THE HIGH COURT

[2022] IEHC 673

Record No. 2014/755 P

BETWEEN

TOM DARCY

PLAINTIFF

AND

ATTORNEY GENERAL AND MINISTER FOR JUSTICE AND EQUALITY

DEFENDANTS

JUDGMENT of Ms. Justice Stack delivered on the 2nd day of December, 2022

Introduction

1. This is an application by the defendants pursuant to the inherent jurisdiction of the court to dismiss the plaintiff's claim for want of prosecution. That jurisdiction is exercised according to the well-known principles in *Primor v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, and I will refer to these principles in more detail below.

2. The background to the claim, is that, on 16 April 2012, Allied Irish Banks plc ("AIB") obtained an order for possession against the plaintiff and his wife in respect of four properties in proceedings bearing High Court Record No. 2010/539 SP. On 29 June 2012, McGovern J. refused a stay, and the plaintiff and his wife appealed both the orders for possession and the refusal of the stay to the Supreme Court (Supreme Court appeal numbers 225/2012 and 352/2012).

3. On 30 November 2013, the Supreme Court allowed the appeal, set aside both High Court Orders, remitted the possession proceedings to plenary hearing and directed that the plaintiff would pay the defendant the costs of the High Court proceedings and of the appeal to the Supreme Court. There was no stay on the order for costs.

4. The plaintiff and his wife won their appeal on the basis of a well-known judgment of this Court, in *Start Mortgages v. Gunn* [2011] IEHC 275. In *Gunn*, it was held that the owner of a charge registered prior to the commencement of the Land and Conveyancing Law Reform Act, 2009, on 1 December 2009, could not apply for summary possession pursuant to s. 62 (7) of the Registration of Title Act, 1964, as amended, unless there had been a default and a demand for payment prior to that date. Section 62(7) of the 1964 Act had been repealed by the 2009 Act and no right to apply for possession on a summary basis pursuant to s. 62(7) could be said to have accrued to the charge holder for the purposes of s. 27 of the Interpretation Act, 2005, which preserves rights under repealed statutes which already accrued and where no specific transitional provisions are enacted. No such provisions were enacted in the case of the 2009 Act, which simply repealed s. 62(7) of the 1964 Act and Dunne J. held that, unless a demand for payment had been made prior to 1 December 2009, the right to invoke the summary procedure under s. 62(7) of the 1964 Act had not accrued to the charge holder.

5. That left a *lacuna* in relation to many charges created prior to 1 December 2009, and where the requisite demand had not been made prior to that date, and left charge holders without a means of recovering possession on a summary basis. Accordingly, the Land and Conveyancing Law Reform Act, 2013 ("the 2013 Act") was enacted —s. 1(2) of which provided that certain *"repealed enactments"* (including s. 62(7) of the 1964 Act) continued to have effect, subject to the proviso in s. 1(5) that the 2013 Act was not to apply to existing proceedings.

6. Subsequent to the Supreme Court order remitting the original possession proceedings to plenary hearing, AIB discontinued those proceedings and issued fresh proceedings (High Court Record No. 2014/44SP), relying on the 2013 Act and claiming an order for possession of the plaintiff's property, which seems to have included his family home, on the basis of the summary procedures set out in s. 62(7) of the 1964 Act. I have consulted the decision of the Court of Appeal in *AIB v. Darcy* [2016] 1 IR 588, [2016] IECA 214 and it appears that a well-charging order was granted by the High Court in respect of four properties in Howth and Malahide, County Dublin. In the course of the High Court proceedings, an application by the plaintiff to dismiss the proceedings as an abuse of process was refused by Gilligan J., and his refusal was appealed unsuccessfully to the Court of Appeal.

7. In that judgment, the Court of Appeal unanimously decided that Allied Irish Banks had not committed an abuse of process by discontinuing the first proceedings, which had been remitted to plenary hearing by the Supreme Court, and instead instituting proceedings which took advantage of the change in the law brought about by the 2013 Act. While many of the complaints of the plaintiff made in oral submissions in this case seem to have been made in that case also, it does not appear that the plaintiff raised the constitutionality of the 2013 Act.

8. While those 2014 proceedings were ongoing, the plaintiff instituted the within proceedings which seek to challenge the constitutionality of the 2013 Act. Fundamentally, the plaintiff claims that the 2013 Act is invalid, having regard to the Constitution in that it *"retroactively and retrospectively and in violation of the rule of law and the principles of legality takes away the rights and entitlements of the plaintiff to invoke a plenary as opposed to summary procedure"* and thus breaches several constitutional rights enjoyed by the plaintiff including the right to fair procedures, private property, the protection of his family, his alleged right to his family home, and the inviolability of his dwelling recognised in

Articles 40.3, 40.5, 43 and 41 of the Constitution. Articles 1, 6, 8 and 13 of the European Convention on Human Rights are also pleaded and a declaration of incompatibility is sought.

9. The plaintiff now applies to dismiss on the basis of delay by reference to the *Primor* principles. In *Primor plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, Hamilton C.J. (at p. 460) summarised the principles to be applied as follows:

> *"(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;*
>
> *(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
>
> *(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*
>
> *(d) in considering this latter obligation the court is entitled to take into consideration and have regard to*
>
> > *(i) the implied constitutional principles of basic fairness of procedures,*
> >
> > *(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,*
> >
> > *(iii) any delay on the part of the defendant — because litigation is a two party operation, the conduct of both parties should be looked at,*
> >
> > *(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,*
> >
> > *(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute*

bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,

(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,

(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."

10. As stated by the Court of Appeal (per Irvine J.) in *Millerick v. Minister for Finance* [2016] IECA 206, the *Primor* principles require the court to address its mind to three issues. The first is to decide whether, having regard to the nature of the proceedings and all of the relevant circumstances, the plaintiff's delay is to be considered inordinate. If it is not so satisfied, the application must fail. If on the other hand the court considers the delay inordinate it must then decide whether that delay can be excused. If the delay can be excused, once again the application must fail. Should the court conclude that the delay is both inordinate and inexcusable, it nevertheless should not dismiss the proceedings unless it is also satisfied that the balance of justice would favour such dismissal. I will consider this application by reference to those three issues.

Whether there is inordinate delay

11. I think it is clear beyond doubt, and indeed it was not seriously disputed by the plaintiff, that there has been inordinate delay in these proceedings. They were issued on 10

February 2014, and pleadings closed with the delivery of a defence by the defendants on 9 October 2015. No step whatsoever was taken in the proceedings until the Chief State Solicitor, on behalf of the defendants, served a notice of intention to proceed which was filed on 10 June 2021. This notice of motion then issued on 23 March 2022.

12. Accordingly, for approximately six and a half years, no step was taken in the proceedings by either party, and as it is for the plaintiff to prosecute his claim, I have no hesitation in finding that the plaintiff is guilty of inordinate delay in the prosecution of these proceedings and, indeed, I did not understand the plaintiff to seriously contest this.

Whether the delay is excusable

13. The plaintiff swore a somewhat confused affidavit in reply to the grounding affidavit sworn on behalf of the defendants. It is possible, however, to discern three potential excuses from that affidavit.

14. First, the plaintiff points to a series of significant health difficulties and family bereavements, any one of which would arouse sympathy. His father died in September 2015, and soon afterwards his son suffered a second retinal detachment and is apparently now clinically blind. The plaintiff and his wife have to care for their son and the plaintiff himself has significant mental health difficulties.

15. In addition, the plaintiff lost two of his brothers which, so far as I can ascertain from his affidavit, appear to have died shortly before the grant by this Court (McGovern J.) of a possession order to AIB. Accordingly, they appear to have died prior to the issue of these proceedings.

16. In the other proceedings brought by the plaintiff which were struck out by this Court on the basis of delay, the plaintiff unsurprisingly also relied on his very difficult personal

circumstances as an excuse for the delay in that case. However, the Court of Appeal at para. 41 refused to overturn my judgment in which I applied *O'Leary v. Turner* [2018] IEHC 7, a decision of Baker J. as a judge of this Court, which was to the effect that very distressing and tragic personal circumstances, similar to those suffered by the plaintiff in this case, did not excuse inordinate delay.

17. Therefore, applying the decision of *O'Leary v. Turner* to these proceedings, it is my view that the plaintiff's difficult personal and financial circumstances cannot be relied upon to excuse the delay of which the plaintiff has been guilty here. This is particularly the case where the various bereavements and his son's health problems all occurred prior to the period of delay.

18. Thirdly, the plaintiff sought to rely on his status as a lay litigant and the fact that he could not afford a lawyer. In the proceedings determined by the Court of Appeal in its judgment last month, this was raised for the first time on appeal and that court therefore considered that matter afresh. However, Noonan J. (on behalf of the Court), stated quite clearly (at para. 23):

> *…[T]he suggestion that Mr. Darcy was unable to progress the proceedings because he was a litigant in person would, in the normal way, provide no basis for excusing his delay in doing so. At the hearing of the appeal, Mr. Darcy complained of the fact that he was being denied his constitutional right to access to justice because he was unable to afford legal representation. Insofar as this appears to be a complaint that legal aid was not available to him, that is not something in respect of which this Court has any power or function, nor can it be regarded as a factor capable of excusing delay. As has often been said, unrepresented parties are subject to the same legal obligations as those who are represented."*

19. Applying that reasoning, it therefore seems that this third reason is also insufficient to explain the delay. As a result, the plaintiff's delay is not only inordinate, but inexcusable, and I must now consider whether the balance of justice lies in favour or against the grant of the defendant's motion.

Whether the balance of justice favours dismissal of the proceedings

20. Although in respect of the first two issues, the matters for consideration overlap considerably with the issues in the proceedings recently determined by the Court of Appeal, the considerations relevant to the balance of justice are quite different in this case.

21. In those latter proceedings, the plaintiff accused a professional person of deceit and made other very significant allegations, the adjudication of which would depend at least in part on oral evidence as to what had occurred in conversations at least fourteen years before any possible trial date. Along with the general damage to the reputation of the defendant in that case, he was also required to notify his insurers and to pay increased professional indemnity insurance premia until the proceedings were disposed of.

22. There was quite evidently prejudice which could be said to tip the balance of justice in favour of granting the application.

23. The matter is not as straightforward in this case, where the defendants are State authorities, and indeed office holders which are not in any sense personally affected by the claim made. The issues are purely at the level of public law, and the potential prejudice to the defendants is in reality prejudice to the public interest in maintaining the 2013 Act on the statute book and in allowing it to operate as intended. In response, the plaintiff emphasises the public interest in the issues he raises, which he says concerns the giving effect to a Supreme Court order and the prohibition on retrospective legislation.

24. It is difficult to identify prejudice to the State defendants in this case. It is of course the case that the State can suffer prejudice, in particular if a constitutional challenge has the effect of interfering with the orderly operation of a statute or of decisions of a State authority or public body made under a provision which is impugned. In fact, if a longstanding constitutional challenge was causing difficulties for charge holders in recovering possession, then I would accept that the State could demonstrate prejudice for the purposes of this application, as the prejudice material to the *Primor* principles goes beyond prejudice to the fairness of a trial.

25. If the Minister decides, as a matter of public policy, that a *lacuna* identified by a High Court decision should be remedied so as to permit owners of charges created prior to 1 December 2009 to recover possession by way of a summary procedure then, subject of course to the requirements of the Constitution, she is entitled to pursue that policy by promoting legislation for that purpose. If that policy is then adversely affected by the institution of proceedings challenging the constitutionality of that legislation but the challenge is not prosecuted by the plaintiff, then that is prejudice for the purposes of the *Primor* principles and it would have to be weighed in the balance against the legitimate interests of the plaintiff in pursuing the constitutional challenge.

26. However, there is no evidence whatsoever of any disruption caused by the institution of the proceedings due to the fact that they have lain in abeyance. In the absence of any other challenge, the presumption of constitutionality means the 2013 Act continues in operation and unless or until somebody else challenges it, the plaintiff's proceedings will have no effect at all on its operation.

27. Counsel for the defendants repeatedly stressed the fact that a *"shadow"* has fallen over the Act. However, in the absence of any effect on the operation of the Act or the creation of uncertainty as to lawfulness of steps taken on foot of it, I do not think there is any

prejudice to the State, even of the moderate level required to succeed in an application to dismiss pursuant to *Primor*.

28. The situation would be entirely different if a constitutional attack included an attack on a decision or order of a public body, or the operation of the enactment in question was in some way affected by the institution of proceedings which included a constitutional challenge to an Act of the Oireachtas. It has long been recognised, in the context of applications for injunctive relief, that the State may suffer a particular form of prejudice if it is restrained from operating a *prima facie* valid legal regime: see O'Higgins C.J. in *Campus Oil v. Minister for Industry and Energy (No. 2)* [1983] IR 88 and *Okunade v. Minister for Justice* [2012] 3 IR 152, [2012] IESC 49 at para. 9.30. In my view, these concerns are equally relevant to the balance of justice in an application pursuant to the *Primor* principles.

29. However, that has not occurred here. In fact, the 2013 Act appears to have been successfully relied upon by AIB in its second set of proceedings against the plaintiff and his wife.

30. In his decision in *Primor,* Hamilton C.J. stated that in considering the balance of justice, the court was entitled to take into consideration and have regard to seven factors which are set out at the beginning of this judgment. I should point out that, while these are not exhaustive (see Kearns J. in *Desmond v. M.G.N. Ltd.* [2009] 1 IR 737, [2008] IESC 56), many of them are not material here. For example, the factor at (ii) relating to special prejudice does not apply, as the case is one which will be decided by reference to a limited number of documents, being, it would appear, substantially the evidence of the papers in the other proceedings where the 2013 Act was applied to the plaintiff, as well as some documentary evidence relating to his land ownership and so on. The case is therefore principally, if not wholly, a *"documents"* case, which would probably turn primarily on legal submissions.

31. The considerations at (iii), (iv) and (v) are irrelevant because there is no delay on the part of the defendants here, nor have they acquiesced in the plaintiff's delay. It is now established that the action of the defendants in waiting to see if the plaintiff would in fact prosecute his claim is a form of inactive delay that does not preclude them from moving, once an inordinate amount of time has passed, for applying to dismiss. The situation would be otherwise if they actively engaged in the proceedings, so as to lead the plaintiff to believe that the proceedings could go out for hearing, notwithstanding this delay. This would occur, for example, where discovery was sought by a defendant and significant costs incurred by the plaintiff in furnishing it. However, nothing of that nature has occurred in this case.

32. The factor at (vi) is not relevant because the nature of the issues, and the limited facts under consideration, are such that there is no general prejudice to the fairness of the trial which might ordinarily be inferred, particularly in a case which relies in whole or in part on oral evidence, and so much time has passed that it can be presumed that the recollection of witnesses will have dimmed.

33. It therefore seems that only (i), which refers to the implied constitutional principles of basic fairness of procedures, and (vii), which relates to prejudice other than matters which might give rise to the risk of an unfair trial, such as damage to a defendant's reputation and business, can be applicable here.

34. I have already considered the type of prejudice put forward by the State, and it is my view that there is no evidence of any concrete or specific prejudice to the State. As regards (i), it seems highly unlikely that the defendants are suffering any stress and anxiety, or even inconvenience, arising from the fact that the proceedings have now stalled for what is, as I have found, an inordinate and inexcusable amount of time. The State is also entitled to fair procedures, but what is fair will always depend on the context, and it cannot be said that an institutional defendant such as the Minister for Justice, absent any related impediment to her

making a decision or relying on an order which she has previously made, could be said to be the subject of unfairness.

35. Senior counsel for the defendants relied on the *dictum* of Irvine J. (as she then was) in *Millerick v. Minister for Finance* [2016] IECA 206, at para. 32 where she stated:

"That is not to say, however, that in the absence of proof of prejudice the proceedings will not be dismissed. The Court is entitled to take into account all of the circumstances of the case including the list of factors outlined by Hamilton C.J. which are conveniently summarised in the head note of the Primor decision." [Emphasis added.]

36. However, that statement, I think, needs to be read in context. The background to the case, as is clear from para. 27, was that the only averment in the grounding affidavit as to prejudice was a very general one about the effect on the recollection of witnesses, and no oral submissions had been made to the High Court judge on the issue. The beginning of para. 32 makes it clear that the submission made to the Court of Appeal in *Millerick* was that the defendant had failed to identify "*any specific prejudice arising from the delay".*

37. It seems to me that in referring to the absence of "*prejudice*", Irvine J. was in that case directing her attention primarily to the absence of any specific prejudice which would affect the fairness of the ultimate hearing.

38. If I am wrong in that and the reference is not only to specific prejudice, but to general prejudice, I think the better view is that the comment is in any event to be regarded as *obiter*. The case itself concerned a road traffic accident which is said to have occurred on 28 March 2007. After the usual application to The Personal Injuries Assessment Board and the sending of originating letters, a personal injury summons was issued against the defendant in that case on 23 September 2009. After the exchange of a notice for particulars and replies, the Minister delivered a defence on 26 August 2010, and after replies to the Minister's notice for further

and better particulars, nothing appears to have happened until the Minister issued a motion to dismiss the claim for abuse of process and delay on 4 March 2015, more than four years later.

39. The Minister was of course in an entirely different position in that case because he was being sued for compensation and therefore there would be a claim in the public purse. Defence of that claim had been complicated by the delay because there was an issue between the parties as to whether the plaintiff's accident had been caused by an unmarked garda vehicle

40. It also needs to be borne in mind that the plaintiff's claim against the Minister was inconsistent with his claim in the related proceedings against the Motor Insurers' Bureau of Ireland ("MIBI"), in which he asserted that he did not know the identity of the driver or the owner of the vehicle — a plea which was plainly inconsistent with an assertion that the car was owned by the Minister and that the driver was a member of the Gardaí.

41. In the hearing of the application to dismiss in that case, counsel for the Minister was not able to point to any specific prejudice if the action was allowed to proceed to trial but relied on the general prejudice which is more readily inferred where a trial takes place many years after the incident which is the subject matter of the proceedings. By the time the High Court dismissed the *Millerick* proceedings for delay, eight years had passed and obviously some more time would pass before the case could have come to trial, even if the motion to dismiss had not been brought. It was therefore a case of general prejudice and it seems that the reference to the defendant being unable to show prejudice was a reference to the defendant's inability to show *specific* prejudice.

42. The citation by Irvine J. of her own earlier judgment in *Cassidy v. The Provincialate* [2015] IECA 74 confirms my view. That was a case where there had been a delay of over thirty years in the bringing of a civil claim arising out of alleged sex abuse. The claims were extremely serious, consisting of assault, abuse, rape and false imprisonment by a

man who the plaintiff alleged was an employee of the Religious Sisters of Charity, the defendant to the action. It was alleged that most of this abuse had taken place in a gate lodge at one of the entrances to the defendant's premises, or in a hut or a somewhat larger shed in the grounds. At other times, it was maintained that the abuse occurred at locations well removed from the defendant's premises.

43. Obviously, the case would have involved an issue as to whether the defendant was vicariously liable for the conduct of this man, particularly given that the defendant maintained that it appeared likely – although it had not been established – that the man was dead, and they could find no record of him ever having been in the defendant's employment. The judgment of Irvine J. reveals that the majority of those who could have assisted in determining whether the man had ever been in the employment of the defendant were dead, and some others could not be found.

44. However, at para. 36 of *Cassidy*, Irvine J. stressed that *"relatively modest"* prejudice, not necessarily amounting to a real risk of an unfair trial, would be sufficient to tip the scales in favour of dismissal. In so finding, she relied on the decision of Kearns J. in *Stephens v. Flynn* [2008] 4 I.R. 31, where he found no error by this Court (Clarke J.) in finding being held that the prejudice required should not be placed *"at a higher degree than moderate".*

45. In *Cassidy* however, there was in fact specific prejudice. Indeed, the prejudice in *Cassidy* appears to have been higher than *"moderate"*. The contest before the Court of Appeal in *Cassidy* was of course framed by the finding of the High Court judge that the defendant had failed to establish a real risk of an unfair trial. The focus of the appellate judgment was whether this was the correct test in an application brought pursuant to the *Primor* principles, as opposed to the *Ó Domhnaill v. Merrick* jurisdiction, and it was found that the burden on an applicant was lower where the *Primor* principles were under

consideration. That is the context in which the comments were made and later applied in *Millerick.*

46. In *Stephens v. Paul Flynn Ltd.* [2008] 4 IR 31, [2008] IESC 4, which was applied in *Cassidy*, there was general prejudice due to the passage of time, and an acceptance that the enactment of the European Convention on Human Rights Act, 2003, required a recalibration of the *Primor* test so that only moderate prejudice was required. However, it is not authority for the proposition that no prejudice of any kind need be shown.

47. Reading *Millerick* in context, therefore, I do not think that it can be read as saying that no prejudice of any kind, whether related to the fairness of the trial or otherwise, need be shown before proceedings can be struck out. All of the cases must be traced back to the decision of Hamilton C.J. in *Primor*, which it has been confirmed does not require to be overruled even in the light of the obligations of the State pursuant to Article 6 of the European Convention on Human Rights and the giving effect to that convention in Irish law by the European Convention on Human Rights Act, 2003. The principles have stood the test of time and are binding on me.

48. In my view, the authorities, read as a whole, clearly establish that some degree of prejudice, which need only be of a moderate nature, must be shown to have arisen from the delay in prosecuting by the proceedings before the balance of justice can be shown to favour dismissal.

49. By analogy, any effect on the day-to-day operation of the 2013 Act, which, as I have said, benefits from a presumption of constitutionality, would constitute prejudice to a State authority. The difficulty in this case is that such prejudice is, I think, either very slight or non-existent, as there is no evidence of any disruption caused by the proceedings and, indeed, the plaintiff property seems to have already been repossessed on foot of the 2016 Court of

Appeal judgment, such that it is difficult to see how he can now benefit from the claim he is making in these proceedings.

50. However, I think counsel for the defendants is correct in stating that the plaintiff is in effect saying that he has no current intention to prosecute the proceedings. I am also of the view that this is a matter to be weighed in the balance of justice. The plaintiff does not explicitly say that he does not intend to prosecute the proceedings, but his explicit refusal to prosecute them without legal representation leads to the conclusion that there is little prospect of these proceedings ever coming to trial.

51. At the hearing of the application, the plaintiff suggested that litigants in person could not successfully prosecute High Court proceedings. However, this is not correct as even a cursory look at the judgments published by the Courts Service will show several relatively recent instances of litigants in person doing precisely that. Indeed, one such case was listed immediately before this application on the day it was heard.

52. The plaintiff referred in argument to the Maintenance and Embracery Act, 1634, which was retained on the statute books by the Statute Law Revision Act, 2007. It would appear for the purposes of a complaint that he could not use third party funds to fund his challenge, and suggested it was unconstitutional. However, the plaintiff has brought no constitutional challenge to that Act.

53. I should add that the plaintiff has not given any detail as to his efforts to secure legal representation. The proceedings were originally drafted by counsel on the instructions of the plaintiff's then solicitors. It is not clear why those solicitors came off record or why the plaintiff has not been in a position to retain new solicitors. Many cases are brought to trial every day by legal teams who agree to take the case on a *"no foal, no fee"* basis and, while that is not by any means a guarantee of legal representation, the frequency with which legal practitioners agree to act on this basis is a significant factor in affording litigants access to the

courts. Indeed, in lists such as the personal injuries list and the judicial review list, such arrangements are extremely common, if not the norm. However, I have no information as to whether the plaintiff attempted to come to such an arrangement.

54. The balance of justice in this case therefore requires me to weigh the interests of a plaintiff who does not appear to have any present intention to bring his proceedings to trial, against those of the State defendants who cannot show, in my view, even moderate prejudice arising out of the maintenance of the proceedings. To put it at its highest, there is prejudice of the very slightest kind in that the existence of the proceedings may be regarded as placing a very faint question mark over the operation of the Act, and this, in my view, would not normally be sufficient to tip the balance in favour of the dismissal of a claim in the absence of an effect on the operation of the impugned statutory provisions. Such an effect would be of considerable significance in the balance of justice but is not present here.

55. However, in this case, it seems that the plaintiff has no real intention of prosecuting his claim as he has no legal representation, is not entitled to legal aid, and contends that he cannot progress the case without a lawyer. This case is therefore unusual in that the plaintiff's interest in maintaining the proceedings are entitled to little, if any, weight as he does not in fact intend to bring them to trial.

56. The result is that the very minimal prejudice shown by the State is sufficient, on the facts of this case, to tip the balance in favour of dismissal. In a case where a plaintiff wished to proceed with his action on the merits, it would be my view that the very limited prejudice shown would be insufficient to justify dismissing the proceedings. However, on the very specific facts of this case, the balance of justice favours dismissal as the plaintiff is not in fact going to prosecute his case.

57. I will therefore dismiss the proceedings.