Neutral Citation Number [2012] IEHC 477

THE HIGH COURT

[2012 No. 83 J.R.]

BETWEEN

LAURENCE FLYNN

APPLICANT

AND

MEDICAL COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Hogan delivered on the 22nd day of November, 2012

1. Under what circumstances should the Medical Council (or more accurately, the Preliminary Procedures Committee of the Council) open a full inquiry into the conduct of medical practitioners following a complaint by a former patient? If, moreover, the Council declines to initiate such an investigation following a complaint by a member of the public, under what circumstances- if any-can this Court intervene by way of judicial review? These are the essential issues which are presented by this application for leave to apply for judicial review which is being heard on notice to the Medical Council following an order in that behalf by this Court (Ryan J.) of the 5th March, 2012. At the hearing, however, it was agreed that this application for leave should be treated as the equivalent of the full hearing.

The background to the complaint

2. The applicant maintains that in his late teenage years he suffered a mishap when in 1987 he pressed the back of his palate with his finger and in the course of this accident broke and moved his left pterygoid hamulus bone. The right hamulus bone is a hook-like narrow bone around which the tendon of muscles of the soft palate glide at the very back of the palate of the mouth. As we shall see, the injury in question is exceedingly rare and not very often encountered, even by specialists.

3. As a result of this mishap Mr. Flynn contended that he suffered considerable pain and had difficulties in swallowing. This complaint was not necessarily received sympathetically by the medical personnel he consulted in the years that followed. Thus, as late as November 1995 a Professor of Dentistry dismissed the suggestion that a bone on the left side of the mouth was broken, saying that:-

> "Multiple investigations have failed to find any reason for this pain and the only people who felt that they could help him in the past have been psychiatrists, although he dismisses them and says they did not help at all."

4. The contemporary psychiatric notes from the period are in a similar vein. Most of the comments were to the effect that the applicant was suffering from a delusion to the effect that there was a pathology "in his face which is either not there at all or [is] only minimal".

5. Yet Professor Gordon Russell of the Department of Dental Surgery at UCC noted in a letter of 16th September, 1994 that:-

> "At examination today for the first time I have found a tiny firm/bony swelling or nodule at the distal end of the hard palate well to the left of the mid-line of the tuberosity [protruding bone]. This nodule coincides with the centre of the painful symptoms which are now said to occur to a lesser extent on the right side of the neck."

6. A CT scan was performed on the applicant in September 1994 at Cork Regional Hospital. The radiologist in question, Dr. Ryder observed that:-

> "The only feature for comment is that the tergoid plate anteriorally on the right side is somewhat larger than on the left side. This is not pathological and would represent normal anatomical variation. However, it may be more susceptible to local trauma."

7. Mr. Flynn was not entirely happy with these investigations and in June, 2006 he had another CT scan done at another private hospital. The consultant radiologist in question- whom I shall term Dr. A.- concluded that the "diagnostic quality" of the scan was excellent and that he did not see any abnormality in the study. He further added:-

> "I note that Mr. Flynn has had two previous CT scans, both reported as normal with reference to slight asymmetry of the pterygoid bone within normal limits on the study dated 26th September, 1994. There does not appear to be any discrepancy between the reports of those studies and the recent CT [scan]."

8. Another consultant radiologist, Dr. B., reviewed the files and concluded in January, 2008 that:-

> "Axial and coronal reconstruction show both the right and left pterygoid bones to be intact. I see no evidence of any deformity or fracture currently. No appreciable change since 2004."

9. Another radiologist, Dr. C, also reviewed these images and concluded that the "pterygoid plates appear within normal limits". In view of Mr. Flynn's concerns about a possible misdiagnosis, the images were also reviewed by a Dr. D, a consultant radiologist. Dr. D. also agreed that there was no evidence of a pterygoid plate fracture or erosion.

10. Mr. Flynn was still dissatisfied. He commenced several sets of medical negligence proceedings against the hospitals in question, but as part of an agreement to discontinue one of those sets of proceedings, the hospital in question agreed to commission a report from Professor Nigel Hoggard, a specialist from the Academic Unit of Radiology at the University of Sheffield. In 2011 Professor Hoggard reviewed the images from 1994 and concluded in a report as follows:-

> "There appears to be asymmetry between the left and right pterygoid hamuluses. This is a bony projection arising from the medial pterygoid plate which extends down toward the roof of the mouth posterior to the hard palate. Without continiguous images at higher resolution (normally we would undertake much higher resolution imaging today) it is difficult to be certain but there would appear to be a possible fracture through the hamulus on the left.
>
> **Interpretation**
>
> The appearances support the contention that the pterygoid hamuluses are asymmetrical and hamulus related pain is a recognised pain syndrome. *However, this is not common and most general radiologists would, in my opinion, be unaware of this*. I am the radiology lead for an atypical facial pain service and for head and neck imaging in my centre which is a large teaching hospital and also incorporates a leading teaching dental hospital where there is an interest in atypical facial pain. During my time in this post I have never been asked to specifically comment on the pterygoid hamulus on a CT scan." (emphasis supplied)

11. In a covering letter, Professor Hoggard added that while the earlier imaging from 1994 was not optimal, he nonetheless concurred "with Mr. Flynn's interpretation of his imaging; the pterygoid hamuluses do look asymmetrical and in this context trauma is entirely feasible". We should, perhaps, pause here to note that this letter and report can only be regarded as an important vindication of Mr. Flynn's position. Contrary to what he had been told by a succession of medical practitioners and consultants since 1994, a recognised expert now more or less admitted that Mr. Flynn's interpretation of the original CT scan was probably correct and that the most likely explanation of events was that he had, in fact, suffered a fracture of the left hamulus.

12. The importance of this report for Mr. Flynn cannot, I think, be overstated. After all, a succession of medical practitioners had rejected his contentions and, moreover, some had maintained that he was suffering from a psychiatric condition. In many respects, Mr. Flynn was doubly unlucky. He was unlucky in the first instance to have (probably) fractured his left hamulus in a freak incident, but he was secondly unlucky in that this condition is so rare that even the specialist radiologists whom he consulted were unaware of it. Irrespective, therefore, of his strict legal merits so far as this application for judicial review is concerned, it is important to acknowledge here the frustration which Mr. Flynn must understandably have felt by reason of the failure of the medical practitioners he consulted to diagnose the root cause of the problem. It is to his credit that he seems to have single-handedly preserved against the odds over a long period until the validity of his concerns was belatedly acknowledged.

13. It should, however, equally be said that the available evidence does not support the more serious allegations which he made against the consultants concerned- namely, that of deliberate misrepresentation of the evidence- and I will return to this later in my judgment.

The complaints to the Medical Council

14. We may now return to the complaints against various medical practitioners. Mr. Flynn first made a complaint to the Medical Council in June, 2010 concerning Dr. A. and Dr. B. In essence the applicant claimed that these consultants had misrepresented the medical evidence which had emerged from the CT scan. By letter dated the 1st September, 2010, the Professional Practices Committee of the Council informed Mr. Flynn that there was not sufficient cause to warrant further action in relation to this complaint. It would appear that an application for leave to apply for judicial review was made of this decision, but that leave was refused on 24th October, 2011.

15. Some days later, Mr. Flynn then made a second complaint against Dr. C. and Dr D. It is these latter complaints which are the subject matter of the present application for judicial review. Counsel for the Council, Mr. Leonard, drew attention to the fact that these complaints were similar in nature to those previously made against Dr. A. and Dr. B. and were made within days of this Court rejecting an application for leave to apply for judicial review. Mr. Leonard urged me to infer from these circumstances that the applicant had simply held these complaints in reserve and that the making of these complaints was abusive. While I do not at all exclude the possibility that doctrine such as Henderson v. Henderson (and other similar rules which might deal with the deliberate and strategic manipulation of the complaints system) might apply by analogy to complaints made under the 2007 Act in much the same way as they apply to ordinary civil litigation, this was a finding which was never made by the Council itself. If the Council did not reject the second set of complaints- and which are the subject of this application for judicial review- on this ground, I do not see how I can step in and in effect advance a fresh reason for rejecting these complaints on their merits when this very reason was never put forward by the regulatory body charged with the statutory duty of adjudicating on these issues.

16. A further consideration here is that the allegations of deliberate misreading of the medical notes and images are serious ones going to the bona fides of the medical practitioners concerned. It seems implicit in the decisions of the Preliminary Proceedings Committee that this particular allegation was found to be entirely without substance, so far as Dr. C. and Dr. D (and, for that matter, so far as the original decision is concerned, Dr. A. and Dr. B.) were concerned. I shall return to this topic later in the judgment.

17. Before considering the principal legal issues which arise with regard to the furnishing of reasons and so forth, it is necessary first to set out in summary the relevant statutory regime regarding complaints involving medical practitioners.

Part 7 of the Medical Practitioners Act 2007

18. The Medical Practitioners Act 2007 ("the 2007 Act") effected significant new changes to the pre-existing statutory regime which had been contained in the Medical Practitioners Act 1978. Quite apart from the fact that the 2007 Act now introduced a lay majority on the Council, the other significant change was that poor professional performance could, in itself, be regarded as a ground of complaint. Section 2 of the 2007 Act defined poor professional performance as:-

> "A failure by a practitioner to meet the standards of competence (whether in knowledge and skill or the application of knowledge and skill or both) that can reasonably be expected of medical practitioners practising medicine of the kind practised by the practitioner."

19. So far as the complaint regime itself was concerned, s. 57(1) of the 2007 Act provides that:-

> "A person (including the Council) may make a complaint to the Preliminary Proceedings Committee concerning a registered medical practitioner on one or more than one of the grounds of-
>
> (a) professional misconduct,
>
> (b) poor professional performance....."

20. Section 59(9) provides:-

> "The Preliminary Proceedings Committee shall, before forming an opinion on whether there is sufficient cause to warrant further action being taken in relation to a complaint, or whether the complaint should be referred to another body or authority, consider-
>
> (a) any information supplied under this section concerning the, complaint, and
>
> (b) whether the complaint is trivial or vexatious or without substance or made in bad faith."

21. Section 63(a) provides that:-

"Where-

> (a) the Preliminary Proceedings Committee is of the opinion that there is a *prima facie* case to warrant further action being taken in relation to a complaint, or.... the Preliminary Proceedings Committee shall refer the complaint to the Fitness to Practice Committee."

Reasons for the decisions not to open disciplinary proceedings against Dr. C and Dr. D.

22. The original reasons given by the Preliminary Proceedings Committee ("PPC") by letter dated the 6th December, 2011, were in the following terms:-

> "The Committee took careful note of the contents of your correspondence, however, the Committee did not feel that the complaints outlined in your correspondence warranted further action being taken in relation to your complaint concerning Dr. [C] and Dr. [D]."

23. There then followed a further exchange between the parties as to the adequacy of the reasons given by the PPC in respect of what I shall term for convenience as the first decision. As I have already noted, the applicant moved this Court *ex-parte* for leave on the 5th March and this was adjourned, but Ryan J. directed the application be put on notice to the Medical Council. As it happens, this application was made before Mr. Flynn had received a letter from the Medical Council indicating that the adequacy of the reasons would be reviewed by the PPC on the 17th April, 2012. It was then agreed these judicial review proceedings should stand adjourned pending the outcome of that decision.

24. The PPC met again on 17th April, 2012. On this occasion the Committee concluded:-

> "The Committee considered the correspondence from Mr. Flynn expressing disappointment at the Committee's opinion that his complaint did not warrant further action. Upon its consideration of all documentation the Committee agreed that Mr. Flynn's correspondence did not contain any further information which would warrant reconsideration of its opinion. In reaching this decision the Committee noted, in particular, the letter of Dr. Hoggard dated 21 November 2011 wherein it was stated that 'I do not believe '9 out of 10'; if not a great many more radiologists would be aware of this structure as [a] cause of pain."

25. As we have already noted, the PPC is required to form an opinion for the purposes of s. 63(a) of the 2007 Act as to whether the facts disclose "a *prima facie* case to warrant further action being taken in relation to a complaint." The statutory requirement that the Committee must form an opinion is of some importance, because the use of this particular language is conventionally understood to import the triple requirements that any such decision must be *bona fide*, not unreasonable and factually sustainable: see, *e.g., The State (Lynch) v. Cooney* [1982] I.R. 337, 361, per O'Higgins C.J. and *Kiberd v. Hamilton* [1992] 2I.R. 257, 265, *per* Blayney J. As Henchy J. explained in *Lynch* ([1982] I.R. 337, 380-381:-

> "I conceive the present state of evolution of administrative law in the Courts on this topic to be that when a statute confers on a non-judicial person or body a decision-making power affecting personal rights, conditional on that person or body reaching a prescribed opinion or conclusion based on a subjective assessment, a person who shows that a personal right of his has been breached or is liable to be breached by a decision purporting to be made in exercise of that power has standing to seek, and the High Court has jurisdiction to give, a ruling as to whether the pre-condition for the valid exercise of the power has been complied with in a way that brings the decision within the express, or necessarily implied, range of the power conferred by the statute. It is to be presumed that, when it conferred the power, Parliament intended the power to be exercised only in a manner that would be in conformity with the Constitution and within the limitations of the power as they are to be gathered from the statutory scheme or design. This means, amongst other things, not only that the power must be exercised in good faith but that the opinion or other subjective conclusion set as a precondition for the valid exercise of the power must be reached by a route that does not make the exercise unlawful-such as by misinterpreting the law, or by misapplying it through taking into consideration irrelevant matters of fact, or through ignoring relevant matters. Otherwise, the exercise of the power will be held to be invalid for being *ultra vires*."

26. This, then, brings us to a consideration of the Committee's decision not to take any action against the two medical practitioners in question. In essence, the applicant's case is that the reasons given by the Committee are inadequate and, moreover, that the decision is not unreasonable or factually sustainable. In some respects it is well nigh impossible to segregate the issue of the adequacy of the reasons from the questions of unreasonableness and factual sustainability so far as the present proceedings are concerned, because the answer to one question informs the disposition with regard to the other.

27. There is no doubt but that the issue as to whether a prosecutor or other statutory personage is required to give reasons for their failure to take either a criminal prosecution or regulatory action is a vexed and troubling one. This is especially true in relation to criminal prosecutions where it is generally thought indecorous for a prosecutor to have to give reasons- certainly detailed reasons-for failing to prosecute a particular case. If, for example, the Director of Public Prosecutions was required to give detailed reasons for such a decision, it might be damning of a particular accused while providing cogent reasons for not acting. The Director might, for example, think that the evidence was strongly suggestive of guilt, yet decline to prosecute because of concerns regarding the reliability of a particular witness or the admissibility of key evidence.

28. Few accused persons placed in that situation would view this state of affairs with equanimity and, hence, for these practical and pragmatic reasons the courts have been reluctant to impose such a requirement on the prosecuting authorities. This is why the Supreme Court concluded in *The State (McCormack) v. Curran* [1987] I.L.R.M. 225 that it would only be appropriate for a court to

intervene by way of judicial review of a decision not to prosecute where such decision was taken "*mala fide* or influenced by an improper motive or improper policy". This approach has been consistently followed ever since in the context of criminal prosecutions: see, *e.g., H. v. Director of Public Prosecutions* [1994] 2 I.R. 589 and, in the context of criminal investigations, *Fawley v. Conroy* [2005] 3 I.R. 480.

29. Similar thinking also underlies the decision of Kelly J. in *Ryanair Holdings plc v. Irish Financial Services Regulatory Authority* [2008] IEHC 231, a case much relied on by Mr. Leonard, counsel for the Council. While it is true that this decision concerned a failure to take regulatory action under the Market Abuse Regulations 2005, this also concerned allegations which, if substantiated, would be certainly unlawful and might expose the entity in breach to the possibility of a serious financial sanction. Viewed thus, the case is much closer to the cases involve failure to prosecute in respect of criminal offences than a case involving a regulatory breach *simpliciter*.

30. Moreover, unlike this case, the complaint in *Ryanair* did not engage - or, at least potentially engage- two important constitutional rights, namely the protection of the person and the right to a good name (both protected by Article 40.3.2) and this, as we shall see, is an important distinction from the present case. In any event, aspects of this reasoning insofar as it concerns decision-making *pursuant to statute* may now have to be re-considered in the light of the subsequent decision of the Supreme Court two years later in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701, a topic which I will consider presently.

31. A further consideration here is that the Oireachtas has itself prescribed the statutory conditions by reference to which a decision to act (or not to act) must be measured. These considerations simply do not apply, for example, to decisions of the Director of Public Prosecutions. While the parameters of that office are regulated by the Prosecution of Offences Act 1974, the decision as to whether to prosecute is not itself governed by statute. By contrast, the Oireachtas has here enunciated a statutory test in relation to the question of whether "further action" should be taken in relation to any given complaint.

32. This, it seems to me, is a crucial consideration, because unless adequate reasons are given for such a decision, it would be all but impossible for a court to perform its supervisory functions and to ensure that the Council properly discharged its statutory functions in the manner which, for example, Henchy J. envisaged in the above-mentioned passage in *Lynch*. As Murray C.J. observed in *Meadows* ([2010] 2 I.R. 701, 732):-

> "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. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."

33. Clarke J. also spoke in the same vein in *Christian v. Dublin City Council* [2012] IEHC 163:

> "It must be recalled that the underlying jurisprudence in respect of the obligations to give reasons suggests that the basis for the obligation (in the absence of an express statutory requirement) is to enable the court to exercise its legitimate judicial review function. In at least some cases if a court does not know why a decision was taken, then the court may not be able to ascertain whether the decision was lawful for the lawfulness of the decision in question may depend on whether the reasons were valid in the light of the appropriate statutory and legal regime applicable."

34. One might also recall that a complaint to the Council will, as often as not, involve an allegation in relation to the integrity of medical treatment. Given that the State is under a specific and express constitutional duty to protect the person (Article 40.3.2), the 2007 Act must be seen as a vehicle whereby this constitutional right can be safeguarded. That constitutional duty could scarcely be regarded as being properly discharged if the body charged with the supervision of medical practitioners was entitled to maintain the studied inscrutability of the Sphink.

35. It must also be recalled that Article 40.3.2 also expressly protects the good name of all citizens and the State commits itself, as best it may, by its laws to vindicate that right. As Hardiman J. noted in *Grant v. Roche Products Ltd*. [2008] IESC 35, [2008] 4 I.R. 679, the word "vindicate" in this context implies that the person's whose good name has been unfairly impugned will be "cleared of blame."

36. Here it may be observed that the two medical practitioners in question, Dr. C and Dr. D. faced the potential allegation of deliberate misreading medical notes and images. This was a serious allegation which, reading between the lines, the PPC considered was unfounded. But if that constitutional right to good name is to be appropriately vindicated by the Council, there should be no need at all for anyone to have to read between the lines. If a complaint of this kind is to be rejected for this reason, than essential fairness and the protection of that good name would also require that this should be expressly stated.

37. None of this is to suggest that the Council is required to give a discursive judgment (*cf* the comments of Murphy J. in *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 751, 757). But, as Murray C.J. pointed out in *Meadows*, it does mean that the essential rationale of the decision should be evident- or, at least, capable of "being inferred from its terms and its context." Given, moreover, as we have just seen that the Council also owes a duty to protect, where appropriate, the good name of the medical practitioners against whom the complaint has been made, there is no reason why the reasons for summarily rejecting a complaint without the necessity for further action could not be pithily and succinctly expressed, quite often in two or three sentences.

Were the reasons proffered for the first decision adequate?

38. If we proceed now to apply these principles to the present case it will be recalled that the Council rejected the first complaint saying that it did not consider "that the complaints....warranted further action being taken in relation to your complaint concerning Dr. [C] and Dr. [D]". For my part, I consider that reasons of this laconic and generic nature do not satisfy the requirements specified by Murray C.J. in *Meadows*. No explanation whatever is ventured in respect of these reasons, so that the addressee of the decision is left to discern as best he or she may the basis for the Committee's conclusions. In the words of Murray C.J., the essential rationale for the decision is simply not evident - either expressly or by implication- from the terms of the decision.

39. Furthermore, as we have already seen, inasmuch and insofar as the Committee's decision that no further action is required is based on the view that the medical practitioner's personal and professional conduct is beyond reproach, any effective vindication of his or her good name in the manner required by Article 40.3.2 requires that this should be expressly stated. This is yet a further reason why reasons - however brief and pithy- must be given for the decision.

40. It should be stressed, of course, that insofar as such reasons are defective, they could generally be cured by the addition of just a few words. Thus, for example, in the present case the Committee ought to have expressly stated that the allegations of deliberate wrong-doing were unfounded.

41. It follows, therefore, I have concluded that:-

> i. The Committee was required to give reasons for its decision not to take any further action in respect of the complaint and that such reasons must, in the words of Murray C.J. in *Meadows,* disclose the essential rationale for the failure to act. Absent such reasons, then for all the reasons articulated by, e.g., Henchy J. in *Lynch*, Murray C.J. in *Meadows* and Clarke J. in *Christian*, this Court could not perform its legitimate judicial review functions.
>
> ii. Where the Committee considers that any allegations against the good name and professional integrity of the medical practitioner concerned are unfounded, the obligation contained in Article 40.3.2 to vindicate that good name requires that the Committee must expressly clear the practitioner concerned of any blame and give reasons - however succinct or pithy - to this effect.
>
> iii. The reasons given in respect of the first decision did not comply with these requirements.

Were the reasons proffered for the second decision adequate?

42. We may now turn to consider the adequacy of the reasons given in respect of the second decision in April, 2012. It will be recalled that by this stage the Committee had before it the report of Professor Hoggard which, as we have already noted, to all intents and purposes, substantially vindicated the contentions which Mr. Flynn had been making all along, even if account is also properly taken of the fact that the crucial original images from 1994 do not lend themselves to the degree of exactitude that would now be possible with higher resolution imaging.

43. The Committee's statement to the effect that Mr. Flynn's fresh correspondence "did not contain any further information which would warrant reconsideration of its opinion" is nevertheless a rather surprising one. After all, Professor Hoggard's report put the entire matter in a completely new light. It showed- or, at the very least, tended to show- that Mr. Flynn's contentions in relation to the asymmetry were correct and that a fracture of the left hamulus was an entirely plausible explanation for trauma. This in itself was hugely significant, as was the fact that Professor Hoggard had stressed that this phenomenon was so unusual and exceptional that few radiologists had ever encountered it or would be aware of it as a possible explanation for trauma.

44. If matters rested at that point, I would quashed the decision on the basis that one of the reasons given by the Committee- namely, that no new information of any significance had come to light- was simply not factually sustainable.

45. Matters do not, however, rest there. As we have seen, the Committee also relied on Professor Hoggard's report by way of justification for the decision not to take any further action. After all, Professor Hoggard had found that the phenomenon in question was so unusual that the great majority of radiologists were simply unaware of it and, indeed, Professor Hoggard specifically noted that he had never previously been asked during his own career to comment upon the pterygoid hamuluses.

46. It is necessarily implicit from the Committee's decision and the reasons given by reference to Professor Hoggard's report that it considered that it could not possibly have concluded that the consultants in question had a case to answer, precisely because of the statutory definition of the term poor professional performance ("standards of competence....that can reasonably be expected of medical practitioners practising medicine of the kind practised by the practitioner"). It cannot be reasonable to expect consultant radiologists to have a specific knowledge of a condition which is so rare that the vast majority of radiologists are unaware of it. In these particular circumstances, it is impossible to see how they could have been guilty of poor professional performance.

47. Besides, in evaluating the question of whether a *prima facie* case has been established, the Committee is entitled to determine "whether the application has any real prospect of being established at an inquiry, any doubt being resolved in favour of an inquiry being held": see *Law Society of Ireland v. Walke*r [2006] 3 I.R. 581, 600, *per* Finnegan P.

Conclusions

48. It is necessarily implicit in the Committee's reasons for the second decision that they considered that the complaint of improper conduct was without foundation and that that of poor professional performance had no prospect of succeeding in the circumstances in view of the statutory definition of the term ins. 2 of the 2007 Act. This was a conclusion which the Committee members were plainly entitled to reach having regard to the available evidence and it was one which satisfied the triple requirements of bona fides, factual sustainability and rationality.

49. In these circumstances, the unsatisfactory aspects of the Committee's reasoning notwithstanding, it is nonetheless plain that if regard is had to the overall reasons advanced for the second decision given in April, 2012, then insofar as they emphasise the fact that Professor Hoggard had stressed that most radiologists were simply unaware of the nature of the applicant's condition, that in this respect those reasons are accordingly adequate to satisfy the requirements of the comments of Murray C.J. in *Meadows*. It follows, therefore, that the decision is also accordingly capable of independent justification on grounds of factual sustainability and rationality.

50. It is for that reason- and for that reason only- that I will refuse the applicant the relief sought.