Neutral Citation Number: [2005] IEHC 305

THE HIGH COURT

[Record No.2001/16889P]

BETWEEN

THE IRISH PENAL REFORM TRUST LIMITED, NOEL LENNON AND SEFTON CARROLL

PLAINTIFFS

AND

THE GOVERNOR OF MOUNTJOY PRISON THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM AND IRELAND

DEFENDANTS

Judgment of Mr.Justice Gilligan delivered on the 2nd day of September, 2005

1. The first named plaintiff in these proceedings is a company limited by guarantee incorporated pursuant to the provisions of the Companies Acts, 1963 to 1999.It was formed in 1994 by individuals who were concerned in common with conditions in the prison system and is a non-governmental organisation and holds charitable status.The first named plaintiff has special consultative status with the Economic and Social Council of the United Nations.The plaintiff company receives a number of grants including inter alia one from the Department of Justice, Equality and Law Reform.The second and third named plaintiffs are persons who suffer from psychiatric illness and have both in their time been incarcerated in Mountjoy Men's Prison pursuant to lawful order.It appears that the first named plaintiff had for some time prior to the institution of these proceedings become increasingly concerned about the manner in which prisoners with psychiatric problems were being treated while in custody and in particular the plaintiff was concerned as to what it saw as systematic deficiencies in the manner in which prisoners with psychiatric difficulties were treated in prison against a background where research which has been exhibited before the court shows that 78% of prisoners put into strip cells (also known as padded or isolation cells) in solitary confinement were found to be mentally ill.

2. The plaintiffs' case is only concerned with the treatment of prisoners who suffer from psychiatric illness.Dr.Val Bresnihan, a social and human rights researcher, avers in her affidavit as sworn on 7th August, 2004 that it is the belief and indeed the experience of the first named plaintiff that such persons are not in a position to assert adequately or in time their constitutional rights especially as regards systematic deficiency.The case is made on the first named plaintiff's behalf that a great deal of work and effort has been expended in the bringing of these proceedings including the retention of international experts.The plaintiff brings the proceedings in a sincere and *bona fides* manner and has nothing to gain itself by their institution or prosecution.

3. The first named plaintiff believes that the conditions in which prisoners are held and particularly those vulnerable prisoners suffering from psychiatric illness is a matter of relevant concern and importance to the wider community.The first named plaintiff believes that the important issues raised by these proceedings, in particular the first named plaintiff's strong belief that the conditions in Mountjoy prison have not complied with basic standards of human rights, are matters which will never be adequately addressed in litigation and might not be addressed at all unless the present proceedings can be determined.

4. The plaintiffs sue the defendants for various declaratory reliefs upon the basis that the defendants have failed in their constitutional obligation to provide adequate psychiatric treatment and/or facilities and/or services for prisoners in Mountjoy Men's Prison and Mountjoy Women's Prison and further a declaration that the treatment of the first and second named plaintiffs in Mountjoy Prison was a breach of their constitutional rights.

5. The defendants have filed a full defence claiming that the plaintiffs are not entitled to the reliefs claimed and in particular they claim that the first named plaintiff does not as an entity have legal capacity to maintain these proceedings and that further and in the alternative the first named plaintiff does not have *locus standi* to maintain the claims as made in these proceedings.Further the defendants claim that the *locus standi* of the second and third named plaintiffs to maintain the claims made in these proceedings is confined to the claims advanced at paragraphs 23 and 24 of the Statement of Claim and paras.(r) (s) (t) and (w) of the claim for reliefs section in the statement of claim.They claim that the second and third named plaintiffs do not have *locus standi* where the remainder of the claims advanced in the statement of claim are concerned.

Issues for determination

6. The issues that come before this court for determination are:

> 1. As to whether or not the first named plaintiff has *locus standi* to maintain these proceedings.
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> 2. As to whether or not the locus standi of the second and third named plaintiffs to maintain the claims made by them in these proceedings is confined or limited in the manner pleaded at paras.23 and 24 of the statement of claim and paras.(r) (s) (t) and (w) of the claim for relief in the statement of claim and further as to whether or not the second and third named plaintiffs have *locus standi* in relation to the remainder of the claims advanced in the statement of claim.

Position of second and third named plaintiffs

7. I propose to deal firstly with the position of the second and third named plaintiffs.

8. Insofar as any of the particulars invoked by the plaintiffs are referable to the factual situation of the second and third named plaintiffs (assuming that the facts alleged by those plaintiffs are true), the defendants accept the entitlement of those plaintiffs to rely on the said particulars.In the case of the second named plaintiff the defendants say it appears that the complaint has been made of his being placed in a strip cell, his lack of access to outdoor activity or proper sanitary facilities as well as a possible failure to assess him upon entry and in respect of these matters the plaintiff may proceed with his complaints.However, the defendants contend that insofar as the particulars have no relation to the actual factual circumstances of the second named plaintiff, as for example a failure to employ any or any sufficiently qualified psychiatric nurses at the respective prisons, the second named plaintiff has no standing to advance such a complaint.The defendants adopt a similar position in relation to the third named plaintiff.

General principles of locus standi

9. The general principle of locus standi in constitutional matters has been laid down by Henchy J.in Cahill v.Sutton [1980] I.R.269 (at 283) as follows:

> "The primary rule as to standing in constitutional matters is that the person challenging the constitutionality of the Statute, or some other person for whom he is deemed by the Court to be entitled to speak, must be able to assert that,

because of the alleged unconstitutionality, his or the other person's interests have been adversely affected, or stand in real or imminent danger of being adversely affected by the operation of the Statute."

10. The *raison d'etre* for personal standing rules has also been identified by Henchy J.as follows:

> "While a cogent theoretical argument may be made for allowing any citizen, regardless of personal interest or injury, to bring proceedings to have a particular statutory provision declared unconstitutional, there are contravening considerations which make such an approach generally undesirable in the public interest.To allow one litigant to present and argue what is essentially another person's case would not be conducive to the administration of justice as a general rule.With out concrete personal circumstances pointing to a wrong suffered or threatened, the case tends to lack the force and urgency of reality.There is also the risk that the person whose case is being put forward unsuccessfully by another may be left with the grievance that his claim was wrongly or inadequately presented."

Departing from general principles
11. Notwithstanding the foregoing, Henchy J.does emphasise that this is merely a rule of practice and that the stated rule of personal standing may be waived or relaxed if, in the particular circumstances of a case, the court finds that there are weighty contravening considerations justifying a departure from the rule.

12. I do not accept the submission on the defendant's behalf that the second and third named plaintiffs' claim is limited to their own very specific personal circumstances.They seek through their claim constitutional remedies in respect of systematic deficiencies in the manner in which prisoners with psychiatric difficulties are treated in Mountjoy.Whilst the second and third plaintiffs do seek a wide variety of declarations in relations to alleged practices at Mountjoy Men's and Women's Prison, it would be wholly unjust to allow what may be systematic deficiencies to go unchallenged.The Supreme Court in *Mulcreevy v.Minister for the Environment* [2004] 1 I.R.72 has held that the rules on standing should not be applied in a manner which would permit allegedly unlawful action on the part of public bodies to escape scrutiny.Keane J.set forth as follows:

> "It has been made clear in decisions of the High Court and this court in recent times that it is not in the public interest that decisions by statutory bodies which are of at least questionable validity should wholly escape scrutiny because the person who seeks to invoke the jurisdiction of the court by way of judicial review cannot show that he is personally affected, in some sense peculiar to him, by the decision."

13. If the second and third plaintiffs were to be denied standing, no other plaintiff would be in a position to challenge these alleged systematic deficiencies, since any plaintiff's claim would be limited to their own personal circumstances.This would mean that alleged systematic failings in the manner in which inmates with psychiatric difficulties are treated would be totally immune from challenge, and this cannot be the purpose sought to be achieved by the locus standi rules.

14. Accordingly I do not accede to the defendant's submission that the second and third named plaintiffs' claims are so limited and I decline the relief as sought on the defendants' behalf as against the second and third named plaintiffs.

Position of first named plaintiff
15. I turn now to the second issue concerning the position of the Irish Penal Reform Trust Limited as a plaintiff in these proceedings (hereinafter referred to as the I.P.R.T.)

Submissions of plaintiff
16. The important features of the claim as brought by the I.P.R.T.are that the plaintiff is concerned about what it believes are systematic deficiencies in the manner in which inmates with psychiatric difficulties are treated, that it viewed litigation as a last resort, that it was the view of the plaintiff that individual inmates were not in a position to identify or address the systematic deficiencies in the system that operated in respect of inmates with psychiatric problems, that inmates in respect of whom this litigation is concerned are persons who experience great difficulty in coping with the prison regime, that prisoners with psychiatric illness are not in a position to inter alia assert adequately their constitutional rights particularly as regards systematic deficiencies and that the plaintiff brings these proceedings in a sincere and bona fides manner and has nothing to gain itself by their institution or prosecution.

Submissions of defendants
17. The defendants take the view that the I.P.R.T.does not have locus standi to maintain the proceedings and to seek the reliefs claimed.Insofar as the I.P.R.T.brings the proceedings, it does so on behalf of persons who are stated to be prisoners in Mountjoy Prison but who have not been identified.In a replying affidavit as sworn by Kevin O'Sullivan on 19th October, 2004, he refers to certain parts of Dr.Bresnihan's affidavit as being argumentative and avers that he does not propose to respond to those parts but advises that the defendants will respond to same in the course of their legal submissions.He avers that the fact that the defendants have not replied to each and every averment does not constitute an acceptance of the truth of those averments.He avers to certain improvements that have been made with regard to the incarceration of mentally ill persons and the appointment of an independent inspector of prisons.He clarifies that padded cells are only used when the safety of prisoners requires such use and emphasises that the first named plaintiff is bringing these proceedings on behalf of an unidentified group of persons in respect of whom certain statements are made, the truth of which cannot be ascertained if those persons are not identified.He further avers to the fact that the second named plaintiff in fact contacted a solicitor after his detention and corresponded with the Minister for Justice, Equality and Law Reform on a number of occasions.

18. It is of significance in my view that Mr.O'Sullivan does not attempt to describe the I.P.R.T.as inter-meddlers or cranks nor does he deny the averment as made by Dr.Val Bresnihan on behalf of the I.P.R.T.that they bring these proceedings in a sincere and *bona fide* manner nor does he take issue with the averment by Dr.Bresnihan that it is her belief and indeed experience that prisoners with psychiatric illness are not in a position to *inter alia* assert adequately their constitutional rights especially as regards systematic deficiencies.

19. Counsel for the defendants submits that the constitutional rights that the defendant is alleged to have breached are all personal rights and that in these circumstances the I.P.R.T.cannot challenge the alleged unconstitutional nature of the acts or omissions of the defendants in respect of the treatment of psychiatric prisoners in Mountjoy Prison since that treatment does not in any way personally affect the situation of the first named plaintiff.It is submitted that the first named plaintiff is seeking to make arguments based on a *jus tertii*.Further neither can the I.P.R.T.demonstrate that its rights have been infringed or threatened.It is submitted that the alleged unconstitutionality could never affect the first named plaintiff, it being a juristic person who can never be detained in Mountjoy Prison and can never suffer from psychiatric problems.It is submitted that the appropriate person to complain of a breach of

constitutional rights in respect of the treatment of psychiatric prisoners in Mountjoy Prison is a person who has suffered an alleged breach of such rights who in the present case are the second and third named plaintiffs.There can never be a question of an actio popularis in respect of persons who are perfectly situated to bring their own proceedings and when those proceedings can be tested by reference to the factual situation of the plaintiffs in question.

20. Counsel submits that to allow the first named plaintiff to maintain the within proceedings would be to create a whole new class of constitutional actions whereby plaintiffs entirely unaffected by the impugned acts or omissions or legislative decisions could invoke the provisions of the constitution to challenge those acts or omissions and this would result in the courts being required to determine constitutional challenges in the absence of factual circumstances and would necessitate decisions to be made in hypothetical context.

Relaxation of locus standi rules
21. The I.P.R.T.contends that the locus standi rules should be relaxed in the particular circumstances of this case where those persons who are prejudiced on the basis of the grounds being alleged are not in a position because of their situation in life to adequately assert their constitutional rights.

22. It is in my view of significance that the rule of *locus standi*, the general principles of which were laid down by Henchy J.in *Cahill v.Sutton* and previously referred to herein, is a rule of practice but like all such rules is, as Henchy J.stated at p.285, "subject to expansion, exception or qualification when the justice of the case so requires".

23. Henchy J.in the context of *Cahill v.Sutton* referred to the paramount consideration in the exercise of the jurisdiction of the courts to review legislation in the light of the constitution to ensure that the persons entitled to the benefit of a constitutional right will not be prejudiced through being wrongfully deprived of it and stated at p.285 "that there will be cases where the want of the normal *locus standi* on the part of the person questioning the constitutionality of the statute may be overlooked if in the circumstances of the case there is a transcendent need to assert against the statute the constitutional provision that has been invoked." Henchy J.gave the example of where the challenger may lack the personal standing normally required but those prejudicially affected by the impugned statute may not be in a position to assert adequately or in time their constitutional rights and stated that:

> "[i]n such a case the court might decide to ignore the want of normal personal standing on the part of the litigant before it.Likewise the absence of a prejudice or injury peculiar to the challenger might be overlooked in the discretion of the court if the impugned provision is directed at or operable against a grouping which includes the challenger or with whom the challenger may be said to have a common interest particularly in cases where because of the nature of the subject matter it is difficult to segregate those affected from those not affected by the challenged provision."

24. An illustration of this exception to the rule is found in *SPUC v.Coogan* [1989] I.R.734 where the plaintiff organisation was afforded locus standi to assert the constitutional, personal rights of the unborn child.In SPUC the court held that the plaintiff was entitled to defend the right to life of the unborn as there could be no potential victim capable of so doing.Finlay C.J.stated at p.742 that:

> "In this case that right is the right to life of an unborn child in its mother's womb.The threat to that constitutional right which it is sought to avoid it the death of the child.In respect of such a threat there can never be a victim or potential victim who can sue.If it were to be accepted, as is contended on behalf of the defendants, that only the Attorney General could sue to protect such a constitutional right as that involved in this case, that would, I am satisfied, be a major curtailment of the duty and the power of the courts to defend and uphold the Constitution."

25. The defendants argue that the decision in *SPUC v.Coogan* was premised on the fact that the unborn could never seek to have their constitutional rights vindicated and that therefore, a departure from the normal rules on standing was justified.In essence, the defendants argue that the *SPUC v.Coogan* exception should be rigidly construed.

26. Counsel for the plaintiffs refers to *Social Inclusion and the Legal System* (Dublin, 2001) where Whyte argues that it is significant that the dicta in *Coogan* were not limited to the protection of the rights of the unborn.He states at pp 82-83 that:

> "Given the particular interest at stake here, namely, the right to life of the unborn, the majority could have restricted their decision on the issue of the plaintiff's rights to present argument on behalf of a third party to cases in which the third party was an unborn child.However, what is striking about the two leading judgments in the majority, delivered by Finlay C.J.and Walsh J., is that their language is not circumscribed in this way."

27. I am of the view that whether or not *SPUC v.Coogan* was indeed restricted to the right to present argument on behalf of the unborn child is not wholly relevant to the present case.The simple fact is that *Cahill v.Sutton* allows, in plain terms, for the relaxation of the personal standing rules where those prejudiced may not be in a position to adequately assert their constitutional rights.It does not restrict this category of persons to the living, the dead or the unborn nor does it give any indication of what category of person may not be in a position to adequately assert their constitutional rights.If a person is incapable of adequately asserting his constitutional rights for whatever reason, I am of the view that *Cahill v.Sutton* would support a relaxation of the personal standing rules, provided the relevant person or body is genuine, acting in a *bona fide* manner, and has a defined interest in the matter in question.

Ability of prisoners to adequately assert their constitutional rights
28. It has been submitted on behalf of the plaintiff that those prisoners, who are party to these proceedings, are not in a position to adequately assert their constitutional rights.On the other hand, Counsel on behalf of the defendants argues that persons allegedly prejudiced by the unconstitutional behaviour of the defendants in relation to the treatment of psychiatric prisoners at Mountjoy can indeed assert their constitutional rights, as is evidenced by the fact that two of the plaintiffs in these proceedings are persons allegedly suffering from psychiatric problems who have been detained at Mountjoy.

29. Counsel for the defendants relies heavily on the argument that all the individual psychiatrically ill prisoners are the appropriate persons to join together to bring these proceedings in relation to the alleged systematic deficiencies in the manner in which prisoners with psychiatric difficulties are treated in Mountjoy Prison but the specific averment by Dr.Val Bresnihan that it is her view and indeed the experience of the I.P.R.T.that such persons are not in a position to assert adequately or in time their constitutional rights especially as regards systematic deficiencies has not been specifically traversed by Mr.O'Sullivan in his affidavit on the defendant's behalf.

30. Clearly, in my view, Henchy J.in *Cahill v.Sutton* was concerned specifically with a challenger who may lack the personal standing normally required but is challenging on behalf of those prejudicially affected who may not be in a position to assert adequately their

constitutional rights.It appears a reasonable proposition to this court, for the purpose of deciding this issue, that psychiatrically ill prisoners are persons who are disadvantaged and not in a position to assert adequately their constitutional rights especially as regards systematic deficiencies regarding the treatment of psychiatrically ill prisoners in Mountjoy Prison.

31. I am of the view that while it is arguable that an adult prisoner is fully competent to assert his constitutional rights, this may be an over-simplistic analysis of the facts.It is almost indisputable that prisoners with psychiatric problems are amongst the most vulnerable and disadvantaged members of society.Indeed, many prisoners are ignorant of their rights and might fear retribution if they challenge the prison authorities.Furthermore, prisoners might not be aware of the fact that they have a constitutional right to receive a better standard of treatment.This puts this particular category of persons in an extremely disadvantaged position and their willingness and ability to adequately assert their constitutional rights may suffer as a result.

32. The I.P.R.T., being a human rights organisation established to campaign for the rights of people in prison and the progressive reform of the Irish penal policy, has a certain expertise and the financial ability necessary to mount an effective challenge to alleged systematic failings in the Irish prison system.I am of the opinion that the claim can be more effectively litigated by the I.P.R.T.who is in a position to identify and analyse systematic failings in the system.

33. Thus, while a psychiatrically ill prisoner may be theoretically capable of asserting his own constitutional rights, I am not satisfied that they are in a position to adequately assert same.This is especially so since the I.P.R.T.is on hand and willing to effectively litigate this claim on their behalf.Accordingly, a relaxation of the *locus standi* principles in the present case would appear to accord with the general principle as laid down in *Cahill v.Sutton.*

Distinguishing cases where relaxation found unwarranted
34. While the Irish courts have shown themselves willing to relax the personal standing rules, there have been occasions where the courts felt that such a relaxation was not warranted.In a recent decision of the Supreme Court in *Construction Industry Federation v.Dublin City Council* (Unreported, Supreme Court, 18th March 2005), the Supreme Court reversed the decision of the High Court and refused to afford standing to the plaintiff, an unincorporated trade association who represented the interests of parties involved in the construction business.McCracken J.noted as follows:-

> "However, it appears to me that to allow the appellant to argue this point without relating it to any particular application and without showing any damage to the appellant itself, means that the court is being asked to deal with a hypothetical situation, which is always undesirable.This is a challenge which could be brought by any of the members of the appellant who are affected, and would then be related to the particular circumstances of that member.The members themselves are, in many cases, very large and financially substantial companies, which are unlikely to be deterred by the financial consequences of mounting a challenge such as this.Unlike many of the cases in which parties with no personal or direct interest have been granted locus standi there is no evidence before the Court that, in the absences of the purported challenge by the appellant, there would be no other challenger.Indeed the evidence appears to be to the contrary."

35. This case may be distinguished on a number of grounds.First, individual members of the appellant organisation all had standing in their individual capacity to adequately challenge the decision of Dublin City Council.Here, if one was to defer to the defendant's contention, there would be no-one in a position to challenge the alleged "systematic deficiencies" in the Irish prison service.The second and third plaintiff would be confined to mounting a challenge based on their own individual circumstances.

36. Second, in *CIF*, all members of the appellant organisation were "very large and financially substantial companies", who would be well capable of mounting such a legal challenge.However, in the present case, any potential plaintiff is disadvantaged, being a prisoner and allegedly suffering from psychiatric illness.

37. Furthermore, McCracken J.did note that:-

> "I have no doubt but that there are circumstances in which it may be permissible, and even desirable, that a representative body such as the Appellant may be entitled to bring judicial review proceedings.A classic example of such a situation is probably *R v.Inspectorate of Pollution & Anor Ex Parte Greenpeace Ltd.(*No.2) [1994] 4 All ER 329, where *Greenpeace* was held to have a sufficient interest to challenge certain authorisations given to British Nuclear Fuels Limited.However, in such circumstances there are usually if not invariably good practical reasons why, in the discretion of the Court, the applicant ought to be allowed to make the application.There undoubtedly are cases where administrative errors would go unchallenged if an application was refused on the grounds of *locus standi.*Clearly consideration of this question must depend largely on the circumstances of the individual case."

38. Otton J.in *R.v.Pollution Inspectorate, ex p Greenpeace* (No.2) 1994 4 AER 239 at p.49 of his judgment states as follows:

> "In reaching my conclusion I adopt the approach indicated by Lord Donaldson MR in *R.v.Monopolies and Mergers Commission, ex p Argyll Group plc* [1986] 2 All ER 257 at 265, [1986] 1 WLR at 773:
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> > 'The first stage, which is applied on the application for leave, will lead to a refusal if the applicant has no interest whatsoever and is, in truth, no more than a meddlesome busybody.If, however, the application appears to be otherwise arguable and there is no other discretionary bar, such as dilatoriness on the part of the applicant, the applicant may expect to get leave to apply, leaving the test of interest or standing to be re-applied as a matter of discretion on the hearing of the substantive application.At this second stage, the strength of the applicant's interest is one of the factors to be weighed in the balance.'

39. This approach was followed and developed by Purchas LJ in *R v.Dept of Transport, ex p Presvac Engineering Ltd* (1989) Times, 4 April when, after considering the decision of the House of Lords *in IRC v.National Federation of Self-Employed and Small Businesses Ltd,* he said:

> 'Personally I would prefer to restrict the use of the expression locus standi to the threshold exercise and to describe the decision at the ultimate stage at an exercise of discretion not to grant relief as the applicant has not established that he had been or would be sufficiently affected.'

40. Thus I approach this matter primarily as one of discretion.I consider it appropriate to take into account the nature of Greenpeace and the extent of its interest in the issues raised, the remedy Greenpeace seeks to achieve and the nature of the relief sought.

41. In doing so I take into account the very nature of Greenpeace.Lord Melchett has affirmed thus:

'Greenpeace International has nearly 3 million supporters worldwide; Greenpeace UK has over 400,000 supporters in the United Kingdom and about 2,500 of them are in the Cumbria region, where the BNFL plant is situated.Greenpeace is a campaigning organisation which as its prime object the protection of the natural environment.

Greenpeace International has also been accredited with consultative status with the United Nations Economic and Social Council (including United Nations General Assembly).It has accreditation status with the United Nations Conference on Environment and Development.They have observer status or the right to attend meetings of 17 named bodies including Parcom (Paris Convention for the Prevention of Marine Pollution from Land Based Sources).

BNFL rightly acknowledge the national and international standing of Greenpeace and its integrity.So must I.I have not the slightest reservation that Greenpeace is an entirely responsible and respected body with a genuine concern for the environment.That concerns naturally leads to a bona fide interest in the activities carried on by BNFL at Sellafield and in particular the discharge and disposal of radioactive waste from its premises and to which the respondents' decision to vary relates.The fact that there are 400,000 supporters in the United Kingdom carries less weight than the fact that 2,500 of them come from the Cumbria region.I would be ignoring the blindingly obvious if I were to disregard the fact that those persons are inevitably concerned about (and have a genuine perception that there is) a danger to their health and safety from any additional discharge of radioactive waste even from testing.I have no doubt that the issues raised by this application are serious and worthy of determination by the court.

It seems to me that if I were to deny standing to Greenpeace, those it represents might not have an effective way to bring the issues before the court.There would have to be an application either by an individual employee of BNFL or a near neighbour.In this case it is unlikely that either would be able to command the expertise which is at the disposal of Greenpeace.Consequently, a less well-informed challenge might be mounted which would stretch unnecessarily the court's resources and which would not afford the court the assistance it requires in order to do justice between the parties.Further, if the unsuccessful applicant had the benefit of legal aid it might leave the respondents and BNFL without an effective remedy in costs.Alternatively, the individual (or Greenpeace) might seek to persuade Her Majesty's Attorney General to commence a realtor action which (as a matter of policy or practice) he may be reluctant to undertake against a government department (see the learned commentary by Schiemann J.on "Locus Standi" [1990] Pub L 342).Neither of these courses of actions would have the advantage of an application by Greenpeace, who, with its particular experience in environmental matters, its access to experts in the relevant realms of science and technology (not to mention the law), is able to mount a carefully selected, focused, relevant and well-argued challenge.It is not without significance that in this case the form 86 contains six grounds of challenge by the time it came to the substantive hearing before me, the Greenpeace 'team' (if I may call them that) had been able to evaluate the respondents' and BNFL's evidence and were able to jettison four grounds and concentrate on two.This responsible approach undoubtedly had the advantage of sparing scare court resources, ensuring an expedited substance hearing and an early result (which it transpires is helpful to the respondents and to BNFL).This line of reasoning has some support from the approach to be found a line of cases in the Supreme Court of Canada (see *Thorson v.A-G of Canada* [1975] 1 SCR 138, *McNeil v.Nova Scotia Board of Censors* [1976] 2 SCR 265, *Borowski v.Minister of Justice of Canada* [1981] 2 SCR 575 and Finlay v.Minister of Justice of Canada [1986] 2 SCR 607 esp the judgment of Le Dain J; see also the helpful and imaginative commentary of the authors Supperstone and Goudie Judicial Review (1992) pp 335-336 and 338-340).

I also take into account the nature of the relief sought.In *IRC v.National Federation of Self-Employed and Small Businesses Ltd* the House of Lords expressed the view that if mandamus were sought that would be a reason to decline jurisdiction.Here, if the primary relief sought is certiorari (less stringent) and, if granted, the question of an injunction to stop the testing pending determination of the main applications would still be in the discretion of the court.I also take into account the fact that Greenpeace has been treated as one of the consultees during the consultation process and that they were invited (albeit with other non-consultees) to comment on the 'minded to vary' letter."

42. It follows that I reject the argument that Greenpeace is a 'mere' or 'meddlesome busybody'.I reject the applicant as eminently respectable and responsible and its genuine interest in the issues raised is sufficient for it to be granted locus standi.

43. I should add that Lord Roskill in *IRC v.National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 ALL ER 93 at 117, [1982] AC 617 at 659 approved the commentary to Ord 53 in The Supreme Court Practice 1989 (see now The Supreme Court Practice 1993 vol 1, para 53/1-14/11) that the question of whether the applicant has a sufficient interest appears to be –

'a mixed question of fact and law; a question of fact and degree and the relationship between the applicant and the matter to which the application relates, having regard to the all the circumstances of the case.'

44. Thus it must not be assumed that Greenpeace (or any other interest group will automatically be afforded standing in any subsequent application for judicial review in whatever field it (and its members) may have an interest.This will have to be a matter to be considered on a case by case basis at the leave stage and if the threshold is crossed again at the substantive hearing as a matter of discretion.

45. I am of the opinion that the present case is more in line with *R v.Inspectorate of Pollution & Anor.Ex Parte Greenpeace Ltd* (No.2) in that if the I.P.R.T.were to be denied standing, those it represents may not have an effective way to bring the issues before the court.A potential plaintiff would not be in a position to command the expertise and financial backing at the disposal of the I.P.R.T., a less well-informed challenge might ensue and justice may not be done.

Requirement that the I.P.R.T.is a bona fide group

46. Finally, in order to relax the locus standi rules in favour of the I.P.R.T., the court must be satisfied that it is a bona fide group, with the same underlying concerns as those alleging a breach of their constitutions right.In *SPUC v.Coogan* [1989] I.R.734, Finlay C.J.stated at p.742 as follows:-

"In such a case…the test is that of a *bona fide* concern and interest, interest being used in the sense of proximity or an objective interest.To ascertain whether such a bona fide concern and interest exists in a particular case, it is of special importance to consider the nature of the constitutional right to be protected."

47. The I.P.R.T.was formed in 1994 by individuals who were concerned in common with conditions in the prison system.It is a non-governmental organisation and holds charitable status.It has special consultative status with the Economic and Social Council of the United Nations and is consulted and presents its views on economic, social, political and human rights matters to the United Nations.Further, it undertakes research, produces publications, provides media comments and makes submissions to government

departments.

48. I am satisfied on the facts before me that the I.P.R.T.is indeed a bona fide organisation with an interest in common to that of the second and third named plaintiffs.I do not believe that it could be deemed to be an "officious or meddlesome intervenient", in the words of Finlay C.J.in *SPUC v.Coogan*.I am satisfied that the I.P.R.T.brings these proceedings in a sincere and *bona fide* manner.

Conclusion
49. Applying the rationale of Henchy J.as outlined in *Cahill v.Sutton* and the views as expressed by Otton J.in *R.v.Pollution Inspectorate exp Greenpeace* (2) [1994] 4 A.E.R., in particular pp 349-350, the approach I take to this matter is primarily one of discretion.I take into account the nature of I.P.R.T.and the extent of its interest in the issues raised and the remedies which it seeks to achieve and the nature of the relief as sought.I am satisfied that if I were to deny standing to I.P.R.T.those whose interests it represents may not have an effective way of bringing the issues that are involved in these proceedings before the court.I take the view that it is unlikely that individual psychiatrically ill prisoners will be able to command the expertise which is at the disposal of I.P.R.T.and in these circumstances were this court to refuse I.P.R.T.*locus standi* it appears unlikely that justice would be done between the parties.Counsel for the defendants has placed considerable emphasis on the fact that other psychiatrically ill prisoners are the appropriate persons to maintain these proceedings and that as the proceedings are maintained by I.P.R.T.they represent apart from the two identified plaintiffs, a number of other prisoners who remain unidentified but in this regard I am satisfied that at the trial of the action clearly it is incumbent on the I.P.R.T.to prove their case in accordance with the applicable procedures.

50. In these circumstances I take the view that the I.P.R.T.has *locus standi* to maintain the claims made by it in these proceedings and I decline to grant the defendants the relief as sought in this regard.