

THE HIGH COURT

[Record No. 2013/2143]

Between/

MARTIN O'SHEA

Complainant

-and-

WEST WOOD CLUB LIMITED

Defendant

AND

NOEL MULHAIR

Complainant

-and-

WEST WOOD CLUB LIMITED

Defendant

JUDGMENT of Ms Justice Iseult O'Malley delivered the 16th day of January 2015.

Introduction

1. This is a consultative case stated in which the central issue raised is the jurisdiction of the District Court to consider, in the context of proceedings for the collection of commercial rates, an argument based on the alleged illegality of the rates arising from alleged breaches of European Union rules on State aid. The defendant company, which operates swimming pools and other leisure facilities in Dublin, says that Dublin City Council ("the Council", or "DCC") is engaged in the supply of services similar to and in competition with its own. It claims that State money received by the Council from, inter alia, commercial rates distorts or threatens to distort competition in that market. It further claims that the Council enjoys tax advantages in relation to its operations in the leisure market, which also constitute State aid. It also says that, in breach of EU requirements, the State aid in question has not been notified to the European Commission.

2. The defendant therefore argued, in the District Court hearing of the rates collection applications, that the Council was in receipt of unlawful State aid and that the District Court was obliged by EU law to vindicate its rights by granting relief from the rates liability and/or by awarding damages equivalent to the amount of rates sought to be collected.

3. The two individuals named in the title of the proceedings are rates collectors who act on behalf of the Council. That body disputed the jurisdiction of the District Court, as a court of limited and local jurisdiction, to grant the relief sought by the defendant.

The Consultative Case Stated

4. The case as stated is here set out in full:

"Consultative Case Stated

Questions of law

1. Whether the District Court has jurisdiction to consider the defendant's EU State Aid complaint and/or challenge to the legality of the rates charged by Dublin City Council, pursuant to Sections 61 and 71 Poor Relief (Ireland) Act, 1838, in defence of these proceedings?

Proceedings

1. The proceedings (1) before the District Court are in respect of the non-payment of rates to Dublin City Council ["DCC"] by the Defendant. The Complainants in each of the two cases are lawfully appointed Rates Collectors of DCC. (2)

2. The particulars of each case are as follows:

(1) Martin O'Shea –and- West Wood Club Limited

Premises: 22 Clontarf Estuary, Dublin 3 - car park

5 Fairview Park, Dublin 3 -sports centre

Amount now due: € 273,213.35

(2) Noel Mulhair –and- West Wood Club Limited

Premises: 1a/2 St Johns Road, Dublin 4 -leisure centre

Amount now due: €50,971.27

2. Case Progression

1. In respect of both cases a Summons was issued returning the matter for hearing before the District Court on 26 October 2012.
2. The cases were adjourned on a number of occasions.
3. On 3 May 2013 the Defendant delivered Points of Defence to the Complainants.
4. On 29 May the Complainants delivered a Reply to the Points of Defence to the Defendant.
5. On 11 June 2013 the Defendant delivered Amended Points of Defence to the Complainants.
6. On 13 June 2013 both matters came on for hearing before Judge O'Neill, at District Court No.8, who agreed that both cases could be heard as one.

Evidence was heard from the two rate collectors:

• **Martin O'Shea** gave evidence that he was a Rate Collector and had his warrant of appointment with him in Court, if required. He gave detail of the Six Day Notice served and that the amount of €273,213.35, following a credit of €36,714.00, remained due and owing to Dublin City Council. He sought a decree that this amount was due and owing and also sought the costs of the application. He was cross-examined.

• **Noel Mulhair** gave evidence that he was a Rate Collector and had his warrant of appointment with him in Court, if required. He gave detail of the Six Day Notice served and that the amount of €50,971.27 remained due and owing to DCC. He sought a decree that this amount was due and owing and also sought the costs of the application. He was cross-examined.

Senior Counsel for the Defendant acknowledged that the formal proofs had been complied with.

The Defendants counsel then commenced by making brief opening submissions and by calling the following witnesses who gave evidence.

Paul Begley, Chartered Accountant with the Defendant, who gave evidence of obtaining information using Freedom of Information on swimming pools operated by DCC.

Alan Leech, Area General Manager with the Defendant, gave evidence of his experience in the leisure centre business.

Patrick Massey, Director of Comecon Limited, gave evidence of a Report that he had been requested to prepare by the Defendant.

Senior Counsel then made submissions to the Court – submissions attached. Judge O'Neill then adjourned the matter until 19 July 2013 to allow the Complainant file written submissions.

7. On 12 July 2013 the Complainants delivered their written submissions to the District Court and to the Defendant.
8. On 19 July 2013 the matter was briefly mentioned before the District Court by Senior Counsel on behalf of the Complainants and the matter was adjourned until 25 July 2013.
9. On 25 July 2013 both Senior Counsel for the Complainants, and Senior Counsel for the Defendant, made oral submissions before Judge O'Neill, District Court regarding the possibility of stating a case on the jurisdiction of the District Court in this matter. Judge O'Neill undertook to give the matter full consideration and adjourned the matter until 26 September 2013.
10. On 26 September 2013 Judge O'Neill advised the parties that he intended to state a case on a point of law and adjourned the matter until 24 October 2013."

(1) At the hearing on 13 June 2013 Judge John O'Neill on the application of Junior Counsel for the Complainant permitted the hearing of the two cases together.

(2) Appointed pursuant to the Local Government (Financial Procedures and Audit) Regulations 2002, Article 38. Each Rate Collector had their Warrants of Appointment in Court on 13 June 2013 available for inspection.

5. This is the case stated signed by Judge O'Neill, on the 9th December, 2013, and lodged in the Central Office by the Chief Clerk of the District Court. It appears, therefore, that it was the learned judge's own decision to state a case, rather than acceding to a request by either party (in which case that party would have been responsible for transmission to the High Court).

6. The court has also been furnished with a slightly different version, which was apparently agreed between the parties and handed in to the District Court on the 21st November, 2013, but that has not been signed by the learned District Judge.

The pleadings in the District Court

7. In its points of defence, as amended, the defendant pleaded that Dublin City Council was, by reason of its alleged involvement in the supply of services and promotion of premises similar to and in competition with those of the defendant and by reason of its allegedly different treatment of the defendant's premises to those under its control, in breach of the Competition Act, 2002 and of various Articles of the Treaty on the Functioning of the European Union. It was also claimed that, for the same reasons, its pursuit of

the defendant was tainted by bias.

8. Further, it was pleaded that the Council received public monies (including commercial rates) which constituted unlawful State aid contrary to Articles 107 – 109 of the TFEU, and that it enjoyed relief from tax on its activities which, separately, constituted State aid. It was claimed that no notification of State aid had been made to the European Commission, contrary to Article 108.

9. The defendant pleaded that, as a result of the foregoing, the District Court was obliged to provide whatever remedy was appropriate in the circumstances. In this case it was asserted that the appropriate remedy was relief from liability for rates and/or an award of damages at least equal to the amount claimed in rates.

10. The complainants pleaded that they were lawfully entitled to the sums claimed under the statute. It was asserted that, even if the Council was involved in the supply of services and promotion of premises as claimed (which was formally denied) that did not entitle the defendant to any relief or exemption. It was denied that the Council was in a dominant position and it was further asserted that it paid rates on properties occupied by it.

11. Without prejudice to the foregoing, it was pleaded that competition law was of no relevance to the proceedings.

12. There was a specific plea as follows:

"It is denied that monies under the control of Dublin City Council which are and/or have been inter alia collected from the Defendant in respect of Rates are disbursed by Dublin City Council in furtherance and support of its own leisure premises and/or facilities and/or services which are in direct competition with the premises and services of the Defendant herein, which is denied, and formal proof of same is required."

13. It was denied that the Council was in breach of the rules on State aid. Further, it was pleaded:

"Notwithstanding the above, it is asserted that the District Court is not the correction [sic] venue to make such allegations and that this Honourable Court has not jurisdiction to make any determination upon same."

14. Bias on the part of the Council was denied.

15. In the written submissions referred to in paragraph 6 of the case stated (which, it will be recalled, were handed into the court on the same day the evidence was heard), the defendant concentrated entirely on the issue of State aid. The submissions outline the principles of EU law applicable to the concept and certain of the exceptions thereto by reference to decisions of the European Court of Justice, the Court of First Instance and one of the leading textbooks.

16. In the circumstances the submissions did not relate directly to the evidence in the case, although it was stated that there was no evidence that the "public service obligations" exemption applied to the activities of the Council, and that that body was "clearly" an undertaking in competition with the defendant. There is a reference to Mr. Pat Massey's report, and also to the Council's financial accounts.

17. The submissions lodged on behalf of the complainants were described as addressing the issues of the jurisdiction of the District Court, who a new State aid complaint can be levied against and the failure of the defendant to pay rates due and owing to the Council.

18. The statutory background was set out, including the right of appeal against the rate provided for in s. 106 of the Poor Relief (Ireland) Act, 1838 and the procedures for the recovery of rates.

19. It was noted that during the hearing the defendant, although it had initially raised a number of different issues, had limited its claim to the question of State aid. It was submitted that the procedure applicable to the recovery of rates in the District Court did not permit a counter-claim or set-off.

20. On the question of jurisdiction, the complainants submitted as follows:

"In this regard the DCC submits that the District Court, being a Court of limited and local jurisdiction, only has the jurisdiction conferred on it by law and there is nothing in Section 33 of the Courts (Supplemental Provisions) Act 1961 to support any claim for an injunction to restrain the imposition of rates or an injunction in aid of nullifying effects of alleged illegal State aid or an order for restitution and/or injunction to the Defendant of rates previously levied and paid by it. None of these proceedings-claims arising from alleged breaches of EU law, even if they had merit, fall within the categories of cases to be decided by the District Court..."

...It is submitted that the function of the District Court in this case is limited to satisfying itself that the rates, as demanded, are due and owing to DCC and that the statutory proofs have been satisfied. This has been done and the Court, with respect, has no jurisdiction to embark upon the type of enquiry suggested by the defendant."

21. The suggestion was made that the claim of a breach of State aid rules should more properly have been brought by way of judicial review proceedings.

22. In response, the defendant filed replying submissions in which a number of assertions, described as not having been put in issue by the complainants, were advanced as follows:

- Public financing, of which rates were the single largest source, constituted State aid to the Council;
- The Council was an "undertaking" within the meaning of EU law when engaged in the provision of leisure activities;
- The State aid distorted competition between the Council and the defendant;
- The State aid affected trade between Member States;
- None of the exceptions to the State aid rules applied;

- Once the court was satisfied that the aid in question was unlawful State aid, it was obliged to protect the defendant against the consequences of implementation of such aid.

23. The principle that national courts must provide a remedy, if necessary by devising one, for a breach of EU law was invoked by reference to the decisions in *Factortame 1* (R. v Secretary of State for Transport, ex p. Factortame Limited (1990) ECR 2433) and *Francovic v. Italy* (Joined cases C-6/90 and C-9/90 (1991) ECR I-5357). It was submitted that the District Court had the same obligation to vindicate the defendant's rights as every other court, and that no court could decline to give effect to EU law on the basis that the parties before it could have adopted another procedure in a different court.

Submissions in the High Court

24. The complainants did not, broadly speaking, disagree with the defendant's outline of the State aid rules. It was also accepted that Art. 108(3) can have direct effect and that an individual may be entitled to bring a claim based on infringement. However, it is submitted, firstly, that jurisdiction to entertain such a claim has not been conferred on the District Court and that even if it had, the claim by the defendant exceeded that court's jurisdiction. Secondly, it was said that if there has indeed been an infringement of the rules (which is, of course, denied) then responsibility for that would lie, not at the door of the Council, but of Ireland.

25. The complainants rely upon a number of authorities, which stress that the District Court is a court of local and limited jurisdiction. Of particular relevance, perhaps, is the Supreme Court decision in *Dublin City Council v Williams* [2010] 1 I.R. 801. In that case the defendant objected to a claim for payment of waste charges on the basis that the plaintiff Council had failed to implement a "polluter pays" policy set out in its own waste management plan. The argument seems to have concentrated on whether the charges should have been based on the principle of proportionality. In holding that the Circuit Court (on appeal from the District Court) did not have jurisdiction to entertain a defence of this nature, the Supreme Court commented that the issues in controversy were "*wholly inappropriate to be dealt with in the District Court by way of defence to a simple claim for the charges*" while not excluding the possibility that they could be raised in a different forum.

26. It should be noted that, although the obligation to have in place a waste management plan ultimately derived from EU legislation, it does not appear to have been contended that the defendant was entitled to rely on that directly.

27. The complainants say that this case concerns a self-contained procedure, in which no defence can be raised other than as provided for in the statute.

28. The defendant submits that all of the authorities relied upon by the complainants relate to issues of purely domestic law. In dealing with claims for the payment of rates the District Court's financial jurisdiction is unlimited. If the collection of the rates is contrary to EU law then that court must refuse to make an order enforcing collection. It is stated that the rates are unlawful because the majority of the Council's income comes from them.

29. The defendant says that its claim for a dismissal is the primary aspect of its case, with the counter-claim and set-off being included by way of fashioning an appropriate remedy.

30. Reliance is again placed on the well-established principle of the supremacy of EU law and the requirement that national courts provide a remedy in cases of breach.

The Consultative Case Stated Procedure

31. The power of the District Court to state a case derives from s.52(1) of the Courts (Supplemental Provisions) Act, 1961 which provides that a judge of the District Court shall, if requested by any person who has been heard in any proceedings before him (with exceptions not relevant here) unless he or she considers the request to be frivolous, and may, without request, refer "*any question of law arising in such proceedings*" to the High Court for determination.

32. The phrase "any question of law" includes any question of European Union law – for an example, see *Director of Public Prosecutions v O'Connor* [2000] 1 I.R. 300, which concerned the impact of certain Directives on the statutory powers of Gardaí under the Road Traffic Acts.

33. The District Judge does not have to wait until the conclusion of the hearing before stating a case.

34. The proper procedure to be adopted by the District Court is that set out by the Supreme Court in *Director of Public Prosecutions (Travers) v. Brennan* [1998] 4 I.R. 67. Giving the judgment of the Court, Lynch J. said (at p. 70)

"...it appears that no evidence was heard by the District Judge before stating the case. In so far as he has purported to find facts this has been done only on the basis of an opening statement by the garda conducting the prosecution perhaps with interventions from the defending solicitor. The proper procedure leading to the stating of a consultative case for the opinion of the Superior Courts is for the District Judge to hear all of the evidence relevant to the point of law arising, to find the facts relevant to such point of law in the light of such evidence, then to state the case posing the questions appropriate to elucidate the point of law and finally, on receiving the answers to those questions to decide the matter before him on the basis of those answers."

35. In *Mitchelstown Co-Op Society v The Commissioner for Valuation* [1989] I.R. 210, the Valuation Tribunal had, for the purpose of stating a case, annexed a transcript of the whole of the evidence given before it, saying that it accepted the uncontradicted evidence given on behalf of the appellants. Blayney J. held that this was insufficient.

"There must still be a finding of fact based on such evidence. There is no such finding in the case. Furthermore it is in the case that the facts must be found and stated. This court should not be required to go outside the case stated to some other document in order to discover them."

The same principle applies to the contentions of the parties; the inferences to be drawn from the primary facts, and the Tribunal's determination. All these must be found within the case, not in documents annexed."

36. Blayney J. specifically held that in this regard the same principles applied to the Valuation Tribunal as to a case stated by the District Court and adopted as a correct statement of those principles the following passage from the Northern Ireland Court of Appeal in *Emerson v Hearty and Morgan* [1946] N.I. 35:

"The Case should set out clearly the Judge's findings of fact, and should also set out any inferences or conclusions of

fact which he drew from those findings. The task of finding the facts and of drawing the proper inferences and conclusions of fact from the facts so found is the task of the Judge. It does not fall within the province of this Court. Accordingly it is not legitimate by setting out the evidence in the Case Stated and omitting any findings of fact to attempt to pass the task of finding the facts on to the Court of Appeal..."

37. Blayney J. returned the Case Stated before him to the Valuation Tribunal for amendment.

38. The question of law must be one "arising" from the facts as found – that is, it must relate to a matter in issue in the case.

39. In *Attorney General v. M'Loughlin* [1931] I.R. 480, a District Judge asked a number of questions arising from a prosecution under the Betting Duty Regulations, 1926. The case as stated contained the following paragraph:

"Having regard to the importance of the issues opened by these questions I decided to invite the opinion of the High Court as to what should be done in the premises upon the facts as herein stated, the questions arising thereon, and the questions which, while extraneous to the issues affecting the defendant's case, appeared to me to affect the jurisdiction of the District Court in the interpretation of the Betting Act and Finance Acts referred to."

40. The response of the Court was pithy. Per Sullivan P. :

"It is obvious that the only question of law which a District Justice can refer to this Court is a question of law arising in any case before him, and that he has no right to ask this Court to answer questions 'extraneous to the issues affecting the defendant's case' because they appeared to him 'to affect the jurisdiction of the District Court in the interpretation of the Betting Act and Finance Acts.' The power conferred upon a District Justice by the section is limited in express terms, presumably because the Legislature recognised that without such limitation an intolerable burden might be cast not only upon this Court, but upon the parties bearing the costs of the proceedings."

Per Hanna J. :

"This Court is not a moot for the decision of any question of law which may occur to the District Justice..."

41. The members of the Court agreed that only one out of ten questions posed in the case could be said to arise in it. They declined to answer the rest.

42. This is not to say that the High Court is not obliged to assist the District Court in so far as it can, having regard to the contents of the case stated.

43. In *Director of Public Prosecutions v Buckley* [2007] IEHC 150, Charleton J. considered that if he answered the question posed by the District Court without reference to the facts set out in the case stated, he might be in danger of misleading that court as to the appropriate law. He referred to the judgment of the Supreme Court in *Dublin Corporation v. Ashley* [1986] I.R. 781, where Finlay C.J. said:

"The purpose and effect of a consultative case stated by a Circuit Court judge to the Supreme Court is to enable him to obtain the advice and opinion of the Supreme Court so as to assist him in reaching a correct legal decision. Having regard to that purpose and relationship which exists between the two courts, it would, in my view, be quite inappropriate for the Supreme Court, for reasons of procedure, to abstain from expressing a view on an issue of law which may determine the result of the case before the learned Circuit Court Judge."

44. (In *Ashley*, the Supreme Court had come to the view, based on the case stated, that there was a point of law that had not been raised by the parties in the Circuit Court but which determined the outcome.)

45. Charleton J. continued:

"It follows that for the purpose of assisting the District Court, this court must look at the whole of the case stated and give advice on the basis of what Laffoy J. in National Authority for Occupational Health and Safety v. O'Toole [1987] 1 I.R. 534 at 541 called: -'the issue on which the District Court Judge requires guidance.' Therefore, a question may be reformulated and an answer given in the light of the whole of the case stated provided this does not exceed the facts as found for this purpose by the learned District Judge; Collins & O'Reilly – Civil Proceedings and the State (2nd Ed; Dublin, 2004), and The Director of Public Prosecutions v. Traynor, (Unreported, High Court, 27th July, 2005)."

46. It will be seen from paragraph 4 above that, in the instant case, no findings of fact have been made (with the possible exception that there is an implicit finding that the complainants were properly appointed rates collectors and had made proper demands under the statute.)

Availability of the State Aid Rules as a defence to a claim for rates

47. The court accepts that the matters dealt with in the foregoing section of this judgment were not canvassed by the parties in the substantive hearing of this matter. However, it is necessary to set out the basic principles relating to the case stated procedure because of an issue which was raised by the Court and on the topic of which further submissions were requested. This arose in the following context.

48. Having reserved judgment at the end of the hearing, the court considered the authorities furnished by the parties. These included a document entitled "Commission notice on the enforcement of State aid law by national courts" issued by the European Commission in 2009. At paragraph 74 of the document there is the following statement:

"However, based on the jurisprudence of the Community courts, third party tax payers may only rely on the standstill obligation where their own tax payment forms an integral part of the unlawful State aid measure. This is the case where, under the relevant national rules, the tax revenue is reserved exclusively for funding the unlawful State aid and has a direct impact on the amount of State aid granted in violation of Article 88(3) of the Treaty."

49. The court therefore requested the attendance of counsel and informed them of certain concerns. Specifically, the court pointed out that the case stated did not comply with the judgment in *DPP (Travers) v Brennan* [1998] 4 I.R. 67. The parties were informed that the court was considering that two possibilities existed – either commercial rates are hypothecated to the use of Dublin City

Council for the purposes complained of by the defendant, in which case the case stated was deficient in not finding facts in that regard, or they are not so hypothecated, in which case State aid may not be a defence to the demand and the question posed is moot. The parties were referred to Case C-174/02 *Streekgewest Westelijk Noord-Brabant v Staatsecretaris van Financien* [2005] ECR I-85, Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium SV v. Ville de Seraing* [2006] ECR I-5293 and C-175/02 *F.J. Pape v Minister van Landbouw, Natuurbeheer en Visserij*.

50. The parties took the opportunity offered to make further written submissions.

51. On behalf of the complainants, much of the submission furnished contains an account of what was or was not said by way of evidence or submissions in the District Court. This is not admissible, there being no reference to it in the case stated, and I do not propose to summarise it.

52. It is submitted that the effect of the ECJ authorities referred to above is that State aid rules do not provide a defence to a claim for a tax in the absence of a close connection between the tax and a subsidy offered to an undertaking other than the taxpayer.

53. However, it is also submitted that

"The jurisdiction issue remains a threshold issue and one which, as a matter of principle, should be addressed first. Does the District Court have jurisdiction to address an issue of this nature?"

54. The Council maintains the arguments made by it in the substantive hearing and submits that even if the tax or charge at issue was a special tax imposed upon sports facilities and the monies raised were exclusively spent on public sports facilities by way of unlawful and non-notified State aid, the District Court would not be empowered to offer remedies to an aggrieved rate-payer.

55. On behalf of the defendant it is submitted that the High Court should be concerned only with the issue of the jurisdiction of the District Court and that the merits of the State aid defence cannot affect the question that it has been asked to answer. It is suggested that the issue raised by the court

"...is not a matter which falls to be determined by the High Court but may fall to be determined by the District Court if the matter is remitted to the District Court and after the District Court has heard the necessary evidence and argument on the substance of the EU law point..."

56. It is said that the defendant reserves its right to develop this argument both by way of evidence and submission *"if it becomes a live issue in the proceedings"*.

57. The issue raised by the court is addressed, but to a large extent on the basis of certain factual assertions which are not to be found in the case stated and which, therefore, cannot be taken into account by this court. It is argued that if the levying of the rate is not itself unlawful, the national court would still have an obligation to neutralise the effect of illegal aid on the competitors of the recipient undertaking. In the alternative, the defendant is prepared to make the case that there is indeed the necessary link between the revenue raised from rates and the expenditure on sports facilities. To this end, it is said that the defendant will, if this issue is raised in the District Court, lead evidence to show the extent of the link.

Discussion and conclusions

58. The authorities referred to above are conclusive as to the necessity to set out the District Judge's findings of fact in the case stated so that this court can understand how, or indeed whether, the question posed can be said to arise in the case. In my view this case is a clear example of the importance of that principle.

59. The complainants maintain that the question raises a "threshold" issue, which must be dealt with so that the learned District Judge can know whether or not he is entitled to embark on a consideration of the issue. They argue that because it is an issue of jurisdiction, the answer to the question does not depend on the facts. The defendant agrees and says that this court must answer the question without regard to the potential merits of the issue raised by it in its defence.

60. Despite the sequence of events outlined in the case stated – pleadings, oral evidence, cross-examination, oral submissions and written submissions – the defendant is maintaining that it is entitled to call further evidence of direct relevance to the issue of alleged unlawful State aid. I do not know whether the learned District Judge would agree with this, or whether he thinks that the evidence has concluded. That is a matter for him.

61. The fact that a question in a case stated raises a jurisdictional issue does not mean that there is no requirement to set out the facts giving rise to the issue. There are many cases where the District Court has asked questions as to jurisdiction, but there is always a factual substratum explaining why the question has arisen. Indeed, the issue of jurisdiction often depends on the facts of a case.

62. The question posed in the case stated here is not a general one as to the powers of the District Court in respect of breaches of EU law but a specific one relating to State aid and it is not for the parties, as opposed to the learned District Judge, to say whether his concern relates to a general matter or the availability of a remedy in this specific case. As a matter of law, the true "threshold issue" in the case is whether or not the availability of State aid as a defence to the collection of a tax or levy arises on the facts. In a case of this nature, it may or may not. There appear to be a number of factual issues to be determined – for example, whether commercial rates are hypothecated to the purposes complained of, and whether the Council is exempt from payment of such rates.

63. It is not possible for this court to answer a question on a point of law without knowing whether it actually arises as an issue. To do so would be to engage in a moot. Putting the matter at its simplest, it is not possible in the case stated procedure to advise whether a court has jurisdiction to grant a particular remedy without knowing whether or not that court has reached a view of the facts tending to indicate that a breach has occurred which requires a remedy.

64. In the particular circumstances of this case it is also not possible for this court to reformulate the question, since there are no findings of fact which could form the basis for such an exercise.

65. In the light of the foregoing I propose to remit the matter to the District Court without answering the question. It is open to the learned District Judge to reach a decision in the case, to continue with the hearing if he does not think it has concluded or to formulate a fresh case stated, as he sees fit.

