UNAPPROVED

THE COURT OF APPEAL

Appeal Number: 2022/158

High Court Record Number: 2019/1157 P

BETWEEN/ **Neutral Citation Number [2023] IECA 115**

Faherty J.
Pilkington J.
Butler J.

DEBRA JAMES

PLAINTIFF/APPELLANT

-AND-

JAMES WATTERS AND DEREK SHORTALL

DEFENDANTS/RESPONDENTS

JUDGMENT of Ms. Justice Butler delivered on the 10th day of May, 2023

Introduction

1. This judgment concerns an appeal against an *ex tempore* decision of the High Court (Owens J., 19 May 2022) striking out the appellant's proceedings against the respondent, who is the second defendant in those proceedings. The application to strike out was brought pursuant to the inherent jurisdiction of the court to dismiss proceedings which are bound to fail and/or which constitute an abuse of process. More specifically, the respondent's application contends that there is no credible basis for suggesting that the appellant will be

able to establish the factual inferences upon which she relies were the matter to proceed to trial – a basis for striking out proceedings under the court's inherent jurisdiction recognised by the Supreme Court (Clarke J.) in *Lopes v. Minister for Justice* [2014] 2 IR 301. The respondent contends that whilst the facts as pleaded by the appellant might, if true, give rise to a cause of action, there is no credible basis for suggesting the facts are as asserted by her. The argument made to and accepted by the High Court was that the appellant's Statement of Claim is based on inferences which the actions and documents relied on by her are incapable of supporting. As counsel for the respondent put it, the appellant's case does not survive a comparison with a contemporaneous record.

2. By way of brief background, the first defendant is a solicitor and the second defendant (i.e., the respondent) is a barrister whom the appellant engaged in May 2018 in respect of an issue regarding her entitlement to a contributory old age pension and with a view to bringing judicial review proceedings. She paid certain sums (in excess of €4,000) in respect of fees on account of which some €500 plus VAT was paid to the respondent for his attendance at a consultation and his preliminary advices. The respondent advised the appellant that before bringing any judicial review proceedings she would need to exhaust her remedies within the social welfare system. The matter then remained largely in abeyance over the next few months whilst social welfare appeal and internal review processes were exhausted.

3. The appellant then became convinced that her initial view as to the legal merits of her case was incorrect and that she had been deliberately misled by the defendants who failed to correct her mistaken understanding of the law. She asserts that they did this so that they could continue to extract fees from her by encouraging her to take judicial review proceedings which would be doomed to failure. No judicial review proceedings were ever instituted on her behalf. Relations between the parties broke down by November 2018 and following consultation with the Professional Practices Committee of the Bar Council, the

respondent wrote to the first defendant on 7 December 2018 formally withdrawing from the case.

4. Although many of the pleas made by the appellant against the respondent in her Statement of Claim are in the form of pleas of negligence and breach of duty of care, the appellant was adamant both in the High Court and on appeal that her case is one in deceit and conspiracy only. In essence, she contends that the respondent conspired with the first defendant to defraud her by deceiving her to believe that she had a legally meritorious claim when the pursuit of that claim could never benefit her but would be financially profitable for the defendants (by which I mean both the first defendant and the respondent). She contends that as the defendants were in a fiduciary relationship with her, they were legally obliged to correct her mistaken view of the law but failed to do so. She invokes s.6(1) and (2) of the Criminal Justice (Theft and Fraud Offences) Act 2001. Subtending all of these pleas is the assertion, firstly, that the claim she originally wished to bring was in fact legally groundless and, secondly, that the respondent knew but deliberately did not advise her that this was so.

5. For reasons which are outlined in more detail below, I agree that the appellant's proceedings as against the respondent are an abuse of process and should be dismissed. In order to explain why I have reached that conclusion, I propose to set out the jurisprudential basis under which applications of this nature fall to be considered; to set out in some detail the history of the parties' relationship; to look at the legal claim made by the appellant in her proceedings particularly as against the respondent and then to examine the record of the interactions between the parties to see if there is any credible basis for believing that the appellant might be able to establish the factual inferences which ground her claim. Finally, I should note at the outset that this application has been brought on behalf of the respondent (the second defendant) only and that the outcome of this appeal does not in itself affect the continued existence of the appellant's proceedings against the first defendant.

Jurisprudential Basis for Striking out Proceedings

6. It is well established that, in addition to the jurisdiction to strike out pleadings which do not disclose a reasonable cause of action, or which are otherwise frivolous or vexatious under O. 19, r.28, the courts possess an inherent jurisdiction to strike out proceedings which are bound to fail and which amount to an abuse of process (see *Barry v. Buckley* [1981] IR 306). There is now a well-established jurisprudence in respect of the exercise of this jurisdiction and on the distinction between this jurisdiction and that arising under O.19, r.28. Although applications of this type are frequently brought in the alternative, the respondent in this case has relied exclusively on the court's inherent jurisdiction and more specifically has invoked that jurisdiction on the basis recognised in *Lopes*.

7. The overriding feature of the jurisdiction to strike out proceedings, whether under the rules or pursuant to the inherent jurisdiction of the court, is that it should be exercised sparingly and only in clear cut cases (*per* McCarthy J. in *Sun Fat Chan v. Osseous Ltd.* [1992] 1 IR 425). In exercising a jurisdiction to strike out proceedings, the court is attempting to achieve a balance between a plaintiff's undoubted right of access to the courts recognised under the Constitution and under the European Convention on Human Rights and the injustice caused to a defendant in being required to defend proceedings which constitute an abuse of the court's processes (*per* Murray J. in *Jodifern Ltd. v. Fitzgerald* [2000] 3 IR 321). As the default position is that proceedings should be permitted to proceed, the onus of proof always lies on the moving party, in this case the respondent.

8. The jurisdiction under O.19, r.28 is only exercisable where, on their face, the pleadings which it is sought to strike out do not disclose a reasonable cause of action or are otherwise frivolous or vexatious. The court must take the pleaded case at its height; it does not enter into an examination of the merits of the claim and it must assume that the facts as asserted

in the pleadings in question are capable of being proved by the party relying on them. In this instance, the respondent, quite rightly, has not invoked O.19, r.28 because the cause of action pleaded by the appellant is one known to law and, if the inferences upon which the appellant relies were accepted, the cause of action is capable of arising on the facts as pleaded. I will return to the distinctive feature of this case which is that the appellant's case is based on inferences to be drawn from the pleaded facts. At this stage it is sufficient to observe that if a solicitor and barrister were to deliberately mislead a client for the purposes of encouraging them to take proceedings which had no prospect of success in order to be paid for their legal services in connection with those proceedings, that could in law amount to a conspiracy to deceive the client.

9. The inherent jurisdiction of the court is somewhat broader in that the court is not strictly confined to the case as pleaded and can consider evidence on affidavit in relation to the issues in the case. However, that consideration should not veer into an attempt to resolve disputed issues of fact or law so as to provide the moving party with the benefit of summary disposal of matters which require *"the type of careful analysis which can only be carried out safely at a full trial"* (*per* Clarke J. in *Moylist Construction Ltd. v. Doheny* [2016] 2 IR 283.

10. The appellant relies on many of the overarching principles which are set out in cases such as *Moylist* and *Jodifern*. Indeed, the respondent, quite correctly does not dispute either the correctness or the relevance of such principles. What is in issue is the extent to which the respondent must lead evidence to support the proposition that the appellant's proceedings constitute an abuse of process. The appellant relies on a statement by Barron J. in *Jodifern* to effect that the question of whether it was proper for her to institute the proceedings must be answered in light of the Statement of Claim and such incontrovertible evidence as the defendant (i.e., here the respondent) may adduce. She asserts that this means that there is an obligation on the respondent to provide objectively verifiable evidence that he acted honestly

and he has failed to do so. She also contends that he failed to provide evidence that the allegations in the Statement of Claim could not be proved at trial.

11. I am far from convinced that the appellant's argument on this important issue is correct. To start with, earlier in the same judgment Barron J. stated:

> *"Every case depends upon its own facts. For this reason, the nature of the evidence which should be considered upon the hearing of an application to strike out a claim is not really capable of definition."*

In this case the issue is quite discrete and concerns whether the defendants were engaged in a conspiracy to deceive the appellant. In order to plead the existence of such a conspiracy, the appellant points to a number of factual matters and invites the court to draw inferences from those facts to the effect that the defendants, including the respondent, were acting dishonestly. It is, I think, legitimate for the respondent to move this motion on the basis of asking the court to examine the facts as pleaded by the appellant, both in themselves and in light of the existing documentary evidence (much of which is exhibited by the respondent), and to consider whether the inferences contended for can be drawn from those facts. If the inferences are capable of being drawn from the facts relied on viewed in this manner, the court should not attempt to decide whether they will actually be drawn. Instead, the case should proceed to trial and all of the evidence should be adduced and tested in the normal way. On the other hand, if the inferences cannot be drawn then there is no basis for the appellant's claim and her proceedings should not be permitted to proceed.

12. Secondly, the respondent has in fact adduced evidence that he acted honestly. In his affidavit grounding the motion, he expressly and trenchantly denies the allegations of deceit, conspiracy and negligence stating not just that they are groundless *"but lack any plausible basis"*. He has also exhibited contemporaneous documentary material which he relies on to show that the appellant's claim is contrary to the objectively verifiable facts.

13. Thirdly, and more importantly, the issue in this case does not involve disputed facts, rather it involves the inferences to be drawn from the basic facts on which the parties are substantially agreed. The respondent relied on *Lopes v. Minister for Justice*, a Supreme Court decision subsequent to *Jodifern,* in which Clarke J. teases out the extent to which and the manner in which a court, in the exercise of its inherent jurisdiction, can examine whether there is any credible evidential basis for suggesting that the facts are as asserted by the plaintiff. In the absence of there being a credible basis for suggesting that it may be possible for the appellant at trial to establish that the inferences on which she relies are ones which a court might draw, then the claim is bound to fail and should be dismissed *in limine*.

14. As *Lopes* is essential to the respondent's application it is appropriate to set out the key passages which are relied on in full:

> *"17. The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v. Buckley [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the court to prevent abuse can be invoked.*
>
> *…*

19. …In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in Sun Fat Chan v. Osseous Ltd. [1992] I.R. 425, at p. 428, that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance.

20. At the same time, it is clear that certain types of cases are more amenable to an assessment of the facts at an early stage than others. Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss. In that context, it is important to keep in mind the distinction, which I sought to analyse in Salthill Properties Ltd. v. Royal Bank of Scotland plc [2009] IEHC 207 between cases which are dependent in themselves on documents and cases where documents may form an important part of the evidence but where there is likely to be significant and potentially influential other evidence as well.

…

23. On the other hand, so far as the inherent jurisdiction of the court to protect against abuse of process is concerned, the court can at least consider whether there is a credible basis for suggesting that Mr. Lopes might be able to establish the facts which he asserts. If there is no such basis, then these proceedings are bound to fail and their maintenance must, therefore, be an abuse of process, such that the proceedings ought now be dismissed."

15. This is not a case in which the known facts might be materially altered by documents yet to be discovered. The appellant appears to be in possession of the relevant documents from her file including those reflecting exchanges between the defendants to which she was not a party, perhaps because there has already been extensive litigation in connection with this matter (see, *inter alia*, the decisions of O'Connor J. [2020] IEHC 688 and Haughton J. [2021] IECA 327). Large tranches of the first defendant's file are exhibited by the appellant and indeed issues have been raised by her as to the completeness of the first defendant's consultation notes (a matter for which the respondent, of course, has no responsibility).

16. Thus, the issue on this appeal is whether on the basis of the agreed facts those documents are capable of supporting the inferences on which the appellant relies. If they are then the case must proceed and the allegations, no matter how weak they may appear to be, can only be determined after a full trial. On the other hand, if they are not so capable then the proceedings constitute an abuse of process and it would be an injustice to the respondent to allow them to proceed and to require him to defend them.

17. Despite it being clear from the submissions made by counsel for the respondent in the High Court that *Lopes* was the main authority on which he was relying, it is notable that nowhere does the appellant engage with that authority. Her Notice of Appeal is in the form of a lengthy quasi-legal submission with extensive quotations from U.K., Irish and European jurisprudence; from text-books and legal articles as well as from the High Court transcript but no mention is made of *Lopes*. It is similarly and strikingly absent from her written legal submissions and from the prepared speaking notes which were handed into court for both her opening submission and her reply at the hearing of this appeal.

18. This failure to engage with the central issue raised in the application against her is, unfortunately, typical of the approach adopted by many litigants-in-person towards their litigation. The appellant remains convinced of the correctness of her central allegation. It

would seem that this conviction has overshadowed her perspective on the actual application which was brought against her. Consequently, she has singularly failed to address the issue before the court which was whether there was any reasonable evidential basis for suggesting that at trial it might be possible for her to establish the inferences upon which she relies. She did not have to establish that the trial court would accept those inferences merely that there was a credible basis for suggesting that it might. Notwithstanding the appellant's failure to engage with this issue, as the jurisdiction invoked by the respondent is one which should only be exercised sparingly, there remains an obligation on the court to ensure that if there is a credible basis for suggesting that the appellant might potentially be able to establish her case, that she should be allowed to proceed to trial.

19. To conclude this overview of the case law, much of the appellant's written material and her oral submissions were dedicated to a number of issues that were not disputed in principle by the respondent although, of course, he did not concede the breach of any of these principles to him were the matter to proceed to trial. These included the proposition that legal representatives stand in a fiduciary duty to their client; that the tort of deceit could be committed in circumstances where legal representatives failed to correct a client's mistaken impression of the law and that a person who does not personally benefit may still be liable in deceit in respect of a fraudulent misrepresentation or a knowingly false statement which benefits another person. Whilst undisputed, none of this is directly relevant to the issue the court must decide. The respondent does not contend that the Statement of Claim on its face, does not disclose a legally stateable cause of action. The issue is the narrower one of whether the actions of the parties and the contemporaneous record are capable of supporting the inferences the appellant seeks to draw from the undisputed facts in order to establish that cause of action.

20. Finally, the appellant also devoted a considerable amount of her submission to attempting to establish that the underlying legal argument which would have been raised in the proposed judicial review was incorrect and consequently that the proceedings were doomed to fail. That issue concerns whether the provisions of the Social Welfare Consolidation Act 2005 setting the eligibility criteria for a contributory old age pension are contrary to European law by virtue of excluding contributions credited in another Member State when those contributions could be relied on by the claimant to establish an entitlement to an equivalent pension in the other Member State. That in turn depends on the extent to which the underlying European legal instruments, properly interpreted, allow the State to exercise its discretion in the manner in which it did in setting those criteria. As the judicial review proceedings were never instituted, that issue has yet to be determined by a court and may conceivably arise in another case. It would be entirely inappropriate for this court to express any view on a legal issue which is not properly before it and I note that the High Court judge did not express any view on the matter either.

21. The parameters of the legal issue have been outlined in order to place the appellant's allegations in context. However, it is important to note that even if this case were to proceed to trial, the court would still not be concerned with whether the underlying point was correct or not. Instead, the court would have to be satisfied that there was absolutely no legal basis on which this point could legitimately be advanced in proceedings in order to be able to draw an inference that in taking the appellant's case the defendants were acting dishonestly. *"Dishonestly"* in this sense means either knowing that the case was based on a false legal premise or being reckless or careless as to the soundness of the legal premise. A case may have a limited prospect of success but nonetheless be properly brought. This distinction – which is not particularly subtle - seems to be entirely lost on the appellant. Separate issues might arise as to whether a client has been properly advised as to the risks inherent in any

proposed litigation before that litigation is commenced and the risks undertaken. Those issues do not arise in this case because no litigation was ever commenced on the appellant's behalf.

Factual background

22. Although the period of their engagement was relatively brief, the history of interactions between the parties is fairly complex. At the material time in 2018 the appellant was 67 years of age. She had lived for an extended period in the United Kingdom before moving to Ireland where, as a mature student, she obtained a graduate qualification and then worked in that field. For most of her time in the United Kingdom she did not work outside the home and received a social welfare payment. Under UK social welfare law, those payments were credited for social welfare purposes thus entitling her to a UK pension. However, when the appellant applied for an Irish contributory old age pension her application was refused on the basis that she did not meet the qualifying criteria. Contributions based on her periods of employment in Ireland and other EU countries were insufficient to reach the qualifying threshold and her credited contributions in the United Kingdom were not taken into account. Believing this to be a breach of the EU law principle of aggregation under which social welfare contributions in one Member State should be taken into account when calculating entitlements in another, the appellant approached the first defendant with a view to litigation.

23. The appellant attended the first defendant's office on 25 May 2018 where she met with a number of the first defendant's staff to whom she outlined her concerns. (Reference in this judgment to the first defendant includes those members of the first defendant's staff with whom the appellant dealt.) The appellant specifically wanted the first defendant to engage the respondent as she was familiar with the respondent's Ph.D thesis on *"Social Welfare*

Rights of EU Citizens in Ireland – Ireland's non-compliance with EU Law". During that attendance and in the presence of the appellant, the first defendant rang the respondent and according to the appellant (although she acknowledges that she was unable to hear the respondent's end of the conversation) the respondent agreed *"to provide…his opinion in the matter of the appeal"*. The appellant paid the first defendant an initial fee of €150 and a further sum of €1,000 plus VAT on account for *"his further services"* and for the respondent's *"opinion"*.

24. At this point the appellant had an extant social welfare appeal which she was anxious to discontinue in favour of taking judicial review proceedings. She provided the first defendant with her instructions to this effect in the form of a letter, also dated 25 May 2018. That letter set out her then-view of the social welfare position which included reference to EU Regulation 883/2004 on the Co-ordination of Social Security Systems and Decision No. H6 of the Administrative Commission for the Co-ordination of Social Security Systems. The letter concluded by indicating that the appellant felt compelled to withdraw her social welfare appeal and to seek leave to institute judicial review proceedings for which she wished the first defendant to brief the respondent. She indicated that she was *"in a position to pay [the respondent's] fee immediately"* and that she understood, incorrectly as it happens, that she would not be able to recover the costs of a judicial review.

25. Rather unhelpfully, the appellant insisted on referring to this letter as a *"letter of offer"* which formed the basis of the contractual arrangement between herself and the defendants. She then proceeded to characterise the subsequent actions of the defendants as amounting to no more than acting on foot of her instructions as set out in that letter – i.e., that the parties had contracted on those terms. Apart altogether from the inappropriateness of assuming that legal professionals act blindly on the initial instructions of a client without offering the client

any advice as to whether those instructions represent an appropriate course of action, in this case the defendants manifestly did not take the actions proposed by the appellant in her letter.

26. Instead, in an e-mail dated 12 June 2018 sent to the first defendant after he had received formal instructions and papers in the matter (on 7 June 2018), the respondent expressly advised that it was not appropriate to issue judicial review proceedings at that stage and that instead *"the appeal should be processed and concluded"*. He also advised seeking a revision of the Deciding Officer's decision directly from the Deciding Officer (a separate step to the appeal of that decision) and looking for the appellant's social welfare records from the U.K. authorities. The respondent's fee for a judicial review was not paid *"immediately"* or indeed at all. Of the €1,000 paid to the first defendant on account, the respondent was paid the sum of €500 plus VAT in respect of his attendance at a consultation and his preliminary advices.

27. That consultation took place on 14 June 2018. In a letter to the first defendant dated 5 November 2018 the appellant acknowledged that the respondent advised her at the consultation that she could not proceed with a judicial review until a decision on her social welfare appeal had been received. The appellant claims that the respondent advised her to pursue a judicial review in the event that her social welfare appeal was disallowed. She also pleads that he indicated that the Appeals Officer was unlikely to find in her favour but that she would get *"just satisfaction"* in the High Court and that the case might go to Europe. The appellant contends that a page of the first defendant's notes from this consultation is missing, possibly destroyed, but she does not contend that that missing page contained anything contrary to the account of the consultation pleaded at para. 10 of her Statement of Claim. This account is consistent with the available notes.

28. During the consultation the appellant raised the fact that she had an extant medical negligence case on which the respondent offered to provide an opinion. Whilst details of the medical negligence proceedings (which had previously been issued by the appellant on

her own behalf) are not set out in these proceedings and consequently are not addressed in detail by the respondent in his grounding affidavit, it is apparent from the exhibited material that they arise because the appellant believes she was prescribed incorrect medication which caused her to suffer, *inter alia*, from cognitive impairment. This is relevant to the current application because the appellant asserts that she was confused when she met with the defendants but that when she stopped taking the medication in question her cognitive condition improved. She claims she then realised both that she had been mistaken in her belief in the strength of her intended judicial review and that the defendants had taken advantage of her confusion and, in effect, duped her into pursuing hopeless proceedings. No medical evidence is offered by the plaintiff to support this account of events. However, the court must take the plaintiff's case at its height and thus, must accept that she was operating under some sort of impairment in the summer of 2018 but not at a later stage.

29. After the consultation matters proceeded slowly. On the respondent's advice, the first defendant wrote to the Social Welfare Appeals Office seeking an oral hearing of the appellant's appeal which was not granted. On 16 June 2018 the appellant provided the first defendant with a file in respect of her claim for a contributory old age pension which had been provided to her by the Department of Social Protection pursuant to a data access request. At no stage was the respondent provided with the equivalent U.K. file in respect of the appellant's contribution records which had been requested by him on 12 June 2018.

30. On 28 June 2018 the appellant attended the first defendant's offices and personally delivered a file containing a summary of the medical negligence case which was subsequently passed on to the respondent. This material is not exhibited and I am unaware of how complete that file was. On the same date the appellant made two further payments on account to the first defendant. These were an additional €1,000 plus VAT on account in

respect of the social welfare matter and €1,500 plus VAT in respect of the medical negligence matter.

31. The social welfare appeal remained outstanding. On the advice of the respondent, the first defendant wrote to the Social Welfare Appeals Office on 19 September 2018 threatening legal proceedings unless the appeal were expedited, and a decision made. The appellant relies on this letter as further evidence of the inevitability of judicial review but in fact the threat of legal action was materially different in that it concerned the possibility of *mandamus* to compel the making of a decision rather than *certiorari* of any decision made. Approximately a month later the Appeals Officer made a decision refusing the appeal on 15 October 2018.

32. Once it had been received, the appeal decision was circulated by the first defendant to the appellant and to the respondent under cover of a letter dated 18 October 2018. This prompted two separate responses. On 2 November 2018 the respondent sent an e-mail to the first defendant advising that a further step should be taken, namely that a request should be made to the Chief Appeals Officer for a revision of the appeal decision under. s.318 of the Social Welfare Consolidation Act 2005. The grounds suggested by the respondent for seeking that revision included the contention that failure to include credited contributions when aggregating contributions from another Member State *"interferes with free movement"* and was *"contrary to the TFEU"*. The appellant, whilst contending that throughout their engagement with the social welfare authorities the defendants did no more than recite the arguments she had made in the letter of 25 May 2018, simultaneously complains that she did not instruct the defendants to make a free movement of persons argument not least because she now believes that such argument is without merit. The request led to a reasoned response from the Chief Appeals Officer dated 16 November 2018 (a Friday) concluding that no error had been made in the Appeals Officer's decision. That

letter was forwarded by the first defendant to the appellant and to the respondent on 19 November 2018 (the following Monday). In his letter to the appellant the first defendant scheduled an appointment for her to attend his office on 23 November.

33. Meanwhile, on 5 November 2018 the appellant wrote to the first defendant referring to the appeal decision of 15 October 2018 and to the fact that the 21-day deadline for a statutory appeal from that decision to the High Court had now passed. The letter continued:

"Please advise how Mr. Shortall intends to proceed".

Finally, she requested invoices from the first defendant and from the respondent setting out details of the charges paid to be provided to her within 14 days of the letter.

34. In response to this letter the first defendant sent the appellant an e-mail on 8 November 2018 containing a number of attachments. One of these was a s.68 letter dated 14 June 2018. There is a dispute between the appellant and the first defendant as to whether this letter was back-dated or whether it was, as the first defendant states, an updated version of a s.68 letter already sent to the appellant in June which she claims not to have received. This dispute does not concern the respondent who is a stranger to that correspondence. Apart from the initial payment to him of €500 plus VAT there is no suggestion that the respondent sought any further fees from the appellant or was aware of the subsequent payments made by her to the first defendant on 28 June 2018.

35. At some stage in early November the appellant's attitude changed radically. On 19 November 2018 she sent an e-mail to the first defendant to which she attached a letter written by herself dated 17 November 2018. Although addressed to the first defendant's office, the respondent was named as one of the intended recipients and both the e-mail and the letter were forwarded to the respondent on the day they were received by the first defendant. The most neutral term I can find to describe the 17 November 2018 letter is extraordinary. The appellant asserts that she was given *"incorrect and incomplete legal advice"* which

"induced" her to pay for legal services but as there was *"no arguable case"* there was *"no prospect of overturning"* the social welfare decision on which she had sought advice. She also claimed that she was induced to pay for services in respect of the medical negligence action which the lawyers had no intention of performing.

36. She then threatened to make complaints to the respective professional regulatory bodies for solicitors and barristers by the Friday of that week (23 November 2018) *"if the terms of settlement set out in para. 3 have not been met".* She threatened to report the matter to the Gardaí and request an investigation into the lawyers' working practices. She threatened to *"provide [her] full story to the media"*. Finally, she indicated her intention to institute civil proceedings to recover fees paid and to seek aggravated and exemplary damages for what she claimed was *"victimisation of a confused elderly woman"*. In para. 3 of the letter, the appellant sought the sum of €75,000 in exchange for her agreement not to make the threatened complaints, declining to prosecute and signing a non-disclosure agreement. She concluded by advising the lawyers that the terms of the settlement were non-negotiable and issuing a warning to *"consider carefully the value of your reputations"*.

37. The tenor of the covering e-mail was very similar. Initially the appellant stated that the first defendant's e-mail of 8 November *"provided the proof I needed"*. That e-mail had attached to it the Chief Appeals Officer's decision of 15 October 2018, the solicitor's letter to the Chief Appeals Officer dated 2 November 2018 and the reply dated 7 November 2018 as well as the disputed s.68 letter referred to above. The appellant complained that the lawyers had violated the ethical principles underpinning the legal profession by telling her that she had a good case when the *"settled law"* was clear that the proposed grounds were unarguable and they had done this in order to induce her to pay for legal services. She then stated that she looked forward to reporting the matter to the Gardaí, posting the disciplinary complaints and seeing her story in the media and that she would enjoy the civil case. The e-

mail also attached drafts of the complaints she proposed to make to the Bar Professional Conduct Tribunal and the Solicitors Disciplinary Tribunal which were to similar effect.

38. By any standards this correspondence is extraordinary. It is all the more so because prior to this the appellant had not raised any issue as to the services with which she was being provided nor communicated any concerns to the lawyers. Further, no litigation had yet been issued on the appellant's behalf. Indeed, from the respondent's perspective matters were still at a preliminary stage. The final decision of the Chief Appeals Officer was not received by the respondent until 19 November 2018, i.e. the same date as the appellant's e-mail and some two days after the date of the 17 November 2018 letter. Manifestly he had not had a chance to consider the terms of that decision, to advise on whether it should be judicially reviewed nor to identify the grounds upon which it might be challenged. The respondent had not yet received the appellant's U.K. social welfare records which he had requested on 12 June 2018.

39. In all of the circumstances it is difficult to characterise the appellant's correspondence as anything other than extortionate. Much of it is fanciful and couched in cloak and dagger terms - most likely for dramatic affect. The appellant sets out arrangements she had apparently made *"in the event of [her] death in unexpected, unexplained or suspicious circumstances."* She states that she would be uncontactable until after the time limited for complying with her *"settlement"* terms had expired. All communication was to be through her new solicitor whose name and contact details were provided. Needless to say neither the first defendant nor the respondent made any payment to the appellant on foot of these demands as a result of which in due course she carried out the threats she had made.

40. The respondent replied directly to the appellant by e-mail on 21 November 2018 attaching a letter apparently written on the same date although incorrectly dated 14 November 2018. Rather than advert directly to the appellant's threats and demands, he

explained that apart from the initial fee which he had received for the social welfare matter, he did not intend seeking further fees from her but if the case were successful would have his fees discharged by the respondent to the judicial review. Similarly, he stated that he had agreed to review the medical negligence file on a *pro bono* basis and that if he believed the case had merit he would continue to act on that basis. He outlined that he had not yet had the opportunity to review her social welfare case but anticipated doing so the following week and would then advise on the relative merits and strengths of the case. He noted that *"the final decision always rests with the client"*. He then addressed one specific issue which the appellant had raised in the draft complaint against him to the Barristers Professional Conduct Tribunal namely the status of the Decision H6 of the Administrative Commission for the Coordination of Social Security Systems. The respondent concluded by expressing the hope that his letter had clarified matters and would assist in rebuilding trust between the parties.

41. Separately, the respondent copied his letter to the first defendant under cover of a letter in which he described his approach to the appellant as *"conciliatory"* and indicated that he was committed to providing services to the appellant should she wish to retain him. To this end, the respondent continued with his review of the appellant's papers and on 27 November 2018 sent an e-mail to the first defendant seeking further detailed instructions from the appellant as to her UK social insurance record and other matters connected with her periods of employment. There is an overlap between the specific queries raised in this e-mail and the more general request for information in the earlier e-mail of 12 June 2018 which had not been responded to. That e-mail was forwarded by the first defendant to the appellant on the morning of 28 November 2018.

42. The appellant did not attend the consultation which the first defendant had scheduled for 23 November 2018.

43. On 28 November 2018 the appellant made a formal complaint of fraud against the first defendant and the respondent to the Gardaí at the Bridewell. The Gardaí contacted the respondent who made a formal statement. In his affidavit he indicates that he spoke with the sergeant dealing with the matter and was told that a file would be submitted to the DPP and that some months later he was advised that the DPP shared the opinion of the Gardaí that *"there was no question of criminality arising and that the matter was closed"*. However, because the appellant had made a criminal complaint against him, he consulted with the Professional Practices Committee of the Bar Council and by letters of 7 December 2018 to the first defendant the respondent formally withdrew his services on both the social welfare and medical negligence matters and returned the fee which he had received in the social welfare case. This was in turn returned by the first defendant to the appellant on 19 December along with other monies paid by the appellant to the first defendant on account in respect of the medical negligence matter.

44. The appellant however continued undaunted. She made formal complaints against both the first defendant and the respondent to their respective professional bodies. The complaint against the respondent was dismissed by the Barristers Professional Conduct Tribunal on 1 February 2019. The tribunal found that the respondent had *"acted properly and professionally at all times"* and rejected all of the appellant's allegations of deceit and fraud, concluding that the respondent that done *"nothing to merit the allegations made against him"*. The appellant appealed this decision to the Barristers Professional Conduct Appeals Board which, on 10 June 2019, also dismissed the complaint and affirmed the decision of the Tribunal. That Board found that the uncontested assertion by the respondent that he had requested further information on two occasions from the appellant which he had not received was *"a credible indication that he had not made up his mind at that time to advise [her] to proceed to judicial review."* Whilst not treating it as a factor in its decision,

the Board regarded the appellant's correspondence of 17 and 19 November 2018 as *"a very disquieting aspect of this case"*.

45. Although not directly relevant to the respondent's application, the court notes that the appellant's formal complaint to the Solicitors Disciplinary Tribunal was dismissed by that body which found that no *prima facie* case of misconduct had been made out against the solicitor. The appellant appealed to the High Court and, with the exception of a complaint in respect of the s.68 letters which was remitted by consent to the Tribunal, the High Court rejected the appellant's appeal (O'Connor J., [2020] IEHC 688). The appellant attempted to appeal further to the Court of Appeal but was out of time to do so. Consequently, her case proceeded before the Court of Appeal as an application for an extension of time to appeal and the judgment of Haughton J. [2021] IECA 327 focusses on whether she had established arguable grounds of appeal. Haughton J. refused the extension of time on the basis that the appellant had not done so and, consequently the balance of justice lay against granting an extension to facilitate an appeal in the circumstances.

46. Finally, on 13 February 2019 whilst the disciplinary complaints were ongoing the appellant instituted these civil proceedings by issuing a Plenary Summons.

47. It is apparent from the matters set out in the four preceding paragraphs that when the lawyers failed to make the payment requested by the appellant in her letter of 17 November 2018, the appellant followed through with her threats to make complaints to the Gardaí and to their professional bodies and to institute civil proceedings. It is also apparent that none of the bodies to whom the appellant made her complaints found them to be meritorious despite the appellant exhausting every avenue of appeal available to her. This is not, of course, determinative of her civil claim nor of the respondent's application to dismiss it. It is, however, indicative of a single mindedness on the part of the appellant in her pursuit of the defendants notwithstanding the fact that, to date, her complaints have been unsuccessful.

Despite this, the appellant intends to pursue her civil proceedings based on the same facts. Accepting, of course, that there are shades of difference in the nature of the issues to be dealt with by each forum and differences in the standard of proof applicable, the appellant's single-minded determination to pursue her grievance against individuals with whom she had limited professional dealings over five years ago in the face of this litany of rejection is almost incomprehensible.

Statement of Claim - Preliminary:

48. This is the factual background to the application brought by the respondent. I have set it out in more detail than would normally be required because the essence of the respondent's application is that the claim made by the appellant in her proceedings is not borne out by the facts on which she relies (i.e., the necessary inferences cannot be drawn from those facts) nor by the documentary evidence. In fact the respondent's application goes somewhat further and contends that the inferences the appellant wishes to draw are contrary to the actions of the respondent and the documentary evidence. It is next necessary to examine the claim as pleaded by the appellant in her Statement of Claim.

49. I do this mindful of the general principle that in an application strike out proceedings as an abuse of process, the Court should take the plaintiff's case at its height and assume that the facts asserted in her pleadings are capable of being proved by her. However, under the *Lopes* line of authority the Court is also entitled to consider the evidence on affidavit to ascertain whether there is any credible basis for suggesting that the facts are as asserted by the plaintiff. The latter exercise is particularly pertinent in the present case as there is no dispute as to the basic facts. The appellant's case of a conspiracy to deceive is based on inferences which she wishes to draw from those facts. If there is no credible basis on which

those inferences can be drawn, then equally there is credible basis on which the appellant could prove her case and it should be dismissed.

50. Further, in conducting this exercise I am aware that in his judgment on the appellant's application for an extension of time to appeal the refusal of her appeal against the decision of the Solicitors Disciplinary Tribunal, Haughton J. (at para. 69) characterised the acts and omissions on which the appellant relies as being such that more than one inference can be drawn from them. At para. 74 he identified the third of three possible inferences which might be drawn from those facts as being that the respondents *"deliberately and knowingly created and reinforced the [appellant's] false impression as to her social welfare claim, and in that knowledge took payment from her for personal gain"*. I should point out that the respondents to that appeal were the members of the solicitor's firm who had dealt with the appellant (i.e., the first defendant) and not the respondent to this appeal and that the underlying legal complaint was professional misconduct rather than the torts of deceit and conspiracy.

51. On one level it might be argued that if the inference that the respondent deliberately reinforced the appellant's false impression of her social welfare claim in order to extract payment from her is one which is open on the facts, then the appellant should be allowed pursue her case and attempt to establish not just that this inference could be drawn but that it should be drawn. Needless to say, the appellant did not make this argument. She focussed exclusively on her belief in the correctness of her legal position and did not engage with the substance of the respondent's application – i.e. whether there was any credible evidence to support that position. Nonetheless and bearing in mind that the appellant is a litigant-in-person, this is something which the court must consider.

52. Having done so, I am not satisfied that Haughton J.'s judgment precludes the court acceding to the respondent's application if it is satisfied that the *Lopes* criteria are met. This

is in part because, as pointed out above, Haughton J. was dealing with an appeal ultimately against the decision of a disciplinary body concerning a different legal complaint and a different respondent. More significantly, Haughton J. was not asked to consider whether the *Lopes* criteria had been met – i.e. whether the case pleaded was inconsistent with the facts upon which it was based and/or the contemporary documentary record. Finally, Haughton J. (at para. 75 of his judgment) expressly found that no tribunal or court *"when faced with three possible inferences – the first benign, the second at worst an inference of inadequate service, and the third an inference of commission of a criminal offence – could make a finding of dishonesty"*. He consequently held (at para. 78 of his judgment) that the appellant had failed to make out any arguable case for an appeal and (at para. 80) that the appellant's complaints of criminal misconduct were *"fundamentally misconceived"*.

53. I should also mention two factual issues which the appellant claims were resolved in her favour by the Court of Appeal in this judgment. In both instances the appellant is mistaken. Firstly, she believes the Court of Appeal made a finding of destruction of evidence by the first defendant. In fact, Haughton J. accepted a more limited proposition, namely that a page of the consultation notes was missing but did so solely for the purposes of the application before him (see para. 76 of the judgment). Secondly, the appellant asserts that the Court of Appeal has found that she was acting under a false impression as to the law when she engaged the defendants. The actual finding made by Haughton J. (at para. 80.3 of the judgment) is both more nuanced and more complex. The appellant complained that the trial judge had not answered the question as to whether she was under a false impression as to the law. Haughton J., quite correctly, pointed out that this question was never tested as the judicial review proceedings were never instituted. He then stated that on the law as found by the Chief Appeals Officer the appellant was under a false impression but that neither the Solicitors Disciplinary Tribunal nor the High Court had made any finding on this issue as it

was unnecessary for them to do so. Thus, no court, including the Court of Appeal, has purported to determine the underlying social welfare law issue. Consequently, no categoric finding has been made nor could have been made that the appellant's impression of the law was incorrect.

The Case Pleaded by the Appellant:

54. The appellant's Statement of Claim is a lengthy and repetitive document running to some 80 paragraphs. At the outset the appellant pleads that she experienced symptoms of dementia in the late summer of 2018 caused by medication she was taking which resolved after she discontinued the medication on 25 October 2018. Interestingly, this period would appear to exclude May and June of 2018 when the appellant instructed the first defendant and had her consultation with the respondent. The appellant had no direct contact with the respondent from 14 June 2018 to 21 November 2018 which covers the period during which she claims to have been incapacitated

55. The appellant then moves onto the social welfare appeal which she had taken prior to instructing the first defendant. She pleads that she had failed to understand that Article 5 and 6 of EC Regulation 883/2004 allowed Members States to impose their own conditions regarding social insurance contributions, such as whether they are paid or credited and that the equivalence of the type of pension is irrelevant. Whilst what the appellant understood is a matter of fact, the extent to which she may have been mistaken in her understanding of the legislation is a legal rather than a factual plea. The basis for a potential judicial review would have been the contention that Member States did not have the level of discretion which would be required to support the Irish legislation if the effect of that legislation were to discriminate against persons moving to Ireland from another Member State. As no judicial review was, in fact, taken this legal issue has not been resolved. Moreover, as pointed out

above, the sustainability of the appellant's proceedings is not dependant merely on establishing that the view she now takes of this issue is legally correct. She would also have to establish that it is so self-evidently correct that a lawyer acting honestly could not have believed that there were possible grounds for judicial review, even for the limited purpose of reviewing the file and advising on potential proceedings.

56. The appellant then proceeds to set out a factual account of her interactions initially with the first defendant, her instructions as *per* her letter of 25 May 2018 and her interactions with the respondent at the consultation of 14 June 2018. She pleads that the respondent advised her to pursue a judicial review of her social welfare appeal if it were disallowed, that he told her the case might go to Europe and that he offered to provide an opinion in the medical negligence matter. She does not advert to the specific advice given to her by the respondent (which is recorded in the consultation notes) that she should not withdraw her social welfare appeal and that she should conclude that process prior to instituting any judicial review. In describing the contents of a letter under cover of which she forwarded her social welfare file to the first defendant on 16 June 2018, she pleads that her false impression as to the operation of Article 5 and 6 of EC Regulation 883/2004 *"had been reinforced, and not corrected, by the affirmative conduct and statements"* made by the respondent at the consultation.

57. The appellant sets out the further payments made by her to the first defendant, including those on the medical negligence file, on 28 June 2018. The respondent had no involvement in those dealings and the appellant does not plead that he had any knowledge of them. She then moves to the social welfare appeal decision of 15 October 2018. No plea at all is made in respect of the period between 28 June 2018 and 15 October 2018 during which time her social welfare appeal remained live within the social welfare system. At para. 18 she pleads that the review request sent by the first defendant to the Chief Appeals

Officer on 2 November 2018 (which had been drafted by the respondent) was based on grounds which the defendants knew to be false as it relied on the principle of aggregation without making reference to Art. 5. At para. 19 she pleads that if her appeal had been successful, it would have led to certain consequences involving discrimination against Irish residents or a removal of the State's right to legislate its own social security law. These are essentially legal pleas posited on the correctness of the appellant's view of the meaning and effect of Article 5 of EC Regulation 883/2004. The appellant then deals with her request for invoices in the s.68 letter, again matters with which the respondent had no direct involvement.

58. The appellant deals with what she calls her *"terms of settlement"* (i.e., her letter of 17/19 November 2018) between paras. 23 and 46 of the Statement of Claim. With a remarkable lack of insight, she sets out the circumstances in which that correspondence was sent and why she believed she was justified in the approach she took. In a similar vein, she does not recite the figure of which she demanded payment from the defendants in order to avoid the series of complaints she subsequently made. As a starting point she pleads the improvement in her cognitive facilities following the discontinuance of her medication and the discovery of her *"mistake"* in her understanding of the law when she read the last page of Decision H6 of the Administrative Commission.

59. As it happens, the appellant appears to be in error at para. 25 in stating that she sent the letter of 17 November 2018 on *"precisely the date 17 November"* (i.e. before she received a copy of the Chief Appeals Officer review decision from the first defendant). The documentary evidence shows that she sent that letter to the first defendant under cover of an e-mail dated 19 November 2018. Even if the letter had been sent on 17 November 2018, as that day was a Saturday it is unlikely the first defendant would have received it before 19 November 2018 being the following Monday. Notwithstanding this error on the appellant's

part, I do not think that anything, either positive or negative, flows from it. The appellant appears anxious to demonstrate that she was unaware of the Chief Appeals Officer's analysis and interpretation of national and EU law before she sent her letter. Again, I don't think anything turns on this. Although the review decision sets out the views of the Chief Appeals Officer with admirable clarity, the social welfare decision makers have been consistent throughout in their reasons for the rejection of the appellant's application/ appeal.

60. At para. 27 and 28 the appellant pleads by inference that the letter sent to her by the first defendant on 19 November 2018 enclosing the Chief Appeals Officer's review decision and requesting that she attend an appointment on 23 November 2018 (the appellant mispleads this as 28 November 2018) was essentially a trap in that it was the first defendant's intention that further payments would be made by her on that date in respect of the initiation of judicial review proceedings. She pleads that she had been led by the respondent to believe that the appeal would fail and the judicial review would be instituted shortly thereafter.

61. As regards the letter sent by the respondent directly to the applicant on 21 November 2018 she pleads (at para. 30) that he fails to mention the Chief of Appeal Officer's analysis in her review decision. This is correct. I note that in that letter the respondent expressly states that he has not yet reviewed the appellant's case and consequently limits his observations to her reliance on DH6 (which is not mentioned by the Chief Appeals Officer). She complains (at para. 31) that he does not provide any reasons why his opinion on the stateability of the case might have changed since the consultation on 14 June 2018 when she asserts he was firmly of the view that her case was stateable as a result of which she claims to have been induced to pay further fees on account to the first defendant.

62. In dealing with the first defendant's correspondence to her of 23 November 2018, at para. 34 of her Statement of Claim the appellant regards the change in the description of her file from *"Social Welfare appeal"* to *"Social Welfare pension"* as both significant and

presumably sinister. This is perhaps because of her later plea as to how her file is described in the s.68 letters (para. 41). She pleads that this was all part of an attempt to encourage her to attend an appointment on 28 November 2018 (the date is mispleaded) despite her disclosure that she was aware of the alleged deception. I do not see anything sinister in the change in the description of the appellant's file. Until the Chief Appeals Officer's review decision of 16 November 2018, the lawyers were dealing with an appeal and the review of an appeal decision within the social welfare system. In fact, notwithstanding delays within the Department, the lawyers were dealing with this quite actively. In June, on the respondent's advice, the first defendant wrote to the Department seeking an oral hearing (which was refused). The respondent had offered to attend any oral hearing with the appellant. In September the first defendant wrote to the Department, again on the respondent's suggestion, threatening *mandamus* proceedings if the appeal decision was not forthcoming and the decision issued a number of weeks later on 15 October 2018. The respondent then drafted the request under s.318 of the Social Welfare Consolidation Act 2005 for a review which was sent to the Department on 2 November. From the 19 November 2018 when the Chief Appeals Officer's review decision had been received by the first defendant, the lawyers were no longer dealing with a social welfare appeal. In these circumstances, the change of description on the file is not particularly surprising.

63. Secondly, the appellant is incorrect in pleading that the scheduled appointment with the first defendant was on 28 November 2018 such that the 23 November 2018 letter should be construed as having been written to her with a view to encouraging her to attend on that date. The scheduled appointment at which the appellant had not attended was in fact for 23 November 2018, the same date as the letter.

64. At para. 36 the appellant pleads that the further information request sent to her by the first defendant on 28 November (following the respondent's e-mail on 27 November) was

not mentioned by the respondent in his letter to her of 21 November. Whilst this is correct, it is unclear what inference the appellant suggests should be drawn from it. In his letter on 21 November the respondent expressly states that he had not yet had an opportunity to review the appellant's case but hoped to do so early the following week. By the time he sent his e-mail to the first defendant a week later he had presumably commenced that review and in doing so had identified gaps in the information before him which required to be filled in order for him to advise fully. Equally, it is unsurprisingly that the 27 November e-mail did not contain the conclusion of the respondent's review of the file (as pleaded at para. 38) as presumably the respondent felt that he needed the requested information in order to conclude his review.

65. Insofar as the appellant pleads that the request for further information demonstrates that the defendants were in possession of her Irish social welfare file which she had posted to the first defendant's office (para. 39), I did not understand that there was any dispute about this. The request for further information clearly relates to information that is not already on this file – i.e. the basis for certain *"reckonable"* contributions and information in respect of any periods of employment or voluntary work in respect of which contributions were not or might not have been paid.

66. The appellant formally pleads the sending to her by the first defendant of a final fee note on 19 December 2018 under cover of a letter enclosing a cheque in respect of the fees returned by the respondent as well as a refund of fees from the first defendant in respect of monies paid on account in the medical negligence matter. The balance of the complaints in these paragraphs (42 – 46) relate to the first defendant's solicitor's fees and do not directly concern the respondent. Paras. 47-51 inclusive are headed *"Duties and Obligations of the first named defendant"* and, as such, are not relevant to the respondent. Similarly, paras.

57–67 inclusive which are headed *"Defaults of first named defendant"* are not relevant to the respondent.

67. Paras. 52-56 purport to set out the duties and obligations of the respondent. The respondent has taken issue with the appellant's failure to procure an expert report prior to instituting her proceedings. The appellant in reply contends that as her proceedings are ones in deceit and conspiracy and not in professional negligence, she does not need such a report. To a large extent this is a subsidiary point as, if the respondent succeeds in upholding the findings of the High Court that there is no credible basis on which the appellant could hope to establish her claim for deceit and conspiracy against him, then the lack of an expert report supporting her claim becomes moot. Notwithstanding the fact that the trial judge determined this issue, in view of the conclusions which I have reached on the central issue I do not think that it is necessary to decide this issue.

68. However, in fairness to the respondent, I might observe that the pleas made in paras. 52-56 are in large part framed in the manner in which such pleas are classically made in professional negligence cases. At para. 52 it is pleaded that as a recognised expert the respondent was obliged to exercise his expertise *"with reasonable care and diligence"*. At para. 55 a *"duty of care"* is pleaded in relation to correcting the appellant's false impression of the law, albeit that this plea segues into *"deception and false representation"*. The appellant goes on to plead at paras. 70-72 that the respondent breached his duty as a barrister in various respects. In the course of the hearing before this Court the appellant insisted that notwithstanding the manner in which her case was pleaded, she was not making a case in negligence. In these circumstances, I would tend to agree with the respondent that if the case were permitted to proceed the appellant would be estopped from advancing any claim in negligence.

69. The essence of the duties pleaded between paras. 52 and 56 is that the respondent was obliged to provide the appellant with the correct legal advice; to honestly and clearly identify the strengths and weaknesses of her case; to uphold the appellant's interests without regard to his own; to correct the appellant's false impression of the law (and that failure to do so amounted to deception) and finally to respect the appellant's autonomy by providing her with sufficient information to enable her to make a reasoned decision as to whether the substantial costs of legal proceedings would be justified by any possible relief which could be obtained.

70. The defence filed on behalf of the respondent does not specifically deny the existence of these duties nor their applicability to the relationship between the appellant and the respondent. Instead, the defence denies any wrongdoing on the part of the respondent in response to the allegations of default made against him at paras. 68-78 of the Statement of Claim. In my view, these reflect the central thesis of the appellant's case against the respondent. At para. 68 the appellant pleads that the respondent agreed to conspire with the first defendant to defraud her by deceiving her to believe she had grounds of appeal intending to induce her to pay for services to be provided by them, to include the initiation of judicial review proceedings, none of which she asserts could have resulted in any possible benefit to her but which would be of pecuniary advantage to the defendants. She pleads (at para. 69) a breach of s.6(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 at the consultation of 14 June 2018 both explicitly by affirmative statements made by the respondent and implicitly by his failure to explain the operation of European law thus leading her to believe she had grounds of appeal which the respondent knew to be false. A similar plea of breach of s.6(1) is made at para. 75 in respect of the medical negligence claim to the effect that the respondent deceived the appellant by offering his services in that matter knowing that his insurers would not indemnify a case in which pleadings had been drafted

by another party. In her affidavit the appellant claims to have been told this by a solicitor specialising in medical negligence when he refused to take her case on. No evidence from any insurer is proffered by her to support this assertion. The respondent denies knowledge of any such restriction.

71. As previously noted, paras. 70-72 plead breach of various duties by the respondent (that he failed to set out the weaknesses of the appellant's case, failed to exercise his expertise and failed to uphold the appellant's interest without regard to his own). It is positively pleaded that he provided false advises.

72. Paragraph 73 pleads what is described as *"an overt act of conspiracy"* with the first defendant in deceiving the appellant to believe that the grounds of her extant appeal were *"very clear about the legal issues"* thus re-enforcing and confirming her false impression regarding the principle of aggregation. It is unclear and not elaborated upon in the plea what the overt act of conspiracy is alleged to be. At para. 74 it is pleaded that the respondent, who stood in a fiduciary duty to the appellant, failed to correct her false impression which he knew to be influencing her which is alleged to constitute deception under s.2(2) of the 2001 Act. A further *"overt act of conspiracy"* is pleaded (although not particularised) in the alleged deception of the appellant to believe that the respondent genuinely intended to offer his services in the medical negligence matter. The appellant contends his intention in making this offer was to increase her confidence in the first defendant and to *"further the main goal of the conspiracy"*, i.e. to induce her to pay for legal services of no benefit to her but for the defendants' pecuniary benefit.

73. At para. 77 the appellant pleads that the request for further information sent to her on 28 November 2018 was another overt act of conspiracy for much the same reasons (i.e., it was of no benefit to her but for the defendants' pecuniary gain). She asserts that her complete employment history was already available to the defendants through her social welfare file

which she had provided on 16 June 2018. This plea largely ignores the fact that the information requested included details of any employment or voluntary work in respect of which contributions might not have been paid and thus which would not appear on her social welfare record.

74. Finally, at para. 78 the appellant pleads that the respondent failed to *"put in writing any reasoned argument intended to be used…in judicial review proceedings"* or to provide a written opinion in the matter or sufficient information to enable her to make an informed decision whether to pursue the case. This is alleged to violate the appellant's personal autonomy. This last plea would make sense if judicial review proceedings had been issued on the appellant's behalf without her fully understanding the potential consequences, particularly as regards costs, that this would entail. In circumstances where no such proceedings were instituted, the plea is very difficult to understand. The reliefs sought by the applicant includes the reimbursement of fees paid by her which had not already been returned to her and damages including aggravated and exemplary damages.

75. Again, I have set out these pleas in greater detail than would normally be required in order to fully understand the nature of the case the appellant wishes to make. In essence she contends that the respondent, either acting alone or in a conspiracy with the first defendant, deceived her either expressly through his actions and statements or impliedly by not correcting her misunderstanding of the law into believing that she had a meritorious case regarding her contributory pension and that he did this for the purposes of inducing her to pay for legal services, specifically for the institution of judicial review proceedings, which could not possibly benefit her, but would provide financial gain to the defendants. The question I have to decide is whether there is any credible basis for this claim.

Analysis

76. Before analysing the case made by the appellant, I might make an observation in respect of the affidavit sworn by the respondent grounding his application to strike out the proceedings. That affidavit, in part, exhibits the contemporary documentary record regarding the respondent's involvement in this matter against which the Court is invited to, and will, assess whether there is a credible basis for the appellant's claim. However, the respondent also makes averments regarding his general practice as a barrister specialising in social welfare law and some general observations regarding the approach taken by Ireland and other Member States towards the implementation of EU law in this area. I have no doubt that the respondent's averments as to the general impecuniosity of his clients in this type of case, the fact that those clients rarely pay him directly for this type of work and his consequent reluctance to pursue hopeless litigation are all true. Indeed, were it not for the willingness of lawyers such as the respondent to act on a *"no foal, no fee"* basis, cases concerning the rights and entitlements of social welfare recipients would be difficult if not impossible for those persons to pursue through the courts.

77. However, I do not think that I should take these averments into account when assessing whether there is a credible basis for the appellant's claim. On a preliminary application of this nature the court must be careful not to embark upon an exercise in which the relevant strengths and weaknesses or even the reasonableness of each side's evidence is weighed against the other. The court cannot strike out the appellant's case because it prefers the respondent's evidence, which at this stage is necessarily limited to affidavit evidence. It is only if there is no credible basis for believing that the trial court might draw the inferences upon which the appellant relies that her case should be struck out. Thus, whilst evidence of the respondent's general practise would undoubtedly be relevant if the matter proceeds to

trial, it is not the type of evidence which could justify the striking out of proceedings at a preliminary stage.

78. I regard the averments at para. 6 of the respondent's affidavit somewhat differently. The respondent's specialisation in social welfare law is undisputed. Indeed, it was this expertise which prompted the appellant to ask the first defendant to instruct him in the first place. His view that Member States such as Ireland tend to adopt a restricted approach to EU law instruments whereas the Court of Justice of the European Union tends to adopt a broader approach and that there is often little consensus between Member States as to the precise meaning of EU law provisions are, in my view, potentially relevant to but by no means determinative of the issue as to whether the court should infer that the respondent *"knew"* that the appellant's understanding of the law was incorrect when he met her on 14 June 2018. The appellant has not taken issue with this averment which is in any case supported by the case law of the Court of Justice of the European Union.

79. The tort of deceit requires a plaintiff to establish the following elements:

- The making of a representation by the defendant. Whilst normally silence will not constitute a representation, where there is a fiduciary relationship between the parties a representation may be made through omission, e.g., a failure to correct the plaintiff's mistaken understanding of the position on which the defendant is advising;
- The representation must be made knowingly and without belief in, or reckless as to, its truth;
- The defendant must intend that the plaintiff will act on foot of the representation. These last two elements together constitute *"fraudulent intent"* and emphasise the deliberate nature of the tort;
- The plaintiff must act on foot of the representation; and

- The plaintiff must suffer damage as a result.

As the trial judge pointed out in his judgment, there must be a causal connection between the intended inducement, reliance on the misrepresentation and the damage suffered before misrepresentation will give rise to an action in deceit.

80. The requirements of the tort of conspiracy were summarised by Quirke J. in *Lismore Homes Ltd. (In receivership) v Bank of Ireland Finance Limited* [2006] IEHC 212 as follows:

> *"In order to sustain a claim for relief arising from conspiracy a plaintiff must prove…that two or more persons agree to do an unlawful act or to do a lawful act by unlawful means with consequent loss and damage to the plaintiff."*

In this case the plea of conspiracy made by the appellant against the respondent is one based on an alleged agreement between the first defendant and the respondent to do an unlawful act (i.e. to defraud and deceive the appellant). The appellant has pleaded the alleged unlawful act not merely in tortious terms but also as a breach of the criminal law namely s.6(1) of the Criminal Law (Theft and Fraud Offences) Act 2001. In order to make out her claim of conspiracy it is essential that the plaintiff establish initially an agreement between the alleged conspirators and ultimately that she suffered damage as a result of their actions.

81. In my view, the respondent is correct in asserting that when the appellant's claims are examined in light of the contemporaneous documentary record and the undisputed actions of the parties there is simply no credible basis for believing that a court might draw the inferences on which the appellant relies to support her claims of deceit or of conspiracy.

82. The overt acts of conspiracy pleaded by the appellant, apart from being poorly identified and particularised, are manifestly incapable of supporting the suggested inferences. It is impossible to construe the respondent's statements that the appellant's extant appeal was very clear about the legal issues nor his request for further information regarding the appellant's employment and insurance record nor his offering to review the

medical negligence file as evidence of an agreement with the first defendant to defraud or deceive the appellant. The proposition that they are evidence of such an agreement is frankly unstateable and there is no logical connection between the matters pleaded and the allegation of conspiracy. All of this is before the court considers whether the appellant has even alleged that damage flowed from these alleged acts of conspiracy. For example, how could a court conceivably hold the request for further information – made after the appellant had sent her correspondence of 17/19 November 2018 and to which the appellant never responded - caused her to sustain damage?

83. The claim in deceit depends at the outset on the trial judge drawing an inference that the respondent knew the appellant's case had no legal merit and then that he kept silent about this in order to induce her into embarking on a hopeless judicial review in order to extract payment for his legal services and those of the first defendant. Subtending the first of these inferences is the proposition not just that the appellant's social welfare claim was unmeritorious but that the respondent must have known this. The correctness or otherwise of the Chief Appeals Officer's view of the law cannot be established without a court deciding the judicial review which was never instituted. Therefore, for the purposes of this application to strike out the proceedings, I am prepared to assume that a judicial review would not have succeeded in overturning the Chief Appeals Officer's decision. However it does not follow from this that when dealing with the appellant the respondent must have known that her view of the law was incorrect. Legal proceedings are often unsuccessful but this does not mean that the lawyers involved must have known from the outset that the proceedings were misconceived. In order to establish this, the appellant would be required to prove that the respondent knew this to be the case or, alternatively, she would be required to establish facts from which the trial court could draw that inference.

84. The appellant relies on three pieces of evidence in this regard. These are the Chief Appeals Officer's decision; Decision H6 of the Administrative Commission and extracts from the respondent's Ph.D thesis. None of these actually support the proposition contended for – i.e. that the respondent knew the advice he was offering was incorrect. The quoted extracts from the respondent's Ph.D thesis do not deal directly with the specific issue raised in the appellant's social welfare appeal. It is also worth bearing in mind that the title to that thesis refers to the State's failure to properly implement its obligations under EU social insurance law. If a judicial review had proceeded in this case one of the central issues would have been whether the 2005 Act breached Ireland's obligations under EU law.

85. As pointed in the respondent's letter of 21 November 2018, Decision H6 is an administrative decision issued for the purposes of providing guidance and it is not binding on Member States or courts. Therefore, whilst Decision H6 offers important guidance on the issues which would have been live in any proceedings, it is not determinative of them. It may be and indeed has been both overturned and reinterpreted by the CJEU.

86. Finally, if a judicial review were to be instituted it would be for the purposes of challenging the statement of law in the Chief Appeals Officer's decision. Therefore, that statement of law cannot be relied on in order to draw an inference that the respondent must have known that the appellant's contrary understanding of the law was incorrect. The issue in the proceedings would have been whether or not it was correct. Further, the respondent's advice to the appellant at the consultation on 14 June 2018 expressly pointed out that he did not expect the appeal to succeed and if judicial review proceedings were instituted it might be necessary to refer the matter to Europe to achieve a successful outcome. At very least, this indicates that the respondent viewed the case as being one of some potential complexity and unlikely to be resolved straightforwardly before the Irish courts.

87. I am conscious that there is a disagreement between the parties as to whether the respondent offered definitive advice at the consultation on 14 June 2018 as the appellant contends or whether, as the respondent suggests, he had not reached a concluded view pending his review of the appellant's file on receipt of the Chief Appeals Officer's decision and the further information requested. This is a conflict which cannot be resolved on affidavit. Therefore, for the purposes of this application I have taken the appellant's case at its height and assumed that the respondent did give the appellant advice at the consultation which led her to believe that she had good grounds for a judicial review and a real prospect of success. However, the success of the appellant's case depends not just on the fact that such advice was offered, which I am prepared to assume, but that it was offered knowing it to be untrue. There is no realistic basis for believing that the trial court might draw an inference that the respondent knew the legal advice he was giving the appellant was incorrect.

88. Even more significantly there is a gaping chasm between the inference the applicant wishes to draw as to the respondent's intention to induce her to issue hopeless judicial review proceedings and the evidence of the respondent's actions supported by the contemporaneous documentary record. In her letter of instructions of 25 May 2018 the appellant expressed her desire to withdraw her social welfare appeal and to issue judicial review proceedings with some degree of urgency. She requested the first defendant's *"timely action"* in this regard and indicated she was in a position to pay the respondent's fee *"immediately"*. None of these things happened. The appellant paid the sum of €500 plus VAT in respect of the respondent's attendance at a consultation and preliminary advices but did not pay him any fees in respect of the intended judicial review proceedings. Instead of proceeding to draft and issue the judicial review proceedings the appellant had requested, the respondent advised her not to issue an immediate judicial review but to exhaust her remedies within the social

welfare system. To this end, not only was her appeal not withdrawn but, at the respondent's suggestion, the first defendant sought an oral hearing of it. The respondent's on-going communications were equally cautious particularly in advising that an internal review be requested under the 2005 Act rather than proceeding directly to issue judicial review proceedings of the Appeals Officer's decision when it issued in October 2018. His requests for further information, made twice (in July and November 2018) indicate that the respondent was actively considering the merits or otherwise of the appellant's case rather than rushing to institute judicial review proceedings in order to extract further fees from her. In light of these actions (which are all clearly supported by the documentary record) there is simply no way a court could draw an inference that the respondent intended to induce the appellant to institute unmeritorious proceedings at all, much less in order to extract additional payment from her.

89. Equally no inference could be drawn that the respondent violated the appellant's personal autonomy or interfered with her capacity to make an informed decision regarding the issuing of proceedings through a failure to provide her with sufficient information. This plea is manifestly premature in circumstances where no proceedings were ever issued on the appellant's behalf and indeed no decision was ever made to issue such proceedings. Any judicial review would have to challenge a particular decision and would require an assessment of that decision in light of the facts pertaining to the appellant's case. As the respondent points out, the possibility for judicial review did not finally ripen until mid-November with the Chief Appeals Officer's review decision of 16 November 2018. No meaningful opinion could be provided before that point and after that the respondent cannot be criticised for not providing a written opinion in circumstances where he sought and was awaiting further information from the appellant and, thus had not concluded his review of her case nor purported to advise her on potential proceedings either way. As it happens

before the Chief Appeals Officer's decision had been received by the respondent and judicial review became a live possibility, the appellant had decided that she was the victim of a fraudulent conspiracy and decided to make a series of complaints against the defendants of which this litigation is a part.

90. The object of the conspiracy alleged by the appellant is the extraction from her of payment for professional services for a judicial review which the defendants knew could not be of benefit to her. Leaving aside the issue of whether a court would infer that the respondent knew that a judicial review could not benefit the appellant, there is no evidence upon which a court could infer that the respondent had reached any agreement with the first defendant as regards further requests for fees. Indeed, there is no evidence that the respondent was aware of, let alone had anything to do with the requests for fees made by the first defendant after the consultation on 14 June 2018. In short, there is no evidence from which inferences could be drawn linking the respondent to the object of the alleged conspiracy.

91. Insofar as the appellant complains that an unsuccessful judicial review would have exposed her to adverse costs orders, no court could infer from the evidence that the defendants would have instituted proceedings on her behalf without fully discussing the costs implications with her and ensuring that she understood and agreed to undertake that risk. As no proceedings were ever instituted the complaint is at best premature, but in reality it is without foundation. Other costs which have undoubtedly been incurred by the appellant through her unsuccessful pursuit of various matters through the courts cannot be attributed to any action on the part of the defendants. It is perhaps pertinent to observe that in her unsuccessful pursuit of the defendants through the courts, the appellant has now amassed costs liabilities far in excess of those which she would have incurred if an unsuccessful judicial review had been taken against the social welfare decision.

92. I have held that there is no evidence upon which a court could infer that the respondent knowingly misrepresented to the appellant that her understanding of the law was correct and no evidence upon which a court could infer the necessary fraudulent intention on the part of the respondent. In addition to these matters, in order to establish the tort of deceit against the respondent the appellant would have to establish that she had suffered damage as a result of the alleged deceit. As the appellant should be in a position to establish any loss she claims to have suffered, this is the only element of her claim which is not dependant on the court drawing inferences in her favour. Given that judicial review proceedings were never issued so no substantial expense was ever incurred by her, the appellant's claim is limited to the sums she paid to the first defendant in respect of the two matters including the €500 plus VAT paid by the first defendant to the respondent on her behalf.

93. I accept that if there was deceit or a conspiracy to deceive, the return of monies thus obtained would not obviate the fact that the tort was committed. However, I do not accept the appellant's assertion that everything done by the defendants after her letters of 17/19 November 2018 should be disregarded. The appellant characterises all of the defendants' actions after this point in time as self-exculpatory. However, prior to 19 November the defendants had no reason to believe the appellant was unhappy with the services being provided to her. I have previously described the appellant's correspondence as extraordinary, which is perhaps an understatement. She made extremely serious allegations against the defendants of which they had no prior notice and then, in effect, threatened their professional reputations unless they acceded to her demand for a large cash payment. To preclude any consideration of explanations offered by the respondent or of actions taken by him subsequent to receiving this correspondence would be clearly unjust. Nonetheless, for the record, I should state that even if everything said and done by the respondent post-19

November 2018 were to be disregarded, the remaining evidence still does not support the inferences which the appellant wishes to draw.

94. There is nothing unusual or untoward in the request that the appellant pay an up-front fee for the first defendant to instruct the respondent and to cover the costs of his attendance at a consultation and his preliminary advices. The appellant appears to believe that nothing was done by the defendants which would justify this fee except to piggyback on the social welfare appeal which she had already brought. I do not accept this as a fair or accurate account of the respondent's involvement with the appellant's file. Apart from the consultation itself, I have already outlined above the various advices offered by the respondent and the steps taken at his suggestion during the period between June and November 2018 whilst matters remained live within the Department. These included the request for an oral hearing, drafting correspondence to expedite the appeal decision and drafting the terms of a request for a review under s.318 of the 2005 Act. He also clearly read the appellant's file in sufficient detail to identify gaps in the available information which he needed to give a final opinion on and to draft proceedings.

95. Insofar as the appellant asserts that the invitation to her to attend an appointment at the first defendant's office on 23 November 2018 was a trap (she incorrectly believes this date to be 28 November) and that such an appointment would have served no purpose save to extract further payments from her, there is absolutely no evidential basis for this claim nor from which an inference of such intention on the part of the respondent could be drawn. Apart from being factually incorrect, the claim is simply illogical. Whilst I have deliberately focused this judgment on an analysis of the appellant's case by reference to the undisputed actions of the parties and the contemporaneous documentary evidence, this is an aspect of it which would also meet the third heading relied on by counsel for the respondent in that it is contrary to reason and common sense. However, as the jurisprudential basis for striking out

a claim on the basis that it lacks reason and common sense is less well developed than it is for doing so on the basis of the lack of any credible evidence to support the pleaded case, I do not think I need to go that far. It is in any event a matter to which the respondent was a stranger as it does not appear that he was asked to attend any proposed consultation on that date or even knew that it was being organised.

Medical Negligence Matter

96. In the course of her appeal submission the appellant placed significant reliance on the medical negligence matter and made two potentially contradictory claims in relation to it. Firstly, she contends that although the respondent offered to advise on this matter he never actually intended to do so. Thus, she claims she was misled into paying fees to the first defendant on account for services which she never received. No payment was ever paid to the respondent in respect of the medical negligence matter and the fees paid on account have been returned to the appellant by the first defendant. Secondly, she contends that the respondent could not have undertaken this work as no insurer would indemnify him in doing as the proceedings were already drafted and issued by herself as a litigant-in-person. It is common case that the respondent had not advised on the medical negligence matter when he withdrew his services on 7 December 2018.

97. There is some dispute between the parties as to whether the appellant had obtained the necessary expert report before issuing the medical negligence proceedings or, if she had, whether the report she obtained supported the issuing of proceedings. The appellant has exhibited a single page from what is presumably a lengthier document purporting to be an expert report for the purposes of the medical negligence proceedings. However, as none of the rest of the medical negligence papers are exhibited it is not possible for me to express any view on this matter. Without sight of the pleadings, I do not know who the appellant

has sued nor on what basis and without sight of the full medical report it is not possible to confirm that the retained expert supports that claim and has appropriate expertise in the same fields as the named defendants. I don't know the date of the proceedings nor whether the expert report pre-dates or post-dates them. Therefore, the only issue on which the court can offer a view is whether inferences can be drawn from the respondent's involvement in the medical negligence proceedings which might support the appellant's claim for deceit or conspiracy as regards the social welfare proceedings.

98. Apart from the fact that the same parties are involved, the link between the appellant's complaints in the social welfare and the medical negligence medical matters are not immediately apparent. The case pleaded appears to be that the respondent deceitfully agreed to advise in the medical negligence matter for financial gain when he could not legally do so. Separately it is pleaded (at para. 76) that the respondent agreed to offer services in the medical negligence matter when his intent was to increase the appellant's confidence in the first defendant and further the main goal of the conspiracy, i.e., the institution of hopeless judicial review proceedings to extract further legal fees. While some criticism might be made of the respondent for his delay in dealing with the medical negligence file, there does not appear to be any evidence upon which an inference could be drawn that he undertook to advise on that matter in order to increase the plaintiff's confidence in the first defendant and, thus, to further the main goal of the alleged conspiracy. As the medical negligence proceedings had already been issued by the appellant, a delay of some five months on the respondent's part (which included the long vacation) would not have been material in terms of the Statute of Limitations.

99. The proposition that an insurer will not indemnify a lawyer in respect of proceedings where they have been drafted and issued by another lawyer (or perhaps by a litigant-in-person) is not one with which I am familiar. It frequently occurs in litigation that parties

change their solicitors and, perhaps even more often, their counsel. The reasons for doing so can vary but commonly involve the non-availability of the counsel originally instructed. Counsel are often brought into proceedings for the first time after they have been issued. It is also a relatively common occurrence that a person who has acted as a litigant-in-person subsequently instructs a solicitor to come on record in those proceedings. Although not expressly pleaded, it appears the appellant's belief that no insurer would indemnify a lawyer in those circumstances arises from a conversation she had with a solicitor specialising in medical negligence who refused to take instructions from her in respect of this case. Taking the appellant's case at its highest point and accepting that this is, in fact, what she was told, this does not establish that what she was told was necessarily correct. Even if these were the terms upon which that particular solicitor was indemnified, it would not necessarily mean that the same terms applied to all lawyers under all insurance policies. In any event, in order for the respondent to be acting deceitfully, as alleged, he would have to have known that his insurers would refuse to indemnify him and there is no evidence upon which the court could infer that the respondent had that knowledge, especially in circumstances where changes of barrister and solicitor frequently occur during the course of litigation without any indemnification issues arising.

Conclusions

100. I accept that the inherent jurisdiction of a court to strike out proceedings as being bound to fail is a jurisdiction which should be exercised with great caution and only in exceptional cases. Nonetheless, I am satisfied that this is an exceptional case in which that jurisdiction was properly exercised by the High Court. I am satisfied that the High Court was entitled to look at the affidavit evidence to ascertain whether there was any credible basis upon which the facts as asserted by the appellant, specifically inferences to be drawn

from largely agreed facts, might be found by the trial court. I agree with the High Court's conclusion that there is no credible basis on which the appellant could hope to establish her claim for deceit and conspiracy against the respondent.

101. I have, in this judgment, taken great care to go through both the factual history as evidenced by the documentary exchanges between the parties, and the case as pleaded by the appellant in order to be satisfied that there is in fact no credible basis for her claims. Having done so, not only am I satisfied that her claims lack a credible basis but also that there are for the most part illogical. As the High Court judge put it, the appellant's claims comprise a fantastical scenario. At its very simplest, a claim that the respondent conspired with the first defendant to induce the appellant to take a hopeless judicial review is manifestly inconsistent with the fact that far from encouraging the applicant to institute judicial review proceedings, the respondent discouraged her from doing so and instead advised her to complete the social welfare appeals process. That process had not been fully completed when the appellant decided that she was the victim of fraud and the relationship between the parties broke down. No judicial review proceedings were ever instituted and, apart from a fee for his initial consultation and preliminary advices, the respondent did not receive any payment from the appellant.

102. The extent to which the appellant's grievances are unfounded is evident from her consistent lack of success in any forum. Nonetheless the respondent has become unwittingly embroiled in the appellant's single-minded pursuit of her unfounded grievance through multiple channels. I have no hesitation in striking out the appellant's claim against the respondent. It would be a manifest injustice and an abuse of the Court's processes to require the respondent to defend these proceedings. I will therefore dismiss the appellant's appeal and uphold the decision of the High Court.

103. In circumstances where the appellant has not succeeded on any element of her appeal my provisional view is that the respondent should be entitled to an order for his costs of the appeal. If the appellant wishes to contend for an alternative order, she has liberty to file a written submission not exceeding 1,000 words within 14 days of the date of this judgment and the respondent will have a similar period to respond likewise. In default of such submissions being filed, the proposed order will be made in the terms suggested above.

104. As this judgment is being delivered electronically, Faherty and Pilkington JJ. have indicated their agreement with it and the orders I have proposed.