



Belfast City Council

Report to:	Development Committee
Subject:	Factotum (The Vacuum)
Date:	14 October 2009
Reporting Officer:	Director of Legal Services, Ciaran Quigley – Ext 6038
Contact Officer:	John Walsh, Principal Solicitor- Ext 6042

Purpose of the Report

To inform Members of the outcome of a legal challenge to a decision to refuse funding to an arts organisation, Factotum, in respect of the publication of a cultural newspaper known as The Vacuum.

Relevant Background Information

An arts organisation, Factotum, received funding from the Council. On 15 June 2004 it published two cultural newspapers entitled 'God' and 'Satan' which Members were of the view contained offensive and arguably blasphemous material. The publication contained foul language and lampooned identifiable church groups. As a result of this the Council determined that in respect of a second round of funding that such funding should be withheld until an apology was forthcoming and assurances given in respect of future publications. This was subsequently communicated to Factotum as a requirement to express regret for offence caused by the publications. Factotum refused to apologise and commenced proceedings for judicial review of the Council's decision. In particular it was argued that the Council's decision offended the Applicant's right to hold and manifest a religious view and right to freedom of expression. It was also argued that the Council's decision was unreasonable.

The initial judicial review was held before Mr Justice Deeny who rejected the arguments advanced on behalf of Factotum. He found that the Council had a wide discretion to determine if funding should be given in any case and whilst there was an obligation to act fairly, it was not required of Councillors that they leave their own views out of account in deciding whether to award such funds.

Factotum appealed the decision of Mr Justice Deeny. The Court of Appeal found that the decision to be made by the Council in respect of funding was one on which it was to make its own judgment. The Council was entitled to take the view that the publications were disrespectful of religion and was further entitled to take that into account in reaching a

decision on whether to grant funding. In respect of the human rights arguments it was found that whilst there was a requirement not to interfere with the Applicant's rights there was no requirement to facilitate them. Thus a decision not to provide funding did not equate to interference. As regards the alleged unreasonableness of the decision, the Court found that, whilst not everyone might have shared the same view as the Council, the decision was not unintelligible.

Key Issues

The decision reaffirms the view expressed by the Director of Legal Services that, whilst the Council has a duty to be fair in how it assesses applications for grants, there is no right for an individual or organisation to be funded to produce material that is offensive or which the Council would otherwise not wish to be associated with. The decision emphasises the extent of the relevant discretion and is important because it establishes that a refusal to provide funding for reasons such as those in this case does not equate to interference with the right of freedom of expression or the right to hold and manifest a religious view.

Resource Implications

The Council incurred costs of senior and junior counsel in respect of both sets of proceedings. As Factotum had received legal aid from the Legal Services Commission, these costs are not recoverable. (Counsel fees: £44,641.00)

The Director of Legal Services has written to the Legal Services Commission to voice concerns in relation to the award of legal aid to bring this challenge but more particularly with regard to the appeal given that the original decision in favour of the Council was robust.

Recommendations

For notation only.

Decision Tracking

Key to Abbreviations

Documents Attached

Copy Judgement