

**THE HIGH COURT
JUDICIAL REVIEW**

[2014 No. 185JR]

BETWEEN:

DONA SFAR

APPLICANT

-AND-

THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDICIAL REVIEW

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APPLICANT

-AND-

THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

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HUMAN RIGHTS COMMISSIONER

NOTICE PARTY

JUDGMENT of Mr. Justice Twomey delivered on the 20th day of June 2016

Introduction

1. In these overlapping judicial review applications the Minister for Agriculture, Food and the Marine ("Department of Agriculture") and the Attorney General are the common respondents. These proceedings involve a challenge to the actions of the Department of Agriculture and ultimately the seizure of animals which were owned by the applicant, where there was evidence of serious suffering to those animals on the applicant's property.

2. The applicant unsuccessfully challenged the said actions in the District Court. She appealed that decision in the Circuit Court, but was unsuccessful. She also sought to challenge the actions indirectly, by seeking to have the veterinary inspector, who carried out the relevant actions on behalf of the Department of Agriculture, found guilty of professional misconduct by the Veterinary Council. This was also unsuccessful. She now seeks to challenge the actions of the Department of Agriculture in the High Court. The applicant is a lay litigant and the Department of Agriculture produced evidence to the Court of the fact that the applicant has instituted 22 sets of judicial review proceedings since 1999, which raises the issue of the effect of serial lay litigants on scarce court resources, as well as the issue of the appropriateness of making of a claim of professional misconduct against a professional where a litigant disagrees with the decision taken by that professional.

Factual background to both Judicial Reviews

3. The applicant kept sheep and pigs on her property in Kilcurry, Co. Louth. The first set of judicial review proceedings (2014/185JR) arose from inspections of those animals on behalf of the Department of Agriculture which were carried out in March and April of 2014 on the applicant's property. The second judicial review (2014/614JR) arises from the issue to the applicant of a Welfare Notice by the Department of Agriculture on the 21st July, 2014, regarding the state of the animals and the subsequent seizure of the animals on the 8th August, 2014.

4. The applicant lives in Dundalk, but she owns property in Kilcurry, Co. Louth, where she kept sheep and pigs until the seizure, which is the subject of these proceedings. The first inspection by the respondent of the applicant's property at Kilcurry, Co. Lough occurred on the 7th March, 2014. It arose from concerns expressed by members of the public regarding the welfare of pigs and sheep on the applicant's property. This inspection was conducted by Mr. O'Brien-Lynch, a registered veterinary practitioner and a Veterinary Inspector in the Department of Agriculture.

5. The Report, produced by Mr. O'Brien-Lynch, of this inspection is dated 13th March, 2014. The Report refers to the presence of a sheep carcass on the applicant's property adjacent to the water-course, which he estimated had been there for two to four weeks. Mr. O'Brien-Lynch refers to the unnecessary suffering of the pigs due to a lack of water supply, shelter and bedding and the fact that there was a significant risk of injury to the pigs and sheep from a road traffic accident as there was a lack of biosecurity on the holding. In this Report, he also refers to a lame sow suffering unnecessarily and requiring veterinary attention as well as noting the presence on the applicant's property of filthy debris and broken pieces of wood and sharp metal objects some with rusty nails

protruding from them.

6. In this Report, his recommendations were, *inter alia*, for a Welfare Notice to be served on the applicant requiring her to provide immediate and secure biosecurity measures for the animals, to provide an immediate and constant supply of clean water for all the animals and to provide veterinary attention to the lame animals. He also recommended that all pigs be disposed of to a registered herd owner within 10 days and all sheep be disposed of to a registered flock owner within 10 days and that the sheep carcase be removed to a registered knackery within 3 days.

7. On the 20th March, 2014, Mr. O'Brien-Lynch visited the premises for a second time. He noted that the conditions were similar to those witnessed on his first visit and he also noted that one of the sheep appeared to be emaciated. He visited the applicant at her home in Dundalk immediately after this visit and relayed his concerns. He outlined the various actions which needed to be taken by her, i.e. the provision of a permanent supply of clean fresh water, clean dry bedding, adequate shelter, adequate feed, secure fencing and veterinary attention.

8. On the 17th April, 2014, Mr. O'Brien-Lynch visited the applicant's property for a third time. On this visit, Mr O'Brien-Lynch continued to have concerns about the welfare of the animals since, *inter alia*, on the provision of water, by him, to the pigs, they drank voraciously indicating that they were very thirsty and the sheep carcase had not been removed.

9. On 17th July, 2014, Mr O'Brien-Lynch visited the premises for a fourth time. His inspection revealed that one sheep required immediate veterinary treatment as it was emaciated and suffering from blow-fly strike while four other sheep had inadequate feed and water provision and required shearing urgently. Mr. O'Brien Lynch had some telephone conversations with the applicant after this visit. He raised his concerns regarding the need for some of the animals to have veterinary care. As a result of the conversations and visits and return visits to the applicant's property, Mr. O'Brien-Lynch remained concerned about the welfare of the animals and as a consequence Mr. O'Brien Lynch formed the opinion that he should serve an Animal Health and Welfare Notice (a "Welfare Notice") as provided for in section 42 of the Animal Health and Welfare Act, 2013 (the "2013 Act") on the applicant. This was served on the 21st July, 2014.

10. The Welfare Notice stated that it was the opinion of Mr. O'Brien-Lynch that the applicant breached her duty to protect animal welfare, caused unnecessary suffering, neglected or was reckless regarding animal welfare, was not capable of taking care of animals and the conditions under which animals are kept breached the 2013 Act. This Welfare Notice required the applicant, *inter alia*, to:-

- (a) provide immediate veterinary care to certain of the animals;
- (b) have sheep sheared;
- (c) provide the animals with a constant supply of water and food;
- (d) provide the pigs with adequate shelter and the animals with adequate fencing and freedom from injury.

11. On the 22nd July, 2014, Mr. O'Brien-Lynch visited the lands for a fifth time and became aware that one of the sheep was missing. When he located the sheep he found that he was suffering from severe maggot infestation following blow fly strike and was in considerable distress. The sheep was immediately euthanised.

12. On the 8th August, 2014, Mr. O'Brien-Lynch returned for a sixth inspection of the animals on the applicant's property. His significant concerns had not been addressed by the applicant and for this reason the animals were seized and delivered to an animal shelter where they were housed in appropriate conditions and received immediate veterinary attention including treatment for parasites. One of the lambs seized was extremely weak and died within hours of arriving at the shelter.

13. The applicant sought a stay on the Welfare Notice, which application was refused by the District Court. She also appealed the issue of the Welfare Notice to the District Court. The applicant's appeal against the Welfare Notice was heard on the 14th November, 2014 and 29th January, 2015. The District Court upheld the issue of the Welfare Notice. The applicant appealed this District Court decision to the Circuit Court and a hearing took place in the Circuit Court on the 23rd April, 2015. The Circuit Court upheld the issue of the Welfare Notice. The applicant also sought to challenge the issue of the Welfare Notice and the seizure of her animals indirectly, by applying for an enquiry into Mr. O'Brien-Lynch's fitness to practice as a vet under the Veterinary Practice Act, 2005. On the 10th February, 2015, the Veterinary Council wrote to Mr O'Brien-Lynch to advise him:-

"Mr O'Brien-Lynch acted at all times in the best interest of animal welfare and there is no indication of professional misconduct against him."

14. Against this factual background, the applicant is now challenging the actions of the Department of Agriculture in these two linked judicial reviews.

First Judicial Review (2014/185JR)

15. In the first judicial review, the applicant seeks the following reliefs against the Minister for Agriculture:-

- (a) A declaration that the livestock of the applicant on her holding in Kilcurry County Louth are not subject to the European Council Directive 98/58/EC (the "Directive") and the European Communities (Protection of Animals Kept for Farming Purposes) Regulations SI No. 705 of 2006 (the "2006 Regulations") and that the Department of Agriculture officials acted *ultra vires* when they instructed the applicant in matters connected with these regulations regarding her livestock and the property at Kilcurry County Louth without warrant under those regulations.
- (b) A declaration that the applicant is entitled to damages for the interference with her ownership rights over these animals and property guaranteed by the Constitution and the European Convention on Human Rights ("ECHR") and its protocols and for unlawful entry to property and breach of her Article 8 right to privacy.
- (c) A declaration that the applicant has a legitimate expectation that her pig herd number would not be cancelled without probable cause or justification and that it is in the interests of justice that she should be allowed her pig herd number.
- (d) An injunction preventing officials from the Department of Agriculture from entering the applicant's private property or filming on the applicant's private property without either her permission or legal authorisation or seizing of her livestock on any grounds whatsoever unless authorised by the courts.

16. The applicant was granted leave for these judicial review proceedings on the 3rd April, 2014, by Peart J. As the second set of judicial review proceedings deal with other alleged acts and omissions of the Department of Agriculture which took place after 3rd April, 2014, it is important to bear in mind that this first judicial review is only concerned with the alleged acts and omissions of the Minister for Agriculture which took place on or before that date.

Analysis

Relief (a)

17. As regards the first relief sought by the applicant, namely the declaration regarding the non-applicability of the Directive and the 2006 Regulations to her livestock, it is stated in the respondent's Statement of Opposition that while inspections of the applicant's animals were carried out in March and April of 2014, no decision was taken by them concerning the use or purpose of the animals and/or the applicability of the Directive or the 2006 Regulations. The Statement of Opposition also makes clear that the inspections were carried out pursuant to the Animal Health and Welfare Act, 2013, and not pursuant to the Directive or the 2006 Regulations.

18. The applicant has not produced any evidence to this Court that a decision was taken by the Department of Agriculture on or prior to 3rd April, 2014, in relation to the matters upon which she seeks a declaration. This Court can therefore find no basis for granting this declaration. Judicial review is the process whereby the actions of, *inter alia*, an administrative body (such as the officials of the Department of Agriculture), are subject to review by the High Court. However, the first relief which the applicant is seeking is a declaration that legislation does not apply to her animals. There is no alleged act or omission of the Department of Agriculture or other body which is at issue and so there is no alleged act which could be *ultra vires* the Directive or the 2006 Regulations, as alleged by the applicant. Indeed, the only acts of the Department prior to the 3rd April, 2014, were inspections pursuant to the Animal Health and Welfare Act, 2013, and this Court can find no evidence that any acts or omissions were committed by the Department pursuant to the Directive or the 2006 Regulations. The purpose of judicial review is not to enable citizens seek declarations that certain pieces of legislation do or do not apply to them, as appears to be the aim of the applicant in seeking this relief. Accordingly, in relation to this first relief being sought by the applicant, her application for judicial review is misconceived and this relief is refused.

Relief (b)

19. As regards the declaration that the applicant is entitled to damages for interference with her ownership rights over her animals, the respondents have pleaded in their Statement of Opposition that the inspections which were carried out in March and April of 2014 were done so pursuant to the Animal Health and Welfare Act, 2013. No evidence to the contrary has been provided by the applicant. As such, this Court can see no basis for finding that these inspections amounted to a breach of Article 1 of Protocol 1 of the ECHR or Article 8 of the said Convention. Interference with a person's property rights and a person's right to respect for private and family life are permitted if done in accordance with law. In this instance, this Court is satisfied that the alleged interference with the applicant's property rights and private and family life is lawfully permitted by the Animal Health and Welfare Act, 2013.

20. In her grounds for the relief, the applicant claimed that she was denied principles of natural justice and denied equality of arms. Since no decision was taken by the respondents on or prior to 3rd April, 2014, the Court can find no basis for a finding that the applicant was denied principles of natural justice. In addition, the applicant has produced no evidence of there being a right under Irish law to equality of arms between the owner of animals and the Department of Agriculture (which under the Animal Health and Welfare Act, 2013, has certain powers for the protection of the welfare of animals) and so this aspect of her argument, in this Court's view, is not sustainable.

Relief (c)

21. As regards the declaration that the applicant had a legitimate expectation that her pig herd number would not be cancelled, it is stated in the respondent's Statement of Opposition that the applicant's pig herd number has not in fact been cancelled and no evidence has been produced by the applicant to support her claim that her pig herd number was cancelled. Accordingly this relief is refused.

Relief (d)

22. As regards the final relief, namely an injunction preventing officials from the Department of Agriculture from entering or filming on the applicant's private property or seizing of her livestock without judicial authorisation, an injunction could only be granted where the Court is of the view that the rights of the applicant have been or are about to be breached. The applicant has provided the Court with no evidence in this regard. Indeed, under s. 38 of the Animal Health and Welfare Act, 2013, authorised officers of the Department of Agriculture are permitted to enter and inspect at all reasonable times any land where they have reasonable grounds for believing that an animal is present. Accordingly, the Court can see no basis for effectively seeking to amend this law (as implicit in the applicant's relief) by requiring the authorised officers to first seek judicial authorisation before entering the applicant's property.

23. As regards any filming which has been or might be done by an authorised officer of the Department of Agriculture, it is to be noted that under s. 38(6) of the Animal Health and Welfare Act, 2013, as part of his right of entry, an authorised officer may take "*any equipment or materials to assist the officer in the exercise of the power*". As is clear from the terms of the Act (which imposes a duty on the owners of animals to protect the welfare of the animals and prohibits animal cruelty), the purpose of the Act, and thus this right of entry, is to ensure, *inter alia*, the welfare of animals. It is this Court's view that in light of the aim of these provisions to protect the welfare of animals, the 'equipment' which an authorised officer is permitted to take with him onto property which contains animals, includes photographic and video equipment which would enable the authorised officer to record the animals which he is inspecting. If it were otherwise and the authorised officer could not photograph or film animals, the right of entry and inspection would be of very limited value in seeking to further the goal of the Act of protecting animals from cruelty and otherwise promoting their welfare. In such a situation, the authorised officer would not be able to provide compelling photographic and 'live' evidence of the welfare of animals which are at risk arising from his inspection and this would greatly compromise the power and worth of the inspection. Accordingly, the injunction, which seeks to prevent photography or filming on the applicant's property without judicial authorisation is refused.

24. The applicant in the grounds for the relief which she seeks, alleges that the Department of Agriculture failed to vindicate her personal and constitutional rights and refers to a Garda car being parked for a considerable time outside her property. She appears to be alleging that the Gardaí may have been motivated by malice as they sought to assist Louth County Council in this regard. The respondents in these proceedings are a stranger to the dealings between the applicant and the Gardaí or Louth County Council and on this basis no relief can be granted in this regard by this Court.

The Second Judicial Review (2014/614JR)

25. In this second judicial review, the applicant seeks the following reliefs:-

- (a) A declaration that s. 38(1)(a) of the 2013 Act insofar as it permits a power of entry without judicial control is incompatible with Article 8 of the ECHR on the grounds that the definition of land and premises contained in the 2013 Act does not exclude the curtilage area of a dwelling.
- (b) A declaration that s. 31 of the 2010 Regulations is incompatible with Article 8 of the ECHR as it does not exclude the curtilage area of dwelling.
- (c) A declaration that the unqualified use of cameras by authorised officers under s. 31(x) of the 2010 Regulations is incompatible with Article 8 of the ECHR.
- (d) A declaration that s. 38(6) of the 2013 Act is incompatible with Article 8 of the ECHR.
- (e) A declaration that s. 44 of the 2013 Act is contrary to Article 13 of the ECHR as it permitted the seizure of her animals notwithstanding the fact that she had appealed the Welfare Notice to the District Court, and therefore deprived her of an effective remedy to recover her animals.
- (f) A declaration that the 2013 Act denied the applicant her right to be heard under European law since it made no provision for her to make representations prior to the issue of the Welfare Notice.
- (g) A declaration that the issue of the Welfare Notice was void or voidable due to procedural impropriety.
- (h) A declaration that the seizure of the applicant's animals breached Article 1 Protocol 1 of the ECHR.
- (i) A declaration that the multiple entries by the Department of Agriculture officials in to the cartilage of the applicant's premises between March 2014 and 8th August, 2014, breached the applicant's personal rights under Article 40.3.2° and Article 43.1° of the Constitution.
- (j) A declaration that the absence of a right under the 2013 Act for the applicant to apply for a stay of the Welfare Notice pending the outcome of her appeal to the District Court amounts to a breach of her rights to due process and fair procedures.
- (k) A declaration that the seizure of the applicant's animals after a notice of appeal to the District Court had been served on the Department of Agriculture and their failure to serve a notice of seizure within 24 hours of the seizure of her animals breached her right to due process and fair procedures and was therefore void.
- (l) Damages and or compensation for breach of her rights under the ECHR, breach of her constitutional rights, loss and damage to her animals.
- (m) Injunction preventing the disposal of her animals seized on the 8th August, 2014.
- (n) Injunction preventing any further seizures of her animals.

26. The second set of judicial review proceedings for which the applicant obtained leave on 16th October, 2014, from Peart J., deal with, *inter alia*, the alleged acts and omissions of the Minister for Agriculture after the 3rd April 2014, including the issue of a Welfare Notice on the 21st July, 2014, in relation to animals kept by the applicant.

Analysis

Reliefs (a) and (d)

27. The reliefs sought under (a) and (d) are applications for declarations that statutory provisions (namely, ss. 38(1)(a) and 38(6) of the 2013 Act) are incompatible with the ECHR. For this reason, it is relevant to refer to s. 5(1) of the European Convention on Human Rights Act, 2003, which states:-

"In any proceedings, the High Court, or the Supreme Court when exercising its appellate jurisdiction, may, having regard to the provisions of section 2, an application to it in that behalf by a party, or of its own motion, and where no other legal remedy is adequate and available, make a declaration (referred to in this Act as "a declaration of incompatibility") that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions."

The section which is challenged under relief (a), s. 38(1)(a) of the 2013 Act, states:-

"(1) For the purposes of this Act or an EU measure an authorised officer may –

- (a) enter and inspect, at all reasonable times, any land or premises where he or she has reasonable grounds for believing that-
- (i) an animal, animal product or animal feed is, may be or has been present,
- (ii) a record relating to an animal, animal product or animal feed is, may be or has been present, or
- (iii) equipment, machinery or other thing used in connection with an animal, animal product or animal feed is, may be or has been present."

The applicant claims that this section breaches one's right to privacy under Article 8 of the ECHR insofar as it permits rights of entry onto property without judicial permission. In this Court's view, it cannot be said that no other legal remedy is adequate or available to the applicant in relation to the relief she seeks of a declaration that s. 38(1)(a) is incompatible with the ECHR. For example, the applicant could have claimed that the section was unconstitutional as a breach of a citizen's right to privacy (although this Court is not to be taken as suggesting that such an application would have been successful), rather than seeking a declaration that the right of entry was incompatible with the Convention.

28. The section which is challenged under relief (d), s. 38(6) of the 2013 Act, states:-

"(6) An authorised officer, when exercising a power under this section, may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power."

The applicant claims that this section breaches a person's right to privacy under Article 8 of the ECHR, insofar as it permits an unlimited number of persons to enter the applicant's land and insofar as it permits the authorised officer to bring filming and photographic equipment with him onto her lands. In this Court's view, it cannot be said that no other legal remedy is adequate or available to the applicant in relation to the relief she seeks of a declaration that s. 38(6) is incompatible with the ECHR. As with the relief sought under heading (a), the applicant could, for example, have claimed that the section was unconstitutional as a breach of a citizen's right to privacy (although, again, this Court is not to be taken as suggesting that such an application would have been successful), rather than seeking a declaration that the right of entry was incompatible with the Convention.

29. In addition, in relation to both relief (a) and relief (d), the applicant's key complaint is that the Welfare Notice, which resulted from the entry on the premises and the taking of photographs, should not have issued in the first place. Accordingly, she could have sought *certiorari* of the decision of the Circuit Court to uphold the granting of the Welfare Notice, which she failed to do. At the hearing of this action, she indicated that she preferred to seek a declaration of incompatibility with the ECHR, rather than *certiorari*, as the former benefited the animal-owning public at large, while an order of *certiorari* would be limited to the actions taken by the Department of Agriculture in her case. This is not a justification for her to be exempt from the express wording of s. 5 of the European Convention on Human Rights Act, 2003.

30. For the foregoing reasons, it could not be said that no other legal remedy was adequate and available to the applicant, such that she was obliged to seek declarations of incompatibility with the ECHR of these two sections of the 2013 Act. On this basis, the reliefs sought under (a) and (d) are refused.

Relief (b) and (c)

31. Under these headings, the applicant seeks a declaration that s. 31 and s. 31(x) and of the European Communities (Welfare of Farmed Animals) Regulations 2010 (SI No. 311 of 2010) are incompatible with Article 8 of the ECHR. However, there is uncontroverted evidence provided by the respondents that the actions of the authorised officers of the Department of Agriculture about which the applicant complains were taken by them, not pursuant to those Regulations, but rather pursuant to their powers under the 2013 Act. It is also clear from the face of the Welfare Notice issued in this case that it was issued pursuant to s. 42 of the 2013 Act. Accordingly, there is no basis for the applicant to seek declaratory relief under those Regulations, since they have no application to the actions of the authorised officers of the Department of Agriculture in this case. On this basis this relief is refused.

Relief (e)

32. Under this heading, the applicant seeks a declaration that the seizure of her animals, notwithstanding her appeal to the District Court of the Welfare Notice at that time, is contrary to Article 13 of the ECHR insofar as it deprives her of an effective remedy.

33. This Court does not see any merit in this claim. The applicant was entitled to appeal the Welfare Notice, which she did unsuccessfully on two occasions. This Court cannot see how this was not an effective remedy. The applicant's claim for relief under this heading implies that her animals should not have been seized once she had an appeal pending regarding the Welfare Notice. By claiming that this deprived her of an effective remedy, she is implicitly arguing that for an appeal to be an effective remedy, the decision to lodge an appeal (as distinct from the decision of the appeal body) should have the effect of reversing the decision of the initial decision-maker.

34. The issue of whether there is an effective remedy available to a person is determined by whether a decision can be appealed and reversed once the relevant appellate body hears the case. There is no suggestion in this case that the Welfare Notice could not have been overturned or that the seizure of the animals could not have been overturned by the relevant appellate body. For a remedy to be effective (in the context of an appeal), it is not necessary that the very act of appealing leads to a reversal of the initial decision-maker's decision, or that, as in this case, the animals should not be seized once the owner has appealed the Welfare Notice. If this were the case, the lives of animals could be put at risk by the simple act of the owner of the animals appealing the Welfare Notice, which (using the applicant's argument) would prevent their seizure even though it might be in the animals' interests that they be seized as a matter of urgency. Hence, this Court does not accept that the applicant did not have an effective remedy and accordingly, relief under this heading is refused.

Relief (h)

35. Under this heading, the applicant seeks a declaration that the Department of Agriculture's seizure and detention of her animals on the 8th August, 2014, breached the applicant's rights to quiet enjoyment of possessions under Article 1, Protocol 1 of the European Convention on Human Rights. This Court does not agree with this claim. As has been outlined elsewhere in this judgment, there were very serious animal welfare issues involved and the response of the Department of Agriculture was proportionate to the interests of the applicant as the owner of the animals, since its agent met with and spoke to the applicant on a number of occasions to prompt her to improve the conditions of the animals before it finally issued a Welfare Notice. Even this Welfare Notice did not lead to any improvement in the conditions of the animals and only at that stage did the Department of Agriculture seize and detain the animals. The Department has also indicated that, should the applicant be prepared to adopt the measures suggested by the Department of Agriculture and ensure its concerns are addressed regarding the conditions of the animals, it would consider the return of the animals to her. In all these circumstances, this Court is of the view that the actions of the Department in relation to the seizure and detention of the animals does not amount to a breach of the applicant's property rights under the ECHR since it amounted to a fair balance between the welfare of the animals on the one hand and the property rights of the applicant on the other.

Relief (i)

36. Under this heading the applicant claims that the multiple entries by the officials of the Department of Agriculture onto the curtilage of the building on her lands breached her personal rights under the Constitution by their arbitrary and unfair interference with her property and possessions.

37. All the evidence that has been adduced to this Court regarding the entry of the authorised officers of the Department of Agriculture onto the lands in Kilcurry, as outlined earlier in this judgment, insofar as it amounts to an interference with the property

and possessions of the applicant, was proportionate in the context of their seeking to protect the welfare of the animals on those lands. These 'multiple entries' as the applicant categorises them are not evidence of arbitrary or unfair interference with the applicant's rights, but rather evidence of a balanced and proportionate response to the authorised officer's duty to protect the welfare of the animals. Indeed, the fact that the entry was not a single entry, but multiple entries, before the animals were seized, is in this Court's view evidence of the proportionate response of the Department to the animal welfare issues which arose in this case. The Department officials were giving the applicant every opportunity to improve the conditions of the animals and the 'multiple entries' were therefore for the purpose of monitoring the welfare of the animals and cannot be regarded as an arbitrary and unfair interference with the applicant's rights. If the Department had seized her animals after a single entry, she might have greater grounds for complaint (although this is not to be taken as suggesting that seizure after a single entry would not be appropriate). However, the fact that there were multiple entries to check if there has been any improvement in the conditions of the animals is not evidence of arbitrary interference with the applicant's rights, but rather evidence of a proportionate response by the Department of Agriculture to the welfare of the animals in light of the rights of the applicant. On this basis, the multiple entries are not evidence of an arbitrary breach of the applicant's personal property rights and so this relief is refused.

Relief (j)

38. Under this heading, the applicant seeks a declaration that the 2013 Act breaches her rights to due process and fair procedures by the failure of the legislation to make a provision for a stay of the Welfare Notice, pending the outcome of her appeal to the District Court. The 2013 Act balances the welfare of animals with the rights of the owners of the animals by providing that this issue of a Welfare Notice can be appealed to the District Court by the recipient of the Welfare Notice. If the appeal is successful the Welfare Notice can be annulled by the District Court, as is clear from s. 43(5) of the 2013 Act:-

"On the hearing of an appeal the judge of the District Court may confirm, modify or annul an animal health and welfare notice."

In this way, due process and fair procedures are observed regarding the Welfare Notice. It is not necessary for there to be a specific reference in the legislation to the District Court being entitled to put a stay on the Welfare Notice for due process and fair procedures to be satisfied. In this case, the Welfare Notice required the applicant to provide immediate veterinary care to certain of the animals, have sheep sheared, provide the animals with a constant supply of water and food and provide the pigs with adequate shelter and the animals with adequate fencing and freedom from injury. If a stay were to be granted on this Welfare Notice by the District Court pending the appeal, it would mean that the applicant would have been absolved of her obligation to feed and provide water to the animals as well as give them veterinary care. Such a stay could conceivably have led to some animals dying. On this basis it is this Court's view that the proportionate response was for there to be no stay on the Welfare Notice, but instead for the issues to be fully ventilated at the appeal hearing in the District Court, as was done in this case. For this reason, it is this Court's view that the absence of an express provision in the 2013 Act regarding the granting of a stay on the Welfare Notice does not amount to a breach of the applicant's rights to due process and fair procedures and so this relief is refused.

Relief (k), (f) & (g)

39. Under heading (k), the applicant claims that the failure of the Department of Agriculture to serve a notice of seizure of the animals within 24 hours of their seizure constitutes a breach of her right to due process and fair procedures. The Court does not agree with this claim. On the facts of this case, the seizure of the animals only occurred after several engagements between the Department's authorised officer and the applicant. The first engagement, which was a visit to the applicant at her home on the 20th March, 2014, led to no marked improvement in the conditions of the animals by the date of the next inspection on the 17th April, 2014. This was followed by a further inspection of the lands on the 17th July, 2014, and phone conversations between the Department and the applicant. The concerns of the Department were not addressed by the applicant. This resulted in the Welfare Notice of the 21st July, 2014, instructing the applicant to carry out improvements of the conditions and treatment of the animals. When on the 8th August, 2014, Mr. O'Brien-Lynch visited the lands and discovered his concerns had not been addressed, he arranged for the seizure of the animals. In these circumstances, and in light of the serious animal welfare issues that arose regarding the applicant's animals when in her care (including the death of a lamb within hours of it being brought to an animal shelter), this Court is of the view that the applicant's rights to due process and fair procedures were vindicated by the foregoing engagement which she had with the Department over a period of five months prior to the seizure of her animals. The failure to notify her of the seizure of her animals within 24 hours of their seizure does not amount to a breach of her rights to due process and fair procedures so as to invalidate the seizure. Since the purpose of the seizure order is to protect animals, it is not necessary, as is claimed by the applicant, that she be notified within 24 hours of the seizure of the animals for her to receive due process and fair procedures, whether or not she had given notice of an appeal to the District Court. As noted by Humphreys J. in his decision in *Sfar v. The Minister for Agriculture* [2016] IEHC 165 at para. 13:

"Animals are powerless to protect themselves against neglect and cruelty. Upholding their welfare is an urgent matter and must not be put on hold pending judicial review proceedings. The mechanisms to uphold animal welfare include prosecution followed by forfeiture in the event of a conviction. The applicant is of course denying criminal liability but she can make what applications she wishes to the District Court if the court is called upon to exercise any powers in this regard."

That case involved the unsuccessful attempt by the same applicant as in this case, in another set of judicial review proceedings in which she sought leave to seek a stay on prosecutions against her in relation to her treatment of animals. Humphreys J.'s comments regarding the welfare of animals being an urgent matter in light of their powerlessness is, in this Court's view, relevant to the denial of relief under this heading, since the concern of the 2013 Act is with the welfare of animals. Given the urgency of the matter (and the fact that animals lives were clearly at risk), the service of a notice within 24 hours of the seizure on the applicant is not required to validate the rights to due process and fair procedures of the applicant and this Court does not believe that the validity of the seizure order can be invalidated on that basis.

40. Under heading (f), a similar issue is raised to that raised under heading (k), namely that the applicant seeks a declaration that the 2013 Act denied the applicant her right to be heard under European law since the 2013 Act makes no provision for her to make representations prior to the issue of Welfare Notice. As is evidenced by the facts outlined under the heading (k), there was considerable engagement between the Department of Agriculture and the applicant before the issue of the Welfare Notice. The applicant had ample opportunity to have her views heard by the authorised officer before the issue of the Welfare Notice. This Court cannot make a finding that the applicant was deprived of her right to be heard. Furthermore, it is not necessary for legislation to specifically provide that fair procedures (of which the right to be heard is an aspect) apply to decisions, which are made under that legislation, in order for those fair procedures to apply. This is because the right to fair procedures does not arise under statute, but as is clear from *McDonald v. Bord na gCon* [1965] IR 217 the right to fair procedures arises under the terms of the Constitution. It follows that the failure to specifically refer to fair procedures in the 2013 Act does not invalidate the legalisation as suggested by the

applicant in this ground for relief. Accordingly, this relief is refused.

41. Under heading (g), the applicant claims more generally a declaration that the Department's issue of the Welfare Notice was void or voidable due to procedural impropriety. No further evidence was provided for this ground and it appears to be simply a repeat of her complaint under the relief she seeks under heading (f). On this basis this relief is refused.

Relief (l)

42. Since no breach of the ECHR has been established, the relief sought under this heading, namely damages for breach of the Convention, does not arise.

Relief (m)

43. Since no breach of the Constitution has been established, the relief sought under this heading, namely damages for breach of the Constitution, does not arise.

Relief (n)

44. As the Court has been provided with no persuasive evidence that the applicant's animals were damaged as a result of their seizure, or otherwise, by the authorised officers of the Department of Agriculture, there is no basis for awarding her damages for any alleged damage to her animals.

Relief (o)

45. Since the applicant has not succeeded on any of the grounds, there is no basis for awarding her costs.

Relief (p)

46. As the Court has not found that the Department of Agriculture breached any of the applicant's rights in seizing her animals, it can find no basis for granting an injunction or order of prohibition preventing the Department of Agriculture from disposing or trading or transferring ownership of the animals seized.

Relief (q)

47. As the Court has not found that the Department of Agriculture breached any of the applicant's rights in seizing her animals, it can find no basis for granting an injunction preventing it from seizures of other animals belonging to the applicant, without judicial sanction.

Serial lay litigants suing the State at considerable cost to the taxpayer

48. The respondents have brought to this Court's attention the fact that the applicant has, since 1999, instituted 22 separate sets of High Court judicial review proceedings (without referencing other proceeding that may have been taken by her against the State in the District Court, the Circuit Court, the Court of Appeal and the Supreme Court - although it must be stated that not all of her actions have been unsuccessful). That list of 22 judicial review proceedings is clearly not comprehensive, since it did not include the judicial review proceedings before Humphreys J. on the 5th April, 2016 or (more obviously), not one, but two unsuccessful judicial review proceedings before this Court now.

49. The respondents are clearly attaching significance to the applicant's history of litigation against the State in the current case, but they have not sought any orders to restrain the applicant's ability to take future judicial review proceedings. While this case has been decided on other grounds set out above, it is appropriate to refer to the issue of serial litigants in these proceedings as it has been raised by the respondents.

50. In considering this issue in the present case, it is relevant that in the most recent judicial review proceedings taken by the applicant, Humphreys J. admonished the applicant for unnecessarily instituting judicial review proceedings in her attempt to have the prosecutions against her for animal welfare offences stayed. In *Sfar v. The Minister for Agriculture* [2016] IEHC 165 at para. 7 Humphreys J. states:-

"the application is in substance the same as that already refused by Kearns P. and under appeal to the Court of Appeal. Again, one might have thought that the applicant could have sought a stay from that court pending the hearing of her appeal. Renewing the application in the High Court without a change of circumstances or different grounds is not the correct procedure."

51. It is also relevant that the action by the applicant before this Court is in effect an attempt by her to challenge the Welfare Notice in the High Court after she failed in her challenge to the Welfare Notice in the District Court. She also failed in her challenge to the Welfare Notice in the Circuit Court. She also failed in her challenge to the professional conduct of the vet that issued the Welfare Notice before the Veterinary Council. For this reason, her two judicial review applications in this case are in essence a fourth and a fifth attempt by her to challenge the Welfare Notice. Since there are only so many appeals and challenges, which a person should have, to a decision with which they disagree, it is this Court's view these two judicial review applications verge on an abuse of process by the applicant.

52. In some cases of serial litigants, it will be relevant that the person is a lay litigant. This is because a lay litigant does not have the cost of instructing lawyers and for this reason it will often be a financially easy decision for such an applicant to institute proceedings against the State. It can also be relevant that the serial lay litigant does not have significant financial resources, since the prospect of having a costs order against them if they lose is not a significant deterrent to litigating. For such serial litigants therefore, the strength of their case may not be a factor in their decision to sue the State, since the cost of taking the action is low and the cost of a losing an action against the State may be non-existent. However, while the decision for some serial lay litigants to institute proceedings against the State can be an easy one, the consequences for the taxpayer of defending multiple High Court actions can be enormous, running into tens if not hundreds of thousands of euro and sometimes even more. This issue of court resources and lay litigants was recently referred to by the Supreme Court in *Tracey v. Burton* [2016] IESC 16. At para 45, MacMenamin J. observed that court time is a 'scarce public resource' which should not be 'unnecessarily wasted'. He added:-

"Court time is not solely the concern of litigants, or their legal representatives. There is a strong public interest aspect to

these issues."

53. Applying this public interest to cases of serial lay litigants, it is this Court's view that, where there is lay litigant, with a long history of mostly unsuccessful litigation against the State and where the costs of those cases have not been recovered by the State from that lay litigant, it may be appropriate in certain circumstances for the State, as the defender of the public interest to which MacMenamin J. refers, to apply for an order which requires that person to obtain the consent of the Court before he or she can institute future proceedings against a State body or party to proceedings, whose legal fees are paid for directly or indirectly by the State.

54. Such an order, if granted, would not deny a deserving lay litigant a right of access to court, since one is not dealing with a prohibition on the issue of proceedings, but rather simply the obtaining of the consent of the Court before the issue of proceedings. Such orders would have the aim of balancing an individual's right of access to court with the need to ensure that both court resources and taxpayer's money, in defending expensive litigation against the State, are not being unnecessarily wasted.

Unjustified claim of professional misconduct as a tactic in the dispute

55. The Department of Agriculture has also brought to the Court's attention the fact that the applicant made a claim against Mr. O'Brien-Lynch of professional misconduct to his professional body, the Veterinary Council, which was rejected by the Council. In considering this issue, this Court is cognisant of the fact that a person's reputation is precious and a claim of professional misconduct against anyone is therefore a hugely significant step to take, since apart from the damage to his reputation, the very right of a person to continue to practice his profession is called into question. It should go without saying that a claim of professional misconduct should not be made lightly or as some kind of a tactic or leverage in a dispute with a professional, for example as a precursor to litigation or ancillary to litigation, where it is not otherwise justified.

56. In this case, the applicant is entitled to disagree with Mr O'Brien-Lynch's decision regarding the welfare of her animals. Further, she is within her rights to appeal that decision. Yet, the Veterinary Council found that a baseless claim was made by the applicant against Mr. O'Brien-Lynch which called into question his professional integrity. The only reason that the Court can find for the applicant making that claim is that she disagreed with Mr. O'Brien-Lynch's decision to issue a Welfare Notice for animals who were suffering while in her control. This claim of professional misconduct should never have been brought against Mr. O'Brien-Lynch. One may disagree with a decision of a professional or even claim that a professional made a mistake or was negligent, but it is another thing entirely to make an accusation of professional misconduct. This is particularly so because, despite the seriousness of claims of professional misconduct, the irony is that such claims can be made to a professional body very easily, usually more easily than issuing court proceedings and often at no financial cost to the complainant. Indeed, in many cases the complainant may not have sought independent advice regarding his complaint, prior to making the claim of professional misconduct. But the ease by which claims of professional misconduct can be made, should not distract from the fact that they should only be made where there is a reasonable belief that there are grounds for such a claim. This is since the very making of a claim of professional misconduct can have very significant effects for the professional involved, even where the claims are completely baseless. This is because the very fact that somebody has alleged professional misconduct against a professional (even if it is subsequently found to be baseless) can have reputational damage for that person and often direct or indirect financial consequences which cannot be undone (e.g. job applications and insurance proposal forms will inevitably raise queries regarding the existence of claims of professional misconduct, with negative consequences in the event of the existence of such claims). In addition, the professional body, upon receipt of the claim of professional misconduct, may have to consider holding an enquiry, which will often have the power to consider the right of the professional to continue to practice. These consequences can arise as a result of a baseless claim of professional misconduct, made for ulterior motives, and which claim can be made very easily to a professional body.

57. The Supreme Court has stated in *Cooke v. Cronin* [1999] IESC 54 that proceedings for negligence should not be issued against professionals, without appropriate expert advice. Denham J., as she then was, stated at page 2 of her judgment:-

"Counsel for the Respondents submitted that this case was run on a wing and a prayer. He informed this Court that he had brought to the attention of the Learned High Court Judge the statement of Barr J. in *Reidy v. The National Maternity Hospital*, unreported judgment delivered on 31st July, 1997, where he stated at page 15:

"It is irresponsible and an abuse of the process of the court to launch a professional negligence action against institutions such as hospitals and professional personnel without first ascertaining that there are reasonable grounds for so doing. Initiation and prosecution of an action in negligence on behalf of the plaintiff against the hospital necessarily required appropriate expert advice to support it."

He pointed out that this had been endorsed by Kelly J. in *Connolly v. James A. Casey and Laura Murphy (Trading under the style and title of Casey and Murphy)* and *Michael Fitzgibbon*, unreported, High Court, Kelly J., 12th June, 1998. That was an action where the Defendants, who were solicitors, were sued for damages for professional negligence. Kelly J. stated at page 19:

"I have no difficulty in endorsing the views of Barr J. that the commencement of proceedings alleging professional negligence is irresponsible and an abuse of the process of the Court unless the persons advising such proceedings have reasonable grounds for so doing."

While bearing in mind the important right of access to the Courts I am satisfied that these statements of law are correct. To issue proceedings alleging professional negligence puts an individual in a situation where for professional or practice reasons to have the case proceed in open Court may be perceived and feared by that professional as being detrimental to his professional reputation and practice. This fear should not be utilized by unprofessional conduct."

This Court is of the view that even though professional misconduct hearings are not always held in public (unlike professional negligence claims), the underlying rationale for the rule in *Cooke v. Cronin*, although concerning a claim of professional negligence, is equally applicable to claims alleging professional misconduct. Such claims against a professional can be just as '*detrimental to his professional reputation and practice*', if not more detrimental, than a negligence claim. Accordingly, this Court would have no difficulty adapting the views of Barr J., regarding claims of professional negligence, to claims of professional misconduct and concluding that the making of claims of professional misconduct is irresponsible unless the persons making such claims have reasonable grounds for so doing. Certainly such claims should not be made, where it is simply a case of the complainant disagreeing with the decision taken by the professional in the exercise of his professional duties.

58. In this case, there is no evidence that the applicant had any support for her decision to make the claim of professional misconduct against Mr. O'Brien-Lynch, other than her dissatisfaction with his decision to issue the Welfare Notice. Professional bodies'

complaints mechanisms should not be used as means for dis-satisfied members of the public to appeal or challenge decisions of members of that professional body, with which they disagree, where there is simply a difference of opinion with that professional or where the professional may have been negligent, but where there is no question of professional misconduct. This Court is of the view that the applicant should never have made the claim of professional misconduct against Mr. O'Brien-Lynch. As a result of her doing so, Mr. O'Brien-Lynch had the shadow of an enquiry into his ability to continue practising as a vet hanging over him from 7th August, 2014 until 10th February, 2015, which enquiry can result in a vet losing the right to practice as a vet and thus calls into question his right to earn a livelihood.

59. It is appropriate to record the Court's disapproval of the applicant's decision to make this claim of professional misconduct against Mr. O'Brien-Lynch as an indirect appeal/challenge to his decision to issue a Welfare Notice. A claim of professional misconduct is not the way in which the applicant's complaint should have been pursued.

Conclusion

60. For the reasons set out earlier in this judgment, the applicant has been refused all the reliefs she has sought.