

THE HIGH COURT

[2019] IEHC 955
[2017 No. 257 MCA]

**IN THE MATTER OF THE STUDENT SUPPORT ACT 2011, STATUTORY INSTRUMENT 125
OF 2017 (STUDENT GRANT SCHEME 2017) AND STATUTORY INSTRUMENT 126 OF
2017 (STUDENT SUPPORT REGULATIONS)**

**AN APPEAL PURSUANT TO SECTION 21 (6) OF THE STUDENT SUPPORT ACT 2011
AGAINST A DETERMINATION BY THE STUDENT GRANTS APPEALS BOARD**

BETWEEN

ROBERT EDWARD BARRY

APPELLANT

AND

THE MINISTER FOR EDUCATION AND SKILLS

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 30th day of August, 2019

Background

1. The provisions of the Student Support Act 2011 (the Act of 2011) and the Regulations made thereunder set out what educational institutions and courses are eligible to be grant aided. Provision is also made for an appeals procedure under which the initial decision whether or not to make a grant can be appealed to an appeals officer whose decision, in turn, can be appealed to the Student Grants Appeals Board. Further, section 21(6) provides: -

“(6) A person (including an awarding authority) aggrieved by a determination of the Appeals Board, may appeal, with the leave of the Appeals Board, or where the Appeals Board refuses such leave, with the leave of the High Court, to the High Court against the determination on a specified point of law.”

Before the Court is the appellant’s appeal under the said section.

2. The appellant suffers from a long-term disability. He has been in receipt of disability benefit in the UK and Ireland for the last thirteen years. He is a service user of the Kilkenny Mental Health Services and is under the care of the Community Mental Health Team in the Kilkenny West sector. On 18 April 2017, the appellant submitted a grant application in respect of a two-year part time course entitled “*Diploma of Legal Studies*” at the Honourable Society of King’s Inns, Henrietta Street, Dublin 1. This application was refused on the grounds that the course in question did not qualify for a student grant as provided for in s. 8 of the Act of 2011 and Regulation 4 of the Student Support Regulations 2017.
3. The appellant appealed this decision to the appeals officer. The appellant’s grounds of appeal were set out in a document, dated 10 June 2017, under two headings: -

I. ‘Indirect discrimination.’

Referring to his disability, the appellant claimed that it would be very difficult for him to undertake a “full time course”. This, he claimed, amounted to discrimination against him on the grounds of disability and was contrary to the provisions of the Equal Status Acts, 2000 and 2004. Further, he relied on s. 8(3)(a) of the Act of 2011 which states: -

“the Minister, with the consent of the Minister for Finance, may prescribe a course that does not require attendance by a student on a full-time basis to be an approved course.”

II. ‘Direct discrimination’

Under this heading the appellant referred to an earlier application for a student grant which, apparently, was awarded to him following an appeal. The appellant stated that by the time he had been awarded the grant on appeal the particular course had been discontinued.

In addition to these two grounds the appellant also sought to rely on telephone conversations he had with two named individuals of the respondent to the alleged effect that they were unwilling to exercise discretion despite the appellant’s disability.

4. By letter, dated 16 June 2017, the appellant was informed that the appeals officer confirmed the decision of the awarding authority for the reason that Regulations 3 and 4 of the Student Support Regulations 2017 define “*approved institutions*” and “*approved courses*” which are covered for grant funding. The Diploma in Legal Studies in the Honourable Society of King’s Inns is not included. The appellant was informed of his right to appeal this decision to the Student Grants Appeals Board which he did.
5. The Student Grants Appeals Board considered the appeal on 25 July 2017 and upheld the decision of the appeals officer. The appellant was informed that the basis of this decision was as follows: -
 - “1. In order to be eligible for a grant you must be attending an approved course in an approved institution.
 2. Approved institutions and approved courses are defined in Regulation 3 and 4 of the Student Support Regulations, 2016 and ss. 7 and 8 of the Student Support Act, 2011. In all instances, an approved course must be a fulltime course.
 3. The Board notes that the only course approved for grant purposes in the Honourable Society of King’s Inns is the one-year barrister at law degree.
 4. The Board understands that the legal course you are pursuing in the Honourable Society of King’s Inns (PG Diploma in Legal Studies) is a two-year part time course. This does not meet the requirements of an approved course and therefore you are not eligible for funding under the terms of the Student Grant Scheme, 2017.
 5. The Board therefore upholds the decision of the awarding authority and appeals officer...”

The appellant was further informed that under s. 21 (6) of the Act of 2011 he may appeal to the High Court on a point of law.

Relevant statutory provisions

6. Section 7 of the Act of 2011 defines an "*approved institution*". Essentially, a publicly funded institution is an "*approved institution*". However, the respondent, subject to conditions, may designate a non-publicly funded institution as an "*approved institution*".
7. Section 8 of the Act of 2011 defines what is meant by an "*approved course*". This means a course that: -
 - (a) Is provided by an approved institution;
 - (b) Subject to subs. (3), requires attendance by a student on a full time basis; and
 - (c) Has been prescribed as an approved course.

It should be noted that s. 8(3), on which the appellant relies, has not as yet been commenced.

8. The "*Student Support Regulations 2017*" (S.I. No. 126 of 2017), passed under the Act of 2011, provide that the Honourable Society of King's Inns is prescribed as an "*approved institution*" in respect of the one-year barrister at law degree course (post graduate) which is prescribed as an "*approved course*". It follows from this that the only course in the Honourable Society of King's Inns which comes within the definition of an "*approved course*" for the purposes of awarding a grant in the Act of 2011 is the one-year barrister at law degree course (post graduate).
9. Under s. 21 (6), as referred to at para. (1) above, the appellant must obtain leave of the Appeals Board, or where the Appeals Board refuses such leave, leave of the High Court to bring an appeal, but only on "*a specified point of law*".
10. In this case the appellant did not obtain leave of the Appeals Board. The fact that he was informed by correspondence of his entitlement to an appeal under s. 21(6) does not amount to leave to bring the appeal. It follows that the appeal is not properly before the Court and, on this ground alone, has to be dismissed. However, I propose to consider various issues raised by the appellant.

Point of law

11. The jurisdiction of the court considering an appeal on a point of law has been the subject of many decisions of the Superior Courts. All these authorities confirm the limited scope of such an appeal. The appeal in this case is very far from a rehearing. I refer to *Deely v. Information Commissioner* [2001] 3 I.R. 439 where, at p. 452, McKechnie J. stated: -

"... There is no doubt but that when a court is considering only a point of law, whether by way of a restricted appeal or via a case stated, the distinction in my view being irrelevant, it is, in accordance with established principles, confined as to its remit, in the manner following :-

- (a) it cannot set aside findings of primary fact unless there is no evidence to support such findings;

- (b) it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw;
- (c) it can however, reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect; and finally;
- (d) if the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision..."

I also refer to the decision of Finnegan P. in *Ulster Bank Investment Funds Ltd v. Financial Service Ombudsman* [2006] IEHC 323 where he stated: -

"... To succeed on this appeal the Plaintiff must establish as a matter of probability that, taking the adjudicative process as a whole, the decision reached was vitiated by a serious and significant error or a series of such errors. In applying the test the Court will have regard to the degree of expertise and specialist knowledge of the Defendant. The deferential standard is that applied by Keane C.J. in *Orange Ltd v. The Director of Telecoms Regulation* (No. 2) [2000] 4 I.R. 159 and not that in *The State (Keegan) v Stardust Compensation Tribunal* [1986] I.R. 642."

- 12. Further limitation on an appeal on a point of law was referred to in *Rotunda Hospital v. Information Commissioner* [2013] 1 I.R. 1 where the Supreme Court made clear that the point of law relied upon must have been raised at first instance.
- 13. In my view, the appellant has failed to identify any point of law as would permit this Court to interfere with the decision of the Appeals Board. The education grants in question are provided for by statute. To be awarded a grant, the appellant must establish the course for which he seeks the grant is being given by an "*approved institution*" and that the course itself is an "*approved course*". The Honourable Society of the King's Inns is an "*approved institution*", but only in respect of the one-year barrister at law degree course. This is not the course in respect of which the appellant was seeking a grant. It follows from this that the initial decision refusing the appellant's application for a grant, the affirmation of the decision by the appeals officer, and subsequently by the Appeals Board, are correct. Further, as has been noted before, the provisions of s. 8(3) of the Act of 2011 on which the appellant relies have not been commenced.

Other issues

- 14. The appellant maintains that, in effect, the reason for the refusal to give him a grant is a result of his disability. The appellant argues that, given his disability, he is restricted to doing only part time courses for which no grants are available. He maintains that this discrimination is in breach of his constitutional right of equality before the law. The appellant also seeks to rely on the U.N. Convention on the Rights of Persons with Disabilities. These matters go well beyond the scope of the statutory appeal that is before the Court. Such issues cannot be considered in the context of these proceedings. It is, of course, open to the appellant to bring such a challenge to the Act of 2011 in other proceedings.

15. The appellant also seeks to rely upon what he identifies as being breaches of the Equal Status Act, 2000 (as amended). In my view, any such alleged breach is outside the scope of the appeal on a point of law which is before the Court. However, s. 21 of the Equal Status Act, 2000 (as amended) provides a statutory procedure and remedies for such breach.

Conclusion

16. By reason of the foregoing, I dismiss the appeal herein.