

THE HIGH COURT

Record No. 2018/4915 P

Patricia Madden, Shirley Power, Alice Rowley, Catherine Spillane, Concepta Lillis, and Joanne Dunphy Allen

Plaintiffs

v

Irish Countrywomen's Association, The Countrywomen's Trust

Defendants

(Approved) Judgment of Ms. Justice Ní Raifeartaigh of the 4th October, 2018

Nature of the Case

1. This is a case which came before the Court in connection with certain national elections within the Irish Countrywomen's Association (hereinafter "the ICA") in 2018. The election in question concerned the selection of candidates to sit on the National Executive Board (hereinafter "the NEB" or "the Board"). In accordance with the Constitution of the ICA, ballot papers are issued by post and voting also takes place by post. For reasons which will be discussed below, the first ballot was cancelled and a second round of ballot papers issued in March, 2018. The ballot was to be closed by 27 April, 2018 and the votes then counted and announced. However, this did not take place because of a series of events in April and May, which culminated in the passing, or purported passing, of a motion by a large majority of the membership of the ICA, at an AGM on 26 May, 2018, to defer the elections for six months and keep a 'caretaker' NEB in place pending fresh elections. The motion was in fact more complicated than I have just described, but I think that this captures the essence of it. Ms. Patricia Madden, the first plaintiff, who represented herself in Court throughout the proceedings, took the view that a number of serious procedural irregularities had taken place, including (but not limited to) irregularities relating to two purported motions passed, the one at the AGM held on the 26 May 2018 already referred to, and one at an EGM held on the 14 April 2018. Ms. Madden also took the view that the second round of ballot papers should have been counted and should now be counted. Essentially, what this Court has been asked to decide is whether declaratory reliefs should be granted in respect of the alleged irregularities; and/or whether injunctive relief should be granted in respect of the second ballot i.e. essentially an order that the second ballot should be counted and that persons thereby elected should take their places on the NEB.

2. It is clear from the affidavits sworn in the proceedings that there is currently, at least in some quarters in the ICA, an inflamed atmosphere and that emotions concerning these elections have been running high and that bitter personal animosities have been generated. I sought to encourage the parties to seek to reach agreement by way of settlement, and also referred the matter to mediation under s. 16 of the Mediation Act, 2017, but attempts at informal resolution did not succeed and it now falls to me to decide the question of whether the sought-for equitable reliefs should be granted or not, having regard to all of the circumstances.

The history of the proceedings and the evolution of the parties and claims

3. The parties and the claims made have been the subject of evolution during the course of the proceedings. To summarise the position as of the close of the case:

(a) There are six plaintiffs, all members of the ICA;

(b) There are two defendants namely the ICA and the Countrywomen's Trust;

(c) The plenary summons has been amended to include the final (non-interlocutory) reliefs sought in the second ex parte docket/notice of motion, with one variation.

(d) A total of 24 affidavits have been sworn. Ms. Madden herself swore 7 affidavits. Ms. Marie O'Toole, the outgoing National President, swore 3 affidavits. Apart from an affidavit of service sworn by a solicitor, the remaining affidavits were sworn by members of the ICA, some of whom had been candidates in the elections, and one of whom worked in the Central Office dealing with the administrative arrangements concerning the posting of ballot papers.

4. A more detailed history of the proceedings follows. All dates referred to are within 2018.

5. Initially, the plaintiff Ms. Madden filed an ex parte docket on the 28th May seeking an order "restraining the ICA from destroying or interfering in any way with any of the Ballot Papers returned in the Elections for National President, National Secretary, National Treasurer and Regional Presidents in the 2018 national elections of closing date 27th April, 2018". This was grounded on an affidavit sworn by Ms. Madden on the same date. On the 30 May, the Court (Stewart J.) granted an order giving the plaintiff liberty to issue and serve short Notice of Motion for an interlocutory injunction returnable on 1 June 2018. A plenary summons was issued on the 30 May, 2018 seeking the same order as was set out in the ex parte docket i.e. non-destruction of the ballot papers. At this stage of the proceedings, the sole plaintiff was Ms. Madden and the sole defendant was the ICA. A Notice of Motion seeking the same relief as set out in the ex parte docket dated the 30 May issued, returnable for the 1st June, 2018. On 1st June, 2018, the Court (Stewart J.) noted that an undertaking was given to the Court on behalf of the ICA that the ballot papers would not be destroyed pending further order and adjourned the motion to the 15 June, requiring the defendant to file a replying affidavit and giving the plaintiff liberty to issue and serve a further notice of motion seeking to join parties.

6. A second ex parte docket was issued on the 6th June, seeking a much longer set of reliefs, grounded on a detailed affidavit of Ms. Madden dated the 6th June, 2018. In broad terms, the reliefs sought were concerned with injunctive relief to secure the counting of the second set of ballot papers and injunctive relief, inter alia, to prevent a convening of NEB and from filling any vacancies on the Board or taking any decisions arising from the motion passed at the AGM, together with declarations that a number of steps that had been taken were contrary to the ICA Constitution. Obviously, the reliefs sought therein were much broader than the reliefs sought in the Plenary Summons. The affidavit dated 6th June dealt with the matters underpinning the relief sought.

7. On the 6th June, the Court (McDonald J.) granted an interlocutory injunction restraining the defendant from convening a meeting of the NEB and from exercising any powers under certain clauses of the Constitution of the ICA until such time as the successful candidates had been declared; and restraining them from filling any vacancies on the Board, or taking any decision arising from the motion passed at the AGM on the 26th May 2018, together with liberty to serve short Notice of Motion seeking interlocutory relief.

8. The matter came before me on the 8th June, at which point Ms. Madden had sworn an affidavit of service dated the 8th June in which she detailed her attempts to notify the ICA, and Mr. Reid solicitor for the ICA, of the order made by McDonald J. Subsequently a Ms. Olivia Smith swore an affidavit of service in respect of documents served on Ms. Madden. There was some dispute between the parties as to precise sequence of events on the 6th June and issues relating to service, but this is of no relevance at this point in time. To Ms. Madden's great annoyance, a Board meeting did in fact take place on the 6 June and certain vacancies were filled notwithstanding the existence of the High Court order. On the 8 June, I gave certain directions and listed the matter for hearing of

the Motion for the 13th June.

9. A third Notice of Motion issued on the 11th June, 2018 in which Ms. Madden sought to join a large number of co-plaintiffs of the proceedings. This was grounded on an affidavit sworn by Ms. Madden on the 11th June, 2018.

10. On the 13th June, the matter came before me again. The first motion dealt with was that concerning the joining of co-plaintiffs. After hearing argument, I gave liberty to join 30 plaintiffs on condition that each of those persons send to the Registrar a signed document indicating consent to being joined to the proceedings and signalling their understanding to the position in relation to risk of costs and damages. (Subsequently, on the 13 July, 2018, this order was varied, at the request of the plaintiff, to the joining of 5 named plaintiffs).

11. On the 13th June 2018, I also part-heard the application in relation to interlocutory relief sought. As the application was not completed on that date, I adjourned it ultimately to the 19th June 2018.

12. On the 19th June, having had an opportunity to read the affidavits filed by that date, I recommended that the matter go to mediation and the parties agreed to engage in an attempt at mediation. A mediator was chosen but on the 4th July, the mediator, Eoin McCullough SC, reported to me in writing that this had been unsuccessful. Accordingly, on the 4th July, I fixed a date for a resumed hearing, namely the 12th July. With the parties' consent, it was agreed that instead of an application for injunctive relief, the full hearing should take place on the resumed date.

13. On the 12th July, counsel on behalf of the ICA applied for and was granted liberty to join the Countrywomen's Trust as a co-defendant. On the same date, I granted leave to amend the plenary summons to encompass the reliefs sought in the (second) Ex parte docket/ Notice of Motion. The hearing continued on the 17th July and on the 26th July. I gave my decision on the 31st July and indicated that I would provide a written judgment on the 1st August.

Chronology of Events leading to the proceedings

14. On the 13th December, 2017 a Code of Conduct for Candidates contesting the Association's 2018 elections was signed by all candidates. It mandated, *inter alia*, that any candidates, including those who were already on the National Executive Board, should absent themselves from any discussions relating to the elections unless all candidates had been invited to such discussions.

15. The National President of the Association, Ms. Marie O'Toole, was on sick leave from the 4th January, 2018 with the result that she had to absent herself from the day to day running of the organisation.

16. On the 15th January, 2018, voting papers and Candidate Profiles Booklets were sent out from the Central Office of the ICA to the Association's local bodies, known as Guilds. Unfortunately, it emerged later in January that four additional sets of ballot papers were also erroneously sent out to the Association's National President, National Secretary, National Treasurer, and the Chairperson of the National Advisory Committee (hereinafter the "NAC"). On the 17th January, 2018 Ms. Susan Potts, the Chairperson of the NAC, sent an email to Mairead O'Carroll, the Chair of the Procedures Committee, querying why she had received ballot papers. The following day Ms. O'Carroll sent an email to a Grainne Ferris, the head of operations for the ICA, asking her to recall the four votes.

17. Ms. Ferris forwarded this message to the National Secretary, Ms. Shirley Power, who replied by stating that she had received a vote in similar circumstances during the Association's 2015 elections and assumed that the same process would be in place for this electoral cycle. She stated that as she had already completed and posted her vote, she was not in a position to return it. This message was forward to Mairead O'Carroll and later that evening she in turn sent an email to Ms. Ferris confirming that under the ICA Constitution only the Guilds should have received a vote.

18. On the 19th January, 2018 the National Executive Board Meeting met to discuss the issue of the ballot papers. However, this gave rise to a second problem; certain Board members who were standing as candidates were present at a meeting where the elections were being discussed, potentially in breach of the aforementioned Code of Conduct. It was agreed at this meeting that the old precedent of issuing ballot papers to the four aforementioned officers would be maintained and that there was no need to recall the votes.

19. On the 3rd February, 2018 there was a meeting for all candidates held by the Procedures Committee. The National Treasurer and Chairperson of the NAC agreed to send back their incorrectly received ballot papers with the National Secretary, Shirley Power, agreeing to send her own Guild's vote back because she had already posted the ballot papers she had received. It appears that other candidates at this meeting were alarmed by the errors and what had or was taking place.

20. On the 19th February, 2018 National President, Ms. O'Toole returned to work.

21. On the 24th and 25th February, election rallies were held by the Association in Cahir and Ballinasloe respectively.

22. In March, 2018, there took place an important exchange of communications. On the 1st March, the body responsible for organising the Kildare Guilds, the Kildare Federation, sent Ms. O'Toole an email expressing surprise and disappointment in relation to the aforementioned error and querying how it came about. Following this, on the 9th March, 2018 a Board meeting took place where the Federation's email was discussed. Ms. O'Toole responded to the Kildare Federation by email, but this was replied to on the 15th March, 2018 by a very heated email from the Kildare Federation demanding that an EGM be called, that elections be deferred for 6 months, that any candidates not abiding by the Constitution or Code of Ethics stand down, that the membership be given more information, and finally that Ms. O'Toole carry on in a caretaker role as National President after her official term length ended.

23. On the 13th March, one of the election candidates, Josephine Helly, wrote to complain about the how candidates were being treated and called for an EGM. In particular, her complaint was that candidates who were also members of the Board were present at discussions of electoral issues in the absence of other candidates.

24. On the 21st March, 2018 an emergency Board meeting took place. The solicitor for the ICA, Mr. Reid, was present. A decision was taken to by the NEB to issue fresh ballot papers to the Guilds, with a closing date of the 27th April, 2018. I note that this meeting was, under the ICA constitution, technically inquorate, although Ms. Madden makes no complaint about this particular irregularity. A fresh set of ballot papers (hereinafter 'the second set of ballot papers'), printed in a different colour to the previous set, were sent out the following day. This is the set of ballot papers which Ms. Madden wishes to have counted.

25. On the 24th and 25th of March, further election rallies took place in Carlow and Louth. During this time Ms. O'Toole received several requests for an EGM to be held from individual Guilds and Federations representing Guilds. In her affidavit Ms. O'Toole exhibited

various samples of this correspondence and it was disputed by the Plaintiff that these exhibits could be taken as proof that 10 percent of Guilds had requested an EGM, as required by the ICA Constitution. Be that as it may, on the 28th March, 2018, letters were then, as a matter of fact, sent to the Guilds advising them that an EGM would be held to discuss with the membership why fresh ballot papers had to be issued.

26. On the 14th April, 2018, the EGM took place at the Gresham Hotel in Dublin. Ms. O'Toole avers that near the end of the meeting an issue arose in relation to some Guilds not having received ballot papers in either the first or second round. This is disputed by the Plaintiff. In any event, the following emergency motion was brought by the Kildare Federation: -

"That the Elections be deferred for a minimum of six months. On completion of you Madame President's Term of Office you and only you remain on in a caretaker role as National President and Director of Elections."

27. Ms Carmel Dawson, a former National President, chaired the part of the meeting relating to the motion. The solicitor for the ICA, Mr. John Reid, was also present. The Plaintiff alleges that the procedures on emergency motions under the ICA Constitution were not followed; in particular, that there was no suspension of standing orders following a vote of the membership, that no leave was sought from the meeting to introduce the motion, that members were not permitted to speak on the motion and that the vote was not properly taken. Ms. O'Toole averred that the motion was properly arising and that a vote was taken with a substantial majority in favour of the motion. Draft minutes were also exhibited, the accuracy of which was vigorously contested by the Plaintiff. An audio recording of the meeting was also put before the Court. There was some controversy in relation to it because it was recorded by one of the plaintiffs at the EGM without the knowledge of other members. The parties made submissions at short notice to me with regard to data protection issues and I was satisfied, with their assistance, that to receive the recording into evidence for the purposes of these proceedings was lawful as I consider the evidence to be of assistance in resolving certain particular issues in these proceedings.

28. On the 21st April, 2018 an emergency meeting of the NEB took place. The Plaintiff noted that this meeting was inquorate and submitted that it was therefore unconstitutional and the decision(s) made at the meeting invalid. The defendants maintained that the inquorate nature of the meeting arose from the necessity to comply with the Code of Conduct which mandated that candidates who were also Board members be excluded from meetings discussing the elections. The main decision taken at this meeting was to put the motion which had arisen at the EGM to the vote at the proposed AGM in May.

29. On the 22nd April, 2018 Marie O'Toole sent a circular to the candidates and all members of the NAC and the NEB referring to the previous day's Board meeting and decision to put the aforementioned motion before the AGM. She also wrote that the current voting was suspended, the count scheduled for the following week cancelled and that the existing ballot papers would be destroyed.

30. On the 23rd April, 2018 the circular referred to in the above paragraph was sent to the Association's general membership along with other documents. This was referred to as the "Dear Ladies letter" at the hearing. The Plaintiff says the document was not collected by An Post from the ICA until the 2nd May and that her Guild did not receive it until the 4th May.

31. The 27th April, 2018 was the closing date for receipt of ballot papers. No count of the ballot papers took place at that time, or since that date. On the 19th May 2018, the last Board meeting before the AGM took place.

32. On the 26th May 2018 the Association's Annual General Meeting took place at the Athlone Springs Hotel. The following motion was put to members attending the meeting: -

"- That the 2018 election process for National and Regional Officers be abandoned

- That the incoming ICA National Executive Board on assuming office at the conclusion of the AGM on the 26th May initiate new elections for the National Officer positions and that of the 4 Regional Presidents

- That the process of election be completed speedily on an agreed election schedule prepared by the incoming Procedures committee with the aim of concluding the process within 6 months and no later than the 2019 AGM as would be required under Clause 67 of the Constitution.

- That the current National President remain in office pro tempore until the conclusion of the election process.

- That the incoming NEB would have the power, should it determine it necessary to fill the 2 National Officer (Secretary and Treasurer) vacancies pro tempore as set out in clause 67 of the constitution 2017 but again only for the period to the conclusion of the election process.

33. Ms. O'Toole averred that the motion was passed by 142 of the 180 delegates present (approximately 80%). Two days later, Ms. Madden completed the first of her ex parte dockets referred to above and the proceedings took the course described earlier.

Complaints of Ms. Madden concerning breaches of the ICA Constitution

34. Ms. Madden made numerous complaints in relation to a number of matters, and I cannot hope to capture them all here. They including the following:

(i) That an election has been held, but the votes have not been counted. The Plaintiff maintains that this is in breach of Clause 4(a) of the Association's Constitution which mandates that every third year will be an election year.

(ii) That the convening of the EGM was in breach of Clause 56(a) of the Constitution which requires that one-tenth of Guilds from three Federations request an EGM.

(iii) That there was a breach of Clause 56 of the Constitution which provides that no business not on the agenda of the meeting may be transacted at the meeting.

(iv) That the emergency motion put before the EGM was not properly arising as it was in breach of the Clause 53(a) which provides that that a motion must be one which could not have been anticipated, that standing orders must be suspended by a majority of the meeting before a motion can be brought, that the motion must be introduced by at least 10 Guilds, that leave must sought to put the motion before the meeting, and that members be allowed speak on the motion. The Plaintiff submitted that this motion could have been anticipated, that none of the procedures were complied with and that there was no proper or meaningful vote on the motion.

(v) That the appointment of Carmel Dawson as Chairperson was in breach of Clause 49 of the Constitution.

(vi) That the meeting of the NEB on the 21st April was inquorate and therefore in breach of Clause 70 of the Constitution which defines and requires the relevant quorum.

(vii) That the failure to announce the victors of the second ballot is in breach of clause 61(h) which provides that the victors should be announced before the AGM that year,

(viii) That continuation of current National President, Treasurer and Secretary in their roles after the AGM in May is in breach of Clause 61(i) which lays down a three-year term limit for those offices.

(ix) That the motion passed at the AGM deferring the elections was not properly arising as it was in breach of Clause 51 of the Constitution which provides, *inter alia*, that motions must be received no later than the 15th February each year in order to be added to AGM's Agenda and that the motion must have been submitted by the NEB after having been properly adopted by that body. The Plaintiff complains that the motion was added to the agenda after the February deadline and that it was submitted and adopted by an inquorate NEB.

35. The Plaintiff also complains that the motion passed at the AGM was substantively in breach of the Constitution insofar as the decision to defer the election process and appoint a caretaker Board is simply not permitted by the Constitution; specifically she complains that Clause 4(a) requiring every third year to be an election was violated; that Clause 61(a) which provides for postal ballots to be sent before an AGM cannot be complied with by this decision; similarly that Clause 61(h) which provides that the results of the election be announced before the AGM is breached; that clause 61 (e), which provides that the vote take place by postal ballot, was breached; and finally she complains that the motion permits the current office holders to remain in place past their term limits, in violation of Clause 61(i). In addition, Ms. Madden submitted that the decision is also in breach of Clause 63 (a) which requires the vote for Regional Presidents to take place before the AGM, 63(e) which requires a postal ballot in the respective regional assembly areas for the vote, and 63(h) which requires that the results be announced prior to the AGM.

36. Having considered the affidavits and listened to the recording of the EGM, I am of the view that, on the balance of probabilities, at least the following procedural irregularities took place:-

-The tabling of the motion at the EGM was in breach of clause 53 of the Constitution (the relevant portions of which are listed at (iv) above). I have listened to the recording of the EGM which was put before the Court. It is clear that contrary to Clause 53, the Chair, Ms. Dawson, rather than the majority of the meeting, suspended the standing orders. Furthermore, no discussion was allowed on the motion; and the motion procedure, which seems to envisage a two-stage process of introducing and then voting on the motion, seems to have been truncated.

- The motion before the AGM was in breach of clause 51 as it added to the agenda after the February deadline and no attempt was made to use the emergency motion procedure provided for in the Constitution. It was also submitted on foot of an arguably inquorate NEB Board decision.

37. More importantly, however, I am satisfied that the procedures were irregular because the substance of the two motions was to allow the Association to take certain steps which are not permitted by its Constitution; in particular, the term limits and election schedules and requirements set out in Clauses 4, 61 and 63 set out at para. 24 above. In this regard, it seems to me that the principle set out by Barrett J. in *O'Sullivan v. Conroy Gold and Natural Resources plc* [2017] IEHC 543 (albeit in the context of the articles and association of a company) is relevant, namely that a resolution which contravenes the articles of association of a company is a nullity even if it is passed by a majority. Ironically, both parties in the present case prayed in aid the principle of the democratic will of the ICA members; the plaintiff, on the basis that this will was precisely articulated in the Constitution itself; the Defendant, on the basis that this will had been expressed through the majority vote at the AGM. However, it seems to me that the majority cannot act contrary to the procedures or principles of the Constitution itself.

38. I hasten to add that I have considerable sympathy with the Board for the position it found itself in during the months of April and May. A difficult situation had emerged in which certain members and Guilds had developed strongly held views that the election process was irretrievably tainted. The Board took what it considered a practical step, in order to ascertain the view of the majority, and I can understand why it did so. Further, it took the steps it did, having obtained legal advice. It considered, perhaps legitimately, that to proceed with the counting of the second ballot might leave it as vulnerable to legal challenges as the course of action adopted. Unfortunately, the practical course of action it adopted, which involved honouring what appeared to be the majority view as to the future course of action, left it vulnerable to challenge on procedural and constitutional grounds, and that vulnerability has, in my view, been exposed in the present proceedings.

39. Further, the position of the Board was, from the outset of the legal proceedings, that the matter would be best resolved by settlement and in a manner which respected the views of the organisation as a whole. In this regard, it put forward a Proposal which involved, *inter alia*, two motions would be debated at an EGM; namely (1) that the second set of ballot papers be counted and a result declared; and (2) that a new set of elections take place. The Proposal also involved various detailed constitutional amendments.

The second round of ballot papers

Summary of Evidence concerning the second set of ballot papers

40. Ms. O'Toole dealt with issues relating to the second set of ballot papers over a number of affidavits in which she exhibited certain exhibits. Ms. Madden disputed aspects of this narrative in her affidavits.

41. As to the evidence of Ms. O'Toole, in her first affidavit of 12 June 2018, she averred that the second set of ballot papers was sent out on the 22nd March 2018, with a closing date for the election to be the 27th April 2018. She averred that when the EGM took place on the 14 April 2018, 'it was indicated [at the EGM] that some Guilds did not appear to have received ballot papers at all in the first or the second round of distribution'. I note that Ms. Madden disputes that this is the case. Ms. O'Toole says that she sent out notification to the NEB, the NAC, the Procedures Committee and all candidates to the effect that the election was cancelled. She refers to this notification as being on the 23 April, but the document she exhibits at MOT 13 in fact dated the 22 April. I note that it is a one-page document which starts with the words, 'Dear All...' Ms. O'Toole averred that some Guilds decided not to vote because they believed the election to have been abandoned after the EGM on the 14 April 2018. In this particular affidavit, she did not exhibit any documentation to support this averment.

42. In her affidavit of the 15 June 2018, Ms. O'Toole referred to the fact that the draft minutes of the EGM record that '*Ms Kenny referred to the fact that some Guilds in Co. Carlow did not receive ballot papers and were advised that there were none left*'. I note that the accuracy of the draft minutes is strongly contested by Ms. Madden. Ms. O'Toole also referred to two emails from the Carlow Federation President, Margot Hennessy dated the 15th June, 2018. One of them says that two Guilds in Carlow Federation did not receive any voting papers in the second round of voting. The second email says that (the remaining) four Guilds did not exercise their votes due to the balloting being stopped. Ms. O'Toole also refers to ten Guilds which did not return their voting papers in light of what happened at the EGM and says that this information was provided by the President of Wexford Federation, Mary D'Arcy.

43. Ms. Margot Hennessy swore an affidavit in which she stated that she was President of Carlow Federation at the time and that there are twelve Guilds in Carlow. She averred that in the second ballot, six Guilds posted votes and six did not. She averred that two did not vote because they did not receive papers, and that when she phoned Central Office, she was told there were none left. She averred that four Guilds did not vote because they believed the election had been abandoned as a result of what had happened at the EGM.

44. In Ms. Madden's affidavit of 18 June 2018, she points out that it is the prerogative of Guilds to decide not to vote, if they want to. She also averred that the document sent to the Guilds directly from Ms. O'Toole was not the one-page notification document that Ms. O'Toole referred to but rather 8 pages of documents (exhibited at PM9 of her affidavit). These 8 pages included the proposed Kildare-Donegal motion, the Standing Orders for the AGM, two pieces of written legal advice from solicitor Mr. Reid, and a cover letter identical to the 22nd May document except that it starts with 'Dear Ladies' instead of 'Dear All'. Ms. Madden strongly disputes the accuracy of the descriptions of the EGM contained within those documents, but, more importantly, says that this document was not circulated until after the 2nd May 2018. Since the closing date for return of ballot papers was 27 April, she points out that the receipt of this document would have been too late to affect any decisions made by the Guilds regarding voting. She also averred that she understood Ms. Kenny at the EGM to be talking about not having received the first set of voting papers (only). Ms. Madden suggested in her affidavit and in her submissions that the evidence regarding the Guilds and voting papers could have been pursued further by the Plaintiff by examination of computers/servers and/or by further affidavits from relevant persons and criticised them for failing to have made greater efforts in this regard.

45. In a further affidavit dated 11 July 2018, Ms. O'Toole set out a list of thirteen (additional) Guilds who, she averred, had decided not to return their second set of voting papers. She exhibited a number of emails from individuals in respect of each Guild. I note that only a minority of these emails explicitly set out the reason for not having voted as being their belief that the election had been cancelled.

46. In Ms. Madden's last affidavit, she averred that most Guilds have their meetings in the first two weeks of each month, which would have been before the EGM took place, and therefore that decisions about voting would have already been made before the date of the EGM. In this regard, for example, she recounted a conversation with the author of the Stradbally letter exhibited to Ms. O'Toole's affidavit, who told her that the decision not to vote had been made at a meeting of the Guild on 3 April 2018 and not as a result of a belief that the election had been cancelled. This conversation is hearsay but nothing turns on that particularly in view of way I have decided to approach the evidence, set out below. In relation to Middleton, Ms. Madden exhibits an email from the author of the letter exhibited to Ms. O'Toole's affidavit which says that that author now believes that Middleton did in fact vote in the second ballot, contrary to what she had originally thought. Ms. Madden complained generally that emails and letters were being procured from persons in the ICA without their being told how they were being used in court by the Defendant to support the assertion that some Guilds did not vote because of a belief that the election had been cancelled.

47. Ms. Colette Dowling, who worked in the Central Office of the ICA, swore an affidavit in which she described the meticulous process of preparing the posting of the first and second round of ballot papers to the Guilds. While she deals with many issues, I do not think she can assist on the precise issue of whether some Guilds did not vote in the second ballot by reason of a belief that the election had been cancelled. As regards the suggestion that some Guilds may not have received the second set of ballot papers, the height of what she says is that one Guild might not have received papers because another Guild was erroneously on the list of Guilds twice; but she makes no mention of anyone phoning her about this.

My factual conclusions relating to the second set of Ballot Papers

48. Because of the telescoped timescale within which these proceedings were conducted, all parties had to prepare affidavits within a short period of time, and the evidence collected and exhibited was therefore necessarily imperfect and incomplete. It seems to me that the matter has to be approached with a degree of practicality and common sense, and that broad conclusions can nonetheless be drawn, some by way of inference, from the evidence before me, even though the evidence was limited in nature. I reach the following conclusions:

(i) It seems to me likely that at least some Guilds did not vote in the second ballot because they believed that this ballot had been cancelled.

(i) In reaching this conclusion, I note the following pieces of evidence that would weigh *against* this conclusion; namely – (a) That many of the emails exhibited by Ms. O'Toole on behalf of various Guilds, stating that they did not vote in the second ballot, do not set out any particular reason for not having voted; (b) That most Guilds usually meet in the first two weeks of each month and therefore before the EGM took place (that date being the 14 April 2018); (c) That in at least one case, an email suggesting that the Middleton Guild had not voted because it believed the vote had been cancelled may be incorrect and the Middleton Guild did in fact vote on the second ballot; and (d) That the documents sent with what has been referred to as the "Dear Ladies letter" sent to the Guilds was not sent until 2 May, at which point the ballot deadline had passed and therefore this particular set of documents could not have influenced the voting.

(ii) Nonetheless, I am satisfied that an inference can be drawn that at least some Guilds did not vote in the second ballot because they believed it been cancelled. I base this conclusion upon the following: (a) Events at the EGM itself, which must have generated a lot of discussion within the organisation from that date onwards (14 April), which was almost two weeks before the vote closed; (b) The notification sent out by Ms. O'Toole (the 'Dear All letter') on the 22 April 2018 to all candidates, the NEB and the NAC; (c) The information provided by the president of the Wexford Federation, Mary D'Arcy, referred to in affidavit of MOT (second), stating that 10 Guilds did not vote by reason of a belief that the election was cancelled; and (d) Emails from the Castletown Guild, the Berrings Guild, and the Bishopstown Guild (exhibited by Ms. O'Toole in her last affidavit) which explicitly state that their reason for not voting was their belief that the process had been cancelled.

49. As to whether or not some Guilds did not receive their ballot papers in the second round of voting, there is a possibility that this occurred, but the evidence is not sufficiently strong in my view to reach a firm conclusion to this effect and I therefore do not reach

any conclusion as to this particular issue.

Legal significance of my conclusion that some of the Guilds did not vote because they believed the election had been cancelled.

50. Ms. Madden submitted that it is the prerogative of Guilds to choose not to vote for any reason of their choosing and that an election is not invalid simply because certain Guilds choose not to vote. Further, she submitted that the cancellation of the election was entirely invalid, and therefore the second round of votes should be counted. In effect, this seems to me to be an invitation to the Court to treat the events of April and May as not having happened in fact, simply because they may have been invalid in law. I cannot accept that proposition. The clock has ticked on, events happened (whether legally valid or not), and people formed views which influenced their decisions regarding the elections. It would seem to me wrong to disregard all of that because it seems to me that there is now a fundamental problem with the second ballot. This is that, in my view, it no longer represents a complete expression of the democratic will of the ICA members who would have voted if they believed there was an election to be voted in. In this context, the question of whether the EGM was validly called, or a motion validly passed, or a cancellation of the vote validly effected, is in my view not relevant. What is relevant is that, as a matter of fact, (as I have so found above), it was the belief of some the Guilds that the vote had been cancelled and therefore they did not vote.

51. As to the prerogative of Guilds to choose not to vote for any reason they wish, it is my view that, while there may be many reasons a Guild may, in the ordinary course, choose not to vote in a particular ballot without rendering the ballot invalid, the present situation is significantly different because of the belief on the part of some that the election itself had been cancelled. The events which had taken place were extraordinary and unprecedented. Conflict had arisen within the organisation about aspects of the election process. This had led to the holding of an EGM, which was clearly conflict-ridden, followed by a purported passing of a motion to defer the elections, followed by a communication from the then President purporting to cancel the elections. The decision of a Guild not to vote on the basis of a belief that there was no election any longer in existence is of an entirely different qualitative character to that of a Guild not to vote in a situation where there is clearly a ballot in existence but the Guild chooses to abstain from voting in it.

52. Of all the various aspects of the ICA Constitution discussed before me, it seems to me that the most fundamental aspect must be that the purpose of the election process in the Constitution is to ensure that the democratic will of the members of the ICA is implemented. This is a principle so obvious as not to require explicit expression in the Constitution itself; the very existence of the procedures in respect of voting in the Constitution are, collectively and cumulatively, directed towards that fundamental purpose.

53. I am of the view that the counting of the votes in the second ballot would not be in accordance with that objective, having regard to the fact that at least some of the Guilds decided not to vote because they believed that there was no longer a ballot taking place.

54. I consider this issue, i.e. that of a ballot truly representing the democratic will of the membership, to be a much more significant than the point that the 'Constitutional' date by which the ballot should be counted has now clearly passed, the issue upon which the Defendant relied to suggest that the relief in respect of the second ballot should be refused.

Issues relating to the exercise of discretion in granting reliefs

55. It is worth noting that the reliefs sought, namely various declarations and an injunction, are equitable reliefs and it did not appear to be in dispute before me that equitable principles therefore apply. A number of authorities were cited to me in respect of a variety of issues touching on the grant or refusal of equitable relief. I will now mention some of the principles and arguments before turning my decision on the reliefs.

56. It was submitted on behalf of the Defendant that there was a lack of candour on the part of the plaintiff when she applied ex parte to the High Court for interim relief. This alleged lack of candour was said to exist in two respects: (a) that she did not tell the Judge (McDonald J) dealing with the interim application that the votes in an election have to be counted and results announced in accordance with clause 61(h) of the ICA Constitution on a date prior to the AGM in the election year i.e. prior to a date which had already passed by the time she made the ex parte application; (b) that she had presented the application as a series of errors arising out of a lack of procedural compliance with the Constitution of the ICA, whereas the case ultimately developed into one involving multiple allegations of bad faith and improper motivation on the part of the former National President and others.

57. Having regard to the materials opened by Ms. Madden to McDonald J at the ex parte stage, I am satisfied that there was no lack of candour or failure to disclose material information on the part of Ms. Madden at the ex parte stage. As regards the issue of accusations of bad faith, I regret that some of the later affidavits sworn and filed on behalf of the plaintiffs contained personalised accusations of bad faith and improper motivation, particularly when I had urged the parties on both sides to exercise restraint. However, I think that there has been a level of accusation and counter-accusation on both sides, and I am going to disregard all of it in reaching a decision on what the most appropriate relief is in the circumstances, and I will be guided by what I consider to be the best interests of the organisation as a whole rather than the personal views or animosities of individuals within the organisation.

58. Counsel for the Defendant submitted that if Ms. Madden were to fail in seeking to have the second ballot counted, it would be futile for the court to grant any of the remaining (declaratory) reliefs. A number of authorities were cited to the court concerning the principle that the court should not grant futile orders and/or that orders granted must be able to have practical effect. Ms. Madden submitted that, even in the event that she did not succeed in having the second ballot counted, the granting of declaratory relief would not be futile and could be useful for the ICA into the future. Counsel for the Defendant also submitted that the Court should not grant a relief which required 'the impossible', citing the now-impossibility of having the results of the second ballot announced before the AGM, for the obvious reason that the AGM was held in May and we currently in the month of July and the relevant deadline has expired. Ms. Madden replied by citing a number of cases concerning the 'time is of the essence' principle in a contract context, and submitted that second ballot should be counted notwithstanding the expiry of the deadline because the second ballot represented the democratic will of the parties. Counsel for the Defendant also submitted that the reliefs should be refused because of the existence of a reasonable proposal for moving forward that had been offered by the Defendant to the plaintiffs at the outset of proceedings together with an indication that they were open to discussion on the detail of the proposal. I have already described some of the content of that proposal. Towards the end of the case, Ms. Madden herself produced a proposal, which was declined by the Defendant. The problem for the Defendant, naturally, was that Ms. Madden's proposal was premised on the view that the second ballot should be counted.

Conclusions

59. I have earlier reached the conclusions (a) that the motions passed at the EGM on the 14 April 2018 and the AGM on the 26 May 2018 were in breach of the Constitution of the ICA, not merely because of some technical procedural irregularities but also because, substantively, the motions provided for a course of action and a set of arrangements which were not authorised/envisaged by the

Constitution; and (b) that by reason of the events which took place in April, the second round ballot papers are unlikely to contain a complete expression of the democratic will of the ICA because, as a matter of fact, some Guilds probably did not vote in that ballot because they believed that this election had been cancelled.

60. The question of where these two conclusions point, in terms of the appropriate reliefs to be granted or not, is not an easy one. In my view, there is no relief that I can order which complies strictly with the terms of the ICA Constitution. The parties themselves, in their respective proposals, have grappled with how to move the current situation forward, and it is clear that it is no easy matter given the existing constitutional provisions. I am conscious that the reliefs sought are equitable reliefs, and it seems to me that the Court should be guided, inter alia, not only by the usual equitable principles, but also by what it considers to be best for the organisation, that is to say, the ICA, as a whole.

61. I have already stated my view that the second ballot should not be counted because, as discussed above, some Guilds did not vote because they thought the election was cancelled and the ballot therefore suffers from a democratic deficit. However, if I were to grant declarations that the motions are invalid without granting the injunction to count the second ballot, this would not resolve the situation at a practical level and would involve an element of futility. Having given the matter considerable thought, it seems to me that the principle of necessity must come into play, in the sense that the court must make an order authorising a course of action even if it is not strictly in accordance with the Constitution, by reason of the exceptional circumstances that have arisen and having regard to the fact that the ICA, an organisation which has 8,000 members, is a registered charity and a company limited by guarantee with a trust fund, and must somehow both continue to function on a day-to-day basis and yet resolve the current impasse.

62. I therefore propose to grant the following reliefs:

- a. I will grant some of the declarations sought by Ms. Madden concerning breaches of the ICA Constitution;
- b. I will order that a fresh ballot be held and counted within two months i.e. by the end of September 2018; and
- c. I will order that the persons currently serving on the NEB stay in place until the elections have been carried out, in order to manage the ordinary and day-to-day business of the ICA.

63. In my view, this should be an entirely fresh ballot and not one necessarily confined to the candidates who stood in the last election.

64. As this election is to be carried out in accordance with a court order, I do not think there is any necessity for the EGM/motion procedures to be followed to authorise the holding of this election, and this therefore enables it to be held within a time-frame which is shorter than might otherwise be required.

65. Administratively, the ballot papers can issue in the normal way from the Central Office of the ICA as soon as is practicable and the counting should take place and the results be announced on the 30 September.

66. I do not propose to deal with the question of constitutional amendments to the ICA Constitution, an issue which featured in the settlement proposals of each side. To an extent, since what will be done will be under the terms of a court order, ratification by enacting specific constitutional provisions may not be necessary. However, it might be that the new NEB will wish to instruct counsel to advise on whether constitutional amendments are required either to deal with what has happened, or to introduce provisions to ensure that similar problems do not arise in the future. However, I think this Court would be significantly overstepping its jurisdiction by intervening in that area, and I prefer to confine myself to making the orders I have described which I hope to be a combination of orders conducive to leading the ICA out of the current impasse and to a place where they can later, without undue haste, consider the necessity for, and content of, any constitutional reform.

67. The specific declarations granted are as follows: Numbers (2), (10) and (11) in the Notice of Motion dated 6 June 2018 which have now been incorporated into the amended Plenary Summons, as well as amended number (7), also incorporated into the Plenary Summons, which is "A Declaration that insofar as positions on the National Executive Board have been filled since 26 May, 2018 they are invalid".