

Bias in the Public Sector

Public bodies in Ireland are familiar with the challenges that conflicts of interest create, and the subject has received a great deal of coverage in the media. Legislation, in the form of the Ethics in Public Office Acts 1995 and 2001, counter some of the problems created by potential conflicts. The newly revised code of practice for the governance of State bodies also sets out procedures to be observed by the board members where a conflict of interest could arise.

What is not generally recognised, however, is that conflicts of interest can infect the decision-making processes of public bodies in ways not envisaged by the legislation or codes of practice, as these tend to concentrate on financial, business and proprietary interests.

Duty to act in a fair and impartial manner

In many public bodies, there are officials whose function is to adjudicate on claims to some form of entitlement. These can arise in the context of education, healthcare or financial provision, and can have far-reaching consequences for claimants or applicants. Examples include a HSE official responsible for assessing the needs of a person seeking disability services or a deciding officer in the Department of Social and Family Affairs adjudicating on a benefit claim. In cases such as these, where legal rights are at stake, the adjudicator must act in a fair and impartial manner. Those adjudicating on legal rights must be free from bias.

Bias in the legal sense

In the legal sphere, the term "bias" is underpinned by two streams of thought. One is that there must be no actual bias in the administration of justice. However, it is extremely difficult to prove actual bias, as it requires one to get inside the mind of the decision maker. The second stream is that there must be no suspicion on the part of a reasonable person that he will not get a fair and inde-

pendent hearing of his case. This is called apparent or objective bias. The reason why the suspicion of bias is enough to overturn a judicial or adjudicative finding was summed up by Lord Chief Justice of England and Wales in a 1924 case on bias when he said:-

"It is of fundamental importance that justice shall not only be done, but should manifestly and undoubtedly be seen to be done."

For public support for the administration of justice, it is crucial that those who adjudicate on rights are seen to do so fairly and impartially. To understand how objective bias works, one needs to look at case law. Cases are coming before the courts in increasing numbers, by way of judicial review or appeals to the High Court. Many relate to the review of decisions made by judges in lower courts.

Dublin Well Woman case

One case concerns the late Judge Mella Carroll who, in 1992 as chairperson of the Commission on the Status of Women, made recommendations to the Taoiseach on the wording of the referendum put to the people following the "X" case and the requirement to adopt the Maastricht protocol.

After the passing of the referendum and amendments to the Constitution, the Dublin Well Woman Centre, a counselling service, sought an order that the provision of information on abortion services abroad came within the scope of the amendment. The Society for the



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Protection of the Unborn Child opposed the application and counsel for the Society asked Judge Carroll, who was the sitting judge, to stand down on the basis that her earlier involvement with the Commission on the Status of Women created an apprehension of bias.

Judge Carroll refused saying that she was satisfied that she was not affected by bias, that she had taken an oath to administer justice without fear or favour and believed she had always done so. The Society appealed to the Supreme Court where it was held that the judge should indeed have stood down from this case. The Supreme Court held that the state of mind of the judge was not the point at issue. What was at issue, was whether her previous involvement with the Commission for the Status of Women and her recommendations to Government could reasonably be expected to influence the outcome of her decision in the High Court proceedings.

The Orange case

In another case, telecommunications company Orange sought judicial review of the decision by the Office of the Director of Telecommunications Regulation (ODTR) to award a mobile phone licence to Meteor. Orange

complained that the award of the licence to Meteor was based on a number of serious mistakes made by the ODTR's evaluation team. Orange argued that the evaluation of their bid had been undermined by bias. The High Court found in favour of Orange and concluded that the decision to award the licence to Meteor was unreasonable in a number of respects and that a pattern of unreasonable decisions could only be attributed to bias on the part of ODTR.

On appeal, the Supreme Court roundly rejected the High Court's decision. In particular, the Supreme Court found that bias could not be inferred from a series or pattern of erroneous decisions in the decision-making process. On the contrary, it said, in order to prove bias, it is necessary to find some circumstances extraneous to the process itself.

Impartial administration of justice

Justice is administered in three separate tiers:-

- (1) the courts;
- (2) quasi-judicial bodies, such as An Bord Pleanála, the Employment Appeals Tribunal or a licensing or regulatory body such as the Financial Regulator;
- (3) individuals in public bodies carrying out an adjudicatory role in an administrative setting, perhaps without a formal oral hearing process.

The principles of impartiality and independence apply to all levels in the administration of justice. If there have been fewer court cases on bias in the administrative context, economic circumstances could conspire to change that. With the growth of judicial review, the development of case law in the field of fundamental human rights and the willingness of tenacious individuals, such as Kathy Sinnott, to assert their rights through the courts, it is likely that more and more administrative decisions will be challenged on the grounds of impartiality in the future.



Pictured is Frank Kelly receiving his chain of office from outgoing Chair of CIPD Ireland, Sean O'Driscoll.

New Chairman of the CIPD

Frank Kelly, Head of HR, Dublin City Council, has recently been appointed as Chairman of the CIPD in Ireland. The CIPD is an international professional body for HR practitioners and Frank is the first Chair from the public sector for some time.

Frank's view is that the CIPD with its very broad spectrum of HR practitioners in membership from the public sector, the private sector, the voluntary sector and all sectors in between is very well placed to harness the optimum HR response for organisations as they grapple with the recession. He is strongly of the view that a strong HR response can provide the leadership necessary to create the vision and resilience needed for these times. Nobody is immune to the difficulties and so it is important to ensure that the private sector and public sector work together through this and end the phoney war between these sectors that seems to have been generated in the past year or so.

IT Forensics Consultant appointed at Deloitte

Deloitte has announced the appointment of Dr. Vivienne Mee as Senior IT Forensics Consultant within its Enterprise Risk Services division.

In her new role, Vivienne will be working with organisations that have experienced incidents of fraud. Throughout the fraud investigation process she will provide litigation support and analyse retrieved data. She will also provide advice to clients on the security measures that should be in place within their organisation.

Throughout her career, Vivienne has gained extensive experience in Computer Forensics and eDiscovery. Previously, she worked with Rits Information Security for over two years as lead Computer Forensics Analyst. Here, she ran the Computer Forensics laboratory and worked on over eighty separate cases.

Vivienne has worked on a wide variety of computer forensic cases for government and private organisations. Such cases include fraud, intellectual property infringement, intrusion detection, malware, inappropriate use and related areas. Vivienne studied for a



Dr. Vivienne Mee as Senior IT Forensics Consultant

number of years at the University of Glamorgan, Wales up to Doctorate level in Computer Forensics. At the University she obtained a PhD in Computer Forensics and an M.Sc. in Information Security and Computer Crime. Vivienne is also a graduate of Dundalk Institute of Technology where she achieved a B.Sc. in Software Development.

Tourism Ireland appoints new chief executive

Tourism Ireland has announced the appointment of Niall Gibbons as its new Chief Executive. The announcement was made by Tourism Ireland Chairman, Hugh Friel, following an extensive, competitive recruitment process.

Mr Gibbons, who takes up the post with immediate effect, has been the Director of Corporate Services and Company Secretary of Tourism Ireland since 2002. He replaces Paul O'Toole who has taken up the position of Director General at FÁS.

Mr Gibbons played a key role in the formation of Tourism Ireland and its subsequent development over the past seven years. During that time, his responsibilities have included eMarketing, Regional Marketing, Access Development and Customer Relationship Management, in addition to Finance, Human Resources and Industry Communications.

The Minister for Arts, Sport and Tourism, Martin Cullen TD welcomed the appointment of Niall Gibbons as the new Chief Executive Officer of Tourism Ireland. Minister Cullen said: "Niall has done outstanding work with Tourism Ireland in his previous role as Director of Corporate Services and Company Secretary. Niall is taking on this new responsibility at a difficult time for tourism globally but I know he will meet this challenge, drawing on his experiences in both the private and public sector and the enthusiastic and pragmatic manner in which he has carried out his work to date."

Prior to his appointment to Tourism Ireland, he held senior roles in the private and public sector. He is a business graduate of Trinity College, Dublin and a Fellow of the Institute of Chartered Accountants in Ireland.



Cllr. Marie Baker, who has represented Fine Gael in the Blackword ward area since first elected in 2004, was elected Cathaoirleach at the Annual General Meeting of Dun Laoghaire-Rathdown County Council. Cllr. Baker topped the poll in the ward at the recent local election on June 5th.



Niall Gibbons, new Chief Executive of Tourism Ireland