THE HIGH COURT

[2021] IEHC 246

RECORD NUMBER: 2020 615 JR

BETWEEN

O O'N (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND D O'N) AND D O'N

APPLICANTS

AND

NATIONAL COUNCIL FOR SPECIAL EDUCATION, MINISTER FOR EDUCATION AND SKILLS, SCHOOL TRANSPORT APPEALS BOARD

RESPONDENTS

JUDGMENT of Ms. Justice Niamh Hyland delivered on 29th March 2021

Summary

1. This is an application for an order of certiorari quashing the decision of the School Transport Appeals Board ("the Appeals Board") of 20 July 2020 (the "Decision"), disallowing the applicants' school transport appeal. Various declarations are also sought, including a declaration that the Appeals Board failed to give any or adequate reasons in its decision of 20 July 2020. For the reasons set out in this judgement, I conclude that the reasons given were indeed inadequate and I therefore remit the matter back to the Appeals Board for further consideration of the appeal.

Proceedings

2. By Order of the High Court of 21 September 2020, the applicants were granted leave to apply for judicial review of the Decision of the Appeals Board of 20 July 2020 and to seek declaratory relief in relation to the Special Educational Needs Scheme.

3. The reliefs sought at paragraph D of the Amended Statement of Grounds dated 16 September 2020 include:

> *"1. An order of Certiorari quashing the decision of the third named Respondent of 20 July 2020, disallowing the Applicants' school transport appeal.*
>
> *2. A Declaration that, contrary to inter alia fair procedures, and natural and constitutional justice, the third named Respondent, in the decision of 20 July 2020, failed to give any, or adequate reasons.*
>
> *3. A Declaration that the [3rd] Respondent failed to have regard to relevant factors which ought to have been considered and/or, if taken into account, failed to give any, or adequate, weight to said factors, in the decision of 20 July 2020, in the premises that the Respondents failed to have regard to the Applicants' submissions and contentions and the evidence of the schools.*
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> *4. A Declaration that rule 3 of the administrative scheme, known as the Special Transport Scheme for Children with Special Education Needs Arising from a Diagnosed Disability, requires an individual consideration of a child's special educational needs requirements in order to determine whether or not any given school is the nearest school too meet that individual child's needs, as opposed to the nearest school simpliciter, including a consideration of class sizes, in the premises that inter alia the educational needs of individual special needs children differ from child to child, which the scheme and the rule was expressly designed to cater for.*
>
> *5. A Declaration that the second named Respondent is operating an inflexible policy in respect of rule 3 of the Special Transport Scheme for Children with Special Educational Needs Arising from a Diagnosed Disability, which fetters the discretion of the Special Educational Needs Organisers and the School Transport Appeals Board, in a manner ultra vires inter alia the said scheme, the Education for Persons with Special*

Educational Needs Act 2004 and the Education Act 1998, in the premises that the first named Applicant, having been placed in the nearest school deemed most appropriate to meet his individual needs, effectively cannot be properly considered by the Special Educational Needs Organiser or the School Transport Appeals Board for full support under the scheme.

…"

4. An affidavit verifying the Statement of Grounds was sworn by D O'N, the second applicant, on 7 September 2020, and a further affidavit was sworn by Ms O'N on the same date exhibiting various documents. A Statement of Opposition of 23 November 2020 was filed, and on the same date an affidavit was sworn by Shirley Kearney, Acting Principal Officer in the School Transport Section of the Department of Education and Skills. Affidavits were sworn by Ciaran Flynn, a member of the Appeals Board on 25 November 2020 and by Audrey O'Shea, Team Manager of the National Council for Special Education on 23 November 2020.

The School Transport Scheme

5. The second named respondent (the "Minister for Education") administers a school transport scheme for children with special educational needs ("SEN") arising from a diagnosed disability (the "Scheme"). The purpose of the Scheme is, having regard to available resources, to support the transport to and from school of children with SEN. The Scheme, which may be found in a document of the Department of Education of November 2011, is administrative in nature and has no statutory basis. No objection is taken by the applicants to this approach.

6. The eligibility criteria set out in the Scheme are at the heart of this case. The applicants and the respondents take wholly different views as to the correct interpretation of those criteria. They provide as follows in relevant part:

"3. Eligibility criteria

Children are eligible for transport where they:

- *have special educational needs arising from a diagnosed disability in accordance with the designation of high and low incidence disability set out in Department of Education and Skill's (DES) Circular 02/05*

and

- *are attending the nearest recognised: mainstream school, special class/special school or a unit, that is or can be resourced, to meet their special educational needs."*

7. Under the heading "*Appeals board",* the Scheme provides, *inter alia*:

"The Terms of Reference for the School Transport Appeals Board are available on the Department's website.

The School Transport Appeals Board examines and determines appeals against the school transport application process regarding the provision of school transport services and/or grant aid under the terms of the School Transport Schemes."

The Applicants

8. The first named applicant, O O'N, is an autistic boy, aged 11 at the date of this judgment, from County Tipperary. The second named applicant is his mother, D O'N. Until 2018, O O'N was attending a mainstream national school in B, Co. Tipperary. He was diagnosed with autism spectrum disorder, dyspraxia and dyslexia by way of a report from Dr Rogers, clinical psychologist, of 16 January 2018. Following his diagnosis his parents decided to move him from B School to a smaller school with smaller classes. This was, as identified in Ms. O'N's affidavit "*partly because [O O'N] struggles in busy and noisy environments, becomes overwhelmed and seeks to leave such situations*" [para. 6].

9. Ms O'N contacted N school which she avers is physically the nearest school to their home. By letter dated 5 February 2019, the N school principal stated as follows:

"[O O'N] has a diagnosis of ASD, Dyspraxia and Dyslexia. His Psychological and Clinical Reports state that he finds noise levels extremely difficult to cope with and that he would benefit from a smaller school setting with smaller class sizes. Our class sizes are on average 30 pupils, therefor we cannot provide him with the best possible educational experience which his needs require".

10. I note that the report of Dr Rogers does not conclude O O'N would benefit from a smaller school or class; rather, that appears to be the conclusion that the principal has drawn from the report of Dr Rogers.

11. Ultimately, it was decided to send O O'N to L School, Co. Tipperary. An application was made on 15 January 2019 to the School Transport Unit of the Department of Education for transport to and from the school in L. Section E of the application form for school transport was completed by the local Special Educational Needs Organiser ("SENO"), a member of staff of the first named respondent, the National Council for Special Education ("NCSE"). The SENO confirmed that the required professional report submitted by the applicants met the Department's criteria for attending the relevant setting i.e. a mainstream school. However, under the heading *"(ii) This school is the nearest to the child's home that is, or can be, resourced to meet the child's educational needs under Department of Education and Skills criteria*", the "*No*" box was ticked. The form provided for any further information relevant to be included and under that heading the SENO had written "*Parent transferred [O O'N] as felt smaller school would meet his needs. Letter attached. Previous school submitted a letter supporting parents right to decide educational placement (on file if needed)."*

12. As described by the respondents in their written submissions to this court, by decision of 16 January 2019 the Department of Education determined that O O'N was not eligible for school transport under the Special Educational Needs Scheme because he was not attending

the nearest recognised school that is or could be resourced to meet his special educational needs. The applicants were informed of the availability of an appeal to the Appeals Board.

13. In February 2019, Ms. O'N provided the Department with the letter from N School, referred to above. On 8 February, there was a telephone call between the Department and Ms. O'N in which the basis of the decision was explained to her. On 20 June 2019, the applicants wrote to the NCSE seeking a review of the decision. They were directed to raise their concerns with the Department. That engagement was the subject of a challenge by way of judicial review in proceedings entitled *[O O'N] (a minor suing by his mother and next friend [D O'N]) and [D O'N] v. the National Council for Special Education and the Minister for Education and Skills* (High Court Record Number: 2019/622 JR). These proceedings were withdrawn by the applicants in May 2020 so that an appeal could be pursued under the appeals process in place.

14. Following the withdrawal of those proceedings in May 2020, an appeal to the Appeals Board was lodged on 12 June 2020.

The Appeals Board

15. The Terms of Reference for the Appeals Board are exhibited to the Affidavit of Shirley Kearney (Exhibit SK2). The first paragraph headed up "Terms of Reference", identifies that the Appeals Board must "*determine appeals against decisions made by, or on behalf of, the Department of Education and Skills regarding the provision of school transport services and/or grant- aid under the terms of the School Transport Schemes*."

16. Under paragraph 3, it is provided that the Appeals Board must determine, *inter alia*, the appeals referred to in paragraph 1 "*having regard to the information provided in the appeal form STA1 and such other relevant information as the Board may acquire*".

17. I will be returning to the importance of paragraph 3 later, as it emphasises that the Appeals Board is charged with dealing with the appeal before them, which means all substantive aspects of the appeal, and not just selective aspects of it.

18. Under the heading "*Operating Procedures*" it is provided that the Appeals Board will be appointed by the Minister of State at the Department of Education for a period of 3 years. The applicants place considerable emphasis on the next sentence of paragraph 1 at page 2, being that *"The Board will be independent in the performance of its functions".*

19. The Board is directed to act in accordance with its Terms of Reference and Operating Procedures. The Board has jurisdiction, *inter alia,* over decisions made by or on behalf of the Department of Education under the terms of the Special Educational Needs School Transport Scheme. There is provision in the Operating Procedures for exchange of submissions by the parties to the appeal. There is also provision for a meeting to be held if necessary, although in this case no physical hearing took place.

20. Importantly, at paragraph 27 of the Operating Procedures the following appears:

> *"On the determination of an appeal, the Board shall send a notice in writing of its determination of the appeal and the reasons for that determination to the appellant and all other relevant parties to the appeal."*

The Applicants' appeal

21. The applicants submitted an appeal document three pages in length. On page 3, having quoted the eligibility criteria from the special transport scheme, it is stated that the interpretation of the second limb is in issue. At paragraph 5 it is stated:

> "5. *It is submitted that the second limb of the test requires an individual consideration of a child's special educational needs requirements in order to determine whether or not any given school is the nearest school to meet that individual child's needs, as opposed to the nearest school simpliciter, in the premises that the educational needs of individual special needs children differ from child to child, which the statutory scheme and administrative rule were expressly designed to cater for.*

However, the Department/NCSE have chosen to exclude any individualised consideration of any given special needs child's educational needs in respect of, in particular, the curriculum offered, the size and type of school.

6. The Appellants have not chosen one particular school over another on the basis of a parental choice. They were guided by medical and educational professionals, whose view was that the chosen school was both necessary and best placed to meet [O O'N]'s needs, as an autistic child, whose profile indicates that he requires small class sizes, and in circumstances where the nearest physical school have expressly stated that they cannot accommodate [O O'N]'s needs.

7. It is unlawful, irrational, a fettering of discretion and patently absurd to wholly exclude from consideration, the curriculum, school size and type, when assessing whether or not a special needs child is entitled to school transport".

22. The Department also made a submission, stated to be prepared by George Carolan. That submission is pithy and merits being quoted in full:

"Terms of Scheme

A pupil with special needs is eligible for school transport if s/he is attending the nearest recognised: mainstream school, special class/special school or a unit, that is or can be resourced, to meet the child's special educational needs under Department of Education and Skills criteria.

An application for special transport arrangements is made by the parents/guardians of the pupil through the School Principal and the Special Education Needs Organiser (SENO) for the school. The SENOs are employed by the National Council for Special Education.

In this case, it has been reported that [O O'N] is not eligible for school transport under the terms of the scheme because he is not attending the nearest recognised school, that

was resourced to meet his special educational needs at the time of his enrolment. [O O'N] is therefore, not eligible for school transport to Lackamore National School".

23. An affidavit was sworn by Ciaran Flynn on behalf of the respondents on 23 November 2020. He avers that he is a member of the Appeals Board and identifies the membership of same, and the processing of the appeal in this case. At paragraph 4 he identifies that:

"4. The Appeals Board is comprised of Chairperson, a Secretary and three Members. The Chairperson is Connie Carolan (formerly National Parents Council Post-Primary). The Secretary is Sean Mac Conmara (formerly Divisional Inspector with the Department of Education and Skills). The Members are Bridie Kearns (former Regional School Transport Manager, Bus Eireann), Joe Fitzsimmons (former post primary school teacher) and myself. I am a former General Secretary of the Association of Community and Comprehensive Schools".

24. Mr Flynn further identifies at paragraph 6 that the appeal was considered by the Appeals Board at its meeting on 20 July 2020. I note therefore that the Decision was rendered on the same day that the appeal was considered. He avers that the Appeals Board were furnished with the appeal, the submissions lodged and a report from the School Transport Section of the Department (described by me as a submission to the Board and set out above). He confirms that all the information available to the Appeals Board was considered and it was determined that the first named applicant was not eligible for school transport, as he did not meet the eligibility criteria in the Scheme. It is worth observing that nowhere in the decision of the Board is it stated explicitly that O O'N did not meet the eligibility criteria.

Decision of 20 July 2020

25. The Decision was contained in a letter of 20 July 2020 to Ms. O'N. Because of its centrality to this judgment, I quote it in full:

"Dear Ms. [O'N],

The Board has considered the submissions made in this case.

Under the terms of the School Transport Scheme for children with Educational Needs, children with special educational needs are eligible for school transport if they are attending their nearest recognised mainstream school, special class/special school or a unit, that is or can be resourced, to meet the child's special educational needs.

As [O O'N] is not attending the nearest school that is or can be resourced to meet his special educational needs, as advised by the SENO, he is not eligible for school transport.

As the terms of the scheme have been properly and appropriately applied, I regret to inform you that this appeal is not allowed.

If you, the Appellant, are dissatisfied with the determination of the Board you have the right to raise the matter with the Ombudsman for Children.

Yours sincerely,

Connie Carolan

Chairperson".

Case law on obligations to give reasons

26. There is a long, and well-established, obligation in administrative law to provide reasons for decisions. However, as recently observed by the Supreme Court in *Connelly v. An Bord Pleanala* [2018] 2 I.L.R.M. 453, there have been significant developments in recent years in the law relating to the reasons required to be given by any decision maker. That case law was synthesised and analysed in *Connolly*.

27. *Connolly* concerned a proposed wind farm development for which An Bord Pleanala granted permission. The decision was quashed in the High Court for lack of reasons. The Supreme Court upheld the High Court decision, although on much narrower grounds. In respect of obligations under national law, Clarke C.J. held that the trial judge imposed too exacting a

standard on the Board in respect of the obligation under national law to give reasons and that the reasons given were adequate to enable any interested party to know why the decision relating to the development consent went the way it did and to consider whether there was any legitimate basis for seeking to mount a challenge.

28. However, he concluded there was a failure to identify findings underpinning a conclusion that, in relation to an appropriate assessment, no reasonable scientific doubt remained as to the absence of any identified potential detrimental effects on a protected site.

29. At paragraph 5.4 he observed as follows:

> *"5.4. In my view it is of the utmost importance, however, to make clear that the requirement to give reasons is not intended to, and cannot be met by, a form of box ticking. One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons".*

30. Having identified various findings on reasons in *Mallak v. Minister for Justice* [2012] 3 I.R. 297, *EMI Records (Ireland) Limited v. Data Protection Commissioner* [2013] IESC 34, and *Oates v. Browne* [2016] IESC 7, he concluded as follows:

"6.15. Therefore, it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker. First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Closely related to this latter requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review".

31. The case of *MD v. Minister for Social Protection* [2016] IEHC 70 was heavily relied upon by the respondents, as was the decision of Hanna J. in *AM v. Minister for Social Protection* [2013] IEHC 524. Both cases referred to a refusal to award a domiciliary care allowance to an applicant in respect of the care of her child. In *AM*, Hanna J. rejected the argument that the decision lacked proper or adequate reasons, on the basis that the decision reflected the language of the governing statutory criteria for qualification for such an allowance.

32. In *MD*, Baker J. accepted that she could not distinguish the judgement of Hanna J. and in those circumstances rejected the challenge on the basis of inadequate reasons, noting that the applicant had sufficient information and reasoning available for her to make an assessment as to the issues on appeal. However, Baker J. went on to observe that the requirement that an administrative body give reasons is founded on more than the proposition that the giving of reasons is necessary to allow an applicant to make an informed decision on whether to appeal or judicially review a decision. She observed at para. 48:

"To consider that the sole or overreaching purpose of the giving of reasons is to assist in the making of a choice to appeal or review, is to ignore the place of Constitutional and natural justice in the decision making process. The particular imperative in the present case is that the decision be made after a consideration of the individual facts. This is a concrete realisation of the rule of audi alteram partem".

Baker J. went on to quote from Kelly J. in *Mulholland v. An Bord Pleanala (No. 2)* [2006] I.R. 453 on the rationale for the giving of reasons, *inter alia* to permit an applicant to:

"... (3) know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider;

(4) enable the courts to review the decision."

33. Considering the evidence that was before the deciding body, she observed there were two short reports from the medical assessors of the Department, which were in almost identical terms and followed almost exactly the formula contained in the legislation, were devoid of factual content or analysis, and expressed a view that the legislative test was not met, using the precise language of the section. Given that evidence, she concluded that the material before the deciding body did not make available a factual basis upon which the deciding officer could engage the full decision-making process and compare or weigh the factors supportive of each position. She went on to conclude that the reasons given by the deciding officer followed the language of the section and showed no analysis of the evidence and no consideration of the individual factors. Accordingly, she concluded that the decision-maker had failed to properly consider all evidence furnished by the applicant and she made a declaration to that effect.

34. The above case law clearly articulates the significant obligations on decision making bodies to give reasons and explains why that is so. I consider the implications of same for the Decision in this case below.

Discussion

35. The applicants identify two core deficiencies from the perspective of the duty to give reasons in the Decision. I deal with each in turn.

First ground of appeal: Interpretation of eligibility criteria

36. First, they say that the Decision does not address at all the question of the correct interpretation of the second bullet point of the eligibility criteria. It will be remembered from the recitation of same above that this refers to children being eligible for transport where they *"are attending the nearest recognised: mainstream school, special class/special school or a unit, that is or can be resourced, to meet their special educational needs".*

37. Counsel for the applicants asserts that the second bullet point means that, when considering whether a child is eligible for transport, the Department must consider whether they are attending the nearest appropriate school that is resourced to meet their special educational needs. In other words, the Department must first consider the individualised special educational needs of the child and then assess the extent to which the school they wish to attend is resourced to meet those needs, possibly carrying out a comparison between that school's ability and the ability of other proximate schools.

38. On the other hand, counsel for the respondents explained the eligibility criteria quite differently. First, he observed that the first and second bullet points must be read together. In other words, the reference to "*their special educational needs*" in the second bullet point refers exclusively to their needs arising from a diagnosed disability under Circular 02/05. He explains that the scheme works as follows. A child's needs are identified by way of a specific criteria set out in a departmental circular. That analysis of their needs identifies whether they can be met in a mainstream school, special class/school, or unit. The criteria identified in the second bullet point is then applied in a mechanistic fashion i.e. it is necessary to identify the nearest recognised school that meets the needs previously identified by way of the analysis carried out under the first bullet, having regard to the location of the child's home. Nothing else is required.

39. Because, for reasons I identify below, I have concluded that the reasons given in this case are inadequate, I do not need to decide upon the correct interpretation of the eligibility criteria.

40. However, the interpretation proffered by the respondent in these proceedings is a coherent one and one that a court in any future proceedings might decide is the correct interpretation. I make no finding in that regard. Equally however, it is not an interpretation immediately obvious to the reader.

41. The interpretation advanced by the applicants, on the other hand, has a certain attraction in that it focuses upon the ordinary meaning of the words "their special needs". It certainly could not be said to be an interpretation so obviously unstateable or manifestly wrong that it did not require to be entertained by the Appeals Board.

42. The above brief analysis of the parties' competing interpretations serves simply to show that the question of the correct interpretation of the eligibility criteria was a substantive (and potentially difficult) issue. It was put squarely before the Appeals Board by the applicants, as is shown by the lengthy extract I set out above from their submissions. The Board had an obligation under the Terms of Reference, including paragraph 3 of same, to determine it.

43. However, there is no trace of any attempt by the Appeals Board to grapple with, and resolve, this issue in its Decision. Counsel for the respondents makes two arguments in this respect. First, he asserts that the second last sentence of the Decision i.e. the conclusion of the Board that "*as the terms of the scheme have been properly and appropriately applied, I regret to inform you that this appeal is not allowed"* implicitly addresses the interpretation argument. That sentence, he contends, is a finding that the interpretation of the Department is the correct interpretation and that nothing further is required.

44. Second, he says that the result itself demonstrates that the Board has rejected the interpretation advanced by the applicants. As he concisely puts it, "*the answer imports the reason*".

45. In my view, even if the outcome signals a rejection of the applicants' interpretation argument (and that is not necessarily the case, as I explain below), there remains a total absence of reasons as to why the Department's interpretation was apparently preferred. It is quite impossible to understand the thinking of the Appeals Board in this respect.

46. For example, were they persuaded by the argument that the first and second bullet points had to be read together, as identified above? If that was indeed the reason for their Decision, it is not clear how they understood the reasoning of the Department in this regard. The argument made by counsel for the respondents at this hearing was not made in the submissions provided by the Department (quoted above). No other material explaining the approach of the Department in this respect appears to have been submitted to them. Similarly, the advice of the SENO, relied upon in the Decision, does not identify this approach.

47. Alternatively, it is possible that the Appeals Board did not engage with the question of interpretation at all and rather proceeded upon the basis that there was no interpretive question before them and they were simply obliged to consider whether the factual analysis carried out by the SENO was correct. That interpretation of their Decision is arguably supported by the following finding: "*As [O'ON] is not attending the nearest school that is or can be resourced to meet his special educational needs, as advised by the SENO, he is not eligible for school transport".* The reference in the fourth sentence to the terms of the scheme having been "*properly and appropriately applied"*, relied upon by counsel for respondents to support an argument that the Appeals Board did in fact determine the question of interpretation, might simply have been a reference to a correct application of the eligibility criteria rather than a vindication of the interpretation of same.

48. The very fact that the Decision requires to be puzzled over in this way demonstrates the deficit in reasoning.

49. Nor could the correct interpretation of the eligibility criteria be treated as an insignificant part of the appeal that could simply be ignored without impacting upon the integrity of the appeal process. In any contest in relation to whether the eligibility criteria have been properly applied, deciding upon the correct interpretation of same is a crucial first step in any appeal if a challenge to same exists. Moreover, the interpretation of the criteria goes beyond the facts of this individual case; any decision of the Appeals Board in this respect will have implications for all other appellants facing issues of eligibility. It is not some kind of *de minimis* point that might legitimately be ignored.

Second ground of appeal: Application of criteria

50. The decision of the Appeals Board is also unsatisfactory in a second respect. Assuming the Board correctly adopted the interpretation advanced by the Department, they failed to identify the educational placement type that meets the O O'N's needs by reference to reports carried out pursuant to the criteria in Circular 02/05 (in this case a mainstream school) and failed to identify the nearest recognised mainstream school that it considered to be resourced to meet O O'N's needs. On the face of the Decision, one cannot see whether the "*advice of the SENO*" that appears to have been followed by them is a correct application of the second bullet point of the eligibility criteria. This is because the "advice" of the SENO, i.e. the filling in of part of the form by the SENO, did not identify the relevant nearest school, the school O O'N sought to attend or the geographical distance between the nearest school and O O'N's home, and the preferred school and O O'N's home. As per the case law on reasons, it is often sufficient to refer to other identified material in a decision as a way of conveying reasons, rather than including the reasons exclusively in the decision itself. But where the SENO's conclusions are

themselves inadequately reasoned, relying upon those conclusions cannot make up a deficiency in reasons.

51. A further criticism is made in this respect by the applicants. They assert that the Board seemed to believe that their role was simply to follow the advice of the SENO. If that is the approach of the Board, it makes the appeal process entirely hollow. I do not presume that the Board interpreted their role in that fashion. However, it is impossible to conclude with certainty that this was not their approach given the lack of information provided to support their conclusion in this respect.

52. In response to the arguments on the application of the criteria, counsel for the respondents says that, as per the Decision in *AM*, the wording of the statutory scheme has been used. Because the reasons given reflect the statutory criteria, the obligation in relation to reasons has been met. In the instant case, I find that the recourse to the statutory formula did not identify either the approach of the Board to the interpretation argument or provide an explanation as to why the Board had arrived at its conclusions.

Conclusion on reasons

53. In summary, the Department have gone to some trouble establishing an Appeals Board. Its existence is notified to all through the Scheme. Terms of Reference are established. As set out in the affidavit of Mr Flynn, persons of considerable expertise and experience have been appointed to the Board. Those persons are stated to be independent of the Department and are obliged to review decisions of the Department afresh. They have an explicit duty under paragraph 27 of the Terms of Reference to set out the reasons for their decision. Those reasons must relate to each and every substantial argument raised by an appellant. No appeal body enjoys the luxury of deciding what arguments they will address and what they will ignore. All this is set at nought if the Board are free to simply announce their decisions without adequately

explaining same, so that parents or guardians unsuccessful in appeals against refusal to provide school transport cannot understand why.

54. Moreover, where an appeal board is charged with acting independently of the body who has established it, as in the instant case, the giving of adequate reasons serves to demonstrate that its duty of independence is being discharged, irrespective of the outcome of the decision. Conversely, an absence of adequate reasons will undermine the perception of independence.

55. It is also worth observing that the applicants here have placed full confidence in the appeal process, having withdrawn a previous judicial review in order to exercise their right of appeal. They are entitled to have the benefit of a full appeal process.

56. Finally, I should observe that, as identified in much of the case law, a discursive analysis such as one would find in a judgment of this court is not a pre-requisite to a finding of adequate reasons.

57. However, for the reasons set out, the Decision has not reached the necessary threshold given its failure to address (a) the interpretation issue and (b) the factual matters that justify reaching a conclusion that the Scheme has been properly applied. Accordingly, I hereby quash the Decision of 20 July 2020 for failure to give adequate reasons.

58. In the circumstances I do not propose to deal with the other matters raised by the applicants as to do so would pre-empt matters that will require to be addressed by the Appeals Board when reconsidering this matter in accordance with this judgment.

Costs

59. I propose that the costs of these proceedings should be borne by the respondents given that they have been unsuccessful, to include reserved costs to be adjudicated upon in default of agreement.

60. If either the applicants or respondents wish to argue for a different decision on costs, submissions of no more than 1,500 words should be filed within two weeks of the date of

delivery of this judgment identifying the reasons for same. If no submissions are received I will make an order in the terms proposed.