



THE COURT OF APPEAL

Appeal No. 2014 1281

**Irvine J.
Hogan J.
Costello J.**

In the Matter of the Courts (Supplemental Provisions) Acts 1961 – 1968

In the Matter of the Courts of Justice Acts 1924 – 1959

In the Matter of the Courts Service Act 1998

Between

Ronan Kennedy, Ian Flynn, Vincent McCormack, Paul Kingston, John G. O'Donnell and Philip English

Appellants

- And -

The Courts Service

Respondent

Judgment of Ms. Justice Irvine delivered on the 7th day of July 2016

1. Core to this appeal is the extent of the respondent's statutory duty in respect of the provision, management, and maintenance of courthouse facilities throughout the country. Do the provisions of the Courts Service Act 1998 (the "1998 Act") impose upon the respondent a statutory duty to provide particular court facilities at particular locations such as Tipperary courthouse, and was Birmingham J. wrong in law when by order of 23rd May, 2014, he declined the declaratory relief sought by the appellants on the basis that the respondent was under no such duty? These are the principal matters addressed in this judgment.

Background facts

2. The appellants, whom I shall refer to in the course of this judgment as the applicants, are all solicitors who practice in that capacity in Tipperary town. The respondent is a body corporate established under the 1998 Act and as such is responsible for the management of courts and the provision and maintenance of court buildings throughout the country.

3. Tipperary courthouse is a protected structure which is owned by Tipperary County Council. As far back as 2008, it had been included in the respondent's list of courthouses which were in need of refurbishment. Unfortunately, the intended refurbishment was never undertaken and the building continued to deteriorate. Nonetheless, it was used for District Court sittings twice per month and for Circuit Court sittings three to four weeks a year up until November, 2010 when part of the ceiling collapsed.

4. As a result of these unfortunate events the District Court now sits in the basement of a local theatre in Tipperary town and the Circuit Court in Clonmel, some twenty five miles away.

5. The courthouse was inspected on 21st September, 2010, by representatives of the Office of Public Works and the respondent for the purposes of identifying the sum of money that would be required to repair the damage. It is not in dispute that a conservative estimate of the cost of carrying out the requisite repairs was then in the region of €100,000.

6. In 2011 the Office of Public Works wrote to the respondent seeking finance to the extent of €100,000 to allow the necessary repairs be carried out. Given that the courthouse is a listed building, the respondent wrote to the Secretary General of the Department of Justice, Equality and Law Reform ("the department") asking if it would be prepared to make funds available to prevent the building further deteriorating in circumstances where it did not have the necessary resources to bring the courthouse up to an acceptable standard.

7. By letter dated 14th June, 2011, the first named applicant was advised by Mr. Brendan Ryan, Chief Executive Officer of the respondent, that due to severe budgeting restraints it was not in a position to fund the extensive refurbishment of the courthouse which would be sufficient to bring it up to modern day standards. He stated that the respondent was engaged in an ongoing review of all secondary court venues, including Tipperary town, having regard to service requirements and capital and current funding availability and that in implementing the review it would have to focus its limited resources on venues carrying the greatest level of court business. He did, however, observe that, because the building was a listed building, the department had agreed to fund some limited repair works to prevent further deterioration but that this would be insufficient to render the building operative.

8. While the Minister for State with Special Responsibility for the Office of Public Works announced in January, 2012 that urgent repairs would be carried out on the courthouse with the assistance of the Department of Justice, no such works have, in fact, been undertaken.

9. The engagement between the relevant interested parties concerning Tipperary courthouse was significantly more extensive than that advised in the aforementioned summary. Nonetheless, I think it is sufficient for the present purposes as it captures the position of the parties and in particular the resting position of the respondent at the date the proceedings issued which was that it simply could not, because of budgetary constraints, agree to carry out the requested repairs.

10. It was in these circumstances that the applicants sought and were granted leave to maintain the present judicial review proceedings (by order of Peart J. dated 21st July, 2011) wherein they seek a number of declaratory reliefs and also an order of *mandamus* directing the respondent to provide, manage and maintain an adequate and suitable courthouse in Tipperary town so as to provide adequate and suitable facilities for the legal profession, judiciary and court staff and members of the public in general. The relief sought by way of an order for *mandamus* was apparently not pressed in the course of the High Court hearing.

Judgment: Birmingham J.

11. Having considered the submissions of the parties and the relevant provisions of the 1998 Act and in particular ss. 5, 6 and 13 thereof, this is what Birmingham J. concluded concerning the statutory remit of the respondent:

"17. For my part, I would be prepared to accept that the Courts Service had a duty to provide, manage and maintain court services and to provide facilities for users of the courts. However, what I find difficult to accept is the suggestion that there is a statutory duty to provide particular facilities at particular locations.

18. It seems to me that any suggestion that there is a specific duty in respect of a specific courthouse in a specific location is incompatible with the power of the Courts Service to designate court venues as provided for at s. 6(2)(j) and the power to create, vary or abolish District Court districts or areas as provided for at s. 26 of the Courts of Justice Act 19[5]3.

19. Again, the existence of a specific duty in relation to a specific venue would not sit easily with the obligation imposed on the Courts Service to secure the most beneficial, effective and efficient use of resources."

12. Regardless of the fact that the Court has received detailed written submissions from the parties concerning these and other findings of the High Court judge, it may be helpful to set out in skeletal form the principal arguments advanced by the parties in the course of the appeal.

The applicants' submissions

13. Mr. Kennedy S.C. submits that:-

(i) The High Court judge erred in law in concluding, having regard to the evidence, that the respondent had no specific duty to maintain courthouse facilities in Tipperary town and in particular Tipperary courthouse. He relied, *inter alia*, on the fact that it had managed and maintained it as a venue over the years and had included it, since 2008, on its list of courthouses for restoration and had sought funding from the department to effect the necessary repairs.

(ii) The trial judge erred in law in concluding that the power to designate court venues was held by the respondent. That power was held by the President of the Circuit Court under s. 10 of the Courts of Justice Act 1947 ("the 1947 Act"). He relied in this regard on Order 1 of the Circuit Court Rules, 2001 as amended by the Circuit Court Rules (General) 2007 (S.I. No. 312 of 2007) and the Circuit Court Rules (Sittings) 2009 (S.I. No. 235 of 2009).

(iii) The respondent's statutory duty to maintain Tipperary courthouse continued in circumstances where the President of the Circuit Court had not made any Order removing Tipperary town as a designated Circuit Court venue.

(iv) That the respondent's failure to maintain Tipperary courthouse breached its obligations under Art. 34.3.4 of the Constitution.

The respondents' submission

14. Mr. Sanfey S.C. on the respondent's behalf submits:-

(i) The High Court judge was correct when he concluded that while the respondent had certain general statutory duties under the 1998 Act concerning the maintenance and upkeep of courthouses throughout the country, the respondent could not be said to have a statutory duty to maintain any particular courthouse or courthouse facilities at any specific location.

(ii) The High Court judge was correct to conclude that the existence of such a specific duty would be inconsistent with the respondent's powers to designate particular venues as provided for in s. 6(2)(j) of the 1998 Act.

(iii) Whatever power was vested in the President of the Circuit Court by reason of the provisions of s. 10 of the 1947 Act, that power was delimited and restricted by the power afforded to the respondent by virtue of s. 6(2)(j) of the 1998 Act.

(iv) The trial judge was correct in concluding that the statutory duty contended for by the applicants was inconsistent with the respondent's obligations to perform its functions in the most beneficial, effective and efficient manner having regard to its resources as per s. 13(2)(a) of the 1998 Act.

(v) The respondent's constitutional obligations as provided for in Art. 34.3.4 are to provide and maintain courts of local and limited jurisdiction. In that regard the respondent was fully compliant with its obligations. Those obligations did not extend to providing such facilities at a particular nominated location such as Tipperary town.

The relevant statutory provisions

15. Given that the applicants' claim for declaratory relief is based upon the respondent's alleged statutory obligations, which are to be found, *inter alia*, in the 1998 Act, it is necessary to consider the precise wording of the sections which detail not only its functions and powers but the manner in which it is required to conduct itself when performing its functions and exercising those powers. It is also necessary, in light of the applicants' submissions, to consider the import and effect of the provisions of the 1947 Act. In this regard the most relevant provisions are those provided for in ss. 5, 6 and 13 of the 1998 Act and s. 10 of the 1947 Act.

16. These provide as follows:-

1998 Act

"5. The functions of the service shall be to:-

(a) manage the Courts,

- (b) provide support services for the judges,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain court buildings,
- (e) provide facilities for users of the courts, and
- (f) perform such other functions as are conferred on it by any other enactment.

6(1) Subject to this Act but notwithstanding any other enactment, the Service may do anything necessary or expedient for enabling it to perform its functions.

6(2) Without prejudice to the generality of subsection (1), the Service may-

- (a) acquire, hold and dispose of land or an interest in land or rights over or in respect of land, and acquire, hold and dispose of any other property,
- (b) enter into contracts and arrangements,
- (c) arrange staff training and education,
- (d) establish arrangements for consultation with users of the courts,
- (e) at the request of the Minister, or on its own initiative, recommend to the Minister appropriate scales of court fees and charges,
- (f) make proposals to the Minister in relation to the distribution of jurisdiction and business among the courts and matters of procedure,
- (g) provide services to other bodies subject to such conditions, including the payment of fees, as it thinks fit,
- (ga) provide secretarial, clerical and administrative, support to the Superior Courts Rules Committee, the Circuit Rules Committee and to the District Court Rules Committee,
- (h) with the consent of the Minister, engage consultants and advisers in connection with the performance of its functions,
- (i) operate public bank accounts within the meaning of section 18 of the Exchequer and Audit Departments Act, 1866,
- (j) designate court venues, and
- (k) Establish, vary the functions of, or dissolve a combined court office under sections 14 and 15 of the Courts and Court Offices Act 2009.

13(2) The board, in the performance of its functions, should have regard to:-

- (a) the resources of the service for the purposes of such performance and the need to secure the most beneficial, effective and efficient use of such resources."

1947 Act

"10(1) For ensuring an equitable distribution of the work of the Circuit Court amongst the several Judges thereof and the prompt dispatch of the business of the Circuit Court in the several circuits thereof, the President of the Circuit Court shall have and exercise the powers conferred on him by subsections of this section.

(2)(a) The President of the Circuit Court may, from time to time, by order fix, in respect of any circuit, the places therein at which sittings are to be held, and whenever an order, made under this paragraph in relation to a circuit, is in force, sittings within that circuit shall be held at the places fixed by the order and not elsewhere.

(2)(b) The President of the Circuit Court may, from time to time, by order fix, in respect of any circuit, the date on which sittings shall commence at each place therein at which sittings are to be held, and, whenever an order under this paragraph is in force, sittings shall commence at each such place in accordance with the order.

(2)(c) The President of the Circuit Court may at any time by order revoke or amend an order made under this subsection (including this paragraph)."

17. Of additional importance for the purposes of determining the extent of the respondent's statutory obligations is the fact that, by reason of the provisions of s. 29 of the 1998 Act and the schedules thereto, the functions formerly held by the Minister for Justice, Equality and Law Reform under s. 26(1) of the Courts of Justice Act 1953 ("the 1953 Act") were transferred to the respondent. Those functions, according to the relevant statutory provision, are as follows: -

"26(1) It shall be lawful for the Minister from time to time, as he shall consider expedient, by order to do all or any of the following things:

- (a) vary or abolish any district court district,

- (b) create any new district court district,
- (c) vary or abolish any district court area,
- (d) create any new district court area,
- (e) vary the class or classes of business for which any district court area is to be delimited,
- (f) alter the places or vary the days or hours from the time being appointed for holding the District Court in or for any district court area,
- (g) after consultation with the President of the District Court, appoint one or more convenient places in every district court area created or varied under this section or within one mile of the boundary of such area in which, and such and so may convenient days and hours at which, the District Court shall be held for the purpose of transacting for such area the business for which the area is delimited,
- (h) assign a name to or change the name of any district court district or district court area,
- (i) revoke or amend an order under this section."

Decision.

18. As was stated by the trial judge in the course of his judgment, it is quite understandable that the applicants, as members of the legal profession in Tipperary, would wish to see court sittings continue in Tipperary town. It is also understandable how, from the correspondence exhibited in the proceedings and the fact that the courthouse is a listed building, they harboured hope that funding might be made available by the respondent or the department to either restore the courthouse to a serviceable condition or at a minimum to a condition sufficient to protect it from any further deterioration. Likewise it is easy to comprehend their disappointment when advised by Mr. Brendan Ryan that, due to the respondent's budgetary restrictions, no refurbishment was proposed for Tipperary courthouse and that depending upon the outcome of a national review of the location and the suitability and number of court venues, the possible permanent closure of Tipperary town as a venue could not be excluded.

19. Harsh and all as it may seem, these are not matters which are material to this appeal. The concern of this Court is to review the findings of the trial judge in light of the issues raised by the applicants in their notice of appeal. That being so, the principal question for this Court is whether the trial judge erred in law in holding that the statutory duties of the respondent, as provided for in the 1998 Act, are not such that the applicants are entitled to require the respondent to provide adequate and suitable court facilities for the legal profession, judiciary and members of the public at a particular location, in this case Tipperary town.

20. As can be seen from s. 5 of the 1998 Act the respondent's role is to manage the courts, manage and maintain court buildings and provide facilities for those who wish to use them. It is also charged with providing support services for judges and information to the public concerning the court system. However, I am in full agreement with the High Court judge insofar as he concluded that there is nothing in that particular section which requires the respondent to carry out these functions by reference to any particular location. Neither is there, in my view, anything in the section from which such a statutory obligation can be inferred.

21. While there was some dispute between the parties, having regard to the content of paras. 5 and 6 of the respondents statement of opposition as to whether the respondent accepted it was under a general statutory duty to provide, manage and maintain court buildings and to provide facilities for the users of the courts as provided for in s. 5 of the 1998 Act, it is clear that the claim advanced before Birmingham J. was focused upon the applicants' contention that the respondent was under a specific statutory duty to provide such facilities at a suitable courthouse in Tipperary town.

22. The applicants cannot obtain declaratory relief unless they can establish the existence of the statutory duty for which they contend. The declaration pursued by them in the present proceedings is based upon their assertion that the respondent has failed to provide adequate courthouse facilities in Tipperary town in breach of its statutory duty under s. 5 of the 1998 Act. A statutory obligation is not created by the actions or conduct of a body such as the respondent. Statutory obligations are provided for by legislation created by the Oireachtas. Thus, it cannot be said, as was urged by Mr. Kennedy, that the High Court judge was incorrect in law in concluding that the respondent was not under the specific statutory duty alleged insofar as he did not have regard to all of the evidence and correspondence exhibited in the proceedings which demonstrated that it had acted as if it was under a specific obligation or duty to maintain Tipperary courthouse. I am quite satisfied that any reliance upon *inter partes* correspondence concerning the efforts made by the respondent to maintain Tipperary courthouse is entirely misplaced. Indeed, reliance upon any conduct on the part of the respondent could not avail the applicants in this regard. Whatever about a claim such as one founded upon the doctrine of legitimate expectations, where a plaintiff might rely upon the conduct of a respondent to support its entitlement to a particular form of relief, the type of declaratory relief sought by the applicants does not permit of such an approach. However, I should also say that the letters relied upon by Mr. Kennedy, in support of this argument in my view very much favoured the respondent's contention that its duties are general insofar as the maintenance of courthouses is concerned and cannot be stated to apply to any specific courthouse.

23. It is accordingly worth noting the following extract from the letter of Mr. Brendan Ryan addressed to Mr. Tom Hayes, T.D., dated 8th March, 2010, where he states, concerning Tipperary town courthouse, as follows:-

"While Tipperary town was included in our building programme, in light of the economic downturn and the reduced capital funding provided to the Courts Service in 2010 it has been necessary to undertake a review of all Court venues and of the building programme which will be completed within the next few months. Given the significant reduction in our funding this year it is not possible to undertake any works at Tipperary Town Courthouse at this time. We will, however, keep the matter under review in the light of available resources."

24. The respondent's understanding as to its statutory obligations under the 1998 Act are also well displayed by Mr. Ryan in his letter to Mr. Sean Aylward, Secretary General of the Department of Justice, Equality and Law Reform, dated 22nd December, 2010, wherein he advised in relation to Tipperary courthouse as follows:-

"The Courts Service is at present reviewing on a nationwide basis the future viability of all of its venues dispersed widely throughout the country. No venue is immune from this review including Tipperary. However, I am conscious of the fiduciary responsibility of the State in relation to the courthouse in Tipperary which as you are aware is a listed building. In this regard I would be much obliged if you would consider the possibility of the Department of Justice & Law Reform

funding, in some way, the urgent immediate works that are required to the roof of the building to ensure that the building is sealed and to prevent its further deterioration. The Courts Service is not in a position to provide any funding to undertake the urgent work as outlined and would not have the financial resources available to invest the significant amount of money to bring the courthouse up to an acceptable standard – even if it was decided to maintain a presence in Tipperary town. However, as the building is listed I am asking you to consider whether such funds could be available from the Department of Justice and Law Reform.

I would be most obliged if you would consider this request as a matter of urgency. While the Courts Service does not have the necessary funds to invest in the courthouse in Tipperary, I believe, as indicated previously, that there is a responsibility on the State to ensure that the building doesn't deteriorate any further."

25. As will be seen from the aforementioned letters the respondent at all times maintained that it was not obliged, having regard to budgetary considerations, to fund the repairs to Tipperary town courthouse. Mr. Ryan referred repeatedly to the State's obligations in respect of the courthouse having regard to the fact that it was a listed building and hence his call upon the department to furnish the resources required to prevent the building from deteriorating further. There is nothing in the correspondence to suggest that the respondent considered itself obliged to maintain this courthouse from its own funds having regard to the financial constraints of its budget.

26. I am also satisfied that the High Court judge was correct in his conclusion that the specific statutory duty contended for by the applicants would appear to be inconsistent and incompatible with the specific powers afforded to the respondent in s. 6 of the 1998 Act.

27. Section 6 of the 1998 Act, gives the respondent a very wide range of powers to enable it perform its many and varied functions which are categorised in section 5. It is, for example, entitled to acquire, hold and dispose of land. If the respondent could be required to repair and maintain court facilities at any particular location, it would be in a position to exercise the last of these powers.

28. I fear I must also reject the applicants' submission that the High Court judge erred in law when he concluded that the statutory right contended for by the applicants was inconsistent with the respondent's rights to designate the venue for sittings of the Circuit Court based upon its powers under s. 6(2)(j) of the 1998 Act. Mr. Kennedy submits that it is the President of the Circuit Court and not the respondent who has the power to designate Circuit Court venues and he relies upon the provisions of s. 10 of the 1947 Act in this regard. Accordingly, he argues that until such time as the President makes an order to the effect that sittings of the Circuit Court should no longer be held in Tipperary town, the respondent remains under a duty to maintain and repair the courthouse.

29. It may well be that the extent of the power which the Oireachtas intended to vest in the President of the Circuit Court when it enacted s.10 of the 1947 Act is unclear. However, while the powers afforded to the President under that section would appear to be driven by the need to give him powers to allow for an equitable distribution of work amongst the court's several judges and the prompt despatch of business, he is empowered "by order" to fix in respect of any circuit the places therein at which sittings are to be held and prior to doing so must consult with the circuit judge permanently assigned to that circuit.

30. For my part I find it hard to accept that the wording of the section might be interpreted in the manner proposed by Mr. Kennedy as the effect of such an interpretation would be that the President of the Circuit Court might designate circuit venues regardless of the condition of the facilities in those venues and the budgetary effect of such decisions on litigants and court users throughout the rest of the country.

31. However, even if Mr. Kennedy is correct in his submission as to the effect of s.10 of the 1947 Act, his argument must fail by reason of the particular wording of s. 6 of the 1998 Act which provides as follows:

"(1) Subject to this Act but **notwithstanding any other enactment**, the Service may do anything necessary or expedient for enabling it to perform its functions.

(2) without prejudice to the generality of subsection (1), the service may:-

(j) designate court venues" (emphasis supplied)

32. The effect of including the phrase "notwithstanding any other enactment" in the aforementioned section is to delimit such a power as may have been held by the President of the Circuit Court or indeed any other body as of the date of the implementation of the Act. That this is the effect of such a clause is clear from what was stated by Kearns J. in *Sheedy v. Information Commissioner* [2005] 2 I.R. 272 where at p. 295 he discussed this precise issue:-

"The use of a "notwithstanding" clause is a convenient form of drafting which skirts or avoids textual amendments to existing legislation but nonetheless operates by implication to bring about amendments or repeals of such legislation."

33. The wording of s. 6 could not be clearer. The respondent, regardless of any other enactment, is entitled to designate court venues. It follows that the respondent must enjoy the power to de-designate a venue. That power cannot be trumped by any power which may earlier have been enjoyed by the President of the Circuit Court under s. 10 of the 1947 Act to fix the place at which sittings may be held.

34. I also fully agree with the conclusions of Birmingham J., concerning the relevance and significance of the provisions of s. 13(2)(a) of the 1998 Act, the text of which is set out earlier at para. 11 of this judgment. The use of the word "shall" in that subsection is, I believe, of substantial importance when it comes to interpreting the powers and functions of the respondent provided for in ss. 5 and 6 thereof. That section governs the manner in which the respondent must perform its functions; namely, having regard to the resources of the service and the need to secure the most beneficial, effective and efficient use of such resources.

35. The effect of s. 13(2)(a) of the 1998 Act is to preclude the respondent from performing its functions otherwise than in a manner which secures the most beneficial, effective and efficient use of its resources. So while it clearly enjoys the power to designate venues and make decisions concerning the upkeep, management and maintenance of various court facilities, it simply has to act in such a way as to secure the most beneficial, effective and efficient use of its resources. That being so, I am entirely satisfied that the respondent cannot be required to meet the individual and particular demands of solicitors in relation to courthouse accommodation at specific locations. As the trial judge stated at para. 20 of his judgment:-

"Quite simply it would be impossible to manage the Courts Service if applications in respect of individual venues can seek to bring them outside the scope of a national review. The effect of making the declaration sought would be to prioritise Tipperary town and Tipperary courthouse to the disadvantage of other venues in Tipperary and further afield."

36. I accept the respondent's submission that the logical consequence of the applicants' claim would be that they could demand that priority be given to Tipperary town, and in this case Tipperary courthouse, to the detriment of the overall needs of court users in other courts at other locations. Likewise, depending upon the number of demands made and the number of dilapidated courthouses, there simply might not be enough money in the budget to meet all such demands without closing all courthouses in respect of which no such demand had been made, regardless of the fact that those courts may be servicing a much greater catchment area or demand.

37. I am accordingly satisfied that it is the respondent under s. 6(2) of the 1998 Act rather than the President of the Circuit Court who has the power to designate or close a particular venue and in particular, a Circuit Court venue. The respondent enjoys the like right in respect of District Court venues by reason of s. 29 of the 1998 Act. The fact that the respondent has not formally de-designated Tipperary town as a Circuit Court venue is, I believe, immaterial to the validity of the applicants' claim.

38. As to the alleged failure on the part of the respondent to comply with its obligations under Article 34.3.4 of the Constitution, that argument is in my view without merit. First, it is an argument not raised by the appellants in their grounds of appeal. Second, the constitutional obligation created by Article 34.2 is an obligation on the Oireachtas to provide Courts of First Instance, a Court of Appeal and a Court of Final Appeal. Article 34.3.4 provides as follows: –

"The Courts of First Instance shall also include courts of local and limited jurisdiction with a right of appeal is determined by law."

It is this latter provision which enables the Oireachtas establish courts of first instance, other than the High Court. There is, however, is nothing in this article from which this court could impose on the respondent a constitutional obligation to provide courthouse facilities at any particular venue or in any particular building.

39. I have no doubt that the respondent in the present case has to make hundreds if not thousands of decisions each year concerning the management, maintenance, repair and upkeep of courthouse facilities throughout the country. It probably has an even greater number of decisions to make in order to support those employed to service the courts and also those who wish to avail of the service it provides such as the legal profession and members of the public. Most, if not all, of these decisions have budgetary consequences. It goes without saying that the consequence of meeting even one significant demand is the rejection of some other competing demand.

40. In these proceedings the Court is being asked to delve deeply into the merits of the respondent's decision not to fund the repair of one particular courthouse. However, to my mind, only those who enjoy a real understanding of the overall organisation, its strategic policy, the extent and nature of the competing demands made upon its resources and its budgetary limitations can be entrusted to make decisions which best meet the organisation's aims and objectives. Neither the High Court nor this Court is adequately equipped to deal with such decisions which necessarily involve a balancing of competing claims in an environment of limited budgetary resources.

41. It is for this reason that there is a long line of legal authority to support the proposition that classic policy and allocative decisions should attract curial deference and that courts ought to show significant judicial restraint when asked to review decisions of such a nature. In this jurisdiction the decisions of the Supreme Court in *Orange v. The Director of Telecommunications Regulations and Another (No.2)* [2000] 4 I.R. 159 and *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 are but two examples of the Courts' general hesitation to intervene by way of judicial review where difficult and often agonising judgments have been made as to how a limited budget is best allocated to the maximum advantage. As is noted by the respondent in its written submissions, these decisions emphasise the distinction between the knowledge of members of the judiciary compared to the particular skill, competence and expertise of those to whom the Oireachtas has entrusted particular decisions which require the deployment of that particular type of knowledge and expertise.

42. Many of the cases which exemplify the judicial restraint shown by the courts to allocative decisions concern the allocation of funds for medical treatment where the courts have stated in no uncertain terms that they cannot be asked to review decisions made with the intention of providing the maximum advantage to the maximum number of patients against the backdrop of a limited budget.

43. While the facts in this case do not involve the emotional considerations that attach to decisions made concerning the allocation of funds for medical treatment, the principle at issue remains the same. It is not the Court's place to trespass upon the realm of resource allocation. However, in the course of the respondent's written submissions reference was made to the decisions in *R (on the application of Robin Murray & Co.) v. The Lord Chancellor* [2011] EWHC 1528 (Admin) (Concerning the "Sittingbourne Magistrates' Court") and *Vale of Glamorgan Council v. The Lord Chancellor* [2011] EWHC 1532 (Admin) (the "Barry Magistrates' Court") which are instructive.

44. Both of these cases concerned a challenge to the closure of particular courts included in a decision of the UK Government to close 93 magistrates' courts and 49 county courts. These decisions were challenged by a firm of solicitors in the Sittingbourne Magistrates' Court case and the council from the area in which Barry Magistrates' Court is situated. In both cases the High Court expressed its sympathy concerning the appellants concerns which included, *inter alia*, the likely effect of the closure on disabled litigants and those living in socially and economically disadvantaged areas, but emphasised that it was not for the Court to trespass upon the realms of resource allocation. In the first of these cases, Sittingbourne Magistrates' Court, at para. 58 the trial judge, Beatson J., stated as follows:–

"It is understandable that closure of local court facilities raise serious concerns amongst the professionals who work or use a court, other court users, and local residents. The principle of local justice is an important one. We consider that the issues raised by the claimant are important, and deserved ventilation at a substantive judicial review hearing. There has now been such a hearing. We have, however, concluded that, for the reasons we have given, the Lord Chancellor's decision was lawful. Accordingly, while we grant permission, this application must be dismissed."

Conclusion

45. Regrettably, like many public bodies over the last decade, the respondent has been significantly curtailed in the manner in which it carries out its obligations and functions having regard to cuts in its capital and current budgets. Such circumstances render it all the

more important that it carry out its obligations in strict compliance with its obligations under s. 13(2) of the 1998 Act. It is mandated to ensure that it meets its obligations by ensuring the most beneficial, effective and efficient use of its limited resources.

46. Of course, the closure of local courthouse facilities raises serious concerns for those professionals who work at and use them. The disadvantage to which they are subjected is clear and palpable. However, while there may be powerful arguments in favour of providing proper and adequate District and Circuit Court facilities in Tipperary town, the merits of the respondent's decision not to fund the repair of Tipperary courthouse from the scarce resources available to it is not the Court's business.

47. The interpretation which the applicants have sought to place upon ss. 5 and 6 of the 1998 Act are, in my view, misplaced. I am quite satisfied that the High Court judge correctly concluded that while the respondent has a duty to provide, and manage court services and to provide facilities for users of the courts, it does not have a statutory duty to provide particular facilities at any particular location.

48. The trial judge was quite correct in his view that to hold that the respondent had a specific duty in respect of a specific courthouse in a specific location was incompatible with the power of the respondent to designate court venues as provided for in s. 6(2)(j) of the 1998 Act and the power to create, vary or abolish district court areas and venues as entitled under s. 29 thereof.

49. Further, the trial judge was correct that to impose the specific duty as advanced by the applicants would be inconsistent with the statutory provision imposed upon the respondent to carry out its functions and powers to secure the most beneficial, effective and efficient use of its resources as mandated by s. 13(2) of the 1998 Act. To grant these applicants the declaratory relief which they seek would entirely negate the purpose of that provision.

Costs Appeal

50. The applicants maintain that the High Court judge erred in law in making an order that they pay 50% of the respondent's costs of the High Court hearing. Mr. Kennedy, S.C., submits that the trial judge should not have made any award of costs in favour of the respondent. In doing so he relied upon the fact that his clients had succeeded in their claim in part, that the respondent had refused an offer of mediation, that the proceedings were in the nature of a test case and that the proceedings had not been pursued entirely in furtherance of their own private interests.

51. Mr. Sanfey S.C., on the respondent's behalf, maintains that the applicants did not succeed on any aspect of their claim, that the respondent had offered them the opportunity of withdrawing the claim on favourable terms and the same had been refused, that they had pursued their claim from the view point of a particular sectional interest, namely court users and members of the legal profession located in or near Tipperary town and if that claim had been successful it would have adverse effects for all other court users who did not fall into that category.

Decision

52. While it is undoubtedly the case that an appellate court is entitled to set aside an order made by a judge at first instance in the exercise of his or her discretion, it should in general be slow to do so (see *Collins v. The Minister for Justice* [2014] IECA 27 and the judgment of MacMenamin J. in *Lismore Builders Limited (in receivership) v. Bank of Ireland Finance Limited* [2013] IESC 6). While it is true to say, as was urged by Mr. Kennedy that this Court has had the benefit of all the evidence that was placed before the High Court judge, it is nonetheless not in nearly as good a position as he was to assess how the costs of those proceedings might most justly be dealt with. This is particularly so in relation to a costs order in a case of this nature. It is only the High Court judge who knows precisely what points were argued in the course of the claim, what concessions were made and whether or not the approach taken by the respective parties is to be criticised in any way.

53. The starting position for the High Court judge was, of course, Ord. 99 of the Rules of the Superior Courts, 1986, which provides that, absent special or unusual circumstances, costs should follow the event. In this case, the applicants, notwithstanding the fact that they lost their claim, were only ordered to discharge 50% of the respondent's costs.

54. From counsel's note of the court's ruling on the 23 May 2014, it would appear that the trial judges principal reason for departing from the costs order routinely required by Ord. 99 RSC was that he was satisfied that the applicants, while they had maintained proceedings on their own behalf, had also been acting in the interest of the wider community. The result of this approach was that the applicants were not penalised in the manner which would normally follow having lost proceedings of this nature and having put the respondent to the costs of defending them. The court having exercised its discretion in that manner, I take the view that unless the applicants can demonstrate that the order made was manifestly unjust, this court should not interfere with it. Accordingly, I will briefly address the submissions relied upon by Mr. Kennedy in support of his appeal against this aspect of the High Court's decision.

55. First, I reject the submission made on the applicants' behalf that the High Court judge should have refused to make any order as to costs on the basis that they were successful in part of their claim. While Mr. Kennedy submits that the applicants succeeded in establishing that the respondent was under a general duty to provide, manage and maintain courthouse buildings by reason of the provisions of s. 5 of the 1998 Act, a duty which he maintained it had denied in its statement of opposition, the entire thrust of the relief sought was destined to establish the existence of a specific statutory obligation requiring the respondent to provide District Court and Circuit Court facilities in Tipperary town as opposed to at any other location. The applicants were unsuccessful in this regard. It is further to be noted that the applicants also sought an order of mandamus but capitulated in relation to the pursuit of that relief at the very last moment. In these circumstances it can hardly be said that the applicants secured any benefit from the fact that they pursued the proceedings to conclusion in the High Court.

56. It is true to say that had the applicants succeeded in obtaining the specific reliefs sought by them in these proceedings, the same would have inured to the benefit, not only of the applicants, but to the benefit of all those who would wish to assess court services in Tipperary town. However, it appears to me that those who would have benefited most would have been the applicants themselves in circumstances where most litigants, if at all, may engage with court proceedings perhaps once or twice in their lifetime, or possibly not at all. Thus, the real beneficiaries of the proceedings would have been the applicants themselves and their clients.

57. The fact that the applicants were, according to Mr. Kennedy, reluctant to pursue the present proceedings and were willing to engage in mediation are not factors, which, having regard to the nature of the proceedings, should or could have been material to the exercise by the Court of its discretion concerning the costs of the proceedings. The particular statutory duty for which the applicants were contending was not a matter which could have been mediated between the parties. Only the Court could pronounce upon the existence or otherwise of such a specific statutory obligation.

58. Further, it is clear from the respondent's correspondence that an offer was made to permit the applicants withdraw their proceedings without penalty prior to the High Court hearing and that this option was not availed of.

59. Finally, there was no novel point of law involved in the within proceedings. The issues under consideration in the course of these proceedings had already been considered in general term by the Supreme Court in cases such *Brady v. Cavan County Council* [1999] 4 I.R. 99 in the judgment of Keane J..

60. For these reasons I would decline the applicants' appeal in respect of the costs order made by Birmingham J. on 23rd May, 2014.