

THE HIGH COURT
JUDICIAL REVIEW

[2012/106 JR]

BETWEEN:-**AN POST****APPLICANT****v.****THE COMMISSION FOR REGULATION****RESPONDENT****Judgment of Mr. Justice Hedigan delivered the 4th day of October 2012**

1. The applicant address is General Post Office, O'Connell Street Lower, Dublin 1. The respondents address is Block DEF, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.

2. Reliefs Sought:-

(1) An order of *certiorari* by way of an application for judicial review quashing the Respondent's Direction to the Applicant (the "Direction") of 22 November 2011, adopted by the Respondent pursuant to Section 21(2) of the Communications Regulation (Postal Services) Act, 2011 (the "2011 Act").

(2) A declaration by way of an application for judicial review that An Post's obligation under Section 16(1) of the 2011 Act or under Section 6(3) of the 2011 Act or otherwise relates to the 'postal address' as determined by An Post.

(3) A declaration by way of an application for judicial review that the Applicant is not required to recognise an address based on a District Electoral Division (now referred to, pursuant to Section 223 of the Local Government Act, 2001, as an "electoral division") ("DED") which is different from the post town which applies to the premises as a "true direction" within the meaning of Section 47(4) of the 2011 Act for the purposes of its obligations as universal postal service provider (the "USP") pursuant to Section 17(1) of the 2011 Act.

(4) A declaration that the phrase "properly addressing" in Section 25 of the Interpretation Act, 2005 relates to the 'postal address' and not to such various addresses as the Respondent may decide to be a "legal address".

(5) Such interim relief as the Court deems fit.

(6) Directions if need be on matters of interpretation of Order 84 RSC as it affects these proceedings.

Background Facts

3.1 The dispute which is the subject matter of these proceedings, relates to a direction issued by the respondent on the 22nd November 2011, requiring the applicant to deliver post to a disputed address. The address in question belongs to two of the applicant's customers Patrick and Sandra O'Connell. The O'Connell's seek to use the address "Blackstone Bridge, Watergrasshill, County Cork." They argue that this address is an accurate geographical description of their location. The applicant however argues that their correct postal address is "Blackstone Bridge, Rathcormac, Co. Cork". The O'Connell's purchased their current property in 2002 and since that time they have used an address bearing a reference to Rathcormac. However they say that as their address is located in Watergrasshill, a small amount of post inevitably bore the Watergrasshill address.

3.2 Between 2002 and January 2011 the O'Connell's received post marked with this address "Blackstone Bridge, Watergrasshill, County Cork", albeit that such post was often delivered one day late. The O'Connell's were prepared to overlook this delay in order to accommodate the local postmen as much as possible. In 2011 An Post introduced its address verification tool to increase the use of correct 'postal addresses'. As part of this program, incorrectly addressed postal packets had adhesive stickers or written instructions placed on them in order to inform the addressee that the postal packet had been incorrectly addressed.

3.3 From 2011 postal packets sent to the O'Connell's and addressed as "Blackstone Bridge, Watergrasshill, County Cork" arrived with stickers or instructions indicating that the address used was an incorrect one. On the 11th of March 2011, the O'Connell's submitted a complaint to An Post customer services stating that:-

(i) at some point after purchasing their home in 2002 they were asked by An Post to refer to Rathcormac in their 'postal address' as their house was served by a postal operative whose route originated in Rathcormac post office;

(ii) while they had been willing to comply with this request they were dissatisfied that some of their mail which was addressed by reference to "Watergrasshill" had been delayed and often had stickers or writing applied to it; and

(iii) they were of the view that their property had at all times been in Watergrasshill.

3.4 Having received no response, they complained to the respondent. On the 13th of May 2011, Jean Dwyer of ComReg emailed Aileen Canning of An Post in relation to the complaint stating:-

"The customer has submitted a complaint to An Post customer service on the 21st March 2011, with Rory Cooke and to date has not heard from him. His local post office told him to change the town land name for ease for the delivery for post to him. They wanted him to change Watergrasshill to Rathcormac. He is now experiencing delays from 24 hours to 3-4 days late. He has not changed the address for anything to do with his house for value purposes. He has also found out that his local post office has sent back mail to the sender stating not right address..."

On the 20th of May 2011, Aileen Canning of An Post replied to Jean Dwyer as follows:-

"...We, to improve Quality of Service, are enforcing the Address Verification tool, which shows Mr. O'Connell's address as Rathcormac. They are delivered from different delivery offices; hence there will be a delay if he chooses to use an alternative address as mail has to be transferred between the offices. Therefore he needs to use his correct 'postal address' should he wish to avoid this."

On 24th May 2011, Gillian Sheridan of An Post Customer Services wrote to the O'Connell's and explained that:-

(i) their house was on a delivery route which was serviced by the Fermoy Delivery Service Unit which provided postal deliveries to addresses in and around the townland of Rathcormac including Blackstone Bridge and that accordingly the 'postal address' for their house ought to refer to Rathcormac;

(ii) if they did not use this 'postal address' then mail addressed to them would be automatically sorted to a Delivery Service Unit that serves Watergrasshill and that this would result in delays in the delivery of the mail in question.

3.5 On the 9th of June 2011, Seamus Plunkett, Postal Regulation Manager with ComReg wrote to Brian Fay Head of Regulatory Affairs of An Post. In this letter Mr. Plunkett stated that "Mr. O'Connell has confirmed to ComReg that Blackstone Bridge, Watergrasshill, Co. Cork is his official address and the address to which all official correspondence including for example any material received from his local authority as well as his election voting cards, is addressed." Mr. Fay replied on the 9th of June 2011. In this letter he suggested that the customer could use the address of "Blackstone Bridge, Ballinaltig, Co. Cork" which would facilitate proper postal routing while alleviating any concern which the customer had about the reference to Rathcormac in his address. This suggestion was made in good faith however it subsequently transpired that the use of an address that did not refer to the postal town Rathcormac would not ensure next day delivery. On 22nd of July 2011, Mr. Plunkett responded to this letter. He stated that the customer had confirmed that "Blackstone Bridge, Ballinaltig, Watergrasshill, Co. Cork" was the address "to which all correspondence is to be delivered". Mr. Plunkett went on to state that "This is the address to which An Post, as the designated universal service provider, is statutorily obliged to deliver". Mr. Plunkett asked that An Post confirm that

"in accordance with its statutory obligations under Regulation 4(3)(a), [the Applicant] will deliver all postal items for this address on the next working day and will not deface/delay any postal items for this address hereafter."

On the 5th of August 2012, Mr. Fay wrote to Mr. Plunkett he noted that based on the correspondence to date it seemed that ComReg considered that the customer's "official address" could be either "Blackstone Bridge, Ballinaltig, Watergrasshill, Co. Cork" or "Blackstone Bridge, Watergrasshill, Co. Cork". Mr. Fay expressed his surprise that an "official address" could vary and was ultimately to be decided by the customer himself which appeared to him to be ComReg's view of "official addressing". Mr. Fay noted that such an approach could facilitate "vanity addressing" which posed significant challenges to An Post's postal network.

3.6 On 31st of August 2011, Mr. Plunkett wrote to Mr. Fay. In this letter Mr. Plunkett stated that there can be no "confusion or debate as to Mr. O'Connell's established address" which he states as "Blackstone Bridge, Ballinaltig, Watergrasshill, Co. Cork". Mr. Plunkett went on to assert that An Post's legal obligation is to deliver mail to the "marked address" on the next working day and that: "How An Post designs its delivery network is a matter for An Post." Mr. Plunkett requested An Post to confirm by 7th of September 2011, that it "shall immediately comply with its legal obligations to deliver mail to this addressee at his legal address at Blackstone Bridge, Ballinaltig, Watergrasshill, Co. Cork on the next working day". Finally Mr. Plunkett indicated that in the event of An Post failing to provide this confirmation ComReg would regard it as being in breach of its legal obligations under Section 16(1) of the Communications Regulation (Postal Services) Act, 2011. On 14th September, 2011 Mr. Fay wrote to Mr. Plunkett. In this letter he explained to Mr. Plunkett that Section 16(1) (a) of the 2011 Act which describes An Post's universal postal service obligation makes no reference to addressing. Mr. Fay further noted that notwithstanding Mr. Plunkett's assertion that there could be no "confusion or debate" as to the customer's "established address" there clearly was such a debate since a number of variations of the customers address were in use. Mr. Plunkett wrote to Mr. Fay on the 4th of October 2011, and asserted that An Post's legal obligation to deliver relates to the 'official address' as determined by the local authorities, and not to "postal addresses".

3.7 On the 22nd of November 2011, An Post received a Direction from ComReg requiring An Post:-

(i) "to accept and recognise either "Blackstone Bridge, Ballinaltig, Watergrasshill, County Cork" or "Blackstone Bridge, Watergrasshill, County Cork" as being true and proper addresses for the purposes of clearing, sorting, transporting and distributing all postal packets marked with either version of the address; and

(ii) to comply with its statutory requirement to deliver all postal packets marked with either "Blackstone Bridge, Ballinaltig, Watergrasshill, County Cork" or "Blackstone Bridge, Watergrasshill, County Cork" on the next working day; and

(iii) to ensure that it shall not refuse delivery of postal packets marked with either "Blackstone Bridge, Ballinaltig, Watergrasshill, County Cork" or "Blackstone Bridge, Watergrasshill, County Cork", nor shall it detain, withhold, return or dispose of such postal packets save where it does so in accordance with section 47 of the 2011 Act."

3.8 On the 28th of November 2011, a number of officials from An Post met with officials from ComReg at ComReg's offices in order to review the "variety of formal documentary evidence" relied on by ComReg in issuing the direction. This documentation included Confirmation from Cork County Council, Copy of Deeds of Customers house, Register of Electors, Information from members of An Garda Síochána, and information from a Mr. James J Bunyan. On the 13th of December 2011, Mr. Fay wrote to Mr. Plunkett and confirmed that the temporary delivery arrangements which An Post had put in place to comply with the Direction remained in place and explained that these were not sustainable from a cost and efficiency point of view and that An Post was now considering how best to introduce a permanent solution. Mr. Fay wrote again on the 10th of January 2012, he informed ComReg that pending An Post being in a position to: (a) fully understand the rationale behind the Direction; and (b) satisfy itself that ComReg's interpretation of An Post's obligations is correct, neither the temporary arrangements which An Post had put in place nor its consideration of the steps necessary in order to comply with the Direction on a permanent basis should be interpreted as acceptance by An Post of the validity of the Direction.

3.9 On the 25th of January 2012, the company secretary of An Post received a letter from George Merrigan, Director with ComReg. Mr. Merrigan asserted that both variations of the address identified in the Direction constituted "a complete and accurate description of the geographic location of the customer's home and therefore a true direction for the purposes of the 2011 Act". Mr. Merrigan acknowledged that Mr. Fay had emphasised the necessity for An Post to understand the rationale behind the Direction and said that: "While I see no purpose in setting out the rationale again in this letter, I shall describe the actual past behavior of An Post which necessitated the Direction..." Mr. Merrigan then gave a number of examples of postal packets which had been addressed to the customers by reference to Watergrasshill which had been either delayed or, in one instance, returned to sender. Mr. Merrigan stated that An Post had "demonstrated a worrying indifference to the principles of the universal service and to the reasonable needs of one of its customers". In relation to An Post's queries as to ComReg's understanding of "the essential elements of an address" Mr. Merrigan stated that the addresses which appeared in the Direction were "sufficient information for An Post to effect delivery".

3.10 On the 13th of February 2012, An Post sought and were granted leave by Peart J. to take Judicial Review proceedings. An Post were granted a stay in relation to ComReg's Direction pending the determination of the issue. The reliefs which An Post now seek include *inter alia* an order quashing the Direction of the 22nd November 2011, and a Declaration that An Post's obligations under the 2011 Act relate to the 'postal address' as determined by An Post.

Applicants Submissions

4.1 On the 22nd November 2011, the respondent (ComReg) issued a direction to the applicant (An Post). An Post contends that the respondent's direction to deliver post to a place name, variously constructed according to parts of electoral information and title deeds, is without legal authority. An Post further contends that ComReg does not have any power to determine addresses. ComReg has confused the nature of a 'postal address', which is a direction to a postal operative to enable him/her deliver mail, with various names, such as place names. Notwithstanding that An Post disputed the validity of the Direction, once An Post was informed of the Direction by ComReg it put in place temporary arrangements to comply with the Direction at significant inconvenience to An Post. The temporary arrangements involved: (a) staff at Watergrasshill post office identifying mail which was addressed to the disputed address by reference to Watergrasshill; (b) sorting this mail into the delivery bundle of a postal operative who does not deliver on the route which serves the disputed address; (c) that postal operative whose delivery route originates from the Watergrasshill post office extending his route to make a delivery to the disputed address. At the same time, mail addressed to the disputed address by reference to Rathcormac was delivered by a mail operative whose route originates in Rathcormac post office and passes the disputed address. The applicant submits that these arrangements were not consistent with good post sorting/delivery practice and were inefficient and not sustainable in the long term.

4.2 In order to comply with the Direction on a permanent basis, An Post would need to restructure the delivery routes originating from both Rathcormac and Watergrasshill post offices so that the disputed address would be on a delivery route which originates in Watergrasshill post office. This would logically require some of the disputed address's neighbours (who are currently served by the same delivery route from Rathcormac post office as it is) changing their 'postal addresses' to incorporate a reference to Watergrasshill which will become their new "post town", so that they will be on the route. This would then mean the mail addressed to the disputed address and any others impacted by the change which bears the address of Rathcormac would be delayed as their homes would now be served from Watergrasshill. This would open the possibility of a flood of customer complaints. 'Postal addresses' are linked to the history of the development of the postal service. If District Electoral Divisions (DED's) were to be used as a component in postal addressing on a nationwide basis this would require a fundamental restructuring of the manner in which mail is sorted and delivered throughout Ireland with attendant disruption, cost, and quality of service issues. Further, such reorganization would require a high proportion of households to assume new 'postal addresses'. Many of these addresses would be very different since DED's have never played a role in postal addressing in Ireland. Furthermore, the 'postal address' has evolved for a reason- to ensure postal delivery- and is stable. DED's are not stable over time or in accuracy of their data. DED's serve a different function. Any such reorganisation would require households to change their addresses when the DED's were changed for electoral purposes. Further, such readdressing would have an impact on property values and consequently property loans and insurance.

4.3 At paragraph 5 of its Statement of Opposition ComReg denies that these consequences will result from the Direction since the Direction relates to one address only. An Post submits that this defence is illogical. If in principle the Direction is correct in law, then An Post's system of addressing (and the system of addressing used by the population of Ireland) appears to be incorrect. Furthermore, if the Direction is upheld by the Court then An Post would have no assurance that ComReg will not issue further similar directions regarding particular addresses elsewhere in Ireland or even a more general direction requiring An Post to comply on a nationwide level with the principles which underpin the Direction or that customers will not raise complaints, or make claims, on the basis of a variety of addresses. An Post's concern in this regard is heightened by ComReg's failure to appreciate the necessary operational role which the use of the correct addressing components plays in the manner in which post is sorted and ultimately delivered via pre-designed delivery routes.

4.4 An Post has been designated as the Universal Service Provider by the Communications Regulation Postal Services Act 2011 Act. Section 16(1) of the 2011 Act provides that:-

"In this part and subject to this section "universal postal service" means-

(a) That on every working day, except in such circumstances or geographical conditions as the Commission considers to be exceptional, there is at least-

(i) One clearance, and

(ii) One delivery to the home or premises of every person in the State or, as the Commission considers appropriate, under such conditions as it may determine from time to time, to appropriate installations ..."

Section 47(4) of the 2011 Act provides that a postal packet is considered to be "undeliverable" "if it cannot be delivered through want of a true direction..." Pursuant to Section 32 of the 2011 Act ComReg has set quality of service targets for An Post including a target in respect of the next day delivery of single piece priority mail of 94 per cent. Pursuant to Section 32(6) of the 2011 Act, where ComReg is of the opinion that An Post has not met these quality of service standards it can issue directions to An Post to take corrective action.

4.5 There is no statutory definition of an "address". The 2011 Act does not define an "address". At paragraph 6 of the Statement of Opposition, ComReg denies that there is a "distinct concept of postal addressing...which has any status in law". An Post fundamentally disagrees with this assertion. There are instances in which Irish and European law operates on the basis of the distinct concept of "postal addressing". More fundamentally, the law, the State, and the EU operates on the assumption that there are 'postal addresses'. Examples of instances include:-

(a) The Registration of Deeds (No.2) Rules 2009 SI No. 457/2009, which specifies that an application for a judgment mortgage is made in form 16. Form 16 requires that a description of the property to which the judgment mortgage relates be provided and in particular requires that a 'postal address' separate and independent of the names of the town, town land, barony, parish, city, county, area and/or map coordinates be provided.

(b) The Planning and Development Regulations 2011 distinguishes between 'postal address' and other address details.

(c) The Arbitration Act 2010 also distinguishes between 'postal address' and other address details.

While there is no prescribed statutory format for the addressing of postal packets, there are however internationally recognised standards of postal addressing which have been generated by the Universal Postal Union (the "UPU") and recognised by the European Committee for Standardisation ("CEN"). The most recent 'postal address' standard is EN14142-1:2001 which was adopted by the National Standards Authority of Ireland on the 16th of August 2011. While compliance with this standard is not legally required the applicant however submits that 'postal address' standard EN14142-1:2001 is an express recognition by the UPU, CEN and NSAI of the existence of a distinct concept of "postal addressing". The 2011 European Standard provides that in a competitive postal environment "the defining authority for the delivery point specification will normally be the identity of the postal operator which owns or serves the delivery point concerned". Accordingly, on the basis of the European Standard Part 1 it is An Post which is the "defining authority" in respect of the correct 'postal address' for the disputed address.

4.6 The applicant submits that the concept of postal addressing is a day to day fact of Irish life which is sufficiently well-known that a Court is entitled to take judicial notice of it. Post towns (i.e. Rathcormac in the case of the disputed address) have always played a critical role in postal addressing in Ireland. The addressing requirements for postal packets being placed in the postal system were explained in Eolai an Phoist which was published by the Minister for Posts and Telegraphs annually from 1924 to 1982. In 1995 An Post issued an updated Eolai an Phoist which remains current. Eolai an Phoist has consistently since 1924 identified the following as the components of a "true direction" for the purposes of a 'postal address' in a "Country District": (i) name of addressee; (ii) name (if any) of house; (iii) name of townland or village; (iv) name of post town in capitals; and (v) name of county. The purpose of a 'postal address' is a direction to postal operatives to sort the mail directly through the An Post system to arrive at the correct post office and to then allow the postal operative to deliver the item to the correct address point where he/she is to deliver the mail. The particular importance of the use of the correct "post town" is that it relates to the post office where the final sorting of the mail is conducted in respect of the address in question before it is taken by the postal operative to make delivery. In the event that the sender diverts a postal packet to the wrong post office for final sorting, An Post must redirect the postal packet to the correct post office thereby entailing a delay in the delivery of the mail to the addressee. In recent years, elements of the mail sortation pipeline were mechanised. However not all mail is handled by the machines. From an information technology perspective, it is not possible to program the machines to make specific provision for the specific customers to whom the Direction refers without enormous additional cost.

4.7 The disputed address is on a delivery route covered by a postal operative who collects mail for delivery from Rathcormac post office. In line with the postal addressing system described above, the customers have previously been advised by An Post that Rathcormac is the "post town" for their mail and, accordingly, mail addressed to them should refer to Rathcormac. This ensures that when mail addressed to the disputed address reaches a mail centre it is sorted for delivery to Rathcormac post office where it will be further sorted by hand into the delivery route of the postal operative who serves the delivery route on which the disputed address is located. Where a sender intended mail to reach the disputed address and this mail refers to Watergrasshill in the address used, it will be sorted in a mail centre for delivery to the Watergrasshill post office. At the Watergrasshill post office it will become apparent that the mail does not relate to any delivery route originating in that post office. It will require to be rerouted (via the Cork Mail Centre in Cork City) to Rathcormac post office in order to be delivered to the Customers which will entail a delay in the final delivery of the mail to the disputed address. Furthermore, there is no crossover between the delivery routes operated by An Post from different post offices. No one house is ordinarily served by deliveries from two different post offices since such a crossover would be wasteful.

4.8 The applicant submits that ComReg is not given power in the 2011 Act, or anywhere else to prescribe a system of addressing to be followed by An Post in providing postal services. ComReg denies at paragraph 7 of the Statement of Opposition that it is "determining the system of addressing to be applied by the applicant in the provision of the universal service..." Notwithstanding this denial, ComReg has in fact purported to compel An Post to comply with a system of addressing whereby the DED forms part of the disputed address. At paragraph 4 of the Direction, ComReg states that:

"Under the Local Government Act 1946, as amended, local authorities have the statutory responsibility for naming streets, townlands and other locations in Ireland. As An Post's obligation relates to the address as determined by the local authorities and not to the "postal address" such as those contained in An Post's Geo Directory".

Pending the full commencement of Part 18 of the Local Government Act, 2001, Section 76 of the Local Government Act 1946 (as amended) provides that the Government (upon an application by the relevant urban district council or town commissioners) may make an order changing the name of an urban district or town. Sections 78 and 79 of the 1946 Act provides that the "appropriate authority" (i.e. in respect of a county or other borough, the corporation of the borough, in respect of an urban district, the council of the urban district, in respect of a town, the commissioners of the town and in respect of anywhere else the county council) may change the name of a street or a locality respectively. Accordingly, paragraph 4 of the Direction is an incorrect statement of law insofar as it is the Government (upon application by the relevant local authority) which has the authority to rename an urban district, town or townland whereas the local authorities have the authority to rename a locality or street. There is no basis in law for the statement that "An Post's obligation relates to the address as determined by the local authorities..." Neither the 2011 Act nor any other statutory provision in respect of the provision of postal services makes any reference to the local authorities in respect of the designation of 'postal addresses'.

4.9 The State, in this instance the national regulatory authority, in the purported implementation of European Union law is bound by the general principles of EU law, including the principle of proportionality. An Post submits that ComReg breached the principle of proportionality in that it carried out no assessment of the proportionality of the Direction prior to its adoption. Further the Direction pursues an illegitimate aim in that ComReg's aims are to secure delivery by An Post to a non-'postal address' and to allow the addressees choose the form of their address which could potentially include "vanity addressing". The extent of the obligation on An Post, namely to reorder the principles and mechanisms by which it delivers mail throughout the State is disproportionate to the result to be achieved namely that the addressees at a disputed address can receive their mail at an address other than their postal address.

4.10 The applicant submits that the direction irrationally denies the crucial role which consistent and accurate postal addressing plays in the delivery of a universal postal service. The logic which underpins the Direction would require An Post to adapt to, and comply

with, a potentially endless number of address variations based on the preferences of individual users. ComReg in adopting the Direction breached the principles of natural and constitutional justice in particular the principle of *audi alterem partem*. The documentary evidence compiled by ComReg, referred to in paragraph 10 of the Direction and on which ComReg relies was not provided to An Post prior to the issuing of the Direction. ComReg failed to afford An Post an opportunity to be heard in respect of the value of this material and the conclusions to be drawn from it, in advance of issuing the Direction and in so doing ComReg breached the principle of *audi alterem partem*.

Finally in relation to the standard of review the *O'Keeffe* test has come to be recognised as the standard test to determine whether or not the action of an administrative body ought to be quashed. An Post submits that the direction falls foul of this test since the direction is vitiated by errors of law in the face of the record, is disproportionate, was made in breach of natural and constitutional justice, is unreasonable and irrational.

Respondents Submissions

5.1 This dispute relates to the fact that the O'Connell's wish the applicant to deliver post addressed to them using a geographically correct address of their residence (as described in the Direction and hereinafter referred to as "the address") in a timely way. The applicant refuses to do this. The applicant does not dispute that the address accurately describes where the O'Connell's reside, however it has insisted that they use a different address for the purposes of receiving their post, which is less geographically accurate than the address but which the applicant maintains is the so-called "postal address" which best suits its postal network. The address which the applicant has stated that it wishes the O'Connell's to use is to include reference to "Rathcormac" as this is the so-called "post town" on the postal delivery serving their residence. However the O'Connell's residence is not physically located in the townland and/or Electoral division of Rathcormac. It is located in Watergrasshill. This is an incontrovertible geographic fact which has not been disputed by the applicant. The applicant requires that persons addressing post to the O'Connell's do not refer to Watergrasshill in their address as Watergrasshill is a post-town on a different postal delivery route which does not serve the O'Connell's residence. The applicant's position is that those addressing post to the O'Connell's must use this address because of the design of its postal network. The respondents position is that, as part of its universal service obligation, the applicant is obliged to deliver postal packets to the address and to do so in a timely fashion, and the applicant cannot refuse to deliver postal packets to the O'Connell's unless those who address postal packets to them i.e. senders use another address to suit the applicant's own postal network. This dispute ultimately resulted in the respondents issuing the direction, which the applicant seeks to quash in these proceedings.

5.2 The O'Connell's have indicated to the respondent that they have been severely inconvenienced by the failure of the applicant to deliver their post in a timely fashion. The respondent argues that the delay and or failure to deliver post to the O'Connell's is part of a deliberate and conscious decision by the applicant to enforce its address verification tool. For nine years prior to January 2011, the O'Connell's were receiving post when "Watergrasshill" was included in their address with minimal delays such that they were reasonably happy with their postal service. However after enforcement of the address verification tool delays have increased significantly, post has also been defaced with stickers and also returned to sender. For example a letter from the Motor Tax Office posted on the 31st January 2001, was received on the 28th February 2011, 20 working days later with a sticker affixed marking it as "incorrect postal address". Two letters from the Department of Transport Motor Taxation Office and one from Allianz insurance were returned to sender. A copy of the deeds of the O'Connell's house posted by the O'Connell's solicitor on the 14th October 2011, at Blackstone Bridge, Watergrasshill, Co Cork" was delivered on the 26th October 2011. This letter was marked "incorrect postal address".

5.3 The respondent argues that the Direction related to a particular complaint from specific postal users and arose out of that particular factual background. It is this narrow issue with which the Direction is concerned and the applicant's attempt to characterise the Direction as being of more general application is unjustified. It is not the case that the rationale for the Direction is that addressees must be free to choose their own address for postal purposes. The Direction relates specifically to the O'Connell's address and the issue that arose for them and the customer complaint which they made to the respondent. The question of choice by the O'Connell's is irrelevant and was not taken into account by the respondent in making the Direction. The address is an accurate description of the location of the O'Connell's residence. The applicant's attempt to characterise this issue as one of general application and one which has an impact on the general system of addressing in the State is disingenuous. The O'Connell's are not asking that the applicant afford them special treatment as is suggested by the applicant. They are merely asking that post bearing the correct particulars of the location of their residence be delivered to them.

5.4 The respondent submits that in making a determination in relation to this issue the court should take into account recent developments in the postal sector. The European and Irish postal services has undergone significant change in recent times. The 3rd EU Postal Directive provided for full market opening and liberalisation of the EU postal services market by 1st January 2011, and the applicant is merely one of a number of postal service providers operating in the liberalised postal market in the State. If the applicant's contention that it should be able to require persons to use a particular addressing system (which does not reflect geographic locations of residences or business premises) were to be accepted then arguably every postal service provider could operate a different addressing system and insist on different requirements when postal users wish to use this service. This would result in a situation where intended recipients of post would need to inform the senders of post to them of the appropriate address to use depending on which postal service provider is going to be used by the sender. This clearly is an unworkable system. The respondent submits that the applicant's contention that it is responsible for determining 'postal addresses', a term it has coined, is inaccurate and has no basis in law. There is no statutory basis for this contention. The applicant's contention that the 1995 version of Eolai an Phoist entitles them to set addresses is groundless. Eolai an Phoist is simply an internal operations manual. It has no statutory basis or legal standing. It cannot be the case that the applicant is the sole arbiter of addresses in a liberalised market, where the applicant is merely one of many private companies which provides a postal service.

5.5 The applicant complains that that it would have huge practical difficulties complying with the direction. The respondent disputes this. At paragraph 37-38 of his affidavit Seamus Plunkett Manager at ComReg addresses this point as follows:-

"37. My understanding is that the data which An Post uses to identify where a letter should be delivered is the address itself and a unique identity or fingerprint for every address locating its exact position known as a Geo-Code and deriving from its Geo Directory. The applicant has not mapped boundaries for its so called 'post towns'. Therefore the applicant has the capability to associate any address with any post-town of its choosing. To comply with the Direction would merely involve An Post reprogramming its system and updating its circulation list for inward sorting and delivery preparation at Watergrasshill delivery services unit. I understand that the applicant often updates its circulation list.

38. Furthermore, it is notable in this context that An Post has closed a number of its 'post-towns' over the years. This has resulted in a transfer of delivery routes into adjacent post-towns. For example, An Post closed Clones in 2011 and transferred the delivery routes into Monaghan. This would be a greater revision than including the town land of Ballinaltig

on the Watergrasshill delivery route. Indeed Watergrasshill is itself a 'post-town'. As such it would not need any additional tray on the automation system or sort box on the manual sorting benches at the Cork Mail Centre. The address is feasible for the efficient automation/manual sorting. There is no operational reason why the address cannot be served from the Watergrasshill 'post-town' other than custom and practice that has built up over the years."

The respondent submits therefore that the applicant could make certain adjustments to its postal network in order to deliver to this address, and that these adjustments should not be overly burdensome. The delivery does not require the applicant to make multiple postal deliveries per working day to the address, this is simply the way the applicant has chosen to organise its delivery routes and enforce its Address Verification Tool. The respondent submits that how the applicant structures its delivery routes is a matter for itself. However it must structure its routes to facilitate the reality of its customer's addresses and not attempt to get its customers to change their addresses to suit the applicant's postal network.

5.6 The respondent as the statutory body responsible for the regulation of the postal services sector has specialist knowledge and particular expertise and skill in the area of postal services regulation. The respondent's statutory functions relating to postal services include to ensure the provision of a universal postal service that meets the reasonable needs of postal service users" (section 10(1) (ba) of the 2002 Act, as inserted by the Communications Regulation (Postal Services) Act 2011 ("the 2011 Act"); and to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services (section 10(1)(c) of the 2002 Act, as inserted by the 2011 Act). Under the 2011 Act the Commission should take all reasonable measures to ensure a high level of protection for postal service users in their dealings with postal service providers.

5.7 An applicant who seeks certiorari of a decision of an expert administrative body must demonstrate that the decision was unreasonable or irrational. In *The State (Keegan) v. Stardust Compensation Tribunal* [1986] 21.R. 642 Henchy J. held:-

"The test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted *ultra vires*, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, *inter alia*, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

The respondent submits that there was ample material before it to justify the direction given that "Blackstone Bridge, Ballinattig, Watergrasshill, Co Cork or Blackstone Bridge, Watergrasshill, Co Cork were true and proper addresses for the purposes of distributing postal packets marked with either version of the address. This material included an email received from ComReg from Theresa Burke of Cork County Council of the 30th of May 2011, which stated "we have a townland of Ballinattig which is in the District Electoral Division of Watergrasshill. The Deeds of the Customers House describe the property in question as "part of the lands of Ballinattig in the Barony of Barrymore in the County of Cork". The Register of Electors states that "the address for delivery of polling cards is Ballinattig Kildinan". Edward J. Geary a member of An Garda Síochána confirmed by email that Blackstone Bridge is in the Watergrasshill Area for prosecution purposes, and information from James J. Bunyon which states Ballinattig is in the Watergrasshill DED.

5.8 The respondent issued the Direction pursuant to section 21(2) of the 2011 Act. The respondent submits that the power to direct the applicant to deliver a postal packet to a specific address is one which is necessarily encompassed in this express statutory power. The test in relation to implied powers is in general terms whether the power can be shown to be "reasonably incidental" to the powers given in legislation. This test is often supplemented by the principle of effectiveness i.e. that the courts will seek to avoid a construction of a statutory provision which renders it largely ineffectual. The respondent submits that the power to direct the applicant to deliver postal packets to a particular address is one which is reasonably incidental to its express statutory powers pursuant to Regulation 21(2) of the 2011 Act which provides:-

"Where the Commission is of the opinion that a universal postal service provider is failing or has failed, to comply with any of the requirements of this section, the Commission may give a direction to the universal service provider to ensure compliance with the requirement concerned."

The respondent argues that any other interpretation of this statutory provision would make the powers contained therein largely ineffectual. In making this argument the respondent relies on the fact that the implied power is consistent with the respondent's function of ensuring the provision of a universal postal service that meets the reasonable needs of postal service users. The respondent also relies on the provisions of section 10(3) of the 2002 Act, which provides that "The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this or any other Act."

5.9 The applicant makes the case that the respondent in making the Direction breached the principles of natural and constitutional justice, in particular the principle of *audi alteram partem*. The applicant complains that the respondent failed to give it an opportunity to be heard in respect of documentary material relied upon by the respondent in making its Direction. The respondent submits that this is not the type of decision that attracts the rules of constitutional and natural justice. Hogan and Morgan in *Administrative Law in Ireland* at p. 708 acknowledge that there are decisions which are exempt from the strict application of the *audi alteram partem* rule and give examples of types of decisions where this is the case. They outline the rationale for this as follows:

"...the *audi alteram partem* rule, at any rate, is more appropriate where a compact range of facts is in issue - for example, in a dismissal case, whether an employee was dishonest - and less appropriate when a broader range of acts and divergent considerations, for example, the economy or some other national interest, is concerned."

The respondent also relies on the decision in *Gorman v. Minister for the Environment* [2001] 2 I.R. 414 where Carney J. held:-

"Whilst there can be no doubt as to the existence of a constitutionally protected right under Article 40.3 to fair procedures in decision-making, it has been recognised in the case-law that the principles of constitutional justice do not apply with equal force in every situation and indeed in some circumstances where decisions are taken by public bodies, such as a decision to enact a particular piece of legislation by the Oireachtas, the *audi alteram partem* rule or the duty to consult and hear submissions does not arise at all. The citizen is not consulted in relation to increased taxation in the budget ...

Thus, the requirements of constitutional justice are largely dictated by the circumstances and it must be emphasised that the right to fair procedures and, in particular, the right to be consulted which must be regarded as an aspect of the *audi alteram partem* rule is subject to the exigencies of pragmatism. This is particularly so in the context of the legislative process."

In this case there are relevant factors which include the need for the respondent as a regulator to be able to make directions in relation to the address of individual postal service users in order to ensure the provision of a universal postal service that meets the reasonable needs of such users.

5.10 Without prejudice to the respondents submission that this is not the type of decision that attracts the rules of fair procedures, the respondent submits that the extensive engagement including correspondence and meetings between the respondent and the applicant between May 2011 and November 2011 fully addressed any obligation it has to allow the applicant to make representations and satisfied the principles of *audi alteram partem*. Between May and November 2011, the respondent outlined the reasons why it considered that the applicant was obliged to recognise the address and, in particular, to deliver postal packets bearing the address to the O'Connell's residence in a timely fashion. The applicant was furnished with the basic reasoning behind the making of the Direction and was fully apprised of the main rationale behind the respondent's Direction (i.e. the fact that the address accurately described the location of the O'Connell's residence), the applicant was notified that the respondent proposed to take enforcement action and was given ample opportunity to make representations. In these circumstances, the fact that some documentary evidence may not have been provided to the applicant prior to the issuing of the Direction does not mean that the applicant has not been given the right to be heard nor does it invalidate the Direction.

5.11 The applicant argues that there are errors on the face of the record, the respondent's position is that the record does not contain errors of law material to its validity. The respondent relies on the judgment in *McKernan v. The Employment Appeals Tribunal* [2008] IEHC 40. *McKernan* involved a judicial review of a decision of the Employment Appeals Tribunal and one of the grounds for review was that the Tribunal misdirected itself as to the law in its determination and that this error appeared on the face of the record. Feeney J. stated the test to be applied as:-

"This Court must therefore give consideration as to whether or not the decision of the Tribunal contained a significant error of a material matter leading to the decision. The Court must consider whether or not the decision of the Tribunal was grounded on an erroneous view of the law and whether the decision turned on an incorrect and wrong determination of a legal issue."

Following the application of the test to the facts Feeney J. was satisfied that the error in relation to legal interpretation identified was not a significant error insofar as it did not relate to a material matter and could not be said to have led to the decision and therefore held in favour of the respondent and refused the reliefs sought. In the instant case, any error on the face of the record did not relate to a material matter and therefore did not constitute a significant error such as would vitiate jurisdiction. It is submitted that any error on the face of the record was an error within jurisdiction and not such as would entitle the Court to set aside the determination.

5.12 The applicant makes the case that the Direction was unreasonable and/or irrational and the applicant's takes issue with the weight afforded to the documentary evidence. The applicant in making these pleas is attempting to ask the Court to re-open the respondent's decision making process and to second-guess the merits of the respondent's decision. However judicial review is not an appeal on the merits. On the basis of the above, the respondent submits that any error it made (and it denies that any error was made) was an error within jurisdiction and accordingly that the Court should not interfere with same. The applicant also makes the case that the Direction breached the principle of proportionality. The way in which this is advanced reflects a misunderstanding of the principle of proportionality as established by the courts in this jurisdiction. The applicant views the proportionality test as allowing the Court to assess the aim of the respondent's decision and to conduct a balancing exercise whereby the Court decides whether a less restrictive means to achieve this aim could have been used by the respondent. This view of the doctrine of proportionality is misconceived and this is apparent from the recent decision of the Supreme Court in *Meadows v. MJELR* [2010] 2 I.R. 701:-

"It is inherent in the principle of proportionality that where there are grave or serious limitations on the rights and in particular the fundamental rights of individuals as a consequence of an administrative decision the more substantial must be the countervailing considerations that justify it."

There is no allegation in the instant case that fundamental human rights were affected and therefore the question of proportionality does not arise in the way that is alleged by the applicant.

Decision

6.1 The applicant challenges the right of the respondent to issue its direction made on the 22nd November, 2011, directing it to deliver mail addressed to a specified customer using the actual geographical description of that customer's house instead of the 'postal address' which in this case was different. In the applicant's argument such a direction is tantamount to an unacceptable form of micromanagement of its postal delivery service and is thus, *ultra vires*, the respondents. It seeks ancillary declarations that their obligations to deliver the post to a particular address means to the 'postal address' of the customer in question and not to any other of a number of alternative addresses such as, for example, the District Electoral Division ("DED") in which the customer's house is located.

6.2 The respondent argues that the applicant is essentially trying to establish itself as the addressing authority of the State. It maintains that the obligation imposed upon it to regulate the applicant's provision of its postal service both obliges and empowers it to direct An Post to deliver post addressed to the customer's actual geographical address as opposed to the customer's 'postal address'.

6.3 It is agreed that the customer's house herein is located at Blackstone Bridge, Watergrasshill, County Cork. It is also agreed that in the applicant's delivery system, the customer's address for postal purposes is Blackstone Bridge, Rathcormac, County Cork.

Since 2002 when he purchased the house, the customer has accepted to use the address as directed by the applicant. This means that "Rathcormac" had to be present in the address because that is the postal town for sorting and delivering mail to this customer's house. Since 2011, with the introduction of its address verification tool, An Post have been affixing adhesive stickers to letters or parcels where the correct postal address, as directed by them has not been used. On some occasions, mail has been delivered a few days late. In some cases it has been returned to sender. In one case, a letter from the Motor Taxation Office was delivered after a delay of twenty days. The customer now insists on being able to use his actual geographic address in the address he gives to those wishing to post items to him. It is the respondent's case that this is a valid requirement of the customer and that it is thus both obligated and empowered to make the direction impugned herein.

6.4 The power invoked by the respondent is contained in s. 21(2) of the Communications Regulation Act 2011. Section 21 provides as follows:-

"(1) A universal postal service provider is required -

(a) to provide a universal postal service in accordance with the obligations imposed on a universal postal service provider by or under the *Communications Regulation Acts 2002 to 2011*, subject to the interruption, suspension or restriction otherwise of all or any part of the universal postal service in cases of *force majeure*,

(b) to provide identical services to postal service users under comparable conditions, and

(c) to comply with the terms and conditions of its universal postal service provision published under section 22 or 23, as the case may be, and any amendments to or modifications of those terms and conditions under that section.

(2) Where the Commission is of the opinion that a universal postal service provider is failing, or has failed, to comply with any of the requirements of this section, the Commission may give a direction to the universal postal service provider to ensure compliance with the requirement concerned."

The respondent claims specialist knowledge and a particular expertise in postal services regulation. Its duties include ensuring the provision of a universal postal service that meets the reasonable needs of postal service users (see s. 10(1)(ba) of the 2002 Act, as inserted by the Communications Regulation (Postal Services) Act 2011 and to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulations Acts 2002 - 2011 in relation to the provision of postal services (s. 10(1)(c) of the 2002 Act, as inserted by the 2011 Act). Under the 2011 Act, the Commission is required to take all reasonable measures to ensure a high level of protection for postal service users in their dealings with postal service providers. It considers that the customer's requirement to use his actual geographic address as opposed to its 'postal address' is 'a reasonable need of postal service users'. It considers that it is obliged to take all reasonable measures to ensure a high level of protection for postal service users in their dealings with An Post. It argues that its direction is such a reasonable measure. In its argument, the express statutory power includes the power to direct the applicant to deliver a postal packet to a specific address.

6.5 An Post has been designated as Universal Service Provider by s. 17(1) of the 2011 Act. As such, it is subject to stringent duties that require it, *inter alia*, to deliver 94% of mail by the next day delivery. This is a highly demanding and vitally important requirement. In order to fulfil its obligations, An Post has established and maintains a complex web of delivery routes which it considers necessary to achieve those ends. The evidence before the court establishes that designated post distribution centres close to delivery points and called 'post towns' are a critical link in the delivery chain that permits fast delivery to a customer located anywhere in this web. The evidence has also established that in some cases, notably in rural areas, this results in a customer being served his post by a post town not located in his exact geographic location. Thus there exists, and has existed since the foundation of this State and long before, a concept of a postal address which is different to the exact geographical location. Examples have been given in this case of post towns located in a village a mile away from a particular location e.g. Ballymun Cross and Santry and even in an adjacent county, e.g. Galbally, County Limerick with Tipperary. The evidence is that these are but two examples of many locations which have a geographic address different to a 'postal address'. I accept that the concept of a 'postal address' is one that exists and is an essential part of the delivery web maintained by An Post. This concept appears to be accepted both by the State and the EU as set out in 4.5 above i.e. by the rules with regard to the Registration of Deeds, by the Planning and Development Regulations, in the Arbitration Act 2010 and the 2011 European Standard EN 14142-1:2011. The latter seems to recognise this in that it states:

"The defining authority for the delivery point specification will normally be the identity of the postal operator which owns or serves the delivery point concerned."

6.6 The respondent emphatically rejects the proposition that there exists such a concept as a 'postal address'. They argue there is no merit to the applicant's claim in this regard. They view the impugned direction as nothing more than an attempt to resolve a specific customer service issue. They consider that the applicant in the recently liberalised market where it no longer enjoys a monopoly is trying to establish itself as the addressing authority for the State.

6.7 I can find no merit in this argument. In my judgment, the concept of a 'postal address' is and has been since the foundation of the State and long before a well known and accepted reality. It may be an irritant to some customers but this irritant is more than outweighed by the benefit of a complex web of delivery routes that enable the fastest possible delivery of the mail albeit that it cannot in all cases exactly mirror the precise geographic location of a particular house. It was accepted at the hearing by the respondent that there is no official addressing authority in the State. There were examples given of countries that did have such an authority but Ireland is not one of them. No body either is or, absent legislation, can be the addressing authority for the State. The applicant thus is not and cannot, in my view be considered as attempting to do that. It is engaged in continuing to use its well established delivery system to provide a speedy and efficient service. Postal towns and therefore 'postal addresses' form an essential part of this system. For those who wish to avail of postal services provided by An Post at peak efficiency, it is necessary for them to use the name of the postal town from which the mail will be finally distributed. This obligation, in my view, is only a minor inconvenience.

6.8 The court of judicial review is limited in the extent to which it can intervene in the decisions of administrative bodies. This is particularly so in the case of bodies that exercise a particular expertise (see *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39). In my judgment, the respondent is such an expert body. However, the picture is somewhat unusual in this case because the applicant is also a body exercising a particular expertise. The applicant in fact claims and with some justification that it is the real expert in the field of postal delivery. Allowing that both have considerable expertise, it seems to me that the court must defer to both insofar as that expertise touches on the decision made. It seems to me that the respondent's decision to issue the direction was made without consideration of the highly relevant fact that the concept of the 'postal address' was an established reality that has existed as long as the postal delivery service itself. It undoubtedly was attempting to resolve a customer complaint as best it could but, in my view, stepped out the area of its expertise and into the realm of the applicants when it apparently ignored the central significance of the 'postal address' in the applicant's complex delivery system. Failing to take account of a relevant consideration when it makes its decision may be grounds upon which this Court can hold that an administrative body has exceeded its jurisdiction. I think that that is what has occurred in this case. Thus I consider the direction given was made, *ultra vires*, and I will make an order of *certiorari* quashing the direction of the 22nd November, 2011. I think the declarations sought at (2), (3) and (4) of the notice of motion are also appropriate in order to clarify the situation and thus will order those also. This decision being dispositive of the case, I see no reason to address the other issues that arose.