

THE HIGH COURT

2005 No. 1219P

IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT, 2003 SECTION 3(1)

BETWEEN

PATRICK KELLY

PLAINTIFF

AND

THE DIRECTOR OF THE EQUALITY TRIBUNAL

DEFENDANT

Judgment of Mr. Justice Gilligan delivered on the 11th day of April, 2008

1. The plaintiff in these proceedings contends that the Equality Tribunal is in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, pursuant to s. 3 of the European Convention on Human Rights Act 2003 on the grounds of unreasonable delay in determining his discrimination claim under the Equal Status Act 2000, and that consequently his claim was not determined within a reasonable time, as required by Article 6.1 of the Convention. The plaintiff claims an award of damages to the amount of €100,000.

2. The background circumstances are that the plaintiff is an Irish citizen and a qualified teacher. He represents himself in these proceedings.

3. In 2002, the plaintiff applied for a place in University College Dublin (UCD) on the Masters and Social Science (Social Work) Degree course which is a two year post graduate course that in addition to the Masters degree leads to a professional qualification in social work in the Republic of Ireland. The plaintiff attended for interview at University College Dublin in February, 2002 and was aware that there were fifty places available on the course and that there were approximately one hundred applicants, almost all of whom were female.

4. By letter dated the 15th day of March, 2002, from the Department of Social Policy and Social Work at (UCD), the plaintiff was advised of the outcome to his interview in the following terms:-

"Dear Patrick

We are sorry to tell you that we are unable to offer you a place this year on the Master of Social Science (Social Work)/Higher Diploma in Applied Social Studies, for the session 2002 – 2004.

As you already know there was very keen competition for the limited number of places. However, we are pleased to inform you that your name has been placed on a waiting list and that you will be considered for any vacancy that may occur. Please let us have a telephone number where you can be contacted over the next six months.

We thank you for having come for interview.

Yours sincerely"

5. The plaintiff then became aware that Trinity College Dublin (TCD) were going to operate an equivalent course and the plaintiff applied for entry to this course towards the end of March, 2002, and was granted an interview, and in his own words "breezed through it", and was offered a place on this course in April, 2002, which he accepted. The plaintiff says there is no distinction between the two courses and that therefore, they are identical. The plaintiff found it interesting that UCD had fifty places on offer on their course, whereas TCD had only seventeen, and yet he was admitted to the Trinity College course. He says the assessment was graded and he received an A plus in each section of the Trinity College assessment for their course. He was, he says, one of the top people selected for their course and rejected from being one of fifty from the UCD course. He says he felt quite aggrieved about that and it seemed to confirm that something was not quite right at UCD.

6. Having been admitted to the TCD course, the plaintiff then made a complaint to the Equality Tribunal on April 29th, 2002, that he had been discriminated against by UCD.

7. The plaintiff refers to s. 25(1) of the Equal Status Act 2000 to the effect that the Director of the Equality Tribunal shall investigate complaints referred to him or her under s. 21 of the Equal Status Act 2000, and that at the conclusion of an investigation pursuant to s. 25(1) and s. 25(4) of the Equal Status Act 2000, the Director shall make a decision on the complaint. Further the plaintiff refers to s. 75(2) and s. 75(3) of the Employment Equality Act 1998 to the effect that the Director may delegate any function conferred on the Director to an Equality Officer.

8. Subsequently, by way of a letter as dated the 19th day of August, 2002, from UCD, the plaintiff was advised to the effect that he was being offered a place on the Masters of Social Science (Social Work) – Higher Diploma in Applied Social Studies for the session which he had applied for, namely September 2002 – 2004. He was advised that the offer was provisional as his application had to be processed by the Faculty of Arts, and he was asked to confirm as soon as was possible but not later than the 28th of August, that he was accepting the place. The plaintiff did not accept the place as offered to him by UCD, embarked on the course in September, 2002 at TCD and continued with his complaint against UCD with the Equality Tribunal, against a background where he himself says there is no distinction between the courses, and that they are identical.

9. The handling of the plaintiff's complaint proceeded along reasonable lines with correspondence passing back and forth between the plaintiff, the Equality Tribunal and UCD.

10. In December, 2002 the plaintiff took a view that he had been victimised by TCD as a result of making the complaint concerning UCD and he, accordingly, made the first of three complaints against Trinity College on the basis of victimisation. The plaintiff, in general terms, took a view that he was victimised by the authorities in TCD, because of the fact of having made a complaint against UCD. The plaintiff takes the view that his difficulties at TCD were due to the delay by the defendants in dealing with his complaint, and due to the actions of UCD. The plaintiff brought three complaints of victimisation to the Equality Tribunal against TCD, all of which were heard together in June, 2005, and none of the complaints were upheld. From this decision of the Equality Tribunal the plaintiff appealed to the Circuit Court and following a hearing in November, 2004 the appeal was dismissed.

11. The plaintiff left TCD in June 2003, and started a course in England in September, 2003 which was a one year course leading to qualification as a secondary school teacher in England. The plaintiff successfully completed this course in the summer of 2004. Between the summer of 2003 and the 20th of March, 2005, the plaintiff did not attempt to advance in any way his complaint against UCD before the defendant.
12. Subsequent to the 20th of March, 2005, it appears that there was a barrage of correspondence with the plaintiff raising the issue of delay, the defendants apologising for the delay and there was a legal issue as to the correct format for the proceedings and it was necessary to take senior counsels opinion.
13. There was a further difficulty in that in the Spring of 2005, the plaintiff complained about the solicitor, advising the Equality Tribunal, to the Law Society on a number of grounds as set out in letters from the plaintiff to the Equality Tribunals solicitor as dated respectively the 18th day of March, 2005, and the 20th day of March, 2005. None of these complaints in respect of the solicitor were upheld at the early *prima facie* stage of the disciplinary process within the Law Society, and from this decision the plaintiff did not appeal.
14. Further, an Officer appointed within the Equality Tribunal, Mr. Hurley, was objected to by the applicant because of his involvement with the solicitor to the Equality Tribunal who had been complained to the Law Society by the plaintiff. The plaintiff in October, 2005 requested Mr. Hurley to relinquish the functions delegated to him in respect of the plaintiff's case, with the result that he took the view that he had no alternative but to stand aside. The Director of the Equality Tribunal then took the decision that an external Equality Officer should be appointed which resulted in the appointment of Mr. Hugh O'Neill who dealt with the case and handed down a written decision on the 2nd day of November, 2006.
15. I have read and considered the content of the affidavit as sworn by the plaintiff on the 24th day of September, 2007, upon which the plaintiff relied in giving his evidence.
16. The plaintiff refers to the consequences of the delay as being quite severe. He alleges that UCD had passed on information about his complaint to TCD and that he had experienced a lot of difficulty at TCD as a result. He takes the view that if the case had been dealt with at an earlier date this would never have arisen because the matter would have been finalised. The plaintiff complains of the uncertainty of the rumours, innuendo and the delay, with no clarity forthcoming from the Tribunal about when there would be a hearing or a decision handed down. These, the plaintiff says, were all the consequence of the delay. The plaintiff takes the view that he had to leave TCD because he felt under attack there. He made various complaints of victimisation against TCD pursuant to the Equal Status Act 2000, and these were not upheld. The plaintiff takes the view that he was victimised by the authorities at TCD and that this victimisation is directly related to the delay in the Equality Tribunal dealing with his complaint, as against UCD. The plaintiff accepts that he is not seeking any relief, or damages, from Trinity College in these proceedings. The plaintiff takes the view that the offer from UCD that was contained in the letter of the 19th August, 2002, of a place on the course, as applied for, was a provisional offer and was solely made to undermine the complaint he had made against UCD. He takes the view that in order to accept the offer he would have had to have said that he was reconciled to UCD and was taking the offer which would basically undercut his whole complaint. He takes the view that if he had accepted the offer that would have been the end of the complaint. The plaintiff says that he did not accept the place on the course because at that stage he had been offered and accepted a place on the TCD course.
17. The plaintiff complains about leaks, about alleged lies that were being spread about him and that he was bound by the provisions of the Equal Status Act 2000, and could not discuss the substance of his complaint. He complains of UCD leaking information about his complaint to other colleagues and that other social work students had been told details of his complaint. He alleges he was driven out of the TCD course, that he became a *persona non grata* and that a cloud of suspicion, resentment and outright hostility followed him everywhere he went in TCD. He complains of a lack of legal representation and that the Trinity College authorities and the UCD authorities were able to afford the best legal representation and he believes that if he had had legal representation he would have won his case against Trinity College.
18. Mr. Kelly complains that he had to leave the country to escape the rumours that were spread from 2000 to 2006 about him and that his good name has been affected. Further, that he had to give up his career in England to come home to pursue this case.
19. Mr. James Hurley, a civil servant and a member of the staff of the Equality Tribunal, gave evidence that since September, 2004 he was in charge of the Equal Status Unit of the Tribunal. He referred to the fact of the legal advisor raising an issue as to whether the plaintiff's claim was properly brought under the Equal Status Act or whether the particular course in question would be regarded as vocational training which would have the effect that the claim should be brought under the Employment Equality Act. There were also a number of other cases which involved the same point and it was decided to get Senior Counsel's opinion which became available in July, 2005. At, or about, that time the person who had been dealing with the plaintiff's case relinquished responsibility and he took over the handling of the case. Subsequently, the plaintiff raised the issue of a possible bias arising from the fact that the internal legal advisor had advised Mr. Hurley in respect of the case and in November, 2005 he relinquished responsibility for the case. It was then that a decision was taken to retain an outside Equality officer to investigate the complaint.
20. Mr. Hurley referred to the letter of 30th, March, 2005, in reply to the plaintiff's letter wherein he stated:-
- "I am sorry that there has been a delay in proceeding with the investigation of your complaint".
- Mr. Hurley expressed the view that he was sorry for the delay which was brought about through pressure of work that existed in the Tribunal at that point in time. The issue as regards the two Statutory Instruments arose in March, 2003 and the papers went to Counsel in May, 2005 and were returned with an opinion in July, 2005.
21. Mr. Hurley referred to a system of informal prioritisation in that consideration would be given to prioritising a claim if a request was received to do so and a valid reason advanced. Mr. Hurley described the procedure on the basis that if a person requested that their case be dealt with expeditiously because they have some particular reason, then such a request would be considered. It was not, as such, a formal system.
22. Mr. Hurley referred to the fact that there were previous cases which took about five years and he accepted that the plaintiff's case was approaching the upper limit of the longest ever delay that the Equality Tribunal had encountered.
23. Mr. Eugene O'Neill, the Equality Officer who dealt with the plaintiff's complaint in a very careful and reasoned decision, referred to the core of the plaintiff's case being that he was less favourably treated at interview by UCD than a woman in a similar position would have been, and this was because the University was inherently biased against men in its school of Social Sciences. As evidence for this proposition the plaintiff put forward an alleged failure on the part of UCD in not doing sufficient to ensure gender balance in those

applying for their Undergraduate Social Science courses. Beyond giving uncontested evidence which Mr. O'Neill accepted that the interviewers were rude and aggressive towards him, he advanced no other evidence to show that the treatment of him at the time was based on his gender, and that a female candidate for interview would have been treated in a different manner.

24. Mr. O'Neill referred to the fact of the plaintiff asking the Tribunal to find that the superior marks he obtained at his TCD interview showed that the marks he received at UCD interview were somehow imbued by a spirit of discrimination. In Mr. O'Neill's view they merely showed that he did an extremely good interview when applying for the course at TCD. He felt confirmed in this view by the fact that Trinity publicly advertised the course and after the interview the gender balance on that course was exactly the same as that in UCD.

25. Mr. O'Neill describes the plaintiff's submissions as being wide ranging and thought provoking, and he presented his case at hearing in a most able manner.

26. Mr. O'Neill, however, took the view that the plaintiff had not established facts from which discrimination could be inferred. Mr. O'Neill clarified his situation, however, by indicating that even if he had accepted that the plaintiff had established sufficient facts from which discrimination could have been inferred, having heard the evidence in its totality, he would have come to the view that UCD would have discharged the onus of proof placed upon it.

27. Mr. O'Neill accepted the evidence given by the University that it did all in its power to ensure that its Social Science course attracted a better gender balance. The fact that it did not have such a balance did not in the view of Mr. O'Neill constitute evidence of discrimination on the part of UCD.

28. In relation to the plaintiff's own case, the uncontroverted evidence before Mr. O'Neill was that eighty seven women and six men applied for the Masters Degree course. Of the fifty initially offered a place, three were male, and two of those were placed first and second. The fifteen people placed on the waiting list included the remaining three males. All of these fifteen were offered places on the course prior to the end of August, and every male applicant for the degree course was, prior to its commencement, offered a place on the course. Mr. Kelly, the plaintiff herein, had in the meantime been offered a similar course in TCD and, therefore, was in the happy position of being able to reject the offer of UCD.

29. Mr. O'Neill concluded that Mr. Kelly, the plaintiff herein, had failed to establish a *prima facie* case of discrimination on the gender ground, and, therefore, his claim failed.

30. The plaintiff is in the process of taking legal advice in advancing an appeal from this decision.

31. Mr. Kelly submits that the appropriate criteria to recover damages are those as set out in *Pride Valley Food Ltd v. Hall and Partners* in the High Court of Justice, Queens Bench Division, wherein Toulmin J. stated at para. 190 of his judgment:-

"In order to recover damages the claimant must show:

(a) That the kind of loss for which he claims damages (but not necessarily its extent) was reasonably foreseeable.

(b) That the loss which he suffered was in fact caused by the defendants breach of duty – it is enough if the breach was an effective cause of the loss – see *Banque Bruxelles SA v. Eagle Star* [1999] 1 QB at p. 375 per Sir Thomas Bingham M.R.

(c) That the loss was not too remote."

32. The plaintiff makes the case that if his complaint to the Director of the Equality Tribunal had been dealt with prior to him starting his chosen course at TCD, the problems as outlined by him would not have arisen. He takes the view that there was a six month period between March and September, and in his view the complaint could quite easily have been dealt with in this time. The plaintiff makes the submission that if the complaint had been dealt with while he was at Trinity College, he could then have gone to the authorities there and said to them that this particular complaint which they knew about, has been heard and upheld and that maybe in those circumstances they, to quote the plaintiff would have "gotten off my back".

33. The plaintiff makes the case that a final decision has not been made as the complaint against UCD has been appealed to the Circuit Court. The plaintiff says this is an ongoing issue. He complains that he was not able to defend himself against what was being leaked about him, and the lies that were being spread about him and that he was bound by the confidentiality provisions of the Equal Status Act and could not talk about the substance of his complaint. He makes the case that he was driven out of Trinity College and became a *persona non grata* and that a cloud of suspicion, resentment and outright hostility followed him everywhere he went in TCD, and that there was no one he could turn to.

34. The plaintiff submits that in February, 2005 he left a teaching job in England to come back to Dublin to fight this particular case, and that he has suffered three years' loss of earnings and incurred travelling costs.

35. The plaintiff complains that he does not have the benefit of legal advice.

36. Further, the plaintiff relies on the United States Supreme Court decision in *United States v. Alvarez Sanchez*, (1994) 511 U.S. 350, wherein the Court stated, per Justice Thomas:-

"To delay is 'to postpone until a later time' or to 'put off an action', a delay is a 'postponement'... The term presumes an obligation to act."

37. The plaintiff submits that the Director of the Equality Tribunal had an obligation to act. She had an obligation under s. 25(1) of the Equal Status Act 2000, to investigate his complaint, and she had an obligation under s. 25(4) of the Equal Status Act 2000, to make a decision on the case. It is submitted by the plaintiff that the Director delayed until November 2nd, 2006, in making a decision on a case that was referred to her on April 29th, 2002. Mr. Kelly submits that the delay was not reasonable and he asks that the court find the Director in breach of her duty under s. 3 of the European Convention on Human Rights Act 2003 and he seeks an award of damages in an amount of €100,000.00.

38. Mr. Durcan on the defendant's behalf accepts that as and from the 31st day of December, 2003, every organ of the State was obliged to perform its functions in a matter compatible with the State's obligations under the Convention pursuant to s. 3 of the

39. Section 3 states:-

"(1) Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the States obligations under the Convention provisions."

40. Article 6 of the European Convention on Human Rights states *inter alia*:-

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

41. Mr. Durcan relies on the judgment of the Court of Human Rights in *McMullen v. Ireland* (Application No. 42297/98) as handed down on the 29th day of October, 2004, wherein the court stated at para. 33 of its judgment:-

"The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation."

42. Taking Article 6 of the European Convention and the relevant passage from the judgment in *McMullen*, Mr. Durcan submits that while the Convention obligation is to have a hearing within a reasonable time, that time is to be determined having regard to the four matters as set out in *McMullen* being:-

- "1. Circumstances of the case having regard to the criteria laid down in the courts case law.
2. The complexity of the case.
3. The conduct of the applicant and of the relevant authorities.
4. The importance of what is at stake for the applicant in the litigation."

Further Mr. Durcan submits that the relevant period to be considered in this case is from the 31st day of December, 2003, being the date upon which s. 3 came into effect until the 2nd day of November, 2006, being the date upon which the Equality Tribunal issued its decision. The relevant principle in respect of the period prior to 2003 is distinctly outlined by Kearns J., in his judgment in *Dublin City Council v. Fennell* [2005] 1 I.R. 604 at p. 615:-

"The Government was obliged to accept the ruling of the European Court in judgments against it, but the Convention otherwise placed no direct obligations on public authorities."

43. It is further submitted that the Equality Tribunal is a public authority and was under no obligation under the Act prior to it coming into force. It is submitted that the only conduct for which damages can be awarded against the Equality Tribunal is with regard to conduct, or actions, which took place after the statutory duty was imposed, and, by definition, the defendant could only fail to comply with the statutory duty from the moment when the statutory duty arose.

44. The defendant relies on the reasonableness aspect and accepts that the court is entitled to look at what happened prior to the 1st day of January, 2004, but that is entirely different from indicating that the court is entitled to give damages in respect of matters that occurred prior to the Act coming into force.

45. It is submitted that it is patently clear that the plaintiff, by the time he had even lodged his complaint, had accepted a place in TCD, having acknowledged that the two courses were in effect identical. It is also clear that he was offered a place in UCD prior to the course commencing, and also the case that at some time in the summer of 2002, the plaintiff was no longer interested in taking up a place in UCD on the course, as offered to him. Mr. Durcan submits that, in effect, the plaintiff, at an early stage, was no longer looking to get into UCD and, in effect, was looking for compensation for what UCD allegedly had done to him. The facts however, Mr. Durcan suggests, boil down to the plaintiff not being offered a place in March, but being offered a place in August in circumstances where, as it happens, he had already taken up a place in an equivalent course in TCD, Dublin, and that was the case which the Equality Tribunal was being asked to deal with.

46. Pursuant to the Equal Status Act, the maximum compensation which the plaintiff would be entitled to if successful in his complaint was the maximum amount that could be awarded by the District Court in civil cases in contract, being €6,395.00.

47. It is submitted that the Equality Tribunal was entitled to come to a conclusion that the case on the basis of its facts had in reality become a compensation case. There was provision for prioritisation, but that this was not a case, it is submitted, that merited such prioritisation because it was, in effect, a compensation claim. There was no correspondence from the applicant between the summer of 2003 and the 20th of March, 2005, which at least indicates that the plaintiff, if he did not agree to that course of action, acquiesced to it. In June, 2004 the three alleged victimisation complaints against TCD were heard and a decision was handed down in November, 2004. There was a barrage of correspondence in or around March, 2005 and then the legal issue was attended to in respect of which it was necessary to obtain counsels' opinion which was received in July, 2005. Mr. Hurley, the Equality Officer appointed had to step aside as a result of a complaint from Mr. Kelly following a suggestion from him that it was inappropriate for Mr. Hurley to decide the complaint, given that he had been advised by the internal solicitor who Mr. Kelly had complained to the Law Society.

48. Mr. Durcan submits that it was reasonable for Mr. Hurley to step aside in the circumstances, and for the Director to bring in an independent Equality Officer to deal with the plaintiff's complaint.

49. It is submitted that when the plaintiff complained of delay in March, 2005 a letter dated the 30th day of March, 2005 was forwarded to him from Mr. Hurley apologising for the delay in proceeding with the investigation of his complaint, advising him of the legal problem that had arisen, indicating that counsels opinion was being sought, that a copy of the opinion would be forwarded to him and he would have the opportunity to make submissions on it.

50. It is submitted that the court has to look at the overall context of the issue that was at stake and the level of its importance.

51. Mr. Durcan makes a reference to *R (Greenfield) v. Home Secretary* [2005] U.K.H.L. 14, where the House of Lords dealt with the issue of damages pursuant to Article 6 of the European Convention. Mr. Durcan accepts that the statutory regime in England is different to the statutory regime applicable in Ireland, but Lord Bingham, in his judgment, refers to the fact that Article 6 breaches are slightly different from other breaches because they are in effect procedural breaches, and that, almost by definition with regard to other breaches, damages flow but in respect of a procedural breach, being a breach of procedure, it is not necessary that any damages flow from it. Mr. Durcan submits that, as a matter of logic, this view must be correct.

52. Reference is also made to the issue in principle as regards whether damages, if they are to be awarded, should be on the same basis as the Court of Human Rights has awarded damages in respect of Article 6 claims, bearing in mind Irish law. Mr. Durcan concludes by indicating that it may not be necessary to get into a detailed discussion as regards the appropriate level of damages because whether you approach the issue in this case from the Strasbourg viewpoint, or from the Irish viewpoint, on damages, any damages, in the particular circumstances that pertain here, are either going to be nothing or something very small indeed.

53. Mr. Kelly in reply submits that s. 3 of the European Convention on Human Rights Act 2003 created a new tort in Irish Law and that damages flow from the breach of an Irish tort.

54. Mr. Kelly emphasises that the case, in reality, is about his good name. Mr. Kelly submits that the delay in the handling of the complaint affected his good name and that if the complaint had been dealt with speedily the value to him would have been a finding in his favour.

55. Mr. Kelly emphasises that the House of Lords decision in *Greenfield* is not a reliable precedent because of the preconditions that are laid down to an award of damages by a Court in the United Kingdom pursuant to s. 8 of the Human Rights Act 1998 and that none of these preconditions are in the Irish Act. Mr. Kelly submits that the English Act did not create a tort whereas the legislator has created an Irish tort and damages should be approached on that basis by the Court.

Conclusion.

56. There can be no difficulty in stating that the delay of four years and six months in dealing with the plaintiff's complaint to the Equality Tribunal is undesirable. The issue, however, which this Court has to determine is as to whether or not the delay involved is unreasonable. Fortunately, explicit guidelines are set forth in the judgment as handed down by the European Court of Human Rights in *Mullen* as regards the criterion to be used in assessing whether in all of the circumstances the delay is unreasonable. The Court has emphasised that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Courts case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and the importance of what is at stake for the applicant in the litigation.

57. The factual circumstances of this case are, in my view, of particular significance. Despite the applicant's vociferous and multiple complaints as regards the handling of the interview process in respect of his application for a place on the Master of Social Science (social work) Higher Diploma in Applied Social Studies 2002/2004 course in UCD, while not being admitted initially to a place, he was placed on the waiting list. Of the one hundred applicants for the fifty places only a very few were male and prior to the completion of the allocation of places all the male applicants including the plaintiff were offered a place on the course, the plaintiff being offered his place by way of a letter of the 19th August, 2002, with the course commencing in September, 2002. The plaintiff by the 19th August, 2002, had already applied for, and had been granted, a place on an identical course being run by TCD and had also initiated his complaint of gender discrimination to the Equality Tribunal. He may, initially, when he made the complaint have been contemplating any number of reliefs, one of which may have been that he would be offered a place. Clearly, however, events had overtaken any such reliefs which he may have contemplated because he had already, in August, 2005, been offered a place and thus the only relief that could have been achieved was that of damages in the event of proven gender discrimination. His complaint was dealt with by Mr. Hugh O'Neill, Equality Officer, and his decision given on the 2nd November, 2006, to the effect that the plaintiff failed to establish a *prima facie* case of discrimination on the gender ground and his claim failed. From this decision the plaintiff has appealed to the Circuit Court and is taking further legal advice.

58. Against this background the importance of what was at stake for the plaintiff would only rank at a very low level of any criteria and it is the view of this Court that the only issue at stake in the initial complaint could have been a finding of gender discrimination and the awarding of compensation and that, in itself, is probably very unclear because it has to be borne in mind that the letter of 15th March, 2002, in effect, advised the plaintiff that he wasn't getting an initial place but he was suitable for the waiting list and his name had been placed on that list and by the 19th August, 2002, he had been offered the place. This Court takes the view that on any interpretation of the factual events nothing of any significant importance could have been or be deemed to have been, at stake for the plaintiff.

59. There is also the fact that it is clear that damages in this case can only be awarded from the first day of January, 2004 but clearly the Court can have regard to the events which occurred prior to this date. From the summer of 2003 through the entire of 2004, and up to and including the 20th March, 2005, the plaintiff never raised any issue with the defendant as regards the hearing and disposal of his complaint against UCD.

60. During 2004 there was a hearing of the three complaints of victimisation against TCD, in which the plaintiff failed and the appeal to the Circuit Court in which he also failed in November, 2004. It was only on the 20th March, 2005, that there was, in fact, a barrage of correspondence and complaints about delay. From the 20th March, 2005, onwards there was the difficulty with the legal point that had arisen and Counsel's opinion had to be obtained and was duly available in July, 2005 and then had to be referred to all interested parties for their comments. There was the difficulty raised by the plaintiff with the internal solicitor who had been advising the Equality Tribunal and Mr. Hurley, the appointed officer and the unfounded complaints that were made by the applicant concerning the solicitor to the Law Society, the difficulty that arose with Mr. Hurley because of a complaint by the plaintiff as regards his suitability to deal with the matter because of his association with the in-house solicitor, the fact of his withdrawal, at the plaintiff's request the fact of the decision by the Director of the Equality Tribunal to bring in Mr. O'Neill, an external Equality officer to deal with the matter, the hearing itself and the decision as then handed down on the 2nd November, 2006.

61. I take the view in all the circumstances of this particular case, and having regard to the level of the importance of what was at stake for the applicant, while as previously stated the delay involved was undesirable, I do not consider that the delay was unreasonable.

62. Given the conclusion I have reached on the delay aspect the issue as to any damages to which the plaintiff may have been entitled falls away. I shall do no more than express the conclusion I would have reached on this aspect had it arisen for decision. Having considered the various complaints as made by the plaintiff regarding the consequences of his complaint against UCD not having been dealt with for a period of four and half years from the date on which it was made to the Equality Tribunal, I am quite

satisfied that s. 3 of the 2003 Act, as previously referred to herein, only brought the plaintiffs entitlement to damages into being as and from the 1st day of January, 2004. I take the view that I am entitled to have regard to the events that preceded this time but not to award damages in respect thereof. As of the 1st day January, 2004, the plaintiff was pursuing a post graduate course in England which he successfully concluded. The plaintiff's complaints mostly relate to a period in time prior to the 1st day of January, 2004, other than an ongoing perceived insult to his character and good name which I reject as having no connection to any delay, and a claim for loss of earnings and expenses by reason of having come home from England to pursue this complaint, which claim I also reject as having no connection to any delay. I take the view that on the basis of the evidence adduced there is no causal connection established between the plaintiff's alleged complaints arising from the delay and the delay itself in dealing with the complaint. In my view, the plaintiff has made out no claim for damages arising from the delay involving the Equality Tribunal dealing with his complaint.

63. Accordingly, I dismiss the plaintiff's claim.