

**THE HIGH COURT**

[2023] IEHC 190

[Record No. 2020/4769P]

**BETWEEN:**

**JOHN CRONIN**

**APPLICANT**

**AND**

**BARRY COWEN**

**DEFENDANT**

**AND**

[Record No. 2021/3684P]

**BETWEEN:**

**JOHN CRONIN**

**APPLICANT**

**AND**

**DREW HARRIS & ANOTHER**

**DEFENDANTS**

**AND**

[Record No. 2020/4770P]

**BETWEEN:**

**JOHN CRONIN**

**APPLICANT**

**AND**

**MICHEÁL MARTIN**

**DEFENDANT**

**AND**

**[Record No. 2020/5051P]**

**BETWEEN:**

**JOHN CRONIN**

**APPLICANT**

**AND**

**HELEN MCENTEE & PAUL GALLAGHER**

**DEFENDANTS**

**JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 23<sup>rd</sup> day of March, 2023**

## **INTRODUCTION**

1. This is my judgment on four related applications to strike out as frivolous and vexatious and/or as showing no reasonable cause of action and/or of being an abuse of process in respect of four separate sets of proceedings brought by the same Plaintiff against different individuals arising from alleged failures in their discharge of duties in public office. An *Isaac Wunder Order* is also sought.

## **BACKGROUND**

2. By way of general background, it appears that the Plaintiff's various difficulties originate in events which occurred in May, 1999 when a company controlled by the Plaintiff [hereinafter "*the Plaintiff's company*"] was involved in a project at Dingle Pier as a subcontractor for Irishenco Construction Limited [hereinafter "*Irishenco*"], a company which it is claimed is or was owned by one Mr. John Mowlem PLC in the UK. It forms part of the narrative background to these proceedings that Irishenco had successfully tendered for certain works at Dingle Pier, including dredging works.

3. While the Plaintiff's company had been subcontracted to dredge 8,500 cubic metres, it is claimed that it in fact dredged some 14,500 cubic metres. A dispute followed in respect of payment for this additional work and the matter was litigated in proceedings between the

Plaintiff's company and Irishenco. It appears that these proceedings were not progressed following the making of an order for security for costs against the Plaintiff's company and were ultimately struck out, seemingly on grounds of delay. It is understood from what was said during the course of the strike out application before me that the proceedings against Irishenco were struck out in or about 2014.

## **PROCEEDINGS**

4. Each of the four sets of proceedings before me commenced in 2020, when plenary summonses issued against various members of the Government and public bodies as appear in the title to this judgment. There is significant overlap between the four sets of proceedings but they are not identical. The Statements of Claim in each case are lengthy. I propose to refer primarily to the Statement of Claim in *Cowen* and to the others only to the extent necessary to broadly identify differences between the cases.

5. It appears that the proceedings against *Cowen* issued against him because he was the then Minister for Agriculture and his Department was the Department involved in the Dingle Pier Project. The *Cowen* proceedings refer to multiple other State agents as well as private companies, solicitors and named persons who are not joined in the proceedings but are identified as persons who are involved in a cover-up, fraud and conspiracy to defraud the State and sub-contractors of hundreds of thousands of euros.

6. The complaint at the heart of the proceedings appears to be that in breach of contract Irishenco did not pay the Plaintiff's company for the dredging work actually carried out despite itself being paid for in excess of amounts excavated by the Plaintiff's company. At paragraph 5 of the Statement of Claim in *Cowen* the Plaintiff pleads:

*"5. The Plaintiff and his brother were directors of J & J City Ltd..."*

7. At paragraph 7, it is pleaded:

*"7. In 1998 J and J City Ltd quoted for subcontracting work in the Dingle Pier Extension to Irishenco Construction Limited..."*

8. At paragraph 10 it is pleaded:

*"10. The work was to dredge 8500m<sup>3</sup> of rock initially but this was then increased to 12500m<sup>3</sup>."*

9. At paragraph 18 it is pleaded:

*"18. Irishenco Construction Ltd would not agree to the Plaintiffs payment valuation and insisted they had only taken out 8500 cubic metres. The Plaintiff was claiming 14500...".*

10. Reference is made to Court proceedings against Irishenco at paragraph 26 of the Statement of Claim. The Plaintiff complains that he was advised to pursue arbitration but that the agreed arbitrator had a conflict of interest. At paragraph 31 it is pleaded that he was advised that he had no case by an arbitrator who had a conflict of interest. Dissatisfied with his legal representation, the Plaintiff changed solicitor.

11. The Plaintiff further complains that Irishenco's name changed to John Mowlem Construction Limited despite entering into contracts and maintaining contracts as Irishenco. He complains that contracts continued to be offered to Irishenco even though the name had been changed and his complaints to the State through approaches to different Government departments were not acted upon. At paragraph 37-38 the Plaintiff pleads:

*"37. The Plaintiff contacted the Minister of the Marine to help him but would not get involved. As the Dingle Bay project was paid for by the Department of the Marine with tax payer's money this situation greatly troubled the Plaintiff. It seemed the contractor, Mr Mowlem could do anything he wants.*

*38. The Plaintiff reported the situation to the Gardai and they took his statement and interviewed the Department of Marine official in Tralee. He had the chief state solicitor with him."*

*"He confirmed that he was happy with value of work paid for by the department of Marine that was signed off by him and his site engineer. The Gardai told the Plaintiff there was*

*nothing they could do as the State won't sign a complaint against the state."*

**12.** In the meantime, the Plaintiff claims that he himself registered the name Irishenco. At paragraphs 41-42 the Plaintiff pleads:

*"41. The Plaintiff informed Mr John Mowlam that he would seek an injunction against them for using my company name all over Dublin. The Plaintiff had registered Irishenco Construction Ltd when he was told the contractor was still using this even though he officially his Company was now registered as John Mowlam Construction Ltd.....At this point the Plaintiff informed Dublin City Council that he was going to lodge an injunction against them to stop and/or suspend Dublin Port Tunnel on the grounds that the contract was null and void as the contractor was now registered under a different name. The legal owner of the company called Irishenco Construction Ltd was now in fact the Plaintiff."*

**13.** It is not clear if this threatened injunction action was ever pursued and the Plaintiff fairly acknowledges that while he asserts ownership of the Irishenco name, no company owned by him entered into the contracts referred to at paragraph 41 of the Statement of Claim.

**14.** The Plaintiff further alleges theft of his intellectual property in a patented process. He claims that his approaches to the Comptroller and Auditor General (paragraph 46) and the Public Accounts Committee (paragraph 47) were not acted on.

**15.** He complains that his proceedings against Irishenco were struck out (paragraph 49). At some point a bankruptcy petition was issued against John Mowlem Construction Ltd., seemingly by or on behalf of the Plaintiff.

**16.** The Plaintiff attributes the breakdown of his marriage to stress relating to these alleged wrongdoings. He considers that there was an orchestrated campaign against him because he was not prepared to let the original breach of contract go unanswered. He maintains that he has been failed by many government departments and is still owed money for the work done. He maintains that patents/trademarks were given on his processes to other people despite caveats lodged on his behalf. At paragraph 58 of his Statement of Claim, it is pleaded:

*“the Plaintiff asserts that the defendant has willingly and knowingly participated and collaborated with other senior Government officials and Civil Servants to silence him and his claims of multi-million pound frauds associated with his companies and awarded by Government bodies on the instruction of top State officials”.*

**17.** It is maintained that the Defendant in the *Cowen* proceedings was obliged to ensure that all monies were paid to the Plaintiff on completion of his Government investigation of the facts.

**18.** At paragraph 55, he refers to Particulars of Special Damage as follows:

*"55. Loss of earnings from breach of contract and subsequent loss of earnings. Loss of earnings from process to award patent/trade mark not being adhered and carried out to in a transparent, equitable, transparent and public manner."*

**19.** He maintains at paragraph 56:

*"56. The defendant was the person charged with responsibility for Agriculture and Marine in the State when allegations were first brought to his attention. He is or was entrusted with the purported power under the Criminal Justice Act 2001 sections 4,6,10 and 11."*

**20.** At paragraph 57, it is pleaded:

*"The defendant was negligent in the delivery of his duties to myself, my companies..."*

**21.** At paragraph 60 it is pleaded:

*"60. The Defendant was obliged to ensure that all monies were paid to the Plaintiff on completion of his Government investigation of the facts after it supported the Plaintiffs claims of wrong-doing by Department of Marine officials under the criminal justice act 1994 and 2011 section 19."*

**22.** At paragraph 80 it is pleaded:

*"80. The Defendant is using his State legal Counsel of the Attorney General's office to influence the state solicitor's office to advise the Civil Service employees to lie in interviews in the presence of An Garda Siochana.*

*"81. The Government and the Attorney General is guilty of criminality by association as it is facilitating all these illegal activities with the blessing of the state organs and officials."*

**23.** The proceedings against Micheál Martin [hereinafter "*the Martin proceedings*"] are in almost identical terms. At paragraph 71 of the Statement of Claim however, the Plaintiff advances a claim which was not made in the *Cowen* case namely:

*"The plaintiff seeks injunction against Mr Michael Martin continuing to hold such an important State office considering his roles in the above fraud allegations and coverups. We also ask that this Injunction prevents him sitting as a lifetime member of the Council of State advising future Presidents."*

**24.** The further proceedings against Paul Gallagher (then Attorney General) and Helen McEntee (then Minister for Justice) [hereinafter "*the McEntee & Gallagher proceedings*"] make similar claims to the *Cowen* and *Martin* proceedings but with added details regarding the Plaintiff's financial difficulties which in turn, it was claimed, caused or contributed to a judicial separation between the Plaintiff and his wife, court ordered maintenance payments and, regrettably, contempt and committal orders arising from non-payment of maintenance. It is pleaded at paragraph 55-62 as follows:

*"55. Because of this financial pressure the Plaintiffs marriage broke down and on October 19 2006 the parties obtained a Judicial Separation.*

*56. In May 2011 the order for maintenance was changed by Circuit Court Judge Con Murphy, but he refused to vary access so I could go abroad to find work. He then said all future dealings to be done in District court.*

*57. The Plaintiff applied to vary access on 21 November 2011. He raised a question about*

*Jurisdiction but the District Court Judge said she could hear the application.*

*58. The Judge would not vary order but said the Plaintiff could go abroad for work plus she reinstated the original maintenance. The Plaintiff clearly explained that his business had failed due to a breach of contract and abuse of the trademark/patent process.*

*59. Given the situation the State had put the Plaintiff in he appealed this decision, but lost after the case was thrown out December 14 2011, but it was reinstated again for 18 December 2011 in unusual circumstances.*

*60. The Plaintiff gets a 28 day sentence for being in contempt of Court with the amount payable for January 28 2011. Given the commercial situation the Plaintiff was in he genuinely could not pay the maintenance amount.*

*61. The Plaintiff appealed this to the circuit Court but lost appeal as the Judge threw the case out as the Solicitor for the other side was not there in time. Another person from her office made representations to delay till she got there. It was put back till later that day but it was never called even though the Plaintiff was waiting in the Court all day. The Solicitor for the other side came at 17:30pm and asked what the Plaintiff was still doing in Court. The Solicitor she goes into the Judge and then calls the Plaintiff in. The Judge apologised to the Plaintiff and said that the case had been thrown out earlier in Day. He then reinstated the case.*

*62. At the next hearing the Plaintiff told the Judge that he should excuse himself from this case as he could not legally do what he did at the previous hearing. The Judge told the Plaintiff that he could do what he liked. The Judge told the Plaintiff that he did not have time to read his supporting documentation and disallowed the Appeal. The Plaintiff was jailed for 28 days for contempt."*

**25.** The Plaintiff alleges that his committal was unlawful and he claims to have been assaulted by a prison officer while in prison. He pleads from paragraph 63 as follows:

*"63. On 31 May 2013 the Plaintiff went to jail where he was assaulted by a prison warder*



*after complaining to the Governor. The plaintiff decided that he needed to see an independent doctor to show him or her all the marks and bruises on his spine from the assault. The Plaintiff went on hunger strike in order to see an independent doctor.*

*64. Another District Court application was made to vary maintenance on May 25 2012. The Plaintiff again lost this application despite all his attempts to exhibit the proofs of breach of contract and loss of earnings through patent/trade mark application.*

*65. This was again appealed on 12 Nov 20 and failed and was put back to District 18 Dec for enforcement.*

*66. In 2017 the Plaintiff applied for freedom of information and for same orders to vary access and change maintenance, but got letter back from court service saying they could only deal with maintenance as there was existing circuit court order in place and they could only deal with one item. The case was up before the same District Court Judge and the Plaintiff asked her to explain to me how she heard it previously, and the Judge was not too happy with the Plaintiffs questions.*

*67. The Plaintiff said she had over stepped her jurisdictions and the Judge threatened the Plaintiff with more jail. The Plaintiff asked how he could get a fair hearing in the circumstances. The only option was now was the High Court.*

*68. The Legal Aid Board did not believe his financial submissions. Nor did the Judge. They did not believe the papers he produced. They said the Plaintiff produced fake documentation which he printed off from his own computer. The Plaintiff was trying to do business in China and offered to get documentation verified by Chinese Embassy.*

*69. The Court told the Plaintiff beg borrow or steal to pay the maintenance.”*

**26.** The complaints that are levelled against the Minister and the then Attorney General in the *McEntee & Gallagher* proceedings appear to relate to the judicial process and whether there was a fair hearing in respect of family law matters. A complaint is also comprised in the proceedings, however, in relation to the Plaintiff's treatment in prison. As set out in the extracts

quoted above from the Statement of Claim, following his imprisonment on foot of the committal orders made, the Plaintiff claims in the *Gallagher & McEntee* proceedings to have been subject to an assault in prison in May, 2013.

**27.** In the claim for special damages advanced the Plaintiff claims:

*"70. Damages to compensate for being unlawfully incarcerated and for the stress and trauma that caused. Loss of earnings from time wasted due to this protracted family law situation which should have been conducted in a timely and transparent manner."*

**28.** The final proceedings are against Drew Harris, the Garda Commissioner and An Garda Síochána [hereinafter "*the Harris proceedings*"]. These proceedings appear to arise from the Plaintiff's dissatisfaction with the approach of the Gardaí to a complaint made by the Plaintiff against the Central Office of the High Court. From the pleadings the complaint made to An Garda Síochána appears to relate to difficulties in issuing a motion for judgment in default of defence out of the Central Office in the *McEntee/Gallagher* proceedings. Some unclear irregularity is alleged against the staff of the Central Office whom it is alleged refused to accept the application. It appears that the Plaintiff complained about his difficulties in issuing the motion to An Garda Síochána at more than one station. The Plaintiff alleges that the Gardaí failed to investigate a complaint against the Central Office arising from their failure to issue a motion for judgment in default of defence. It is pleaded:

*"The defendants (An Garda Síochána) by their actions and inactions are obstructing and delaying justice by not performing their statutory duties of care and are then aiding and abetting the Minister for Justice and Attorney General in the miscarriage of justice for their own gain."*

**29.** The Plaintiff claims *inter alia*:

*"15. An order that Drew Harris and An Garda Síochána put right this situation."*

*"To achieve this they must locate the original documentation with the Plaintiff's signature in the High Court Central Files referenced in the document. They must also*

*find the additional documents which were sent in even though they (High Court) claim they do not have them. They must further amend the titles to reflect the contents of the 'true copy' that was submitted by the Plaintiff. At no point did the Plaintiff amend the titles."*

## **APPLICATIONS TO STRIKE OUT**

**30.** In each case the application to strike out is grounded on an affidavit of the solicitors dealing with the particular file in the Chief State Solicitor's Office. As the applications followed a similar approach, they were not all opened in full but counsel for the Defendants instead proceeded by opening the application in the *Cowen* case and then endeavouring to identify any differences in the other cases.

**31.** The application to strike out in the *Cowen* case is grounded on the Affidavit of Mr. Peter Clifford, Solicitor. In his grounding affidavit he claims that the Defendant's position that is the proceedings herein should be struck out as frivolous and vexatious and/or bound to fail, and/or are an abuse of the process and because the proceedings are clearly statute barred. It is contended that the proceedings form part of a pattern of litigation by the Plaintiff against Ministers, former and current, of the Government and that recently, this has included apparent threats of possible litigation against legal representatives for the State. For this reason, the Defendant additionally considers that it is just and appropriate that the Plaintiff should be made the subject of an Order that any further proceedings against him, his servants or agents, or indeed against other State actors, may not be brought by the Plaintiff without the prior leave of this Honourable Court (a '*Wunder*' order).

**32.** Mr. Clifford proceeds to offer a background by way of overview and high-level summary from what is apparent from the Statement of Claim delivered in the *Cowen* proceedings from which it appears that the Plaintiff had a grievance with a construction main contractor in respect of a contractual issue regarding construction works carried out by his company at Dingle Pier sometime around the year 2000. This, in turn, appears to be the launchpad for various (vague) claims he makes against State actors, including Mr. Cowen. Mr. Clifford highlights two paragraphs of the Statement of Claim in this regard. At paragraph 18 the Plaintiff pleads:

*“Irishenco Construction Ltd would not agree to the Plaintiff’s payment valuation and insisted they had only taken out 8500 cubic metres. The Plaintiff was claiming 14500 cubic metres removed based on the surveys of site and hydrographical measurements done on a daily basis.”*

**33.** Mr. Clifford further refers to paragraph 53 of the Statement of Claim where it is claimed as follows:

*“The Plaintiff believes he was failed by all the Government Departments involved. The Plaintiff believes that this orchestrated campaign against him was due to the fact that he would not let this breach of contract go unanswered. To this day he is still owed monies for his work in Dingle Harbour.”*

**34.** In response to what appears to be the gravamen of the Plaintiff’s claim, Mr. Clifford sets out that it is the Defendant's position that the underlying grievance is or was quintessentially a civil or contract law dispute between two private parties to which Mr. Cowen is a stranger. As subcontractor the contract for the dredging work carried out by the Plaintiff’s Company was with Irishenco rather than with any State entity.

**35.** Mr. Clifford further contends that the claim is statute-barred pointing out that at paragraph 7 of his Statement of Claim, the Plaintiff refers to a pre-contractual matter which dates back to 1998. At paragraph 50, he references a move by a pharmaceutical company seeking to build a facility at Carrigtwohill in 2006. Mr. Clifford points out that while the Defendant is a stranger to these dates, even if they are relevant, the matters in question occurred at least 15 years ago. Mr. Clifford notes with regard to the other proceedings taken by the Plaintiff concerning broadly the same subject matter that he has referred to a contract entered into on 10<sup>th</sup> of May, 2000; a wrongdoing which occurred in 11<sup>th</sup> of December, 2004; and, another relevant date of 31<sup>st</sup> of May, 2013 and points out that all events instanced by the Plaintiff are outside a 6 year period from the issuing of the proceedings against any of the parties.

**36.** Mr. Clifford also avers that it is the position of the Defendant that, even taken at its height, the Plaintiff’s claim identifies or pleads no proper cause of action against the Defendant and/or that the Plaintiff’s case is manifestly devoid of merit. It is noted that while the pleadings are

vague, the core of the pleaded grievance appears to be the contract law dispute between main contractor and sub-contractor regarding Dingle Harbour. Mr. Clifford points out that by definition, the Defendant would not have been a party to a contract between the main contractor and sub-contractor, nor would the Governmental Department for which he was formerly responsible or any Government Department. Accordingly, it is contended on behalf of the Defendant that he can bear no responsibility for the said contract, but rather that the parties to the contract are responsible for the performance or otherwise of their obligations to one another. Mr. Clifford points out that the Statement of Claim refers to proceedings brought between the parties to the Dingle Pier project highlighting by way of example paragraph 49 of the Statement of Claim which pleads *inter alia*:

*'Five years into the Plaintiff's proceedings his defence was struck out due to non-compliance even though no discovery was given to the Plaintiff. On the day of the motion to strike the other side piggy-backed with a motion for protection of costs and won.'*"

**37.** In Replies to Particulars the Plaintiff confirmed that the strike-out here referred to occurred in July, 2014. It is stated on behalf of the Defendant that the statute issue is raised primarily to underscore that the Plaintiff has no good or reasonable cause of action against the Defendant. Mr. Clifford avers that to the extent that the claim rests on some form of assumption that the Plaintiff was owed a duty of care by the State in respect of his private-law relationship with the main contractor, any such assumption would be misconceived and incorrect in law. He offers the view that the proceedings cannot be saved by an appropriate amendment of the pleadings noting that any elaboration of the claim is statute barred in any event.

**38.** Mr. Clifford makes the case on affidavit that the Plaintiff's claim does not make sense. In this regard he refers to paragraph 77 of the Statement of Claim where the Plaintiff says:

*"They are targeting any employee that highlights their criminal activities by using the State to legitimate [sic] their conspiracy to silence and cover up their illegal actions and cartels."*

**39.** He further refers to paragraph 79 of his Statement of Claim where the Plaintiff states:

*"The Defendant and his senior civil servants are using the organs of the state in a criminal organised ring. They are using the majority of its law-abiding employees for their own political and financial gain."*

**40.** Mr. Clifford also refers to a pattern of litigation against a wide range of bodies and recent threats of bringing proceedings against legal representatives of the State personally. The point is made that dealing with the Plaintiff's multiple proceedings is a time consuming and expensive process in which the Defendant will have to defend a claim which cannot succeed. Mr. Clifford exhibits correspondence received by email dated 11<sup>th</sup> of August, 2021 which states:

*"Dear Mr Clifford,*

*Thank you for your reply. I will await your response prior to our next hearing date. Please also note I will be issuing new motions over coming days and weeks against your clients. Please also note that I have been contacted by an international news media outlet that are going to run a news story about all cases that have been issued to date."*

**41.** He exhibits a further e-mail from the Plaintiff to several solicitors working in the Chief State Solicitor's Office and states as follows:

*"Dear sirs and madam.*

*As per my previous emails to your offices for which I have not had a reply to date, I formally request a copy of each of your law society practicing certs by return. Please be advised you are now being notified that you are implicated in a separate High Court Case filed by I. I will need to interview you all separately for to take written statements. Please advise when you can make yourselves available?"*

**42.** Several other emails in similar vein were exhibited in which the Plaintiff contended, *inter alia*, individuals within the Chief State Solicitor's office were witnesses for the Plaintiff and will need to be interviewed, notified that he would be calling solicitors and counsel who have been dealing with aspects of the case as witnesses on his behalf against the Court Service of Ireland against whom the Plaintiff issued proceedings in May, 2021.

**43.** Although a replying affidavit was filed in the *Cowen* proceedings by the Plaintiff, it adds little clarity to the claim. He avers (at paragraph 6):

*"6. At paragraph 10 the Deponent states that it is the Defendants position that the underlying grievance is or was a quintessential civil or contract law dispute between two private parties to which the Defendant is a stranger. At no stage in these pleadings did I refer to any private contract. The issue here revolves around a Government tender, the terms of which were breached and the relevant bodies did not take any action to address or put right any issues and this includes the Defendant."*

**44.** At paragraph 7 he says *"To clarify what this matter is actually about..."* - and then he goes into the detail of the Dingle Pier denying that this is a private contract matter. It centres on a Government tender and he exhibits the tender documents. The tender documents exhibited date to 1999. The Plaintiff then avers:

*"8. I say that my company was contracted to dredge in Dingle as a subcontractor in the Dingle Pier extension, I followed and adhered to all my contractual obligations. The main contractor awarded this contract was Irishenco Construction Ltd owned by John Mowlen PLC based in the UK. My company kept daily records of the amount of rock excavated and carried out a twice daily hydrographical measuring exercise of the sea bed. These figures were confirmed by checking the stockpile volumes.*

*9. I say that it was clear that we were excavating more than the contract stipulated. Irishenco Ltd were paid enough based on the Government tender they were awarded to be in a position to pay my company..."*

**45.** At paragraph 10 he deposes as follows:

*"I say the Government contractor refused to pay the correct amount to my business as subcontractor even though the main contractor was paid in full. I really am at a loss to understand how the Deponent can state the Defendant is a stranger to this matter given*

*that this tender was awarded and supposedly overseen by the Minister and Department for Agriculture and the Marine."*

**46.** As quoted above, the Plaintiff avers that the main contractor refused to pay his company whilst at the same time being paid in full and he holds the Minister responsible for the failure of the main contractor to pay him. The Plaintiff does not, however, respond at all to the Defendant's claim that the dates of events relied upon were all more than seven years previously.

**47.** An application is advanced on similar grounds in the *Martin* case save that it is pointed out on behalf of the Defendant that the Court would not have jurisdiction to make the order sought, namely an injunction preventing him sitting as a lifetime member of the Council of State advising future Presidents.

**48.** In the application in *Gallagher & McEntee* proceedings, Mr. Clifford seeks orders striking out the proceedings on much the same basis as the other cases but refers also to the fact that the Plaintiff pursued a motion for judgment in default of defence in that case without serving the motion and after the defence had been delivered. He refused to strike out the motion on consent. Mr. Clifford also refers to the serious nature of the pleas advanced of fraud and cartel like behaviour for which no factual foundation is given. He again exhibits all of the correspondence from the Plaintiff threatening to involve solicitors and others in the proceedings personally.

**49.** The replying affidavit filed on behalf of the Plaintiff is in largely similar terms to that in the *Cowen* case in each of the four cases. It is clear that in each case, the Plaintiff's point of departure is his claim not to have been paid for the work done on the Dingle Pier in 1999/2000.

**50.** In his oral submissions before the Court the Plaintiff impermissibly sought to expand on what had been set out by him on replying affidavit in response to each application. I do not propose to recite each of his submissions but merely the broad outline of the main points made.

*It is noted that he referred in oral submissions to the fact that his property had been repossessed and that he had taken several sets of other proceedings arising from this. He indicated that an application to strike out those proceedings had been recently*



*heard and judgment was awaited (he said in three cases which were “probably going to become eight cases”). The Plaintiff repeatedly told the Court in oral submission that the State believed him to be “dead” pointing to a death notice in the name of a different John Cronin, apparently of the same address, which he handed in to court. From what he said on his feet before me the Plaintiff appears to have become aware of the death of the other Mr. Cronin from correspondence directed by the Property Registration Authority in relation to the registration of his property.*

**51.** The Plaintiff maintained that his proceedings were all about “*fraud*”. He said that it was fraudulently maintained that he was dead, even though no misapprehension as to whether the Plaintiff was dead or alive formed any part of the cases pleaded or the application to strike out in any of the four proceedings before me. Referring to the fact that he was treated as “*dead*” in proceedings elsewhere, the Plaintiff added:

*“And, now, because there's criminal intent to pervert the course of justice in Government departments and Government bodies that are aiding and colluding in this massive fraud that has ultimately started in Dingle and culminating now in my loans and my property being sold on the grounds that I'm dead. And the statutory bodies governed to protect me and to investigate these things have failed in their duties. And the Guards and the Minister for Justice, they've all been aware of the situation. And I'm dead. Tonight, I have no insurance. Tomorrow, I can't even borrow €10 in the bank, your Honour, because all the Government, the Central Bank's files now are virtually worthless because they're contaminated. And based on the affidavit that I received on the 22nd of January this year, there's about another 15,000 people that could be in a similar position to me where my loans have been transferred illegally, not registered, and now ended up in the company that has supposedly sold my loans, or sold my property illegally, and the Guards haven't investigated my death and resurrection as we stand here. I think now the file has been issued to the Bridewell again for criminal investigation. And the issue now is the State is looking to withdraw my constitutional rights, being saying that I'm vexatious, frivolous, without merit and I'm bound to fail, but I say the facts speak for themselves, the documents speak for themselves. And if the Guards do their job properly, they will uncover the multibillion pound frauds and deceptions that have been perpetrated for the last 22 years on me and other people an on the State at the hands of - and facilitated by Government officials and State officials. And I'm paying the price.*

*My life has been stolen.”*

52. He added:

*“But, ultimately, this is fraud on fraud and the State is involved and the Government bodies associated with the supervision and the administration of these contracts is involved. The employees that sign off on the things are involved. The banks are involved, the Revenue are involved. I'm fighting the State. And because of that, I'm being ostracised.”*

53. The Plaintiff appeared to proceed on the basis that the Statute of Limitations, 1957 (as amended) did not apply because a claim is based on fraud. He posited an intention to amend proceedings in a vague manner. Referring to a prepared speaking note he told me:

*“But, ultimately, everything here that we're going to discuss starts with multimillion pound frauds and it ends now in potentially billion-pound frauds and illegal sale of loans and transfers of property... This case is all about tracing the initial mistakes and to see it back to the first point of contact and then contract, and subsequently the Dublin Port Tunnel, the James Joyce Bridge. From this, everything will be examined in a forensic detail so as to untangle the web of conspiracy hiding the truth. This, in turn, will expose the whole truth about the involvement and the levels of participation of each party. It will expose their involvement in the trying to hide/obscure the facts leading up to the illegal sale of my property and property loss/misplaced by the banks/finance companies. It will all show the connections between big business and the political establishment, legal practices and individuals, regulatory organisations, including: An Garda Síochána, Public Accounts, CRO, Data Commissioners, Revenue, Department of Finance, banks, Law Society, LSRA, PRA and public servants, including elected members. As a whistleblower, I brought an issue with major infrastructural problem to the attention of the relevant stakeholders in 1999/2000...Department of Marine officials and Government Ministers. Instead of the issues being investigated fully and addressed, it was ignored and I was left counting the costs.....the point I'm making is that this a State sponsored fraud. .. I know I'm never going to get paid because the State won't sign a complaint against this. I reported it to the State. The Guards interviewed the*

*Government officials, but the State wouldn't sign a complaint against the State. And, in that case, it's left down to a private individual to take a public prosecution against the State and the State employees.....I'm highlighting the fraud and the subsequent fraud that was associated with these companies and the contracts that were awarded to these companies were invalid.....But I own Irishenco. So the contract for Irishenco that was signed for the Dublin Port Tunnel was invalid on the grounds that Irishenco at the time wasn't Irishenco, it was John Mowlem Construction Limited. And I owned the new Irishenco with the legal name going back to - and the legal things going back to 1948.”*

**54.** It further appears from his submissions, in line with the pleadings, that the Plaintiff contends that he now owns the trading name for the company that had entered into the contract for the dredging works back in 1999/2000. It is unclear what legal significance he attaches to this in the cases before me.

**55.** It should be recorded that in his oral submissions to me in response to the applications to strike out the Plaintiff made further allegations against a host of different people and referred not only to other sets of proceedings but to complaints made to the Law Society and other authorities which it was claimed were not properly dealt with. No clear or intelligible details were provided. By way of example, he alleged that engineers working for the Department of Marine raided the Patent Office and may have stolen a process developed by the Plaintiff and used it on a Department of Marine contract adding:

*“Well, it might be my patent, it could be another patent.”*

**56.** The Plaintiff added to his issues with the committal warrant whilst on his feet referring me to the form of the order. Although not exhibited in response to the application to strike out, the Plaintiff handed into Court, without objection on behalf of the Defendants, a purported copy of a Court order. The date on the purported copy order which handed in to Court recites ‘3013’ instead of ‘2013’. By reference to this date, the Plaintiff stated that the warrant should never have been executed and he should never have been committed. The particular complaint regarding the date on the summons was not pleaded in any of the proceedings, although the Plaintiff appeared to submit that he should be allowed to add it to his case against An Garda Síochána. He referred also, however, to the fact that when he was in prison (in 2013) he

complained to the Governor about the mistake on the warrant. He claimed that he was assaulted for complaining. By reason of this alleged assault, the Plaintiff contended that he was entitled to sue for assault and to bring that claim against the Minister for Justice because the Prison Service are within the auspices of her Department notwithstanding that he did not bring proceedings for assault against his assailant or the Irish Prison Services within the prescribed time-limits. He further sought to persuade me that the alleged failure to investigate his complaint of assault was a failure on the part of the Gardaí, albeit that the claim of failure to investigate a complaint of assault is not contained in the *Harris* proceedings.

57. The Plaintiff acknowledged in oral submissions before the Court that he was visited in prison by his solicitor whom he claims logged a complaint on his behalf in relation to his alleged treatment in custody. The Plaintiff did not explain why no proceedings were ever brought against the alleged assailants or the Irish Prison Service in connection with this assault within applicable statutory time limits, despite his acknowledgment that he was legally represented at that time.

58. The Plaintiff added on his feet that he had made complaints to the Gardaí in relation to the repossession of his property and signatures on documents and that these had not been investigated. This forms no part of the case as pleaded against the Garda Commissioner in the *Harris* proceedings and was a complaint developed by the Plaintiff on his feet. No evidential basis was advanced as to the nature of the complaint made. No details were provided in relation to the treatment of that complaint to demonstrate a factual basis for an actionable claim in damages arises.

59. During his oral submissions, the Plaintiff referred to “*unfolding*” events. He maintained that there was an elaborate conspiracy between State bodies and individuals in business and law who were all involved in a fraud or cover up. He maintained that if he could not get a court hearing he would have to go “*public*”. It was pointed out in reply on behalf of the Defendants that these applications are being heard in public.

## **LEGAL PRINCIPLES**

**60.** In moving the applications on behalf of the Defendants, counsel appearing for all Defendants, placed reliance on a series of authorities which include *Doherty v. Minister for Justice, Equality & Ors* [2007] IEHC 246; *W v. Ireland & Ors.* [1997] 2 IR 141; *Towey v. Government of Ireland & Ors.* (11<sup>th</sup> of November, 2022) and *Smith v. McCarthy & Ors.* [2017] IECA 168.

*Actions in respect of the Exercise of Public Law Powers*

**61.** *W v. Ireland & Ors.* is relied on as an authority for the very limited circumstances in which a duty of care will be found to arise in respect of the discharge by the Attorney General of public law duties. *Smith v. McCarthy & Ors.* (Hogan J.) is cited as further authority to similar effect in relation to the absence of a general duty of care in respect of the exercise of public law powers.

**62.** In *Smith*, Hogan J. found that proceedings against the Law Society for Ireland were bound to fail and stated with regard to the claim in negligence pleaded in that case (paras. 35-36):

*“35. Such a potentially open-ended liability is, of course, also entirely contrary to principle and in over 100 years of negligence litigation the courts in all common law countries have resolutely recoiled from the unfairness of open-ended duties of care of this kind which would apply regardless of the absence of proximity or other special circumstances as between the claimant and the defendant or other considerations based on foreseeability and remoteness of loss. It is perhaps worth recording that both the English courts (see, e.g., Peasegood v. Law Society [1996] EWCA Civ 644) and the Supreme Court of Canada (see, e.g., Edwards v. Law Society of Upper Canada [2001] 3 SCR 562) have all stressed that regulatory powers vested by statute in bodies comparable to the Law Society exist for the benefit of the general public and do not give rise to a private law duty of care to a specific private litigant.*

*36. It follows, therefore, that the very breadth and open-ended nature of the plaintiff’s claim as against the Society is inconsistent with the existence of any generalised duty of care in the manner which she alleges. While it is perhaps unnecessary for present purposes to express any view on the question of whether the Society could ever qua*

*regulator be held responsible in negligence for failure to take action against any particular solicitor, it is perhaps sufficient to say that the facts of any such claim would have to be exceptional.”*

**63.** What these authorities establish is that it is only in exceptional circumstances and where a relationship of proximity is established and damage is foreseeable that the law imposes a duty of care in tort in respect of individual members of the public in respect of the discharge of public law duties.

#### *Jurisdiction to Strike Out*

**64.** *Doherty v. Minister for Justice, Equality & Ors* [2007] IEHC 246 and *Towey v. Government of Ireland & Ors.* are cited as authorities which guide the exercise of my jurisdiction to strike out and to make an *Isaac Wunder* order.

**65.** It is well established that the jurisdiction to strike out proceedings is to be exercised sparing and only in clear cases. The jurisdiction under Order 19, rule 28 of the Rules of the Superior Courts, 1986 is a jurisdiction which falls to be exercised by reference to the pleadings only. In exercising that jurisdiction, the court does not engage with the facts set out on affidavit. The Court proceeds on the basis that the allegations made are true. In addition to my jurisdiction under O. 19 rule 28, however, I have an inherent jurisdiction which permits me to strike out proceedings where I consider a case bound to fail. The Court’s inherent jurisdiction is a wider jurisdiction than the jurisdiction to strike out under the Rules, existing to prevent a party abusing the process of the Court.

**66.** The distinction between the two strike out jurisdictions invoked in this application *viz.* under the Rules or under the inherent jurisdiction of the Court, was addressed by Simons J. in *Clarrington Developments Limited v. HCC International Insurance Company PLC* [2019] IEHC 630 (at para. 24) in terms which were adopted with approval by Dignam J. in *Towey* as follows (para. 26):

*“24. For the reasons explained by the Supreme Court in *Lopes v. Minister for Justice Equality and Law Reform* [2014] IESC 21; [2014] 2 I.R. 301, [16] to [18], it is important to distinguish between the jurisdiction to strike out and/or to dismiss*

*proceedings pursuant to (i) Order 19 of the Rules of the Superior Courts, and (ii) the court's inherent jurisdiction. An application under the Rules of the Superior Courts is designed to deal with circumstances where the case as pleaded does not disclose any cause of action. For this exercise, the court must assume that the facts—however unlikely that they might appear—are as asserted in the pleadings.*

*25. By contrast, in an application pursuant to the court's inherent jurisdiction, the court may to a very limited extent consider the underlying merits of the case. If it can be established that there is no credible basis for suggesting that the facts are as asserted, and that the proceedings are bound to fail on the merits, then the proceedings can be dismissed as an abuse of process. 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.*

*26. Whereas it is correct to say that—in the context of an application made pursuant to the court's inherent jurisdiction—it is open to the court to consider the credibility of the plaintiff's case to a limited extent, the court is not entitled to determine disputed questions of fact.”*

**67.** Dignam J. goes on to succinctly identify a number of overarching principles as follows (para. 27):

*“27. In addition to these principles, the jurisdiction, whether under the Rules or the court's inherent jurisdiction, is subject to a number of overarching principles: first, it is a jurisdiction to be exercised sparingly, given that it relates to the constitutional right of access to the courts; second, the onus is on the moving party to establish that the pleadings do not disclose a reasonable cause of action or that the case is bound to fail or that it is an abuse of process and the threshold to be met is a high one; third, the Court must take the plaintiff's claim at its high-water mark; fourth, the Court must be satisfied not just that the plaintiff will not succeed but cannot succeed; and fifth, the Court must be satisfied that the plaintiff's case would not be improved by an appropriate amendment to the pleadings or through the utilisation of pre-trial procedures such as discovery or by the evidence at trial (see *Keary v The Property Registration Authority of Ireland* [2022] IEHC, *Scanlan v Gilligan & ors* [2021] IEHC 825, *Irish Bank Resolution**

*Corporation v Purcell & Ors [2016]2 IR 83).*

**68.** In *Doherty*, McGovern J. referred to *Faye v. Tegral Pipes* [2005] 2 IR 261 where McCracken J. explained that the jurisdiction to strike out as frivolous and vexatious has as its purpose to ensure that proceedings will not be used as an abuse of process of the courts. The two reasons identified by McCracken J. for this jurisdiction were, firstly, to protect the privilege of access to the courts which is of considerable constitutional value and should not be used as a forum for lost causes and secondly, to ensure that litigants are not subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed. In *Doherty*, McGovern J. agreed with the judgment of McCracken J. but added (at paragraph 11):

*"While completely agreeing with the judgment of McCracken J., I would add that in addition to not permitted the courts to be a forum for lost causes, the courts should not be used to facilitate general abuse of a person or class of persons. The courts are not to be used as a forum for ventilating complaints but, rather, for resolving genuine disputes between parties to the litigation and, where appropriate, the granting of declarations and ancillary relief, based on established right or entitlement."*

**69.** McGovern J. further referred to the decisions of Smyth J. in *Hanly v. News Group Newspapers Limited* [2004] I.R. 472 and *Riordan v. Hamilton* [2000] IEHC 189. Smith J. noted that the imputations of character made in the pleadings in *Riordan v. Hamilton* were such that they would leave a person open to litigation for defamation were they not accorded the protection of the privilege of the court.

**70.** In *Doherty*, McGovern J. further states (at para. 14 of his judgment):

*"Where the extent of the scandalous or vexatious pleading...is sufficiently gross and extensive, it seems to me that it is not the function of the court to sift through the material in the statement of claim to see if, perhaps, somewhere within it, a claim can be found in the proper form. The court is entitled to have regard to the document at a whole. There might well be cases where there is an isolated pleading here or there which may be scandalous or vexatious, but the greater part of the document contains pleadings in a*



*proper form. In those cases, the courts can strike out the offending portions of the pleadings. But that is not the case here."*

71. These authorities establish that I should exercise my jurisdiction to strike out proceedings sparingly and only where I am satisfied that the pleadings do not disclose a reasonable cause of action or that the case is bound to fail or that it is an abuse of process and that they cannot be saved by appropriate amendment.

*Jurisdiction to make Isaac Wunder Order*

72. The principles governing applications for what have become known as “*Isaac Wunder Orders*” are also well-established. Dignam J. considered and applied two recent authorities in his judgment in *Towey*, namely the judgments of the Court of Appeal in *Údarás Eitlíochta na hÉireann & DAA Public Limited Company v. Monks* [2019] IECA 309 and *Kearney v. Bank of Scotland* [2020] IECA 92.

73. In *Údarás Eitlíochta na hÉireann & DAA Public Limited Company v. Monks*, Haughton J. referred to the judgment of MacMenamin J. in *McMahon v. WJ Law & Co LLP* [2007] IEHC 51 in which MacMenamin J. had set out the features identified by Ó Caoimh J. in *Riordan v. Ireland* (No. 5) [2001] 4 I.R. 463 as justifying such an order, or militating against the vacating of such an order already granted, as follows:

*“1. The habitual or persistent institution of vexatious or frivolous proceedings against parties to earlier proceedings.*

*2. The earlier history of the matter, including whether proceedings have been brought without any reasonable ground, or have been brought habitually and persistently without reasonable ground.*

*3. The bringing up of actions to determine an issue already determined by a court of competent jurisdiction, when it is obvious that such action cannot succeed, and where such action would lead to no possible good or where no reasonable person could expect to obtain relief.*

4. *The initiation of an action for an improper purpose including the oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights.*

5. *The rolling forward of issues into a subsequent action and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings.*

6. *A failure on the part of a person instituting legal proceedings to pay the costs of successful proceedings in the context of unsuccessful appeals from judicial decisions.”*

**74.** In his concurring judgment in *Údarás Eitlíochta na hÉireann & DAA Public Limited Company v. Monks*, Collins J. emphasised the exceptional nature of the *Isaac Wunder* jurisdiction and the care that needs to be taken to ensure that such orders are made only where the court called upon to make such an order is satisfied that it is proportionate and necessary. They are not to be made simply because a proceeding has issued that is bound to fail, or because considerations of *res judicata* or the rule in *Henderson v. Henderson* apply. In his concurring judgment Collins J. emphasised that:

*“The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed. It is also important that the order must be framed as narrowly as possible (consistent with achieving the order’s objective.)”*

**75.** In *Kearney v Bank of Scotland* [2020] IECA 92, Whelan J. stated:

*“132. Isaac Wunder orders now form part of the panoply of the courts’ inherent powers to regulate their own process. In light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:*

- i. *Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.*
- ii. *Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or their legal representatives or other professionals connected with the other party to the litigation.*
- iii. *The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.*
- iv. *Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.*
- v. *The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.*
- vi. *It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.*
- vii. *Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.*
- viii. *Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human*

*Rights by article 6, to which the courts have regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.*

- ix. The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.*
- x. Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.*
- xi. An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, “vexatious” and this may present a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.*
- xii. Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it.”*

**76.** Addressing these two authorities and the fact that the factors identified in each are not identical, Dignam J. stated in *Towey* as follows (at para. 52):

*“An Isaac Wunder Order is an interference with the constitutional right of access to the courts and, as such, is of an exceptional nature and should only be made when proportionate and necessary; the terms of any such order should themselves be*

*proportionate; and the party against whom an order may be made must be given an opportunity to respond to the application. It will be noted that the factors set out by Whelan J and those set out in Riordan are different (possibly because the factors in Riordan were originally given as factors which tend to show that a proceeding is vexatious rather than as the basis upon which an Isaac Wunder order may be granted), though there is considerable overlap between them. They, of course, are not prescribed as simple checklists but as frameworks containing a non-exhaustive list of relevant factors within which a court may consider the proper balance between the rights of the person who may be the subject of the order, persons who may be defendants in proceedings and the interests of the common good.”*

77. In the circumstances of five different sets of proceedings under consideration in *Towey*, Dignam J. was satisfied that the factors identified in the Court of Appeal judgments relied upon had been met such that an *Isaac Wunder Order* was appropriate in that case.

## **DECISION**

### *Strike Out Jurisdiction*

78. It is very difficult to understand the Plaintiff's claims in these proceedings. The pleadings are very long and are constructed in unusual form. As stated by McGovern J. in *Doherty*, I am not obliged to sift through the Statement of Claim to see if somewhere within the prolix terms of the pleadings, there is some germ of a claim. Despite affording the Plaintiff considerable latitude to explain his cases to me, the oral hearing served to confuse rather than clarify matters for me. The Plaintiff's complaints appeared to grow and expand from what had been pleaded but without appropriate factual basis in evidence or a clearly articulated and rational basis for the ever-expanding claims being advanced.

79. Given the serious allegations made, my inability to comprehend or marshall the factual basis for the varied claims advanced from the pleadings but in view of the fact that I am obliged to treat the facts alleged as true in circumstances where the Plaintiff is a lay litigant, personally affected in a manner which was manifest to the Court from his presentation by what he clearly perceives as serious wrongdoings against him, I prefer to approach the application in these four related sets of proceedings on the basis of an exercise of my inherent jurisdiction. In line with

the principles identified above, to strike out in exercise of my inherent jurisdiction I must be satisfied that the proceedings are bound to fail and/or their maintenance constitutes an abuse of the process of the court. This is the standard I propose to apply in deciding whether to strike out in this instance.

**80.** It is maintained on behalf of the Defendants that it is manifest that the Plaintiff is using the courts as a forum for ventilating his complaints at the Dingle Pier tender even though the Plaintiff enjoyed no contractual nexus with the Defendants and any claim arising from the failure to pay him for work done lay against Irishenco, as the other contracting party. That this is core to the Plaintiff's grievances is indeed clear from the pleadings in each of the four cases, all of which refer back to the Dingle Pier Project and from which the Plaintiff dates all his issues including his marital breakdown and subsequent committal (albeit allegedly unlawful) and alleged assault whilst in prison. It is immediately obvious from reading the pleadings in all four cases that the real nub of the Plaintiff's claims relate to or arise from alleged historic wrongs which did not directly involve the named Defendants at all.

**81.** The claim relating to non-payment for dredging works which is at the heart of each of the proceedings is a private law claim in contract. Manifestly, the Plaintiff enjoyed no contractual nexus with any of the Defendants in relation to the Dingle Pier Project. The proceedings brought against Irishenco, the party with whom a contractual relationship existed, stands struck out and cannot be revisited in proceedings against strangers to the contract for the dredging work done. Nor indeed has the Plaintiff *locus standi* to maintain a claim personally which ought properly to have been pursued by the contracting company.

**82.** The lack of any contractual nexus between the Plaintiff and the Defendants sued in these proceedings in respect of the Dingle Pier Project is fundamental and must mean that any claim arising from non-payment for that work or the consequences both direct and remote flowing from such non-payment are bound to fail in a court of law unless the Plaintiff identifies special and exceptional circumstances which might demonstrate the existence and breach of a duty of care or statutory duty on the part of one of the public bodies sued. The Plaintiff's case in this regard appears to be that the State authorities have failed him in to the management of public monies in respect of work done and by failing to ensure that his company was paid for work done under a private contract with a third party. It has not been demonstrated that a relationship of proximity existed between the Plaintiff and any of the Defendants and no special

circumstances are properly identified on the facts such as might ground the maintenance of a claim by the Plaintiff arising from a failure in the discharge of public law duties.

**83.** No proper legal or factual nexus has been demonstrated to establish proximity, foreseeability and special circumstances such as might warrant maintaining proceedings for breach of duty (either in tort or pursuant to statute) against any of the Defendants arising from their handling of the Dingle Pier Project. The historic difficulties with Irishenco and issues in relation to payment for the Dingle Pier Project are not actionable at the suit of the Plaintiff in any of the four proceedings before me. Furthermore, each of the proceedings issued more than six years after the conclusion of those works by the Plaintiff's company and any further claim is manifestly statute barred. I am satisfied that all claims arising from the handling of the Dingle Pier Project are bound to fail.

**84.** Insofar as a complaint has been made of assault whilst in prison, the remedy for same would have been an action for damages as against the alleged assailant and the Irish Prison Service. The Plaintiff had access to legal advice at the time of the alleged assault and claims to have complained to prison authorities. This notwithstanding it appears that no properly constituted action was brought in respect of an alleged assault. . A claim cannot now be maintained in proceedings brought more than six years after the event against the Attorney General and the Minister for Justice and Equality sued either personally or in their public capacities. There is no precedent for extending a duty of care to the Attorney General and Minister for Justice and Equality in the circumstances pleaded and I am satisfied that the dicta of Hogan J. in *Smith v. McCarthy & Ors.* applies.

**85.** Were there really an issue with regard to the lawfulness of the Plaintiff's committal to prison, remedies are provided under Irish law contemporaneously with events (including an application under Article 40.4 of the Constitution) or in appropriate proceedings taken in time (such as proceedings for false imprisonment). The matter of the lawfulness of the Plaintiff's committal to prison is not actionable as against the Minister for Justice and the Attorney General in proceedings issued more than six years after the events. The Plaintiff was legally represented at the time of his committal to prison. Were there any substance to the complaint he makes, then the complaint might properly have been pursued in appropriate constituted proceedings issued within prescribed time limits. No explanation is offered for the failure to do so. It is simply not open to the Plaintiff to revive any claim he might have had by

repackaging it as a claim for some class of asserted but inadequately particularised claim of fraud or inadequately framed breach of duty on the part of Defendants at this remove.

**86.** Similarly, a complaint concerning the alleged failure of the Central Office to issue a motion is not a matter for which the Minister for Justice or the Attorney General can be made amenable in law absent special circumstances set out in pleadings. No such circumstances have been identified as existing in this case. Still less can the Minister for Justice or the Attorney General or the Taoiseach or any member of Government be held accountable in law in respect of an alleged failure on the part of the Gardaí to investigate complaints made by the Plaintiff in respect of ostensibly civil matters or at all (*W v. Ireland & AG* (No. 2) [1997] 2 I.R. 141 refers). Insofar as the Plaintiff makes complaints against the Garda handling of matters other than his engagement with the Central Office, these have not been particularized in his pleadings and are advanced in oral submission in a scattergun manner which has not been grounded in evidence. No such basis is demonstrated in the pleadings in these cases, albeit that the Plaintiff has many theories of conspiracy, cover-up and fraud, none of which has been properly particularised or has been demonstrated to amount to anything more than assertion based on deeply held and wide-ranging suspicions. It is not part of the functions of An Garda Síochána to police the day-to-day operations of the Central Office or other public bodies unless there is a basis for suspecting criminal wrongdoing. The case-law demonstrates that special circumstances would be required to substantiate a case of breach of duty on the part of An Garda Síochána in the investigation of a complaint including a pleaded basis for establishing that a relationship of sufficient proximity and foreseeability existed and actionable damage was caused. No special circumstances are identified in the pleadings or on affidavit or in submissions in these cases. I am satisfied that the proceedings maintained arising from a failure to investigate fall foul of the principles in *Smith v. McCarthy & Ors*.

**87.** While the Plaintiff posited an intention to amend proceedings, he did so in a vague manner which did not demonstrate a better basis for a stateable claim but rather served to highlight even further the wild and inchoate nature of his suspicions and beliefs. The manner in which these matters were referred to before the Court without any evidential basis and through oral submission is entirely unsatisfactory. The Plaintiff has not established a basis for his claims in a manner which I can positively assess. He has not demonstrated that an amendment to the proceedings might suffice to advance a case that has some prospect of success. Instead, the manner in which the Plaintiff's allegations range far and wide in oral



submissions beyond what has been pleaded support the unavoidable conclusion that there is no concrete basis whatsoever for what appear to me to be the Plaintiff's free floating, random and unsubstantiated suspicions. For example, even if it were true as a statement of fact (and it may or may not be), that the Plaintiff now owns the trading name Irishenco, it is unclear how this is relevant to the issues in these proceedings. In particular, it does not address the fact that the Plaintiff's company's contract for dredging works was with a company then trading as Irishenco and not with any State body sued in these related proceedings. The Plaintiff does not point to any factor which would give a factual basis for an action on his part as against the State.

**88.** The Plaintiff clearly attached considerable importance to a death notice for another John Cronin in his oral submissions but it is not clear in what way this was relevant to the wrongdoing complained of in the proceedings before me nor in what way it impacted on any of the proceedings before me. None of the Defendants had ever suggested that the Plaintiff was dead or in any way relied on his putative death. From what he said on his feet before me the Plaintiff appears to have become aware of the death of the other Mr. Cronin from correspondence directed by the Property Registration Authority in relation to the registration of his property. No issue relating to the Property Registration Authority arises in these proceedings. The issue of whether the Plaintiff was improperly believed to be dead, if this be the case, has no apparent relevance to any of the proceedings before me. I do not understand how it could be relied upon to ground a complaint of fraud against any of the State Defendants in the proceedings before me.

**89.** The Plaintiff referred to unfolding events in his submissions before me. Insofar as the Plaintiff relies in oral submission upon events which have occurred since the issue of the proceedings to save the proceedings, it seems to me that he cannot tenably seek to ground his existing actions retrospectively. Having considered the papers and the Plaintiff's submissions which seek to expand on his pleadings in numerous but unclear and non-focussed ways, I can only conclude that there is a grandiosity to the Plaintiff's claims which renders them entirely implausible in the absence of some coherent evidential or identifiable factual basis. He has made no attempt to formulate legal claims in the manner in which this should occur. No coherent factual account of a wrongdoing for which a legal remedy lay in any of the proceedings before me could be identified by me either on the pleadings or in his oral submissions. Further with the exception of interactions with the Gardaí and the Central Office, all pleaded dates of events

relied upon in the proceedings occurred more than seven years before the issue of each set of proceedings. Accordingly, an amendment of the pleadings even if the terms of an amendment had been identified, cannot cure the Plaintiff's proceedings which are manifestly bound to fail because they have not been taken in time.

**90.** The expanding and grandiose nature of the claims advanced in submissions and the Plaintiff's professed wish to amend his pleadings in some non-specific manner and free-floating manner put me in mind of Smyth J.'s exhortation in *Hanly v. News Group Newspapers Limited* that pleadings should not be used as an opportunity for placing unnecessary or scandalous matters on the record of the court, or as an opportunity of disseminating such matters when they have nothing to do with any dispute between the parties. These words resonate strongly in this case. The Plaintiff adopts what might aptly be described as a "scattergun" approach. He makes very serious, non-specific allegations against a wide number of individuals involved in public administration in the State. He does not respect the requirement to provide clear particulars of the facts relied upon when advancing serious allegations of fraud and cartel like behaviour.

**91.** By maintaining these proceedings in the manner in which he does, the Plaintiff is protected under the cloak of privilege of court proceedings in making unsubstantiated and groundless allegations with impunity. To my mind this is an abuse of the court process which I ought not to permit. I am particularly mindful in reaching this decision of the nature of the allegations made in each of the four proceedings and by the Plaintiff on his feet. Insofar as fraud running to multi-millions and conspiracy to cover up is alleged against public bodies and named individuals in their professional capacities without any coherent factual underpinning, the claims advanced are nothing short of scurrilous.

**92.** I am satisfied that these are appropriate cases for the exercise of my jurisdiction to strike out the proceedings on the basis that the pleadings do not disclose a reasonable cause of action and the cases are bound to fail and cannot be saved by appropriate amendment. I am further satisfied that to permit these actions to proceed constitutes an abuse of court process. I am particularly mindful in reaching this conclusion of the nature of the allegations made in each of the four proceedings as expanded upon by the Plaintiff on his feet. Insofar as fraud running to multi-millions of euro and conspiracy to cover up is alleged against public bodies and named

individuals in their professional capacities without any coherent factual underpinning, the claims advanced are nothing short of scurrilous.

*Isaac Wunder Jurisdiction*

**93.** I am asked to also make an *Isaac Wunder* Order precluding further litigation against the State arising from the subject matter of the within proceedings. Concerned as I am to protect the Plaintiff's constitutional right of access to the Court, I am also required to vindicate and protect from unjust attack the personal rights, including the reputational rights, of those targeted by the Plaintiff in unmeritorious proceedings. The scurrilous nature of the allegations made by the Plaintiff and the risk of damage to personal reputations arising from unsubstantiated claims of fraud and conspiracy give rise to a very serious counterbalance to the Plaintiff's right of access to the Court. To quote from Butler J. in *Scanlan v. Gilligan & Ors.* with regard to the making of an *Isaac Wunder* Order:

*“the making of such an order ensures that the opposing party is not subjected to an endless stream of litigation from the same litigant unless the court has determined that there is some objective merit to the proposed proceedings...”*

**94.** I am very mindful of the fact that significant costs are incurred by parties who are required to come to Court to meet cases in which serious but ill-founded allegations are made. In this regard the Plaintiff's pleaded history of non-payment of maintenance coupled with the fact that the Plaintiff's company's proceedings were struck out in the absence of security for costs provision being made, raises the spectre that the Plaintiff may have no real ability to meet costs orders made against him in serial unmeritorious proceedings such that the potential sanction of an adverse costs order is not effective in protecting against the risk of unmeritorious proceedings.

**95.** The history to these matters demonstrates that the Plaintiff has a propensity to seek to treat as actionable failings the response of different public authorities who do not vindicate his position in complaints made by him. This is very evident both from the proceedings already taken and from the proceedings threatened in correspondence and intimated in oral submissions before the Court. There is also some suggestion that the Plaintiff is engaged in serial litigation

against other parties. Indeed, the Plaintiff referred to other litigation in his oral submissions before me. However, these other matters are not before me. I am not in a position to form a view as to whether such other proceedings demonstrate a reasonable cause of action or not or instead represent an attempt to revisit matters which have previously been finally determined.

**96.** While parties should be protected against an abuse of court process where issues which have been conclusively determined are improperly sought to be revisited, it is not established on the evidence on these applications that the Plaintiff has persisted in pursuing vexatious and unmeritorious proceedings against the Defendants in the face of a Court determination of the issues. While there are four sets of proceedings advanced as a variation of the same claim before me, none of these claims appear to have previously been adjudicated upon. I am therefore not satisfied that the evidential basis for concluding that litigation pursued by the Plaintiff against the State is so persistently and repeatedly vexatious or unmeritorious as to warrant the making of an *Isaac Wunder Order* of general application in respect of proceedings against the State on these applications.

**97.** I have considered making a tailored *Isaac Wunder Order*, in the absence of an appropriate undertaking from the Plaintiff, restricted to the taking of further claims arising from the non-payment for the Dingle Pier Project, his committal to prison in 2013 and an assault whilst in prison, events which occurred more than six years ago or any failure to properly investigate same against a State party. Such a tailored order would limit interference with the Plaintiff's right of access to the Court and would not represent a complete bar to litigation in any event insofar as the Plaintiff might still litigate in respect of these issues subject to obtaining the leave of the Court to do so. However, mindful that the making of an *Isaac Wunder Order* is an order of last resort where no other means of protecting the rights of others and preserving court process from abuse is available, it seems to me that I cannot be satisfied on the evidence before me that the factors identified by the Court of Appeal in *Údarás Eitlíochta na hÉireann & DAA Public Limited Company v Monks* and *Kearney v Bank of Scotland* are met in these proceedings.

**98.** It is recalled in this regard that proceedings taken by the Plaintiff's company against Irishenco were struck out in 2014 seemingly without the issue of payment for work done being substantively determined. In each of the four sets of proceedings the subject of the within applications, the Plaintiff now seeks to revisit the question of non-payment for dredging work

carried out under contract with Irishenco even though this has already been the subject of struck out litigation and it is not now open to the Plaintiff to revisit his claim arising from non-payment for dredging works, but there is no evidence before me that the Plaintiff has previously pursued these issues in cases against the Defendants or other State parties and is now seeking to revisit claims previously finally determined.

**99.** It seems to me to be consistent with the jurisprudence referred to above to afford the Plaintiff the opportunity to accept a final ruling in relation to the claims advanced in the four proceedings considered by me. Insofar as the Plaintiff may seek to maintain further claims against any of the Defendants herein relating to non-payment for the Dingle Pier Project, his committal to prison in 2013 and an alleged assault whilst in prison, events which all occurred more than six years ago, then it seems to me that these issues will be determined by orders made by me striking out the within proceedings. Clearly these issues should not be revisited in future proceedings unless my order is set aside on appeal. However, in circumstances where, at least insofar as I am aware, this is the first time where a court has ruled in respect of the subject matter claims, it does not seem to me that there is evidence of a pattern of repeat litigation revisiting the same issues such as might warrant the making of an *Isaac Wunder* Order at this stage.

**100.** Where other proceedings are pursued by the Plaintiff in relation to non-payment for dredging works as part of the Dingle Pier Project, the Plaintiff's committal to prison in 2013, an alleged assault whilst in prison in 2013 or the investigation of any complaints in relation to these matters in the face of final orders made dismissing the proceedings and the Plaintiff declines an opportunity to undertake not to further maintain those proceedings, the Court might at that stage properly be invited to again consider making an *Isaac Wunder* Order in respect of any of these matters. I trust that this will not arise but were the Plaintiff to persist in revisiting the perceived failings of public authorities in relation to the matters the subject of the proceedings which stand dismissed on foot of this judgment, a Court might, in the event of such further proceedings being pursued and the Plaintiff refusing to undertake to desist from further action in appropriate terms, be satisfied to make an *Isaac Wunder* Order precluding the bringing of any further proceedings.

## **CONCLUSION**

**101.** The claim relating to non-payment for dredging works which is at the heart of each of the proceedings is a private law claim in contract. The Plaintiff enjoyed no contractual nexus with any of the Defendants in relation to the Dingle Pier Project. The proceedings originally brought against Irishenco, the party with whom a contractual relationship existed, stand struck out and cannot be revisited in proceedings against strangers to the contract for the dredging work done. Nor indeed has the Plaintiff *locus standi* to maintain a claim personally which ought properly to have been pursued by the contracting company. No proper legal or factual nexus has been demonstrated to warrant maintaining proceedings against any of the Defendants with regard to the Dingle Pier Project in tort or for breach of statutory duty. I am satisfied that the historic difficulties with Irishenco and issues in relation to payment for the Dingle Pier Project are not properly actionable at the suit of the Plaintiff in any of the four proceedings before me. Furthermore, each of the proceedings issued more than six years after the conclusion of those works by the Plaintiff's company and any further claim is manifestly statute barred.

**102.** I am satisfied that the Statements of Claim in each of these four cases considered in their entirety and together and having regard to the affidavit evidence adduced by the parties are documents which disclose no reasonable cause of action as against the named Defendants, are prolix, scandalous, vexatious and an abuse of the courts process. Accordingly, I will direct that each of the claims be struck out. The Plaintiff's claims against the Defendants relating to the non-payment of dredging fees for the Dingle Pier Project, the Plaintiff's committal to prison in 2013 and any assault whilst in prison in 2013 or any failure to properly investigate said matters, are determined by my orders striking out these proceedings unless set aside on appeal. They should not be the subject of further litigation in proceedings involving the same parties. A failure on the part of the Plaintiff to desist from revisiting these issues in future litigation may well justify the making of an *Isaac Wunder Order* against him precluding further court action. I am not, however, disposed to making an *Isaac Wunder Order* at this time. I will hear the parties further in relation to the form of any order and any consequential matters.