Reasonable Access
People (DPP) v. Gormley

By Hugh McDowell, Written 18th March 2014

The Supreme Court’s decision in People (DPP) v. Gormley represents a substantial change in Irish law with regard to the constitutional right of reasonable access to a solicitor while in Garda custody. Whereas previous judgments of the court had fallen short of recognising a right to legal advice prior to questioning, the unanimous decision of the five-judge court in Gormley does so and brings Irish law closer to the jurisprudence of the European Court of Human Rights and the United Kingdom.

The facts in Gormley are unremarkable. Mr. Gormley was convicted of attempted rape, contrary to s. 4 of the Criminal Law (Rape) (Amendment) Act 1990, in 2007. Mr. Gormley is alleged to have committed the offences in the early hours of the 24th April, 2005, a Sunday. He was arrested at 1.47 pm that day and arrived at the Garda station at 2.00 pm. He was informed of his rights and gave the names of two solicitors at 2.15 p.m. Efforts were then made by the Gardaí to locate either one of the two solicitors, and eventually one agreed to attend and indicated that he would be at the Garda station shortly after 4pm.

Mr. Gormley was then interviewed at 3.10 pm by the investigating Gardaí in the course of which he made a number of inculpatory statements. His solicitor eventually arrived at 4.48 pm, and following a meeting with the solicitor, a second interview took place. The inculpatory statements made during the first interview were deemed admissible by the trial judge and Mr. Gormley was found guilty.

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EXAM TIME

BL exams are ongoing, and Diploma exams will begin 12th May. Everyone from the Legal Eagle wishes all students the best of luck.

The Calcutta Run is the legal profession’s annual corporate social responsibility initiative which over the last 15 years has raised nearly €3m for the Peter McVerry Trust and GOAL. Both charities have specific programmes that are totally dependent on the Calcutta Run for fundraising. 100% of all funds raised by participants go directly to the two charities.

The event is primarily supported by solicitors, trainee solicitors and barristers and offers a great networking opportunity to interact with the legal professionals in a friendly environment at the post event BBQ which promises to be bigger and better than ever before.

This year’s event will take place on Saturday 17th May 2014 @ 11:00 am. The 5km/10km run/walk begins and finishes at the Law Society, Blackhall Place, with both distances taking participants through the Phoenix Park.

The Calcutta Run 2014 includes:

A 5km and 10km route for you to run or walk, there is a team competition known as the DX Challenge.

An after-run BBQ with lots of entertainment

An 8 week training plan designed by Double European Champion Fionnuala Britton which is available on the website. This event is a great opportunity to have fun with your colleagues, get fit, set yourself a personal challenge all while helping two worthy causes. So sign up now on the Calcutta Run website.

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Exam Time Table for Diploma Students

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** ADMINISTRATIVE LAW is scheduled from 2.00pm – 4.00pm **
In considering Mr. Gormley’s appeal against his conviction, Clarke J’s judgment (Denham CJ, Murray, McKechnie JJ all concurring) examined the evolution of the Supreme Court’s position in this area. In doing so, he referred specifically to a number of cases:

- **People (DPP) v. Healy [1990]** 2 IR 73, in which a solicitor arrived at the Garda station but was prevented from meeting the accused for a period, during which the accused made an inculpatory statement. Finlay CJ ruled that ‘in the event of the arrival of a solicitor at the Garda station in which a person is detained, an immediate right of that person to be told of the arrival and, if he requests it, immediate access’.

- **Lavery v. Member in Charge, Carrickmacross Garda Station [1999]** 2 IR 390, where it was decided that the right of reasonable access to a lawyer did not encompass a right to have a lawyer present during questioning.

- **People (DPP) v. Buck [2002]** 2 IR 268, in which the accused was interrogated before his solicitor had arrived. Keane CJ ruled that the admissibility of any statement made before the accused had had access to his solicitor falls within the discretion of the trial judge.

The issue under consideration in **Gormley** was: do the Gardaí have the right to interrogate a suspect prior to that suspect receiving legal advice, where such advice has been requested by the suspect?

In arriving at his decision, Clarke J placed particular emphasis on the cases of Salduz v. Turkey (2009) 49 ECHR 19 and Cadder v. Her Majesty’s Advocate [2010] UKSC 43.

In **Salduz**, it was determined by the European Court of Human Rights that the right to fair procedures, enshrined in Article 6, requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 (at par. 55).

The **Salduz** judgment was applied in the UK case of **Cadder** by the Supreme Court. Lord Hope’s viewed the effect of **Salduz** to be that ‘the contracting states are under a duty to organise their systems in such a way as to ensure that, unless in the particular circumstances of the case there are compelling reasons for restricting the right, a person who is detained has access to advice from a lawyer before he is subjected to police questioning’ (at par. 48).

Following a discussion of these cases, as well as subsequent cases in common law jurisdictions and the ECHR, Clarke J concluded that ‘the entitlement not to self-incriminate incorporates an entitlement to legal advice in advance of mandatory questioning of a suspect in custody. In Mr. Gormley’s case that right was clearly denied. He had requested such advice, had not withdrawn any request or otherwise waived his entitlement and yet had been questioned before he had received the necessary advice. No question could arise on the facts of his case as to whether there might be an exception where it proved impractical, through no fault of any of the prosecuting authorities, to provide the advice in question. The right to a trial in due course of law encompasses a right to early access to a lawyer after arrest and the right not to be interrogated without having had an opportunity to obtain such advice. The conviction of a person wholly or significantly on the basis of evidence obtained contrary to those constitutional entitlements represents a conviction following an unfair trial process’ (at par. 9.13).

Hardiman J wrote a concurring judgment of his own, the purpose of which appears to have been to explicitly recommend that the legislature put in place an adequate system to combat the problems which arise with regard to legal advice in custody. In particular, he observes that measures requiring Gardaí to arrest suspects early in the morning and/or at weekends only where necessary should be adopted, so as to minimize the difficulty finding a solicitor at such times. He also suggests that, as in other jurisdictions, the state should establish a panel of solicitors to be available or on-call in the event of arrests during non-business hours. It would appear that these concerns originate from a desire to ensure that the detention of suspects is not extended for the period of time it takes to locate and summons a particular solicitor, as ‘such a prospect may gravely undermine a person’s resolution to see a solicitor’.

The immediate impact of **Gormley** is that the Gardaí cannot question a suspect before a solicitor has arrived at the Garda station. This decision not only changes the law in Ireland going forward, but will also be judicable in cases and appeals currently awaiting hearing. Unless the specific point was argued at their trial or appeal, those convicted in the past will not be entitled to rely upon the judgment to have their conviction overturned.

From a broader perspective, the Supreme Court’s judgment is notable in that it does not address the issue of whether one is entitled to have a solicitor present during questioning (as this point was not raised by Mr. Gormley in the course of his appeal), and as a result the decision in **Lavery** remains the law in Ireland. While deliberately avoiding a definitive answer, the court’s judgment notes that ‘the jurisprudence of both the European Court of Human Rights and the United States Supreme Court clearly recognises that the entitlements of a suspect extend to having the relevant lawyer present’ (at par. 9.10). James McDermott BL, speaking on Today with Sean O’Rourke on the day that the **Gormley** judgment was given, speculated that such a right would be likely to be recognised if and when the question is raised before the Supreme Court.
Talk Of The Devil

Experience of 2nd Year deviling

Second year deviling delivers a shock to the system for many people and I have certainly noticed significant change from the outset of my second year down at the bar. However, I was somewhat prepared for it. I had talked to people who had recounted their own experiences to me and this was helpful. The spectrum of change varies depending on who you speak to. My own experience of second year is largely defined by my attempts to balance my interaction and workload with my second year masters and combining that with my own work when I am fortunate enough to get some.

From the outset, one of the first things that struck me was the fact that there wasn’t the same paternal relationship or connection that exists between a master and a devil in second year as would normally exist with a first year. In my first year deviling, I practiced exclusively in criminal law and was based solely in the criminal courts. Although I wanted to keep up criminal law in my second year, I was advised and felt that it would be beneficial to get experience and obtain an insight into the civil side of the law. On this basis, at around Christmas time of my first year, I decided to get two masters who were both experienced yet not inclined to having a full time devil. Importantly, I felt that both of these particular barristers would be happy to have me as a part time devil, yet would let me give my attention to my own pieces of work if they came about.

I was taken on by a criminal master who I got to know during my first year and a civil master who had been recommended to me by a colleague. At first I was unsure how I would apportion my time during the year and as a result I was preparing myself to be split between the CCJ and the Four Courts and to be going back and forth between the two. It took me awhile to get used to the freedom you are given by your masters in your second year. There is little or no “stalking” of your master, and it is very much left up to you to get in contact with them to see what their workload is like and whether they require you to fill in for them or to do any particular motions/mentions. On the basis that I had to effectively juggle between both criminal and civil work I would often try to plan it as efficiently as was possible, but as is the norm at the bar planning of any sort is almost impossible.

Before I started my second year in October I spent the last two or three weeks of September in the District Court trying to pick up a few reminders which I was fortunate to get. I found myself out in many of the district courts outside the CCJ such as Dun Laoghaire and Swords and I was eager to take on any work that was going. I found that period to be a good time of year to be available because a lot of your colleagues are away and will happily handover whatever they get to you if they hear that you are available to work.

It is a good way of getting your name passed on to criminal solicitors, and I would suggest that anyone who is serious about getting off to a good start in second year should do this.

In terms of juggling between the two masters and my own work, both my masters have been very helpful. They have facilitated me by allowing me to go about my own business, and whenever I become free I touch base with them to see whether they need assistance. I’ve been lucky to pick up a decent bit of work this year and although it has been sporadic and inconvenient at times, I feel like I am constantly learning which will hopefully stand to me in years to come. There was one week in particular, where I found myself in different courts around the country everyday and then I had to go back to the CCJ or Four courts when I have finished to check in with my master(s) and do my returns.

For me, second year is a great time to begin the transition to being your own boss, which is what inevitably awaits you when you get to third year. In second year, you don’t have to answer to anyone like you do when you are in first year, and you have a lot more freedom than you ever previously did. For example, in first year you might have gone to lunch with your master everyday or didn’t leave their side during a trial. This is not the case in second year.

Alternatively, if in second year you wish to have a full time master like you had in first year, this is also possible. However, if like the vast majority of second years you are looking for a looser arrangement and want to get a sense of what it is like to be on your own, then it is probably better to get a master who is younger or who is not as demanding as a more senior master tends to be.

Having said that, whenever you have any questions no matter how easy or difficult, you still have experienced colleagues there to assist you. I found this to be particularly useful in respect of the civil matters that I have had to deal with. On the basis that I had little or no exposure to this area of the law in my first year, it was great to have a civil master to show me the basics and lead me in the right direction.

My criminal master in second year does mainly defence work, which was in stark contrast to first year master who did all prosecution work. I also feel that your mind is more focused in second year on the things that you have seen (during first year) to be essential skills. For example, I feel that I learnt a lot this year in terms of dealing with clients in consultations, I observed the importance of this skill in first year, and used second year to hone my skills in this area, and accordingly, I have then been able to transfer this skill into my own consultations with clients in the District court.

Legal Eagle would like to thank all 1st and 2nd Year Devils who shared their experiences with us this year.
Why Choose fulltime BL

By Shane Quinn

The full-time course was the right course for me. For others, the modular course is much better suited to their needs and temperament. Financially, the modular course makes a great deal of sense and, since we do little but complain about the poverty of the Bar, it surprises me that more people do not opt for it. I think the stamina required for full-time employment and two years of weekend studying is not to be underestimated; I am not sure I could have managed it. Then again, the full-time course is not without its demands either.

King’s Inns, and the Bar itself, seem to set great store by the idea of collegiality. The tradition of dining together, always being able to ask for help, and even the respectful manner by which we address one another in court all serve to underline the fraternal character of the Bar. I think experiencing King’s Inns on the full-time course strengthens this. Daily interaction with fellow students and the Inns lecturers has certainly helped me to focus more narrowly on my education here than I would have otherwise done if I had been on the modular course.

Moreover, King’s Inns is not just a mechanical exercise in becoming qualified. I believe that the way in which the full-time course is organized (small groups, intense and packed schedule) creates an esprit de corps which is almost unique to the Inns and quite hard to replicate in the modular format.

I managed to keep a part-time job throughout the year. It is one of the things that people often wonder if they can do while at the Inns. While the full-time course is taxing (particularly on time) it is manageable and many others do it. The whole work-life-study balance is difficult whatever course one chooses, so it really is a matter of preference. Ad gustum, and all that.

Simon Mathews BL
This Issue Shane Quinn reviews ‘Parliament’

Chris Bryant’s excellent new book about the Houses of Parliament has shot up my list of “must-reads”. Styled a biography, Bryant’s work has two main objectives; to dispel certain myths about Parliament and to tell the life story of the institution through the lives of those who occupied it. It achieves these two aims effortlessly and with a great deal of wit and wisdom throughout.

Ever heard that the red lines that run along the front benches in the Commons are two sword lengths apart? A load of bunkum, it would seem. Bryant describes in his introduction that the Victorians created a great deal of mythology and “tradition” which, though swallowed whole these days, are inventions through and through.

Ireland features prominently in the book, often for the wrong reasons. In 1893, for example, a Commons debate on Home Rule descended into an outright brawl between Unionists and Nationalists, punches being thrown and one MP being bundled under the bench. The Irish Parliament, however, is noted as having the first known Act of Parliament in 1216, handsomely ahead of England’s in 1229.

It is in this way that the legal interest makes itself felt. The book, one of two volumes, takes the reader through Parliament’s long and twisted passage from the days of Simon de Montfort up to the dissolution of the Irish Parliament and the Act of Union. On this fascinating journey, one can see how much chance played in the establishment of so many legal principles which we take for granted today.

The Habeus Corpus Act of 1679 only got through the House of Lords by two votes after the teller for the Ayes counted one fat peer for ten votes.

Conversely, the fusion of the Executive and the Legislature, followed here and abhorred in the United States, was very nearly abolished in the Hanoverian era. The Place Bill of 1713, which would have removed all government ministers from Parliament, fell because the vote at Third Reading in the Lords was tied.

Bryant’s greatest triumph is in taking 400 years of Parliamentary history and, without neglecting the complexity of that history or assuming too much of the reader, he condenses it into a book of 400 pages. The story from 1800 up until the Thatcher era is the subject of the second volume. While the chapter on Ireland is comprehensive, the impact on Irish radicalism of the French and American revolutions could have been given greater consideration. Unfortunately, the Regency Crisis receives no mention at all.

The book is an unflagging joy from cover to cover and is a fantastic analysis of the kaleidoscopic history of both Parliament and the British Isles. It is with the greatest anticipation that I await the next volume which will have to include some of the finest Parliamentarians of the nineteenth and twentieth centuries; from Disraeli to Powell, from Gladstone to Benn.
A Beginners Guide to Latin

Audi alteram partem:

German manufacturer Audi revolutionised the car industry in the 1970s with the introduction of the first mass market four-wheel drive saloon, the Quattro. This move proved controversial as many road users were suspicious of four wheel drive, and Audi were forced to change their system which allowed for the car to be changed back to two-wheel drive at the flick of a switch. In order to do this, Audi had to alter a part in their system - “Audi alteram partem” - from which the maxim developed that you must listen to the complaints of its customers, ie. both sides in any argument must be heard.

Inter alia

The local soccer team of Alia, a small town on the outskirts of Milan, were bought over by a group of wealthy Russian industrialists. Jealous of the success of that city’s most famous team, Inter Milan, the owners sought to change the name of their team from Alia to “Inter Alia.” The famous Milan club petitioned the court with a long list of objections to the name Inter Alia in the summer of 1976 but, in the middle of a heatwave, and with the courthouse to be used that evening for the launch of a vintage Tuscan wine, the judges were in a hurry to decide the case. The first pleading - “The name Inter Alia will cause confusion in the minds of reasonable people” was accepted as sufficient grounds for appeal, though there were many other grounds that could also have been heard. That pleading has since become authority for a situation in which other matters are not mentioned;

with Inter Alia, albeit inaccurately, having become shorthand for the expression “amongst other things”.

Estoppel

A rare and much-sought after type of Jewish bread, stocked exclusively by the Bretzel bakery off Dublin’s South Richmond Street, word quickly spread about its famed qualities of freshness and malleability (see below). A queue would regularly form outside the bakery at 4am each night, and unruliness would often break out amongst disgruntled, would-be customers.

Lacuna

Another car-based maxim. When launched in 1988, the Renault Lacuna was a mid-size family car, with the unusual features for its size of being a hatchback. Aimed primarily at the business user, it took on the more conventional “three box” shaped mid-size saloons, and offered sales reps the added benefit of a hatchback with fold down seats, giving them greater flexibility in the amount of product they could carry. The French firm were congratulated for this innovation, which involved spotting a gap in the market, and henceforth the term “lacuna” has become synonymous with a gap in the law which has been filled by an innovative judgment or piece of legislation.

Locus standii

When a wheat-farmer’s crop was destroyed by a plague of locusts in Alberta, Canada in 1907, his insurance company refused to compensate him, pointing to the fact that a locust plague was specifically mentioned as something which would absolve the insurers of liability. A novel defence was presented, however, which suggested that the locusts in question were not those excluded by the small print, and were instead a rare type of two-legged insect, which were able to stand and walk upright, and which had deliberately been bred by a neighbouring farmer to put his rival out of business. While this defence was immediately dismissed, and indeed was ridiculed by the court, the imaginative pleading passed into folklore,

Many fledgling students of law will have noted the preponderance of Latin terminology in circulation, and this can be intimidating for those without a classical education - ie. those who didn’t go to Clongowes.

Exclusively to the Legal Eagle Christopher Birmingham provides a crash course in the must-know maxims and expressions of Irish Legal practice

For the TORT Law Student

‘quaeso esto meus vicinus!’

Please won’t you be my neighbour

PRO BONO NO BONO

The local residents of Portobello, many of them of the legal fraternity, sought to bring a claim for nuisance against the Bretzel, who in turn denied stocking the bread, and refused to accept any liability. With the plaintiffs having secured sworn affidavits from customers who had purchased the Estoppel, however, the bakery were forced to admit liability. The word ‘estoppel’ henceforth became known as the principle for being unable to deny a truth which has been verified by law.

The Morgan Principle

Though not strictly speaking derived from Latin, it has its origins in Latin America and hence merits inclusion. Captain Morgan rum was for years the favourite drink in its native Caribbean islands, and such was its popularity that many cheap imitations were produced. Many a dispute would occur in Bajan bars when a customer ordered a Captain Morgan, but believed himself to be getting a cut-price imitation, so a rule of law developed whereby a customer was allowed to challenge whether the rum was authentic, and if he reasonably believed it to be so, he could obtain a refund. The more unreasonable his belief, however, the less likely it was that the bar owner would have to compensate him. While it is still referred to in the Caribbean by its full name, the Captain Morgan principle, for the sake of brevity this became known in Europe as the “Morgan Principle.”
Gay Marriage, are you opposed?

By David Campbell

The current government has given a commitment to hold a referendum on the issue of same-sex marriage in 2015. This is an issue of tremendous importance for us as a society and the early indications are that it will be an intense debate between two opposing sides. The first forays of this battle have been fought through the vehicle of legal opinion during the recent ‘Pantigate’ affair with RTÉ. The controversy revolved around a guest on one of the broadcaster’s talk shows describing certain individuals who advocate against same-sex marriage as being homophobes. The subjects of these comments claimed that they had been defamed. As all diligent Kings Inns students can no doubt rhyme off in their sleep (and over the coming weeks Diploma 1 students probably will) a defamatory statement is one which “tends to injure a person’s reputation in the eyes of reasonable members of society”. Therefore calling somebody a homophobe prima facie falls within the ambit of this definition. However, it appears from subsequent public comments made by Rory O’Neill that should the issue be litigated he might rely upon the defences of truth or honest opinion. Either of these defences would require an examination of what homophobia is.

A difficulty arises in that there are competing definitions of the word homophobia. There are those who insist that by virtue of the suffix phobia the definition should involve an irrational fear or hatred and be classed within the group containing other phobias such as arachnophobia or agoraphobia. This approach reduces the term to a psychological disorder and has the effect of medicalising it.

Adopting this classification of homophobia, which, given it is the one of ordinary and everyday usage and therefore likely to be accepted by “reasonable members of society” the next question must be: is opposing the marriage of homosexuals based upon their sexuality discriminatory? In terms of definitions, this moves us from the frying pan into the fire as we must consider, what is marriage?

While it is beyond the scope of a short article such as this to fully thrash out all the arguments against gay marriage it is appropriate to hone in on the most prevalent reason for opposition; children. Those who oppose gay marriage frequently rely upon a conception of marriage which sees its prime purpose as the creation of children. Opposition to two people marrying on this ground is a less than watertight position and taken to its logical conclusion should see the law banning infertile people or people over a certain age group from marrying. Stated in these terms it’s fallacious basis is clearly exposed. However, what about adoption? If gay marriage also simultaneously allows for the adoption of children by gay couples then there would be an understandable and acceptable conflation of these two distinct concepts however the current government has stated its intention to legislate on the issue of adoption prior to and separately from any referendum thereby decoupling these two issues. In any event it would be deeply inconsistent not to allow gay couples to adopt considering our current approach to fostering. There are a large number of children in this country that require, for whatever reason, a foster home. These are often the most vulnerable children in our society and therefore require the most special care. The law allows for gay couples to foster children and indeed the HSE actively encourages and seeks them out for this role. Surely there would be something peculiar about a situation that allows and encourages gay couples to look after, care for and nurture the most vulnerable of our children and yet preclude them from adoption based on concerns over their fitness to parent.

When concerns over gay couples adopting children are either divorced from the issue of gay marriage or negated through an analysis of our current approach to placing children with gay couples one must then seek a concept of marriage which is not conflated with the notions of children or parenting. It seems to me that something along the lines of: “two people, who are not otherwise barred from marriage, entering into a loving union of fidelity, support, comfort and care for each other” adequately serves as a useful description.

According to the standards arrived at through the above analysis the question premised in the title of this article could alternatively be written as “Are you acting in a discriminatory manner if you oppose two people who happen to be gay from entering into a loving union of fidelity, support, comfort and care for each other, by virtue of their sexuality?” In an answer fit for a Kings Inns student, I submit... it depends, but arguably, yes.
inBRIEF

Casenote: Zatreanu & Ors. v. Dublin City Council [2013] IEHC 556

By Sinead Travers

On 4 December 2013, Hedigan J gave judgment in the High Court decision of Zatreanu & Ors v Dublin City Council. In this case, MLRC on behalf of its client, Mr Zatreanu, had sought judicial review of Dublin City Council’s decision not to grant Mr Zatreanu’s application for a priority transfer to other Dublin City Council accommodation. Mr Zatreanu had applied for the transfer because he and his family were suffering severe harassment in the area. The Council had refused the application on the basis that the incidents were a matter for the Gardai. The High Court quashed the Council’s decision.

In reaching its decision, the High Court considered the Council’s housing allocations scheme and the reasons given by the Council for refusing the priority transfer. The Court held it was “clear” that incidents of harassment and intimidation were matters for the Council to consider in assessing priority transfer applications. The High Court found, as a result, that the Council had applied an incorrect test in deciding on the application. The Court quashed the Council’s decision and referred the application back to the Council for reconsideration.

Openness and fairness—Reasons given for decision must enable recipient to understand the basis of the decision and decision must be within scope

The High Court decision is important in affirming that: A person affected by an administrative decision has, in general, a right to know the reasons on which the decision is based; and the underlying rule is that the decision making process must be fair, open and transparent.

The basis for applying for the transfer

Mr Zatreanu had applied to Dublin City Council for a transfer as he and his family had been subjected to physical attacks, harassment and intimidation by certain local residents in and around his family’s home. He had applied to be given a priority transfer under the Dublin City Council Allocations Scheme on the basis that there were “exceptional social grounds” for doing so. The Council refused the application.

The Housing Act 1966, as amended, places a duty on housing authorities such as Dublin City Council to assess the need for the provision of housing for those in need of it and to determine the priority to be accorded when allocating housing which it owns. The Housing (Miscellaneous Provisions) Act 2009 allows the Council to disregard the normal priority where there are exceptional circumstances, including exceptional compassionate grounds.

Dublin City Council’s Allocations Scheme provides that priority status for housing or for a transfer may be given on “exceptional social grounds”. The Scheme sets out how investigations are to be carried out where a person alleges that they are being subjected to harassment and intimidation.

Dublin City Council’s reasons for refusing the priority transfer

Dublin City Council refused Mr. Zatreanu’s transfer application. The Council did not give reasons to Mr Zatreanu for this decision. MLRC made submissions to the Council requesting the reasons for the decision. In response to MLRC’s submissions, the Council gave as the reason for the refusal: “It is a matter for the Gardai to deal with incidents of law and order and, in general, such incidents are not within the scope of the Exceptional Social Grounds Scheme.”

Judgment – Dublin City Council’s decision quashed – Reasons given showed Council adopted incorrect test in assessing the application

Hedigan J held that the Council had not applied the correct test in deciding on the application. The Court noted that harassment and intimidation were clearly matters which came within the Council’s Allocations Scheme. Hedigan J said, “Such incidents [of harassment and intimidation] will almost always involve breaches of the law which the gardai might well deal with. The mere fact that the gardai might be involved does not mean that there has not been harassment and intimidation.” The Court held that the Council, “in adopting this view of the scope of the scheme [to exclude harassment and intimidation], the [Council] had applied a test that was too narrow.”

The High Court quashed the decision and referred Mr Zatreanu’s application back to the Council for reconsideration.

In this case, the Council had made its decision based on an incorrect test. That this had happened was clear from the reasons given by the Council for the decision. The High Court decision is a very welcome one for MLRC’s client, Mr Zatreanu, who for several years has been, with his family, suffering severe harassment around his home. It is also a very welcome decision in affirming the requirement that the administrative decision making process must be fair, open and transparent and that the recipient of such a decision must be able to assess from the decision whether it was fair or not.

Síobhán Phelan BL and Feichín McDonagh SC successfully represented pro bono