

COUNTY OFFALY VOCATIONAL EDUCATION COMMITTEE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL

This report has been prepared pursuant to Section 7(4) of the Comptroller and Auditor General (Amendment) Act, 1993.

Suspension of an Officer

Section 7 of the Vocational Education (Amendment) Act, 1944 provides for the suspension of an officer of a vocational education committee for alleged failure to perform duties satisfactorily, misconduct or unfitness for the position held. It also places an obligation on the Minister for Education to enquire into the grounds for the suspension as soon as may be convenient after the date of the suspension. The Minister may terminate a suspension under the legislation and every such suspension shall continue until so terminated.

In April 1987, County Offaly Vocational Education Committee (VEC) suspended an officer from teaching duties under the provisions of Section 7 of the Act. In February 1988 an Order of Mandamus was granted by the High Court which required the Minister to terminate the suspension and to pay the legal costs of the teacher. Later that month the teacher was again suspended by the VEC. An inquiry into the suspension of the teacher was completed and the Inspector's report submitted to the Minister for Education in November 1989. The suspension continued until December 1994 when an Order of Mandamus granted by the High Court directed the Minister to terminate the suspension, to pay the appropriate salary for the period of the suspension and to pay all legal costs. Salary for the period of the suspension was paid and the teacher was restored to the VEC payroll with effect from 1 May 1995. In April 1997 the VEC suspended the teacher for a third time.

Information was requested from the Accounting Officer of the Department of Education as to what actions were taken to bring the matter to a conclusion during the periods of suspension, the salary paid to the teacher in respect of each period of suspension and the legal costs incurred by the State as a consequence of the legal proceedings.

Department's Response

The Accounting Officer stated that uniquely in the education sector, the suspension and dismissal of VEC employees are the subject of particular statutory provisions. Essentially the Minister is required to enquire into a suspension and following this enquiry to reach conclusions as to reinstatement or dismissal or other disciplinary action. All such enquiries prior to this case were of a formal or sworn nature. The experience of the Department in relation to this type of enquiry was that it was by its nature very lengthy and tended to be stressful for witnesses (some of whom could be young students) who could be required to give evidence on oath in a court type forum.

Following the suspension of the teacher in question, the Department in 1987 sought the advice of the Chief State Solicitor as to the feasibility of proceeding by way of a more

informal unsworn route. On being informed that such an approach was legally permissible it was decided that that route should be followed in this case. While a less formal route of enquiry had much to recommend itself, with the benefit of hindsight it is apparent that the very novelty of this approach itself created difficulties relating to uncertainty as to procedure. Resolving this uncertainty created a delay which, as events unfolded, seriously undermined the Department position.

What constitutes unreasonable delay in matters of suspension and enquiry depends on the circumstances of the particular case and it was not a matter with which the Department had had any experience up to then by which to gauge its actions. This case was the first, within the experience of the Department, in which a suspended teacher applied to the courts for reinstatement on the grounds of delay in completing the enquiry process.

The combination of these factors contributed significantly to the failure to complete the enquiry into the first suspension and also contributed to the delay in acting on the findings of the enquiry into the second suspension. In turn this delay resulted in the commencement in 1992 of legal proceedings by the teacher in question. The Department was at all times legally advised and was anxious to settle these proceedings in a manner which avoided the payment of damages and which minimised the incurrence of legal costs through repeated court appearances. To achieve this outcome required protracted negotiations which culminated in a High Court Order, by consent, whereby the teacher was reinstated with the payment of arrears of salary but no damages.

Following its experience in this case the Department has revised its whole approach to the conduct of such enquiries in order to better balance the objectives of dealing sensitively with all parties, including in particular any under-age complainants, and at the same time minimising the duration of the suspension. Concrete steps in this regard include the setting up, within the Department, of a legal section and the practice of supporting Inspectors conducting enquiries with external legal advice.

The salary paid to the teacher in respect of the periods of suspension was £8,326 for the period June 1987 to February 1988 and £123,588 for the period March 1988 to April 1995.

Details of the legal costs involved in the first Judicial Review were not yet available. The legal costs of the second Judicial Review were £22,777.

A handwritten signature in black ink, appearing to be 'John Purcell', written over a horizontal line.

JOHN PURCELL
COMPTROLLER AND AUDITOR GENERAL

11 JUNE 1997