Neutral Citation: [2016] IEHC 388

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 23 J.R.]

THE WEST CORK BAR ASSOCIATION, COLETTE MCCARTHY, VERONICA NEVILLE, MARIA O'DONOVAN AND ANTHONY COOMEY, PAUL O'SULLIVAN AND LIAM CROWLEY

APPLICANTS

AND

THE COURTS SERVICE

RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered the 8th day of July, 2016.

Introduction

1. This case concerns the proposed closure of Skibbereen Court House. The first applicant ("WCBA") is an unincorporated association of solicitors practising in the west Cork area and the second to seventh applicants are solicitors practising there. In these proceedings, the applicants challenge an order made by the respondent on 21st October, 2013, approving the closure of the Court House. The applicants seek to quash that decision.

Background facts

2. The respondent ("The Courts Service") was established by the provisions of the Courts Service Act 1998 ("the Act") which gives it responsibility, inter alia, for managing courthouses and court venues throughout the State. The respondent is funded entirely by the Exchequer and in the wake of the economic collapse which commenced in 2008, has seen very significant reductions in its budget. The respondent operates under a statutory imperative which requires it to have regard to the resources available and the need to secure the most beneficial, effective and efficient use of such resources (s. 13(2)(a) of the Act).

3. Against this background, the Building Committee, a sub-committee of the Board of the Courts Service ("the Board"), at a meeting on 10th October, 2011, established a Venue Review Committee ("VRC"). The VRC's mandate was to carry out a review of all court venues throughout the State. The purpose of this review appears to have been to assist in the assessment of how economies and efficiencies could be introduced in regard to court venues in the light of the budgetary constraints imposed. The VRC met on a number of occasions and presented a draft report to the Building Committee on 17th April, 2012. The draft report was reviewed by the Building Committee on that date and again 12th June, 2012, and as a result a revised report was prepared by the VRC which was considered by the Building Committee on 25th June, 2012. The VRC report embodied a proposed methodology for identifying court venues which might be considered for closure, there being 41 such throughout the State.

4. It proposed a grading or marking system for each venue and a consultation and review process to be followed in respect of each court venue proposed for closure. Eight criteria were identified as appropriate for assessment and points were allocated under each criterion with a possible total of 52 being available. It was proposed that any venue scoring 23 points or less should be considered for a more detailed evaluation. Although Bantry, Bandon and Macroom all received less than 23 points, it was felt that they should be omitted from more detailed evaluation for geographical and logistic reasons. Other venues in west Cork scoring 23 points or less included Kinsale, Clonakilty and Skibbereen. The Building Committee recommended that the Board approve the VRC report and the Board duly did so at its meeting on the 25th June, 2012.

5. On 3rd September, 2012, the Courts Service wrote to WCBA enclosing a copy of the methodology for court venue review setting out the criteria and the points awarded. The letter indicated that the Courts Service would now proceed with a detailed evaluation of each venue identified for potential closure and would engage in a local consultation process with local court users and other stakeholders. The letter concluded by inviting comments or contributions. WCBA responded by letter of 11th October, 2012, expressing concern over the prospect of further court closures in the area. This was followed by a detailed written submission on 26th October, 2012. On 22nd November, 2012, the Courts Service wrote to WCBA saying that there may have been a misunderstanding that Skibbereen and Clonakilty were to be closed into Cork whereas in fact the proposal was for the business from Skibbereen to be transferred to Bantry. WCBA responded on 11th December, 2012, stating that there had been no misunderstanding and in fact the original proposal had been to close Skibbereen into Cork rather than Bantry.

6. On 24th January, 2013, WCBA furnished an addendum submission directed towards the closure of Skibbereen into Bantry rather than Cork. Following the receipt of all relevant submissions from interested parties, the Building Committee met on 16th May, 2013, and decided to recommend closure of the Skibbereen Court House. On 17th May, 2013, WCBA wrote to the Courts Service drawing attention to the impending increase in the jurisdiction of the District Court which it was felt would impact on the business transacted in Skibbereen Court House significantly. On 21st May, 2013, the Courts Service wrote to WCBA informing it of the Building Committee's decision to recommend closure of the Courthouse.

7. On an unspecified date in May, 2013, but presumably prior to the meeting of the Building Committee on 16th May, 2013, a document entitled "Venue Review West Cork Venues" designated report 9/2013 was prepared by Mr. John Coyle, head of Circuit and District Court Operations for the Courts Service. This report analysed the case for closing the three venues in question and this analysis included a consideration of the cost saving involved. In that regard, the report said in relation to Skibbereen:

> "The analysis examined the court profile for a three month period (six court sittings) and then extrapolated the outputs from the analysis over a twelve month period. The total saving for the Courts Service would amount to €11,643 while the total cross justice Exchequer saving would amount to €15,783 if the District Court area of Skibbereen were amalgamated with the District Court area of Clonakilty."

8. The higher figure quoted appears to have been taken from an earlier internal Courts Service document entitled "Cost Analysis Report – Closure of Skibbereen" which is dated simply 2012 and states on the final page that the net saving to the Exchequer of closing Skibbereen will amount to an estimated €15,783 over twelve months. Report 9/2013 had a number of appendices attached to it. Appendix A, entitled "West Cork Venue Review" contains what is described as a detailed assessment and business case prepared by Mr. Coyle in respect of the three venues including Skibbereen. The following is stated at para. 6.2 of that document:

"Indicative figures (2011 figures) produced by Circuit and District Operations Directorate in respect of a decision, if taken, to move the Skibbereen Court sittings to Bantry or Clonakilty, which looked at the impact of such a move on T&S costs for the Gardaí, Courts Service and Legal Aid as well as looking at the maintenance savings enclosing the venue, indicate a possible overall net saving €1.3k per annum if the court sitting moved to Bantry and a net saving of €12.2k if the sittings moved to Clonakilty. Given that there would be costs associated with additional sittings in Bantry and / or Clonakilty it is estimated that the overall net saving would be in the region of €1k per annum if the court moved to Bantry.

Again an analysis of cost from the same source under the same criteria if the venue closed into Clonakilty show a potential net saving of in excess of €12k per annum less the cost of the additional sittings in Clonakilty estimated at €4k per annum."

Thus this report was estimating a net saving of €8,000 per annum although it does not specify whether this is an Exchequer or a Courts Service saving.

9. Appendix B attached to report 9/2013 comprises a document entitled "Review of West Cork Venues" and is stated to be comments on the submissions of WCBA. Paragraph 3.2 of this document refers to the Courts Service in considering the closure of any venue undertaking a standard cost analysis report. This is presumably a reference to the cost analysis report above referred to. The document then goes on to say:

> "The following is the outcome of this analysis in relation to the venues in west Cork currently under consideration for closure.
>
> Skibbereen to Clonakilty
>
> Net saving to the Courts Service of €11,643.
>
> Net saving to the Exchequer of €13,168."

10. It will be seen therefore that whilst the figure specified for the net saving to the Courts Service is the same as that appearing in the Cost Analysis Report, the figure for the net saving to the Exchequer is different. There is no indication of where or how this figure was obtained.

11. It thus emerges that report 9/2013 and its appendices give three different figures for apparently the same thing being respectively €15,783, €8,000 and €13,168.

12. A further report entitled "District Court Variation Order" and designated report no. 20/2013/7 was prepared on the 19th June, 2013, by the Chief Executive Officer of the Courts Service. This report had attached to it appendix 1 which was report 9/2013 above referred to with its own appendices containing reference to the three different figures. Report 20/2013/7 with its appendices was circulated to the members of the Board a week prior to a meeting of the Board which took place on 1st July, 2013. At that meeting, the Board approved the closure of Kinsale Court House to Bandon but deferred a decision on Skibbereen to a further meeting of the Board to be held on 21st October, 2013, pending clarification of an issue that had been raised with regard to the refurbishment of Clonakilty Court House. On 4th July, 2013, the Courts Service wrote to WCBA advising of the Board's decision.

13. The Board met again on 21st October, 2013, and an extract from the minutes of that meeting is in the following terms:

> "District Court variation order on the amalgamation of the District Court area of Skibbereen and the District Court area of Clonakilty (report no. 29/2013).
>
> The Chief Executive presented the report as circulated. The matter had been considered by the Board at its meeting on 1st July, 2013, when the Board, having fully considered the report before it and all submissions received, expressed concern over the condition of Clonakilty Court House and the progress of the refurbishment of the Courthouse. The Board decided to defer the decision in relation to the amalgamation of the District Court area of Skibbereen with the District Court area of Clonakilty until the next meeting when the Chief Executive would advise on the status of the refurbishment plans for Clonakilty. The Chief Executive advised the meeting that the funding had been made available to carry out all the refurbishment works required to bring Clonakilty Courthouse up to an acceptable standard and the works will be carried out as quickly as possible. The Board considered the matter and decided to approve the amalgamation of Skibbereen District Court area with Clonakilty District Court area, to be implemented only on completion of all the necessary refurbishment works at Clonakilty Courthouse."

14. The Courts Service wrote to WCBA on 24th October, 2013, informing it of the decision of the Board.

Functions of the Courts Service

15. The functions of the Courts Service are defined in the Act as including to "provide, manage and maintain court buildings" (s. 5(d)). Section 6(j) confers on the Courts Service the power to designate court venues. Section 13 provides inter alia as follows:

> "(2) The Board, in the performance of its functions, shall have regard to—
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> (a) the resources of the Service for the purposes of such performance and the need to secure the most beneficial, effective and efficient use of such resources, and
>
> (b) any policy or objective of the Government or a Minister of the Government insofar as it may affect or relate to the functions of the Service.
>
> (3) The Minister may inform the Board of any policy or objective of the Government or a Minister of the Government referred to in subsection (2)(b)."

The Applicants' Case

16. Although a large number of issues were canvassed in the course of the hearing, I think these effectively distilled down to three. First, the applicants say that the Board's decision is effectively contaminated by the errors of fact in relation to the alleged savings to be gained from a closure of Skibbereen Courthouse. Three different figures were put before the Board and two at least must be

wrong. Such a fundamental error requires the decision to be set aside.

17. Secondly, complaint is made that the Board failed to give any reasons for its decision. Closely allied to this ground is the submission that because the constitutional right of access to justice is at issue in this matter, there has to be clear justification for the decision arrived at which ought to be subject to close scrutiny. Thirdly, it was submitted that there is no clear statutory power contained in the Act which empowers the respondent to close a functioning court house and accordingly the decision is *ultra vires.*

18. In response, the respondent contends that the decision in question ought to be viewed as allocative in nature and not susceptible to judicial review. The respondent had no duty to give reasons but if it did, adequate reasons were in fact given. Any errors of fact that may have arisen were not material and cost saving was only one of a range of issues considered by the respondent. Even if there was such error, it could not give rise to a right to judicial review. The respondent has a clear statutory power under the Act to close courthouses by virtue of the sections above referred to and as found by this Court in Kennedy & Ors. v. The Courts Service [2014] IEHC 259.

Availability of Judicial Review

19. The closing of Skibbereen Courthouse is undoubtedly a serious matter for those affected by it and it was not disputed that the constitutional right of access to justice is in play. Indeed it is expressly considered in the various reports to which I have referred and which were before the Board when it took its decision. It featured heavily in the applicants' submissions to the respondent in relation to the proposal.

20. In *Clinton v. An Bord Pleanála* [2007] 4 I.R. 701, the Supreme Court considered an application for judicial review in respect of a compulsory purchase order. In the course of delivering the unanimous judgment of a five member Supreme Court, Geoghegan J., in dealing with the availability of judicial review where constitutional rights are in issue, said the following (at p. 723):

> "[46.] I think it appropriate to make the following further observation. It is axiomatic that the making and confirming of a compulsory purchase order to acquire a person's land entails an invasion of his constitutionally protected property rights. The power conferred on an administrative body such as a local authority or An Bord Pleanála to compulsorily acquire land must be exercised in accordance with the requirements of the Constitution, including respecting the property rights of the affected landowner (see *East Donegal Co-Operative Livestock Mart Ltd. v. Attorney General* [1970] I.R. 317). Any decisions of such bodies are subject to judicial review. It would insufficiently protect constitutional rights if the court, hearing the judicial review application, merely had to be satisfied that the decision was not irrational or was not contrary to fundamental reason and common sense."

21. It seems to me therefore that the decision in the present case, representing as it does, a limitation on the constitutional right of access to justice of a significant number of persons, cannot be said to be beyond the scope of judicial review. However, I readily accept that decisions essentially relating to the allocation of limited resources as between competing interests will only be subject to judicial review in relatively rare cases. It is of course not the Court's function to consider the appropriateness of a decision or whether it was right or wrong. Many of the applicants' submissions focused on attributing too little weight to some factors and too much to others but these are not, in my view, matters to which the Court can have regard because to do so would be to trespass upon the merits which is not the function of judicial review.

Judicial Review and Mistake of Fact

22. In *E. v. Secretary of State for the Home Department* [2004] QB 1044, the Court of Appeal for England and Wales considered the availability of mistake of fact as a ground for seeking judicial review. Delivering the Court's judgment, Carnwath L.J. said (at p. 1070):

> "[63.] In our view, the *Criminal Injuries Compensation Board case* [1999] 2 AC 330 points the way to a separate ground of review, based on the principle of fairness. It is true that Lord Slynn distinguished between 'ignorance of fact' and 'unfairness' as grounds of review. However, we doubt if there is a real distinction. The decision turned, not on issues of fault or lack of fault on either side; it was sufficient that 'objectively' there was unfairness. On analysis, the 'unfairness' arose from the combination of five factors: (i) an erroneous impression created by a mistake as to, or ignorance of, a relevant fact (the availability of reliable evidence to support her case); (ii) the fact was 'established', in the sense that, if attention had been drawn to the point, the correct position could have been shown by objective and uncontentious evidence; (iii) the claimant could not fairly be held responsible for the error; (iv) although there was no duty on the Board itself, or the police, to do the claimant's work of proving her case, all the participants had a shared interest in co-operating to achieve the correct result; (v) the mistaken impression played a material part in the reasoning.
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> [64.] If that is the correct analysis, then it provides a convincing explanation of the cases where decisions have been set aside on grounds of mistake of fact."

23. In *R (March) v Secretary of State for Health* [2010] EWHC 765 (Admin), the applicant was one of thousands of haemophiliacs infected by contaminated blood products administered by the NHS in the UK during the 1970s and 1980s. It had never been established in court or by public inquiry that anyone was negligent or at fault. The Government proposed an ex gratia scheme of funding to compensate the victims. The compensation scheme considered recommendations made in the Archer Inquiry Report that payments should be at least equivalent to those payable under a similar scheme applying in Ireland. The Government proposed to introduce a scheme of payments at a lower level than the Irish scheme on the basis that in Ireland, there had been a finding of fault before the scheme was introduced. This was in fact incorrect. The applicant sought to quash the Government's decision on the basis of a material mistake of fact. The High Court set aside the decision. In the course of his judgment, Holman J. said:

> "[50.] I wish to make absolutely clear that the allocation of resources is entirely a matter for the government. They have said, in effect, that they cannot afford to pay more; and that is entirely a matter for them, as to which I neither express, nor have, any opinion or comment whatsoever.
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> [51.] They also say, in effect, that a relevant consideration in deciding the allocation of resources is the advice to them and their view as to whether or not, or to what extent, the government have been at fault or are vulnerable to a civil claim. That seems to me to be a consideration which the government are entitled, if they think fit, to take into account.
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> [52.] But they have been faced also with a specific, reasoned recommendation, which they have rejected, of comparability (or equivalence) with Ireland. When pressed by Dr. Iddon (and by the claimant in his letter to which Dora East replied) as to why they have rejected comparability, they have not merely repeated: because we cannot afford it. They have given a reason which, in my view, does contain an error and does not withstand scrutiny. They continue to regard the Irish system as based on fault and to be a reaction to Finlay whereas, as the brief clearly states, it was

already based on compensation.

> [53.] I am satisfied that the government's approach to recommendation 6 (h) has been, and remains, infected by an error. Miss Whipple argued that even if there was error, the error was not material because (i) the government have already proposed to pay the most they can afford to pay; and (ii) Mrs Webb says at paragraph 61 of her statement that 'the recommendation that a system similar to the Irish system should be adopted was not considered in detail and was not fully .... investigated.' However the minister did not give non-affordability as the reason for rejecting recommendation 6(h) but, rather, the supposed distinction with Ireland; and it was that supposed distinction which led the government not even to consider recommendation 6(h) 'in detail' or fully to investigate it: Mrs Webb refers in the immediately preceding paragraph, paragraph 60, to 'the very different situation in Ireland.' In my view, the error is material because a different decision might (I stress, might) have been made if the government had correctly focussed on, and grappled with, the compassionate basis of Irish payments, when considering in particular the passage at internal pages 90 - 94 of Archer which underpins recommendation 6 (h)."

24. The law in this jurisdiction is to similar effect as shown in the judgment of Hogan J. in *Efe v. Minister for Justice* [2011] 2 I.R. 798, where he said (at p. 819):

"To this might be added the observation that the courts will also quash a decision which is vitiated by material error of fact: see, e.g., *Hill v. Criminal Injuries Compensation Tribunal* [1990] I.L.R.M. 36; *A.B.-M. v. Minister for Justice, Equality and Law Reform*, (Unreported, O'Donovan J., High Court, 23rd July, 2001); *AMT v. Refugee Appeals Tribunal* [2004] IEHC 219, [2004] 2 IR 607; V.C.B.L. v. Refugee Appeals Tribunal [2010] IEHC 362, (Unreported, High Court, Cooke J., 15th October, 2010); *ML v. Refugee Appeals Tribunal* (High Court, Hogan J., 21st January, 2011) and *HR v. Refugee Appeals Tribunal* [2011] IEHC 151 (Unreported, High Court, Cooke J., 15th April, 2011)."

Did a Material Error Occur?

25. There is no dispute about the fact that an error was made. The material put before the Board before it reached its decision was manifestly mistaken. Three different figures were given for ostensibly the same thing or at least potentially the same thing. Whilst it might be said that the amounts involved were in absolute standards fairly modest, nonetheless the highest figure put forward was almost double the lowest. As I have said, clearly at least two of the figures were wrong and perhaps all three were wrong. WCBA in its submission had come up with a different figure again which was lower than any of the figures appearing in the Courts Service reports. The respondent submits that the differences were immaterial but there is no evidence of that as no member of the Board has sworn an affidavit. The mistake, had it been realised, might conceivably have lead to a different outcome. It seems to me that this is all that is required. It is not necessary to show that a different result would have ensued if the mistake had been discovered, merely that it might have. However, there is no way of knowing.

26. In that respect, it is important to bear in mind that the entire project from the outset was primarily, if not entirely, about the allocation of funding. The whole purpose of considering the closure of venues was to see if savings could be made. No other reason has been suggested. As the Courts Service itself contends in its written submissions, these proceedings involved a challenge to the respondent's decision on how to efficiently allocate limited resources. The expression "resources" is normally synonymous with "money". In its submissions, the respondent repeatedly refers to the budgetary constraints introduced as a result of the cutbacks and the need to have regard to its statutory duty to secure the most beneficial, effective and efficient use of resources. Whatever way one looks at it, that can really only come down to saving money. If for example, closing Skibbereen Court House was going to result in a cost to the respondent, could this be said to be a beneficial, effective and efficient use of its resources? If on the other hand the closure was predicated on a saving being made, then it is difficult to see how it could be said that the amount of such saving could ever be other than material to the decision.

27. In my view, therefore, the errors of fact made in this case must be viewed as fatal to the decision.

Reasons?

28. The respondent contends that it had no duty to give reasons but if it did, it fulfilled the duty. The oft quoted words of Fennelly J. in *Mallak v. Minister for Justice* [2012] 3 I.R. 297 are apposite (at p. 321):

> "[63.] This body of cases demonstrates that, over a period approaching thirty years, our courts have recognised a significant range of circumstances in which a failure or refusal by a decision maker to explain or give reasons for a decision may amount to a ground for quashing it. Costello J. attached importance, quite correctly, to the presence or absence from the statutory scheme of a right of appeal. The absence of a statement of reasons may render such a right nugatory...
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> [67.] More fundamentally, and for the same reason, it is not possible for the applicant, without knowing the Minister's reason for refusal, to ascertain whether he has a ground for applying for judicial review and, by extension, it is not possible for the courts effectively to exercise their power of judicial review.
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> [68.] In the present state of evolution of our law, it is not easy to conceive of a decision maker being dispensed from giving an explanation either of the decision or of the decision making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.
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> [69.] Several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have a right to know the reasons on which they are based, in short to understand them."

29. These comments were again approved more recently by the Supreme Court in DMPT v. Taxing Master Moran [2015] IESC 36.

30. Similar views were expressed by the Supreme Court in *EMI Records v. Data Protection Commissioner* [2014] ILRM 225 where Clarke J. delivering the court's judgment said (at p. 248):

> "[6.3] More recently, in Meadows v. Minister for Justice [2010] 2 I.R. 701; [2011] 2 ILRM 157, Murray C.J. said as follows at pp. 732/177-178:
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> 'An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale

on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective.' "

Clarke J. continued at p.250:

"[6.9] Where, for example, an adjudicator makes a decision after a process in which both sides have made detailed submissions it may well, as Fennelly J. pointed out in Mallak , be that the reasons will be obvious by reference to the process which has led to the decision such that neither of the parties could be in any reasonable doubt as to what the reasons were. But it seems to me that, in a case where any party affected by a decision could be in any reasonable doubt as to what the reasons actually were, it must follow that adequate reasons have not been given."

31. The issue of closing courthouses was recently considered by a divisional court of the High Court of Justice of England and Wales in two decisions given on the same day. The first, *R. (Murray and Co.) v. The Lord Chancellor* [2011] EWHC 1528 (Admin) concerned the closure of Sittingbourne Magistrate's Court as part of a nationwide appraisal of court venues for closure. A lengthy consultation process had been undertaken by the Lord Chancellor which resulted in the closure of a significant number of courts. Delivering the court's judgment, Beatson J. said (at para. 37):

"There is no real dispute as to the relevant law applicable in this case. It can be summarised as follows:

(1) Even though the Lord Chancellor was under no express statutory duty to consult, once consultation was undertaken it had to be conducted fairly: see *R v North and East Devon Health Authority*, ex-parte Coughlan [2001] QB 213 and R (Capenhurst and others) v Leicester City Council [2004] EWHC 2124 (Admin) at [44]…

(4) As far as the second of the requirements in ex-parte Gunning (enabling intelligent consideration and an intelligent response) is concerned, 'it is important that any consultee should be aware of the basis on which a proposal put forward for … consultation has been considered and will thereafter be considered…': *per* Silber J. in the *Capenhurst* case at [46]. Silber J. also stated that this means that the person consulted should be informed or be aware of what criterion would be adopted by the decision-maker and what factors would be considered decisive or of substantial importance by the decision-maker in making his decision at the end of the consultation process."

32. In the second case, *Vale of Glamorgan Council v. Lord Chancellor* [2011] EWHC 1532 (Admin) which concerned Barry Magistrate's Court, the judgment of the same court was delivered by Elias L.J. who said (at para. 38):

"Failed to provide proper reasons.

[38.] This submission was not advanced with any particular enthusiasm, and in our view rightly so. We do not accept a submission from the Lord Chancellor that there was no obligation to give any reasons at all for this decision. It is true that the common law has not yet reached the point where reasons need be given for all administrative decisions: see *Hasan v Secretary of State for Trade and Industry* [2008] EWCA Civ 1322, para 21 per Sir Anthony May, P. However, where there has been consultation the Minister is under an obligation properly to consider the responses, and in our view he is then obliged to give reasons sufficient to indicate why, notwithstanding submissions to the contrary, he has made the decision he has."

33. In the present case, a lengthy process was undertaken spanning some years. It involved extensive consultation with the relevant stakeholders including the applicants. Very detailed written submissions were made by WCBA on all aspects of the matter in which important constitutional rights of the applicants and many others were potentially affected. At the end of that lengthy and detailed consultation process, the only evidence of the Board's decision is in the final sentence of the extract from the minutes above referred to. This simply says that the Board decided to approve the closure. Clearly, it could not be said that this on its face gives any reason for the decision. Even if it were to be argued that the Board by implication was accepting the recommendation of the Building Committee apparently made on 13th May, 2013, there is no minute of that decision or anything which indicates the reasons for which it was reached. Regrettably therefore, it seems to me that the applicants are left in the dark as to the reasons for the decision under challenge here, irrespective of mistake. I would have thought that applicants having engaged extensively with the respondent and made comprehensive submissions should at least be given an indication as to why those submissions were being rejected in toto. In my view therefore the decision must be set aside on this ground also.

Other Issues

34. As previously indicated, one of the applicants' arguments is that the Courts Service has no statutory power to close a functioning courthouse. In *Kennedy*, Birmingham J. appears to have concluded otherwise. Insofar as this issue was considered in that case, the applicant submits that it was wrongly decided. In the light of the conclusions I have already reached, it would in my view be both unnecessary and inappropriate for me to embark on an analysis of the correctness of that decision.

35. The applicants also made submissions based on the contention that WCBA was only invited to address the closure of Skibbereen into Bantry in its written submissions to the Courts Service and was never in fact given the opportunity to deal with the closure of Skibbereen into Clonakilty. This is clearly a fair procedures point in respect of which leave was neither sought nor granted and therefore cannot be considered.

36. In addition to seeking *certiorari*, the applicants also seek an order of *mandamus* directing the Courts Service to keep Skibbereen Courthouse open. The effect of granting such an order would be to confer priority on Skibbereen Courthouse over other venues and compel the Courts Service to expend whatever resources are required to comply. In *Brady v Cavan County Council* [1999] 4 IR 99, Keane J. (as he then was) considered an application for an order of mandamus against a local authority to compel them to repair a particular road in its functional area. He said that to grant such an order -

"…would simply mean that its [the Respondent's] admitted responsibilities were being discharged in a haphazard and arbitrary manner by the elevation of this particular strip to an unjustified priority in its road repair programme."

37. The court accordingly refused the relief sought.

38. In my view therefore, an order of mandamus is not available to the applicants in this case.

Conclusion
39. For the reasons explained, I will set aside the decision of the Board and remit the matter for further consideration.