Neutral Citation [2015] IEHC 363

THE HIGH COURT

JUDICIAL REVIEW

[2013 No.745JR]

BETWEEN

GERARD WILLIAMS SANDYS AND BRYAN C. BROPHY

APPLICANTS

AND

LAW SOCIETY OF IRELAND

RESPONDENTS

JUDGMENT of Kearns P. delivered on the 12th day of June, 2015

The applicants seek an order of *certiorari* quashing the determination of the Complaints and Client Relations Committee ('the Committee') of the respondent of the 3rd July, 2013 whereby the issue of the applicant's failure to send an estimate of costs in accordance with section 68(1) if the Solicitors (Amendment) Act 1994 to the residuary beneficiary of the estate of Ms. Maureen O'Connell, deceased, was referred to the Solicitors Disciplinary Tribunal.

Orders are also sought to quash the determination of the Committee that there was evidence of excessive charging by the applicants in respect of three bills submitted to the residuary beneficiary of the estate of the late Ms. O'Connell and directing that the applicants repay the sum of €340,070 to the residuary beneficiary. A further order is sought preventing the referral of the alleged overcharging to the Solicitors Disciplinary Tribunal.

BACKGROUND

The applicants are both solicitors and members of the respondent Society. They have practised under the style of Sandys & Brophy Solicitors with an address at Sea Road, Galway.

The applicants were retained by Ms. Maureen O'Connell to act as her solicitor during her lifetime and were appointed as executors of her last will and testament. Ms O'Connell passed away on the 5th May, 1998 and a Grant of Probate in respect of her will was extracted on the 7th October, 2004. Her estate was valued at approximately €14,000,000 at that time and the Society of St. Vincent de Paul is the sole residuary beneficiary named in the deceased's last will and testament.

Following the death of Ms. O'Connell, the applicant set about the task of administering her estate. The applicants were required to institute High Court proceedings in 1998 seeking to prove the last will and testament of the deceased and to condemn a subsequent will. These proceedings were eventually settled in March 2013. Circuit Court proceedings were also commenced in December 2005 seeking possession of a premises known as O'Connell's Bar at 8, Eyre Square, Galway. This valuable licensed premises constituted the principal asset in the deceased's estate. The defendant in those proceedings issued a counterclaim and those proceedings were ultimately compromised in June 2006 subject to the consent of the Attorney General and the Commissioner for Charitable Bequests and Donations. Once approved, the licensed premises was sold for €14,000,000.

Further professional services were provided by the applicants in connection with the extraction of a Grant of Probate and the conveyance of two separate properties owned by the estate, namely the premises at Eyre Square and a site at Castlegar, Tuam Road, Galway.

Five separate bills of costs were raised by the applicants in relation to the professional services provided and their fees were discharged out of the deceased's estate. On the 23rd February, 2011 Mr. Cormac Brennan, solicitor for the Society of St. Vincent de Paul, made a complaint to the respondent Society alleging that the applicants had charged excessive fees for the provision of professional services and had failed to furnish the deceased's estate with an estimate of the legal fees as required by section 68 of the Solicitors (Amendment) Act 1994. The complaint was referred to the Committee on the 5th September, 2011. Correspondence ensued and the applicant was requested by the Committee to provide detailed schedules to their bills of costs, setting out the nature of the work undertaken and the basis upon which the fees were calculated.

Throughout the subsequent months there was a considerable amount of correspondence between the Committee, the applicants and the complainants. Various proposals were put forward as to how to proceed with the matter and how it might be resolved. In January 2012 the Committee suggested that the parties might seek to resolve their differences by agreeing to be bound by the decision of an independent legal costs accountant. However, the parties could not agree as to how the costs for this proposal would be discharged. In July 2012 the Committee engaged the services of Mr. Noel Guiden of Behan & Associates, Legal costs Accountants, to examine the substance of the complaint. By letter of the 12th September, 2012 the Committee advised the parties that the Society would bear the costs associated with procuring a report from Mr. Guiden and the applicant's solicitors subsequently furnished Mr. Guiden with the applicant's files for the purpose of examining the complaint and preparing his report.

Mr. Guiden delivered his report to the Committee on the 9th November, 2012. Mr. Guiden's report sets out the five bills of costs which were examined. In relation to the Circuit Court proceedings, for which the applicants had charged €165,000.00 for solicitor's fees, the report states that "*I cannot see any circumstances whereby a fee in the magnitude of the fee charged is justifiable…I am of the opinion that the Solicitor's professional fee should have been more in the order of €30,000.00/€35,000.00*".

In relation to the extraction of the Grant of probate and administration of the estate, Mr. Guiden recommended a fee in the order of

€55,000.00/€65,000.00 rather than the €175,000.00 which had been charged. The professional fee in respect of the conveyance of the property at Eyre Square was €140,070.00. Mr Guiden's report states that if an hourly rate of €300 was applied in respect of the work undertaken, in excess of 460 hours would have to be spent on the conveyance to arrive at the fee charged. Mr. Guiden described this as "*highly improbable*" and suggested a fee of €35,000.00/€40,000.00 in circumstances where the conveyance was "*fairly straightforward*".

Mr Guiden did not recommend altering the bills of costs in relation to the High Court proceedings on the basis that the bill had already been compromised and settled. The bill in relation to the conveyance of the Tuam property, for which a professional fee of €1,500.00 was charged, is described as "*clearly reasonable*". Mr. Guiden's report was sent to the parties in November 2012.

A meeting of the Committee was scheduled to take place on the 6th February, 2013. However, on the 5th February, the applicants' solicitors wrote to the Society stating that they were not in a position to have the matter determined at the meeting of the 6th February. This letter further stated that, after considering Mr. Guiden's report, the applicants wanted an opportunity to submit a report prepared by their own legal costs accountant and former Taxing Master. A number of issues with Mr. Guiden's report were highlighted, including that it did not consider the level of fees charged before the recession in 2008 and that the report failed to consider the importance of the Circuit Court proceedings to the eventual sale of the property at Eyre Square for a favourable price. An issue was also raised in relation to the requirement to send a s.68 letter to beneficiaries of an estate. At the meeting of 6th February, 2013 the Committee indicated that no additional report of a legal cost accountant of the applicants' choosing could be submitted but that their submissions to the Committee could be informed by such a report.

On the 8th April, 2013, after receiving the draft minutes of the meeting of the 6th February and taking instructions from the applicants, the applicant's solicitors wrote to the Society objecting to the continuing chairmanship of Mr. Richard Hammond on the basis of a perception that he had pre-judged the complaint and the Committee would not consider a report of a legal cost accountant in response to Mr. Guiden's report. Mr. O'Dwyer, solicitor for the applicants, states in this letter "*It has always been my understanding over many years of practice that the primary purposes of the Complaints and Client Relations Committee was to resolve complaints between the Complainant and the Respondent. I am not aware that any such effort by the Society to resolve the issues between the complainant Mr Cormac Brennan and my client had taken place. Our clients would be amenable to such a proposition…*".

By letter dated the 19th April, 2013 the Committee pointed out that Mr. Guiden's report had been sent to the applicants in November 2012 yet submissions in relation to it were received only on the 5th February, 2013, on the eve of a meeting of the Committee. The Committee states that the applicants had ample opportunity to consult their own legal cost accountant at any stage over the previous two years and that at no time during that period did they put forward any proposal to reduce the fees, which is the usual method by which matters of this nature are resolved. It is reiterated in this letter that at such a late stage in the process the Committee was not willing to consider a separate report of a legal cost accountant and would proceed to determine the matter based on Mr. Guiden's report. It is denied that the chairman pre-judged the matter and a final meeting was scheduled for 30th April, 2013. Following further correspondence on the issue of the chairman recusing himself, which he refused to do, submissions were filed by the applicants on 29th April, 2013 and the matter was subsequently adjourned to 3rd July, 2013.

In the intervening period the submissions of the applicants were forwarded to Mr. Guiden for review. Mr. Guiden submitted his observations to the Committee by letter dated 7th June, 2013. After taking objection to certain matters raised in the applicant's submissions, he states that "*I do not propose commenting individually on any of the items raised in Crean O'Cleirigh & O'Dwyer's letter of 29th April as there is nothing contained therein which in any way alters my opinion*".

The Committee convened on the 3rd July, 2013 in order to adjudicate on the complaints and the decision arrived at was communicated to the applicants' solicitor by letter dated 8th July, 2013. The decision letter states that the Committee found there to have been a total overcharge of €340,070 and that this sum, plus VAT, should be reimbursed to the complainant no later than 31st January, 2014. The overcharging was also referred to the Solicitors Disciplinary Tribunal along with the failure to send letters in accordance with section 68 of the 1994 Act. No findings were made in respect of inadequate professional services under section 8 of the Act.

STATUTORY PROVISIONS

The long title of the Solicitors (Amendment) Act 1994 ('the 1994 Act') provides that it is:–

> *"An Act for the administration, enrolment and control of solicitors of the Courts of Justice and to provide for other matters in connection with the matters aforesaid."*

'Client' is defined in section 2 of the Act as follows –

> *'"client"' includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and includes a beneficiary to an estate under a will, intestacy or trust;"*

Section 9 of the Act empowers the respondent Society to investigate complaints regarding the sums claimed in bills of costs issued by solicitors and to impose sanctions for charging excessive fees. Section 9(1) provides:–

> *"9.—(1) Where the Society receive a complaint from a client of a solicitor, or from any person on behalf of such client, that a solicitor has issued a bill of costs that is excessive, in respect of legal services provided or purported to have been provided by that solicitor, the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they are satisfied that the bill of costs is excessive, direct the solicitor to comply or to secure compliance with one or both of the following requirements, namely—*
>
> *(a) a requirement to refund without delay, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the solicitor's costs in connection with the said legal services;*
>
> *(b) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs."*

Section 68 of the Act relates to charges to clients and provides as follows:–

"68.—(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of—

(a) the actual charges, or

(b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

(c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties)."

SUBMISSIONS OF THE APPLICANTS

The applicants seek to quash the decision of 3rd July, 2013 on a number of grounds including that the Committee failed to afford fair procedures to the applicant; the Committee unlawfully delegated its decision making authority to a legal cost accountant; and that the Committee failed to give any or adequate reasons for its decision. It is also argued that no referral should have been made to the Tribunal in respect of the failure to issue a section 68 letter as the applicants contend they were not required to send one to the beneficiary of the estate.

Failure to Afford Fair Procedures

The applicants' primary ground of challenge is that the Committee imperilled a fair hearing and just determination of the complaint by refusing to allow the applicants to adduce evidence from an appropriately qualified legal costs accountant to rebut the evidence given to the Committee by the Committee's own appointed legal costs accountant.

It is submitted that basic principles of fair procedures and natural justice require that any person who stands accused of the conduct alleged is entitled to be heard in his defence and to be afforded the opportunity to make the best possible case in reply to the allegations. Counsel refers the Court to the decision in *Re Haughey* [1971] I.R. 217 where a senior Garda had made a number of allegations about the respondent to the Dáil Public Accounts Committee. After refusing to answer questions before the Committee the respondent was sentenced to a term of imprisonment of six months. On appeal to the Supreme Court the respondent contended *inter alia* that the Committee's procedures failed to vindicate his right to natural and constitutional justice. In finding for the respondent, Ó Dálaigh C.J. stated that a person whose conduct is impugned in the course of proceedings before a quasi-judicial body is entitled to the following rights:–

"(a) that he should be furnished with a copy of the evidence which reflected on his good name; (b) that he should be allowed to cross-examine, by counsel, his accuser or accusers; (c)that he should be allowed to give rebutting evidence; and (d) that he should be permitted to address, again by counsel, the Committee in his own defence."

The then Chief Justice when on to state that –

"To deny such rights is, in an ancestral adage, a classic case of clocha ceangailte agus madraí scaoilte. Article 40, s. 3, of the Constitution is a guarantee to the citizen of basic fairness of procedures. The Constitution guarantees such fairness, and it is the duty of the Court to underline that the words of Article 40, s. 3, are not political shibboleths but provide a positive protection for the citizen and his good name."

While the applicants accept that they had adequate notice of the complaint made against them, it is submitted that they were not given an adequate opportunity to meet the substance of the complaint and were denied fair procedures as a result. In this regard, counsel refers the Court to the case of *The State (Irish Pharmaceutical Union) v. Employment Appeals Tribunal* [1987] I.L.R.M. 36 wherein McCarthy J. stated as follows:–

"Whether it be identified as a principle of natural justice derived from the common law and known as audi alteram partem or, preferably, as the right to fair procedures under the Constitution in all judicial or quasi-judicial proceedings, it is a fundamental requirement of justice that person or property should not be at risk without the party charged being given an adequate opportunity of meeting the claim, as identified and pursued. If the proceedings derive from statute, then, in the absence of any set of fixed procedures, the relevant authority must create and carry out the necessary procedures; if the set or fixed procedure is not comprehensive, the authority must supplement it in such a fashion as to ensure compliance with constitutional justice…"

It is submitted that any person accused of wrongdoing could not hope to have a fair hearing if he is denied the opportunity to adduce evidence in order to rebut the case against him. In *R. v. Board of Visitors of Hull Prison Ex p. St. Germain (No.2)* [1979] 1 W.L.R. 1401 Lane L.J. stated:–

"In our view,…the right to be heard will include, in appropriate cases, the right to call evidence. It would in our judgment be wrong to attempt an exhaustive definition as to what are appropriate cases, but they must include proceedings whose function is to establish the guilt or innocence of a person charged with serious misconduct. In the instant cases, what was being considered was alleged serious disciplinary offences, which, if established, could and did result in a very substantial loss of liberty. In such a situation it would be a mockery to say that an accused person had been "given a proper opportunity of presenting his case" (section 47(2) of the Prison Act 1952) or "a full opportunity…of presenting his own case" (rule 49(2)), if he had been denied the opportunity of calling evidence which was likely to assist in establishing the vital facts at issue."

Counsel for the applicants submits that Barron J. reached the same conclusion in the case of *Flanagan v. University College Dublin* [1988] 1 I.R. 724. In that case, the applicant, a postgraduate student at the respondent University, had been accused of plagiarism

by a lecturer. This complaint was referred to the Registrar as a breach of academic regulations and the applicant was summoned to appear before a disciplinary committee. The applicant addressed the committee and denied any deliberate plagiarism. The committee, with the permission of the applicant, decided to refer the matter to an independent expert to be selected by the Registrar. The expert concluded that the essay had been plagiarised and the committee, acting on this opinion, recommended that the applicant be sent down from college for a year. The applicant challenged the decision on the basis that she had been denied fairness of procedures. Barron J. found for the applicant and stated as follows:–

> *"In the present case, the principles of natural justice involved relate to the requirement that the person involved should be made aware of the complaint against them and should have an opportunity both to prepare and to present their defence."*

Barron J. went on to state:–

> *"At the hearing itself, she should have been able to hear the evidence against her, to challenge that evidence on cross-examination, and to present her own evidence."*

Counsel for the applicants submits that the Committee's decision to refuse to accept the applicants' report had the effect of converting expert evidence, prepared by a former Taxing Master, into submissions. While the Committee sought to justify this course of action by letter dated 19th April, 2013 wherein it was stated that accepting an additional report would be "*unworkable*" and the Committee could not countenance any further delay, it is submitted on behalf of the applicants that avoiding administrative inconvenience does not justify a denial of fair procedures.

It is submitted that the respondent's Committee fell into error by refusing to allow the applicants to adduce evidence to rebut the expert opinion of Mr. Guiden. In this regard, counsel relies upon the following statement of Henchy J. in *Kiely v. Minister for Social Welfare* [1977] I.R. 267:–

> *"Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice."*

It is submitted that in the present case the Committee wrongly denied the applicants a fair opportunity to exculpate themselves and elevated Mr. Guiden's expert report to the status of accepted fact without affording the applicants a fair opportunity to controvert it and present their strongest defence.

Unlawful delegation of decision making function

Counsel for the applicants submits that the Committee has a statutory function to hear and determine allegations such as those made against the applicant. In the case of *Fitzgibbon v. the Law Society* [2014] IESC 48, the Supreme Court held that the CCRC is "*a specialist committee in its work. Its work is not that of a solicitor*". It is submitted that the Committee's decision to 'determine the complaint based on Mr. Guiden's report' as stated in Mr. Watson's letter of 19th April, 2013 can not be justified. The Committee is a quasi-judicial body which cannot delegate its decision making power to a person who provides expert evidence. While it can have regard to expert evidence, the Committee must not follow such evidence slavishly.

In *Flanagan v. UCD* [1988] 1 I.R. 724 the respondent's disciplinary committee decided that the applicant had been guilty of plagiarism on the basis of a report the disciplinary committee had procured with the applicant's consent from an independent expert, Professor Hannan. Barron J. held that:–

> *"…by acting on Professor Hannan's report the committee of discipline had in effect delegated its function, which…is improper."*

Counsel submits that it is clear, having regard to Mr. Guiden's limited response to the submissions in relation to his report prepared by the applicants, that the Committee was guided solely by Mr. Guiden's opinion.

It is further submitted that any suggestion that the Committee would have been placed in an "unworkable" position were it required to consider a further expert report is an entirely unsustainable proposition. The Committee has a statutory function to adjudicate between competing contentions of fact or legal submissions advanced by all interested parties, and is not entitled to restrict the focus of the inquiry merely to avoid having to prefer one expert opinion over another. It is submitted that by following so closely the report of Mr. Guiden the Committee unlawfully delegated its decision making role.

Failure to give reasons

It is submitted that the duty for quasi-judicial bodies such as the Committee to give reasons is well established. Counsel refers to the decision of Murphy J. in *O'Donoghue v. An Bord Pleanála* [1991] ILRM 750 wherein it was stated:–

> *"It is clear that the reason furnished by the board (or any other tribunal) must be sufficient first to enable the courts to review it and secondly to satisfy the persons having recourse to the tribunal that it has directed its mind adequately to the issue before it. It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations."*

In *Mulholland v. An Bord Pleanála (No. 2)* [2006] 1 I.R. 453 Kelly J. considered the nature of the statutory obligation to give reasons as follows:–

> *"The obligation at (b) above to state the considerations on which a decision is based is, of course, new. I am of opinion that, in order for the statement of considerations to pass muster at law, it must satisfy a similar test to that applicable to the giving of reasons. The statement of considerations must therefore be sufficient to:-*
>
> *(1) give to an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision;*

(2) arm himself for such hearing or review;

(3) know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider; and

(4) enable the courts to review the decision."

In *Mallak v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 297 the Supreme Court identified the obligation to give reasons as a requirement of natural and constitutional justice. Fennelly J. stated as follows:-

> *"The obligation to give fair notice and, possibly, to provide access to information or, in some cases, to have a hearing are intimately interrelated and the obligation to give reasons is sometimes merely one part of the process. The overarching principle is that persons affected by administrative decisions should have access to justice, that they should have the right to seek the protection of the courts in order to see that the rule of law has been observed, that fair procedures have been applied and that their rights are not unfairly infringed"*

Fennelly J. continued:–

> *"More fundamentally, and for the same reason, it is not possible for the appellant, without knowing the Minister's reason for refusal, to ascertain whether he has a ground for applying for judicial review and, by extension, not possible for the courts effectively to exercise their power of judicial review."*

In the present case it is submitted that the Committee failed to give clear and cogent reasons for its decision which would enable the applicants to understand whether the Committee had directed itself to a task it was obliged to perform and to understand the basis for the determination impugned. It is submitted that the applicants do not know the reasons why the decision was made and were unable to make any assessment of the likelihood that an appeal to this Court under s.11 of the 1994 Act would succeed. Nor is it possible, counsel contends, for the applicants to discern from the determination whether or not the Committee actually directed its mind to the submissions made by the applicants' solicitor on their behalf. It is not clear why the Committee confined itself to and followed so closely the figures identified by Mr. Guiden in his report when there were competing submissions on behalf of the applicants.

Counsel for the applicants submits that the statement of opposition filed by the respondent tacitly accepts that the Committee did not give any or adequate reasons for its decision but now seeks to justify this failure by reference to "*the context of the longstanding investigation of the complaint, the express delineation of the issues being considered, the exchange of documentation and the manner in which submissions were received and addressed in oral discussion before the Committee*." It is submitted on behalf of the applicants that the reasons for the determination can not be inferred from the history of the proceedings before the Committee and that, in any event, the applicants were entitled to an explanation as to why their submissions in relation to the fees charged were rejected and why the Committee confined its deliberations solely to the range of figures put forward by its appointed legal costs accountant.

It is further submitted that the respondent is now belatedly attempting to offer an explanation for the Committee's failure to state any reasons for its decision and that the Court should be slow to allow material gaps in the decision making process to be retrospectively filled in by evidence adduced and/or submissions made in the context of these proceedings.

Availability of an alternative remedy

In relation to the respondent's contention that the applicants have failed to avail of an appropriate alternative remedy, counsel on behalf of the applicants submits that the Committee failed to afford them fair procedures and that the determination is thus null and void and of no effect. Therefore, the appeal provided under section 11(1) of the 1994 Act did not provide an adequate remedy.

It is further submitted that just because the applicants were entitled to appeal the impugned decision does not automatically bar them from seeking the relief within. In this regard, counsel refers the Court to the decision in *Doherty v. South Dublin County Council* [2007] IEHC 4 wherein Charleton J. stated:-

> *"The fact that an appeal might be available as an alternative can, depending on the circumstances, bar the availability of a remedy, but it does not automatically exclude it."*

Further, in *Fitzgibbon v. The Law Society* [2014] IESC 48, Denham C.J. stated that the respondent's Committee may be subject to judicial review. In *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497 Barron J. considered the factors to be taken into account in deciding whether an appeal or judicial review was the appropriate remedy in any given case. He stated:–

> *"The real question to be determined where an appeal lies is the relative merits of an appeal as against granting relief by way of judicial review. It is not just a question whether an alternative remedy exists or whether the applicant has taken steps to pursue such remedy. The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that the applicant has not gone too far down one road to be estopped from changing his or her mind."*

It is submitted that it is well settled that objections relating to the Committee's failure to afford fair procedures to the applicants are more appropriately dealt with by way of judicial review than appeal. In this regard, in *Harding v. Cork County Council* [2006] 1 IR 294 Kelly J. held at p. 303 that points relating to "*vires, fair procedures and bias*" are "*properly within the jurisdiction of [the High Court] on judicial review*" rather than a statutory appeal before An Bord Pleanála.

The applicants submit that the logical conclusion of the respondent's contention is that the applicants should be satisfied with an unfair hearing before the Committee and a fair appeal to this Court. It is submitted that this contention is without merit and that the applicants were entitled to a fair hearing at first instance and also on appeal.

In any event, it is further submitted that the respondent's failure to state the reasons for its decision meant that the applicants were unable to discern the basis for the determination impugned or to engage with it in any meaningful way by way of an appeal.

In *Leary v. National Union of Builders* [1970] 2 ALL ER 713, Megarry J. considered the circumstances in which an appeal would not

constitute an adequate remedy for a party to whom a decision is addressed. It was held that a failure to afford fair procedures at first instance cannot be cured by an appeal conducted in accordance with the principles of natural justice. Megarry J. stated as follows:–

> *"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."*

It is submitted that the Supreme Court reached the same conclusion in *Stefan v. Minister for Justice* [2001] 4 I.R. 203 where Denham J. (as she then was) stated:–

> *"The original decision was made in circumstances which were in breach of fair procedures and which resulted in a decision against the appellant on information which was incomplete. The appeals authority process would not be appropriate or adequate so as to withhold certiorari . The applicant is entitled to a primary decision in accordance with fair procedures and an appeal from that decision. A fair appeal does not cure an unfair hearing."*

Similarly, in *State (Abenglen Properties Limited) v. Dublin Corporation* [1984] I.R. 381 O'Higgins C.J. stated:–

> *"If the decision impugned is made without jurisdiction or in breach of natural justice then, normally, the existence of a right of appeal or of a failure to avail of such, should be immaterial."*

In the recent decision of *Cash v. Judge Halpin* [2014] IEHC 484 Baker J. considered the relevant authorities on this issue and identified the following principles:–

> *"(a) The fact that an alterative remedy exists does not preclude an applicant from bringing an application for judicial review.*
>
> *(b) The court will look at all of the circumstances to ascertain whether the relief sought is one which is more properly characterised for an application for judicial rather than appeal.*
>
> *(c) The court has a discretion to consider an application for judicial review notwithstanding the existence of alternative remedies, and notwithstanding the fact that these alternative remedies were not pursued by an applicant.*
>
> *(d) The essential question for the court is whether the application brought is for the type more properly dealt with by judicial review."*

It is submitted therefore that in the circumstances of this case the applicants were entitled to proceed by way of judicial review even though an appeal was available pursuant to section 11(1) of the 1994 Act.

The Section 68 Letter

In relation to the decision to refer to the Tribunal the applicants' failure to issue a letter pursuant to section 68, it is submitted that the applicants were not obliged to furnish such an estimate of costs to the complainant. It is submitted that a 'client' under the Act includes, unless the context otherwise requires, "*the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and includes a beneficiary to an estate under a will, intestacy or trust*".

In *Condon v. Law Society of Ireland* [2010] IEHC 52 this Court held that the definition of a client for the purposes of the 1994 Act was broadly framed to ensure that beneficiaries could have recourse to the Respondent where solicitors had provided inadequate services. It was held that:–

> *"The definition of 'client' in s.2 of the Act of 1994 not only addresses the usual position of a person who by giving instructions to a solicitor becomes a 'client', but, much more significantly, extends the definition to include a beneficiary to an estate under a will, intestacy or trust. This provision, in my view, is deliberately framed to cover situations where solicitors are acting in the dual capacity of executors and solicitors, because, absent such a provision, a definition confined to the 'normal client' would mean that an executor solicitor could not be held accountable to beneficiaries in respect of services which he provides to them."*

However, it is submitted that while the definition includes beneficiaries, it does not follow that the applicants were obliged to furnish an estimate of costs to the complainant pursuant to section 68 of the 1994 Act. It is submitted that section 68 provides that an estimate of costs must be furnished "on the taking of instructions to provide legal services to a client, or as soon as practicable thereafter". Counsel for the applicants contends that the requirement imposed on solicitors by section 68 is expressed clearly and unambiguously and requires the solicitor to send an estimate of costs only to a client from whom that solicitor has taken instructions.

Counsel refers the Court to the decision of Denham J. (as she then was) in Board of Management of *St. Mologa's N.S. v. Department of Education* [2011] 1 I.R. 362 as authority for the proposition that where words in a statute have a clear, plain meaning they should be so construed. It is further submitted that any other interpretation of section 68 would give rise to an absurd situation where solicitors were compelled to furnish an estimate of costs to a person from whom he has not taken instructions and does not have the capacity to give instructions in respect of the administration of the estate. Moreover, such a beneficiary is not entitled, if dissatisfied with an estimate, to decide not to retain the solicitor concerned. Therefore, counsel contends, furnishing an estimate of costs to such a person would be entirely otiose.

SUBMISSIONS OF THE RESPONDENT
The respondent submits that throughout the process of investigating the complaint received by the beneficiaries' solicitor in September 2011, the Committee was exercising two functions, namely, it was considering a complaint of overcharging and excessive fees and, alongside this, it had to form a view on the allegation of misconduct and whether or not it warranted referral to the Tribunal. It is denied that there was any breach of fair procedures or that the Committee wrongfully delegated its decision making function. It is further submitted that the applicants have failed to avail of an alternative remedy pursuant to section 11(1) of the 1994 Act and the matter is not suitable for judicial review.

Breach of natural justice
The respondent submits that at all times the applicants were aware that in addition to the investigation into an allegation of overcharging under section 9, the Committee was also considering claims that such overcharging might amount to misconduct and a referral to the Tribunal might be warranted. It is submitted that this investigation ran in tandem with the section 9 investigation and that a similar situation arose in the case of *O'Sullivan v. Law Society* [2009] IEHC 632. In *O'Sullivan*, Edwards J. considered the level of fair procedures required in the following terms:–

> *"What level of fair procedures and natural justice rights was the applicant entitled to?*
>
> *It seems to this Court that the answer to this question depends upon the nature of the investigation being conducted by the Law Society. In very broad terms it can stated that if an investigative process, or investigative processes (if two or more investigations are being run in parallel), has the potential to result directly in the making of an adverse finding or findings against, and/or the imposition of sanctions upon, the person under investigation that person must be afforded the level of fair procedures and respect for his/her natural justice rights appropriate to a formal disciplinary inquiry. If, however, an investigative process is in the nature of a preliminary step, in which the investigator does not have the power to make adverse findings against, or impose sanctions upon, the subject under investigation, and which involves merely the gathering and sifting of information which requires to be assessed in order to determine if there is a basis for the initiation of some further process in the course of which the subject will have a full opportunity to deal with relevant complaints or concerns, eg. a formal disciplinary inquiry, then less formal procedures may be quite adequate and appropriate."*

Edwards J. went on to state:-

> *"In the Court's view it was not necessary for the first named respondent to afford to the applicant the full panoply of natural justice rights in the course of any investigation into his conduct (outside of, and/or in parallel with, any s.8 or s.9 process that may also have been underway) prior to their invocation of s.17. They were, of course, obliged to treat him fairly but they were entitled to adopt less formal and more abridged procedures than in circumstances where s.17 had actually been invoked."*

The solicitor's appeal of this decision was dismissed in the Supreme Court, where McKechnie J. re-examined his earlier judgment in *O'Driscoll v. Law Society of Ireland* [2007] IEHC 352 as follows:–

> *"92. In the context of discussing whether a parallel inquiry existed in O'Driscoll, the following was stated at para. 34 of the judgment:-*
>
> > *'It seems to me that the commencement of an investigation by the Society into allegations of misconduct is potentially a most serious matter for the solicitor in question. From carrying on his professional business, in many instances supporting other colleagues and staff, he may find himself being summoned, within an acute timeframe, to appear before the CCR or other Committee, and suddenly in a most concentrated way he may be fighting for his practice and indeed even his career. His very livelihood may be in jeopardy and may be even eliminated in extreme cases. It is because of these potentially devastating consequences that the legislature has laid down firm and definite rules which are designed to protect and safeguard, not only members of the public, but also members of the Law Society itself. It therefore seems to me that, at a minimum, fair procedures must demand that the Law Society informs a solicitor of its intention to conduct a misconduct investigation and of the statutory provision(s) under which it proposes to do so. Otherwise there is a grave risk to justice.'*
>
> *93. In marked contrast to the timeline in the instant case, where the relevant periods stretch from May, 2004 to September, 2007, the solicitors in O'Driscoll were notified by the Law Society of the first complaint on the 25th October, 2005, and the second on the 24th November, 2005. Within two weeks the CCR Committee had determined complaint No. 1 and within three weeks had dealt with complaint No. 2. If the referral to the Disciplinary Tribunal had not been set aside by the court, the solicitors therefore, within a period of about six weeks, would have found themselves the subject matter of a formal disciplinary process involving the Tribunal. This would have occurred in circumstances where they were led to believe that the process in question was solely within the provisions of s. 9 of the Act of 1994.*
>
> *94. It hardly needs stating that for a solicitor to face an allegation of misconduct, with all of what that might entail, as distinct from an overcharging complaint per se, is a critically more important matter for him, involving as it might the consequences above described. Whilst there is no doubt but that fair procedures would apply before the Disciplinary Tribunal, the passage reproduced from O'Driscoll was intended to reflect what I believe the law to be, namely that one must consider the question of fair procedures at all stages of a tiered process (see para. 70 supra). In considering such issue O'Driscoll found unacceptable an submission that the CCR Committee could carry out an investigation into conduct, even when all known indicators were to the contrary. That could not be fair by reference to any standard, notwithstanding what rights might arise at a later stage to prevent that situation from occurring. O'Driscoll held that the Society must inform a solicitor of the existence of a misconduct inquiry if that is what the Law Society intends or is pursuing. This can be done by any means as stated by way of an example that a reference to a particular statutory provision may well be adequate to satisfy such requirement. However, such would not be the only way of conveying the information. Once a solicitor was so informed, the means and method of so doing was entirely secondary.*
>
> *95. That, in my view, is what O'Driscoll decided. It is an entire misunderstanding of the decision to suggest that it laid*

down any general rule which would require what has been described as "the full panoply of natural justice rights" to be applied at every phase of an investigative process. It made no such decision and any reading of it in that regard, is incorrect."

In the present case, it is submitted that the applicants were fully afforded fair procedures with regard to the misconduct investigation. They were aware of the existence of the investigation and were given a full opportunity to make submissions to the Committee in respect of the complaints. On each occasion when the Committee sat, the applicants were notified in advance and entitled to attend and address the hearing. It is submitted that no findings of misconduct have been made against the applicants. Rather, some of the complaints have been referred to the Tribunal. At the Tribunal stage the applicants will be entitled to the 'full panoply' of natural justice rights.

Delegation of decision making function

Counsel for the respondent submits that the procedure adopted by the Committee is entirely consonant with the requirements of section 9. It is submitted that the Law Society effectively acted as a mediator throughout the process by trying to facilitate an agreed settlement and by ultimately imposing a 'just solution', as is the role of the respondent identified by McKechnie J. in *O'Driscoll*.

It is submitted that both parties were afforded an opportunity to address Mr. Guiden's report and make submissions in relation to it. The respondent denies that the Committee in any way curtailed itself or considered itself to be hamstrung by the report of Mr. Guiden. It is submitted that the minutes of the Committee meeting of the 3rd July, 2013 make clear that the report was considered by the members and some members indicated that the level of fees indicated by Mr. Guiden had been overstated. Nevertheless, the Committee came to the view that in respect of the three bills which it directed be reduced, such reduction should be at the higher level of the range of fees adopted by Mr. Guiden.

It is submitted that while Mr. Guiden's report was sought to enable the Committee to discharge its functions under section 9 and impose a just solution in the absence of agreement between the parties, there was no unlawful delegation of this function and the ultimate decision was arrived at only after detailed consideration of all relevant matters, including the submissions of the applicants.

Furthermore, the respondent submits that when the proposal of obtaining a report from an independent expert was initially advanced, the applicants did not object and forwarded their files for review. It was only some three months after the report was published that the applicants first suggested commissioning their own report and this was ultimately not available until April 2013. It is submitted that the matter had come before the Committee on numerous occasions and, despite various proposals, no agreement could be arrived at. In those circumstances, counsel for the respondent submits that the Committee was entitled to adopt the course it did in order to impose a just solution.

Alternative remedy available

It is submitted on behalf of the respondent that the applicants have a right of appeal in respect of section 9 available to them under section 11(1) of the 1994 Act. Counsel contends that this is an entirely suitable remedy through which the applicants can express their dissatisfaction with the direction of the Committee to refund the amount of €340,070 plus VAT to the estate of the late Ms. O'Connell. In this regard, the respondent relies on the decision of this Court in *Condon v. The Law Society* [2010] IEHC 52 where it was held that the solicitor had not made out an entitlement to judicial review and that the Court would have refused relief in any event as the solicitor had a right of appeal available to him.

Counsel further refers the Court to the oft cited dicta of O'Higgins J. in *State (Abenglen) v. Dublin Corporation* [1984] I.R. 381:–

"The question immediately arises as to the effect of the existence of a right of appeal or an alternative remedy on the exercise of the court's discretion. It is well established that the existence of such right or remedy ought not to prevent the court from acting. It seems to me to be a question of justice. The court ought to take into account all the circumstances of the case, including the purpose for which certiorari has been sought, the adequacy of the alternative remedy and, of course, the conduct of the applicant. If the decision impugned is made without jurisdiction or in breach of natural justice then, normally, the existence of a right of appeal or of a failure to avail of such, should be immaterial. Again, if an appeal can only deal with the merits and not with the question of the jurisdiction involved, the existence of such ought not to be a ground for refusing relief. Other than these, there may be cases where the decision exhibits an error of law and a perfectly simple appeal can rectify the complaint, or where administrative legislation provides adequate appeal machinery which is particularly suitable for dealing with errors in the application of the code in question. In such cases, while retaining always the power to quash, a court should be slow to do so unless satisfied that, for some particular reason, the appeal or alternative remedy is not adequate."

In the same case, Henchy J. stated (at p.404):–

"The present case does not seem to me to exhibit the exceptional circumstances for which the intervention of the Courts was intended. On the contrary, certiorari proceedings would appear to be singularly inapt for the resolution of the questions raised by Abenglen. Certiorari proceedings, based as they are on affidavit evidence, can result only in a stark and comparatively unilluminating decision to quash or not to quash; whereas an appeal to the Board would have allowed all relevant matters to be explored (if necessary, in an oral hearing, with the aid of experts in the field of planning), thus allowing an authoritative exposition to have been given of the appropriate practice and procedure, aided, if necessary, by a reference to the High Court of a question of law."

Counsel for the respondent submits that it cannot be said that the alternative remedy in the present case was inadequate or that the case exhibited any exceptional circumstances that made the alternative remedy unsuitable or inapt. It is further submitted that as the alternative remedy in the present case reposed in the High Court issues of law which arose could have been fully dealt with. The High Court would also have had full power to rescind or vary the direction of the Committee. In *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497 Barron J. considered the question of the adequacy of alternative remedies in the following terms:–

"The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that the applicant has not gone too far down one road to be estopped from changing his or her mind."

It is submitted that should the applicants be successful in the present case the likely outcome would be to quash the decision and remit the matter to the Committee for further consideration in accordance with law. It is submitted that this is a considerably less desirable outcome, having regard to the length of time that has elapsed since the complaint was first made in mid-2011.

While an appeal under section 11(1) is not a *de novo* hearing, the Supreme Court noted in *Fitzgibbon v. The Law Society* [2014] IESC 48 that the High Court has flexibility to allow the matter to proceed by way of oral evidence. Denham C.J. Stated (at para. 21): –

> *"There is no reason to consider that the form of appeal envisaged by the President, with oral evidence if necessary, is not such as to protect the appellant's right to fair procedures."*

It is submitted therefore that an appeal under section 11(1) would have been perfectly capable of meeting the applicants' principal concern in relation to the decision of the Committee. Indeed, counsel submits that such an appeal would not only have been adequate, but could have provided a significantly better mechanism for the airing of the applicants' grievances.

Failure to give reasons

Counsel for the respondent submits that the contention that the Committee failed to give reasons for its decision is erroneous for a number of reasons.

It is submitted that the duty to give reasons is not an absolute one, but exists in order to enable a party affected by a decision to determine whether or not a quasi-judicial body has validly exercised a power conferred on it. In *Manning v. Shackelton* [1994] 1 I.R. 397 the applicant contended tat the failure by the Property Arbitrator to provide reasons for his award and a breakdown of the sums awarded rendered same *ultra vires*. Barron J. considered a number of previous cases where the Courts had quashed decisions over the failure to give reasons and noted:–

> *"These cases indicate that the giving of reasons by a person or body required to act judicially may be compelled by this court when such reasons are necessary to determine whether such a power has been validly exercised. It is not an essential obligation and arises only when required to prevent an injustice or to ensure that not only has justice been done but is seen to have been done. The absence of reasons in the award itself does not invalidate it. The question is, whether, if reasons are not now given, justice will neither be done nor be seen to be done."*

The respondent further relies upon the following statement of Fennelly J. in *Mallak v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 297 with regard to the giving of reasons (at para.68):–

> *"In the present state of evolution of our law, it is not easy to conceive of a decision maker being dispensed from giving an explanation either of the decision or of the decision making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."*

The respondent submits that the applicants' primary complaint regarding a lack of reasons relates to the direction given under section 9 that the applicants refund the sum of €340,070 plus VAT to the estate. In the affidavit of Mr. O'Dwyer, solicitor for the applicants, it is complained that the Committee adopted the figures of Mr. Guiden "in such a slavish fashion that they have not even elided the amount of €70 from their calculations" and that the Committee relied "entirely and without comment" on Mr. Guiden's report.

Counsel for the respondent submits that this must be viewed against the backdrop of a process that was ongoing for in excess of two years and where the primary matters of concern to the Committee had been identified well in advance of the Committee's decision of 3rd July, 2013. It is submitted that the Committee decision indicates that it is taking the higher level of the alternative figures put forward by Mr. Guiden and that the applicants, having had the report of Mr. Guiden for eight months, could have been in no doubt as to the basis upon which the particular figures were arrived at. Counsel contends that there is no question of an injustice to the applicants on the basis of what is set out in *Shackleton*.

It is submitted that no greater explanation was required in relation to the decision of the Committee to refer the failure to send an estimate of costs under section 68 to the Tribunal in circumstances where the applicants' solicitors had acknowledged in correspondence that no such letter had been sent. The respondent contends that the same can be said in relation to the referral of the overcharging for an inquiry by the Tribunal.

In relation to the direction that a sum of €3,000 be paid by the applicants to the Law Society's compensation fund, the respondent submits that the reason for this is obvious and that the determination letter states that it relates to "the Society's costs in investigating the matter", which, of itself, is a reason. Furthermore, the applicants have also received copies of the minutes of the relevant Committee meeting of 3rd July, 2013 and these constitute a statement of the reasons for the various decisions of the Committee.

Lack of a Section 68 Letter

Counsel for the respondent contends that under section 2of the 1994 Act "client" is defined, unless the context otherwise requires, to include "the personal representative of a client or any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm has been instructed; and includes a beneficiary to an estate under a will, intestacy or trust."

It is submitted that St. Vincent de Paul, as a beneficiary under the will of the deceased, was a "client" of the applicants within the meaning of section 2 of the Act 1994 Act and refers to the decision of this Court in *Condon v. The Law Society* [2010] IEHC 52 where it was stated:-

> *"The definition of 'client' in s.2 of the Act of 1994 not only addresses the usual position of a person who by giving instructions to a solicitor becomes a 'client', but, much more significantly, extends the definition to include a beneficiary to an estate under a will, intestacy or trust. This provision, in my view, is deliberately framed to cover situations where solicitors are acting in the dual capacity of executors and solicitors, because, absent such a provision, a definition*

> *confined to the 'normal client' would mean that an executor solicitor could not be held accountable to beneficiaries in respect of services which he provides to them. As has been pointed out, the logic of the applicant's argument would lead to the consequence that beneficiaries would never have recourse to a solicitor's professional body in situations where he provided inadequate services. This in my view would entirely defeat the whole point of defining beneficiaries as clients in s.2 of the 1994 Act…*
>
> *…I think the wider definition of 'client' as contained in s.2 must necessarily be the correct one. The sole purpose of the work which the applicant was doing was to benefit the beneficiaries. In my view the clear and obvious purpose of s.2 - and the fact that a beneficiary is therein defined as a client - is to ensure that a beneficiary obtains all the protections under the Act which any other client of a solicitor would obtain. I am also satisfied that the purpose of the 1994 Act is not to create two classes of clients, namely those who can make a complaint about inadequate services and those who cannot make a complaint about inadequate services."*

It is submitted that the decision in *Condon* is clear authority for the proposition that beneficiaries are clients for the purposes of Part III of the 1994 Act, which deals with the Law Society's powers in respect of investigation of complaints, and the applicants were therefore required to comply with the requirements of section 68(1) by sending a letter of estimated costs to St. Vincent de Paul.

Counsel for the respondent submits that the suggestion that St. Vincent de Paul was a client but not a client from whom instructions were taken and there was therefore no need to send a section 68 letter is entirely at variance with the decision on *Condon (ibid.)* where this Court stated:–

> *"It is a basic principle of statutory construction that a statute be construed purposively and not in a manner which leads to an absurd outcome. The Solicitors (Amendment) Act, 1994 requires to be read and interpreted as a whole. It is an Act which, under s.1 thereof, is to be construed together with the Solicitors Acts, 1954 and 1960. The long title of the Act of 1954 provides that it is an Act to provide for, inter alia, the 'control of Solicitors of the Courts of Justice'."*

It is submitted that in the present case the applicants, in administering the estate of the deceased, were not acting for any party other than the sole beneficiary, St. Vincent de Paul, and as such, they were taking instructions from that party. It is submitted that any other construction would lead to an illogical conclusion that the applicants were not taking instructions from any party, which would be an absurd outcome.

DISCUSSION

Before embarking on any consideration of the applicants' substantive grounds of challenge to the procedure adopted by the Committee and the determination arrived at, the Court must consider whether or not a judicial review before this Court is the appropriate remedy in circumstances where the applicants had a right of appeal against the decision of the Committee pursuant to s11(1) of the 1994 Act. While, as stated by Charleton J. in *Doherty v. South Dublin County Council*, a right of appeal can be a bar to remedy by way of judicial review, the Supreme Court decisions in *Stefan* and *Abenglen* as outlined above, as well as the recent High Court decision in *Cash v. Judge Halpin*, make clear that, in certain circumstances, where a decision in the first instance was arrived at following a procedure which was unfair or breached natural justice, the fact that an appeal is available is immaterial. A person against whom some form of wrongdoing or misconduct is alleged is entitled to a fair hearing and determination in the first instance and to a fair appeal on foot of that decision. Having regard to these decisions and the nature of the applicants' objections, I am satisfied in all the circumstances of this case that the applicants are entitled to challenge the decision of the Committee by way of judicial review and that leave was sought within three months of the decision.

The Court must next consider whether or not the procedure adopted by the Committee was lacking in fair procedures or in breach of natural justice. In this regard, the Court accepts the submission of the respondent that the role of the Committee was two-fold - it was required not only to carry out an investigation under section 9 of the 1994 Act in relation to alleged overcharging, but was also required to consider whether or not the applicants' conduct should be referred to the Tribunal.

In relation to the section 9 aspect and the alleged overcharging, the applicants' primary challenge is that the Committee imperilled a fair hearing by refusing to allow them to submit its own independent expert report. However, before this request was made by the applicants in February 2013, the matter had come before the Committee on numerous occasions and, despite the Committee's best efforts, had dragged on for over two years with no realistic prospect of an amicable agreement between the parties. It was in those circumstances that the Committee had decided to seek the view of an independent legal costs accountant and it is noteworthy that the applicants acquiesced to this process and forwarded their files once the burden of the associated costs was borne by the Committee. The applicants received Mr. Guiden's report in November 2012 and then, on the eve of a Committee meeting in February, sought permission to submit their own expert report to controvert the findings of Mr. Guiden. In my view, having regard to the role of the respondent in disputes of this kind as set out by McKechnie J. in *O'Driscoll*, the Committee was entitled to refuse this eleventh hour request and to instead adopt the course it did in an effort to arrive at a 'fair solution'. It is perfectly clear from the correspondence exhibited that the applicants were in no way prohibited from using their own expert to inform their submissions on Mr. Guiden's report and they did in fact do so in lengthy submissions filed in April 2013. The minutes of the 3rd July meeting also make clear that these lengthy submissions were considered in detail by the Committee and the Court does not accept that the applicants were prevented in any way from submitting their best defence.

In those circumstances I am satisfied that the Committee afforded both parties fair procedures by commissioning, at its own expense, a report from a suitably qualified expert and allowing both parties the opportunity to make comprehensive submissions in relation to it.

As to whether or not the Committee delegated its decision making function to Mr. Guiden, the Court does not accept this contention. It is clear that the assistance of Mr. Guiden informed the decision of the Committee. This is precisely what it was intended to do once submissions in relation to the report had been advanced by both parties and considered by the Committee. I am satisfied that, as the minutes of the Committee meeting make clear, the various members of the Committee fully engaged with both the report and the submissions of both parties, and ultimately decided to direct repayment in the amounts set out in the determination. It is clear from the minutes that the Chairman indicated that "it *was open to the Committee to deviate entirely from the report if it wished, in light of all the submissions*". I am satisfied that the decision arrived at was the Committee's own decision and it did not unlawfully delegate its decision making function to Mr. Guiden.

The Court does not accept that the Committee has failed to provide any or any adequate reasons for its determination. The jurisprudence in relation to the duty of quasi-judicial bodies to give reasons makes clear that it is not necessary to provide an exhaustive analysis of every aspect of a particular case and that the broad basis for a decision is sufficient. It is crucial however that

the parties affected by a decision can be satisfied that the relevant body directed its mind to the issues before it. I am satisfied that the Committee in the instant case carefully considered the applicants' submissions on each aspect of the case and that the applicants can be left in no doubt as to the reasons for the Committee's decision which was communicated by letter dated 8th July, 2013. While the Court is satisfied that this letter adequately sets out the basis for the decision in its own right, the Court also accepts that having been furnished with the minutes of the relevant Committee meeting the applicants can not claim to be left in any doubt as to the reasons for the Committee's decision. It is also of relevance that the determination was arrived at after two years of ongoing engagement and correspondence between all sides to this dispute. The Court finds that, in all the circumstances, any suggestion that the applicants are not aware of the reasons for the decision of the Committee is entirely unsustainable.

In relation to the referral of the alleged overcharging to the Tribunal, it is my view that fair procedures were adopted by the Committee in arriving at this decision. The applicants were aware at all times of the allegations against them and were put on notice and permitted to attend and participate in every meeting of the Committee. The Court accepts the submissions of the respondent that no adverse findings have been made against the solicitor and they will be entitled to a fully comprehensive and fair hearing before the Tribunal which accords with the principles of natural justice.

The Court also accepts the submissions of the respondent in relation to the correct interpretation of "client" under the 1994 Act and the requirements of section 68. As this Court noted in *Condon*, the definition of client in the1994 Act extends to a beneficiary to an estate under a will, intestacy, or trust. The applicants in the present case contend that while St. Vincent de Paul, as a beneficiary, is a 'client', it did not give instructions to the applicants and therefore it was not necessary to issue a section 68 letter. The Court does not accept this proposition. As submitted by counsel for the respondent, if the applicant is correct this would lead to an absurd situation whereby solicitors tasked with administering an estate were not in receipt of instructions from anybody and therefore free to proceed without having provided an estimate of costs to the estate from which fees will be withdrawn. Such a situation is entirely at odds with the intention of the legislature in relation to section 68 of the Act. The Committee were entitled to refer this matter to the Tribunal where the applicants will be protected by the 'full panoply of natural justice rights' as referred to by Edwards J. in *O'Sullivan*.

CONCLUSION

For the reasons outlined above I would dismiss the applicants' case and affirm the decision of the Committee of 3rd July, 2013.