THE HIGH COURT

JUDICIAL REVIEW

[2011/614 JR]

BETWEEN

MEDB MC CARTHY, ROBERT JOHNSON, AND IESHA ROWAN

APPLICANTS

v.

THE MINISTER FOR EDUCATION AND SKILLS

RESPONDENTS

Judgment of Mr. Justice Hedigan delivered the 25th of April 2012

1. The first named applicant is a student at the National University of Ireland and resides at Murtyclogh, Burrin, Co. Clare. The second named applicant is a student at the Dundalk Institute of Technology and resides at Lattonalbany, Carrickmacross, Co. Monaghan. The third named applicant is a student at the Galway/Mayo Institute of Technology and resides at 35 Ashbrook, Oranmore, Co Galway. The respondent is the Minister of Government with responsibility for the provision of student grants within the State and his office is located at Marlborough Street, Dublin 1.

2. The applicant seeks the following relief's:-

(i) An order of *certiorari* quashing the decision of the respondent's to extend the distance for non adjacent grants to forty five kilometres or more and reducing automatic eligibility of mature students to the higher non-adjacent rate of grant in respect of the applicants.

(ii) An order of *mandamus* restoring the non-adjacent grant in respect of the applicants to twenty four kilometres and restoring automatic eligibility of mature students to the higher non-adjacent rate of grant.

(iii) A declaration by way of an application for Judicial Review that the applicants had a legitimate expectation the criteria for the non-adjacent grant in respect of them as students in progression would remain constant as long as they remained students in progression.

(iv) A declaration by way of an application for Judicial Review that the extending of the distance for non-adjacent grants to forty five kilometres from twenty four kilometres and reducing automatic eligibility of mature students to the higher non adjacent rate of grant in respect of the applicants, as students in progression, is unfair, unjust and repugnant to the provisions of Section 6 of the Student Support Act, 2011.

(v) An order of *mandamus* directing the respondent to reinstate the applicant's non adjacent grant.

(vi) A declaration by way of an application for judicial review that the respondent in extending the distance for the non-adjacent grants to forty five kilometres and reducing automatic eligibility of mature students to the higher non-adjacent rate of grant has acted in an arbitrary, capricious and or unfair manner towards the applicants as students in progression.

(vii) A declaration by way of an application for judicial review that the applicants hereto had a legitimate expectation that the procedures and criteria provided for in the non adjacent grant scheme and in particular the distance criteria would be adhered to and or would remain applicable whilst they remained students in progression.

(viii) Damages.

Background Facts

3.1 The applicants are students who ordinarily qualify for a student support grant. The student support grant is payable to eligible students in full-time third-level education and the rate paid varies according to a number of different factors, including the distance between the student's ordinary residence and the third-level institution. The first named applicant is a student on the Bachelor of Arts (International) course at National University of Ireland, Galway. She has completed the second year of a four year course. For her student year 2010/2011 she qualified for the full fees and special top up student grant at the non adjacent rate based on her residence being thirty nine kilometres from NUI Galway. During the student year 2010/2011 the first named applicant received by way of non-adjacent grant approximately €6,355.00. The second named applicant is currently studying business studies at Dundalk IT and has completed year two of a three year course. Due to a family bereavement, the second named applicant sat seven deferred exams in August 2011. The second named applicant qualified in the student year 2010/2011 for full fees and a special top up student grant on the non adjacent rate on the basis he resides circa twenty eight kilometres from Dundalk IT. During the student year 2010/2011 the second named applicant received by way of non-adjacent grant approximately €6,700.00. The third named applicant is studying business studies at Galway/Mayo Institute of Technology and has completed the first year of her three year course and during the student year 2010/2011 she qualified for a grant on the higher non adjacent rate given she is a mature student. During the student year 2010/2011 the third named applicant received by way of non adjacent grant approximately €6100.00.

3.2 In December 2010, the government indicated an intention to alter the distance criteria applicable for the non-adjacent grant. This alteration was confirmed by the publication of the grant scheme for the student year 2011/2012 which was published by the

respondent on 1st July, 2011. Under the Student Support Act 2011, the Oireachtas abolished the previous regime pertaining to the allocation and payment of student grants which previously had been provided for under the auspices of the Local Authorities (Higher Education Grant) Acts 1968-1992. Under Section 6 of the Student Support Act 2011, the respondent extended the distance criteria from twenty four to forty five kilometres. In the case of the third named applicant who is a mature student, by the measures introduced by the respondent she was made amenable to the adjacent rate of payment having previously been entitled to the higher non-adjacent rate of grant payment.

3.3 The applicants contend that the decision to extend the qualifying distance for non adjacent grant rates and disallowing automatic qualification for mature students for higher non-adjacent grants is repugnant to the provisions of the Student Support Act 2011, section 6. The applicants further claim that they have a legitimate expectation that the "grant", i.e. the non-adjacent rate of student support grant, would continue in respect of each of them, and that they relied on that expectation to their respective detriments. The applicants seek, *inter alia, certiorari* quashing the respondent's decision and *mandamus* re-instating the qualification criteria for the non-adjacent rate of the student support grant.

Applicants Submissions
4.1 The applicants seek to challenge the decision of the Minister following the passing of the Student Support Act 2011, to extend the distance for non-adjacent grants to 45 kilometres or more and to reduce the automatic eligibility of mature students to the higher non adjacent rate of grant. The applicants challenge essentially relies on two grounds. First, that the decision of the respondent is in breach of s. 6 of the 2011 Act and second that the decision of the respondent is in breach of the legitimate expectation of the applicants that the non adjacent grant would continue to be available to them for the duration of their courses.

4.2 Section 6 of the Student Support Act 2011 states as follows:-

> "S.6 (1) The enactments specified in *column (2)* of *Schedule 1* are repealed.
>
> (2) A person attending a course who was, prior to the coming into operation of this section, awarded a grant to attend the course pursuant to -
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> *(a)* the enactments referred to in *subsection (1),* or
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> *(b)* schemes administered by a vocational education committee whereby grants were provided to students to assist them in attending courses in higher or further education, shall, subject to the terms of the enactments or schemes, continue to receive the grant concerned until the person has completed that course and he or she shall not apply for a grant other than the grant of which he or she is in receipt.
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> (3) The enactments referred to in *subsection (1*) and schemes referred to in *subsection (2)(b)* shall continue in force and apply to grants made pursuant to those enactments and schemes before the coming into operation of this section to the same extent as if this Act had not been passed."

It is well established that in the interpretation of Statutes, words should be given their natural and ordinary meaning. In *D.B. v. The Minister for Health and Children* [2003] 3 IR 12, Denham J (as she then was) stated at p.21:-

> "In construing statutes, words should be given their natural and ordinary meaning. The approach taken by the Courts in the construction of statutes was described by Blaney J. in *Howard v The Commissioner of Public Works* [1994] I IR 101. He emphasised that the cardinal rule for the construction of statutes was that they be construed according to the intention expressed in the Acts themselves. If the words of the statute are precise and unambiguous then no more is necessary than to give them their ordinary sense. When the words are clear and unambiguous they best declare the intention of the legislator."

The applicants submit that the words used in s. 6 are clear and unambiguous.

4.3 Section 6(2) provides that a person attending a course who was prior to the coming into operation of the section awarded a grant to attend a course either pursuant to the enactments already referred to in subsection 1 or to a scheme administered by a vocational authority shall subject to the enactments or schemes continue to receive the grant concerned until they have completed the course. The applicant submits that in looking at these provisions it is clear that it refers to a person attending a course who prior to the coming into operation of section 6 was awarded a grant to attend a course and it is clear that such persons would continue to receive that grant until they had completed their course. If there is any ambiguity (which is not admitted) as to the phrase 'subject to the enactments referred to in the subsection' the applicants submit that such ambiguity is resolved when one looks at the phrase in its context. The phrase follows the reference to the enactments referred to in subsection 1 or schemes administered by vocational committees. It is not new enactments or new schemes. It is clear therefore from the subsection that a person, such as the applicants, who was attending a course prior to the coming into operation of the section, and had been awarded a grant either under the enactments or schemes administered by vocational committees would continue "...subject to those enactments or schemes, to receive the grant concerned until they completed their course."

4.4 The applicants submit that three questions arise for consideration. First whether the applicants are persons who attended a course prior to the coming into operation of the section. Second whether the applicants had been awarded a grant to attend the course. Third whether the award of the grant had been pursuant to enactments referred to in subsection 1 or schemes administered by a vocational education committee. In this instance, the answers to all three questions are in the affirmative and in accordance with section 6 the applicants are entitled to continue to receive the grants until they complete their courses.

4.5 The second ground to the applicants challenge is that the decision of the respondent is in breach of their legitimate expectation that the non adjacent grant would continue to be available to them for the duration of their courses. In *Glencar Exploration plc v. Mayo County Council (No. 2)* [2002] 1 IR 84 Fennelly J. outlined the three elements necessary for an applicant to succeed in establishing legitimate expectation. Firstly, the authority must make a statement or adopt 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. Secondly, the representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons. Thirdly, it must be such as to create an expectation reasonably entertained that the public authority will abide by the representation to such an extent that it would be unjust to permit the public authority to resile from it. It is submitted on behalf of the applicants that on the analysis of the present case they come within the three criteria set out in *Glencar*. The applicants in considering what colleges and what courses to

attend, if at all, availed of the non-adjacent grant on the basis that their residences were twenty four kilometres or more from the colleges they were attending, or in the case of the third named applicant that she qualified automatically for the higher non-adjacent grant as a mature student. The applicants in so choosing their college and course reasonably and legitimately expected that the criteria for the said grant in relation to the distance from the college to their permanent residence would remain at twenty four kilometres or automatic qualification for mature students for the higher non-adjacent grant while they remained students in progression through their courses. The applicants in deciding what colleges and courses to attend arranged themselves and their finances based on the reasonable and legitimate expectation that the distance criteria for the non adjacent grants would remain at twenty four kilometres in their instances or automatic qualification as mature students for the higher non adjacent rate. It is submitted that the respondent in altering the criteria for the non adjacent grant has failed to consider students in progression. Such students decided to take up courses based on the non-adjacent rate of the grant applying for the duration of their courses and whilst they remained students in progression.

4.6 The *Glencar* test was recently applied in the case *Curran v The Minister for Education and Science* [2009] 4 IR 300. The *Curran* case concerned the early retirement scheme for teachers. For a number of years prior to 2008/2009 the Department had operated an early retirement scheme for teachers. It had been in operation since May 1997. The scheme had operated as a pilot scheme and in a circular issued by the Department in 2007 stated that the scheme would continue to include teachers retiring in 2007/2008. The Court assessed whether on the facts the applicants came within the test set down in *Glencar*. The Court found that the express statement contained in the circular amounted to a representation or promise as to how the Department proposed to act in respect of the pilot scheme for early retirement. The Court then looked at whether it was to an identifiable person or group of persons. The facts were that the group in question could encompass as many as 60,000 teachers. However the Court found that the size of the group alone cannot operate to frustrate the application of the doctrine of legitimate expectation. The Court then went on to look at the question of whether the doctrine was confined to the expectation that a certain procedure would be followed or whether a substantive benefit would be conferred. It was found that the scheme did confer a substantive benefit. However in the particular circumstances of the *Curran* case the Court came to the view that the overriding public interest outweighed any legitimate expectation. Dunne J stated at paragraph 39 as follows:-

> "I am satisfied that the declining economic circumstances were such that the overriding public interest in taking the decision to suspend the scheme must outweigh any legitimate expectation the applicants had to pursue their applications under the scheme."

The Judge further stated at paragraph 43:-

> "There may be cases where the nature of a change of policy is such that it would be appropriate to have a reasonable period of notice or transitional arrangements in place for those affected by a change in policy."

The applicants submit that these last words are particularly relevant in this case. The non adjacent scheme and distance criteria has stood since its inception and no rational explanation has been advanced as to why those coming within the parameters of the grants and who embarked on a third level course ought to have their non-adjacent grant cut simply because the distance criteria changes at the stroke of a pen. Nowhere is it set out by the respondent what overriding interest or basis precluded the phasing in of the revised distance criteria.

4.7 It is submitted on behalf of the applicants that they go further however than the applicants in *Curran* in that unlike them, here the applicants have taken steps to act on the representations made by the respondent and the Department of Education and have entered on the courses. Having entered on the courses in accordance with the terms of the scheme the applicants were justifiably entitled to believe in accordance with the terms thereof that as long as they continued with the course, attained the necessary standards within the course from year to year, remained in progression, that the grant would be tenable for the duration. Paragraph 7.2 of the scheme states:-

> "A grant is tenable for the normal duration of the approved course and it is renewable annually subject to satisfactory attainment and the approval of the Local Authority, subject to the terms of clause 7.6"

The applicants had a legitimate expectation that the Department in the case of persons who have already entered on a course and had been awarded the non adjacent grant to attend those courses would continue to do so in accordance with the provisions of section 6(2) of the 2011 Act. They have a legitimate expectation that the provisions of the 2011 Act preserved whatever entitlement they had already been granted following their entry on the course which they were then engaged in and that this provision of the 2011 Act could not be applied to them.

Respondents Submissions

5.1 The applicants' case is based on a claimed legitimate expectation to the continuation of grants of which they were in receipt at the previous rate, during the academic year 2010-2011. The applicants seek orders for *certiorari* and *mandamus*. If granted, these orders would have the effect of directing that the distance criteria for non adjacent grants be reduced and that criteria for mature students be altered. It is submitted on behalf of the respondent that this would be a fundamental interference with the substantive decision made by Government and implemented by the Minister.

5.2 The applicants' central objection is that they are continuing students, or students in progression, and that they embarked on their studies before alterations or changes were indicated. They claim that they therefore have a legitimate expectation that they would continue to receive the non-adjacent rate of what was known as the maintenance grant. They rely upon *Glencar Exploration plc* v. *Mayo County Council (No. 2)* [2002] 1 IR 84 cited above.

5.3 However, the applicants have not argued that the respondent made any representation that a particular rate of grant would endure for the duration of their course, nor was there a representation as to how the grant might be calculated. The first-named applicant avers, at paragraph 4 of her affidavit, that, in considering what courses to attend, she was aware of the various grants available to students and that, had the 45 kilometres restriction applied to a non-adjacent grant, she would have considered attending an alternative third level institution beyond 45 kilometres. The respondent submits that nowhere is it stated by the first named applicant that any particular representation was made by the respondent. Indeed, at paragraph 15 of her affidavit, the first-named applicant acknowledges that, in being entitled to a grant she "was always susceptible to the vagaries of the amount of grant being allocated as same have always increased or decreased on an annual basis depending on factors such as inflation, government spending and resources". The respondent also submits that the second-named applicant, makes no reference to any representation in his affidavit. At paragraph 7 of his affidavit he states

> "...similar to Ms McCarthy whilst I appreciated the amount of the grant would vary from year to year I never expected nor

envisaged the distance criteria for the nonadjacent maintenance rate varying and whereby I would be excluded from the nonadjacent rate. As has been set out this distance criteria has been in force and applicable since 1968 and has remained constant since that date and even during more recessionary times."

The third-named applicant avers that one of the major factors in deciding to return to education as a mature student was that she would be eligible for the higher non-adjacent rate of maintenance grant. At paragraph 5 of her affidavit, she avers that one of the fundamental reasons she and her partner considered returning to full-time education was the fact that, as full-time mature students, they would automatically qualify for the higher non-adjacent rate of maintenance grant for each academic year they attended the course. Again the respondent submits that no representation on its part is averred to. The respondent submits that the scheme as it existed, or as it presently exists, cannot be construed as a representation or promise to the applicants, that it would continue, at the same or any particular rate.

5.4 The applicants must demonstrate that an express or implied representation has been somehow conveyed to an identifiable group. It has been accepted in *Curran*, that a group of 60,000 teachers who were affected by a decision of the respondent, did not constitute a group too large to be an identifiable one. While on this basis it is arguable that the applicants meet the second leg of the test in *Glencar (No. 2)*, it is submitted that the fact that such a group may include many thousands of potential applicants necessarily involves the Court engaging in closer scrutiny of the nature of the representation allegedly made, in order to determine whether it can be construed as one that gives rise to a legitimate expectation and whether it is more likely that supervening public interest factors will be held to justify changes.

5.5 The applicants must demonstrate that the group has, as a consequence of the representation, formed a reasonable expectation that the respondent will stand by the representation such that it would be unjust to permit the respondent to resile from it. The respondent submits that the applicants cannot have formed such reasonable expectation. The instant case is readily distinguishable from the circumstances of the applicants in *Power v. The Minister for Social and Family Affairs* [2007] I IR 543. In that case, McMenamin J. found for the first applicant, who had partaken in a non-statutory back-to-education scheme that was designed to encourage unemployed persons to return to full-time higher education, and quashed the decision of the respondent to cease to make the allowance available to the applicants during the summer holidays. In contrast to the proceedings herein, the scheme in *Power* was an administrative, non-statutory scheme. In *Power*, the scheme was promoted by an information booklet, which stated, *inter alia*, that payments under the scheme would continue during all academic holiday periods. The contention of the applicants in *Power* was that they relied on the representation of the respondent in the information booklet to their detriment and found themselves suddenly and arbitrarily out of pocket. In the instant case, it is again submitted that no such representation was made; indeed, no representation at all was made. Furthermore, there is no evidence as to how the applicants may have relied on any representation on their parts, to their respective detriments. Another factor which was absent in *Power* relates to the background economic conditions to ground the decision of the respondent. There, McMenamin J. did not consider the evidence adduced sufficient to justify removing the benefit of the scheme from the applicant. In this case there are and were grave economic reasons for so doing. The circumstances in the instant case, where there is an enormous budget deficit and rising national debt, therefore, are not matters that arose for consideration in *Power*.

5.6 Even if a legitimate expectation is found to arise in given circumstances, that expectation may be overridden by public interest reasons. It is clear from the affidavits sworn by Donal McNally that since 2008, Ireland has been faced with an economic emergency. The applicants have suggested that the respondent acted arbitrarily and/or unfairly. The respondent submits that it was obliged to act in a careful way to respond to the worsening economic climate and address resource issues in the national and public interest. The respondent acted in an even-handed and equitable manner to carefully respond to this situation and where possible to reduce, the impact of necessary funding adjustments on the higher education grant sector as a whole. In fact, had the measures being contested by the applicants not been made by the Government, in the way that they were, the entire grant sector would have faced an across-the-board cut of 20%, which reduction would have affected all students equally, without any reference to means or personal circumstances. Brian *Power* has averred in his affidavit, that the increase in the non-adjacent rate criteria from 24 kilometres to 45 kilometres is based on existing government policy: ie. the Public Service Agreement 2010-2014, known as the Croke Park Agreement, which allows the State, as employer, to re-locate an employee within 45 kilometres. The respondent submits that there is therefore a rational basis for the analogous geographical limitation criteria for the non-adjacent rate and that it is objectively reasonable.

5.7 The applicants contend that the decision to extend the qualifying distance for non adjacent grant rates and disallowing automatic qualification for mature students for higher non-adjacent grants is repugnant to s. 6 of the Student Support Act 2011. Section 6 of the 2011 Act provides that a person attending a course who was, prior to the coming into operation of the Act, awarded a grant by a VEC to attend the course shall, subject to the terms of the enactments and schemes, continue to receive that grant until the person has completed the relevant course. The applicants have not been denied a grant. However, the *rates* of the grants have changed, and the eligibility of the third-named applicant for a particular rate has changed. In circumstances where the amendments to the rates of the student support grant scheme constituted exactly that, changes in rates rather than the abolition of the grants themselves, it is submitted that section 6, and specifically subsection (2) thereof, does not assist in an argument that the applicants may be entitled to a particular rate of grant.

5.8 In order for the applicants to bring the proceedings herein before the Court, they must have *locus standi* to do so, however, it is submitted that neither the first-named, nor the second-named applicant has such *locus standi*. In circumstances where the first applicant is partaking in the ERASMUS programme involving study as an exchange student for one year in Valetta, Malta, she will not only qualify for a student support grant, but also for the non-adjacent rate of that grant since she will be attending an educational establishment that is situated more than 45 kilometres from the place where she is ordinarily resident. As such, it is submitted that the first-named applicant is a stranger to her complaint and, in the current year, does not have *locus standi* to bring judicial review proceedings herein. The second-named applicant has averred at para.6 of his supplemental of the 16th November 2011, that he is not, either a student in progression or currently in receipt of a student support grant. Finally it is submitted that, in order to satisfy the third ground in *Glencar (No.2)*, the applicants would have to be able to show that they relied on a representation to their detriment. The alleged "detrimental" reliance averred to by the applicants is that they completed the first year of a third-level course, or the first two years in the case of the first applicant. There is no demonstration of how they have suffered any loss, whether financial or otherwise.

Decision of the Court

6.1 The applicants are students who ordinarily qualify for a student support grant. The student support grant is payable to eligible students in full-time third-level education and the rate paid varies according to a number of different factors, including the distance between the student's ordinary residence and the third-level institution. For the student year 2010/2011 each of the applicants qualified for the non adjacent rate of grant. In December 2010, the government indicated an intention to alter the distance criteria applicable for the non-adjacent grant. This alteration was confirmed by the publication on the 1st July 2011, of the grant scheme for

the student year 2011/2012. The Oireachtas by the Student Support Act 2011, abolished the previous regime pertaining to the allocation and payment of student grants which had been governed by the Local Authorities (Higher Education Grant) Acts 1968-1992. Under section 6 of the 2011 Act, the respondent extended the distance criteria from twenty four kilometres to forty five kilometres. In the case of the third named applicant who is a mature student, by the measures introduced by the respondent she was made amenable to the adjacent rate of payment having previously been entitled to the higher non-adjacent rate of grant payment. The applicants seek to challenge the decision of the Minister to extend the distance for non-adjacent grants and to reduce the automatic eligibility of mature students to the higher non adjacent rate of grant. The applicants submit that the decision of the respondent is in breach of s. 6 of the Student Support Act 2011. The applicants further submit that they had a legitimate expectation that the non-adjacent rate of student support grant, would continue in respect of each of them, and that they relied on that expectation to their respective detriments.

6.2 Section 6 of the Student Support Act states as follows:-

> "Section 6 (1) The enactments specified in *column (2)* of *Schedule 1* are repealed. (2) A person attending a course who was, prior to the coming into operation of this section, awarded a grant to attend the course pursuant to -
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> *(a)* the enactments referred to in *subsection (1)*, or
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> *(b)* schemes administered by a vocational education committee whereby grants were provided to students to assist them in attending courses in higher or further education, shall, subject to the terms of the enactments or schemes, continue to receive the grant concerned until the person has completed that course and he or she shall not apply for a grant other than the grant of which he or she is in receipt.
>
> (3) The enactments referred to in *subsection (1)* and schemes referred to in *subsection (2)(b)* shall continue in force and apply to grants made pursuant to those enactments and schemes before the coming into operation of this section to the same extent as if this Act had not been passed."

Section 6 of the 2011 Act provides that a person attending a course who was, prior to the coming into operation of the 2011 Act, awarded a grant by a VEC to attend a course shall, subject to the terms of the enactments and schemes, continue to receive that grant until the person has completed the relevant course. The entitlement is to "receive the grant concerned." It is not to receive a grant of a certain amount or to receive the grant subject to the same conditions. The rates of the grants have changed and the eligibility of the third-named applicant for a particular grant has changed. The applicants are not assisted by section 6(2) because the amendments made to the rates of the grant are changes in the rates as opposed to the abolition of the grants themselves. Section 6(3) is simply a continuation to a prior legal entitlement. The applicants claim that they had a right to the same grant they received in 2010 as long as they continued on their courses. I am satisfied that the schemes are annual in nature. Nowhere in the wording of the 2010 scheme is it stated that it is to apply in 2011, 2012 or 2013. It is clear that at the end of 2010, the 2010 scheme comes to an end. No scheme gives a guarantee as to the level of the future grant.

6.3 The applicants' argue that as students in progression who embarked on their studies before the alterations were indicated they had a legitimate expectation that they would continue to receive the non-adjacent rate of the maintenance grant. In order to demonstrate that they had a legitimate expectation the applicants must satisfy the test as set out in *Glencar Exploration plc v. Mayo County Council (No. 2)* [2002] 1 IR 84. Fennelly J set out the test as follows at p.85:-

> "In order to succeed in a claim based on 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,
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> 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.
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> 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 or 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 they are qualified by considerations of the public interest including the principle that freedom to exercise properly a statutory *Power* 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"

6.4 The first part of the test requires the applicants to demonstrate that the respondent made a representation to them that they would continue to receive the non-adjacent rate of the student support grant until such time as they had completed their respective courses of study.

The first-named applicant at paragraph 15 of her affidavit, acknowledges that, in being entitled to a grant she:-

> "was always susceptible to the vagaries of the amount of grant being allocated as same have always increased or decreased on an annual basis depending on factors such as inflation, government spending and resources".

The second-named applicant avers at paragraph 7 of his affidavit that:-

> "...whilst I appreciated the amount of the grant would vary from year to year I never expected nor envisaged the distance criteria for the non-adjacent maintenance rate varying and whereby I would be excluded from the non-adjacent rate."

The third-named applicant avers at paragraph 5 of her affidavit that:-

> "One of the fundamental reasons we both considered returning to full-time education was the fact that, as full-time

> mature students, I would automatically qualify for the higher non-adjacent rate of maintenance grant for each academic year I attended the course."

The furthest the matter is put is that the applicants never envisaged that they might become disentitled to the non-adjacent rate, no where is it stated that any particular representation was made by the respondent.

6.5 The second part of the test requires the applicants to demonstrate that an express or implied representation has been somehow conveyed to an "identifiable group". I accept that the students affected by the decision could constitute an "identifiable group". The third part of the test requires the applicants to demonstrate that as a result of the representation the group has formed a reasonable expectation that the respondent will stand by that representation and that it would be unjust to permit the public authority to resile from it. The question arises as to whether or not the applicants could reasonably have expected a regular practice to continue. The applicants must have been aware of the worsening economic situation. The rates of grant in general, and in the higher education sector, have been reduced, including a reduction of 4% for all grants in the year 2011/2012. Rates of grant were also reduced by 5% in 2009/2010. The alteration in the distance criteria and the position of mature students, the subject matter of this challenge had been signalled in the 2010 Budget. In these circumstances, it is my view that it was not reasonable for the applicants to expect the regular practice to continue.

6.6 Even if I were satisfied that the applicants had demonstrated that they had a legitimate expectation that would not be the end of the matter. Even an expectation legitimately held may be qualified by considerations of the public interest. In *Curran v Minister for Education* [2009] 4 IR 300 Dunne J. held at 317:-

> "That a legitimate expectation may be overridden by virtue of the public interest has also been recognised by the English courts in, for example, *R (Nadarajah) v. Secretary of State for the Home Department ... and R. v. North and East Devon Health Authority, ex parte Coughlan*. The affidavits of Mr Tatton and Mr McNally, as referred to in section 2 of this judgement, outline a bleak sketch of the state of the public finances at the time the decision was taken to withdraw the early retirement scheme which the applicants wish to apply for. It is to be noted that the very budget in which the announcement to suspend the scheme was announced was brought forward in response to the worsening economic circumstances. In addition, the preamble to the Financial Emergency Measures in the Public Interest Act 2009 serves to illustrate the same backdrop against which those exceptional measures were enacted."

The affidavits sworn on behalf of the respondent in this case outline the perilous state of the public finances at the time this decision was taken. Donal McNally has outlined in his affidavit the unprecedented economic emergency currently facing the State. At the end of 2011 the national debt stood at €119 billion. This had grown from just over €93 billion euro at the end of 2010. It is projected to reach €170 billion by the end of 2015. The affidavit's sworn by Donal McNally and Brian Power make for very sobering reading. It is clear that an unsustainable gap has emerged in recent years between the State's income and its expenditure. The expenditure reduction measures introduced over the course of the past four years must be weighed against a very challenging economic background. Whilst the applicants have suggested that the respondent acted unfairly, it seems to me that given the obvious requirement for reduction in public expenditure there was a clear public policy basis for the respondent's actions.

6.7 To summarize, lam not satisfied that the decision of the respondent to extend the qualifying distance for non-adjacent grant rates and disallowing automatic qualification for mature students for higher non-adjacent grants is in breach s. 6 of the Student Support Act 2011, nor am I satisfied that the applicants had a legitimate expectation that the non- adjacent rate of student support grant, would continue in respect of each of them. Even had the applicants such an expectation, overwhelming considerations of the public interest would outweigh it in the light of the dire financial circumstances facing this country at the time the decision was made. These findings are dispositive of this case and therefore I do not propose to address the respondent's objection to the applicant's *locus standi*. The relief's sought must be refused.