THE HIGH COURT

[2015 No. 2712 P]

BETWEEN

P McD

PLAINTIFF

AND
GOVERNOR OF X PRISON

DEFENDANT

JUDGMENT of Ms. Justice Baker delivered on the 1st day of November, 2018

1. The plaintiff is now in his late 40's and has spent almost all of his adult life in prison, mostly in England. He has, since 7 December 2011, been a prisoner in X Prison having been convicted and sentenced to twelve years in prison for burglary and the assault of a 97-year-old woman in her home. His sentence was increased on appeal by the Court of Appeal from the previous sentence of nine years.

2. The plaintiff had a most troubled childhood and early adulthood and, on his own admission, commenced abusing glue-like substances when he was eight years of age, drinking alcohol at around twelve, started taking cannabis at twelve, and, as he himself put it, "worked my way up" to an abuse of hard drugs, including LSD, crack, cocaine, and other proscribed substances. He has also developed a dependence on prescription drugs.

3. The plaintiff had a serious injury following a road traffic accident when he was six years of age, and this has resulted in chronic back pain and the loss of his spleen which he asserts has made him particularly vulnerable to infection.

4. The plaintiff has a complex psychiatric history and was long since diagnosed as suffering from a borderline personality disorder. He has engaged in many episodes of self-harm and has little or no social or family emotional support.

5. In or around February 2015, the plaintiff commenced a hunger strike as a protest against his prison conditions. On 31 March 2015, I delivered judgment in *Governor of X Prison v. McD.* [2015] IEHC 259, [2016] 1 ILRM 116, where the question for determination was the plaintiff's capacity to give directions regarding his medical care in the course of the hunger strike, and whether his expressed wish not to be fed involuntarily was to be respected, even should he fall into coma.

6. Following the hearing of the application on 25, 27, and 30 March 2015, I delivered a judgment on 31 March 2015, in which the following three declarations were made, at para. 131:

> "(a) A declaration that the defendant's decision to refuse medical and nutritional assistance is valid.
>
> (b) A declaration that the defendant's wish and direction should remain operative in the event that the defendant becomes incapable of making a decision whether to accept such treatment.
>
> (c) A declaration that the plaintiff is entitled to give effect to the defendant's wishes not to be fed and not to receive medical assistance."

7. As is apparent from the postscript to the judgment, at paras. 131 and 132, the plaintiff, at the conclusion of the hearing, indicated a willingness to commence nutrition treatment in hospital on the basis that he had instructed his lawyers to commence proceedings to seek declaratory and other relief in regard to his prison conditions. The present judgment is directed to the relief sought in those proceedings commenced by plenary summons on 8 April 2015.

8. Counsel for the plaintiff opened the trial on the basis that the claim was narrow, and focused on events leading up to the plaintiff's hunger strike which commenced in February 2015, and the two grievances which the plaintiff alleges led him to choose that extreme form of protest. The plaintiff claims that the prison authorities were negligent and that the plaintiff's conditions of detention were a breach of his constitutional rights and those derived from international instruments. Notwithstanding the attempt by counsel for the plaintiff to keep the focus narrow in scope and time, the oral evidence lasted sixteen days and counsel for the defendant cross-examined the plaintiff over 6 days in regard to his long and complex personal life, his history of incarceration in England, and to the four years he had spent in X Prison. I consider that the entire context created by the plaintiff's stay in X leading up to the hunger strike was relevant to the defence, and counsel for the defendant is not to be faulted for long cross-examination.

9. The plaintiff described himself as a "model prisoner" but the evidence, as it evolved, showed that this description was far from the truth, and that the management of the plaintiff in a prison environment has been difficult and testing for the prison authorities having regard to his personality and psychological condition, and the difficulty that this has caused for prison personnel.

The claim

10. The plaintiff seeks various declaratory orders relating to the conditions of his detention in X Prison, and the focus of his claim is the events leading up to his decision, in or around February 2015, to commence a hunger strike. The statement of claim pleads that the plaintiff has been detained in "solitary confinement" from December 2011, and it is common case that he has, since his admission to X Prison on 7 December 2011, been detained pursuant to r. 63 ("Rule 63 Detention") of the Prison Rules 2007, S.I. 252/2007 ("the Prison Rules"), as a result of which the plaintiff is *de facto* confined to his cell for 23 hours of every day and has no association or interaction with other prisoners.

11. The plaintiff voluntarily subjected himself to Rule 63 Detention because he believes he is at risk from other prisoners, including but not limited to those associated with a feud between two families of the Travelling Community. The plaintiff himself is a traveller who was brought up in England, albeit his parents where Irish, and he has described himself as an outsider in both Travelling Communities. While the defendant denies that the plaintiff's fears were rational, the Prison Governor gave evidence that, even without an express voluntary submission to Rule 63 Detention, having regard to the nature of the crime of which the plaintiff was convicted, he would most likely have been detained subject to the conditions of Rule 63 Detention for his own safety.

12. The plaintiff's hunger strike commenced after a change in established patterns in his daily life in prison.

13. For the three years leading up to the matters herein complained of, the plaintiff was detained on an identified landing or the medical unit of X Prison. During those years, the plaintiff took his exercise at 1 o'clock in a yard which was not overlooked by any

occupied cells. The plaintiff said that, for the three years leading up to the change in the prison practices, he was satisfied with the limited exercise regime and that, for the most part, he took up the opportunity to leave his cell and take outdoor exercise during that time.

14. In August 2014, and as a result of financial cutbacks that led to a reduction in the resources available to the Governor, the exercise regime was changed. The plaintiff was offered exercise on a more variable basis, but mostly at 2 o'clock in the afternoon in a different yard, which is overlooked by the prison's gymnasium.

15. The plaintiff says that liquid was thrown on him from one of the cells or from the gym which overlooked this exercise yard, which he believed was human urine. He refused thereafter to use that exercise yard and was then offered the opportunity to take exercise in the so called CBU ("Challenging Behaviour Unit") yard, which he described as a "cage" with no direct sunlight and where he felt he was like an "animal". The CBU yard was the subject of a judgment of Faherty J. in *Dolan v. Governor of Mountjoy Prison* [2017] IEHC 405 and of Murphy J. in *Whelan v. Governor of Mountjoy Prison* [2015] IEHC 273.

16. The second change in routine of which the plaintiff complains was a change in the system of food delivery at about the same time. Prior to the change, the plaintiff's food was served by a kitchen officer, a member of the prison staff.

17. The plaintiff complains that the new system by which prisoners distributed food on his wing of the prison was unsafe and that he was frightened, as he believed it was easy for those prisoners he believed might have had, or did in fact have, a grudge against him, or who regarded him as an outsider, to tamper with his food, and he explained that he believed he was in danger particularly if the prisoner serving food had an infectious disease such as HIV or Hepatitis.

18. The plaintiff gave a description of finding a human hair on a plate on which his food was delivered, and that this raised a fear of lack of hygiene.

19. Once the regime changed, he refused to take the food delivered to him, and would eat only food that came from the small shop in the prison, primarily Weetabix cereal. The plaintiff has no financial support from outside and he had limited capacity to buy or obtain by other means alternative food in those circumstances.

20. It is these two changes in the plaintiff's daily regime in prison that led him to engage in a short so-called "dirty protest", but which he says ultimately led him to entirely refuse food in early February 2015.

21. The plaintiff claims that the failure to provide him with exercise and a system of food delivery which specifically identifies and segregates the food to be provided for him is a breach of his rights under the Constitution and the European Convention on Human Rights Act 2003 ("the 2003 Act"), and also pleads that the defendant was negligent and that the failure to monitor and consider the detrimental effects that the change in regime would have on him, having regard to his fragile psychological state and borderline personality disorder, taken together with his isolation in the prison, amounted to a failure to provide him with a safe and secure prison regime, had a detrimental effect on his psychological or mental health, and later, his physical health, and was a denial of his basic human dignity and bodily integrity.

22. The plaintiff also pleads a failure of the defendant to deal with two written complaints made on 10 February 2015 in accordance with Rule 57B of the Prison Rules, as inserted by r. 2 of the Prison Rules (Amendment) 2013, S.I. No. 11/2013, and that the failure to promptly resolve and deal with those complaints led inexorably to the continuation of his hunger strike and the serious detrimental effects that this had on his wellbeing.

23. All the pleaded complaints made in February 2015 were determined on the same day, 27 March 2015, after the capacity case had started before the High Court.

24. The plaintiff pleads that he has suffered stress, depression, anguish, and physical harm, although no medical evidence was adduced regarding any physical sequelae of the hunger strike.

25. The claim is fully defended and the defence includes the broad plea that the defendant has a duty to all prisoners and that the good management of the prison and the allocation of resources were done in a reasonable manner. The defendant also pleads that the plaintiff was offered internal transfers to other areas of the prison, and that the plaintiff himself has exacerbated the effects of his long term confinement in a single cell by reason of what counsel has described as his "unsubstantiated and subjective fears", and that he has refused without good reason to engage in structured prison activities, or with the education and other activities offered to him.

26. The defendant pleads that the plaintiff has had 971 recorded interventions with prison medical staff and engagements with counselling services which he himself unilaterally ceased in or around May 2013.

27. The defendant accepts that the plaintiff began refusing food in or around February 2015 but says that this was a choice made by him without reason, particularly as he was offered the opportunity of serving his own meals before other prisoners, to be moved to a different unit, or to have his meals delivered in a separate sealed container.

28. Negligence and breach of the pleaded rights of the plaintiff are all denied and the defence contains a specific plea that the defendant is "obliged and entitled to manage and operate the prison as he deems fit and in accordance with the law and with good penological practice", and denies that the internal management of the prison is properly a matter for the courts.

The plaintiff's borderline personality disorder

29. The plaintiff had no more than six months of formal school in his life, but he was an articulate and expressive witness and his command of language, both written and oral, would be remarkable even in an educated person. All of the witnesses accepted that he is highly intelligent, but the impact of the personality disorder on his behaviour and thinking is key to the claim he makes in these proceedings.

30. The plaintiff has been diagnosed as suffering from borderline personality disorder. This is not a psychiatric condition recognised as a mental disorder for the purposes of the Mental Health Act 2001 or the Criminal Law (Insanity) Act 2006 and it does not, of itself, result in delusional thinking or absence of decision making capacity or of normal cognitive ability.

31. The nature of the personality disorder from which the plaintiff suffers was examined in my judgment in *Governor of X Prison v. McD*. at paras. 73 *et seq*.:

> "73. Mr. McD suffers from a borderline personality disorder, a type of personality disorder characterised by maladaptive behaviour, instability in interpersonal relationships, and poor self image. Persons with this type of specific personality disorder are impulsive and often self-harm. Professor Kelly, while noting that personality disorder was not a mental illness, made the following comment:-
>
> > 'Notwithstanding this fact, it is noteworthy that an individual's personality undoubtedly has an influence and decision making, and that personality disorder is typically characterised by enduring maladaptive passions of behaviour, cognition and inner experience.'
>
> In this light, it appears unlikely that Mr. McD's personality disorder is entirely unrelated to his decisions but any matter including his decision to go on hunger strike - a decision which might well be regarded as maladaptive and thus consistent with the core feature of personality disorder. It is also not unreasonable to imagine that Mr. McD's personality disorder may be linked to a lack of flexibility in his decisional style and may thus affect his pattern of decision making in relation to this and other matters."
>
> 74. Professor Kelly took the view however that this did not mean that Mr. McD's mental capacity was impaired. He says rather that Mr. McD's personality type means that his decisions are often firmly, and perhaps even stubbornly, held, that he is inflexible in his decisional style, and that this inflexibility may result in him making decisions which might to an outsider seem "maladaptive", but which are consistent with his own personality type."

32. The reference to the personality disorder as being "borderline" does not reflect the fact that the condition is one "close to" that of a well person.

33. Professor Brendan Kelly, associate clinical professor of psychiatry and consultant psychiatrist, gave evidence in the 2015 proceedings and also in the present action, and described the borderline personality disorder as follows:

> "Borderline personality disorder is a long standing pattern of maladaptive behaviour, characterised by a pervasive pattern of instability in interpersonal relationships, self-image and emotions. People with borderline personality disorder are also usual very impulsive, often at times demonstrating self- injurious behaviours. Personality disorder is specifically and explicitly excluded from the definition of mental disorder under the Mental Health Act 2001".

34. The borderline personality disorder is included in the World Health Organisation classification of recognised personality disorders.

35. Consistent with this diagnosis, the plaintiff has a long history of self-harm and is, on any reckoning, a very challenging prisoner.

36. On 10 August 2012, Professor Harry Kennedy, consultant forensic psychiatrist at the Central Mental Hospital, Dundrum, had a report prepared for the purposes of management of the plaintiff's stay in X Prison and described the facets of his personality as "glib, superficial, lacking in empathy" and that he had a "egocentric view of right and wrong".

37. Professor Kennedy said that the plaintiff has no mental illness or mental disorder, that he has multiple addictions, and that he would "benefit from a highly structured regime in which there is little room for him to gain from his behaviour".

38. The plaintiff's medical and prison records from his various stays in prisons in England show that he has a history of self-harm and that he suffers from long term eating problems. He expressed concerns, in 2008, that other prisoners might contaminate his food or that his food had otherwise been tampered with. He was described as a "massive management problem for the prison staff" in a report prepared in the course of his incarceration in Winson Green Prison in Birmingham, England. The report of Dr. Van Woerkom, a consultant psychiatrist, dated 20 August 2008, which was transmitted to the Irish prison authorities, described the plaintiff as being on a "destructive course" although it was said that he "does seem to respond to sympatric listening and talking and reassurance". The view of Dr. Van Woerkom was that it was doubtful that he could be "managed in any ordinary psychiatric facility" but that his behaviour was "referable to underlying personality traits".

Reliability of the plaintiff as a witness

39. The plaintiff presented as courteous, mostly clear thinking and mostly honest in his evidence, but entirely convinced that his analysis of his circumstances is correct. As many of the witnesses said in their evidence, he is not a reliable historian. In fact, on a number of occasions, when an alternative narrative was put to him, he described his previous evidence as a mere "little white lie" in an effort to distance himself from earlier evidence which contained a clear untruth.

40. The plaintiff was calm and fluid in response to cross-examination. Much of his evidence was given with his head bowed and his eyes focused on the desk in front of him. His evidence did not have any markers of having been rehearsed but did come from a conviction from which he never wavered in the course of his evidence-in-chief and in cross-examination that he has been wronged and that his response to the food delivery and exercise regime was correct.

41. When the circumstances required, the plaintiff engaged with a firm gaze, and while his evidence showed a degree of obsession and preoccupation with his complaints, I consider the reason he did not generally waiver at all in his answers was because of his conviction borne out of his subjective and, what the psychologist and doctors described as "maladaptive", response to the circumstances, and his almost complete inability to understand how another person might react to what he said or did.

42. The defendant relies on the lack of credibility or truthfulness of the plaintiff in regard to matters such as the date his mother died, the number of siblings he has, and where he was born, but I do not find it useful for the purpose of the present case to make a determination on those facts, as the facts themselves are not part of the question before me. However, I accept, in general, the proposition presented by the defendant that the plaintiff is a very difficult prisoner who presents great difficulty in his management, and that his responses to events in prison, which were, on occasion, extreme and excessive, are deliberate and conscious. The plaintiff himself accepted that he self-harmed when he was "cornered" and that he mostly coped very poorly when his routine was changed or when things did not go well for him on a day-to-day basis.

43. The plaintiff did display some degree of insight into his condition and I found him coherent in his descriptions of his reaction to events. His demeanour was calm but firm, he did not flinch from difficult cross-examination and, importantly, fairly expressed his likeness for and kindness received from members of staff. For example, he described Nurse Officer X in very positive terms as a very kind woman and Mr. X, the prison psychologist, as "a good man" that he trusted. The plaintiff says that he understood that prison is a "structure and a system", but unfortunately his response to his circumstances made it difficult for those who had to manage the structure and society of the prison to offer him the kind of assistance he believed he deserved.

Salience deriving from limited daily variables
44. The Assistant Governor of X prison gave evidence of the shortage of staff in the prison by mid-2014, at which point the understaffing was estimated at 54. She said that this had an effect on all prisoners but that the changes, in particular in the exercise regime, had a particular impact on the plaintiff, as he refused to take his exercise in groups like other prisoners. She accepted that the change in the exercise regime "might have" happened without any advance warning to the plaintiff although she did consult him within a few days of the new regime commencing.

45. Chief Officer X accepted that the prison's approach to exercise once the staff shortage became acute was "haphazard" and that, at best, what was put in place was "a staggered" schedule. He thought the plaintiff was initially happy with this arrangement.

46. The Governor of X Prison from June 2010 to September 2014, said he was unaware whether the plaintiff had been notified of the change of regime, particularly the exercise regime, and accepted that he should have been told, as the plaintiff was not in a "normal regime" within the prison. He accepted that routine was important to him and that a change in routine would have to be managed. The Governor was unable to advise why he did not engage the prison Chief Nurse Officer to deal with the plaintiff's response to the regime change.

47. The view of Professor Kelly expressed originally in his report of 26 March 2015 that the "very low number of variables in the plaintiff's day-to-day life in 24-hour solitary confinement is relevant to the high level of salience he accords to specific matters, such as his exercise and meal time arrangement" was not contested.

48. Professor Kelly explained that:

> "[…] the key issue is that there were so few factors over which [the plaintiff] could exercise any control and that sort of little sliver of potentially controllable factors was something he focused on hugely".

49. Professor Kelly considered that the degree of salience and level of importance the plaintiff placed on the issues regarding exercise and the distribution of food was an "entirely human response to the situation in which he finds himself which is a highly constricted one in which specific matters of some high levels of salience which they would not otherwise assume in different situations or circumstances".

50. It is that particular factor which, in my view, is the central evidence that determines the correct approach of the court to the present case.

The plaintiff's attitude to self-harm
51. The plaintiff accepted, in the course of cross-examination, that some of his self-harming activities might have come across as a response to not getting what he wanted on a particular occasion but says that what he really was doing was "de-stressing myself" and that he was "taking the hurt out of myself with a razor blade". He described himself as often being in a "dark place" and that, on those occasions, self-harm was the only way he knew to cope.

52. He expressed a view that when he did self-harm, it was "unnecessary and unhygienic" to take him to hospital, and that he was perfectly happy and capable of dressing his own wounds after such incidents. The plaintiff described his self-harming and dirty protest as "private" and insisted that it was appropriate that he would deal with the resulting injury himself without nursing assistance. The Nurse Officer with whom the plaintiff had a good relationship confirmed this, but both she and Chief Nurse Officer X confirmed that that approach was not always suitable in a prison environment, as there was a possible risk to other prisoners or, more specially, to nursing and prison staff. I accept this evidence and reasoning.

53. The plaintiff showed little or no insight into the possible medical effect of smearing open wounds with his own faeces, a practice described on a number of occasions in the notes from the English and Irish prisons. The plaintiff said that he did not "just decide to be difficult" and that he did not behave poorly in prison merely "to seek attention", but that sometimes, a dirty protest or breaking-up his cell were the "only way" that he could respond, as his tension and upset had built up to such a high point.

54. The plaintiff was quite clear that it was he, and he only, who should determine which medication should be prescribed to him, and he insisted that only one form of painkilling medication, a strong drug called Lyrica, was the drug that would offer him relief from pain.

55. The plaintiff refused an offer of transfer to Arbour Hill Prison because it was, in his view, a prison designated for sex offenders and was not suitable for him because of the fact that all prisoners there are on 24-hour confinement. He also considered that he needed to remain in a prison which offered him a medical treatment program for drug abuse which was not available in Arbour Hill.

56. The tendency to self-harm and to engage in so called "dirty" protests is a feature of the borderline personality disorder and this was confirmed in evidence by Professor Kelly and by the prison Chief Nurse Officer. These witnesses agreed that to engage on a therapeutic level with a person with a borderline personality disorder in a prison environment is challenging, and this is partly because the range of possible coping strategies, such as talking to a friend, taking exercise, going for a walk, *etc*., is very small and constrained in the prison environment. Further, the refusal or inability of a person with the disorder to engage therapeutically or interpersonally is part of the pathology. Impulsivity and manipulative behaviour equally are features.

57. Professor Kelly confirmed that a lack of empathy is a common feature of the borderline personality disorder and is present to a significant degree in the plaintiff, and that his general understanding of a person was to attribute all behaviour of that person to his or her personality rather than the circumstances in which a decision was made. It was in this context that the plaintiff characterised certain prison staff as "bad eggs" or "bad apples", and subjectively attributed everything that person did as deriving from such characteristic rather than the constrained circumstances in which he or she was dealing.

Applicable legal principles
58. There is not much difference between the parties regarding the relevant legal principles which govern the rights of a prisoner, the protection of constitutional rights within the framework of a prison, and the role of the court in scrutinising the management of the day-to-day conditions of a prisoner.

59. The first principle is that expressed by Barrington J. in *The State (Richardson) v. Governor of Mountjoy Prison* [1980] IRLM 82, where he said there was no "iron curtain between the Constitution and the prisons in this republic […]", and which finds echo in the strong statement of Costello J. in *Murray v. Ireland* [1985] 1 IR 532, at p. 542:

> "When the State lawfully exercises its power to deprive a citizen of his constitutional right to liberty many consequences

result, including the deprivation of liberty to exercise many other constitutionally protected rights, which prisoners must accept. Those rights which may be exercised by a prisoner are those (a) which do not depend on the continuance of his personal liberty (so a prisoner cannot exercise his constitutional right to earn a livelihood) or (b) which are compatible with the reasonable requirements of the place in which he is imprisoned, or to put it another way, do not impose unreasonable demands on it. This accords with the view expressed by the American Supreme Court in *Wolff v. McDonnell* (1973) 418 U.S. 539, a case dealing with the rights of prisoners in a prison in Nebraska to due process in disciplinary proceedings. In the course of the majority judgment the following observations of principle were made at p. 555, here quoted with reference to earlier cases omitted:

> 'Lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a 'retraction justified by the consideration underlying our penal system.' But though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country. Prisoners have been held to enjoy substantial religious freedom under the First and Fourteenth Amendments. They retain the right of access to the courts. Prisoners are protected under the Equal Protection clause of the Fourteenth Amendment from invidious discrimination based on race. Prisoners may also claim the protection of the Due Process clause. They may not be deprived of life, liberty, or property without due process of law. Of course, as we have indicated, the fact that prisoners retain rights under the Due Process Clause in no way implies that the rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed'."

60. The constitutional rights not abrogated by imprisonment include the right to "personal autonomy and bodily integrity", as Fennelly J. explained in *Creighton v. Ireland* [2010] IESC 50.

61. However, in *The State (Richardson) v. Governor of Mountjoy Prison*, Barrington J. highlighted the need for the governors of prisons to "reconcile the need for security and good order in the prisoners' subsistent constitutional rights". This, in turn, finds a reflection in the nuanced approach for which Edwards J. contended in *Devoy v. Governor of Portlaoise Prison* [2009] IEHC 288, where he said, at p. 83 of his judgment:

> "[T]hat the humane treatment, and respect for the human dignity, of a prisoner requires that he or she should not be totally or substantially deprived of the society of fellow humans for anything other than relatively brief and clearly defined periods."

62. Recent jurisprudence has highlighted the need for a proportionate response to the management of a prisoner, one which reflects the need to respect the rights of the prisoner and the need for the orderly management of a prison. That the response be proportionate also derives from the separation of powers and the general reluctance of the courts to interfere in management, or to "micromanage" the prison regime, the language of the Court of Appeal in *McDonnell v. Governor of Wheatfield Prison* [2015] IECA 216, [2015] 2 ILRM 361, at para. 91, and from the general reluctance on the part of the courts to interfere with the executive function: see also *Connolly v. Governor of Wheatfield Prison* [2013] IEHC 334, *Killeen v. Governor of Portlaoise Prison* [2014] IEHC 77 and *Devoy v. Governor of Portlaoise Prison*.

63. The observations of Hedigan J. in Killeen v. Governor of Portlaoise Prison, at para. 6.5, regarding the correct approach to the segregation or isolation of prisoners are important in the present context. He identified a number of principles as follows:

> "(a) There must be good reasons – the segregation must be necessary – the onus is on the authority to justify.
>
> (b) It should be no more than is necessary to meet the requirements of the occasion i.e. safety and security.
>
> (c) It should be proportionate to the objective sought.
>
> (d) There should be ongoing review. The person in prison bears some responsibility to "accommodate himself to the reasonable organisation of prison life: *Murray v. Ireland* [1991] ILRM 465 and *The State (McDonagh) v. Frawley* [1978] I.R. 131, and this intends the necessary curtailment of the wishes and even to some extent of the rights of the prisoner."

64. This reluctance means that, in general, the court will not prescribe specific conditions for the management of a prisoner, the general environment of a prison, or conditions under which a given prisoner or group of prisoners are kept: per the judgment of the Court of Appeal in *McDonnell v. Governor of Wheatfield Prison*.

65. In McDonnell v. Governor of Wheatfield Prison, at para. 89, the Court of Appeal stressed that:

> "[a] prisoner may not legitimately create the conditions in which it is impossible for him to enjoy normal facilities. A prison, like any other institution or organisation, requires cooperation all round for it to operate successfully. A prisoner who repeatedly breaches discipline and is subject to successive punishments cannot complain that he is being subjected to an unpleasant regime on an indefinite basis because he has nobody to blame but himself. Similarly, a person in the community who is a serial offender in committing crimes one after the other cannot complain that he ends up in prison."

66. In *Simpson v. Governor of Mountjoy Prison* [2017] IEHC 561, White J. was dealing with a claim that the conditions in which the plaintiff was detained, which included the practice of "slopping out" and using a chamber pot in the context of shared cell occupancy, amounted to a breach of constitutional rights and those under the European Convention on Human Rights and the 2003 Act. Whilst he did find that there was a breach of the plaintiff's constitutional right to privacy, he held, at para. 417 of his judgment, that "[s]lopping out and lack of in cell sanitation have not of themselves been deemed to be unconstitutional practices". He dealt with the issue of the separation of powers, *inter alia*, at para. 408 of his judgment:

> "To argue that the courts cannot come to a conclusion on how the executive has responded to criticisms by respected international bodies such as the CPT or to examine its historical response to those criticisms in particular its commitments to remedy the continuing deficit in its prison estate, or to prevent the court drawing conclusions from the various reports on Mountjoy by the Inspector of Prisons, a person appointed by statute, in my view, is unsustainable. The court is quite entitled to examine and come to a conclusion on the substantial delay in installing in cell sanitation in the State's main prison."

The analysis of the issues
67. Counsel agreed a number of key issues of fact. I propose now setting these fourteen issues out in some detail, but I should note, before doing so, that there was relatively little disagreement between the parties as to the facts, and what was in issue was the legal consequences that are to flow therefrom.

Issue 1: What is the relevance of the personal family and medical history of the plaintiff?
68. I have dealt with the personal family and medical history of the plaintiff above in some detail.

69. The plaintiff has almost no contact with his family and I find, as a matter of fact, that the prison did not prevent such contact, but that the plaintiff was not receptive to any positive encouragement that he would engage with his siblings, or his mother before she died. The plaintiff's personal and medical history is one of profound physical and psychological deprivation and abuse from a very young age, and this, allied with his personality disorder, probably explain to a large extent his lack of family involvement.

70. I take no view as to any causative connection between the plaintiff's upbringing, his personal history, and his present psychological condition.

Issue 2: To what extent has the plaintiff engaged in errant misbehaviour while in prison?
71. The plaintiff has engaged in "errant misbehaviour" while in prison, although all of the prison staff who gave evidence in the case, whether for the plaintiff or for the defendant, were generous and fair to him in saying that he was mostly "not much trouble", but that he occasionally was very troublesome indeed.

72. The Governor of X Prison from September 2014 until December 2017, says that, in general, the plaintiff did not present with "major problems", although he did have behaviour episodes which were challenging. The Governor described the plaintiff as "unique" and also that the challenges he presented to X Prison authorities were "fairly unique".

73. The Governor accepted that it was not common for a prisoner to "thrash" his cell as the plaintiff did on a few occasions, but that this resulted from his frustration at being in a cell 24 hours a day, and probably from his personality disorder.

74. An Assistant Chief Officer who worked at the relevant time in the High Support Unit ("HSU") described the plaintiff as "fine" most of the time but, on occasion, as challenging and manipulative. In general, he said the plaintiff was "quiet and pleasant".

75. The prison Chief Nurse Officer gave evidence of his good relationship with the plaintiff in his early years but said that this deteriorated over time. He attributes the deterioration of his initial good relationship with the plaintiff to the difficulty in implementing treatment options in prison and to what he regarded as the disproportionate response by the plaintiff to events which did not go his way.

76. Another Chief Officer described the plaintiff as "challenging".

77. On 7 May 2014, the plaintiff threatened to assault the Nurse Officer with whom he had a good relationship and says that this was because he was provoked and intimidated in a racially motivated attack by another prisoner. He later apologised to her for this incident but, at the time, he refused to take personal responsibility, although he later accepted that he "owned" the incident, by which he meant that it was a matter for which he was responsible. The medical reports that describe the plaintiff's behaviour as "narcissistic" relate to this type of incidents and illustrate that he has a singular lack of empathy.

78. The plaintiff had a particular rapport with this Nurse Officer, who gave evidence on behalf of the plaintiff and spoke of him in a most human and generous manner. She said that he kept his cell very clean and was mostly pleasant, except when he was "on one of his rants". She described a very good relationship with the plaintiff and expressed a belief that the prison environment would have been very difficult for him physically and psychologically.

79. While, in general, she said that the plaintiff kept himself spotlessly clean, when he was experiencing one of his "outbursts", matters were different, and that she did face visits with him with a certain trepidation or fear. In general, she said he was not "too challenging", but in a characteristic understatement which was generous and kind, she described visits to his cell when he self-harmed or when he was on a so called "dirty protest" as "not very nice" and "likely to be unhealthy".

80. This Nurse Officer accepts, in regard to the incident when the plaintiff lunged at her, that she was not the intended target, although she was bruised on her arm and knee and did accept the plaintiff's apology.

81. The plaintiff had 19 disciplinary charges levied in the years leading up to the litigation in March 2015. There is no doubt that he has verbally abused and threatened members of staff and, on several occasions, broke up his cell and caused damage to prison property including to a television in the general recreation room.

82. The plaintiff had a curious honour regarding his behaviour in prison. For example, when he secreted a blade on his person, which he did on a number of documented occasions, he insisted that he would never "hide" that he had secreted an instrument such as a blade, that he always made it clear to the relevant staff when he had a blade secreted, and that it was never his intention, nor did he ever make a threat, that the blade would be used on other persons. The prison staff understandably and reasonably could not safely act on an assumption that the plaintiff would not seek to use the secreted blade as a weapon, and while the plaintiff's self-described honour is to be acknowledged, his failure to understand the impact of his actions on other persons or to take account of their likely impact is a feature of his personality which was very apparent in the course of his evidence and that of other witnesses in the course of the trial. The prison psychologist says he did not feel threatened by the plaintiff's behaviour but other persons did, and their response was reasonable and would, to a person capable of a normal response, have been predictable.

83. The prison Chief Nurse Officer attributes the deteriorating of his initial good relationship with the plaintiff to the difficulty in implementing treatment options in prison, and to what he regarded as the disproportionate response by the plaintiff to events which did not go his way.

84. What is more difficult to analyse is the question of whether the plaintiff consciously chose to engage in a particular form of behaviour, and the defendant argues that the plaintiff deliberately and consciously engaged in behaviour such as self-harming, abusive language and conduct to members of staff, dirty protests, *etc*. with a view to achieving a change in his prison conditions or "to his own ends". That is a correct characterisation, but only to an extent, and the question of cause and effect is one that is more satisfactorily dealt with by the more nuanced approach of Professor Kelly, who does not go so far as to say that the plaintiff engages in poor behaviour in prison without making a conscious choice to do so, but rather, that the behaviour is explained by, or derives

from, his personality.

85. The plaintiff had a certain sense of honour, but observing him giving evidence over 6 days and with the assistance, in particular, of the evidence of the relevant Governor, the prison Chief Nurse Officer, and Professor Kelly, I formed the view that the plaintiff's ability to understand and know the difference between right and wrong behaviour, or more especially, to understand what, if any, effect his behaviour would have on other persons was minimal and not within a range that one would describe as "normal". He engaged in behaviour which would, on one reading, be conscious and anti-social, but it is explained by his personality profile and his inability to understand with any degree of insight the effect his behaviour has on other persons.

86. I consider that the plaintiff's personality profile, taken in the broadest and general sense, explains but does not justify his behaviour, but that is not to say I am of the view that the plaintiff's conditions in prison ought not, in some way, reasonably reflect his needs.

Issue 3: To what extent has the plaintiff's physical and mental welfare deteriorated while in prison?
87. The plaintiff's physical and mental welfare has deteriorated in prison, but I take the view that his welfare has been deteriorating over a long number of years, as the behaviour he has displayed in X prison is broadly similar to that which is reflected in records in other prisons where he was detained in the United Kingdom and, before this, in Cloverhill.

88. I heard no medical evidence that would suggest that the plaintiff's physical condition has deteriorated as a result of prison rather than as a result of the normal aging process, taken in conjunction with the fact that the accident that he had as a child has had long-term sequelae.

Issue 4: To what extent is the deterioration of the plaintiff's conditions attributable to culpable acts or omissions of the defendant?
89. The prison Chief Nurse Officer was the nurse manager in X Prison at the material time. He gave evidence of attempting to meet the plaintiff's complex needs which he described as "unique". He described X Prison HSU, a unit containing nine beds, the purpose of which is to provide medical treatment for the five or six hundred prisoners detained in the prison from time to time, and in which the plaintiff was located up to May 2013, as not being part of "regular prison life", not intended to be a permanent placement, and not a clinically appropriate place to deal with the issues presented by the plaintiff.

90. The prison Chief Nurse Officer gave evidence of attempts throughout 2012 to obtain an alternative placement through the Irish Prison Service and that no suitable placement was available. He said that a suitable therapeutic unit was due to be opened in 2018 which might have suited the plaintiff's need but was not available at the relevant time. His evidence is that there was then no suitable place in the entire "prison estate". It was decided, however, after a case conference held on the first week of November 2012, almost a year after the plaintiff first went to X Prison, that he would remain in the HSU, but a decision made at case conference on 13 May 2013 resulted in a move to a different wing from where some of the more structured multiagency focus on his care was lost.

91. The then Governor met the plaintiff on a number of occasions in 2015, on 7 February and 9 March, when the hunger strike had commenced, and told him he respected his position, but was concerned about the impact the ongoing hunger strike might have on his health but that, because of "resources issues", it was impossible to provide him with the special structures he sought.

92. I am not satisfied that the failure to provide the plaintiff with more suitable accommodation arose as a result of the negligence of the defendant, and I am satisfied that every effort was made to give the plaintiff the benefit of reading materials, the gym, association with other prisoners should he wish, visits from outside, and that he was treated with great humanity and dignity by the persons who dealt with him day to day, especially by the Nurse Officer with whom he had a good relationship.

93. The plaintiff's mental condition has deteriorated, but I am not satisfied that the deterioration was caused by any act or omission of the prison authorities, although I am of the view that the plaintiff's conditions of detention, and the fact that he is in prison in the first place, have not helped him to develop any social or interpersonal skills or to permit him to fully develop his undoubted natural intelligence.

Issue 5: Was the plaintiff's detention a form of "solitary confinement"?
94. The plaintiff has been subject to Rule 63 Detention regime since he was first detained in X Prison and he is kept separate from all other prisoners on a regime described as "protection all others". This is, undoubtedly, an extreme form of separation, albeit it is quite clear to me that the choice of this form of detention was one made by the plaintiff and one that he consistently reaffirmed. While the two prison Governors, in turn, both accepted that it would probably have been the case that the plaintiff would have been detained in some form of separate regime equivalent to that provided in r. 63, that fact is not relevant to the circumstances of the present case, as the plaintiff consistently and clearly confirmed his choice to remain separated and segregated from prison life.

95. Rule 63 of the Prison Rules provides as follows:

> "(1) A prisoner may, either at his or her own request or when the Governor considers it necessary, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be kept separate from other prisoners who are reasonably likely to cause significant harm to him or her.
>
> (2) A prisoner to whom paragraph (1) applies may participate with other prisoners of the same category in authorised structured activity if the Governor considers that such participation in authorised structured activity is reasonably likely to be beneficial to the welfare of the prisoner concerned, and such activity shall be supervised in such manner as the Governor directs."

96. The overall aim of r. 63 of the Prison Rules is the maintenance of good order and the provision of safe and secure custody. The role is twofold, to further the safety and welfare of the prisoner and the ongoing management of the prison. There seems to be no intrinsic difference between the operation of r. 63 of the Prison Rules where a prisoner volunteers to be subjected to its Regulation and where the regime is imposed involuntarily, as in *McDonagh v. Governor of Wheatfield Prison*. In *Connolly v. Governor of Wheatfield Prison*, Hogan J. regarded the detention of a prisoner under r. 63 of the Prison Rules as being "an exceptional measure" and one which one would not normally expect to continue indefinitely. Rule 63(3) of the Prison Rules requires a governor to keep a record of any directions given.

97. In *McDonnell v. Governor of Wheatfield Prison*, the Court of Appeal noted that r. 63 of the Prison Rules is not concerned with solitary confinement but with "separation in the interest of a prisoner's safety". Rule 63, therefore, is not, in itself, a form of detention

as a punishment or disciplinary measure, as is r. 62 of the Prison Rules.

98. The extent to which separation and segregation of a prisoner from social and interpersonal engagement in the prison might have an impact on the psychological state of such prisoners has been noted in a number of cases, and the expert evidence in the present case supports the view that there is a risk of what Hogan J., in *Connolly v. Governor of Wheatfield Prison*, called "psychological anguish and psychiatric disturbance". There is no dispute, in the evidence in the present case, that the plaintiff suffered from a psychological condition which made his treatment and any clinical engagement with him in the prison difficult and, on occasion, extremely difficult, and that a regime which facilitated him in engaging with other persons, taking exercise, and engaging in other therapeutic activities to give him some form of psychological release, was the best means to advance and support the plaintiff's psychological wellbeing.

99. Solitary confinement is not defined in statute or in the Prison Rules, and as Ní Raifeartaigh J. said in *S.F. v. Director of Oberstown Children Detention Centre* [2017] IEHC 829, [2018] 1 ILRM 459, at para. 11, the phrase comes with "pejorative associations derived from its use historically and in other contexts." She preferred the word "segregation" as a neutral description of the state of being held alone in a room separately from one's peers.

100. Cregan J. gave a useful and detailed description of the international literature on solitary confinement in *McDonnell v. Governor of Wheatfield Prison* [2015] IEHC 112, and of its negative psychological and physiological effects including insomnia, confusion, hallucination, and psychosis. Cregan J. referred to the report pursuant to UN Resolution 65/205 of the Special Rapporteur of the UN Assembly of 5 August 2011, where the effects were described as "negative health effects" and that such a regime was a "harsh measure which might cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions".

101. The plaintiff argues that he has been held in X Prison in conditions of solitary confinement, but this particular argument, whilst contained in the first set of submissions, was not pursued with any great vigour at trial. The plaintiff accepted that he was segregated by his own choice and that he himself continued to decline all engagement with other prisoners, and mostly refused psychological and other services within the prison, education, counselling and bereavement services, visits from groups of persons or individuals who generously attend prison to offer solace and comfort to prisoners.

102. Whether the plaintiff was detained in solitary confinement in the true sense is not, in my view, material, but what is relevant is the fact that he was at all times detained in a unit where his interaction with other persons was limited or mostly non-existent. I am satisfied that the fact that the plaintiff was, at his own choice, detained long term in X Prison in a unit where had little or no contact with other persons did impact upon his response to the circumstances in which he found himself from time to time, and I accept the evidence of Professor Kelly regarding the particular and extreme salience that the plaintiff gave to the change in food delivery and exercise regime which might not have impacted upon other prisoners in the same way.

103. The plaintiff has been on 23-hour lockup since he first came to X in 2011. This was at his own conscious and informed choice. I am satisfied that attempts were made to find suitable other accommodation within the prison system for the plaintiff but none was then available, although the facility due to come on stage in this calendar year might have been suitable.

104. I am not satisfied that the plaintiff is detained in "solitary confinement" in the sense in which this is used in the authorities or international literature.

Issue 6: To what extent has the plaintiff engaged with psychological and psychiatric services available to him in prison?
105. The plaintiff's obsessive and self-absorbed world view prevented him from fully engaging with the prison psychologist although he did engage to a significant degree and, in my view, derived benefit from this.

106. The prison psychologist was not aware, until 26 February 2015, that the plaintiff was on hunger strike. Once he became aware of this, he kept in touch with prison staff, although did not prioritise a meeting with the plaintiff having regard to the fact that the plaintiff had previously refused to see him.

107. The prison psychologist accepted that, prior to the hunger strike, the plaintiff had six months of relatively stable behaviour between summer and Christmas of 2014, although, during that time, he did self-harm at times of stress or distress. He described the "overall picture" as being more stable at that time.

108. The prison psychologist accepted in evidence that the hunger strike was not a "surprise" but regarded it was a maladaptive response to perceived, but not real, problems.

109. One significant failure, however, was the fact that the prison authorities did not inform The prison psychologist that the plaintiff had commenced a hunger strike in early February 2015. While it is not possible from this vantage point to be sure whether an intervention of The prison psychologist would have assisted the plaintiff, the plaintiff did, as a matter of fact, respond in due course to the psychological and counselling assistance offered to him by Professor Kelly, and it is likely, in those circumstances, that had The prison psychologist understood the gravity of the situation, his intervention might have been of benefit.

110. I find that the prison psychological services were available to the plaintiff, but he did not always avail of the opportunity to engage with The prison psychologist who had a deep understanding of the plaintiff's condition and was committed to helping him.

Issue 7: Is the plaintiff at risk of significant harm within the prison, and if so what is the nature of the threat?
111. Assistant Chief Officer X said the plaintiff believed himself to be at risk from other prisoners and refused to mix with other prisoners or leave his cell. He said that the plaintiff became more and more introverted over the time he was in X Prison.

112. He said it was the plaintiff's own choice to remain in his cell and that although he was encouraged to interact with other prisoners, to exercise, to attend the gym and education services, he generally refused these.

113. The then Governor accepted that the plaintiff could be at risk from other prisoners, and the following Governor also agreed with this, but denies there were any circumstances in which the food delivered to the plaintiff could have been contaminated.

114. Both Governors accepted that the plaintiff would have been on a protected regime having regard to the crime of which he was convicted, although they took the view that there was no particular or unusual risk to the plaintiff from other members of the Travelling Community within the prison.

115. I find that the plaintiff was at some risk of significant harm from other persons within the prison and I accept the evidence of the Nurse Officer with whom the plaintiff had a god relationship that the plaintiff had a subjective fear of others. Objectively speaking, the plaintiff was, in my view, at risk, but this is because of his personality and the fact that he had relatively little self-control or moderation in his responses to others. The danger, in other words, was one that derived from the plaintiff's personality and not from outside forces.

Issue 8: Has the plaintiff previously been assaulted, or threatened, or abused physically and/or verbally in prison
116. The Assistant Governor accepted that a complaint was made that the plaintiff was splashed with water in the yard where exercise was provided in October 2014 but that she was unable to identify the person who had thrown the liquid on the CCTV image. That yard was removed from operation in the late 2014/early 2015 and she accepts that the replacement yard is overlooked by the cells and staff areas.

117. The plaintiff gave evidence that he was verbally and racially abused by other prisoners and I accept his evidence. No evidence was adduced of any physical or other kind of assault of any note, although in my view, the plaintiff believed that he was at risk.

Issue 9: Has the plaintiff previously been contaminated by other prisoners?
118. The Assistant Chief Officer said that he attempted to reassure the plaintiff regarding the change in food delivery and told him that the prisoners who were delivering the food were trained and supervised and that all other prisoners were subjected to the same change.

119. The plaintiff himself gave evidence of his food being spat on or at, and of threats of contamination made to him by other prisoners.

120. No contrary evidence was adduced, and his evidence must be accepted in the circumstances.

Issue 10: Is the plaintiff's food at risk of contamination by other prisoners and if so what is the extent of this risk?
121. I heard evidence of the system in place for the protection of the food and supervision of the prisoners who deliver the food.

122. The relevant then Governor expressed satisfaction that there was "no security issue" regarding food delivery and that the system operated was used in every division in the prison.

123. The Assistant Governor described the changes in the food delivering regime following the Haddington Road Agreement, which provided for a productivity review of certain State services. The "satellite kitchen" for the prisoners in the wing in which the plaintiff was resident no longer had dedicated kitchen staff but was staffed by prisoners who were supervised by an officer.

124. The plaintiff was the only prisoner to complain about the regime and the Assistant Governor was unaware of any incident or complaint regarding contamination or interference with food by any other person. The prisoners who work delivering food wear gloves and white clothing and they are enhanced prisoners with privileges earned from good behavior.

125. There is in my view little risk of the plaintiff's food being contaminated by other prisoners, but the plaintiff believes that this is a real risk. The defendant categorised his belief as irrational and not based in evidence but, in my view, the correct characterisation is that the plaintiff honestly believes that his food is at risk of contamination. His honest belief is not mischievous or malevolent but is borne of his grave difficulty in perception and distinguishing truth from falsehoods and derives from his obsessive personality.

Issue 11: To what extent if any is the plaintiff's limited contact with his family attributable to the acts or omissions of the defendant?
126. There are probably many reasons for the plaintiff's lack of contact with his family, most of which were not explored in the course of the evidence, and the plaintiff's incarceration, probably his complex and troubled family history, and his own personality are all relevant factors.

127. In the light of the evidence of the plaintiff, and because I am satisfied that the defendant offered to facilitate the plaintiff in maintaining and improving contact with this family, I am of the view that the defendant is not in any way responsible for the lack of contact that the plaintiff has with his family.

Issue 12: To what extent is the plaintiff's limited access to educational services attributable to the acts or omissions of the defendant?

128. The defendant has provided facilities, within the available resources, for the plaintiff to further his education. The plaintiff has not accepted most of these offers, although he has accepted from time to time the offers of books, music, etc. The prison resources are limited, and what the plaintiff requires is a service that would involve a considerable and not reasonably available degree of resources, even were the resources of the prison to be satisfactory in other respects.

129. I find that the defendant did not fail for reasons other than lack of resources to meet the needs of the plaintiff.

Issue 13: What complaints has the plaintiff made to date about the conditions of his detention?
130. The plaintiff has made very many complaints, and some of these will be dealt with below.

131. The statement of claim pleads the failure to deal effectively and efficiently with two complaints made in February 2015, but evidence was adduced regarding the manner in which the prison dealt with the plaintiff's fourteen complaints which were the subject matter of examination-in-chief by the defence and cross-examination by the plaintiff's counsel. In the course of his submissions, counsel for the plaintiff argues that the handling of these fourteen complaints, and not merely the two complaints in February 2015 in respect of which a specific failure is pleaded, is relevant.

132. The plaintiff cannot be permitted to go outside the pleadings and the two specific complaints in February 2015 identified therein, but I do accept the argument of counsel for the plaintiff that the manner in which the identified fourteen grievances were dealt with had led the plaintiff to a feeling of almost total lack of confidence in the system, a perception which, in my view, was objectively justifiable.

133. I propose, therefore, considering the complaints in respect of which the plaintiff makes argument for the purposes of analysing whether the complaints process had, as is argued by the plaintiff, entirely broken down.

134. The Prisoner Complaints Policy Document ("the Policy Document") issued on 16 June 2014 contains a categorisation of the type of prisoners' complaints reflecting r. 57B, the Prison Rules (Amendment) 2013, S.I. No. 11/2013. In general, at para. 4.1.5 of the Policy Document, it is stated that complaints shall be investigated "forthwith" in accordance with the policy criteria. There are four complaints categories defined in the Prison Rules:

> A) Section 57B(1) of the Prison Rules defines such category of complaints as referring to "[a]ssault or use of excessive force against a prisoner or ill treatment, racial abuse, discrimination, intimidation, threats or other conduct against a prisoner of a nature and gravity likely to bring discredit on the Irish Prison Service". These complaints were usually dealt with by the Governor of X Prison directly (Transcripts, day 12, p 129).
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> B) Category of complaints "of a serious nature, but not falling within any other category of complaint. Examples of Category B complaints could include verbal abuse of prisoners by staff, inappropriate searches […]" (para. 4.3.2 of the Policy Document).
>
> C) According to para. 4.4.1 of the Policy Document, Category C complaints "are basic service complaints (and may include complaints about visits, phone calls, reception issues, missing clothes, not getting post on time, not getting appropriate exercise). "Category C complaints will arise in two ways, namely, by informal complaints made to officers and by written complaints on complaint forms" (para. 4.4.2 of the Policy Document). Para. 4.4.5 of the Policy Document requires that the prisoner be given a reply or acknowledgment within 24 hours for a category C complaint, and the requirement is for "immediate action" and that 48 hours was the desired turnaround time (para. 4.4.9).
>
> D) According to para. 4.5.1 of the Policy Document, Category D complaints are complaints against "professional which, for example, may include medical personnel, legal/financial representative". Category D "may also fall into Categories A, B, or C to be investigated" (Policy Document, para. 4.5.3).
>
> E) According to para. 4.6.1 of the Policy Document, Category E complaints are complaints "made by visitors to the Prison.".
>
> F) According to para. 4.7.1 of the Policy Document, Category F complaints are complaints "against decisions made by IPS Headquarters in relation, for example, to such matters as the granting of temporary release, prison transfers."

135. I will briefly set out the complaints in respect of which the plaintiff makes argument:

> i. Complaint 82, 21 May 2014. This was a complaint that a prison officer was abusive towards the plaintiff and that he was placed in an isolation cell with a wet mattress for bedding. The plaintiff named the Nurse Officer with whom he had a good relationship as a witness. This Nurse Officer confirmed she was not interviewed in relation to the incident. Her evidence was that the mattress was wet. It is clear that this Nurse Officer was never interviewed, and the prison records show that the complaint was not upheld. The relevant Governor confirmed the approach to this complaint was "sloppy" and "not acceptable", and that the failure to interview this Nurse Officer was "very unprofessional".
>
> ii. Complaint 145, 2 October 2014. This was a racial abuse complaint where CCTV footage was available. The relevant Chief Officer in charge of complaints was not able to explain why he did not interview one of two prisoners seen on the footage. The complaint was not categorised for a period of about three weeks. The complaint was not finally processed until 14 January 2015. The Nurse Officer with whom the plaintiff had a good relationship noted this complaint in a note dated 14 October 2014.

iii. Complaint 176, 9 December 2014. The plaintiff complained his cell was unlocked at a time when other prisoners were on the landing. The complaint was dealt with on 21 January 2015 and the delay was explained by the relevant Chief Officer in charge of complaints as being due to the Christmas holiday period. The finding was that the prison officer in charge was "at worst a little careless". The complaint was not upheld. The direct evidence of the relevant Assistant Governor acknowledged that the incident was "very careless", a very different characterisation from that formally notified in the complaints process.

iv. Complaint 177, 9 December 2014. The plaintiff complained that exercise was offered very late in the day, at 6.45 PM. The complaint took longer than the 28 days allowed for a category B complaint and The relevant Chief Officer in charge of complaints made a finding that the plaintiff had "absolutely no substance to this complaint". He Officer found that "the opportunity for exercise is contingent on operational requirements and manned on a daily basis". The fact that the plaintiff was not offered an hour's exercise was a breach of r. 32 of the Prison Rules because exercise, which had commenced at 6.45 PM, concluded at 7.10 PM, and therefore, the plaintiff was denied the one-hour exercise mandated by the Prison Rules. The relevant then Governor accepted in evidence that there were grounds for the complaint and that the conclusion reached was not reasonable.

v. Complaint 208, 10 February 2015. This complaint relates to food delivery. The plaintiff heard nothing and on 19 February 2015 placed a query in the complaints box asking the relevant Chief Officer in charge of complaints why the matter was taking so long to even acknowledge. That complaint was not categorised until 25 February 2015, when it was categorised as a C complaint. No reasons for the delay in dealing with this complaint were offered and the complaint was finally dealt with on 27 March 2015, when it was assessed as having no basis.

vi. Complaint 209, 10 February 2015. This complaint related to exercise. The plaintiff said he was "stuck in this cell 24 hours per day" as he was "frightened to use the exercise yard", and went on to say that "it is no wonder I'm cracking up and constantly self-harming". This complaint was categorised as a category C complaint on 25 February 2015. On 27 February the plaintiff was given a copy of this complaint as well as of complaint 208 which bore the same date. No explanation was offered in the course of evidence for the fifteen-day delay in categorising the complaint. The complaint was dealt with and the plaintiff was formally noticed with the result on 27 March 2015.

vii. Complaint 206, 13 February 2015. This is a complaint regarding to noise caused by a prisoner banging the floor directly above the cell in which the plaintiff resided. It was categorised on 23 February 2015 as a C complaint and the relevant Chief Officer in charge of complaints made a determination that it was not to be upheld. In that complaint the plaintiff made reference to self-harming. In evidence, The relevant Chief Officer in charge of complaints did accept that the relevant officer did give an account of overhead banging but took the view that this in itself did not "support the basis of the complaint". At this stage, the plaintiff had been on hunger strike for several days. The Nurse Officer with whom the plaintiff had a good relationship had given evidence that he was particularly sensitive to noise and wore earplugs because of the noise levels in prison.

Issue 14: How were the plaintiff complaints dealt with by the defendant?
136. The evidence of another Assistant Governor, the complaints Liaison Officer, and the relevant Chief Officer in charge of complaints very fairly explained the operation of the complaints procedure in X Prison at the material time, and both witnesses fairly accepted that the procedure was not functioning effectively or efficiently at the time.

137. The then Governor received three complaints from the plaintiff, two dated 10 February 2015 and the other 13 February 2015, which were, in each case, addressed directly to him marked in an envelope "Strictly Private and Confidential". He accepted that the timeframes for these complaints, which were categorized as "Category C Complaints", which the Policy Document, at para. 4.4.1, describes as "basic service level complaints", was difficult to meet and probably too tight in all the circumstances. He is not aware of why there was such a long delay of six weeks in dealing with these complaints.

138. The Governor accepted that he had a meeting with the plaintiff on 7 February 2015, the day before the hunger strike started, and that he was aware from that meeting that the plaintiff had difficulty with the two matters that became the subject matter of the hunger strike. He gave evidence that he told him to use the formal complaints process, and that the matters would be dealt with that way. He said he was very concerned about the threat of a hunger strike and it is clear to me, in the light of the fact that the plaintiff had made complaints on 9 December 2014, which were not dealt with until 16 February 2015, that the matter was beginning to escalate out of control. The Governor directed the plaintiff to the designated process but in the events, the process was ineffectual and did not deal in any meaningful way with the complaints during the currency of the hunger strike. The Governor, in cross-examination, could not explain why the outstanding complaints were not mentioned in the affidavit evidence in the High Court. He accepted that the delay in dealing with the complaints was unacceptable

139. The Governor agreed with the conclusion of Professor Kelly that the limited range of the plaintiff's life meant that some factors assumed salience which would not be found in other circumstances. He also accepted the description of Professor Kelly that the complaints process, had it been processed effectively, would have a positive effect on the plaintiff.

140. He very fairly said that there were failures in the complaints process, and that the offer of the enclosed CBU was not an acceptable alternative to comply with the entitlement of the plaintiff to exercise every day. He said in evidence that "we could not keep up with the complaints" because of lack of personnel.

141. The Governor said that it was unusual for a prisoner to "take things into his own hands" in the way the plaintiff did, and the plaintiff's response was "highly unusual". He very fairly said that he was concerned with the plaintiff's wellbeing and he did have some contact with him in early 2015 but that the system that he recommended him to use failed. The plaintiff too had said that the Governor had treated him very fairly and the prison psychologist noted that the plaintiff had told him this.

142. The evidence of the complaints Liaison Officer was, in general, not satisfactory. He was unaware of, or could not remember, the conclusions of report regarding the inadequacy of the complaints process from the Inspector of Prisons.

143. He did accept that the processing of the complaints made by the plaintiff was not satisfactory but gave various reasons as to why it took so long to deal with the complaints. For example, in relation to the ten days' delay in dealing with the complaint of 13 February 2015, he explained that he "could have been on leave", but was unclear whether a structure existed to substitute for him if he was indeed on leave.

144. He accepted that both the then Governor and Assistant Governor had stressed the importance of the complaints process, in general, for dealing with grievances in the prison, but in cross-examination admitted that the fact that the complaint of 13 February 2015 had made a reference to self-harming did not trigger any particular concern in his mind that the complaint required to be processed with some expedition.

145. In answer to my question, the complaints Liaison Officer accepted that he was the final decision maker and that the relevant Chief Officer in charge of complaints made findings of fact and not ultimate determinations.

146. The relevant Chief Officer in charge of complaints could offer no explanation for not dealing with complaints 208 and 209, made on 10 February 2015. He accepted that he could not be certain the plaintiff was advised directly regarding the outcome of complaint 200, which was successful.

147. In response to questions regarding two separate complaints, No. 176 and No. 145, the answers of the relevant Chief Officer in charge of complaints focused on the delay in coming to a conclusion by reference to the possible consequence the complaint might have for a prison officer, and not on the substance of the complaint by the prisoner.

148. The manner in which the plaintiff's complaints has been dealt with is much less than satisfactory, the failures being attributable to a failed system rather than to any individual failure of the persons engaged with the management of the complaints systems within the prison. This system is grossly under resourced, one person bears the responsibility for fact finding, and even he, the relevant Chief Officer in charge of complaints, was singularly unclear about the precise extent of his role. The system dealing with complaints was unsatisfactory and not compliant with basic levels of fairness or procedural correctness.

149. I conclude, on the facts, that the method of dealing with complaints in X Prison was considerably less than satisfactory, and I am fortified in my view by the report of the Inspector of Prisons, the late Judge Reilly, who came to a strong conclusion regarding the complaints procedures in X Prison in his 2016 report pursuant to Part 5 of the Prisons Act 2007 "Review, Evaluation and Analysis of the Operation of the Present Irish Prison Service Prisoner Complaints Procedure".

150. It is not for me to determine whether the complaints were valid or justified any intervention by the prison authorities, but I find, as a matter of fact, that the prison authorities did encourage the plaintiff to use the complaints process to resolve his grievances, that the plaintiff did take this advice in good faith, that the complaints procedure was one of the few "pro-social" methods of resolution available to the plaintiff having regard to his isolated status in the prison, and that the prison authorities actually knew that, on account of the plaintiff's particular vulnerability and his personality and cognitive distortions, he was likely to pursue with enthusiasm, if not a degree of obsessiveness, his complaints, and that a robust and functioning complaints process ought to have been put in place. I am satisfied that the process was not functional and that the plaintiff was poorly served at a time when his health and wellbeing were at serious and life threatening risk.

The importance of the complaints procedure
151. The evidence of the defendant is that the formal complaints procedure is an important component in the management of the prison and its importance, both to management and to the prisons, was acknowledged by all the relevant witnesses. The evidence is

that the then Governor , in conversations with the plaintiff in the period immediately before and in the early days of his hunger strike in February 2015, advised the plaintiff to avail of the prison complaints system to air his grievances regarding the change in the food delivery and exercise regimes.

152. The plaintiff argues that the complaints procedure was not operated in accordance with its own terms, and that the management of his complaints amount to negligence and breach of duty.

153. In the Court of Appeal's decision in *McDonnell v. Governor of Wheatfield Prison*, the plaintiff was in protective isolation and, at para. 97, Hogan J. referred to the grievance procedures under the Prison Rules:

> "It is apparent from this scheme that a prisoner who feels aggrieved about his treatment in the prison has a number of avenues of complaint. Obviously, that administrative process is subject to supervision of the courts by way of judicial review. The advantage that it offers is of examination of the issue raised by the prisoner by persons and in circumstances of knowledge of prison life and also the capacity to specify means of dealing with the complaint. Expert knowledge of prison life and the capacity to give specific directions highlight the distinction between this form of investigation and the process of judicial review that is available in the Courts. This mode of proceeding does, of course, exclude access to the courts for the purpose of indicating constitutional or legal rights but the scheme provided by the Prison Rules affords reassurance that the prison authorities, the Director General and the Minister all have responsibilities in regard to complaints, which obviously includes the conditions in which prisoners are detained and their human rights."

154. The Court of Appeal recognised the importance of the complaints procedure and the particular advantage it offered in providing assistance for the dealing with grievances by a person with knowledge of prison life.

155. The plaintiff gave evidence of the importance of complaints procedure for him and the evidence is that he made twenty-seven complaints between December 2011 and March 2015, a period of more than three years, of which fourteen were made in the six months leading up to the hunger strike.

156. The prison psychologist, who played a pivotal role in the management of the plaintiff's psychological state in prison and who offered an independent, dedicated, and compassionate voice, gave evidence that the plaintiff frequently, if not almost always, made reference in his meetings with him to the progress of his complaints. He regarded the complaints procedure as "pro social", an expression which is the opposite of the more commonly used "anti-social" route, and a functioning complaints procedure was likely to have been very beneficial to the plaintiff. He accepted that the availability of the complaints process was an "important instrument" in the management of the plaintiff's condition and very useful to him, and the introduction of a formal structure to deal with complaints might be one reason why he became settled and less liable to self-harm in the six-month period leading up to Christmas 2014. He noted, in particular, that at meetings with him, the plaintiff usually brought up any complaints he had made often as the first thing he mentioned.

157. All of the relevant witnesses accepted the adverse effect on the plaintiff of his prolonged period of isolation from others, and the prison Chief Nurse Officer and the Nurse Officer with whom the plaintiff had a good relationship were especially clear that the regime in which he lived was very restrictive and offered him little outlets.

158. The X Prison authorities too were well aware of the borderline personality disorder from which the plaintiff suffered, and his "unique" presentation in the prison environment and the difficulties it presented. The plaintiff's perception of reality or truth and of interpersonal values was distorted and certain matters, as Professor Kelly makes clear, came to take on a salience they would not have been afforded in a more "normal" person or in a life where sufficient variables were present to modify the response.

159. The prison authorities were aware of the importance of regularity in the plaintiff's life, and Professor Kelly accepted this as did both prison Governors, the Nurse Officer with whom the plaintiff had a good relationship, the prison Chief Nurse Officer , and the prison psychologist.

160. The prison psychologist said that he was "not surprised" that the plaintiff had taken on the extreme form of protest of hunger strike, but I regard it of critical importance that neither the prison psychologist nor the prison Chief Nurse Officer were informed of the commitment to the hunger strike or of its progress until the application was made to the High Court. Further, the prison Chief Nurse Officer was not aware that the plaintiff had made complaints or expressed difficulty regarding the change in the food delivery and exercise regimes and he said these are "operational" changes which were outside the healthcare system for which he was responsible.

161. The then Governor spoke to the plaintiff on 9 March and on 7 February 2015 and encouraged the plaintiff to utilise the formal complaints procedure, but at that stage the category C complaints, both dated 10 February 2015, were already in the system and took almost six weeks to be dealt with.

162. Those complaints were particularly important having regard to the fact that the plaintiff had commenced his hunger strike at this time, and, in my view, the failure to even acknowledge the existence of the complaints and to deal with them in a reasonably speedy manner, while it did not cause the plaintiff to go on hunger strike, did lead the plaintiff to take a particularly intractable approach to food refusal, and what might have been characterised as food refusal in the early days soon became a full scale hunger strike from which the plaintiff essentially saw no way back. It was not until the evidence had concluded and judgment was due to be delivered in March 2015 that the plaintiff, with the assistance of his legal and medical advisors, came to develop a perspective on the matter that allowed him to take some nutritional therapy.

163. The plaintiff himself said that he made a decision to continue on the hunger strike "out of frustration and nobody listening to me or taking any notice of me". At para. 127 of my previous judgment in the capacity side of this matter I said as follows in relation to the plaintiff's choice related to the continuation of his hunger strike:

> "The medical evidence is that he is not suicidal. The choice he has made and expressed will inevitably lead to his death, but it could still be said that his stated wish is not a positive wish to die, that his wish is a conditional one that if he cannot achieve an improvement in his conditions then he accepts the inevitable result of his protest against these conditions."

Conclusions as to the management of the plaintiff in the prison environment

164. Professor Kelly gave evidence that one aspect of the plaintiff's personality is that he would constantly seek to push the limits beyond what was available from time to time. The plaintiff had 971 medical recorded interventions in prison up to March 2015, when

these proceedings commenced. There were many visits as an out-patient to the Mater Hospital and direct medical intervention in X Prison itself. The plaintiff was adamant that the only medication that gave him pain relief was a medication which was now proscribed in the prison environment, Lyrica, and he also wanted DF118 and Gabapentin. The plaintiff himself said that he knew how to manipulate the system or, as he put it, "to play the system".

165. I accept the evidence of Professor Kelly that the plaintiff engaged in manipulative behaviour which made it difficult to meet his demands without leading to a "changing of the goalposts" if an individual demand was met. This has the consequence that the prison had to be cautious in meeting his demands, and therapeutic advice was that care was needed to ensure that the plaintiff's well-being was managed in manner that did not encourage poor behaviour or increasing demanding behaviour.

166. The plaintiff has not engaged in any meaningful way with the services offered to him in prison to deal with his post-release life and did not attend most of the programmed sessions for that purpose. He has not engaged in any meaningful way with the Parole Board.

167. The prison authorities were well aware of the personality disorder of which the plaintiff suffered. I accept that, on a day-to-day level, the prison authorities did what they could to relieve the very difficult conditions of isolation in which the plaintiff was detained. I have heard evidence from the two Governors of visits made to the plaintiff in his cell to encourage him to take exercise or to use the gym. The plaintiff was given privileges in the form of extra coffee and tobacco in return for doing some cleaning work, but this was short lived.

168. I accept the argument of the defendant that there was proved only one occasion when the plaintiff was denied his one-hour exercise to which he was entitled, but notwithstanding this, and in the light of the acknowledged right of all prisoners to a minimum of one hour's exercise a day, and in the light of the judgement of Faherty J. in *Dolan v. Governor of Mountjoy Prison*, I consider that the conditions in which the plaintiff was required to exercise in the CBU yard were wholly unsuitable.

169. The management of the plaintiff's exercise was particularly difficult because, on many occasions, the plaintiff simply chose not to take his exercise and consistently rejected the offer of attending the gym.

170. In this regard, the judgment of Kearns P. in *Nash v. The Chief Executive of Irish Prison Services* [2015] IEHC 504 is relevant. He made it clear that one could not have "a prison of one's choosing" and that the essence of the deprivation of liberty inherent in being in prison is that the day-to-day conditions of one's life are directed and must be directed by others, so that the day-to-day life of individual prisoners can legitimately differ from the conditions a prisoner might want.

171. In *McDonnell v. Governor of Wheatfield Prison*, the Court of Appeal was dealing with a prisoner who was on a 23-hour lock up regime not imposed as a punishment but for the safety of the prisoner. At para. 89, Hogan J. said as follows:

> "A prisoner may not legitimately create the conditions in which it is impossible for him to enjoy normal facilities. A prison, like any other institution or organisation, requires cooperation all round for it to operate successfully. A prisoner who repeatedly breaches discipline and is subject to successive punishments cannot complain that he is being subjected to an unpleasant regime on an indefinite basis because he has nobody to blame but himself. Similarly, a person in the community who is a serial offender in committing crimes one after the other cannot complain that he ends up in prison."

172. Thus, the authorities would suggest that, while a prisoner may not be deprived of all of his rights, certain rights of self-determination and the management of day-to-day conditions of one's life may be removed in the interest of the general management of the prison in regard to which the courts have indicated a reluctance to intervene.

The nature of the cause of action

173. In Creighton v. Ireland, the plaintiff's claim was for damages for personal injury arising from the negligent failure of the prison to protect him from a violent and unprovoked knife attack by a fellow prisoner. The claim in the present case is pleaded in negligence and for declaratory relief that the plaintiff has suffered a breach of his rights.

174. The defendant says that, even if there has been a breach of rights, they do not amount to breach of the same nature of seriousness of that found by Ni Raifeartaigh J. in *S.F. v. Director of Oberstown Children Detention Centre* and by White J. in *Simpson v. Governor of Mountjoy Prison*.

175. Ni Raifeartaigh J. found the plaintiffs had suffered a breach of their rights to family contact and exercise and was not justifiable in that it had continued for longer than was necessary or proportionate.

176. White J. found a breach of the plaintiff's privacy rights and held that the lack of privacy in basic personal hygiene was at a level of seriousness that justified the declarations sought.

177. Both of these cases engaged questions of the reasonableness and proportionality of the response of the prison authorities and whether the conditions in which the prisoners were detained were such as amounted to a disproportionate and unnecessarily prolonged deprivation of rights.

178. The plaintiff came to X Prison with a difficult personal past, and a borderline personality disorder which made him difficult to manage in prison and that being in prison would perhaps cause him a great deal of distress. Counsel for the defendant argues it did all it reasonably could to offer the plaintiff the services and assistance that was available in the prison and that the plaintiff chose to engage in hunger strike, notwithstanding that he was given or offered very good medical, psychological, and other care in the prison environment.

179. There is no doubt that the plaintiff came to prison a very damaged man, and that, for the most part, he got on well with members of the prison staff and, to an extent, they with him. The plaintiff argues that the prison failed to take steps to prevent the escalation of matters to the point where he had engaged in hunger strike for 50 days and that the duty of care was breached in that respect. I do not consider that the hunger strike was a consequence of the change in food delivery and exercise regime. The hunger strike was a protest the plaintiff himself accepted it was such in the 2015 proceedings.

180. I accept, however, the argument of the plaintiff that various factors taken together, including the personality disorder from which the plaintiff suffered, did call for special and focussed responses from the prison authorities as the particular protest or response by the plaintiff to his condition was different from the others he has previously taken and was very dangerous to his health and safety. The prison authorities were aware of the negative consequences of the level of isolation in which the plaintiff lived, and

were well aware for several months that the plaintiff was dissatisfied with the change of regime. It was clear that the plaintiff did not like change, but that of itself would not have led to the choice that the plaintiff took to engage in hunger strike. I accept his evidence that he took that step because he felt all other avenues had been closed to him, and that was also the evidence he gave in the first case. He was clear, then, that he did not wish to die, but that his prison conditions had become intolerable and no other avenue was available to him to resolve his grievances with the prison authorities.

181. In *McDonnell v. Governor of Wheatfield Prison*, the Court of Appeal made it clear that a prisoner must bear a degree of responsibility for his or her own life in prison, and to engage with the prison authorities and cooperate in the orderly management of the prison. A prison, to that extent, is a society, and a prisoner must behave in a way that reflects the needs of other prisoners and the prison order. The plaintiff opted to live outside the society of the prison, and his stated and considered wish was that he was to remain in an isolation regime and that he would have no contact with any prisoner. But he could not be isolated from the requirements of the prison authorities to manage the order of the prison, and even a prisoner in isolation such as the plaintiff must, of necessity, engage with the prison staff, and is restricted in the choices he or she may make by resources and the overall need for an orderly prison.

182. On 20 February 2015, the plaintiff wrote what became known as a "disclaimer letter" to the prison authorities in which he said that, should he fall into coma or become otherwise incapable of making a decision regarding his own welfare, he was not to be medicated, or given nutritional therapy, or fed against his will. I consider that it was on that date that he made the determination that his action was not mere food refusal, something he had done before in X Prison itself, in the United Kingdom, and in Cloverhill, but a different form of response to his conditions, both in quality and intent. This letter was written the day after he had sought copies of the complaints he had lodged ten days earlier. I consider that there was a direct connection between the failure of the authorities to deal with his two complaints and his determination expressed in that letter to continue the hunger strike, even should it cause his death. Thus, I consider that the circumstances escalated in a relatively short period from being a form of protest, which is not qualitatively different from others engaged by the plaintiff, to becoming a protest demanding a response of substance. Such response did not happen.

183. I consider that the most likely explanation for the response of the prison authorities to the plaintiff's hunger strike was that they believed that the plaintiff was engaging in a form of protest of broadly the same type and with the same intention as other protests he had engaged in in the past. In the initial stages the refusal of food was treated as if it was merely that, a refusal of food similar to that which had occurred on previous occasions. This particular protest by the plaintiff was quite different and he continued on his hunger strike for 50 days with obvious risk to his health and wellbeing, and the evidence before me in the earlier trial was that the plaintiff had become emaciated and that his physical health had deteriorated very rapidly as a direct consequence of the hunger strike. I consider that the prison failed to appreciate and evaluate the extent to which this protest was different and had become intractable and needed careful and intense engagement of a type that was not offered to the plaintiff.

184. The prison authorities made application to the High Court for directions and no criticism can be made in that regard, especially as the plaintiff himself was satisfied that the Court should make directions regarding his treatment should he fall into coma or become otherwise incapable of making a decision as to his treatment. I consider that the focus of the prison authorities became the means by which they were to deal with the likely sequelae of the plaintiff's hunger strike, but the prison authorities failed to deal with the cause of this and whether there was any means by which the plaintiff could be persuaded to discontinue the hunger strike. In the event, it was Professor Kelly and the legal team who offered great professional and personal help to the plaintiff through the first case and thereby unlocked his approach to his conditions. I consider it to be of critical importance that the plaintiff did not wish to die and expressed this most forcibly in the first case. He was engaged in the protest to change his conditions, he wanted to be heard, not to end his life.

Conclusion

185. For these reasons, the plaintiff fails in his claim that his prison conditions are in breach of his rights under national and/or international law. However, there was, in my view, a failure to deal reasonably and with expedition with his complaints, that failure was negligent, it did not cause the plaintiff to go on hunger strike but made his protest much harder than a fleeting and transient one.

186. I consider that there was a breach of the obligations of the prison authorities to properly manage the plaintiff's grievances and the difficulties that he had with the change of prison regime. It is not my view that the prison is not entitled to change the regime of food delivery and exercise, and the lack of resources including personnel and financial resources was marked and outside the control of the prison authorities. In this, I am fortified by the comments made by White J. at para. 408 of his judgment in *Simpson v. Governor of Mountjoy Prison* and I regard my criticism as one that does not breach the separation of powers.

187. I accept, as was held by White J. in *Simpson v. Governor of Mountjoy Prison*, at para. 354, that a breach of the Prison Rules of itself is not actionable, and that the Prison Rules governing complaints (apart from category A complaints) are regulatory, and not mandatory. However, the fine line between the proper regulation and management of the complaints procedure and negligence was, in my view, passed in this case, and the defendant does bear some responsibility for the escalation of the plaintiff's protest to a point where, in the light of his very difficult personal and psychological makeup, it became impossible or, at least, very difficult for him to turn back, and this was a reasonably foreseeable consequence of the failure to deal with the plaintiff's written complaints.

188. As to damages, I consider that the actions on the part of the prison authorities did not cause the plaintiff to go on hunger strike, but I do consider that the negligent failure of the prison authorities to take his protest seriously and to understand the extent to which it was different from other protests did accelerate and exacerbate the hunger strike to a point where it became not mere food refusal but, by 20 February 2015, a hunger strike which could have led to the plaintiff's death.

189. The plaintiff says it is self-evident that the hunger strike caused him physical and psychological harm, and it did. No evidence was adduced as to any physical or psychological sequelae, and therefore, the injury of which the plaintiff suffered was the injury of pain or distress of being on hunger strike.

190. It is difficult to put a monetary value on such injury or pain, and especially difficult as the hunger strike itself, even without its acceleration or continuation, would have caused pain and distress for the plaintiff, for which the defendant cannot be blamed. I believe that compensation should be nominal and that is because the plaintiff has, in effect, recovered, if that is the correct word, and his physical and mental state are, broadly speaking, that which existed before the hunger strike had commenced.

191. In *S.F. v. Director of Oberstown Children Detention Centre*, Ni Raifeartaigh J. awarded the plaintiffs €100 in compensation, the amount being nominal to reflect the fact that they had succeeded in their claim, and also the fact that they were minors. In *Simpson v. Governor of Mountjoy Prison*, White J. took the view that the plaintiff exaggerated his conditions, and I do not consider that the

plaintiff can be criticised of this, on account of any exaggeration of the effect on him of his day-to-day living conditions.

192. I propose awarding the plaintiff €5,000, but I stress that this sum is not intended to do any more but mark damages in respect of a matter for which the plaintiff is primarily responsible, but where the inaction of the defendant led to the circumstances becoming far more grave and dangerous than those even the plaintiff himself intended in the early days of the hunger strike.

193. As the first judgment delivered in 2015 contained matters of a profound personal and sensitive nature, I was then concerned to preserve the anonymity of the plaintiff. I have anonymised the written judgment in the present case, insofar as this was possible or reasonable, so that the publication of this judgment will not inadvertently disclose the identity of the defendant in the 2015 judgment. Taken alone, the justification for anonymisation of this judgment would not be compelling.