court which must ultimately do this balancing. Secondly, the *British Oxygen* principle is concerned with ensuring that policies are properly applicable to the particular case in hand, where as the legitimate expectation principle is designed to prevent the alteration of a policy which the citizen accepts as applicable".

The first point which must be made is that what was in issue here is a non statutory discretionary power. Secondly the statement that a legitimate expectation will arise only if the court thinks that there is no good reason of public policy why it should not is certainly applicable in the instance of a discretion or power made pursuant to a statue or statutory instrument which is exercisable for

the good of the public or a specific section thereof. Thirdly it is clear that the court must ultimately carry out a balancing exercise between the interest to the claimant and the public interest in the unfettered exercise of the decision maker's discretion. Finally the applicant here is seeking the application to himself of a principle already enunciated and clearly applicable to his particular situation and to a well defined and categorisable group. The booklet in its terms cannot be seen as a mere general statement of policy particularly so when taken in conjunction with the application form which creates an individualised clear and unequivocal relationship between the applicant and the respondent thus having regard to the circumstances it is fair to see that the relationship created in the instant case is more akin to an individualised promise and representation rather than the mere enunciation of a general policy. Thus the facts of the instant case are distinguishable from a number of authorities cited by the respondent in the course of submission see *R. v. Secretary of State for Education and Employment ex parte* Begbie [2000] 1 WLR 1115; *R. v. Secretary of State for the Home Department ex parte* Hargreaves [1997] 1 WLR 906; *R. v. Secretary of State for Health, ex parte United States Tobacco International Incorporated* [1992] QB 353 *United States Tobacco (Ireland) Limited v. Ireland* [1993] 1 I.R. 241.

29. It is clear that the expectation in this case relates to a benefit rather than to a procedure. In Glencar the Supreme Court expressly declined to rule upon the point as to whether the doctrine of legitimate expectation can always be successfully relied upon in order to obtain a benefit sought in a particular case. However on the basis of the third test in *Abrahamson* outlined above seems to me that the issue has been decided in this jurisdiction where (as here) public authorities are carrying out functions of an administrative or non statutory nature regarding a clearly defined category of persons who avail of a scheme on an individualised basis by way of application form analogous to contract.

30. The point is illustrated in the case of *R. v. North and East Devon H.A. ex parte* Coughlan [2001] QB 213 where the respondent had guaranteed a "home for life" to the applicant who suffered from disabilities in a residential home. The subsequent decision to close that home was quashed by the Court of Appeal on *certiorari*. In so doing that court held that where a public body acted to induce a legitimate expectation of a substantive benefit, to frustrate that benefit would be so unfair that it would amount to an abuse of power. In such circumstances the court had to determine whether there were such overriding interests to justify a departure from the promise. It further considered that the fact that the consequence to the public authority of honouring the expectation was financial only was not a relevant factor.

31. In Coughlan Lord Wolfe MR described three categories of expectation, the third of which was described as follows;

> "Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that hereto the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon a change of policy." [2000] 2 WLR 622 at 645.

32. Where the promise is induced in expectation of a substantive benefit the Court of Appeal found that its task was to "determine whether there is a sufficient overriding interest to justify departure from what has being previously promised." I do not consider that the evidence which has been adduced in this case is sufficient to justify removing the benefit of the scheme from the first named applicant. While the change took place as a result of a budgetary constraint no "sufficient overriding interest" has been established. On the evidence the respondent has not demonstrated the existence of any overriding public interest, insofar as relates to the category a person to whom the first named applicant belongs to justify the change in the application of the scheme to him as a person who, on specific representations, had been admitted to third level education and who was participating in the scheme; as opposed to any person seeking to benefit from the modified scheme in the future. In this connection the court notes no such change took place at post graduate level or to certain other categories of persons of limited means.

33. One turns then to the issue of the representation. Here the applicant relies on the decision of *Keogh v. The Criminal Assets Bureau* [2002] 1 I.R. 84; in the course of that judgment Keane C.J. stated

> "In the many cases which have subsequently come before the High Court and this court dealing with applications for refugee status it has been generally accepted that the applicants in such cases are entitled to have their applications dealt with under the Von Arnim procedure, later replaced by the "Hope Hanlon" procedure. The judgments I have cited indicate some divergence of views to whether that approach is properly regarded as an application of the doctrine of legitimate expectation or (as McCarthy J. preferred to put it) simply the recognition of the duty on the Minister to observe the procedures he had undertaken to apply. This may reflect the fact, noted by Fennelly J. in his judgment in this case in *Glencar Exploration plc v. Mayo County Council (No. 2)* that the doctrine of legitimate expectation is a developing one and that its legal parameters cannot be regarded as having being definitely established as yet. For the purposes of this judgment it is sufficient to say that the respondents, having acknowledged that fair procedures require the furnishing to all the tax payers with whom they had dealings of full accurate and timely information failed to observe those requirements in the case of the applicant.
>
> It is undoubtedly the case that documents such as the "Charter of Rights" in the consideration of the present case whether so described or called a "mission statement" or given some other title, frequently contain what are no more than praiseworthy statements of an aspirational nature designed to encourage the members of the organisation concerned to meet acceptable standards of behaviour in their dealings with the public and to give the latter some form of assurance that complaints as to discourtesy or other shortcomings on the part of the former will be seriously entertained. Some at least of the undertakings of the taxpayers charter of rights would fall in to that category. The statements of that nature would not normally give rise to causes of action based on an legitimate expectation doctrine.
>
> In this case we are concerned with the *specific* undertaking to give taxpayers full timely and accurate information as to the provisions of a notoriously opaque and difficult code …"

In a manner analogous to that in *Keogh*, I consider that the respondent herein issued a statement or adopted a position amounting to a specific promise or representation, express or implied, as to how it would act in respect of an identifiable area of its activity. Furthermore, through the booklet and other material exhibited, the representation was conveyed to an identifiable group of persons, namely those individuals who had entered, obtained the benefit of the scheme, and who were in third level education by the time the decision challenged in these proceedings was adopted. The representation formed part of the transaction definitively entered into by persons who commenced third level education on the basis of representations contained in the booklet. It was reasonable for the first named applicant to conclude that the respondent would abide by the representation to the extent that it would be unjust to permit the respondent to resile therefrom. One need only go as far as the statement in the booklet, referred to earlier, that "the allowance is payable for the duration of the course, including all holiday periods. It is not means tested so you may also work without affecting your payment". The first named applicant as a beneficiary of the scheme came within a category of persons who were prevented from

otherwise obtaining educational benefit by reason of their socio economic status. On that basis I consider that it would be unjust to permit the respondent to alter the applicants' circumstances once he had committed himself to following a course of third level education on foot of the respondents representations. The first named applicant has suffered detriment as a consequence of the breach of the commitment entered into by the respondent and on foot thereof that he has sustained a loss.

It is necessary then for the court to consider the relief to which the applicant may be entitled. For the findings which have been made do not in the circumstances justify judicial review by way of *certiorari*.

In the year 2003 the applicant actually obtained work during the summer vacation. The court has been informed that as a consequence thereof he sustained a loss or detriment in the sum of €4,200.51. In the summer of 2004 he was unable to find work and therefore he continued to remain on unemployment benefit. A similar position obtained in the year 2005. The applicant also has, in order to continue to avail of third level education, mortgaged his home a second time and, is substantially in debt.

However the fact remains that in the instant case he did not seek relief from the courts in the year 2003. No application for any form of interim relief whether by way of injunction or otherwise was sought. On foot of the position in which he found himself the applicant understandably obtained work, although by doing so it necessarily had the effect of depriving him of the benefit which would normally accrue to a third level student of a vacation at which point he may have enjoyed the company of his family or furthered his studies. The failure to seek any legal remedy in the year 2003 has therefore certain consequences. While I am satisfied that good grounds have been established to extend the time within which judicial review may be sought the elapse of time must affect the reliefs to which the applicant is entitled. The conduct which was impugned has occurred. The benefit which the applicant sought and detained has been removed. He has, by dint of his own efforts continued his third level education and has now reached the fourth and final year of his science undergraduate course. But the court must have regard to the fact that the conduct of the applicant in refraining from seeking a judicial remedy in the year 2003 has the effect of debarring him by his own conduct from obtaining judicial review by way of *certiorari* prohibition or injunction.

35. I am satisfied however that the applicant herein is entitled to a declaration that the decision of the respondent to implement the said changes was contrary to his legitimate expectation. He is entitled to restitution, that is to be placed in the same financial position as he would have been in had the decision not been made. Having made the declaration and set out the nature of the applicants entitlement I will hear counsel on the extent of the restitution and the ultimate form of the order.