

LEGAL ADVOCACY: COMMUNITY-BASED LITIGATION AND LAW REFORM

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THE LEGAL ISSUE:

THE CORE ISSUE & THE ORGANISATION'S INVOLVEMENT

Historically, in Ireland, Traveller children have suffered extreme educational deprivation in comparison to their settled counterparts. While there has been some progress over the past few years, the numbers of Travellers attending education at second level remains significantly low. The case of John Stokes, a Traveller denied access to a secondary school in 2010, involved a legal challenge to a school's admissions policy. This policy effectively guarantees school places to children of past pupils by affording preference to their applications when the school is oversubscribed, thereby reducing the pool of places available to the remaining applicants whose fathers did not attend the school. Mary Stokes has consistently argued, on behalf of her son John, that this criterion disproportionately affects Travellers as their parents are statistically less likely to have attended second-level education. As a result, it has the effect of continuing the cycle of educational disadvantage among Traveller children. She instructed the Irish Traveller Movement (ITM) Independent Law Centre in 2010, and a legal strategy was developed. The core argument adopted was that, by giving priority to the children of past pupils, the school's admissions policy indirectly discriminated against John as a member of the Traveller community under the Equal Status Acts 2000-2008.

(Note: Between 2004 and 2014, The Atlantic Philanthropies provided funding to organisations in the Republic of Ireland and Northern Ireland to use the law to secure social change. To read a summary report about the lessons Atlantic grantees learned in doing this work, [click here](#).)

THE APPROACHES USED:

WHY THEY WERE ADOPTED, WHAT THEY INVOLVED, CHOICES MADE

In relation to the development of a legal strategy in the Stokes case, a community-based approach was adopted. As part of the ITM, a national network of organisations and individuals within the Traveller community, the Law Centre is well placed to engage with Travellers and to identify the core issues affecting them. It used this connection to identify that the Stokes case was of strategic importance to the wider community and that litigation was the appropriate approach to adopt. This latter decision was informed by the Law Centre's experience that litigation is often the most effective way of achieving meaningful change for Travellers in Ireland, with attempts at other approaches being regularly stonewalled.

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² According to the Census of 2011, 55% of Travellers completed their education before the age of 15. This compares with only 11% for the general population. In addition, only 3% of Travellers continued their education past 18 compared with 41% of the settled population. Seventeen per cent of Travellers have no formal education compared with 1.4% of the general population. See Central Statistics Office, Profile 7: Religion, Ethnicity and Irish Travellers (Dublin: Central Statistics Office, 2012) at p. 32.

Initially, there was an attempt to resolve this case at a local level. However, following an unsuccessful internal appeal of the school's decision to the Board of Management, and subsequently to the Department of Education, the Law Centre filed proceedings in the Equality Tribunal in 2010. A favourable outcome was achieved at this stage as the Tribunal held that the school's admissions policy indirectly discriminated against Traveller children. The school successfully appealed to the Circuit Court, which held that the discrimination against John was objectively justified due to the school's reliance on donations from past pupils.

Under instruction from Mary Stokes, the Law Centre appealed this decision to the High Court in 2012. This appeal was based on a point of law, i.e., that the operation of the past pupil criterion placed John Stokes 'at a particular disadvantage'. At this point, the Law Centre adopted a collaborative approach with the Equality Authority, a statutory body. This resulted in the latter's submission of an *amicus curiae* (third party) brief to the Court to assist in the application of equality law to the issues raised.³ The litigation approach adopted also employed European and international human rights standards, including the jurisprudence of the European Court of Human Rights, the United States' Supreme Court and the European Court of Justice, in order to reinforce the strength of the case. However, the High Court did not consider the case in light of human rights standards but narrowly interpreted the relevant domestic legislative provision. The Law Centre lost this appeal on the basis that, although the policy was indirectly discriminatory against Travellers, the disadvantage suffered was not particular to them as other groups could be affected by its application. On foot of this decision, the Law Centre supported Mary Stokes to appeal to the Supreme Court and the case is currently sitting on its docket.

The ITM, with input from the Law Centre, has also employed legal advocacy approaches to advance the Stokes case and its potential impact. The legal expertise gained through litigating this case in the courts was used to develop a submission on school enrolment in 2011.⁴ Following the introduction of the Education (Admission to School) Bill by the Minister for Education in 2013, the ITM produced a further submission highlighting its concerns about the legislative proposals.⁵ It successfully lobbied the Oireachtas Committee reviewing this Bill to obtain a hearing and to present its arguments on the proposed legislation. It is also continuously engaging in political lobbying to ensure that the particular issues affecting Travellers are reflected in the Bill. Finally, the ITM has developed strategic links with organisations, such as the Bar Council and the Law Society of Ireland, the Council of Europe, the International Bar Association, the United Nations, and other human rights organisations in Ireland and overseas. Such links can play a key role in placing the issue of indirect discrimination against Travellers on the relevant agenda. The ITM Law Centre is also engaged with the European Roma Rights Centre in the first-ever Collective Complaint (similar to a class action) against the Irish State to the European Committee of Social Rights on the issue of housing, in particular Traveller housing.

³ Irish Traveller Movement Independent Law Centre, Submission to the Discussion Paper on a Regulatory Framework for School Enrolment (2011) at <www.itmtrav.ie> (date accessed: 28 May 2014) at p. 3.

⁴ See generally; *ibid*.

⁵ Irish Traveller Movement Independent Law Centre, Submission to Joint Oireachtas Committee on Education & Skills on the Draft General Scheme of an Education (Admission to Schools) Bill 2013 (2013) at <www.itmtrav.ie> (date accessed: 28 May 2014).

THE OUTCOMES:

THE DIRECT & INDIRECT SUCCESSES OF THE INTERVENTION

The Law Centre's litigation-based strategy achieved early success in the equality tribunal but has failed to obtain a favourable court decision. Despite this, the Stokes case has had a significant impact in practice. Firstly, as a direct result of this case, the Department of Education is now reviewing admission policies through the 2013 Bill. This Bill proposes a far more circumscribed application of the past pupil criterion than exists at present, as it limits the number of school places that may be allocated to children of past pupils to 25%. The ITM has expressed its criticism of this new position on the basis that it provides a discriminatory rule with statutory footing.⁶ However, the Joint Oireachtas Committee on Education & Skills has recommended in its report to the Department for the complete removal of this criterion and heavily relies upon the arguments of the ITM in justifying this recommendation.⁷ Therefore, through the Stokes litigation and its engagement with the parliamentary process, the ITM has made significant progress in achieving the abolition of the past pupil criterion.

The Stokes case has also played a key role in promoting awareness about the issues affecting the Traveller community in the public domain. This is a key achievement in light of the fact that Travellers are one of the most marginalised and oppressed groups in Irish society. Furthermore, although this case was focused on the admission policy of a school, it has the potential to have a much broader impact. It provided the Law Centre with a key opportunity to publicly challenge the legality of State-imposed structures and policies that indirectly discriminate against Travellers. Therefore, it paved the way for future strategic litigation to advance the rights of the Traveller community.

THE LESSONS LEARNED:

REFLECTIONS TO BE SHARED WITH OTHER ORGANISATIONS & FUNDERS

The Stokes case serves to underpin the importance of the relationship between the concerns of Travellers themselves and legal action. The strength of the Law Centre's approach is that it adopts a community-based model of strategic litigation; Travellers, who are affected directly by patterns of discrimination, state action or weak legislative frameworks, dictate the issues that need to be addressed through the use of the law. This ensures that Travellers trust the organisation to advocate on their behalf. In the interests of maintaining a good relationship with the community, it also facilitates there to be a short timeframe between an issue being communicated to the Law Centre and a decision being made about what can be done from a legal perspective. Furthermore, as the legal team operates at a grass-roots level, they have developed specialist expertise in the specific areas of law that affect Travellers.

⁶ Joint Committee on Education and Social Protection, Response on the Draft General Scheme of an Education (Admission to Schools) Bill 2013 (2014) at <www.oireachtas.ie> (date accessed: 29 May 2014) at p. 30.

⁷ Ibid. at pp. 30, 55.

This short report also highlights how litigation, even if ultimately unsuccessful, can prompt awareness of a problem that can be addressed through the political process of law reform. Therefore, when undertaking strategic litigation, organisations must visualise the broader impact that can be achieved outside of the courtroom. The case also demonstrates that litigation can be successfully brought to the Equality Tribunal and the Law Centre has highlighted the advantage of presenting such a case to equality officers who are specialised in equality law. Conversely, organisations should anticipate the potential for the judiciary to adopt a conservative approach in the courts, particularly with regard to arguments based on international human rights standards.

Finally, the Stokes case highlights that the strategic importance of a case is not always easily identifiable. The potential for this case to have a broad impact was not immediately recognised by the Law Centre, and it took a close examination of the facts to identify the core issue of indirect discrimination. Furthermore, to a large extent it was the tenacity and determination of Mary Stokes that furthered the potential of the case. As a result, it is necessary to cast a critical eye over all legal queries to ensure that the 'right' case and the 'right' client are not missed.