

THE HIGH COURT
JUDICIAL REVIEW

2008 605 JR

2008 1193 JR

BETWEEN

AUGUSTINE TONY AYAVORO

APPLICANT

AND

THE HEALTH SERVICE EXECUTIVE

AND THE MINISTER FOR SOCIAL AND FAMILY AFFAIRS

RESPONDENTS

JUDGMENT of O'Neill J. delivered the 6th day of February, 2009

Before the court are two judicial review applications. In the first, the applicant was given leave on 26th May, 2008, by me, to pursue a variety of reliefs, principally, an order of *certiorari* quashing the decision of the first named respondent made on 26th March, 2008, refusing the applicant Supplementary Welfare Allowance (SWA) on the grounds that the applicant had failed to furnish sufficient or adequate information to enable a decision to be made in his favour.

Against the second respondent, the applicant was given leave to seek an order of *certiorari* quashing the decision of the second named respondent refusing the applicant a Jobseeker's Allowance (JSA) on a basis similar to the reason for refusal by the first named respondent of the Social Welfare Allowance.

In addition, declarations are sought to the effect that the actions of both respondents breached the applicant's rights under Article 3 of the European Convention on Human Rights (ECHR). Also, the applicant claims damages, *i.e.* general damages and damages to compensate him for legal costs.

In the second proceedings in which the applicant got leave of this court (Peart J.) on 24th October, 2008, the applicant was permitted to seek, *inter alia*, orders of *certiorari* quashing the decision of the first named respondent made on 21st August, 2008, refusing the applicant a Social Welfare Allowance. The applicant was also given leave to seek an order of *certiorari* quashing the decision of the second named respondent made on 15th October, 2008, refusing the applicant's appeal against an earlier refusal of the Jobseeker's Allowance.

Also, in these proceedings, declarations were sought to the effect that both defendants acted in breach of duty and negligently, that they acted in breach of the applicant's legitimate expectation, that the first named respondent's procedures failed to vindicate the applicant's constitutional right to fair procedures and constitutional justice, and that the actions of both breached the applicant's rights, as protected by Article 3 of the European Convention on Human Rights.

The facts which underlie both sets of proceedings are as follows:

The applicant arrived in Ireland on 4th January, 2008. Prior to that, he was resident in the United Kingdom. The applicant is an Irish citizen of Nigerian birth, a married man with two children. He is a Law graduate, having obtained an LLB degree from John Moores University, Liverpool, and LLM degree from Dundee University, in September 2008.

On 4th January, 2008, the applicant applied for Jobseeker's Allowance at the Social Welfare Local Office (SWLO), Northumberland Street, Dublin 1. He gave his address as 6, Freeman's Lane, Dublin 1. Details of his wife and children were included in the application form. There was no intimation of a marriage breakdown. On 7th January, 2008, the applicant informed the second named respondent that he was moving to Dundalk. On 10th January, 2008, a repeat claim for Jobseeker's Allowance was made to Dundalk SWLO and the applicant gave his address as 52, Claddagh Park, Dundalk. The applicant was invited for interview on 5th February, 2008, and on 8th February, 2008, and did not turn up for either of these interviews. He rang to say that he needed one week's notice of any interview. On 28th February, 2008, the applicant was interviewed. At interview, he gave the same address, *i.e.* 52, Claddagh Park, Dundalk. Later, this address was visited by Dymrna Shaw, a Social Welfare Inspector in Dundalk. The applicant was not there and Ms. Shaw was informed by the main tenant that the applicant was there occasionally and, "*his stuff was not there*".

By letter of 7th March, 2008, Ms. Shaw wrote to the applicant in the following terms:

"Dear Mr. Ayavoro,

With reference to your claim for Jobseeker's Allowance and my interview with you on 28th February, 2008, I wish to advise you that the information, as requested, has not yet been received, i.e. bank statement from NatWest, credit card statement and full details of the monies you stated you had received from friends. Failure to supply this information within the next seven days may result in non-payment of your claim.

An envelope for your reply is enclosed."

On 13th March, 2008, the applicant informed the SWLO in Dundalk, of a change of address to 6, Rampart Court, Dundalk. On the same

date, i.e. 13th March, 2008, the applicant made an application for supplementary welfare allowance to the health centre in Dundalk. In his application form, the applicant describes himself as a married man with two children. Also on that day, the applicant was interviewed by Catherine McHugh, a Community Welfare Officer, who requested from him the following documents: photographic identity, bank statements, credit card statements, evidence that he lived within the common travel area for the past two years, and the applicant's wife's Social Security number.

On 14th March, 2008, the applicant returned to the health centre with bank and credit card statements. Photographic identification was sent later from the Employment Exchange.

By letter of 18th March, 2008, the applicant wrote to the second named respondent as follows:

"I am writing to respond to your last letter and to draw your attention to the above address as my new address.

I hope by now you must have received my NatWest bank statement and Barclay's credit card statement I personally left with your colleague at the unemployment office.

As proof of the loan I received from my friend, I refer to the payments of £250 made on 14th January 2008, and 5th February 2008, that was made into my NatWest bank account. My bank statements and credit card statement indicate that I am living on debt, therefore, there is no doubt as to whether I have satisfied the means test.

It is clear from your investigations that I have been living in the UK for the last two years: therefore, it is not an issue whether I satisfy the habitual residence requirement. In addition, your investigation must have revealed that from the time I made my application for unemployment assistance in Ireland, I have not received benefit in the UK and neither have I received any income from employment.

Bearing in mind the length of time my application for unemployment assistance has taken, I beg you to pass my file to the deciding officer so that a decision can be reached soon."

On 20th March, 2008, Catherine McHugh wrote to the applicant in the following terms:

"Dear Augustine,

Further to your visit to my office today regarding the above, I confirm that I am awaiting documentation confirming that you have lived in the common travel area for the past two years as you have last claimed here in 2002.

I must require a bank statement from the Bank of Ireland account at the Parade, Kilkenny, and your wife's Catherine's bank account in Bank of Ireland, Court Place, Carlow.

I note from my records that you are in receipt of tax credits from the UK. Please supply documentary evidence of these payments and details of your employment while outside this jurisdiction, as you would appear to be the primary applicant on this claim. Please provide documentation from your landlord at 6, Rampart Court, that you have resided at this address.

Upon receipt of this documentation, I will be in a position to progress your application."

Ms. McHugh had made enquiries of the Social Security Agency in the United Kingdom which disclosed that the applicant had been in receipt of child tax credits which were paid in the United Kingdom in the applicant's name.

On the same day, 20th March, 2008, the applicant had called to the health centre and had discussions with Catherine McHugh. She informed him of the requests in the letter. He responded by saying that her actions were racially motivated, an allegation that was to be repeated by the applicant throughout these proceedings.

On 28th March, 2008, the applicant wrote to Ms. Hugh in the following terms:

"Dear Catherine McHugh,

RE: APPLICATION FOR SUPPLEMENTARY ALLOWANCE

PPSN: 9122257W

I am writing in response to your letter dated 20th March, 2008.

In your letter, you stated that my last claim in Ireland was in 2002, which is false. The last claim I made in Ireland was in 2004.

In relation to the proof of my physical presence in the common travel area, I have supplied you with proof of my receipt of benefit for the year 2007, and a letter from my University which indicates my presence in the UK for the year 2006.

On a balance of probability, I have discharged the burdens of proof imposed on me as to my habitual residence within the common travel area.

In addition, you have made several contacts with the unemployment office, which has clearly revealed that there is no doubt as to whether I have lived in the UK for the last two years, and also you have information as to my receipt of child's tax credits which also reveal my physical presence in the UK for the last two years. Therefore, it is not an issue whether I satisfy the habitual residency requirement.

You stated that your record confirms that I am in receipt of child tax credit and you require documentary evidence of this payment. It is very unfair and malicious to ask me to provide you with documentary evidence of my receipt of child tax credit when your source of information has already revealed to you details of my receipt of child tax credit.

More also. I would like to advise you that under the Social Welfare Act, any benefit or related payment to children does

not apply in a means test. Therefore, even though I am in receipt of child tax credit in the UK, it has no material effect on my application for supplementary welfare allowance. The tax credit is paid to my wife's bank account and it is for the maintenance of my children and has no material effect on my claim for supplementary welfare allowance and Jobseeker's benefit.

As to my bank statement, I enclose herewith a statement which indicates that my account has been closed and the sum I owe the bank.

I am not in a position to provide you with details of my wife's bank account. The account is not a joint account and under the Data Protection Act, the bank is not obliged to furnish me with details of the account. It is not within my power to compel my wife to provide me with the details of her account. There is no legal authority that compels me to force my wife to provide me with details of her account. I am making a claim in my own right and not a joint claim with my wife.

In relation to documentary proof of my residency at 6, Rampart Court, Dundalk, I enclose herewith a copy of the Rent Allowance Form. If you have any doubts as to my residency, do not hesitate to contact my landlord. The landlord rang your office on Thursday 25th March, 2008, and left a message with your colleague for you to contact him. For your information, the landlord has served me notice to quit the room he rented me by Friday 4th April, 2008, if I failed to make payment of the outstanding rent.

As to your request on details of my employment while outside the jurisdiction of Ireland, I can confirm that I have been unemployed since 2004, and still currently unemployed.

Regardless of how you apply your discretion as to your establishment of whether I qualify for supplementary welfare allowance as an Irish citizen, I have a natural right to a means of living as provided under the Irish Constitution and it is clear from the facts of this matter that I have no means of living.

The State has an obligation to protect me from torture, inhuman and degrading treatment, as provided under Article 3 of the European Convention on Human Rights. Your conduct and action has subjected me to mental/physical torture, inhuman, degrading treatment and punishment; therefore, it is my legitimate right to seek relief as provided under Article 3 of the ECHR.

At the moment, I wish to confirm to you that I shall not be supplying you with any documents and I am appealing to you to make an immediate decision based on the documents and information you have gathered on this matter. The purpose of supplementary welfare allowance includes providing immediate and flexible assistance for those in need who are awaiting a decision on payment of other State schemes. The facts of the matter indicate clearly that I am desperately in need of financial assistance and I have satisfied the requirement and yet for no just reason, you are deliberately depriving me of my entitlement to supplementary welfare allowance.

It is very clear from the whole facts of this matter that you are racially prejudiced towards me and you are abusing and acting outside the powers given to you.

In your own best interests, I will advise you to seek legal advice as to the legal consequence and implication of your conduct and action. If, by Friday 4th April, 2008, you fail to make payment of my statutory entitlements to supplementary allowance and rent allowance, I will have no alternative than to consider taking any of, but not limited to, the following actions:

To commence court proceedings and will be seeking both pecuniary and non-pecuniary damages and also an injunction directing and/or compelling you to perform your statutory duties;

Lodge an official complaint against you with the Minister for Social Welfare."

On 1st April, 2008, the applicant came to the health centre and met Catherine McHugh, who informed him that she would not be responding to the allegations in his letter but that she still required the documents sought in the letter of 20th March, 2008.

The applicant also produced the same bank statements to the second named respondent for the purposes of the Jobseeker's Allowance application. As is apparent from these statements, the great bulk of the transactions during the months of January, February and March 2008, occurred outside the jurisdiction.

No documentation was furnished by the applicant relevant to the enquiries to establish habitual residence, except a Rent Allowance Claim Form signed by the applicant's landlord, which was furnished on 30th March, 2008. This was produced to the second named respondent. This was not accepted as adequate proof of residence. The applicant had been informed that either a letting agreement/lease or a rent book or official correspondence or utility bills would be accepted as proof of residence at the address nominated by the applicant.

On 26th March, 2008, the second named respondent noted that the documentation information necessary to make a decision to grant the applicant Jobseeker's Allowance had not yet been furnished.

On 30th March, 2008, the applicant wrote to the second named respondent as follows:

"Dear Deciding Officer,

JOBSEEKERS'S ALLOWANCE

PPSN: 9122257W

I am writing in response to my conversation with Frances at the Social Welfare office on 28th March, 2008. The object of this letter is to clarify the issues which were read to me by Frances from the report of Inspector Dympna Shaw in relation to my Jobseeker's Allowance claim.

In relation to the child tax credit, I would like to advise you that under the Social Welfare Act, any benefit or related

payment to children does not apply in means test. Therefore, even though I am in receipt of child tax credit in the UK, it has no material effect to my application for Jobseeker's Allowance. The tax credit is made to my wife's bank account and it is for the maintenance of my children.

As to the regular payment of £119 that is lodged to my NatWest bank account, I would like to advise that the payment is for my mother's pension credit. The statement of account shows clearly the source of payment and my mother's National Insurance Number. The source of payment is the Department of Works and Pensions, my mother's National Insurance Number is SE704711D, my National Insurance Number in the UK is SE210047D. The difference in the National Insurance Number shows clearly that the payment is not for me.

Under the Data Protection Act, I am not obliged to furnish you with any further details of my mother's pension credit. If you require any further details, please contact the Department of Works and Pensions in the UK.

It is very clear from your investigation in the UK that I am not in receipt of any benefit, therefore, the mere fact that my mother's pension credit is paid to my account is not an issue as to my claim for Jobseeker's Allowance. The pension credit is for the maintenance of my mother and it has no relevance whatsoever to me as a source of income. I have the right to use my account for any lawful purpose.

As to my change of address, I enclose herewith a copy of the signed Rent Allowance Form from my landlord.

At the moment, I am very frustrated and depressed about the unnecessary delay in making a decision to my Jobseeker's Allowance. The delay is affecting my health, my family life and my ability to search for work. Therefore, I am appealing for a decision to be made without any further delay.

If, by Friday 4th April, 2008, no decision is made, I will have to assume that my application has been refused and I will consider taking any, but not limited, the following actions: lodging an official complaint with the Social Welfare office in Dublin; seeking legal advice as other legal remedy."

On 31st March, 2008, Frances McArdle, Deciding Officer, decided that the Jobseeker's Allowance was not payable to the applicant because the applicant had not demonstrated that his means were less than €197.80, the eligibility threshold.

On Friday 4th April, 2008, the applicant returned to the health centre in Dundalk and produced some bank statements but not those of his wife.

On 7th April, 2008, the applicant's file was re-examined by Catherine McHugh who concluded that:

- (i) the habitual residence conditions were still not met;
- (ii) bank statements in respect of the applicant's wife were not produced;
- (iii) a request for documentary evidence with regard to child tax credits paid directly to the applicant had not been addressed;
- (iv) the applicant's application for Jobseeker's Allowance had been disallowed;
- (v) the payment of £119 paid weekly into the applicant's bank account had not been explained.

On 8th April, 2008, Catherine McHugh wrote to the applicant as follows:

"Dear Augustin,

Further to your visit to my clinic on 4th April, 2008, I confirm that I have re-examined your file.

Firstly, I have forwarded your Freedom of Information request to Rosemary Mulligan, FOI officer, HSE, Dublin Road, Dundalk.

I can confirm, also, that the evidence you have produced regarding your habitual residency condition covers the periods from September 2003 to May 2006 and from February 2007 to November 2007. I have documentary evidence for the period from May 2006 to February 2007, which is relevant to your claim. Your claim for child tax credits was made in November 2007. I consider it reasonable to request documentation in relation to your claim for child tax credits.

I note that your claim for Jobseeker's has been disallowed and in this matter, I require documentary evidence confirming that you are appealing this decision, along with any additional supporting documentation supplied.

I also note from your bank statement that there is a weekly lodgement of £119.05. Please supply an explanation regarding this weekly lodgement, along with supporting documentation.

To date, I have received no application from you for rent allowance."

The applicant avers that he did not get this letter.

On 10th April, 2008, the applicant returned to the health centre and produced an AA card to prove habitual residence. This was not accepted as its value as proof was very low. The applicant also produced a letter to his mother at a London address to show that the payment of £119 was for his mother. He also produced his Jobseeker's Allowance appeal which had no grounds attached, although these were contained in an accompanying letter.

On 14th April, 2008, in the absence of further documents or information, Catherine McHugh issued a refusal on the supplementary welfare allowance on the grounds that insufficient evidence regarding means was supplied, and, further, that he failed to satisfy the habitual residency condition.

On 24th April, 2008, the applicant's appeal in respect of the refusal of the Jobseeker's Allowance was forwarded to the Social Welfare

Appeals Office. On 21st May, 2008, the Appeals Office requested, by memo, that the applicant be given clarification of the requests for documents and information. On 18th June, 2008, the second named respondent wrote to the applicant to clarify what was outstanding. Attached to that letter was a schedule setting out the outstanding material as follows:

"Schedule

(i) Copies of Barclaycard and NatWest accounts from date of Jobseeker's Allowance claim on 04/012008, to date of decision on 31/03/2008;

Periods outstanding are -

Barclaycard: 01/01/2008 to 12/02/2008

13/03/2008 to 31/03/2008

NatWest: 11/02/2008 to 12/03/2008

14/03/2008 to 31/03/2008

(ii) Documentary evidence of residence at 6, Rampart Court, Dundalk, to comprise e.g. lease/tenancy agreement, rent book, utility bills or other.

(iii) Documentary evidence of transfer weekly payments of £119.05 from Department of Work and Pensions, paid into your NatWest account, to the benefit of the person entitled to these credits."

The applicant responded to this letter by a letter of 24th June, 2008, in the following terms:

"Dear Frances,

With reference to your letter dated 18th June, 2008, I attach herewith the following documents:

NatWest bank statement;

Barclay credit card statement;

A letter from the pension credit office in the UK in relation to my mother's pension credit;

A signed Rent Allowance Form from my landlord for 6, Rampart Court, Dundalk.

If you entertain any doubt as to my residency at 6, Rampart Court, I suggest you contact the landlord on 087-6240034.

As you are aware, the refusal of my Jobseeker's Allowance has subjected me to severe pain and suffering.

At the moment, I am having intense pressure from my landlord. He told me to leave immediately. If, by 3rd June, 2008, I cannot pay the landlord the rent arrears, I will have no alternative than to consider giving back my room keys to the landlord. I cannot stand the pressure from the landlord any more . . ."

The foregoing letter from the applicant was responded to by letter of 27th June, 2008, from Frances McArdle, Deciding Officer, as follows:

"Dear Mr. Ayavoro,

I acknowledge, with thanks, receipt of your letter of 24th June, 2008, with enclosures, in reply to my letter of 18th June, 2008, and the schedule attached to that letter.

Referring to the matters listed numerically on that schedule, I have examined the material now submitted by you and find as follows:

(i) Copy of Barclaycard account is now complete for the period requested, thank you.

Details of NatWest account for the period from 11/02/2008 to 02/03/2008 and 14/03/2008 to 31/03/2008, and requested in above schedule, were not attached to your letter of 24th June, 2008, and should be forwarded to me as soon as possible please.

(ii) Photostat copy of extract from application from rent allowance provided is not acceptable as proof of residence. As requested in schedule, lease/tenancy agreement, rent book or utility bills should be forwarded please.

(iii) Please forward documentary evidence of transfer of weekly payments of £119.05 lodged to your NatWest account to Mrs. B.E. Ayavoro, Flat 7, 76, St. George's Way, London SC15 6QT.

Please forward the above to this office within the next fourteen days."

In July 2008, the first of the judicial reviews in these proceedings came on for hearing before Mr. Justice O'Keeffe and on 31st July, 2008, these proceedings were adjourned to 13th October, 2008.

Also in July of 2008, there was a significant change in the applicant's circumstances in that he was joined by his wife and two children and moved to Kildare.

On 22nd July, 2008, the applicant discussed an application for supplementary welfare allowance with Mr. Pat Dunney in Newbridge. The applicant describes this discussion in paragraph 8 of his affidavit, in the second set of proceedings, as follows:

"8. On 22nd July, 2008, the applicant spoke with Mr. Pat Dunney, a Community Welfare Officer (first respondent) about the possibility of making a family supplementary welfare allowance claim for himself, wife and children. The applicant informed Mr. Pat Dunney of the ill-treatment that was inflicted on him by officials in both the Community Welfare Services in Dundalk and the Social Welfare Office in Dundalk. In particular, the applicant informed Mr. Pat Dunney of the reasons why the Community Welfare Office in Dundalk refused the applicant's claim for supplementary welfare allowance and the reasons why the Social Welfare office refused the applicant's Jobseeker's Allowance claim. After the applicant had informed Mr. Pat Dunney of the reasons for his refusal, the applicant told Mr. Pat Dunney that, as a result of the ill-treatment he received from both the officials of the Community Welfare Services in Dundalk and the Social Welfare Office in Dundalk, the applicant is having nightmares that his supplementary welfare allowance application in Newbridge will not be treated fairly. The applicant told Mr. Pat Dunney that his fear is that his family will have to suffer as a result of the prejudice towards him by the officials that dealt with his supplementary welfare and Jobseeker's Allowance claim in Dundalk. The applicant told Mr. Pat Dunney that he should advise him on whether he should lodge a family claim for supplementary welfare allowance, or whether it is better for the applicant's wife to make her own separate claim. That is, the applicant's wife should make a claim for herself and the two children. Mr. Pat Dunney advised the applicant to lodge a family supplementary welfare allowance claim and that Teresa Keogh (first respondent) will make the decision on whether a temporary supplementary welfare allowance should be paid and whether the applicant's wife should make a claim for herself and two children".

Following this discussion, the applicant completed a claim form for supplementary welfare allowance, with his wife named as an adult dependent and two child dependents. He also completed an Habitual Residence Condition Form and dated this 23rd July, 2008. These two forms were given to Mr. Dunney. As there was no proof of residency from 2003 to January 2008, so far as the applicant was concerned, given with these forms, and as the evidence available established that the applicant's wife satisfied the residency condition, it was suggested to the applicant that his wife make the application for the supplementary welfare allowance. This suggestion was made in a telephone conversation between Mr. Dunney and the applicant on 1st August, 2008, and subsequently confirmed by letter. The suggestion was to the effect that the applicant's wife could obtain the supplementary welfare allowance on condition that she applied for the Jobseeker's Allowance.

On 7th August, 2008, the applicant's wife applied for the Jobseeker's Allowance and on 8th August, 2008, she applied for Supplementary Welfare Allowance. This latter benefit was awarded to her from 7th August, 2008; the sum awarded was €377.10 per week being the rate applicable for a wife, an adult dependent and two children. This was the maximum benefit payable.

On 26th August, 2008, an oral hearing in respect of the applicant's appeal was directed, notwithstanding the suggestion by the applicant in letter of 19th August, 2008, that there was no need for one.

On 21st August, 2008, the first named respondents conducted a review of the applicant's file and as a result of this on 27th August, 2008, the allowance in respect of the applicant was withdrawn. The explanation of these events is that the continued application by the applicant, notwithstanding the grant of the Social Welfare allowance to the applicant's wife, caused confusion and this resulted in a communication to the applicant from Teresa Keogh's secretary, Janet Blake, to the effect that he appeared to qualify for payment. This had occurred on 15th August, 2008. In the meantime, the applicant, in pursuit of his application, had furnished documents relating to the residency issue, in particular, a letter from Dundee University stating that he was a fulltime student there until 11th September, 2008. Teresa Keogh considered that fulltime students are excluded from supplementary welfare allowance either as the main applicant or as an adult dependent. On 21st August, 2008, Teresa Keogh wrote to the applicant to tell him of this. On 25th August, 2008, the applicant replied by letter challenging this decision on the basis that he was living in Ireland since 4th January, 2008, and was available for work fulltime. On 27th August, 2008, the allowance in respect of the applicant was withdrawn.

On 28th August, 2008, Teresa Keogh wrote to the applicant stating as follows:

"Thank you for your letter of 25th August, 2008. I wish to advise you that fulltime students are not eligible for payment of SWA. If you are not in fulltime education, please provide confirmation of this from the Registrar of Dundee University."

No further correspondence ensued before the issue of the second set of proceedings. On 18th September, 2008, an oral hearing of the applicant's appeal in respect of the refusal of the Jobseeker's Allowance took place, conducted by Mr. Andrias O'Sullivan, an Appeals Officer, and attended by the applicant and Mr. John Brett. Mr. Brett, is a Social Welfare Inspector for the Dundalk area and he had compiled a report in which he analysed the information and documents which had been submitted by the applicant. At the oral hearing, the applicant, when queried about his means of livelihood or source of livelihood from January to March 2008, when he claimed to be resident in this jurisdiction, indicated that he used an AIB account. Statements of this account were furnished and were analysed by Mr. O'Sullivan. These statements covered the period from 28th January, 2008, to 7th April, 2008, and showed a total of nine transactions of which six were in Euros and three in Sterling. The total amount of the six transactions in Euros on the AIB statement was €104.63.

Mr. O'Sullivan subsequently made his decision which was communicated to the applicant on 15th October, 2008, and his decision was to the effect:

"The applicant's evidence concerning his financial transactions and circumstances lacked credibility. In the circumstances, I consider that he has failed to establish that he fulfils the statutory conditions as to means for Jobseeker's Allowances purposes i.e. that his means are less than the statutory limit for receipt of the payment."

By letter dated 20th October, 2008, the applicant sought clarifications as to how Mr. O'Sullivan had arrived at the reasons for his decision. Subsequent to the issue of the second set of proceedings, Mr. O'Sullivan compiled a report dated 8th December, 2008, providing such clarification. In this report, he explained his reasons as follows:

"The applicant forwarded a copy of his AIB account for the period 28th January, 2008, to 7th April, 2008, which approximates to the period covered by the NatWest and Barclay accounts examined by Mr. Brett. This AIB account showed nine transactions in the period in which six were in Euros and three in Sterling. The total amount of Euro transactions was €104.63. This information clearly contradicted the claim by the applicant at the oral hearing that he had used his AIB account for his day-to-day living."

On 15th October, 2008, Teresa Keogh reviewed the applicant's case. She took into account that the applicant had not furnished proof that he was in fulltime education since 11th September, 2008, but decided to reinstate adult dependent allowance backdated to 11th September, 2008. This payment was issued to the applicant on 15th October, 2008.

On 16th October, 2008, Teresa Keogh wrote to the applicant to inform him that the payment would continue for twenty-one days to allow him confirm that he was not in fulltime education. The only period when the maximum Supplementary Welfare Allowance was not paid to the applicant's family, was from 27th August, 2008, to 11th September, 2008.

On 29th October, 2008, Teresa Keogh carried out a further review and concluded that she had made an error in disallowing the adult dependent allowance for the applicant because he was in fulltime education, that being an irrelevant consideration given that his wife was the applicant and she was eligible for adult dependent payment. She authorised a payment for adult dependent an allowance for the applicant from 7th August, 2008, to 10th September, 2008, which was paid. As the applicant's wife had already been paid adult dependent allowance for the period from 7th August, 2008, to 27th August, 2008, there was in the result an overpayment.

The applicant did not make any further application for a Supplementary Allowance and did not appeal the decision of 21st August, 2008.

FIRST CASE

The first issue raised by the applicant at hearing was that he had a legitimate expectation to be interviewed by the first named respondent in respect of the residency issue and to have been given a particular form dedicated to the topic of residency to fill out. He based this legitimate expectation claim on a document downloaded by the applicant from the Department of Social Welfare website which sets out the Department's investigation and decision procedure relating to habitual residence. This document is exhibited as Exhibit P in the second affidavit sworn by the applicant in the first proceedings. In particular, he relies upon section H of the document which is under the title, 'Claims Investigation and Decision Procedure', the relevant part of which reads as follows:

*"In straightforward cases, it should perhaps be possible to determine whether a person satisfies the habitual residence condition without recourse to detailed examination, for example, a person who has never been abroad other than for brief (e.g. a holiday) period. **In other cases, an interview (desk or visit) may be the most effective method of obtaining all the facts. Where it appears that the habitual residence factors of the case may require detailed examination, the applicant should be asked to complete Form H or C1 in addition the claim form for the relevant payment . . .**"*

It is on the basis of this passage that the applicant claims to have had the legitimate expectation to an interview and to have completed the form mentioned. The applicant entirely ignores paragraph A. of this form under the heading 'General', which reads as follows:

"This guideline deals specifically with the question of determining habitual residence in relation to the payments listed at D below other than Supplementary Welfare allowance . . ."

It is quite clear that the basis put forward by the applicant for legitimate expectation is entirely misconceived and, in any event, without any substance. As the history of events set out above indicates the applicant was interviewed and, indeed, had several meetings with relevant officials, I am satisfied that this aspect of the applicant's claim must fail.

Next, the applicant maintained the case that the first named respondents, and in particular, Ms. McHugh, and to a lesser extent, Mr. Manning, were actuated in their dealings with the applicant by dishonesty and bad faith and, indeed, racism. For the purposes of this submission, the applicant relied upon the definition of dishonesty gleaned from the following passage from the judgment of Hutton LJ. in the case of *Twinsectra Ltd. v. Yardley and Ors.* [2002] UK H.L. 12, at p.174, par. 36, where the learned law Lord says the following:

"Therefore, I consider that the courts should continue to apply that test and that your Lordships should state that dishonesty requires knowledge by the defendant that what he was doing will be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

It is quite clear to me and, indeed, in my view, beyond any reasonable arguments that both respondents are entitled to seek, and indeed, demand, from the applicant for the purposes of determining whether he was entitled to either Supplementary Welfare Allowance or a Jobseeker's Allowance documents and information to establish that the conditions for obtaining these benefits were satisfied, in particular, the habitual residency condition and financial eligibility. Needless to say, neither respondent would have been entitled to make onerous demands of a type which kept an impecunious person out of benefit for an unconscionable period of time which, in the case of impecuniosity, would, indeed, be a very short time indeed.

I am satisfied, however, that the information and documents requested by both respondents for either application were relevant and, indeed, necessary to satisfy both respondents that the applicant was entitled to the benefits claimed.

In a situation where the applicant had just arrived in Ireland, and where his family continued to reside in the United Kingdom and where there was no intimation of a breakdown in family relations, and having regard to the fact that the bank statements and credit card statements furnished, disclosed a picture which, on any reasonable view, indicated that the applicant spent very little time in this jurisdiction and availed of an unusually large amount of air travel and, additionally, was in receipt of certain Social Welfare benefits in the United Kingdom and had a weekly payment into his account of Stg.£119.00, it is quite clear to me that both respondents were entitled to be concerned about his habitual residency, and were also entitled to be concerned about financial eligibility. I am also satisfied that the requests made to him for information and documentation were in that context quite reasonable and appropriate.

It is unfortunate that the applicant's reaction to these legitimate requests was argumentative to the point of obstruction. His assertion that Ms. McHugh and, to a lesser extent, Mr. Manning, were actuated by racism and malice and *mala fides* was baseless and utterly without foundation. The making of the allegation in the heat of the moment, and if there was an appropriate apology, might be excusable, but the persistence in the allegation in these proceedings in the absence of any evidence whatsoever to support it is simply outrageous.

The same can be said of the utterly baseless assertion in the second case that Teresa Keogh was also actuated by malice. As the facts and evidence in that case reveal, nothing could be further from the truth.

The use of the privilege which the applicant enjoys in these proceedings to make these utterly unwarranted and baseless attacks on the good names and reputations of these servants of the State is an abuse of process which must be roundly condemned. The applicant is an educated man and the holder of LLD and LLM degrees who should appreciate the reprehensible nature of his conduct.

I am quite satisfied, using the test for dishonesty as submitted by applicant, or in any other test of that concept, that the applicant's case in this regard is utterly devoid of merit and worthless.

The applicant next submitted that the demands of him in respect of the residency issue, his mother's pension and child benefit, were in the nature of allegations made against him by the first and second named respondents and as such, the onus of proof was on them which they failed to discharge. In my view, the applicant is completely wrong in this regard. These were matters which arose because of the information given to the first and second named respondents by the applicant which gave rise to reasonable queries and at all times the onus was on the applicant to respond to those queries and provide the necessary documents and information. This submission fails.

The applicant made the case that treatment of him by the first named respondent in Dundalk was inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. Implicit in his submission in this regard is that as a result of their conduct he was subjected to a form of destitution which could rightly be considered to be inhuman or degrading. In support of his submission in this regard, the applicant relied upon the decision of the House of Lords in the case of *R (Linbuela) v. Secretary of State for Home Department* [2005] 3 W.L.R. at 1014. In my view, the applicant's reliance upon this case is misplaced as manifestly it has to be distinguished because the facts involved and the legal problem encountered are wholly different to the applicant's case. The *Linbuela* case concerned three claimants who were asylum seekers and claimed to be destitute and in respect of whom there was evidence that they were destitute but who had been refused Social Welfare support in the United Kingdom on the ground that they had not claimed asylum as soon as reasonably practical after their arrival in the United Kingdom. The consequence of this refusal in respect of which the defendant Secretary of State had no discretion was that they could neither work to support themselves nor could they claim any social support as a result of which they ended up in dire destitution. The House of Lords held that Article 3 of the European Convention on Human Rights which prohibits torture and inhuman and degrading treatment was engaged by the combination of the statutory provisions which placed the applicants in that case in that position. Insofar as the applicant in this case is concerned, the situation is wholly different. In the first place, the statutory regime in respect of which he was an applicant, namely, the Jobseeker's Allowance and Social Welfare Allowance, not only provides for an appeal but, in fact, makes provision for revision of decision where further information is required. Unlike the situation encountered in the *Linbuela* case where there was a total prohibition on benefit being provided, under the Social Welfare Act of 2005, as was submitted by Mr. Dignam for the second named respondent, the door never closes.

A second point of crucial difference between the applicant's case and the *Linbuela* case is that there is no evidence in this case of destitution on the part of the applicant. On the contrary, his credit card and bank statements over the months of January, February and March of 2008, illustrate movements that are hard to reconcile with destitution. In fact, there was no evidence of destitution in this case.

I am quite satisfied that the facts of this case do not engage Article 3 of the European Convention on Human Rights and, indeed, the applicant's attempt to claim breach of that Article borders on the absurd.

The applicant next made the case that there was a breach of Article 13 of the European Convention on Human Rights on the basis that his right to an effective remedy was breached. Manifestly, this submission is without substance. The fact that the applicant is pursuing in these two sets of proceedings, the reliefs which he seeks of itself defeats his submission. Apart from this, he wholly failed to establish any breach of any other Article of the Convention and, in particular, Article 3.

Next, the applicant submitted that he was entitled to damages for breach of his constitutional and Convention rights. In this regard, he relied upon the judgment of Costello J. in the case of *Hosford v. Murphy*.

I am quite satisfied that there has been no breach of the applicant's constitutional or Convention rights and, hence, a right to damages does not arise.

Finally, so far as this first case is concerned, the applicant complains that he was not asked to provide documents and not given a fair opportunity to address the concerns of the respondents before decisions were made against him.

It is quite clear, in my view, from the affidavit evidence in this case that the applicant was given ample opportunity to address the legitimate concerns that were raised by both respondents, both as to habitual residency and financial eligibility. The evidence indicates that he persistently ignored or actually refused to respond to reasonable requests. In particular, in his letter of 28th March, 2008, to the first named respondent, he made it quite clear that he would not furnish any more information or documents and demanded that a decision be made on the basis of the information furnished.

I am quite satisfied that the applicant was given ample opportunity to meet the reasonable requests of both respondents but for reasons best known to himself, he adopted an argumentative and aggressive posture which had the inevitable result of leading to a refusal of both benefits. In other words, he was the author of his own misfortune.

For the foregoing reasons, I am quite satisfied that I must refuse the applicant the relief claimed in the first set of proceedings.

THE SECOND CASE

The first thing to be observed about the second case is the complete lack of candour of the applicant in his affidavit grounding his *ex parte* application for leave to apply for judicial review. In this affidavit, he completely omits any mention whatsoever of the fact that he acquiesced in the making by his wife an application for Supplementary Welfare Allowance and that the maximum benefit attainable was granted, subject to a short period when, in error, adult dependent benefit in respect of the applicant was withheld but was almost wholly restored before he applied to Peart J. for leave to pursue relief by way of judicial review. It is quite clear he completely misled Mr. Justice Peart.

Apart from the foregoing, the claims he makes in this second case are utterly devoid of merit. His attack upon the integrity of Ms. Keogh is totally without foundation in the light of the facts which reveal that Ms. Keogh went to great lengths to facilitate the applicant and his family.

The applicant makes the case that because of the communication to him by Ms. Keogh's secretary on 15th August, 2008, of the fact that it was thought he was entitled to benefit, that he thereby had a legitimate expectation to receive that benefit. In my view, this contention is wholly without substance. In the first place, at the relevant time, the maximum Supplementary Welfare Allowance was paid to the applicant's wife with the applicant as adult dependent. Clearly, the applicant was not entitled to the same benefit for himself. The applicant was well aware of all of these relevant circumstances at the time. The mere fact that an honest clerical mistake was made could never entitle the applicant to a benefit to which he clearly was not entitled.

This aspect of the second case fails.

Next, the applicant challenges the decision on appeal made by Mr. O'Sullivan communicated to the applicant on 15th October, 2008, on the grounds of irrationality on the basis that there was no material before Mr. O'Sullivan upon which he could base his decision. In this regard, he relied upon the cases of *Keegan v. The Stardust Tribunal* [1986] I.R. and *O'Keeffe v. An Bord Pleanála* [1994] I.R.

The basis of his submission is a rather eccentric one. Because, in the course of his affidavit and elsewhere, Mr. O'Sullivan refers to the AIB statement account which was examined by him after it was disclosed in the oral hearing as a "*credit card account*", the applicant submits that, because it was not a credit card account but a current account, that therefore there was not credit card account and therefore there was nothing before Mr. O'Sullivan upon which to base his decision that the applicant lacked credibility because of the conclusion by Mr. O'Sullivan that he could not have used this account for day-to-day living in Ireland during the months of January, February, March or April 2008.

In my view, this submission is nonsensical. The inaccurate description by M. O'Sullivan of the account as a credit card account is manifestly a clerical type error of no importance whatsoever. What mattered was what was revealed in the statement of account to which Mr. O'Sullivan clearly had regard.

In addition, the applicant attacks the decision of Mr. O'Sullivan on the basis that he failed to have regard to the fact that the applicant had been in receipt of loans from friends as revealed by two entries in his English bank account statements; one for £250 and one for £200. In this regard, he submitted that Mr. O'Sullivan clearly had not read his letter of 18th March, 2008.

It is quite clear from the evidence that that letter of 18th March, 2008, was amongst material which was before Mr. O'Sullivan for the purposes of the appeal and I am satisfied that it was part of the material considered by him. In this regard, also, the applicant claimed that Mr. O'Sullivan was negligent in not reading this letter. I am quite satisfied that the applicant is wrong in this regard.

I am also satisfied that there was no negligence on the part of Ms. Keogh or her secretary in the error made in informing the applicant on 15th August, 2008, that he was entitled to Social Supplementary Welfare allowance. It is clear this situation was brought about in part, at least, by the inevitable confusion arising from the very strange situation of the applicant persisting in his application for Supplementary Welfare Allowance when that allowance had been granted to his wife with the applicant as adult dependent.

Finally, as is abundantly apparent, having regard to the fact that from 7th August, 2008, the applicant and his family have been in receipt of Supplementary Welfare Allowance, these proceedings have at all times been moot.

For the reasons set out above, I must refuse the relief claimed in these second set of proceedings as well.