Neutral Citation Number: [2011] IEHC 274

THE HIGH COURT

2011 409 P

BETWEEN:

THE BOARD OF MANAGEMENT OF ALL SAINTS CHURCH OF IRELAND NATIONAL SCHOOL

PLAINTIFF

AND

AN TSEIRBHIS CHUIRTEANNA/COURTS SERVICE

DEFENDANT

Judgment of Mr Justice Michael Peart delivered on the 6th day of July 2011:

The plaintiff Board runs a national school in the grounds of the Church of Ireland All Saints Church which is located immediately behind the Courthouse in the town of Mullingar. A substantial wall divides the two properties.

The courthouse and its curtilege is now under the de facto management and control of the Courts Service though still in the legal ownership of Westmeath County Council. While the courthouse will no doubt become vested in the Courts Service, this has not yet been occurred.

The school has been in existence at its present location since 1964 when it was first built, and provides primary education to children aged between five and twelve within its catchment area. In the early years of its existence there were just two teachers, and a compliment of perhaps forty children who lived within a radius of about 12 miles of Mullingar attended the school. Some children were collected for school in a minibus which was paid for through funds raised by the Church – others presumably came by car, or walked.

Access to the school at that time was by means of the main entrance to All Saints Church which is located at the end of Church Avenue - a narrow street leading to the church from Pearse Street. It appears that cars and the minibus were able to access the Church gate at the end of Church Avenue without any great difficulty, and also to turn in the area outside the Church gate and proceed back up Church Avenue to Pearse Street.

The school buildings are located on ground to the rere of the church. Having been dropped off at the church gate the children and others wishing to reach the school itself would make their way on foot through the church grounds to the school. After school these children would be collected again at the church gate either by minibus or by car.

These arrangements appear to have been satisfactory in the early years of the school's life, given the small number of children attending at that time. However, as time went on the number of children attending the school increased, as did the size of the buses being used. Free school transport was introduced sometime in the 1970s. This service was provided by buses of the well-known single-decker variety, and considerably larger than a minibus.

For a while these buses dropped the children off at the church entrance and thereafter reversed back up Church Avenue to Pearse Street, since they were unable to turn in the area outside the church gate. Clearly that could not continue forever as a modus operandi. Concerns were expressed to the principal of the school at the time, Mrs. Ray, and she in turn spoke to the then manager of the school, the late Canon McDougal. He approached Westmeath County Council with a view to coming to some arrangement which would allow the buses to drop the children at the main entrance to the courthouse, instead of dropping them at the church entrance. This would avoid the difficulties encountered by the bus drivers at the church entrance.

But such an arrangement was thought to be satisfactory and workable only if the children, having alighted from the bus, could make their way to the school by walking through the grounds of the courthouse and gaining entrance to the school by means of an opening or doorway in the high wall at the back of the courthouse which separates the courthouse from the school grounds. Such an opening did not at that time exist. Such an opening would avoid the children, once they have alighted the bus, having to walk some distance from the entrance to the courthouse along the public street in order to walk around to the church entrance via a small narrow laneway called Church Lane.

Fortunately, Mrs Ray is still available to give evidence of these matters which occurred in 1979 while she was the school principal, though to facilitate her giving her evidence the Court made an order that it be taken on commission.

Whatever discussions took place between Canon McDougal yielded fruit and agreement was reached between him and the Council that an entrance would be constructed in the wall at the rere of the courthouse so that the children could be dropped at the entrance to the courthouse, and permitting the children to walk through the courthouse grounds and enter the school grounds through a doorway entrance to be constructed in that wall. The school defrayed, or at least contributed to, the cost of constructing this entrance and some steps leading up to it, as there was a difference in ground level. Mrs Ray gave evidence in this regard, but there is also before the Court a copy of a minute of a meeting of the school management committee which took place on the 27th March 1979 which, *inter alia*, records:

> "New entrance/exit:
>
> Access can now be made to the school through the courthouse grounds so that the larger buses which could not get up Church Avenue can pick up and set down the children in a safer spot. The County Manager gave his permission for this venture and the committee approved the agreement to pay the £250 owed towards this project in easy instalments."

It is not clear whether the Council or the school undertook the work itself, but it is not disputed that the school paid a sum of £250 towards the cost of the creating this entrance.

Mrs Ray stated that this method of entry to the school by the children was very convenient and safe, and that it was used continuously by the children up to her retirement in 1995, and there has been other evidence which confirms that until January 2011 it continued to be used as a means of access to the school both by children arriving and leaving by school bus, as well as by children who are brought to school by car, and indeed by other persons who have business at the school.

As I mentioned already, the number of children attending this school has increased over the years since this arrangement was entered into, so much so that in 1997 the school applied for planning permission for the erection of a two classroom extension to the school. That planning application was duly granted subject to conditions which included that the development be carried out strictly in accordance with the plans submitted. Those plans showed the existence of the entrance door in the wall.

The agreement reached with the Council did not specify any particular route through the courthouse grounds which children and other persons wishing to reach the door in the wall must take. The evidence has been that they walked through the courthouse grounds by whatever route they chose to do so. They were not confined in that regard. Over the years since 1979 life at the courthouse has become busier. The number of civilian cars, Garda cars, prison vans and so forth, all of which use parking which is available in the courthouse grounds has increased greatly, such that in recent times concerns arose in the Courts Service regarding the safety of children, if they are to be allowed to wander at will through the grounds of the courthouse in order to gain entrance to the school. There has fortunately been no reported incident of injury to any child, but a Health and Safety Report commissioned by the Courts Service in 2006 identified this arrangement as a hazard.

Not unsurprisingly, relations between the school and the Courts Service and its predecessors have always been very cordial and friendly. For example, when in 1999 the school obtained a further planning permission which permitted the provision of a new Portakabin for use as an additional classroom at the school, the school was permitted by the County Registrar to have the Portakabin delivered to its location in the school grounds by access through the courthouse grounds. This was no doubt a considerable convenience to the school, as the contractor had advised the school that this was the only viable access. There was no hesitation in permitting it to be put in situ in this way. It is but one example of the spirit of cooperation which seems to have been a feature of the relationship between these two neighbours.

But even as far back as 1980 the County Registrar saw fit to write a letter dated 20th October 1980 to Canon McDougal in the following terms:

> "I very much regret that I find it necessary to write to you regarding the congestion caused to the Courthouse car park by parents collecting children in the afternoons, particularly on days upon which the Courts are sitting.
>
> Kindly therefore arrange as was requested, that children be collected outside the gates. I may add that I would indeed be very sorry to find myself in the position whereby the Licence already given would have to be revoked.
>
> If you would like to discuss the matter at any time please do not hesitate to call on me."

This concern was not directed towards the safety of children but appears to have been confined at that time to congestion caused by parents parking in the courthouse car-park when picking up children after school. But the letter is of some significance since the County Registrar refers to the arrangement as a licence and clearly was of the view that it was a licence which could be revoked at will. That is a relevant matter given that the plaintiff in these proceedings is seeking to have the arrangement declared to be a right of way or an equitable easement, which cannot be unilaterally terminated by the Courts Service, as the latter has now done from the 7th January 2011. The entrance door in the wall at the rere of the Courthouse has been blocked off by the defendant and cannot now be used. I will return to the events which led to this action in due course.

It would appear that over the years parents of school children would not only drop and collect children at the courthouse entrance itself but also could drive around to the back of the courthouse and drop and collect at the doorway itself. Access to the rere of the courthouse was unrestricted in this regard. Provision for the parking of cars by court staff and others using the courthouse was in due course provided at the back of the courthouse given the increased numbers using the courthouse. Prior to that, his area at the rare of the building was not available for parking as it was simply an overgrown area.

The use of this car park area by parents became a concern to the County Registrar, and in 2000 the County Registrar wrote a letter to the then school principal, Patrick Horan in the following terms:

> "I refer to our telephone conversation a few months ago when I said that barriers were being erected at the Courthouse. This is being done to curtail day long parking and to facilitate Court Service staff who work in the building and to enable prison/garda authorities park on court days. The side and back of the Courthouse is being used for this purpose and the barriers are being erected in the archway and to the side of the building. The front of the building will be free for court users.
>
> The outcome of this is that parents will be unable to drive round the building as before to leave and collect their children who use the back gate to gain access to the school. Neither will they be able to park there at any time. Work is in progress to erect the barriers, and the new system will be in use shortly. Children who wish to use the back gate will still be able to walk round the building as before. That facility agreed by my predecessor still remains.
>
> Perhaps you can inform the parents of the introduction of the new system and to impress upon all children and adults **NOT TO WALK UNDER THE BARRIERS AT ANY TIME**."

The plaintiff does not appear to have taken any issue at the time in relation to this alteration by the Courts Service to the previous usage of the courthouse grounds. The new arrangements appear to have been implemented without any great problem and worked satisfactorily.

As I have said, the use of the courthouse and the numbers of staff and public using the car parking areas and the public areas generally increased considerably over the years. The correspondence and documentation which has been produced to the Court confirms that there were serious concerns being raised between the County Registrar and the County Council in this regard, in order to ensure that adequate parking was available to the users of the Courthouse, and to avoid congestion.

In addition, the Courts Service was making plans for the refurbishing of the Courthouse which would involve significant works, and this was seen to create potential dangers to, inter alios, the children who were accessing the school through the court grounds, as there would inevitably be additional traffic and other activity in and around the courthouse by construction staff and vehicles.

The County Registrar was increasingly concerned about the safety of the children following the Health and Safety Report which was commissioned by the Courts Service and she sought to improve that safety. Mrs Sharkey was appointed to the position of County Registrar in about 1983 and she gave evidence of the increase in the use of the Courthouse, the car parking area, the numbers of children accessing the school by this route as far as she was aware, and the route which the children would take, either by the left or the right of the Courthouse in order to access the entrance to the school grounds at the rere, and of the concerns which she and the Courts Service had in relation to safety and congestion, as well as the steps taken to address these concerns.

In 2006, in order to alleviate these concerns and improve the standard of safety for the children wishing to access the school through the doorway at the rare of the courthouse, the County Registrar provided a more defined route for the children to take to the doorway by placing a line of cones and some chain-link barrier along a route to the left of the courthouse which would enable the children, once they had been dropped at the main entrance of the courthouse, to proceed down the left hand side of the courthouse, through the archway there, and then turn immediately to their left and walk behind the line of cones and chain link towards the doorway in the wall at the rere.

The parents of children were notified of this route which was to be used, and thereafter the children and others wishing to access the school did so by this defined route only, and did not use any route to the right of the courthouse. No objection appears to have been raised in relation to these altered arrangements put in place by the County Registrar, and there was no assertion made by the school Board or others on their behalf that these new arrangements were in breach of a right of way over the courthouse grounds.

In 2006 the Courts Service was progressing its plans to renovate the Courthouse. The works involved in this project were thought to have implications for the safety of children and others accessing the school, because, of necessity, there would be additional construction traffic present at the Courthouse, additional construction personnel, and all the disruption one can readily associate with such a project. These concerns for the safety of the children were discussed with the Principal of the school.

In due course, in order to improve safety for the children when accessing the door into the school grounds, the cones and chain-link arrangement was replaced by a more sturdy form of high wire mesh fencing which defined the route to the left of the courthouse for use by the children, and behind which they were required to walk, and that remains in situ and was the route used by the children up to the 7th January 2011, when the doorway in the wall was blocked up by the Courts Service. Mr Barry Tennyson, Consulting Engineer, who gave a report to the Courts Service, has reservations from a safety point of view about even this more secure type of fencing which is in situ. But it certainly represented an improvement on the previous cones and chain link arrangement.

Two emails dated 20th July 2006 which passed between the County Registrar and Ann Price of the Courts Service demonstrate their concerns in relation to the cones and chain link demarcation of the route taken by the children. That from Ann Price to the County Registrar dated 20th July 2006 shows that Ms. Price had had discussions with the School Principal in which she had stated that because of the proposed renovations to the courthouse the access arrangement could not continue. That from the County Registrar indicates that she had had discussions with health and safety personnel with whom it was concluded that even before the renovation works commenced the cones and chain link barrier would have to be replaced with what she described as "crowd control barriers" and she went on to state "it would be better if the children did not come into the school through this way in the first place".

Another internal email dated 27th September 2006 from Ms. Price to Shay Kirk who was Head of the Estates and Buildings Unit of the Courts Service at the time refers to a meeting on the 4th September 2006 between the Courts Service and the School Principal, Patrick Horan, regarding access. That meeting addressed the safety concerns and the proposed refurbishing project, and intimated that during the course of that project the courthouse would be vacated and that it would essentially be a building site while those works were undertaken, and that there would be no access available during that period. It notes also that Mr Horan was reluctant to relinquish the access. The following passage from that email encapsulates the stance of both parties:

> "Mr Horan is reluctant to relinquish his access and has indicated that it is a right of way now due to the passage of time. However he was not in a position to show from a legal perspective or otherwise how he deems this right of way to exist. Neither myself nor Elizabeth [Sharkey] were in a position to argue his position. As the Local Authority was on the site at the courthouse until recent years there is some speculation that some agreement may have been entered into with them prior to Mr Horan commencing at the school." (emphasis added)

Clearly neither side was at that time aware of the precise terms of the arrangement agreed between Canon McDougal and the County Council in 1979 or the content of the Minute of the School Board dated 27th March 1979 to which I referred already.

On various dates during 2007 the plaintiff's solicitors wrote to the defendant reiterating that any refurbishing plans which the defendant had for the courthouse would have to take into account what the plaintiff believed was their right of way over the courthouse grounds, and sought confirmation to that effect. No such confirmation was forthcoming, culminating in a letter dated 30th January 2008 in which the defendant stated that the planned refurbishment was due to commence "very shortly" and that the health and safety concerns associated with that work meant that it was necessary to block up the opening in the wall between the two properties, and it requested the plaintiff's solicitors to notify their client in this regard and urging them to so inform the parents of children accordingly.

The plaintiff's solicitors responded in trenchant terms to the effect that their client would then have to proceed by way of objection to the defendant's planning application, based on their right of way, and again asserted that this right of way had been exercised for over thirty years without objection, and that if the defendant was contending that the plaintiff's use of the courthouse grounds was only on the basis of a licence agreement, then it was incumbent upon them to produce a copy of any such agreement. Further correspondence was exchanged in this regard but to no avail. But by letter dated 26th November 2008 the plaintiff's solicitors suggested that the parties meet to discuss the matter.

Such a meeting took place on the 18th December 2008, and it seems to have resulted in a proposal which would allow the children to continue to access the door by a defined route to the left of the courthouse and in a way which protected them sufficiently from any risks from the refurbishment works. In fact the works did not commence at that time, and there was no interruption in access at that time. But it is clear also that while the proposal was unobjectionable in principle, the plaintiff's solicitor was maintaining the position that nothing in any such proposal could be taken as diminishing in any way or waiving the right of way contended for by the plaintiff. A letter dated 19th January 2009 from the plaintiff's solicitors makes this clear.

A further letter dated 7th October 2009 from the Courts Service to the plaintiff's solicitors addressed the matter further. This letter clarified that at the meeting in December 2008 no agreement was reached that the plaintiff had a right of way as contended for. Referring to what was offered by the Courts Service, this letter explains it as follows:

> "I should clarify that while we had discussions about the provision of access for the school children to the school there was no agreement reached at our last meeting in favour of your clients regarding a right of way across the Courthouse site in Mullingar. The Courts Service is anxious to regularise the position and that is why we put forward the proposal for separate access which would be provided as part of the works to refurbish the Courthouse.
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> What the Courts Service is offering is an irrevocable licence for the duration of the existence of All Saints School in its current location which would mean that a dedicated and safe entrance would be provided for all school children to access the school at the rere of the Courthouse. Details of the proposed access is set out on the attached map. The terms of the licence could be agreed with you and the Board of Management e.g. it would be available for an agreed number of days per week between an agreed number of hours per day. In terms of access to the school this arrangement would not differ from the current arrangements other than that it would guarantee the pupils access to the school through the Courthouse property in a safe manner. As I mentioned at the meeting the proposed redevelopment provides for the provision of holding cells on that side of the building which is currently used by the children and would involve movement of large prison vehicles in that area and it is critical therefore that clear separation is created as provided for under the proposed licence agreement. I am available to meet or to discuss this matter with you further at any stage."

This letter was acknowledged and it was indicated that instructions would be obtained in relation thereto. By letter dated 21st October 2009, the plaintiff's solicitor indicated that he was meeting the Board of Management of the school in mid-November and that he would revert thereafter. There is nothing to indicate that this occurred, as there is a further letter dated 17th December 2009 from the Courts Service to the plaintiff's solicitor in which they refer to the previous correspondence and enquire as to the outcome of that meeting. I have not been provided with any response to that letter but there is a further letter from the Courts Service to the plaintiff's solicitor dated 9th April 2010 which refers to the previous correspondence ending with the said letter dated 17th December 2009. Having referred to previous correspondence the letter proceeds to refer to the advancement of plans to refurbish the courthouse, and to the proposal to allow access to the school for the children as previously detailed in correspondence. The letter indicated that work was due to commence at the end of 2010, and that since thereafter the area would become a building site "it will not be possible to allow access across the site for the duration of the works", which were estimated to take about 18 months to complete.

That letter was replied to by letter dated 15th April 2010, which stated materially as follows:

> "… Our position is as stated, we hold a right of way over the ground and we will accommodate the works to be carried out by your service, provided our right of way is in no way compromised.
>
> We fully agree that we will accommodate works during the course of construction period by our clients' agreeing not to use the right of way for that period. Terms upon which you had offered to enhance that right of way when the works were completed as indicated by you, were acceptable to our clients. Please note the position in that regard."

That letter evoked a response contained in a letter dated 24th May 2010 in which issue was taken with the continued assertion of a right of way, which was denied, and it was stated that the position of the Courts Service remained as stated in the earlier letter dated 7th October 2009. Having again referred to the proposal for the provision of a dedicated walkway to the left of the courthouse as access for the children to the doorway in the wall at the rere, this letter then stated in its penultimate paragraph:

> "If your clients continue to assert that a right of way exists, in addition to fully defending this claim the Courts Service may reconsider its investment in the refurbishment of the Courthouse having regard to the difficult budgetary situation and its priorities elsewhere in the Courts estate.
>
> If it would be helpful I am available to discuss this matter at your convenience."

A meeting was arranged to take place between relevant personnel on both sides for the 5th July 2010 at the offices of the plaintiff's solicitor so that all issues might be discussed. The evidence which I have heard suggests that at least in the mind of the plaintiff's solicitor this was intended to be a without prejudice meeting at which the Courts Service could provide some assurances to the Board of the School as to the future arrangements regarding access. It was thought that some such amicable meeting might ease the situation which was emerging between the parties. But the evidence before me has been partly to the effect that the meeting became somewhat concentrated on the entrenched legal position of the parties – the plaintiff emphasising, and relying on, a right of way, and the Courts Service maintaining its position that what was given in 1979 was a revocable licence, and reiterating its offer of an irrevocable licence subject to certain conditions as to the hours and days during which the access could be availed of, and presumably delimiting in some way the persons who could use it. The position of the parties did not alter following that meeting, even though there was and still exists a degree of goodwill on both sides. Certainly the Courts Service is very aware of the need for the school to have a safe access to the school for its children who arrive by bus or even by car, and they accept that the access through the Courthouse grounds provides such a safe means of access, and are willing to facilitate the school in what they see as a reasonable way in that regard, and which meets the need for child safety.

Equally the school board is as anxious as the Courts Service that any access for the children should be safe access and they accept that the access route proposed in the dedicated walkway in the new plans would be a safe means of access to the door in the wall at the rere.

The only obstacle between the parties reaching an agreement for the access to continue – even through the construction period - is the fact that this irrevocable licence offer by the Courts Service does not acknowledge, or is not without prejudice to, the school's claim that what they have is a right of way as opposed to a mere revocable licence.

The meeting of the 5th July 2010 did not advance that matter further in any way it would appear. Each party's position remained unchanged as is evidenced by a letter from the Courts Service to the plaintiff's solicitor dated 3rd August 2010. However that letter, while noting the respective positions of the parties, notes also that it was confirmed at the meeting that the Board of Management would consider a formal proposal from the Courts Service. The proposal put in this letter is in the following terms:

> "Without prejudice to the above the Courts Service is prepared to offer an irrevocable licence for the duration of the existence of All Saints School in its current location and while the primary use is as All Saints School as per terms set out in the latter of October 7th, 2009. A further copy of the map showing the access walkway is attached for information. This would mean that a dedicated and safe pedestrian entrance would be provided for all school children who wish to access the school in the manner set out on the drawing. In circumstances where the licence would be irrevocable by the Courts Service this should give legal comfort to the school that it will enjoy uninterrupted access after completion of the capital project. The current Board of All Saints School would be required to formally confirm that the school has not accrued any rights over the Courts Services lands included but not limited to any right of way, other than those under the irrevocable licence which would now be granted.
>
> This offer is made to regularise the current unsafe situation and to facilitate the speedy development of a refurbished Courthouse for Mullingar. The Courts Service cannot be held responsible for the safety of schoolchildren and particular in the manner in which they are currently walking through the site. If agreement cannot be reached on the basis of this proposal by Friday, September 10th next the Courts Service will have no choice but to suspend the capital project for the refurbishment of the Courthouse until such time as the matter is resolved, if necessary by a court. In the interim the Courts Service will be also left with no choice but to secure the perimeter of the courthouse site to enable it to more fully manage the current unsafe situation. The Courts Service does not assert this lightly nor as some sort of veiled threat to a neighbour. The Mullingar project is at the top of its building priority list but the reality is that the Courts Service will not be able to sanction the significant public expenditure required unless it is clear that it can safely secure its own site and in delivering the capital project resolve the current unsafe situation."

That letter evoked a response which concentrated on the suggestion that the Board's position might result in the postponement of the refurbishment project, and the latter indicated that the Board would not accept the blame in that regard. The letter reiterated the school's position in relation to a right of way, and suggested even that the strip of land over which it was proposed to create a dedicated and safe route for the children could be transferred to the school Board, particularly since that strip of ground was in any event being excluded from the proposed development.

A letter dated 11th November 2010 from the Courts Service brought the matter to a head because it notified the plaintiff's solicitors that it was now necessary to secure the perimeter of the site for health and safety reasons for the purpose of the refurbishment project, and that therefore there would be no access for the children by this route from 1st January 2011 and that any attempt by children or their parents to use it would constitute trespass. The letter went on to state that the school could commence proceedings to assert its claim but these would be fully defended.

Further correspondence was exchanged, not surprisingly, but eventually the entrance was blocked up by the Courts Service early in January 2011, thereby preventing any access for the children. By letter dated 11th January 2011 the plaintiff's solicitor called upon the Courts Service to remove the obstruction to the doorway, and indicate that unless an undertaking was received in that regard within 48 hours, proceedings would be commenced.

No such undertaking was provided, and proceedings were commenced. Soon thereafter the plaintiff sought an interlocutory injunction in order to have the access reopened pending the hearing of these proceedings. I heard that application on notice to the defendant and for the reasons given at that time I refused to grant interlocutory relief, and provided as early a hearing as was reasonably practicable.

Peter Bland SC for the plaintiff has made a number of legal submissions, the first of which is of a technical nature but none the weaker for that fact alone. It is a simple point, namely that the Courthouse itself but more particularly the lands around it, are not as yet vested in the Courts Service, even though that process has been in train for some years; and accordingly he submits that since the Courts Service is as a result not the legal owner of the land around the Courthouse, it has no right or entitlement whatsoever to block up the entrance and deny access to the school through the Courthouse grounds. It is a fact that the title to the property has not as yet been vested in the Courts Service by the Minister for Justice. The premises and its curtilege are therefore presumed to be still vested in the Westmeath County Council. That Council of course has not participated in these proceedings and no relief is sought against them, as the Council has not had any hand act or part in the blocking up of the entrance.

I have sufficient evidence to conclude that the process of vesting the property in the Courts Service has been underway for some years, but appears to have been halted or at least not progressed to finality. The Courts Service has indicated that one of the reasons for the delay is the existence of this dispute as to the status of the plaintiff's right in relation to usage of the property as access to the school.

Section 26 (2)(a) of the Courts Service Act 1998 empowers the Minister for Justice "to by order appoint a vesting day in respect of any land (or part of any land) used solely for purposes to which the functions of the Service relate ……", and section 26 (1) (b) provides that on such vesting day the land the subject of the order, and all rights, powers and privileges relating or connected thereto shall, in effect, and without further transfer or conveyance become vested in the Courts Service "but subject to all trusts and equities affecting the land subsisting and capable of being performed."

The Courts Service regards itself as the *de facto* owner of the Courthouse premises and the curtilege, and has assumed all the responsibilities of ownership with the agreement of the Westmeath County Council. Mr Bland on the other hand submits that while pursuant to statute the Courthouse itself may become vested in the Courts Service at some future date, this has not occurred, and that in such circumstances the Courts Service has no title sufficient to deny the School's claim to have a right of way, and that in effect what they seek to do is to assert a *jus tertii*. He submits that if any party has a right to deny the plaintiff's claim to access to the school, it is Westmeath County Council, but that the Courts Service have no defence to the plaintiff's claims herein.

In fact, Mr Pat Coyle, the Senior Administrative Officer of Westmeath County Council gave evidence in this case. He stated that there was nothing on any file which he had seen in relation to this matter which indicated the existence of a right of way as asserted by the plaintiff. He stated also that the County Council had themselves vacated the Courthouse building around 2003/2004. He was aware of the process by which the premises was to become vested in the Courts Service but was aware also that this had not yet occurred. Nevertheless, because of the statutory power vested in the Minister to appoint a date for such vesting, Mr Coyle stated that since the County Council had vacated the building it no longer had any interest in same or the grounds, and he confirmed that the County Council took no issue with the fact that the Courts Service, as a matter of fact, are in control of and occupation and management of these premises. It regards the Courts Service as the effective owners of the premises. He confirmed under cross-examination that the County Council had not requested that the entrance in the wall be blocked up, and it is clear that it took no

part in the decision to do that, even though they had been aware of an issue in relation to the status of the usage.

Eamon Marray BL for the Courts Service has made the point that when making arrangements for the importation of Portakabins into the school grounds it was the Courts Service whose permission was sought by the school and not that of the County Council, and that the plaintiff cannot approbate and reprobate on the issue.

Clearly, the Courts Service is in a highly unusual situation as far as its title to the premises is concerned. The Act provides that the Minister "may" appoint a vesting day. He may never do that for whatever reason. What then is the status of the occupation of such premises by the Courts Service? During submissions on this topic, it occurred to me that in such circumstances the status of the Courts Service might be similar to the status of a purchaser of land who has signed a contract and has paid a deposit, but has not yet completed the transfer into his own name. Such a purchaser has an equitable interest in the land, such that, if let into possession pending completion, he might be able to take steps to prevent a trespass or other ingress onto the lands, or perhaps to revoke a revocable licence over the land, but that he could not do so in the teeth of an expressed objection to him so doing from the legal owner (i.e. the Vendor). I believe that this analogy is of some use in the present case. Clearly the occupation and control of the premises by the Courts Service is with the agreement of the County Council. They exercise no control over the premises. They have no issue with regard to the blocking up of the entrance by the Courts Service and regard that as a matter purely between the plaintiff and the defendant.

In relation to this latter point, I should just say that while the Council has stated this in evidence through Mr Coyle, he did not exclude the possibility that the blocking of the entrance may have some planning implications since the planning permission for the extension of the school many years ago may have been granted on the basis that this entrance existed, and in so far as it is now blocked up, there could be a suggestion that there is a breach of planning permission. It is appropriate to refer to that reservation, since it is the Council which is also the planning authority for the area.

I think that if the County Council in its capacity as the legal owner of the premises was to make a decision to block up an entrance which was exercised by the Courts Service or to otherwise attempt to interfere with the use of the Courthouse or its grounds by the Courts Service, it would be held not to be entitled to do so. The Act of 1998 is very clear that courthouse accommodation theretofore used either solely as courthouse accommodation, or partly so used in conjunction with either the Commissioners of Public Works, or alternatively a local authority, would in due course become vested in the Courts Service. Obviously, given the great number of such premises, all would not become vested on a single day. There would presumably be a good deal of legal work to be done to make sure all was done correctly, taking into account rights and privileges others may have over such premises, and these would have to be ascertained and investigated prior to vesting taking place. While it is unfortunate that the vesting of the particular premises the subject of these proceedings has not been completed, that fact alone in my view cannot deny to the Courts Service the right to regulate the use of the premises and land it occupies for the purpose of its statutory functions, especially in circumstances where the County Council takes no issue with what steps the Courts Service has taken, or might wish to take in this regard. Clearly, as occupier, it has responsibilities as far as public safety is concerned which it takes, and is required to take, very seriously.

I have no doubt that when Canon McDougal reached an agreement with Westmeath County Council in 1979 both parties believed that the purpose of the arrangement was so that the children who were arriving and leaving the school by means of a school bus could access the doorway in the wall to be constructed between the courthouse and the school by traversing the courthouse grounds, having been dropped or collected by bus at the main entrance gate of the Courthouse.

The evidence of Mrs Ray, which was taken on commission on the 16th March 2011, is reliable and is clear on the point. She stated that when the children first attended the school after its establishment some children were brought and collected again by a minibus. The size of that minibus meant that it could access the school by means of Church Avenue without any difficulty. It was only after the introduction of free school transport that the larger type of bus was used, and it became apparent that these larger buses could not turn in the area at the Church entrance, and it was this difficulty which prompted Canon McDougal to approach the Westmeath County Council with a view to reaching the agreement whereby these larger buses could drop and collect the children at the courthouse entrance, and the children could use the courthouse grounds in order to access and exit the school grounds. She also believes that while the County Council may have installed the door in the wall, the Board of Management of the school paid for that work, including the construction of steps from the doorway onto the courthouse grounds, made necessary by the difference in the two levels.

She confirmed also that since the door was installed that means of access and egress was used continuously by the children. Now that the entrance has been blocked off, she is not happy that the route by which the children who are left at the Courthouse entrance have to walk in order to reach the church entrance by walking through Church Lane is safe, since she believes there are undesirable persons loitering in that lane, and this poses a risk to the children.

When she was cross-examined she agreed that she had not been part of the discussions between Canon McDougal and the County Council, but she believed following those discussions that the school had the use of the Courthouse grounds as an access in the morning and in the evening after school, and that this was for the benefit of the children attending the school. It was put to her that no right of way as such was given to the school over the Courthouse grounds but rather a permission for children to have access over the Courthouse grounds so that they could access the school. She confirmed that this was her understanding, and said that she never regarded it as a right of way, but rather that "it was one business trying to help out another business". She confirmed also that this permission was limited to children attending the school. When it was suggested to her in cross-examination that the plaintiff was claiming that the entitlement was for anybody coming to the school, she seems to have been very certain that the intention was that it was for the children only.

Neither did she believe that it was intended that "traffic" could enter the courthouse grounds. She was not aware of the letter dated 20th October 1980 to Canon McDougal from the County Registrar in which the latter drew attention to the fact that congestion was being caused in the courthouse car-park by parents collecting children in the afternoons, and her request that children be collected outside the courthouse gate. Neither was she aware of any discussions about a right of way as such. She had not been party to any such discussions which may have taken place. But she did consider that whatever arrangement had been agreed between the County Council and Canon McDougal was a permanent arrangement, and she was relieved at the time that the children could enter and exit the school safely thereafter.

I am satisfied as a matter of fact that the arrangement committed to in 1979 by the County Council was one whereby the large type of school bus could pull up at the entrance to the courthouse thereby those children alighting from and entering those buses to use the courthouse grounds for the purpose of access to and exit through the gate constructed in the wall at the back of the courthouse.

There is no doubt also, however, that within a short time after 1979 there was an accretion from that understanding to the point where parents bringing their children and collecting their children by car began to use the courthouse car-park when delivering and collecting their children. That accretion was never intended to be part of the arrangement, no matter how convenient it might have seemed to the parents. But it happened nonetheless. It is clear also from that letter dated 20th October 1980 that there was no acquiescence on the part of the County Registrar to that accretion in the use of the Courthouse grounds. It is clear that this additional usage caused concerns, and that these concerns were made known to Canon McDougal. No issue was raised at that time by him or the Board of Management that what the County Registrar was requesting in that letter was against either the letter or indeed the spirit of what was agreed in 1979.

Such lack of acquiescence is also evident from the manner in which the County Registrar arranged for barriers to be erected in the courthouse grounds which provided for a specific pedestrian gate by which pedestrians should access the rere of the courthouse. Again, these arrangements, put in place in the interests of safety and to avoid congestion, were not challenged as being a breach of the arrangement agreed to by the County Council in 1979. Similarly, there was no demurral in relation to the creation of a defined walkway to the left of the courthouse, at first delineated by cones, and later by the erection of a wire mesh fence, behind which the children were directed to pass on their way to the access door in the wall.

I refer to these matters because it is contended by the plaintiff that the manner in which the Courthouse grounds were used from 1979 onwards has resulted in an equitable easement by which, whatever the nature of the original arrangement, that arrangement transmogrified gradually over the years to the point where the plaintiff Board, and through it the parents of children and indeed all others having business at the school, now have a right amounting to a pedestrian right of way to traverse the courthouse grounds in whatever manner they chose, and by whatever route they chose, in order to access the gate at the rere of the courthouse.

It is clear from the evidence which I have heard from witnesses called on behalf of the Courts Service that over the years all concerned have had no objection in principle to the manner in which the use of the access through the courthouse grounds has accreted to the point where the access came to be used by persons other than the children arriving and leaving by school bus. Any efforts to control the manner in which this access was used was dictated solely by genuine and reasonable concerns for the safety of those concerned, and in particular the children, as the use of the courthouse by members of the public generally, court staff and Garda and prison personnel increased over the years. On any occasion when arrangements were altered in the interests of proper management of the areas concerned, these arrangements took into account the use being made of the courthouse grounds for the purpose of access to the school.

Equally, I am completely satisfied that the Board of Management share these concerns for the safety of its children, and have conducted itself in a very responsible manner, and in a way which accommodated the genuine concerns of the County Registrar and others in the Courts Service for the childrens' safety. They were at all times willing to accept the changes put in place by the County Registrar regarding the route to be taken by the children, and indeed others using that access to the school.

But matters have been brought to a head by the unilateral decision by the Courts Service to block up the doorway and to refuse to permit access through the Courthouse grounds, since it failed to reach an agreement with the plaintiff Board regarding the method of access deemed necessary in the interests of safety during any period in which the Courthouse is to be refurbished. The access route proposed by the Courts Service during these works certainly appears on its face to reasonably provide for the safety of all concerned, who otherwise would be exposed to an enhanced risk of injury due to the amount of construction traffic and personnel during the refurbishment period. The proposal clearly divided the route which the children would take from what was anticipated to become a building site with all the dangers inherent in such a site. This proposal was to be put in place at no cost to the Board.

It is indeed a pity that the only issue which separated the parties was the requirement by the Board that no such altered arrangement in the form of an irrevocable licence could prejudice or in any other way deny what the Board regards as its right of way over the Courthouse grounds. It is hard to see, given the nature of the irrevocable licence proposed, albeit that it would be subject to conditions to be agreed as to the days and times during which the access would be used, and limiting the categories of persons who could use it, how the position of the school would be adversely and unreasonably prejudiced by that proposal. All agree that the safety of the children is the primary concern, and that is both admirable and entirely correct.

It is fair to say that it was only in the face of the assertion that the original permission had evolved or accreted into an equitable easement amounting to a full right of way not only for pedestrians but also vehicular traffic for school users (vehicular traffic now being abandoned by the Board) that the Courts Service considered it necessary to terminate the permission in the manner in which it did in January 2011, since they do not accept that such a right of way exists. I am satisfied that even though the access has now been withdrawn by the Courts Service, it is conscious of the impact on the children who now have to avail of a less satisfactory route, and would be willing to reinstate an arrangement along the lines proposed and which have been rejected by the plaintiff only because the Courts Service will not acknowledge the existence of an equitable easement of the nature contended for.

Given the positions adopted by the parties, it falls to this Court to determine the rights of the parties as a matter of law. I have to say that, given the goodwill which clearly exists on both sides towards each other as good neighbours over many years, and the shared concerns for the safety of the children, it is regrettable that some workable agreement could not be reached in order to avoid this costly litigation, if necessary by some compromise in the polarised positions existing, and where the ultimate objective of the childrens' safety and convenient access to the school could be ensured into the future. I should add that the irrevocable licence proposal put forward by the Courts Service was not one limited to the duration of the refurbishment works to the Courthouse. It was of indefinite duration and for as long as the school should exist on its present site, and for as long as the school desired it..

It is contended by the plaintiff that by virtue of a proprietary estoppel, the Courts Service are estopped from blocking up this doorway in the wall and/or prohibit or prevent any or all of those persons from continuing that access through the Courthouse grounds, and denying that an equitable easement amounting to a right of way has been created or has evolved in the plaintiff's favour, and that it would be unconscionable for them to be permitted to do so.

The plaintiff does not in these proceedings claim a right of way by prescription, and believes that it does not need to base its claim on prescription.

Against the plaintiff's claim to have acquired an equitable easement over the courthouse grounds by virtue of facts and events post-1979, the defendant makes a number of submissions.

It is submitted by Mr Marray that no right of way can be established simply by usage of a property over time, where such usage has, as in this case, been pursuant to a permission or licence. In this regard, the defendant characterises the arrangement or agreement reached between the County Council and Canon McDougal in 1979, and as minuted by the plaintiff Board as a "permission", and that

accordingly the "*nec precario*" principle is not satisfied in the present case, and no right of way should be found to have been created.

In cases where a right of way is claimed to exist over land by prescription, the proof that such usage as occurred took place by virtue of a licence or permission (precario) will normally be sufficient to defeat the claim. But, of course, as Mr Bland has been at pains to emphasise, the plaintiff Board is not claiming a right of way by prescription (though he reserves his right to do so at any later stage, and says that he can do so if necessary), but rather an equitable easement, such that its denial by the defendant would be unconscionable.

But Mr Bland has referred to the judgement of Lord Scott in *R (Beresford) v. Sunderland City Council* [2003] 3 WLR 1306 at 1318 where the relationship between prescription and permission is discussed.

Having referred to the need for the acquisition of a right over land to be by grant or deed, and conversely, if a right is contended for by prescription the need for an absence of a permission, Lord Scott went on to describe circumstances or exceptions where a private easement may be acquired without deed or grant. Mr Bland has referred to the following passages from Lord Scott's judgement:

> "Where private easements are concerned, there are, however, two exceptions to the requirement that the right must be granted by a deed. First, this permission to enjoy a right capable of constituting an easement is given by the landowner in terms likely to lead, and that do lead, the beneficiary of the permission to believe he is entitled on a permanent basis to enjoy the right, and in that belief he sufficiently alters his position to his detriment, by expenditure of money or otherwise, he may become entitled in equity to the easement by a proprietary estoppel... The landowner would not be able to withdraw the permission he had given. Twenty years enjoyment of the equitable right would surely enable the beneficiary of the permission to claim a legal easement under the 1832 Act. In such a case it is easy to regard the enjoyment of the right pursuant to the original permission as enjoyment by a person "claiming right thereto". In such a case the original permission would be the foundation of a claim of right but the enjoyment would not have been precario.
>
> Second, if an agreement to grant an easement is entered into for good consideration and the consideration was fully paid, the purchaser of the easement would at once become absolutely entitled in equity to the easement and would become entitled at law after 20 years use. His enjoyment of the easement, although deriving from permission, would not have been 'precario' and, in my opinion, would have been an enjoyment by a person "claiming right there to"..... . It follows that the proposition that use pursuant to the permission given by the landowner is always precario and can never be as of right for prescription purposes is not correct."

Mr Bland submits that on the facts of the present case, the plaintiff Board had become entitled to such an easement in equity by a promissory estoppel. He has referred to *Gale on Easements* (17th ed. 2002) at Pages 78-79 which describes the essentials of proprietary estoppel in the following way:

> "An equity arises where the owner of land induces or encourages or allows another to believe that he has or will enjoy some right or benefit over the owner's property; in reliance upon this belief, the other acts to his detriment to the knowledge of the owner; and the owner seeks to take unconscionable advantage of the other by denying him the right or benefit which he thought he had or expected to receive."

Mr Marray for the defendant submits that the ingredients of inducement, detriment, reliance and unconscionability are absent on the facts of the present case so that no estoppel should be found to exist.

At first blush it is hard to see that what the Council did in 1979 when it agreed to the school having a convenient access route through the courthouse grounds at no cost save the expenditure of £250 to construct the entrance in the wall, could be considered to have been an inducement by the County Council causing the school's Board to act to its detriment. There is something inately contradictory in a contention that by conferring a benefit one causes a detriment.

In many of the cases on proprietary/promissory estoppel one encounters facts were one person, on what is perceived at the time to be a promise of a benefit in the future acts to his detriment in the present. A simple example is a young man who, instead of going to university to pursue some course of study, chooses instead to remain at home on the family farm in the promised expectation that in due course the farm will be his. Such a person has clearly acted to his detriment in the present on a promise of a benefit in the future.

In the present case, Mr Bland submits that the school acted to its detriment by the expenditure of money in the first instance on the construction of the doorway in the wall, and later by the expenditure of money on the construction of a hand-rail and steps, and on the general maintenance of same over the years, and in the reasonable expectation of future benefit i.e. the uninterrupted right of way over the courthouse grounds for the purpose of access and egress to and from the school.

There is another aspect of detriment suggested by Mr Bland; though, in truth, it is easy to conflate it with the concept of reliance. It is that over the years since 1979 and as the number of pupils attending the school increased, the Board installed additional school classrooms pursuant to a Planning Permission based on plans which showed the existence of this doorway access to and from the courthouse grounds, and it is submitted that the planning permission granted is in fact predicated upon the existence of that access, such that where that access is now denied, the continued use of the school pursuant to that Planning Permission could be considered unlawful.

The detriment/reliance contended for is that were it not for the existence of what the Board believed to be an unfettered right of access and egress by this route, the Board could have, and indeed would have been obliged to have considered and adopt an alternative solution to the problem which was addressed by reaching the agreement in 1979 between the County Council and Canon McDougal, namely that of access for children arriving at the school and leaving the school by bus. It is difficult to see now what other solution there may have been then, but one nuclear option, I suppose, would have been to consider closing down the school completely at its present location, and relocating it elsewhere at a location where a school buses would have convenient and safe access to the school entrance. The availability of access through the courthouse grounds certainly enabled the plaintiff Board to look at its medium and even long term future in terms of its present location, and it proceeded to make its plans accordingly.

I think it is reasonable to consider that by so doing it was acting, not so much to its detriment, but rather in reliance upon what was agreed in 1979. I find it hard, I must say, to consider any of what was agreed to by the County Council in 1979, or by implication after that, as being an inducement to the Board to act to its detriment on the basis of some future benefit, now being denied to it.

If one overlooks the concept of detriment in the present case, or at least finds that element satisfied by the modest enough sum of £250 (even by the standards of 1979) for the construction of the doorway, one is still left with a clear picture that in 1979, the County Council agreed to something which was at that time a great benefit to the school-going children and their parents, and therefore to the Board of Management. There is nothing to suggest, either in any written record or indeed in any evidence which I have heard, that either party did not consider that this arrangement might not continue into the future at least for as long as the Board wished it to do so. The absence of any indication in 1979 that it was temporary in nature only, or being something which could be revoked at will by the County Council, combined with the number of years that have passed during which in one form or another that benefit has been enjoyed by the school, and combined also the fact that the access in question has been a factor built into the school's development plans over the years, means to my mind that some equitable easement has been created in favour of the Board, such that by reason of an estoppel the County Council, and through it, the defendant who is in de facto occupation of the premises tantamount to ownership, that benefit may continue to be enjoyed as a right appurtenant to the school.

But critical to the present case, and it is the only reason why the matter has fallen to be decided by this Court, is the question of the extent of the benefit to the school which has now been derived from the agreement reflected in the minute of 1979, including by virtue of the nature of the usage of the courthouse grounds by the school since that time.

The parties have not been able to agree on the extent of any rights acquired. Certainly by the date on which these proceedings were commenced, and certainly by reference to how the claims asserted by the plaintiff were originally pleaded in the Statement of Claim, the plaintiff has adopted an extreme position on the available spectrum of possibilities, namely an unfettered right of way, both pedestrian and vehicular, over the entire of the courthouse grounds. That extreme position has been, quite rightly if I may say so, modified in oral submissions. But it is understandable in my view that the Courts Service, faced with such an extreme position, and given its need to have regard to, and take all necessary steps in relation to, the safety of children and other users making use of the courthouse grounds under its responsibility, would put forward a proposal for an irrevocable license in relation to a defined and safe access route to the entrance on the wall, which it felt reflected the purpose and intention of the 1979 agreement, and which took into account the increased usage of the courthouse grounds in terms of traffic and personnel, and the increased risks to all concerned, and that, following the rejection by the Board of such a proposal because it lacked a recognition of the claim for a full and unfettered right of way as described, should decide, on grounds of safety, particularly for the children, that is the access doorway should be boarded up and the use of the courthouse grounds thereby halted.

In my view, given the overriding responsibilities which the Courts Service have regarding public safety, and in this regard including the safety of very young children, it was not unreasonable, let alone unconscionable, to block up this entrance while issues were resolved either by some agreement between the parties, or by a decision of this Court. For that reason, *inter alia*, I refused an interlocutory injunction, and indeed encouraged the parties to resume what discussions had previously taken place prior to the commencement of these proceedings. However, such efforts as were made in that regard have yielded no fruit.

My conclusion that the action taken by the Courts Service was understandable, and indeed reasonable in all the circumstances, does not dispose of the case however, as undoubtedly equity would recognise some expectation that certain rights were required in and following 1979, and that an equitable estoppel would prevent a total denial of that expectation, and a resiling from the agreement.

I must decide the extent of any equitable easement which is derived from that 1979 agreement, the benefit which the plaintiff is entitled to thereby enjoy, having regard not only to how this access has been used, but also the conduct of the parties by acquiescence or otherwise in order to arrive at a solution which is just to both parties, given their particular rights and obligations, a just balancing of rights being the very essence of any decision in equity.

The Court, as accepted by both parties, has a very wide discretion as to how the plaintiff's easement in equity should be recognised and declared.

I am completely satisfied on the available evidence that in 1979 what was sought by Canon McDougal, and what was readily agreed to on the basis of good neighbourliness by the County Council, was a means of access and egress to and from the school by means of a doorway in the wall, so that school children arriving and departing therefrom on a large school bus could alight and be collected again at the main entrance to the courthouse, rather than having to do so at the church entrance which was an area where these larger buses could not turn. Such an agreement necessarily implies a limitation to the class of person which was the target of this benefit and to a reasonable extent the hours during the day during which the access was to be available.

This was an arrangement whereby the benefit was on one side only -- namely the board of management of the school, since safe and convenient access to and from the school was achieved into the future for those children attending the school by means of a large bus in increasing numbers.

One could perhaps, if one had to stretch a point, say that there was a benefit to the County Council also, since apart altogether from its capacity as owner of the courthouse and its grounds, it would as the local authority for the county, have an interest in ensuring the safety of children attending school by means of a school bus. But that apart, there is no benefit to the County Council, qua owner, of the courthouse grounds. There was neither consideration passing, nor any annual payment being made by the board of management.

It follows inexorably in my view, therefore, that whatever access was being facilitated by the agreement, it is reasonably to be implied into that agreement that the use of the courthouse grounds pursuant to that agreement would continue to be such as did not unreasonably inconvenience courthouse use and users, and did not constitute a danger to any persons, including the children, and for which the county council might find itself held responsible at law. For this reason, it was in my view not inconsistent with, and to be implied into, the permission given in 1979 that the manner in which the courthouse grounds were traversed, and the route to be taken, would be controlled reasonably, and prescribed therefore by the County Council, including through the County Registrar, as happened for example in 1980, and again in, I think, 2000, provided that the manner and route so dictated or directed by the County Council/County Registrar was consistent with and did not offend against the objective and intention of the 1979 agreement, either in its spirit or the letter thereof.

It is important when reflecting on the correctness of the view by the Board and its advisers that a full unfettered right of way or an equitable easement amounting to such a right of way existed, to recall the lack of any demurral on the part of the Board in 1984 or 2000 to the alteration proposed to the route, or the manner in which parents might use the car parking facilities in the courthouse grounds. That lack of demurral reflects in my view the reality of the arrangement, even when seen from the Boards perspective.

This Court ought in all the circumstances to recognise and declare for the benefit of the parties, that an equitable easement has arisen and continues to exist to the extent that children attending the school as pupils, and others having business or other reason to

reasonably have access to the school may do so by means of the doorway in the wall at the rear of the courthouse during school hours, and during school terms; and, in addition, may do so during such other hours and other periods outside school terms as may be agreed to in writing by the Courts Service (such agreement not to be unreasonably withheld), by such route through the courthouse grounds as may be prescribed by the Courts Service having regard to the safety of those persons, and the use of the courthouse premises and its surroundings as a courthouse.

To so declare does not in my view offend principle, requiring as it does for estoppel to operate, that there be a detriment, a reliance and an element of unconscionability to deny it. Detriment in the present case must be considered in a somewhat nuanced way for the reasons which I have already given. But, nevertheless, there is sufficient, given the likelihood and probability that the existence of this access point dictated or at least influenced the development and expansion of the school in its present location, thereby removing the need to consider any alternative permanent solution. The other elements of reliance and unconscionability are more straightforward and there is no need to elaborate further upon them.

Having reached this conclusion, I will of course hear any further submissions which either party may wish to make as to the precise wording of the declaratory order which this Court should make consistent with my conclusions.