Neutral Citation: [2016] IEHC 285

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 367]

BETWEEN:

LON

APPLICANT

-AND-

DISTRICT COURT JUDGE COLIN DALY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

-AND-

CHILD AND FAMILY AGENCY

NOTICE PARTY

-AND-

GG

NOTICE PARTY

JUDGMENT of Mr. Justice Twomey delivered on 30th day of May, 2016.

Introduction

1. This case involves a challenge to the validity of Care Orders granted by the District Court in respect of the applicant's four children. The applicant alleges that, while she consented to Care Orders of three years, the Care Orders which were granted ranged from 12 to 16.5 years and were disproportionate.

2. A key issue in this case is whether the availability to the applicant of an appeal of the District Court's decision to the Circuit Court, as well as the alternative remedy of her seeking a review of the Care Orders during their term by the District Court, is sufficient to deprive the applicant of her right to judicially review in the High Court the decision of the District Court.

Background

3. The applicant is a young woman who has drug problems and is involved in a relationship which has a history of domestic violence. She is the mother of four children, the first child was born when she was 17 and the last of the four when she was 22. The children are currently 7, 6, 4 and 2 years of age, respectively. The father of the four children is a notice party to the proceedings but is taking no active part in the proceedings. The Care Orders in this case were delivered by Judge Daly on the 16th February, 2015, although the judgments are dated 16th January, 2015. Under these Care Orders, all of the four children are with separate carers. Three of the children were placed with a paternal aunt, the applicant's cousin and a paternal grandmother, respectively, and one was placed with non-relative foster carers.

4. Under s. 18 of the Child Care Act, 1991 (the "1991 Act"), before a child is subject to a Care Order, the court must be satisfied that:-

> *"(a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or*
>
> *(b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or*
>
> *(c) the child's health, development or welfare is likely to be avoidably impaired or neglected,*
>
> *and that child requires care or protection which he is unlikely to receive unless the court makes an order…"*

5. The Care Order hearing before the District Court lasted seven days and 15 witnesses gave evidence to Judge Daly, including social workers, child psychologists, a drug treatment GP and a Paediatric Neuropyschologist. In addition, evidence was taken from both parents and the guardian ad litem.

6. The applicant and the father both conceded to Judge Daly at the hearing in the District Court that the criteria set out in s. 18 (b) and (c) of the 1991 Act had been met and they both sought Care Orders of three years duration in respect of each child.

7. The Child and Family Agency in a detailed 120 page Report to the District Court requested the Court make a Care Order in respect of the children until they are 18 years of age.

8. The guardian ad litem, an experienced social worker, appointed to represent the interests of the four children, provided a detailed 40 page Report to the District Court and recommended that a Care Order be made until each of the four children reached 18 years of age.

9. Having heard all the evidence, the District Court granted a Care Order for each of the children until they reached 18 years of age.

Judge Daly gave his reasons for making the orders:-

> *"11. My reasons for making orders for these durations are as follows:*
>
> *(i) The children's exposure to and experience of domestic violence between the parents;*
>
> *(ii) The parents lack of adequate or proper supervision of the children while in their care;*
>
> *(iii) The parents ongoing and pervasive drug addictions and failure to adequately address their addiction difficulties;*
>
> *(iv) The children's exposure to the parents' drug addictions;*
>
> *(v) The parents failure to deal with their own personal issues underpinning their drug related problems;*
>
> *(vi) The parents current lack of capacity to parent and in particular the mother's assessed ongoing lack of capacity to parent without full-time support which the father is not at this time able to provide;*
>
> *(vii) The parents relatively little progress in addressing their own difficulties since the children's reception into care.*
>
> *12. I am satisfied this decision is proportionate for the care of the children having considered that the question of proportionality may be summarised as the making of an order that goes no further than is strictly necessary to assure the welfare of the children. Here I have considered the proportionate duration of the care order in light of the harm suffered by each of the children, the risk to them and that fact that the parents have made relatively little progress to address their own difficulties in the time the children have been in care."*

Judge Daly directed that the case would be listed for a full review of the children's progress in care on the 29th January, 2016, with a review at that stage of the parents' progress in dealing with their difficulties. He also provided for a second review since he recommended that if the parents demonstrated sufficient progress on that date the matter could be listed for a full review of the children's care arrangements two years after that review date.

This Court was advised that the review due to be held on 29th January, 2016, was adjourned until 9th May, 2016, by the Child and Family Agency. As no issue was made regarding this adjournment on behalf of the applicant, it appears that this adjournment was made without objection from the applicant.

This Judicial Review

10. On 29th June, 2015, Noonan J. granted leave to bring these judicial review proceedings. On 16th March, 2016, McDermott J. ordered that the applicant's four children be joined to the proceedings as notice parties and that the guardian ad litem in the District Court proceedings be appointed guardian ad litem of these notice parties for the purposes of this judicial review.

11. In this judicial review, the applicant is not taking issue with the foregoing reasons given by Judge Daly for his decision. Counsel for the applicant, at the hearing of this case accepted that these reasons were based on the concessions made by the applicant and her partner at the hearing before Judge Daly. Nor is the applicant taking issue with the fact that these reasons justified a Care Order. At the hearing in the District Court the applicant accepted that the threshold requirement for a Care Order as set out in s. 18 of the 1991 Act had been satisfied, namely that the children's health, development or welfare has been or is likely to be avoidably impaired or neglected, and that the children require care or protection which they are unlikely to receive unless a Care Order is made.

12. However, the applicant's case is that, while a Care Order was justified (indeed the applicant sought one of three years duration), the reasons given by Judge Daly are inadequate and are perfunctory in the context of the granting of a Care Order until each of the children were 18 years of age, which the applicant says is disproportionate.

13. Since Judge Daly made Care Orders until each of the children were 18 years of age, taking account of the ages of the children at the time of the Care Orders, this meant that the four Care Orders were for 12 years, 13 years, 15 years and 16.5 years. The applicant claims that these Care Orders are disproportionate, in light of the constitutional right of the mother to the care and custody of her children, the constitutional importance of the family and the natural and inalienable rights of children under the Constitution and also in light of the progress which the applicant had made in her drug dependency and in progressing her domestic situation. She also alleges that the decision is contrary to Article 8 of the European Convention on Human Rights. The applicant therefore wishes to reduce the length of the Care Orders on the grounds she sought Care Orders of three years duration for each of her children yet the District Court ordered Care Orders for between 12 and 16.5 years, albeit that these are judicial review proceedings and thus she is concerned in this Court with striking down the four Care Orders, in which case this matter would have to be re-heard in the District Court.

14. As this is a judicial review, this Court is not concerned with the merits of the decision made by Judge Daly and in particular whether he should have made Care Orders for lesser periods for the children. To quote Hardiman J. in the Supreme Court case of *Meadows v Minister for Justice Equality and Law Reform* [2010] 2 IR 701 at 786, when quoting Kelly J. (as he then was) in *Flood v Garda Síochána Complaints Board* [1997] 3 IR 321 at 346:-

> *"Even if this court would have reached a conclusion different from that of the respondent, it is not entitled on judicial review to substitute its view in that regard for one borne by the entity charged by statute with forming the appropriate opinion."*

It is important to bear in mind therefore, that even if this Court might have granted a Care Order of a different duration, this is not sufficient reason to strike down the Care Order. In this sense, the District Judge has the right to get the decision wrong. However, what this Court is concerned with is ensuring, that although the District Court is entitled to make the wrong decision, that the decision making process was lawful. However, the first consideration for this Court is whether Judge Daly's decision is amenable to judicial review.

Analysis

15. In considering whether Judge Daly's decision in this case is amenable to judicial review, regard must be had to whether the availability of other remedies to the applicant operate as a bar to judicial review. This is clear from the seminal Supreme Court case of *State (Abenglen Properties Ltd) v. Dublin Corporation* [1984] IR 381. At p. 393 O'Higgins C.J. makes clear that the granting of judicial review is a discretionary remedy since:-

"In the vast majority of cases, however, a person whose legal rights have been infringed may be awarded certiorari *ex debito justitiae* if he can establish any of the recognised grounds for quashing; but the court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief or, I may add, if the relief is not necessary for the protection of those rights. For the court to act otherwise, almost as of course, once an irregularity or defect is established in the impugned proceedings, would be to debase this great remedy."

16. In exercising its discretion, and in particular in deciding whether the relief sought is necessary for the protection of the applicant's rights, this Court must now have regard to the fact that the applicant had, and has, other remedies available to her in her desire to shorten the length of the Care Orders. A recent analysis of the law on this area is provided by the *Supreme Court in EMI Records v The Data Protection Commissioner* [2013] 2 IR 669. In recognition of the importance of this issue to this case, it is necessary to set out in some detail Clark J.'s analysis. After referencing the *Abenglen* case, he states at p. 726:-

"[36] Therefore, it follows that, where there is an adequate alternative remedy available and an applicant for judicial review fails to avail of that alternative, the court is likely to exercise its discretion against the applicant.

[37] However, it should also be noted that the mere presence of an appeal mechanism, in and of itself, does not operate as a bar to relief in judicial review proceedings. Rather, as Denham J. pointed out at p. 216 in *Stefan v. Minister for Justice* [2001] 4 I.R. 203 :-

"It is clear that whilst the presence of an alternative remedy, an appeal process, is a factor, the court retains jurisdiction to exercise its discretion to achieve a just solution."

[38] Some examples are worth noting. In *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497 , Barron J. was faced with the question of whether a statutory appeal or judicial review was appropriate in circumstances where there was an allegation that a planning authority had breached the obligation to obey fair procedures by determining the matter in question on a version of the facts which had not been fully disclosed to the applicant. Barron J. identified the following as being the key considerations in any such determination, at p. 509:-

"The real question to be determined where an appeal lies is the relative merits of an appeal as against granting relief by way of judicial review. It is not just a question whether an alternative remedy exists or whether the applicant has taken steps to pursue such remedy. The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that the applicant has not gone too far down one road to be estopped from changing his or her mind."

Applying these criteria, Barron J. felt that, as the applicant had yet to receive a fair determination on issues of fact, an order of certiorari was appropriate in the circumstances.

[39] Amongst other reliefs sought by the applicant in *O'Connor v. Private Residential Tenancies Board* [2008] IEHC 205 , (Unreported, High Court, Hedigan J., 25th June, 2008) was an order of certiorari in respect of certain decisions of the Private Residential Tenancies Board and the prior decision of its adjudicator, including a decision to allow the notice party an extension of time to make a complaint. It was also open to the applicant, under s. 123 of Residential Tenancies Act 2004, to appeal to the High Court from the Tribunal in respect of a point of law. After citing the passage from T*he State (Abenglen Properties) v. Corporation of Dublin* [1984] I.R. 381 quoted above, Hedigan J. ruled as follows, at pp. 6 to 8:-

"It is clear here that the applicant had the opportunity to appeal the Board's decision to extend the time for the notice party to bring his application to it. He did not avail of this when he became aware of it. As I have found, this was when he received the copy letter of the notice party referring to the extension in June, 2005. In short, he had an adequate alternative remedy but did not avail of it. As to this and his other complaints he not only was aware of the alternative remedy provided by s. 123, he actually availed himself of it. When, upon the application of the notice party, the Master of the High Court struck out his proceedings brought under s. 123, the applicant did not appeal. The fact that the applicant may have decided that judicial review was the more convenient remedy cannot avail him here …

It is clear to me that the entirety of the case made herein by the applicant could have been made by way of an appeal under s. 123, using a procedure specifically designed for that purpose by the legislature and, in this particular case, capable of dealing with each and every one of his complaints. This being so, even were I to have extended the time, I would still have refused the reliefs sought on the basis that there existed an alternative remedy of which the applicant did not avail himself."

[40] A recent summary of the law in this area can be found in the judgment of Hogan J. in *Koczan v. Financial Services Ombudsman* [2010] IEHC 407 , (Unreported, High Court, Hogan J., 1st November, 2010). At pp. 11 and 12 of his judgment, the following is said:-

"19. There are, doubtless, certain categories of cases where the legal argument raised falls properly to be canvassed by means of judicial review rather than by way of a statutory appeal. As indicated in *Square Capital Ltd. v. Financial Services Ombudsman* [2009] IEHC 407 , [2010] 2 I.R. 514 , an argument directed towards a total lack of subject matter jurisdiction is perhaps one such case. Judicial review might also be appropriate where the complaint relates to the integrity or basic fairness of the decision-making process, so that in justice the decision-maker ought to be afforded an adequate opportunity of defending his or her position in judicial review proceedings which admit of the possibility of cross-examination and oral evidence. There may well be other cases – such as, e.g. , those touching on the constitutionality of legislation or the validity of statutory instruments – where the legal issues cannot properly be raised by way of appeal (whether by virtue of the special rule contained in Article 34.3.2° of the Constitution or otherwise) and which must be dealt instead with by means of a declaratory action: cf. the discussion of this issue in the judgment of Kearns J. in *S.M. v. Ireland* [2007] IESC 11 , [2007] 3 I.R. 283 .

20. These cases must, however, be regarded as the exception rather than the rule. It is well established that the Oireachtas must be presumed to know the law and the Oireachtas is, of course, well aware of the existence and parameters of the High Court's judicial review jurisdiction. It follows, therefore, that the creation by legislation of a right of statutory appeal from an administrative decision which is not confined to an appeal on a point of law generally raises the inference – albeit a rebuttable inference – that the Oireachtas 'must have intended that the court would have powers in addition to those already enjoyed at common law' in respect of its judicial review jurisdiction: see *Dunne v. Minister for Fisheries* [1984] I.R. 230 at p. 237 per Costello J. That in turn suggests that the Oireachtas further intended that the

statutory appeal would form the vehicle whereby the entirety of an appellant's arguments could be ventilated in such an appeal without any need to commence a further set of proceedings, at least to the extent that it was procedurally possible to do so: see, e.g. , the comments in this regard of Laffoy J. in *Teahan v. Minister for Communications* [2008] IEHC 194 , (Unreported, High Court, Laffoy J., 18th June, 2008)."

[41] Thus the overall approach is clear. The default position is that a party should pursue a statutory appeal rather than initiate judicial review proceedings. The reason for this approach is, as pointed out by Hogan J. in *Koczan v. Financial Services Ombudsman* [2010] IEHC 407 , (Unreported, High Court, Hogan J., 1st November, 2010), that it must be presumed that the Oireachtas, in establishing a form of statutory appeal, intended that such an appeal was to be the means by which, ordinarily, those dissatisfied with an initial decision might be entitled to have the initial decision questioned.

[42] However, there will be cases, exceptional to the general rule, where the justice of the case will not be met by confining a person to the statutory appeal and excluding judicial review. The set of such circumstances is not necessarily closed. However, the principal areas of exception have been identified. In some cases an appeal will not permit the person aggrieved to adequately ventilate the basis of their complaint against the initial decision. As pointed out by Hogan J. in *Koczan v. Financial Services Ombudsman* [2010] IEHC 407 , (Unreported, High Court, Hogan J., 1st November, 2010), that may be so because of constitutional difficulties or other circumstances where the body to whom the statutory appeal lies would not have jurisdiction to deal with all the issues. Likewise, there may be cases where, in all the circumstances, the allegation of the aggrieved party is that they were deprived of the reality of a proper consideration of the issues such that confining them to an appeal would be in truth depriving them of their entitlement to two hearings.

[43] However these and any other examples must be seen as exceptions to the general rule. In addition, the conduct of the party seeking to question the initial decision is a factor although not, as Barron J. pointed out in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497, necessarily a decisive one."

17. Based on the foregoing extract from *EMI Records v The Data Protection Commissioner* it seems clear to this Court that:

(i) where there is an adequate alternative remedy available and an applicant for judicial review fails to avail of that alternative remedy, the court is likely to exercise its discretion against the applicant;

(ii) the default position, for a person who has a complaint about a decision taken by an administrative body or lower court, is that he must pursue a statutory appeal rather than initiate judicial review proceedings since it must be presumed that the Oireachtas, in establishing a form of statutory appeal, intended that such an appeal was to be the means by which, ordinarily, those dissatisfied with an initial decision might be entitled to have the initial decision questioned;

(iii) there will be cases exceptional to the general rule, where the justice of the case will not be met by confining a person to the statutory appeal and excluding judicial review, which set of circumstances is not necessarily closed but the principal areas of exception are:

a. where the appeal will not permit the person aggrieved to adequately ventilate the basis of their complaint against the initial decision e.g. because of constitutional difficulties or where the appellate body would not have jurisdiction;

b. where in all the circumstances the initial decision making process deprived the applicant of the reality of a proper consideration of the issues, such that confining them to an appeal would be in truth depriving them of two hearings.

18. On this basis, one can conclude that only in exceptional cases is an applicant entitled to judicial review, where there exists a statutory appeal or an adequate alternative remedy which will remedy the applicant's complaint. In considering whether this is such an exceptional case, one has to consider whether the justice of the applicant's case would not be met by confining her to the statutory appeal or other alternative remedy that may be available to her. For this purpose consideration needs to be given to the statutory appeal and alternative remedies available to her in this case.

Availability of an appeal to the Circuit Court

19. Counsel for the applicant advised that the applicant had a right to appeal the decision of Judge Daly to the Circuit Court, which appeal was not pursued. Since Care Orders are granted under Part IV of the 1991 Act, it is s. 28(1) which establishes the right of appeal, as it states:-

"(1) The District Court and the Circuit Court on appeal from the District Court shall have jurisdiction to hear and determine proceedings under Part III, IV or VI."

20. At the hearing before this Court, counsel for the applicant clarified that one of the reasons Judge Daly's decision was not appealed to the Circuit Court, and instead a judicial review was instituted in the High Court, was because an application for judicial review gave the High Court an opportunity to clarify the law of proportionality as it applies to child care law. This is because, while it was clear that proportionality applied in relation to other areas of law, this Court was advised that there is little or no caselaw on the principle of proportionality as it applies to child care law.

21. Undoubtedly, the lawyers for the applicant, as experienced practitioners in child law, see the benefits of the principle of proportionality, as it applies to child care decisions, being clarified. However, this Court does not believe that this is a sufficient reason for the Court to exercise its discretion to judicially review the decision of Judge Daly. The primary role of the Courts is to resolve disputes between parties, rather than to clarify areas of the law that might benefit from clarification. If the role of the Court were the latter, it could be an endless task, as well as being one which is expensive for the taxpayer in cases where the taxpayer is paying some or all of the costs.

Availability of application for the discharge of Care Order

22. In addition to the foregoing appeal to the Circuit Court which was available to the applicant, s. 22 of the Child Care Act, 1991, states that:-

"The court, of its own motion or on the application of any person, may—

(a) vary or discharge a care order or a supervision order,

(b) vary or discharge any condition or direction attaching to the order, or

(c) in the case of a care order, discharge the care order and make a supervision order in respect of the child."

It follows that, not only had the applicant the right to appeal the decision of Judge Daly to the Circuit Court, but she continues to have the right to seek in the District Court a variation or discharge of Judge Daly's Care Orders at any time under s. 22. In considering the suitability of an application under s. 22 in her case, it is relevant that Judge Daly's Care Orders are dated 29th January, 2015, and the applicant had sought from Judge Daly Care Orders of three years duration. This means that if the Care Orders she had sought were granted, the Care Orders would have lasted until 29th January, 2018.

23. The fact that the applicant sought Care Orders of such duration leads to the inescapable conclusion that she felt that she would not be in a position to care for her four children until at least January 2018. In these circumstances, and in light of the applicant's claim that her drug dependency and domestic situation was improving at the time of Judge Daly's Care Orders, it seems to this Court that s. 22 of the 1991 Act offered her a particularly suitable remedy for her complaint that the Care Orders should not have been for 12 years, 13 years, 15 years and 16.5 years, but for three years in each case.

24. An application under s. 22 of the 1991 Act would allow the applicant to provide evidence to the District Court to show, that during the three years in which her children were in care at her request, her circumstances had improved to such an extent that an order discharging the Care Order was justified. Indeed, it seems to this Court that s. 22 is specifically designed for the circumstances in which the applicant finds herself, allowing as it does for improvements in the circumstances of the applicant to be taken into account, after a Care Order has been granted.

Availability of court-ordered reviews

25. Apart from the right of the applicant to a make an application under s. 22 of the 1991 Act for a review of the Care Orders at any time, it is also relevant that Judge Daly provided for two court-ordered reviews in the following terms:-

> *"I will list this matter for a full review of the children's progress in care on the 29 January 2016 and review of the parents' progress in dealing with their various difficulties. I will further recommend that should the parents demonstrate sufficient progress at that review date that this matter be listed for a full review of the children's care arrangements 2 years after that review date".*

26. It is clear from the terms of this order that Judge Daly was very much open to the Care Order being revised on the grounds that the parents might be able to show that their circumstances had improved to such a degree that the Care Order could be varied or even discharged. Indeed he envisages it being revised within only one year of the original order (even though the parents had themselves requested a Care Order for three years) as the first court-ordered review was set for January 2016. The second court-ordered review was due to take place in January 2018, which was at the expiry of the three year period requested by the parents.

27. While the court-ordered review due on the 29th January 2016 was adjourned until May 2016, there is no suggestion that this adjournment was done against the wishes of the applicant and hence the adjournment does not in this Court's view impact upon the relevance of the availability of this remedy to the applicant, in considering this judicial review. It is this Court's view that these two court-ordered reviews offered the applicant a further alternative remedy in which to address her complaint that the Care Order should be shortened.

28. Indeed, in view of the applicant's case that her circumstances were improving at the time of the Care Order, and the willingness of Judge Daly to review the parents' progress within only one year of the Care Order, it is arguable that this court-ordered review for the resolution of her complaint about the length of the Care Orders was the most *'appropriate remedy considered in the context of common sense'* (to quote Barron J. at p. 509 in *McGoldrick v. An Bord Pleanála*).

Is this an exceptional case?

29. Notwithstanding the availability of an appeal and alternative remedies, this Court must now consider whether this is an exceptional case where judicial review should still be available to the applicant. In doing so, this Court must first consider whether the applicant's case falls within the two specific exceptions identified by the Supreme Court in *EMI Records v. The Data Protection Commissioner*, noted above. This requires this Court to consider whether the appeal to the Circuit Court and other remedies, enable the applicant to adequately ventilate the basis of her complaint against the initial decision or whether the original decision deprived the applicant of the reality of a proper consideration of the issues such that confining her to an appeal, rather than judicial review, would deprive her of the entitlement to two hearings.

30. The appeal to the Circuit Court from a decision of the District Court, such as this one, is a full re-hearing of the applicant's case. For this reason, it seems clear to this Court that this appeal does permit the applicant *'to adequately ventilate the basis of their complaint against the initial decision'*. As regards the second exception, in this Court's view, this is not a case where the initial decision making process by Judge Daly deprived the applicant of the reality of a proper consideration of the issues. This was because there was a seven day hearing at which 15 expert witnesses gave evidence and a 120 page report was provided by the Child and Family Agency to support the application for the proposed Care Orders. Crucially, the applicant and the father of the children gave evidence at the hearing. Also of significance is the fact that a guardian ad litem was appointed for the hearing to represent the interests of the children and she gave to the District Court a comprehensive and independent 40 page report containing her detailed consideration of the children's welfare and recommendations of the Care Orders which she thought should be granted. This independent report is particularly important since according to the Supreme Court in *The Southern Health Board v. CH* [1996] 1 IR 219 the interests of the children are always paramount in care proceedings. It could not therefore be said, in this Court's view, that the applicant did not have a proper consideration of the issues at the District Court hearing, so that an appeal of that decision would not amount to a genuine second hearing of her case.

31. In line with the principles set out in *EMI Records v. The Data Protection Commissioner*, this Court must next consider whether this is a situation where the justice of the case will not be met by confining the applicant to the statutory appeal or the other remedies available to her.

32. This Court can find nothing about either the appeal of Judge Daly's decision to the Circuit Court under s. 28 of the 1991 Act or the application to vary the Care Order to the District Court under s. 22 of the 1991 Act or the consideration of the length of the Care Order at the court-ordered reviews to take place after the first year of the Care Order and after the third year of the Care Order, that causes an injustice to the applicant in her desire to have the Care Orders shortened in her case. On the contrary, as noted earlier in the judgment, it seems to this Court that the court-ordered review after only one year and the right of the applicant to seek a discharge of the Care Order under s. 22 of the 1991 Act are particularly suited to the applicant's personal circumstances. She

anticipates her circumstances will continue to improve so that she will be able to convince the District Court prior to January 2018 that she can provide a home where her children's health, development or welfare will no longer be impaired or neglected.

33. For these reasons, this application to judicially review the decision of Judge Daly is refused.

Costs to the taxpayer of judicial review as a factor in Court's discretion

34. Finally, although not a determinative factor in the applicant's case (since in this case the applicant had essentially three different appeals/remedies available to her), it is this Court's view that, in exercising its discretion as to whether to judicially review a particular decision, where there are adequate alternative remedies available to an applicant, this Court is entitled, when considering the appropriateness of the other remedies, to take into account the most efficient use of taxpayers' money, where taxpayers' money is at stake.

35. In *Tracey v. Burton* [2016] IESC 16 at para 45, the Supreme Court noted that court time is a '*scarce public resource*' and '*the public have a right to a court system which operates effectively and expeditiously in the public interest*'. Similar sentiments regarding expense and court resources were expressed by Hardiman J. in his dissenting judgment in the Supreme Court case of *Meadows v. Minister for Justice Equality and Law Reform* [2010] 2 IR 701 at p. 753, where he describes judicial review in the High Court as an '*expensive and time consuming level of substantive appeal*' in what he calls our '*overcrowded and under equipped legal system*'. For this reason, this Court is of the view that, in order for it to make a decision on which remedy is the most '*appropriate remedy considered in the context of common sense*' (as stated by Barron J.), that the very same common sense demands that where taxpayers' money is at stake regard must be had to the costs of the various remedies available to the applicant.

36. If this Court does not consider the taxpayer, it is possible that no other party to the proceedings will do so. Such concern for the taxpayer is particularly important in cases where the taxpayer is likely to ultimately pay all the parties' legal costs, regardless of the result and regardless of the court in which the action is instituted.

37. In the present case, regardless of whether the applicant wins or loses her case, it is possible that three sets of High Court costs will end up being paid for by the State. The applicant is in receipt of legal aid, the Child & Family Agency's legal costs, as a State funded body, will be paid by the taxpayer and the guardian ad litem has argued that her High Court legal costs should be discharged by the Child and Family Agency (since this is what happens in the District Court pursuant to s. 26(2) of the 1991 Act.).

38. There is no suggestion being made that the applicant was not perfectly entitled to seek and obtain legal aid for her application in this case. However, if the applicant were paying the legal costs personally, rather than being funded by legal aid, it is likely that she would have asked for her challenge to the duration of the Care Orders to be done in the most cost-efficient manner possible. If she had done so, she might have been advised to appeal to the Circuit Court or to seek to have her Care Order varied on the scheduled review in the District Court or to seek a variation to the Care Order in the District Court under s. 22 of the 1991 Act, all of which are likely to have cost the taxpayer a fraction of the costs of this High Court judicial review.

39. Since the legal costs of this case are not being paid personally by the applicant, but by the taxpayer, it is possible that the legal costs were of little or no concern to her, in her decision to pursue this judicial review.

40. However, in order to ensure that there is someone looking out for the taxpayers' interests, it is this Court's view that in an application for judicial review, where the applicant has not exhausted all remedies available to him or her, the legal costs to the taxpayer of the various remedies available to an applicant are a factor, which can be taken into account by this Court in exercising its discretion as to whether to judicially review a decision. This can be done by the Court asking; could the interests of justice be met by resolving the dispute at issue at a significantly lesser cost to the taxpayer?

Conclusion

42. In this case, it was not necessary for the Court, in exercising its discretion to refuse judicial review, to consider the costs to the taxpayer of the various appeals and remedies available to the applicant. This is because in this Court's view, it is clear based on the principles outlined in *EMI Records v The Data Protection Commissioner*, that the appeal and alternative remedies which were available to the applicant are such as to deprive the applicant of the right to have her complaint, regarding the duration of the Care Orders, to be dealt with by means of judicial review in the High Court.