Neutral Citation Number: [2013] IEHC 474

THE HIGH COURT

[2005 No. 336 P]

BETWEEN

JOHN MEAGHER

PLAINTIFF

AND

DUBLIN CITY COUNCIL AND

HEALTH SERVICE EXECUTIVE

DEFENDANTS

JUDGMENT of Mr. Justice Hogan delivered on the 1st November, 2013

PART I: INTRODUCTION

1. The dramatic rise in the number of refugees seeking asylum in the State in the latter part of the 1990s was a remarkable social phenomenon. While there was less than 100 such applications annually in early 1990s, by the latter part of the decade the figures had risen dramatically and, indeed, exponentially. This sudden surge began to manifest itself especially in the years from 1997 onwards. It is, I think, fair to say that this was a phenomenon for which the authorities found themselves somewhat unprepared.

2. This litigation arises directly out of these events. The plaintiff is a business man who has been involved in a variety of different businesses, but he also has considerable experience of the hotel and hostel accommodation business.

3. Shortly after the first major influx of refugees arrived in 1997, Mr. Meagher was approached to see whether he would be prepared to make arrangement to enable his hostels to be used as accommodation centres for the new refugees. This he agreed to do, and for that purpose entered into several different formal and informal contractual arrangements with both Dublin City Council and the statutory predecessors to the Health Service Executive. It is not in dispute but that Mr. Meagher entered into an arrangement with the HSE at some stage in late 1997 (or, perhaps, at the latest, early 1998) whereby he would provide accommodation and other ancillary services (such as the provision of basic meals) in respect of refugees and other homeless persons. At this time the responsibility for the accommodation of asylum seekers rested with the HSE, albeit that the Council paid for this. This continued until October 2001 when the Council took over the control of the hostel service and dealt with and paid service providers such as Mr. Meagher directly.

4. The principal premises where these services were provided was at the Sancta Maria Hostel and adjoining premises at 2-8 Charlemont St., Dublin 2, but the services were also supplied at other premises in Dublin, including at Parnell Square, Dublin 1 and Dorset Street, Dublin 2.

5. This action is, in essence, a breach of contract action against the defendants whereby the plaintiff contends that he has not been paid the full sum of the amounts that had been promised to him by the defendants under these contractual arrangements.

6. I should pause at this juncture to indicate that at various different stages in this narrative the second named defendant (or, more strictly its statutory predecessors), was described by different names. At one stage the functions were discharged by the Eastern Health Board and that Board was later subsumed into the Eastern Regional Health Authority. These functions were then later again taken over the Health Service Executive following the passage of the Health Act 2004. Purely for reasons of convenience I propose to refer to the second defendant as the HSE even though, in strictness, that body only existed after 2004, but since at least for the purposes of this litigation, this is only a matter of nomenclature and nothing turns on this. The same applies to Dublin City Council which was formerly known as Dublin Corporation. Again, purely for reasons of convenience, I propose to described it as the Council.

7. The plaintiff's claim in these proceedings is for the sum of €390,699, together with a payment of interest under the Prompt Payment of Accounts Act 1997. That sum is made up of three separate elements as follows:

> i. €147,227 in respect of unpaid invoices supplied between 25th May 1998 and May 2002,
>
> ii. €203,158 being what is claimed to be the unpaid balance owing on foot of a one year contract dated 20th October 1999 in respect of capitation payments in respect of the Charlemont St. premises,
>
> iii. €40,314 representing the unpaid balance of the annual rollover capitation contract for the period from 8th September, 2002, and 19th October, 2002.

PART II: IS THE CLAIM STATUTE-BARRED OR OTHERWISE BARRED BY THE DOCTRINE OF LACHES?

The course of the proceedings

8. The proceedings were commenced on the 9th March, 2005. Rather remarkably, the proceedings were not served on the two separate defendants until sometime in April, 2008 and then pursuant to a court order (Peart J.) which renewed the summons for six months from the 1st April, 2008. The Council entered an appearance on 24th April, 2008, and the HSE filed an appearance on 18th June, 2008.

9. The plaintiff then subsequently brought a motion for summary judgment in July, 2009. Following an exchange of affidavits, this culminated in an order of the Master of the High Court remitting the matter to plenary hearing. There then followed a statement of claim, particulars and then, finally, two separate defences filed which were filed on 14th November, 2011 (by the Council) and on 23rd December, 2011, (by the HSE) respectively. It may be observed that the HSE's defence pleaded that the plaintiff's claim was barred by the doctrine of laches and undue delay and was also statute-barred for the purposes of the Statute of Limitations.

10. Before considering these latter pleas, it is necessary to bear in mind that a significant element of the plaintiff's claim relates to a settlement in respect of outstanding invoices and arrears of rent which was entered into between the parties on 11th October, 2000. As the plaintiff maintains that the defendants dishonoured their part of the bargain, he is now re-presenting these invoices for payment. Many (but not all) of the invoices pre-date 2000. It is against this background that the contention that the action is statute-barred or barred by the doctrine of laches can be evaluated.

Is the claim statute-barred?
11. While it is true that the plea of the Statute of Limitations has been raised by the HSE only and not by the Council, the essential point is that the plaintiff has at all times has been on notice of the plea. This is especially so where the defences of the two defendants are intertwined and where the defendants are, indeed, represented by one single legal team. In these circumstances, it would not seem unfair to allow the Council to avail of the plea that the action is statute-barred.

12. The present action commenced on 9th March, 2005, and so accordingly the plaintiff is entitled to claim in respect of the six year period which commenced on Wednesday, March 10th, 1999. Claims which accrued prior to that date are accordingly statute-barred.

13. It is, however, worth noting that the proceedings were served on the defendants only in April, 2008. Here it may be observed that this Court made an order ex parte on 31st March, 2008, extending time for the service of the summons pursuant to O. 8, r.1. One might query whether it is permissible for a plaintiff through this procedure effectively to delay the operation of the Statute of Limitations for such a striking period of time. One of the objectives, after all, of the Statute was to ensure that defendants would be informed in a timely fashion of the making of a claim. If, however, O. 8, r.1 is operated in such a manner as effectively to allow a defendant to be served many years after the Statute of Limitations would otherwise have expired, this seems at odds with that very statutory objective.

14. This very point was made by Clarke J. in *Moloney v. Lacey Building & Civil Engineering Ltd.* [2010] IEHC 8, [2010] 4 I.R. 417, 427:

> "It seems to me that a renewal of a summons outside the limitation period so as to further extend the time (by reference to the limitation period) within which service can be effected, amounts at least to a stretching of the principles behind the existence of a statute of limitations in the first place. Such considerations should, in my view, inform decisions relating to both the question of what might be taken to be a 'good' reason for the renewal of a summons and also in weighing the factors that might be put in the balance in considering whether the balance of justice lies."

15. In *Doyle v. Gibney* [2011] IEHC 11, I also voiced reservations about this practice. The facts in that case were admittedly extreme in that not only had the summons had been renewed at a time when the limitation period had expired over a year previously, but there was then a further delay in that nothing happened for a period of eleven years before the summons was finally served after a further extension of time. I held that "a further subsequent delay of over eleven years for the service of a summons is plainly unsustainable if the courts are not to permit the legislative policy choices underpinning the Statute of Limitations indirectly to be set at naught".

16. The facts of the present case are admittedly nothing as extreme as those disclosed in *Doyle*. Yet the delay in effecting service was nonetheless significant and it might well have been open to the defendants to apply pursuant to O. 8, r. 2 to have had the renewal of the summons set aside on this very ground. As this did not occur and the defendants elected to plead to the proceedings, the validity of that renewal of the summons must now be accepted. It follows, therefore, that even though the defendants only first obtained notice of the proceedings in April 2008, time nonetheless stopped for the purposes of the Statute of Limitations on the date the proceedings commenced in March, 2005.

Is the plea of laches available to defeat a claim of damages for breach of contract?
17. The plaintiff's claim is for damages for breach of contract. Can, however, the equitable doctrine of laches be utilised to defeat a claim for damages for breach of contract at common law which is otherwise not statute-barred? The doctrine itself imports the concept of unreasonable delay defeating the grant of equitable relief on the principle that delay defeats equity. But can the doctrine be deployed so as to defeat a claim which springs, not from equity, but from the common law?

18. This is not the place to essay a lengthy analysis of the question of the extent to which law and equity have been fused since the enactment of the Supreme Court of Judicature (Ireland) Act 1877 ("the 1877 Act"). It is true that on one view of the judgments in *Hynes Ltd. v. Independent Newspapers Ltd.* [1980] I.R. 204 both O'Higgins C.J. and Kenny J. appeared to suggest that there had been a complete fusion of the two separate streams of the common law and equity.

19. Insofar as this was in fact suggested by O'Higgins C.J. and Kenny J., these comments must in the first instance be adjudged to be purely *obiter dicta* because the issue in that case was whether a defendant had validly invoked a rent review clause when the relevant notice had been sent some six weeks too late. In such cases, save where time was deemed to be of the essence, equity provided relief where the common law did not. This was one of the particular conflicts between law and equity specifically resolved by s. 28(7) of the 1877 Act which provided that henceforth "in the case of conflict or variance" the equitable principles should prevail:

> "….Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or have become the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity."

20. This was, in any event, the focus of the judgments in *Hynes* where the Court was dealing with the application of this particular equitable principle in the context of time being of the essence. Save for a stray reference by O'Higgins C.J. to the "fusion of common law and equitable rules" ([1980] I.R. 204, 216) there is, in fact, little in the judgments to suggest that some broader concept of substantive fusion was actually being embraced or considered. It is true that the Court referred with approval to the decision of the House of Lords in *United Scientific Holdings Ltd. v. Burnley Borough Council* [1978] A.C. 904, but this was simply in the context of the application of the specific equitable rule regarding time being of the essence. There was no discussion of Lord Diplock's statement in that judgment regarding the substantive fusion of law and equity.

21. One may therefore agreed with the comments of Professor Hilary Delany, *Equity and the Law of Trusts in Ireland* (at 10) that it "would be a mistake" to read too much in to the comments in *Hynes*. Insofar as the comments of both O'Higgins C.J. and Kenny J. in *Hynes* suggest some form of substantive fusion - and, to repeat, it is far from clear that they do – they must be regarded as *obiter* since the wider question of whether the 1877 Act achieved a complete fusion of law and equity simply did not directly arise for consideration in that case. One may, in any event, wonder whether such a fusion with such far-reaching implications could ever really have been legislatively intended.

22. There is first is the obvious point that s. 28 of the 1877 Act assumes that the existing common law rules will continue to apply within, to so speak, their own sphere of influence, even if modified in certain defined instances by reference to pre-existing equitable principles. As Maitland famously observed, equity was not "a self-sufficient system [since] at every point it pre-supposed the existence of the common law": *Equity: A Course of Lectures* (1909). Professor VTH Delany similarly observed that the "'so-called' fusion effected by the Judicature Acts has done nothing to minimise the dependence of equity on the common law": "*Equity and the Law Reform Committee*" (1961) 24 M.L.R. 116, 117. This is also certainly the view of such distinguished modern commentators as Chief Justice Keane, *Equity and the Law of Trusts in the Republic of Ireland* (Dublin, 1988)(who suggested that until the question is finally resolved, the views expressed in *Hynes* were "most safely regarded as in the nature of premature funeral orations") and Professor Hilary Delany, *Equity and the Law of Trusts in Ireland* (4th.ed.)(Dublin, 2007) at 7-12.

23. Second, a procedural fusion of the chancery and common law courts was certainly effected by the 1877 Act and so much is non-controversial. This procedural fusion has been long since accomplished, not least given that the High Court created by Article 66 of the Constitution of the Irish Free State and subsequently by Article 34.3.1 of the Constitution was a unified court which swept away the various divisions (Chancery, King's Bench and so forth) which characterised the pre-1924 High Court. But no one has ever yet suggested that the effect of s. 28(7) of the 1877 Act was that the common law remedies should, like their equitable cousins, become entirely discretionary, even though this would be the logical corollary of any substantive fusion of law and equity.

24. Third, s. 28(7) of the 1877 Act undoubtedly provided that in the case of a conflict or variance between the common law and equity, the equitable rules should prevail. But that is far from saying these two discreet systems of law should thereafter be fused, even if since 1877 they have been administered by one single court. There is, after all, a presumption against unclear changes in the law (*cf.* the comments of Henchy J. in *Hales v. Minister for Industry and Commerce* [1967] I.R. 67, 76-77) and had the legislators in 1877 intended to effect such a far-reaching change as to effect the complete and substantive fusion of common law and equity, one might have expected that this would have been stated in very clear terms.

25. Yet despite all the claims which have been made – both here and in England - in respect of the fusion of law and equity, there is the striking fact that in over 135 years of jurisprudence since the passage of the 1877 Act there is no authority for the proposition that the court might refuse to award damages for breach of contract or in tort on discretionary grounds such as undue delay *per se* or because the claimant has been guilty of bad faith by, for example, exaggerating the nature of the claim, even though these would be well established grounds for refusing any equitable relief which might otherwise have been granted

26. Indeed, it may be significant that the courts' power to refuse to make an award of damages in tort in respect of exaggerated claims comes either from the quite different doctrine of abuse of process (*cf. Shelley-Morris v. Bus Atha Cliath* [2002] IESC 74) or from a newly enacted statutory power giving the courts power to strike out proceedings where false or misleading evidence has been given by a plaintiff claiming damages for personal injuries: see s. 26 of the Civil Liability and Courts Act 2004.

27. The very fact that such a distinction remains embedded in the legal system should perhaps give us pause to reflect before any far-reaching claims regarding substantive fusion can properly be accepted. It might also be borne in mind that many equitable principles were originally fashioned to impose particular duties on persons such as trustees and fiduciaries to ensure that they exercised their powers in a manner consistent with the overriding principle of utmost good faith, even if over time these equitable principles were applied more generally and more widely in order to temper the rigour of the common law. Yet these higher duties had been imposed by the Courts of Chancery by reason (in part, at least) of the special obligations which trustees or fiduciaries owe to third parties by virtue of their special relationship with such persons. It would not, however, be necessarily appropriate to impose these higher standards in the ordinary sphere of the law of contract and tort where these underlying principles will generally have little or no application, even though this would (or, at least, might) be a natural consequence of the substantive fusion of law and equity.

28. This may be especially true in the context of limitation periods and delay. The doctrine of laches was originally developed by the Courts of Chancery because "successive statutes of limitation did not apply to equitable claims" :see Brady and Kerr, *The Limitation of Actions* (Dublin, 1994) at 167. Thus, the length of time which it may be appropriate to allow a plaintiff to seek discretionary equitable relief such as an injunction or recission or the setting aside of a transaction as improvident may well depend on the particular circumstances of the case, especially if this would adversely affect the rights of third parties.

29. By contrast, the length of time for actions in both tort and contract have been fixed by the Oireachtas in the Statute of Limitations 1957 (as amended). It is true that s. 5 of the 1957 Act provides that: "Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise." This, however, is clearly directed at the grant of equitable relief (injunctions, specific performance, rectification etc.) which might otherwise operate in the context, for example, of actions to recover land or actions in respect of trust property. It certainly has never previously been suggested that actions in tort and contract which have otherwise been commenced within the appropriate limitation period could be barred by reference to these equitable principles.

30. Here one may accordingly agree with the observations of Hanbury and Martin, *Modern Equity* (19th Ed.)(at p. 29) that while the two systems of law work ever more closely together and draw mutual inspiration from each other, the two systems "are not yet fused." All of this means that the doctrine of laches has, as such, no application to a claim at common law for damages for breach of contract where that claim is not otherwise barred by the Statute of Limitations.

31. The major exception to this principle is, of course, where the delay has been of such a magnitude that it would effectively deprive the court of its capacity to do justice between the parties in the manner envisaged by Article 34.1 of the Constitution and thereby infringe the constitutional right of the other party to fair procedures, even if the claim is not otherwise statute-barred: see, *e.g., Primor plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, *McBrearty v. North Western Health Board* [2010] IESC 24 and *Donnellan v. Western Textiles Ltd.* [2011] IEHC 11. While the delay in the present case has been unfortunate and has hugely complicated the task of the witness to reconstruct the events from 1999-2002 in particular, it cannot be said that the delays have so effectively compromised the capacity of the court to do justice. Thus, even if it were to be said that the delays have inordinate and inexcusable, it cannot be said that the interests of justice (*i.e.,* the third limb of the *Primor* test) would justify the dismissal of the case on this ground.

Conclusions regarding the course of the proceedings and lapse of time

32. In summary, therefore, while deploring the lapse of time and the general delays associated with the proceedings, I will nonetheless refuse to strike out the proceedings on grounds of delay. For the reasons I have just set out, I consider that the running of the Statute of Limitations was stopped by reason of the commencement of the proceedings in March 2005 and I do not that the equitable doctrine of laches has any application to a common law claim for damages.

33. It is against this background that we may now proceed to consider the merits of the case.

PART III: THE OUTLINE FACTS OF THE CLAIM

34. As we have already noted, by late 1997 the situation regarding the housing of asylum seekers was reaching crisis proportions. The HSE had responsibility for housing asylum seekers and refugees along with other homeless persons and in July 1997 it set up an asylum seekers unit. Mr. Hugh Carr, who was then a superintendent Community Welfare Officer with the HSE, was assigned to that unit. Sometime in late 1997 Mr. Meagher was approached by Mr. Carr to see if he was interested in supplying accommodation for asylum seekers. As Mr. Meagher had hostels available for this purpose at a variety of locations (including 2-8 Charlemont St., Dublin 2, 128-129 Church St., Dublin 7, "St. Joseph's" Parnell St., Dublin 1 and 119 Dorset St., Dublin 1), he was amenable to this proposal.

35. Reflecting, perhaps, the strains which this new phenomenon was placing on the administrative system, it seems clear that a series of rather ad hoc arrangements were quickly put in place. These can be summarised as follows:

The nightly rate agreement

36. The basic agreement provided for the payment of IR£15 per adult and IR£10 per child on the basis of asylum seekers who were referred to Mr. Meagher's hostel accommodation. Many of these asylum seekers arrived in the State at times which were outside normal business hours and so arrangements for accommodation had to be found for them at short notice. In effect, the HSE would issue the asylum seeker in question with a document requesting accommodation which would be presented on arrival. The HSE were then invoiced directly by the plaintiff in respect of these arrivals.

37. As it happens, by reference to the practice which then prevailed, the HSE would seek the relevant amounts from Dublin City Council which, qua housing authority, had direct responsibility for discharging these sums. On receipt of payment these invoices would then be discharged by the HSE. Sometime around 2002 this practice was stopped and all invoices in respect of asylum seeker accommodation were subsequently made out to Dublin City Council directly.

The November 1998 agreement

38. A special arrangement was made in November 1998 in respect of the accommodation of Roma and other ethnic asylum seekers. By virtue of this agreement the defendants agreed to pay enhanced rates for the accommodation of the Roma clients, including IR£20 per night for adults, IR£15 for children and IR£5 for children under two. In return Mr. Meagher agreed not to pursue the defendants or their clients for damages or theft. While it may seem some what unsettling that special arrangements of this kind would be made for persons of a particular background and ethnicity, this may have also reflected that it was felt that special arrangements would have to be made in respect of this group. The fact that Mr. Meagher could speak some Romanian was also considered to be of assistance.

39. It is not disputed but that such an agreement was reached, but there is rather controversy regarding the duration of the agreement and its operation. Certainly, Mr. Griffin, a community welfare officer attached to the Asylum Seekers Unit wrote to Mr. Meagher on 29th June 1999 informing him that with more or less immediate that it was now proposed to "pay the same the same rate for all clients, regardless of their ethnic origin.". Mr. Meagher responded on 28th July 1999 asking for a reconsideration of the reduction, but this was refused. There was some suggestion, however, that the special rate was re-instated in December 2001, a topic to which I will presently return.

The Charlemont Street agreement

40. In October 1999 Mr. Meagher also entered into another agreement with the defendants whereby in return for a yearly capitation payment of €84,000 payable monthly in advance, he agreed to provide some two hundred beds at his Charlemont St. premises for the exclusive use of asylum seeker accommodation. A number of other similar arrangements appear to have been made around this time in respect of the other properties available to Mr. Meagher for this purpose. Due in part to a fall-off in demand, it seems that by May 2000 the Charlemont St. premises were no longer used for the purposes of accommodating asylum seekers and the Council claimed that it was no longer liable to pay the capitation sums which would otherwise have been due.

41. The plaintiff maintained that in the two years which followed there were numerous breaches of these agreements, in part brought about new personnel who were unfamiliar with the earlier (mainly oral) agreements. Thus, for example, it was contended that there were numerous unauthorised deductions from the invoices which had been supplied. The special arrangements for the Roma was changed by letter dated 29th June 1999, so that the same rate was applied to all asylum seekers irrespective of ethnic background. Then in June 2000 the Council wrote to Mr. Meagher stating that as there were no longer asylum seekers resident in Charlemont St. it did not propose to make payments on foot of the invoices which had been supplied by the plaintiff.

42. The plaintiff protested vigorously in related to what he perceived to be unjustified changes unilaterally effected by the defendants and correspondence between the parties regarding these changes accordingly ensued. The parties accordingly agreed to meet in order to discuss these matters in December 2002 and, subsequently, May 2002.

43. Mr. Meagher claimed that at a meeting of 13th December 2001 at which Mr. Carr and Mr. Lennon were present Mr. Carr agreed to re-instate the special rate. He subsequently wrote to Mr. Lennon on 13th January 2001 and in that letter he appeared to suggest that this is what had occurred.

The Dorset St. and Parnell St. premises

44. The parties were also in dispute concerning the plaintiff's Parnell St. and Dorset St. premises. It was common case that the HSE stopped using the Parnell St. premises in December 1999, but Mr. Meagher contends that some asylum seekers continued in occupation after that date and that as he was effectively precluded from evicting them, he claims an entitlement to payment. The HSE stopped using the Dorset St. premises in June 2000 and the same issue arises in relation to these premises.

The settlement agreement of 11th October, 2000.

45. It is not in dispute but that a settlement meeting took place on the 11th October 2000. There is some dispute about the location of the meeting. Mr. Meagher thought that it had taken place at an office of the Council in D'Olier St., Dublin 2, but Mr. Rehill stated in evidence that it had occurred at his office in Mount Street and the other person present at the meeting, Mr. Wallace, thought the location was at his own office at Wellington Quay. At all events, it is agreed that Mr. Declan Wallace (representing the Council) and Mr. Padraig Rehill (representing the HSE) were the other parties present and that the meeting lasted for between 45 minutes and one hour.

46. At this stage Mr. Meagher was in financial difficulties and he was anxious to be paid. His accountant had estimated that sums approaching IR£500,000 were due to him in total. Mr. Meagher gave evidence that he thought that the Council were anxious to settle the case and that Mr. Wallace left the room on a number of occasions to make telephone calls as various figures were being discussed. In the end, Mr. Meagher agreed to discount his figures by approximately one third and in turn the parties agreed that he would be paid the sum of IR£185,000 immediately and that the existing contracts would be renewed.

47. It is important to stress that this sum was referable purely to the Charlemont St. properties in respect of which Mr. Meagher had claimed the sum of approximately IR£354,000. It is further accepted that Dublin City Council promptly paid the sum of IR£185,000.00 as had been agreed. Indeed, this was acknowledged by Mr. Meagher when he wrote to Mr. Wallace on 17th October, 2000, setting out his understanding of the agreement which had just been reached with both the City Council and the HSE in respect of the sums which he had contended were due and owing. Mr. Meagher acknowledged payment of the IR£185,000 as "a settlement of outstanding money due in respect of the capitation contract for Charlemont Street up to and including 19th October, 2000". Mr. Meagher continued by saying that the settlement was "on the basis of the agreement reached between that the existing contract at St. Nicholas House, 129 Church Street and Santa Maria, Charlemont Street are renewed and continued without interruption…the agreed terms are listed below:

> (1) The contract is renewed as per 20th October, 2009 with existing [arrangements]
>
> (2) The rent is unaltered at IR£84,000 for a weekly period payable in advance;
>
> (3) As requested No. 7 and No. 8 will be invoiced separately and Nos. 3 to 6 Charlemont Street will be invoiced separately and St. Nicholas House at 129 Church Street will be invoiced at IR£24,181 per calendar month payable in advance."

48. Mr. Meagher also wrote simultaneously to Mr. Rehill of the HSE in more or less the terms. But Mr. Meagher also took care to include a copy of his invoice "in respect of the outstanding back money due on other properties for IR£106,320 for your immediate attention as per the agreement reached". I will return presently to the question of the monies due from the HSE.

49. Mr. Wallace replied on 26th October, 2000, setting out the agreed terms for the use of the premises at 33-8 Charlemont Street, Dublin 2 in the wake of the meeting of 11th October. Mr. Wallace continued:-

> "Payment for the accommodation at 3-8 Charlemont Street will be as follows:-
>
> ? 3-6 Charlemont Street will be used to accommodate asylum seekers (based on 50 beds) and will be paid by the Mount Street office at the rate of IR£21,000 per four week period in advance.
>
> ? 8 Charlemont Street will also be used to accommodate asylum seekers (based on 76 beds) and will be paid by the Mount Street office at the rate of IR£31,920 per four week period in advance.
>
> ? 7 Charlemont Street will be used to accommodate indigenous homeless men (based on 60 beds) and will be paid by Dublin Corporation at the rate of IR£31,000 per four week period in advance.
>
> …the agreement is to be on a monthly rollover basis and will last for a period of twelve months except in the event of either party not performing in accordance with the conditions laid out or in the event of circumstances arising which will make the building unacceptable for use for this purpose."

45. Mr. Meagher in turn replied on 31st October noting the contents of the earlier letter and asking Mr. Wallace "to note that the rent figure agreed between us is as it was before exclusive of any charges for the provision of food". Mr. Meagher also observed that he noted that Mr. Wallace had "omitted to mention in our agreement the nineteen apartments at St. Nicholas House, 129 Church Street, Dublin 7". As it happened, the Council paid the sum of IR£24,181 in respect of St. Nicholas House and this does not appear to be in dispute.

The claim as against the HSE

46. That still left a claim for IR£106,320 as against the HSE in respect of the accommodation provided by Mr. Meagher in respect of asylum seekers at other premises throughout the city. The invoices here suggest that the claim is broken down as follows:

Invoices No. Dates Amount claimed

7-24 25th May 1998-21st September 1998 IR£20,760

25-61 22nd September 1998-7th June 1999 IR£26,645

62-75 8th June 1999 – 7th July 1999 IR£360

76-111 14th September 1999-22nd May 2000 IR£30,560

112-131 29th May 2000-9th October 2000 IR£27,995

47. These claims lie at the kernel of the present dispute. Mr. Meagher gave evidence that he understood that the HSE had agreed that this sum would be discharged more or less immediately, subject only to some small adjustments following cross checking by HSE officials. Thus, in other words, Mr. Meagher considered that there had been an admission of liability in principle on the part of the HSE and he was prepared to discount his invoices in return for prompt payment . The HSE for its part took the view that it had merely given a commitment that it would investigate the merits of the claim. It says that these claims were investigated and were found to be unsubstantiated.

48. Indeed, of this sum of IR£106,320, the Council maintains that IR£35,396 was claimed in respect of persons no longer in accommodation; IR£30,375 was claimed based on an incorrect assessment of the special Roma rate; IR£16,024 was claimed in respect of the premises at 146 Parnell Road, which was no longer in use and IR£24, 084 was claimed in respect of the premises at 119 Dorset St., which was no longer in use.

49. An internal memorandum prepared by the Council immediately after the settlement meeting recited that:

> "The disputed back money will be the subject of further investigation by the Eastern Health Board's staff in consultation with Mr. Meagher's accounting section."

50. Mr. Meagher riposted to this defence by saying that the invoices had already been vouched prior to October 2000. Specifically he contended that he had elaborate procedures in order to keep a record of every asylum seeker. There was thus a signing-in book and register in respect of every overnight stay.

51. The question of whether there was any liability on the part of the HSE was a matter of ongoing correspondence and discussion for the best part of two years. A further meeting was held between Mr. Meagher and the HSE in May 2002. Mr. Kenny and Mr. Antalovi (who were involved in property management with Mr. Meagher) and John O'Donoghue (Mr. Meagher's accountant) were present with Mr. Meagher and the HSE was represented by Mr. Justin Parks, Mr. Hugh Carroll and Mr.Pat Lennon. A note of the meeting was jointly signed by Mr. Meagher and Mr. Lennon and it was in the following terms:

> "1. Gypsy rate. Check date when rates stopped and capitation started?
>
> 2. Parnell Street/Dorset Street: check legal responsibility for clients in accommodation – also check with Maurice Dwyer plus Pat Bulger re agreement to pay until client left.
>
> 3. Invoices: Check with DCC for solution."

52. The entire process culminated in a letter dated 19th November, 2002, from Mr. Lennon of the South West Area Health Board which was in the following terms:-

> "Further to recent meetings discussions regarding the alleged outstanding monies, our position on the three items disputed [is] as follows:-
>
> '1. The Gypsy Rate. A special rate of payment for Romany Gypsies was agreed with Mr. Meagher in 1999. In March, 2000 all landlords were instructed that a standard rate of £15.00 inclusive of VAT per night will be paid in respect of all adult clients in our emergency accommodation. Mr. Meagher benefited for an overlap period and the higher rate continued to be paid. There are, therefore, no outstanding arrears due in respect of this special category.
>
> 2. Dorset Street and Parnell Street. Following inspections by the local authority both of these premises were found to be unsuitable for housing. The Asylum Seekers Unit and the Homeless Persons Unit were instructed to remove all clients. Alternative accommodation was provided for all of these clients. Mr. Meagher and the respective clients were informed of this decision. Mr. Meagher allowed some of these clients to return to his premises against the express wishes of the Health Board. Community Welfare Officers have confirmed that this is the fact of the situation, therefore we believe no outstanding arrears are due.
>
> 3. Disputed Invoices. It was the Board's control procedure at the time that this dispute arose that all invoices were thoroughly checked on a weekly basis by the relevant Community Welfare Officer and the local manager to confirm important details such as (a) numbers residing, (b) room checks, (c) date of occupancy and amounts charged. The Community Welfare Officer left an in book out book to monitor the comings and goings of all citizens in the accommodations. Every invoice submitted by the landlord was checked and signed by the relevant Community Welfare Officer and then checked by the Grade III Administrative Assistant and then checked by the Office Manager and finally, signed off by the Superintendent Community Welfare Officer.
>
> Any discrepancies were brought to the attention of the relevant landlord at the time of payment. If a discrepancy was identified in the invoice in favour of the landlord, this discrepancy was made good in the landlords favour.
>
> With regard to Mr. Meagher's current claims in providing outstanding invoices, a series of meetings was held in an attempt to resolve outstanding issues. To this end, the Senior Community Welfare Officers allocated the Office Manager to examine in detail all relevant invoices in connection with a member of Mr. Meagher's staff and clearly their invoices are in order. As a consequence, we are sure there are no outstanding arrears."

Mr. Meagher was clearly upset by the terms of that letter. He wrote a pointed response stating that the HSE had:-

> "chosen to ignore all my points of arguments, and he restated the position he held from the beginning. Despite my invitation, no one has come to examine records which illustrate a pattern of good record keeping regardless of who has been on duty and confirm my claim. In short, I find yours response after such an unreasonable time and delay unacceptable…"

53. Against this general background we can now proceed to summarise the evidence of the main individual witnesses. I should add here that the intervening delays posed considerable difficulties for the Council and HSE witnesses in particular. While many of them – understandably – struggled at times to recollect the minutiae of issues from which all of them had long moved on, the candour and fair-mindedness of their evidence was nonetheless refreshing.

PART IV: THE EVIDENCE OF THE INDIVIDUAL WITNESSES

Mr. John Meagher

54. The plaintiff, Mr. Meagher, gave evidence that he was a businessman, one of whose businesses was the provision of hotel and

hostel accommodation. The sudden and precipitate rise in the number of refugees coming to Ireland in the late 1990s caused difficulties for the authorities. Mr. Meagher then described how he was approached in 1998 as to whether he would be interested in providing hostel accommodation. To that end he agreed to provide accommodation on a capitation basis, i.e., that the bed spaces were reserved for the exclusive use of the referring agency, in this case the HSE. He described how he had capitation agreements in relation to properties at Charlemont St., Church St. and Parnell St.

55. Mr. Meagher gave evidence that the special Roma rate had been reinstated by Superintendent Carr in December 2001. He also gave evidence as to the manner in which he was obliged to accommodate asylum seekers for certain periods in his premises at both Parnell St. and Dorset St. after the HSE had originally directed that it be ceased to be used for this purpose.

Ms. Angela Dylan
56. Ms. Angela Dylan worked as a receptionist at No. 8 Charlemont St. between 1998 and 2001. She described the procedures whereby asylum seekers were booked into the hostel. She explained that most asylum seekers arrived with a document from a Community Welfare Officer requesting accommodation either for a specified period or until further notice. Charlemont St. operated as the administration centre for all of Mr. Meagher's premises and the details of the bookings, leavings and cancellations were all quickly given to the accounts department.

57. Ms. Dylan further gave details of inspections of the register carried out by the Health Boards and she went through a sample of invoices to explained what they represented in terms of particular families arriving and departing.

Mr. Theo Florent
58. Mr. Theo Florent gave evidence that he was employed as general manager of the Charlemont St. premises between 1998 and 2001. His responsibility was in matters of administration, invoicing and bookkeeping. Just as with Ms. Dylan, he explained that there was a booking in procedure. The register was then compiled and the invoice then sent to the HSE. The invoices were then sent weekly.

59. Mr. Florent maintained that in the period both up to the settlement agreement of October 2000 or subsequently nobody from either the HSE or the Council came to check these invoices or to compare them as against the register or the booking-in book or the cancellation book. While he agreed that these officials did come perhaps every two weeks to check on individuals for social welfare purposes, there was no check as against register or booking-in forms.

Ms. Cora Cox
60. Ms. Cox worked in reception with Ms. Dillon at Charlemont St. She gave evidence as to the logging system in operation and how details of arrivals, cancellations and departures were recorded. She further explained how this system operated by reference to five sample cases during the period from 1998 to 1999 in the light of invoices actually supplied by Mr. Meagher to the defendants which were disputed. She accepted in cross-examination that she did not know the applicable rates which were payable in respect of these families.

Mr. Thomas Collins
61. Mr. Collins was an assistant community welfare officer between 2001 and 2002. His responsibilities included the monitoring and supervision of asylum centres. He stated in evidence that he had inspected the Charlemont St. properties on a number of occasions in 2001 and 2002 and had found them to be in "appalling condition." A further inspection was carried out on 2nd September 2002 by both an Environmental Health Officer and himself. They found the premises to be in an "unliveable and uninhabitable condition." Mr. Collins rejected the suggestion put to him in cross-examination that Mr. Meagher had carried out the refurbishment and repair works which he had been directed to carry out by the Council.

Mr. Hugh Carr
62. Mr. Hugh Carr gave evidence that he had worked as a Superintendent Community Welfare Officer with the HSE and that he was attached to the Asylum Seekers Unit when it was set up. He worked there from July 1997 until October 2000, save for a short interlude.

63. Mr. Carr recounted how, following an assessment, newly arrived asylum seekers were provided with short term emergency accommodation. This would often take the form of a telephone call to the hostel concerned to inquire if accommodation was available. The asylum seekers were then given a docket and an identification to enable them to be brought to the hostel where they would be booked in a temporary basis.

64. At that stage there was no computerised booking system and for the period from 1997 to 2000 social welfare cheques were paid manually by the community welfare officer at the hostels concerned. In the event that individual did not turn up to collect their social welfare cheques, then checks would be made in respect of the hostel's register and records.

65. Mr. Carr further stated that the hostels were required to invoice on a weekly basis. When the invoices were received, they were date stamped and checked.

66. One of the reasons for the high turnover was that at this time asylum seekers were being encouraged by community welfare officers to seek rental accommodation in the private sector. This was not only for reasons of economy, but also to ensure that space was kept free in hostel accommodation such as that of the plaintiff to cater for the asylum seekers newly arrived in the State who desperately needed emergency accommodation.

67. Mr. Carr further stated that he had visited the Charlemont St. premises on a number of occasions, but this was mainly to have informal discussions with Mr. Meagher with regard to various issues then arising from the supply of asylum accommodation. He never visited the actual accommodation as such or checked as against any individual asylum seekers.

68. While Mr. Carr was not present at the October 2000 meeting, he was subsequently given to understand that the HSE had simply promised to re-examine the various invoices which had been presented by Mr. Meagher. To this end he instructed Ms. Patricia O'Halloran, the accounts manager in the Asylum Seekers Unit to conduct a review of the invoices which had been supplied. In February 2002 Ms. O'Halloran then conducted this exercise by reference to the invoices which had been supplied by Mr. Meagher. Mr. Carr acknowledged that, given the volume of the invoices, he did not go through each of them with Ms. O'Halloran, but simply inspected a random sample. Mr. Carr was satisfied with her explanations in relation to various deductions as to why there was no money owing to Mr. Meagher.

69. Although the HSE had sent a letter to Mr. Meagher on 1 February 2002 acknowledging that in December 2001 that parties had

agreed to a joint meeting to examine disputed invoices, Mr. Carr nevertheless agreed in cross-examination that no one can actually went to Mr. Meagher to see if any of the alleged discrepancies in the invoices could, in fact, be reconciled. He also accepted that Ms. O'Halloran had not inspected these invoices. For his part, Mr. Carr could not recall any such agreement regarding a joint inspection.

70. So far as the operation of the special Roma rate is concerned, Mr. Carr acknowledged in cross-examination that the duration of this rate was to some extent a matter of controversy. It appears to have been agreed in November 1998, but some correspondence suggested that it was not commenced until June or July 1999. Mr. Carr agreed that Mr. Meagher had written to the HSE in January 2002 to the effect that he had had a meeting with Mr. Carr in December 2001 where the special rate for the Roma was further confirmed. While Mr. Carr agreed that he must have attended such a meeting, he had no personal recollection of it. While he noted that Mr. Meagher had given evidence regarding the discussion of the special Roma rate at that meeting, Mr. Carr could not contradict this, but he had no personal recollection of the meeting.

71. Mr. Carr agreed that he put in a place a capitation agreement in October 1999 with Mr. Meagher so that 200 places would be available for incoming asylum seekers, regardless of many of these places were taken up. He was not involved in the decision to stop payment under the capitation agreement.

Mr. Padraig Rehill
72. Mr. Rehill gave evidence that he was a Superintendent Community Welfare Office in the period between November 1999 and November 2001. He engaged Mr. Meagher to provide accommodation for asylum seekers and further described the system of verification of invoices received from accommodation service providers.

73. Mr. Rehill further gave evidence regarding the settlement meeting of 11th October 2000. He said that the first part of the meeting concerned an endeavour by Mr. Wallace and Mr. Meagher to reach an agreement which they ultimately did. Mr. Meagher then raised the question of the IR£106,000 and the monies for the other premises. Mr. Rehill stated (Day 7, Q. 146) that at that point:

> "[Mr. Wallace] turned to me and said will you carry out an examination of these invoices and that was it. Now I would probably think Mr. Meagher might have had a slightly different view of what was agreed in that he was may be certain he was going to receive the money for the other property, but that was not Mr. Wallace's agreement with him and nor was it mine.
>
> Q. 147: Had you agreed to pay him IR£106,000?
>
> A. No, no. I agreed a review would be carried out. Because if I agreed there and then I would have issued the cheque there and then because a couple of days later we did issue the cheque for the IR£185,000...."

74. Mr. Rehill insisted that there was "nothing specific about how we would investigate the disputed money" and to that extent tacitly disagreed with the Council's memorandum to the effect that this would be done in consultation with Mr. Meagher's accounting section. He pointed out that he had written to Mr. Meagher on 30th August 2001 denying that any further monies were due:

> "As you can see from our records we don't consider this to be due. Please forward to me any documentation you may have in relation to agreements regarding the monies as owing."

75. Mr. Rehill maintained that no further documentation in this regard had been received from Mr. Meagher which was of any particular assistance.

Mr. Patrick Bolger
76. Mr. Patrick Bolger was a Community Welfare Officer in the late 1990s and he is now a trade union official. Mr. Bolger gave evidence as to how the authorities struggled to cope with the unanticipated large influx of refugees who arrived in 1997 and 1998. He also described how the HSE monitored the attendance of refugees at particular hostels.

77. As Mr. Bolger explained (Day 7 Question 313):

> "…another element at work here that may be providers would not be too aware of was that every presenting family or individual generated a payment record. So he had to ensure that they were staying where they were because if they were not in the accommodation provided they did not qualify for a payment from us, they did not qualify for supplementary welfare allowance payment. That was applied to other homeless persons who had previously been the normal clientele. If you did not state who you were booked into you were not the responsibility of the homeless unit and subsequently you were not the responsibility of the asylum seekers unit, so we had very intense control around the management of our own financial records. So whereas the provider might only see you acting in relation to the invoice and their records we actually had our own very intense system of financial control of justification of payment because qualification of payment was dependent on staying in the appointed accommodation. So, on a weekly basis we at the time for most of that period physically produced individual cheques for all the clients. It was not just we were depending on an invoice for the payment of records, it was also a control feature around the justification for the payment for supplementary welfare allowance payments."

78. Mr. Bolger did admit, however, that in the early days a large number of invoices were not paid to Mr. Meagher, but he did stress that there was an elaborate system of checking and counter-checking the identity of the asylum seekers for whom emergency accommodation was provided and the duration of their stay.

79. Mr. Bolger could not remember any discussion with regard to the asylum seekers being allowed to stay on after the premises had formally closed and he doubted whether he had authorised this (Day 8, Qs, 212, 213).

Ms. Patricia O'Halloran
80. Ms. O'Halloran gave evidence that she was employed in the Asylum Seekers Unit in Mount St. She stated that in 2002 she was asked to check the invoices or IR£106,000 presented by Mr. Meagher. Of that sum, Ms. O'Halloran noted that the charges for persons no longer in accommodation was just over IR£35,000; IR£30,375 was in respect of the non-payment of the Roma rate; IR£16,024 was in respect of the use of 146 Parnell Road and IR£24,084 was in respect of 119 Dorset St. In effect, Ms. O'Halloran performed a re-check on these invoices which had previously been disallowed. She felt certain that she had access at the time to the original invoices and she also checked them against the reports of the relevant community welfare officers at the time. This re-check took the best part of a week to perform.

81. Ms. O'Halloran accepted in cross-examination that she did not have access to the invoice book which had been prepared by Mr. Meagher setting out the invoice numbers, the asylum seeker families and the amounts at issue. She further accepted that she had never gone to Mr. Meagher's accounts department and check these matters

Mr. George Finglas
82. Mr. George Finglas gave evidence that he was the former Senior Project Officer with Dublin City Council with responsibility for homeless services. Mr. Finglas stated that after the October 2000 agreement it was agreed that the Charlemont St. premises would be leased by the Council at the rate of IR£84,000 for a monthly period and that separate invoices would be supplied for premises at 2, 3, 4, 5 and 6 Charlemont St. and 7-8 Charlemont St. on the other.. He wrote to Mr. Meagher on 26th October 2000 to the effect that the agreement:

> "will be on a monthly rollover basis and will last for a period of twelve months except in the event of either party not performing in accordance with the conditions laid out or in the event of circumstances arising which would make the building unacceptable for use for this purpose."

83. It followed, therefore, that after October 2001 the arrangements between the Council and Mr. Meagher were on a monthly rollover basis, so that either party could terminate on a month's notice. Acting on foot of reports of Environmental Health Officers, Mr. Finglas formed the view that the premises were in a deplorable condition and unsafe. It was accordingly decided to give one month's notice of termination in respect of the premises at 2, 3, 4, 5 and 6 Charlemont St.

84. The Council ceased usage of the premises at 2-6 Charlemont St. after that date. While Mr. Finglas contended that the Council's Housing Department had never received Mr. Meagher's invoice for the period from 8th September 2002 to 19th October 2002, he nevertheless robustly denied that any sum was due for this period. Mr. Finglas gave evidence that he was not satisfied that the repair maintenance works on which the Council had insisted on had been complied with. Accordingly, following a meeting with Mr. Meagher on 17th July, 2002, Mr. Finglas wrote to Mr. Meagher in the following terms:-

> "Dear John,
>
> Further to our meeting today I wish to convey the following to you in writing as agreed. A review has been carried out on the management and maintenance of the above apartments used by Dublin City Council Homeless Services Section for emergency accommodation. The ongoing maintenance is not being carried out to the satisfaction of the Homeless Services Section. Accordingly, under the terms of the agreement between Dublin City Council and John Meagher, I hereby give month's notice of the intention to discontinue the agreement to commence from 8th August, 2002, and terminate use on 7th September, 2002. Dublin City Council will arrange for the property to be fully vacated by 7th September, 2002, in accordance with the one month's notice.
>
> As this service is paid for in advance it should continue up to that date. A further payment of IR£28,884.56 will be made on 8th August, 2002, for the period 7th September, 2002. The Northern Area Health Board will be notified of this termination of agreement and advise that Dublin City Council will not recoup the many monies that this property has used after 7th September, 2002, without the express approval of Dublin City Council. However, as discussed, Dublin City Council may have interest in using these properties at a further date for homeless related service matters provided they can be renovated to an acceptable standard and a mutual agreement can be reached on their use. Should you require any further information concerning this matter please do not hesitate to contact me…
>
> Yours sincerely
>
> George Finglas, Senior Housing Officer"

85. As far as Mr. Finglas was concerned, this notice was sufficient to effect a termination of the pre-existing contractual arrangements between the parties.

Mr. Gerry Boyle
86. Mr. Gerry Boyle gave evidence that from the period between May 1998 and November 1999 he was the office manager in the Asylum Seekers Unit in Mount St., Dublin 2. One of those functions was the verification of invoices received from landlords.

87. Mr. Boyle explained how the invoices were first checked by the Community Welfare Officers who verified whether the invoices were correct. He considered that the Community Welfare Officers largely worked off the inwards/outwards book which was maintained in the hostel when asylum seekers were first booked in and when they were discharged. He gave detailed evidence regarding an analysis book maintained by the Asylum Seekers' Unit in respect of emergency accommodation invoices between 1998-1999 which showed how the relevant payments were calculated. He agreed, however, that the disputed invoices had never been assessed by the defendants with reference to Mr. Meagher's own books and records.

88. Mr. Boyle also gave evidence that he had written to Mr. Meagher on 23rd July 1999 to explain that the special rate for ethnic Roma was being reduced to IR£15. Mr. Meagher replied by letter on 28th July 1999 drawing attention to his earlier agreement with Mr. Carr from November 1998 and asking confirmation of the change. Mr. Boyle sent a further letter on 4th August 1999 confirming this change and he stated that he had received no further correspondence in that regard from Mr. Meagher.

Mr. Gerard Griffin
89. Mr. Gerard Griffin was a Community Welfare Officer during the period in question. He was familiar with Mr. Meagher's hostels and generally visited them once a week in order to distribute social security cheques, check who was there and deal with the problems of the individual asylum seekers. While he kept diary entries regarding the identity of asylum seekers staying in individual hostels and the duration of their stay, he later – very understandably - disposed of them, not realising that they might later be needed at a very much later stage.

90. Mr. Griffin did, however, state that when an invoice was presented he regularly consulted his diary for verification purposes. While this was a further check within the system, he did concede, however, the invoices did not always tally "because some people might have moved in after you had been" (Day 8, Q. 369). Mr. Griffin accepted in cross-examination that he had not been asked for his diary records in 2002 when the HSE verification exercise was being carried out.

91. His visits to the premises were another source of verification, because in some cases social security cheques were not collected and one could then determine that they might already have vacated the building. He also checked the rooms for further verification

purposes.

92. Mr. Griffin accepted, however, that he was unaware of the fact that Mr. Meagher's invoices had been disputed or that it had been suggested that a representative of the HSE would go to visit Mr. Meagher's premises in order to inspect the in/out books and the various invoices.

93. Mr. Griffin considered that the general accommodation standards of the premises provided by Mr. Meagher was "dilapidated and substandard." Nor had he encountered a situation where asylum seekers did not want to move out of hostel accommodation into private rented dwellings, as at the time there was some financial advantage in doing this and they would not be shackled by the rules and regulations of the hostel.

94. Mr. Griffin further gave evidence that he had corresponded with Mr. Meagher in July 1999 to inform him that there would be no further special rate for ethnic Rome asylum seekers. He had never heard anything about the rate being reinstated, but he also acknowledged that he had moved from the asylum seekers unit after July/August 1999 and would therefore not necessarily have been au fait with any subsequent developments.

Mr. Patrick Lennon
95. Mr. Lennon said that he had commenced working as a Superintendent Community Welfare Officer with the Asylum Seekers Unit on 17th January 2000. At that stage, the Parnell St. premises had been closed and he no recollection of every dealing with it. He referred extensively to the various checks and protocols for checking the invoices against the accommodation records. In cross-examination, however, he acknowledged (Day 9, Qs. 175 and 176) that it had been agreed with Mr. Meagher at the meeting in December 2001 that the verification exercise would involve a joint inspection and review of the invoices (i.e., with representatives of both sides), but that this never happened.

96. So far as the Dorset St. premises was concerned, he considered that it was a fire hazard and he was anxious that it should be closed. So far as both premises were concerned, he considered that if asylum seekers were continuing to stay in such premises and refusing to move after it had been closed, this was something of which he would normally be made aware of, but perhaps "not all of the time" (Day 9, Q. 112). Where a premises were closed, then if the asylum seekers subsequently refused to move, the "normal situation" was that, no matter who was responsible for it, the landlord would not be entitled to get payment. It was possible that there might be departures from this at local level, but he was "not quite sure" of this (Day 9, Qs. 113 and 114). Indeed, he later acknowledged that there probably were "informal agreements that people could stay until disputes were resolved." (Day 9, Q. 203).

97. He also confirmed the existence of a special rate for ethnic Roma, but maintained that this was changed with effect from July 1999. He had no recollection of the meeting with Mr. Meagher of December 2001 at which Mr. Meagher claimed that the ethnic Roma rate had been re-instated by Mr. Carr. While Mr. Lennon was insistent that so far as he was aware the ethnic Roma rate had never been re-instated, he accepted in cross-examination that he had not replied to a letter which had been sent to him on 13th January 2000 by Mr. Meagher in which it was indicated that Mr. Carr had agreed to re-instate the special Roma rate.

Mr. Declan Wallace
98. Mr. Wallace gave evidence that in 2000 he was an assistant principal officer with the Council. He gave evidence that while he previously had some meetings with Mr. Meagher, the meeting of 11th October 2000 was a more formal meeting designed to resolve the outstanding issues. He stated that they reached an agreement following discussion and argument in respect of Mr. Meagher's claims with regard to the Charlemont St. properties and that the parties compromised on the IR£185,000 figure. He said that Mr. Rehill also undertook to look at the invoices in respect of the IR£106,000 claim.

99. Mr. Wallace insisted that as he had legal advice that the Council might well be liable for the entire IR£354,000 in respect of the Charlemont St. properties, he accordingly had an authority to negotiate on that basis. He said, however, he had no such authority so far as the invoices were concerned and that this was a matter which he left to Mr. Rehill. He had subsequently prepared a memorandum dated 17th October 2000 recording the agreement with regard to IR£185,000 payment. So far as the HSE claim was concerned, Mr. Wallace stated in the memorandum

> "The disputed back money will be the subject of further investigation by the [HSE] staff in consultation with Mr. Meagher's accounting section."

100. It seems clear, however, that the verification exercise was conducted without actually involving Mr. Meagher's accounting section.

PART V: THE CLAIM THE OCTOBER 2000 AGREEMENT

WAS VOID BY REASON OF MUTUAL MISTAKE

101. A key feature of the plaintiff's claim is that the October 2000 agreement should be voided by reason of mutual mistake. If this were to occur and the agreement accordingly unravelled, then he maintained that he would be entitled to present all unpaid invoices as against the Council and the HSE without any discount (as had occurred in October 2000).

102. The first point to note is that the settlement was not a single composite whole, with one agreement (with the Council) entirely dependent on the other (with the HSE). All three participants at the meeting of October 2000 are at one in their evidence that the agreement between Mr. Wallace and Mr. Meagher was reached first and there is no suggestion that this agreement was in any respect contingent on an agreement in respect of the HSE claim. In these circumstances I consider that Mr. Meagher is estopped from re-opening as against the Council any claim as against it which arose prior to October 2000. Insofar, therefore, as there was any mistake with regard to the HSE claim, this did not effect the efficacy of the settlement which had been reached between Mr. Meagher and the Council.

103. There remains the contention that the agreement of October 2000 as between *Mr. Meagher and the HSE* should be regarded as void by reason of mutual mistake. The leading authority on the scope of mistake in the law of contract remains that of the decision of the Supreme Court in *Mespil Ltd v. Capaldi* [1986] ILRM 373. In that case both the plaintiff company and a related company had sued the defendants in two separate, but related, proceedings. One of those actions was compromised by a hastily drafted agreement, the terms of which were not fully reduced to writing as between counsel. It later transpired that one of the parties considered the settlement had resolved all the proceedings between the parties, whereas as the other party considered that it was a full and final settlement only of one set of proceedings.

104. In these circumstances the Supreme Court held that the settlement was a nullity by reason of mutual mistake. As Henchy J. said:

> "No blame is to be attributed to the two able and experienced counsel in question who, in the limited time available to them on the morning of the hearing, sought to achieve a binding settlement in accordance with their respective instructions. But, not having time to reduce the terms of settlement to full and unambiguous written expression, the heads of settlement which they authenticated with their signatures were not sufficiently specific to exclude ambiguity. The result was that the two counsel left court that day, each with a genuine but opposite belief as to what the settlement had achieved."

105. There can be little doubt but that Mr. Meagher genuinely understood as a result of the agreement that the HSE had conceded liability for the IR£106,000 in principle, subject only to checking the invoices which were supplied and allowing for minor variations. He insisted that he had the invoices re-checked before submitting them in advance of the meeting and he was prepared to give the HSE approximately a one-third discount in return for a quick settlement and early payment (Day 3, Q. 21 *et seq.*).

106. Mr. Rehill fairly conceded in his own evidence that this was quite possibly, in fact, Mr. Meagher's understanding. For his part, however, Mr. Rehill had made no such concession. All that he had undertaken in his own mind on behalf of the HSE was that it would undertake an exercise whereby the existing invoices were scrutinised to see if any monies were outstanding. Indeed, it may be observed that Mr. Wallace had a different view again, since he formed the view that the dispute regarding the invoices was to be the subject of an investigation by the HSE staff in conjunction with Mr. Meagher's own accounting staff.

107. I am quite satisfied that Mr. Meagher would never have agreed to such a settlement in the manner understood by Mr. Rehill or even that suggested by Mr. Wallace. Conversely, it is plain that neither Mr. Rehill or the HSE would never have agreed to the immediate admission of liability in principle in respect of these invoices when they considered that they had no liability.

108. Neither party could be faulted for the misunderstanding which evidently did occur. In these circumstances the further principle articulated by Henchy J. in *Mespil* applies to the agreement between Mr. Meagher and the HSE:

> "It is of the essence of an enforceable simple contract that there be consensus *ad idem*, expressed in an offer and an acceptance. Such a consensus cannot be said to exist unless there is a correspondence between the offer and the acceptance. If the offer is made by the person in a fundamentally different sense from that which is tendered by the offeror and the circumstances are objectively such as to justify such an acceptance, there cannot be said to be the meeting of minds which is essential for an enforceable contract. In those circumstances the alleged contract is a nullity."

109. It follows, therefore, that by reason of that mutual mistake neither the HSE nor Mr. Meagher are bound by the October 2000 settlement since there was no true consensus between them on essential features of the agreement.

PART VI – THE BALANCE OF THE CLAIM AGAINST THE HSE

110. What, then, is the balance of the claim as against the HSE? It really comes down to the following categories of payments or potential payments: pre-March 1999 invoices; post-March 1999 invoices; the special Roma rate; overstaying asylum seekers and payment for other accommodation. I propose to express my conclusions in respect of these separate headings:

Pre-March 1999 claims

111. The proceedings commenced on 9th March 2005. Accordingly, for the reasons already set out above, it must be concluded that all claims which accrued before 10th March 1999 are statute-barred.

Post-March 1999 claims

112. The evidence establishes that, regardless of anything else, the parties had agreed that the verification exercise would be conducted jointly between the parties. Whatever may have been the understanding to emerge from the October, 2000 meeting (on which the participants had different recollections), it seems to have been put beyond doubt by Mr. Lennon's letter to Mr. Meagher of 26th February 2002 which, while denying any further liability, indicated that "any further disputed monies would be the subject of further investigations between yourselves and ourselves."

113. It is equally clear that the verification exercise which was performed was not actually performed in this fashion with a joint scrutiny of each individual invoice. Had this exercise actually been performed, it would probably have thrown up some anomalies and omissions.

114. This is definitely an instance where the delays have hampered the ability of the court to ascertain the precise state of affairs. Had the proceedings been moved with greater dispatch, then, for example, the defendants would have had the benefit of Mr. Griffin's diary. Yet there probably were some instances where invoices were incorrectly disallowed in circumstances where a particular asylum seeker had, in fact, stayed for somewhat longer periods than the Council records had suggested. Given the lapse of time it is nonetheless all but impossible to do any better than to provide some form of estimate of this. On a purely rough and ready estimate, I propose to allow Mr. Meagher to claim for some 20% of the invoices supplied to the HSE after 10th March 1999, other than the invoices supplied in respect of the Roma rate and the Dorset St. and Parnell St. premises which I will now deal with separately.

The special Roma rate

115. There is absolutely no doubt but that a special rate was agreed in respect of the accommodation of ethnic Roma asylum seekers sometime in early 1998. There is, however, considerable confusion as to the dates on which the special rate was operated, as, indeed, the participants at the meeting of 23rd May 2002 appear tacitly to have acknowledged. There is the further difficulty that many of these agreements were made orally and the memories of the various witnesses have undoubtedly (and understandably) dimmed in the meantime.

116. It seems equally clear that the special rate was discontinued in July 1999 and this is borne out by the correspondence between Mr. Griffin and Mr. Meagher from this period. The evaluation of what happened after that date is, however, rather difficult.

117. Mr. Meagher contends, however, that the rate was re-instated by Mr. Carr at the meeting of December 2001 at a meeting involving Mr. Carr, Mr. Lennon and himself. There is, moreover, the fact that he also wrote to Mr. Lennon on 30th January 2002 and

again on 25th March 2002 making this very point regarding what Mr. Carr had said at the meeting just a month earlier. Mr. Lennon did not respond to that letter, possibly because he saw no basis for the claim. He had, after all, previously written to Mr. Meagher on 21st November 2001 denying the existence of any special rate. Mr. Lennon could not recall the meeting, but was emphatic that the special rate had never been re-instated. For his part Mr. Carr could not recall that discussion at the meeting either, yet very fairly stated in evidence that he could not "contradict" Mr. Meagher's own account of that meeting.

118. In these circumstances, I find myself coerced to the conclusion on the balance of probabilities that Mr. Carr did, in fact, agree to restore the special ethnic Roma rate at the meeting in December, 2001. It follows that the plaintiff is entitled to be reimbursed on that basis in respect of those invoices which are not otherwise statute-barred, *i.e.,* those which accrued after 10th March, 1999.

The overstaying asylum seekers

119. While it is clear that both the Parnell St. and the Dorset St. premises were in a most unsatisfactory state of repair, the preponderance of the evidence nonetheless suggests that local arrangements were made or some tacit understandings reached to accommodate the asylum seekers who did not wish immediately to vacate the premises.

120. In the case of the Parnell St. premises Mr. Meagher had written on 1st March 2000 contending that by reason of the intervention of the solicitor for the asylum seeker family he could not eject the family at that stage. The property was eventually vacated on 31st January 2000. There was no response to that letter. In the circumstances I propose to allow Mr. Meagher claim in respect of these premises from mid-December 1999 until the 31st January, 2000.

121. So far as the Dorset St. premises are concerned, there is a note on the book of Mr. Meagher's invoices to the effect that Mr. Bolger had spoken by telephone on June 9th, 2000 to the effect that while the premises were no longer to be formally used after that day, "we can hold them in the accommodation and bill them until they move out." The residents in question moved out on 16th October 2000. While Mr. Bolger – most understandably – had no recollection of this conversation, the contemporary note seems nonetheless reliable and authentic.

122. Some support for this is also to be found in Mr. Meagher's notes of the joint meeting held on 23rd May 2002 where it was noted that it been stated during the meeting that a Community Welfare Officer "had been contacted about the dilemma and had cleared the placement for payment pending the outcome of attempts to have the property vacated."

123. In these circumstances I will therefore allow the claim for invoices on the part of Mr. Meagher for Dorset St. up to 16th October 2000.

PART VII: THE CLAIM AGAINST THE COUNCIL IN RESPECT

OF THE UNPAID RENT ON CHARLEMONT STREET

124. It remains to consider the claim for some €40,314 against the Council in respect of the rent due on 2-6 Charlemont St. for a five week period from 8th September, 2002 to the 19th October, 2002, which was reflected in an invoice for this sum dated 11th December, 2002. It is implicit in this claim that Mr. Meagher contended that the agreement of October, 2001 provided for the roll-over of a 12 month contract from year to year which on the giving of a month's notice would not be continued after the expiry of the existing 12 month contract. On this basis, therefore, the Council was bound up to 19th October, 2002, irrespective of the fact that it had moved out of the premises on 7th September, 2002.

125. While the language is admittedly ambiguous ("...will be on a monthly rollover basis and will last for a period of twelve months..."), I would understand this to mean that the agreement would be rolled-over from month to month and that the agreement that this would be done would itself last for a twelve month period. On this basis, therefore, the Council validly terminated the agreement by giving one month's notice.

126. In any event, I fully accept the evidence given by the Council witness (see, e.g., the evidence of Mr. Griffin and Mr. Finglas) that the premises were in a deplorable condition and that Mr. Meagher had not in fact remedied the various defects which had been identified by the Council's Environmental Health Officers. In these circumstances the Council was fully entitled to terminate the agreement on this ground as well in accordance with its own terms.

127. Given, therefore, that the agreement had been validly terminated by the Council with effect from 7th September 2002, there is no basis for contending that any sum was due in respect of Mr. Meagher's invoice for the period from 7th September, 2002 to 19th October, 2002.

PART VIII - CONCLUSIONS

128. It remains only to summarise my principal conclusions:

A. For the purposes of the Statute of Limitations, time runs from the date the summons was issued, namely, 9th March, 2005. Accordingly, claims which accrued prior to the 10th March, 1999, are statute-barred.

B. While the delay in prosecuting the action has been considerable, it cannot be said that these delays have in themselves been so egregious and prejudicial that they would justify the striking out of the proceedings on *Primor* grounds.

C. The doctrine of laches has no application to a claim in damages at common law for breach of contract.

D. The plaintiff is estopped from re-opening any claim as against the Council by reason of the settlement of 11th October, 2000.

E. The settlement with regard to the HSE as of the same date binds neither the plaintiff nor the HSE since it was voided by reason of mutual mistake. Neither party were truly *ad idem* as regards the scope of the verification exercise so far as the plaintiff's invoices were concerned.

F. The plaintiff is entitled to claim 20% of the invoices supplied to the HSE in respect of services provided after 10th March, 1999 not otherwise addressed in this judgment.

G. The plaintiff is entitled to claim the enhanced rate for ethnic Roma asylum seekers in respect of services provided after 10th March, 1999.

H. The plaintiff is entitled to claim for the services provided in Dorset St. for the period from 16th December, 1999, to 31st January, 2000.

I. The plaintiff is entitled to claim for the services provided in the Parnell St. premises for the period from 8th June, 2000 to 16th October, 2000.

J. The plaintiff is not entitled to make a claim for unpaid rent in respect of the Charlemont St. premises from 8th September, 2002 to 19th October, 2002.

129. In the light of my conclusions that the plaintiff's claim is well founded to the limited extent just indicated, I would accordingly invite counsel to see if precise agreement can be reached in relation to the quantification of Mr. Meagher's claim on these specific grounds.